

**2015–2017 STATE AND FEDERAL LAW UPDATE**  
**84<sup>TH</sup> LEGISLATIVE SESSION**



### **Important Note:**

This document is provided as a courtesy for instructors. This handout is not a 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 and all other courses. Feel free, though, to use this to assist in developing your individual lesson plans and tailoring this course to your particular needs.

### **3184 Curriculum Committee:**

- **Clay Abbott, Esq.**, [Texas District and County Attorneys' Association](#)
- Curriculum Specialist **Susan Brundage**, [TCOLE](#)
- SGT **Stephen Bynum**, [Texas Department of Public Safety](#)
- **Michael Ferguson**, [East Texas Police Academy](#)
- SGT **Bill Kennedy**, [Nacogdoches Police Department](#)
- **Davis Merrell**, [Del Mar Police Academy](#)
- Chief **James Pierson**, [Henderson Police Department](#)

### **Abstract:**

Multiple bills passed by the 84<sup>th</sup> Legislature will have an impact on Texas law enforcement. There were administrative changes, changes in existing statutes, and new laws. In pursuit of equality in justice and ensuring public safety, peace officers will better serve their communities by increasing their awareness of changes and additions in 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 84<sup>th</sup> 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 Presentation, if necessary
- 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 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. Tell students that they will have a written, objective test that requires a 70% to pass at the end of the presentation.

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.

**Examination Requirement:**

An examination to determine student mastery of the content is required for TCOLE credit.<sup>1</sup> The exam should be based on the material presented during classroom instruction. A minimum passing score of 70% is required to receive credit for the class.

An exam has been created and attached to this document for the use of instructors. It is recommended that this exam be used as long as no additional material has been added to the course for local use. If instructors have added material for use in local training courses, additional questions covering the specific topics covered in that course presentation should be included to determine student mastery of the added material. The test questions added should be based on learning objectives and the material presented during instruction.

**Contact Information:**

Texas Commission on Law Enforcement  
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 Education and Training Department. 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.**

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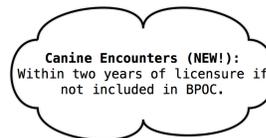
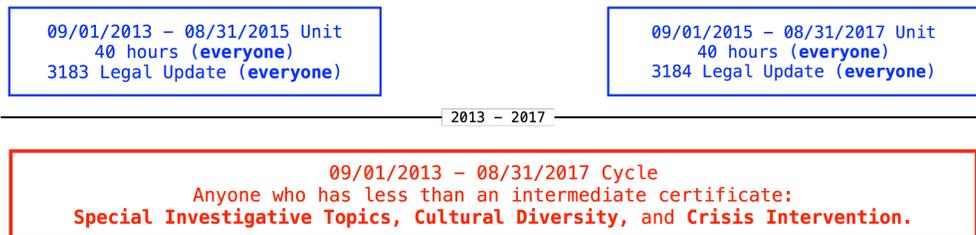
<sup>1</sup> See TCOLE Rules, [§218.1 \(c\)\(1\)](#)

## 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 09/01/2013 through 08/31/2017 quadrennial training cycle:<sup>2</sup>

- 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 (TCOLE course 3184 for the 2015-2017 unit).<sup>3</sup>

A peace officer first licensed on or after **January 1, 2011**, must complete a basic training program on the trafficking of persons within one year of licensure.<sup>4</sup> Because of the way the enabling statute is written, the Human Trafficking course that satisfies this requirement may not be contained within an officer's basic peace officer academy training; it must be taken after the officer is licensed (i.e., sworn in with a law enforcement agency).

A new law, [HB 593](#), requires<sup>5</sup> peace officers to complete a **minimum four-hour bloc** of training on "canine encounters" **within two years of initial licensure** if that training was not a part of the officer's basic academy training. **Effective January 1, 2016, the canine encounter training class becomes an intermediate and advanced certification course.** The Commission

<sup>2</sup> A "cycle" is **four** years; training mandates are found in TCOLE Rules [§218.3 \(d\)](#)

<sup>3</sup> A "unit" is **two** years; legal update mandate found in TCOLE Rules [§218.3 \(a\)](#)

<sup>4</sup> TCOLE Rules, [§218.3 \(f\)](#)

<sup>5</sup> Occupations Code § 1701.253, *School Curriculum*

on Law Enforcement is required by this new statute to review the canine encounters curriculum at least once every four years. The bill does state that an officer who has previously attended a canine encounter class of at least four hours does not need to repeat the class for TCOLE purposes.

Another legislatively required change to TCOLE training is from [HB 1338](#), which amends the Texas Occupations Code. This bill requires<sup>6</sup> the Commission on Law Enforcement, in collaboration with the office of acquired brain injury of the Health and Human Services Commission and the Texas Traumatic Brain Injury Advisory Council, to establish and maintain a training program for peace officers and other first responders that provides information on the effects of an acquired brain injury and of a traumatic brain injury ("TBI") and techniques to interact with persons who have an acquired brain injury or a traumatic brain injury. Further, HB 1338 requires<sup>7</sup> the Commission, in collaboration with the Texas Veterans Commission, to establish and maintain a training program for peace officers that provides information on veterans with combat-related trauma, post-traumatic stress, post-traumatic stress disorder, or a traumatic brain injury. An officer is not permitted under this new law to complete the training by taking an online course. The Trauma-Affected Veteran training will be incorporated by TCOLE into the Crisis Intervention Training ("CIT") course.

A major change in mandated training for law enforcement *supervisors* comes in the form of [HB 3211](#), which completely rewrites the way new supervisor training must be handled. Previously, newly appointed law enforcement supervisors were required to complete the TCOLE New Supervisor Course (#3737) within 24 months after the officer's first appointment to a supervisory position. Effective 09/01/2015, HB 3211 amends Occupations Code [§1701.352\(d\)](#) to require a peace officer who *is appointed* or *who will be appointed* to the officer's first supervisory position to receive in-service training on supervision not earlier than the 12<sup>th</sup> month before the date of that appointment or later than the first anniversary of the date of that appointment. This change permits LE agencies to train their new leaders before putting them into the supervisory position.

[HB 2053](#) adds a course on the use of the Child Safety Check Alert List to the classes required for an officer to obtain an intermediate or advanced proficiency certificate.<sup>8</sup>

[HB 2684](#) requires school district peace officers and school resource officers at school districts with an enrollment of 30,000 students or more to go through Child Behavior training.<sup>9</sup>

[SB 1987](#) requires that training on interactions with deaf and hard of hearing drivers be completed as part of the BPOC or to obtain an intermediate proficiency certificate.<sup>10</sup> Senate Bill 1987 also amends the Transportation Code<sup>11</sup> to provide for the Texas Department of Motor Vehicles' issuance of specialty license plates for persons who are deaf or hard of hearing. A license plate issued under this new law must include an emblem indicating that the person operating the vehicle is deaf or hard of hearing.

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<sup>6</sup> Occupations Code §1701.261, *Acquired and Traumatic Brain Injuries Training*

<sup>7</sup> Occupations Code §1701.262, *Trauma Affected Veterans Training*

<sup>8</sup> Occupations Code §1701.402, *Proficiency Certificates*

<sup>9</sup> Occupations Code §1701.263, *Education and Training Program for School District Peace Officers and School Resource Officers*

<sup>10</sup> Occupations Code § 1701.253, *School Curriculum*

<sup>11</sup> Transportation Code §504.204, *Persons Who Are Deaf or Hard of Hearing*

Like many of the other TCOLE technical proficiency certificates, the Investigative Hypnosis Proficiency Certificate now expires after two years. TCOLE Rule [221.7](#), *Investigative Hypnosis Proficiency*, requires holders of the TCOLE Investigative Hypnosis Proficiency Certificate to complete update training at least once during each biennial training unit in order to keep that certificate valid. This rule change went into effect on October 17, 2013.

One of the big changes you will notice is that there have been several areas in the Rules that are now numbered differently from before. For example, as of November 11, 2014, §217.1 (*Minimum Standards for Enrollment and Initial Licensure*) has all of the rules for enrollment in basic training courses and initial licensure in one place. Administrators and officers no longer have to look in one section for peace officers, another for jailers, and a third for telecommunicators.

One **huge** change made by the 84<sup>th</sup> legislature was designed to address the ongoing shortage of qualified applicants for peace officer jobs. The legislature recognized that there is a large pool of highly qualified, experienced, former officers whose peace officer licenses have expired but who would otherwise be excellent applicants. [HB 872](#), effective 09/01/2015, permits<sup>12</sup> former Texas peace officers to reactivate their peace officer license if the officer:

- (1) completed at least **10** years of **full-time service** as a peace officer in good standing before the break in employment;
- (2) meets current licensing standards;
- (3) successfully completes:
  - A. an online or in-person supplemental peace officer course of not more than 120 hours;
  - B. other in-person training requirements of not more than 40 hours;
- (4) passes a peace officer reactivation examination;
- (5) pays any required fees.

## 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.**

[Fernandez v. California](#) 134 S. Ct. 1126 (2014)

**Issue:** If a person objects to police making a warrantless search of his residence, and police physically remove him from the residence (i.e., arrest him), can the police make a warrantless search with the consent of the remaining co-occupant?

**Holding:** Yes. Under *Georgia v. Randolph*, a person's objection to a search of a residence is not effective unless he is physically present. As soon as he is removed, his objection is also removed.

**Commentary:** The Texas Court of Criminal Appeals decision in *State v. Copeland*, 399 S.W.3d 159 (Tex. Crim. App. 2013), holding that a driver's consent to search was valid even when a co-owner passenger objected, just became much stronger now that the Supreme Court has limited *Georgia v. Randolph* to its facts in this case.

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<sup>12</sup> Occupations Code §1701.316, *Reactivation of Peace Officer License*

[Riley v. California](#) 134 S. Ct. 2473 (2014)

**Issue:** May the police, without a warrant, search digital information on a cell phone seized from an individual who has been arrested?

**Holding:** No, not unless the facts create an exception to the warrant requirement, such as exigent circumstances. The sheer volume and diversity of information that is stored on a cell phone makes searching one incident to arrest analogous to searching a giant trunk the arrestee is towing and arguably more invasive than searching the arrestee's home, both of which would also require a warrant.

**Commentary:** Bottom line, *officers must get a search warrant to obtain contents of a cell phone*. Officers can hold onto the cell phone while they get a warrant. This is about as definitive a loss as we could have expected for law enforcement officers, but after the decision of the Texas Court of Criminal Appeals on February 26, 2015, in *State v. Granville*, it cannot be much of a surprise. Exigent circumstances will be a valid exception, but it will apply in a minority of cases. Consent is also a valid exception.

[Heien v. North Carolina](#) 135 S. Ct. 530 (2014)

**Issue:** When an officer stopped the defendant for having only one working brake light and subsequently found drugs in the car, should the drugs have been suppressed after the appeals court determined that the ambiguous traffic statute actually permitted the operation of a vehicle with only one working brake light?

**Holding:** No. An objectively reasonable mistake of law by an officer does not offend the Fourth Amendment. In this case, no North Carolina court had ever held that the officer's interpretation of the statute was legally incorrect, and both the state appeals court and U.S. Supreme Court concluded the officer's interpretation of the statute was a reasonable one given the statute's ambiguous language.

**Commentary:** Unfortunately for us, Texas codified the "good faith" exception in CCP [Article 38.23](#) and limited it to an officer's good faith reliance on a warrant based on probable cause. But all may not be lost even when an officer is wrong about the law. The Texas Court of Criminal Appeals upheld an arrest under similar circumstances in *State v. Mazuca*, 375 S.W.3d 294 (Tex. Crim. App. 2012), where the officer's conduct was not flagrant and he discovered a valid warrant during the traffic stop.

[Los Angeles v. Patel](#) 192 L. Ed. 2d 435, 2015 U.S. Lexis 4065 (2015)

**Issue:** Is Los Angeles Municipal Code §41.49, which requires hotel operators to record and keep certain guest information for 90 days to be made available to police without a warrant, unconstitutional?

**Holding:** Yes. Section 41.49 violates of the Fourth Amendment because the subject of an administrative search must be given an opportunity for pre-compliance review before a neutral decision-maker, and no such opportunity is available under this statute. The ability to search the register with a warrant is unaffected, however.

**Commentary:** This is now one of the leading cases on administrative searches. Administrative searches are commonplace for certain "closely regulated" businesses identified in this opinion—such as places that sell alcoholic beverages and automobile salvage shops. The decision makes very clear the tests that you have to satisfy if you want to justify an administrative search. But if you want to justify an administrative search, you had better hope that the place that was searched was "closely regulated" (and hotels are not, according to the Court). This decision is also important for another reason: The Court makes clear that a defendant can raise a facial challenge to the constitutionality of a statute under the Fourth Amendment. Such challenges are not just reserved for First Amendment claims.

[Rodriguez v. United States](#) 135 S. Ct. 1609 (2015)

**Issue:** Does the Fourth Amendment allow a dog sniff conducted after completion of a traffic stop?

**Holding:** No. Without reasonable suspicion, extending a traffic stop to conduct a dog sniff violates the Fourth Amendment. “An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop” [but] “he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.”

**Commentary:** Expect more litigation of the duration of traffic stops and claims that officers “slow walked” the traffic investigation while they waited on a dog or backup. Remember, too, that an officer can extend the stop as long as he has reasonable suspicion of an offense other than the traffic offense, as discussed by Justice Alito.

[San Francisco v. Sheehan](#) 135 S. Ct. 1765 (2015)

**Issue:** Sheehan lived in a group home for individuals with mental illness. After she threatened to kill her social worker, police officers went to escort Sheehan to a facility for temporary evaluation and treatment. Sheehan grabbed a knife and threatened to kill them. They retreated, then reentered her room. Sheehan, knife in hand, again confronted them. After pepper spray proved ineffective, the officers shot Sheehan ... a lot. Sheehan later sued, claiming the officers violated Title II of the Americans with Disabilities Act of 1990 (ADA) by arresting her without accommodating her disability.

**Holding:** Qualified immunity applies and the court did not decide whether the Constitution was violated.

**Commentary:** This case does not resolve these issues, except that “Qualified Immunity” exists in this situation. Whether the ADA mandates that officers accommodate the specific mental illness of the suspect before he or she is arrested or shot is still open.

**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.

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Note on the organization of this update: Updates will be presented by the statute(s) affected, the effective date(s), and the enabling legislation. A (hopefully) short synopsis of the changes will follow. Links to the bills are provided. The changes are broken down by code (e.g., Penal Code, CCP, Transportation Code, Health & Safety Code, etc.).

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### UNIT III: Changes to the Texas Penal Code

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

#### NOTE ON OPEN CARRY OF HANDGUNS

[House Bill 910](#) is a massive, complicated, **42-page** behemoth that made sweeping changes to a huge number of Texas statutes relating to the carrying and possession of handguns. Previous Texas law provided for a licensing scheme to carry a concealed handgun under certain circumstances. House Bill 910 amends the Alcoholic Beverage Code, Code of Criminal Procedure, Education Code, Election Code, Family Code, Government Code, Health and Safety Code, Labor Code, Local Government Code, Occupations Code, Parks and Wildlife Code, and Penal Code to authorize a person who is **licensed to carry a handgun** to **openly carry** a **holstered** handgun. To add to the confusion, [SB 11](#) made changes to gun laws, too.

You will need to get used to no longer using the term “**CHL**” for this type of license, because the weapon no longer has to be concealed. The statutory term is now simply “Handgun License,” so we’re assuming the phrase “**HL**” will be used from this point forward (e.g., “I stopped a guy with an HL and he looked like Dirty Harry with the .44-magnum hog leg he was carrying in his holster!”).

Rather than take up pages upon pages of space in this document listing the changes to signage and rules that these new rules brought into effect, keep in mind that (most likely) if it once read “concealed handgun,” it now most likely simply will read as “handgun.” An example: §11.041(a), Alcoholic Beverage Code, has been changed to read as follows:

(a) Each holder of a permit who is not otherwise required to display a sign under Section 411.204, Government Code, shall display in a prominent place on the permit holder's premises a sign giving notice that it is unlawful for a person to carry a weapon on the premises unless the weapon is a [~~concealed~~] handgun the person is licensed to carry under Subchapter H, Chapter 411, Government Code.

One other thing that might help you as you wade through the voluminous and confusing changes wrought by the changes to the laws relating to handguns: with a few exceptions, the basic rule is this: ***if it was illegal to do with a CHL, it's probably still illegal to do with an HL in plain view. It was legal to do with a CHL, it's probably legal to do with a holstered handgun in plain view.*** That's obviously over-simplified, but it's a good rule of thumb as you work your way through it. Please keep these changes in mind as you read through the remainder of the handout. The open-carry changes are scattered throughout the laws you will see.

**You need to read the bills yourself to ensure you're familiar with them!**

☆☆☆

**Statutes:** §§28.03 (b), (f), (h) and (j), *Criminal Mischief*; 28.06(d), *Amount of Pecuniary Loss*; 8.07 (e), *Interference with Railroad Property*; 28.08 (b) and (d), *Graffiti*; 31.03 (e), *Theft*; 31.04 (b) and (e); 31.08 (c), *Value*; 31.16 (c) and (d), *Organized Retail Theft*; 32.02 (c), *Value*; 32.23 (e), *Trademark Counterfeiting*; 32.32 (c), *False Statement to Obtain Property or Credit or in the Provision of Certain Services*; 32.33 (d) and (e), *Hindering Secured Creditors*; 32.34 (f), *Fraudulent Transfer of Motor Vehicle*; 32.35 (e), *Credit Card Transaction Record Laundering*; 32.441 (e), *Illegal Recruitment of an Athlete*; 32.45 (c), *Misapplication of Fiduciary Property or Property of Financial Institution*; 32.46 (b), *Securing Execution of Document by Deception*; 33.02 (b-2), *Breach of Computer Security*;

34.02 (e), *Money Laundering*; 35.02 (c), *Insurance Fraud*; 35.025 (b), *Value of Claim*; 35A.02 (b), *Medicaid Fraud*; and 39.02 (c), *Abuse of Official Capacity*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1396](#)

For the first time since 1993, we have a new standard value ladder!

Standard Value Ladder: 09/01/2015

From	To	Level/Degree
	\$99.99	M/C
\$100.00	\$749.99	M/B
\$750.00	\$2,499.99	M/A
\$2,500.00	\$29,999.99	SJF
\$30,000.00	\$149,999.99	F/3
\$150,000.00	\$299,999.99	F/2
\$300,000.00		F/1

**Statute:** 20.05, *Smuggling of Persons*

**Effective Date:** 09/01/2015

**Legislation:** [HB 11](#)

There were several changes to §20.05:

1. The actor must now have the **intent to obtain a pecuniary benefit** when he **knowingly** either:
  - a. uses a motor vehicle, aircraft, watercraft, or other means of conveyance to transport someone with the intent to conceal that person, flee from law enforcement, etc.; **or**
  - b. encourages or induces a person to **enter or remain** in this country in violation of federal law by concealing, harboring, or shielding that person from detection.
2. The punishment levels have changed, too:
  - a. F/3 normally;
  - b. F/2 if the actor commits the offense in a manner that creates a “substantial likelihood” the victim will suffer SBI or death, or if the victim was <18 YOA at the time of the offense;
  - c. F/1 if the smuggled individual became a victim of sexual assault, as defined by PC §22.011, or aggravated sexual assault, as defined by PC §22.021; or if the smuggled individual suffered SBI or death.
3. The affirmative defense that was under §20.05(d) is now subsection (c) and may not be used for the F/2 and F/1 levels of this offense listed above.

**NEW Statute:** 20.06, *Continuous Smuggling of Persons*

**Effective Date:** 09/01/2015

**Legislation:** [HB 11](#)

A person commits an offense if, during a period that is **10 or more days** in duration, he engages **two or more times** in conduct that constitutes PC §20.05. You cannot charge

someone for §§20.05 and 20.06 for the same set of actions that constitute the offense charged. **One victim = one count, regardless of how many times he was smuggled.** This offense is punishable as a F/2 unless the act creates substantial likelihood of SBI / death or if the victim is younger than 18 YOA at the time of offense, in which case F/1. If the smuggled individual actually became a victim of sexual assault, as defined by §22.011, or aggravated sexual assault, as defined by §22.021, or if the smuggled individual actually suffered serious bodily injury or death, the offense is a F/1 with a **minimum** punishment of **25 years**.

**Statute:** 20A.03, *Continuous Trafficking of Persons*

**Effective Date:** 09/01/2015

**Legislation:** [HB 10](#)

Section 20.03(a) was rewritten such that it is now an offense if actor commits trafficking two or more times in 30 days "against **one** or more victims."

**NEW Statute:** 20A.04, *Accomplice Witness; Testimony and Immunity*

**Effective Date:** 09/01/2015

**Legislation:** [HB 10](#)

A party to an offense under chapter 20A can be required to provide evidence or testify against another about the offense, but may not be prosecuted for any offense about which the party is required to provide evidence or testify. A conviction under this chapter may be had on the uncorroborated testimony of a party to the offense.

**Statute:** 21.15, *Invasive Visual Recording*

**Effective Date:** **IMMEDIATELY**

**Legislation:** [SB 1317](#)

Senate Bill 1317 amends Penal Code §21.15 to **rename** the offense of *Improper Photography or Visual Recording* as *Invasive Visual Recording* and to revise the conduct constituting the offense. Specifically, §21.15's definitions and the elements of the offense are clarified as follows:

A person commits an offense if, **without the other person's consent and with intent to invade the privacy of the other person**, he:

- (1) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of an intimate area of another person if the other person has a reasonable expectation that the intimate area is not subject to public view;
- (2) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of another in a bathroom or changing room; or
- (3) knowing the character and content of the photograph, recording, broadcast, or transmission, promotes a photograph, recording, broadcast, or transmission described by Subdivision (1) or (2).

For purposes of this renamed and reworked offense, (1) "female breast" means any portion of the female breast below the top of the areola; (2) "intimate area" means the naked or clothed genitals, pubic area, anus, buttocks, or female breast of a person; (3) "changing room" means a room or portioned area provided for or primarily used for the changing of clothing and includes dressing rooms, locker rooms, and swimwear changing areas; and (4) "promote" has the meaning assigned by PC [§43.21](#).

**NEW Statute:** 21.16, *Voyeurism*

**Effective Date:** 09/01/2015

**Legislation:** [HB 207](#)

House Bill 207 creates the new offense of voyeurism. A person commits an offense if, with the intent to arouse or gratify sexual desire of the actor, he observes another without that person's consent while the other person is in a dwelling or structure in which the other person has a reasonable expectation of privacy. This new crime is an M/C unless the actor has two prior convictions, in which case it becomes an M/B. If the victim is <14 years of age, the offense becomes a SJF. If conduct that constitutes an offense under this §21.16 also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

NOTE: Because of some recent case law out of the Texas Court of Criminal Appeals related to the constitutionality of certain statutory language (“with the intent to arouse or gratify the sexual desire of the actor”), there is the potential for litigation on this statute relatively quickly. Also note that some of the same conduct is still covered by the offense of *Disorderly Conduct* [PC [§42.01](#)(a)(11)] if the actor “window peeps” under that law, which is an alternative to this section. *Talk with your local prosecutor before making a decision on how to proceed.*

**Statute:** 22.021, *Aggravated Sexual Assault*

**Effective Date:** 09/01/2015

**Legislation:** [HB 2589](#)

Prosecutors have expressed concern that there is a gap in current law regarding the age at which a juvenile is considered a disabled individual for purposes of certain sexual assault offenses. These prosecutors have reported instances in which, because of this age gap, a victim who is not old enough to be considered a disabled individual for purposes of the more serious offense of aggravated sexual assault while, at the same time, not young enough for purposes of that same offense when the age of the victim is considered—so the offender can only be charged with the less serious offense of sexual assault. House Bill 2589 amends the Penal Code to lower the age above which a person is considered a disabled individual for purposes of an aggravated sexual assault offense. “Disabled individual” means a person **older than 13 years of age** who by reason of age or physical or mental disease, defect, or injury is substantially unable to protect the person’s self from harm or to provide food, shelter, or medical care for the person’s self.

**Statute:** 22.04, *Injury to a Child, Elderly Individual, or Disabled Individual*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1286](#)

House Bill 1286 amends the Penal Code to expand the conditions<sup>13</sup> that qualify a person as a disabled individual for purposes of the offense of injury to a child, elderly individual, or disabled individual. The term “disabled individual” can now apply regardless of the victim’s age (previously was >14 years of age).

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<sup>13</sup> The following were added: autism spectrum disorder, as defined by [§1355.001](#), Insurance Code; developmental disability, as defined by [§112.042](#), Human Resources Code; intellectual disability, as defined by [§591.003](#), Health and Safety Code; severe emotional disturbance, as defined by [§261.001](#), Family Code; or traumatic brain injury, as defined by [§92.001](#), Health and Safety Code.

It is an affirmative defense to prosecution under Subsections (a)(1), (2), and (3) for injury to a **disabled individual** that the person **did not know and could not reasonably have known** that the individual was a disabled individual, as defined by Subsection (c), at the time of the offense.

**Statutes:** §§25.07, *Violation of Certain Court Orders or Conditions of Bond in a Family Violence, Sexual Assault or Abuse, Stalking, or Trafficking Case* and 25.072, *Repeated Violation of Certain Court Orders or Bond in Family Violence, Sexual Assault or Abuse, Stalking, or Trafficking Case*

**Effective Date:** 09/01/2015

**Legislation:** [SB 147](#); [HB 2645](#)

Senate Bill 147 amends the Code of Criminal Procedure, Government Code, and Penal Code to consolidate provisions relating to violations of protective orders or bond conditions in a family violence, sexual assault or abuse, or stalking case and to include trafficking cases<sup>14</sup> within the scope of those provisions. The title to §25.072 is changed to include these new parameters. PC §38.112, *Violation of Protective Order Issued on Basis of Sexual Assault or Abuse, Stalking or Trafficking*, is **repealed** because the conduct prohibited in that section is now covered in §§25.07 and 25.072.

House Bill 2645 now makes it an offense if a person removes, attempts to remove, or otherwise tampers with the normal functioning of a global positioning monitoring system.<sup>15</sup>

**Statute:** 30.06, *Trespass by License Holder With a Concealed Handgun*

**Effective Date:** 01/01/2016

**Legislation:** [HB 910](#)

In addition to multiple other changes discussed later, HB 910 decreases the penalty for a license holder trespassing with a concealed handgun to a M/C and creates a M/C offense punishable by a fine not to exceed \$200 for a license holder trespassing with an openly carried handgun. The penalty for these trespassing offenses is enhanced to a M/A if the trespasser ignores **verbal** notice that the person may not enter or remain on the property with a handgun.

**Statute:** 30.07, *Trespass by License Holder With an Openly Carried Handgun*

**Effective Date:** 01/01/2016

**Legislation:** [HB 910](#)

This new section is designed to mirror the elements of §30.06 and apply them to the carriage of openly carried handguns. Importantly, this new law specifically clarifies that it is **not** a defense to prosecution that the pistol is carried by the actor in a belt holster or shoulder holster.

**This new law permits property owners to prohibit open carry, concealed carry, or both, from their premises.** For purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication. The same signage requirements as §30.06 exist (English & Spanish, contrasting colors, 1" block letters, etc.). Importantly, though, the owners

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<sup>14</sup> For purposes of §25.07, "Trafficking" means any conduct that constitutes an offense under [§20A.02](#).

<sup>15</sup> "Global positioning monitoring system" has the meaning assigned by Article [17.49](#), Code of Criminal Procedure.

must have the applicable (i.e., separate) signage for **each type** of carriage they wish to prohibit. If they want to prohibit both types, **there must be two separate signs**.

It is an **exception** to the application of this new section that the property on which the license holder openly carries the handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under §§46.03 or 46.035.<sup>16</sup>

**NEW Statute:** 31.18, *Cargo Theft*

**Effective Date:** 09/01/2015

**Legislation:** [SB 1828](#)

For purposes of this new offense, "cargo" means goods, as defined by [§7.102](#), Business & Commerce Code ("all things that are treated as movable for the purposes of a contract for storage or transportation"), that constitute, wholly or partly, a commercial shipment of freight moving in commerce. A shipment is considered to be moving in commerce if the shipment is located at any point between the point of origin and the final point of destination regardless of any temporary stop that is made for the purpose of transshipment or otherwise. "Vehicle" has the meaning assigned by TRC [§541.201](#) (basically, any device that can be used to transport or draw persons or property on a highway. The term does not include a device exclusively used on stationary rails or tracks, nor does it include manufactured housing).

A person commits Cargo Theft if:

- he knowingly or intentionally conducts, promotes, or facilitates an activity in which the person receives, possesses, conceals, stores, barter, sells, abandons, or disposes of: (A) stolen cargo; or (B) cargo explicitly represented to the person as being stolen cargo;  
**OR**
- is employed as a driver lawfully contracted to transport a specific cargo by vehicle from a known point of origin to a known point of destination and, with the intent to conduct, promote, or facilitate an activity described above, knowingly or intentionally:
  - (A) fails to deliver the entire cargo to the known point of destination as contracted; or
  - (B) causes the seal to be broken on the vehicle or on an intermodal container containing any part of the cargo.

Punishment is determined by the dollar values involved:

- If value of items stolen is <\$1,500: **this offense doesn't apply**
- \$1,500 - \$9,999.99: **SJF**
- \$10K - \$99,999.99: **F/3**
- \$100K - \$199,999.99: **F/2**
- over \$200K: **F/1**

If the vehicle is stolen or damaged as part of the same criminal episode, **that value is added into the value of the amount stolen for purposes of punishment**. Offense bumps to next higher level (can go no higher than F/1) if it is shown on the trial of the offense that the person "organized, supervised, financed, or managed" one or more other persons engaged in an activity described above.

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<sup>16</sup> *Places Weapons Prohibited or Unlawful Carrying of Handgun by License Holder*

**Statute:** 33.02, *Breach of Computer Security*

**Effective Date:** 09/01/2015

**Legislation:** [HB 896](#)

This bill amends PC §33.02 by adding number (2) to Subsection (b-1) which broadens the concept of the “owner” of a computer to include the government or a business. It also makes it an offense for a person to violate a **clear and conspicuous prohibition** by the owner of the system or to violate a contractual agreement with the intent to defraud, etc. The bill further adds section (f) which creates a defense to prosecution if the actor's conduct was due to a contract to provide security for the computer or other security-related services.

**Statute:** 33.021, *Online Solicitation of a Minor*

**Effective Date:** 09/01/2015

**Legislation:** [SB 344](#)

SB 344 alters the elements of the offense needed to establish *Online Solicitation of a Minor* and implying new defenses to prosecution. Section 33.021(a)(1) is amended by removing “represents himself or herself to be” from the definition of “minor.” The definition now includes only those who actually are younger than 17 years of age or an individual whom the actor believes to be younger than 17 years of age.

Section 33.021 is further changed by amending subsections (b), (d), and (e). Subsection (b) is updated by removing “with the intent to arouse or gratify the sexual desire of any person” and replacing it “with the intent to commit an offense listed in Article 62.001(5)(A), (B) or (K), CCP.”<sup>17</sup>

Subsection (d) is amended by REMOVING that it is NOT a defense to prosecution that “(2) the actor did not intend for the meeting to occur; or (3) the actor was engaged in a fantasy at the time of the commission of the offense.” In other words, subsection (d) now says simply that “It is not a defense to prosecution under Subsection (c) that the meeting did not occur.”

**Statute:** 36.06, *Obstruction or Retaliation*

**Effective Date:** 09/01/2015

**Legislation:** [SB 923](#)

In another tool to fight “[doxing](#),” subsection (a-1) is added to §36.06. This new subsection states that a person commits an offense if the person posts on a publicly accessible website the residence address or telephone number of an individual the actor knows is a public servant or a member of a public servant’s family or household with the intent to cause harm or a threat of harm to the individual or a member of the individual’s family or household in retaliation for or on account of the service or status of the individual as a public servant. The new offense is a F/3 unless the actor’s conduct is described by Subsection (a-1) **and** results in the bodily injury of a public servant or a member of a public servant’s family or household, in which case it becomes a F/2.

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<sup>17</sup> *Continuous Sexual Abuse of Young Child or Children, Indecency with a Child, Sexual Assault, Aggravated Sexual Assault, Prohibited Sexual Conduct, Compelling Prostitution, Sexual Performance by a Child, Possession or Promotion of Child Pornography, and §20A.02 (a)(3), (4), (7), or (8), Penal Code [Trafficking of Persons].*

**Statute:** 37.10, *Tampering with Governmental Record*

**Effective Date:** 09/01/2015

**Legislation:** [HB 644](#)

House Bill 644 adds “a search warrant issued by a magistrate” to the list of items punishable as a F/3 offense under section (c)(2).

**Statute:** 38.15, *Interference with Public Duties*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1061](#)

Creates a rebuttable presumption of interference with a peace officer if the actor intentionally disseminates the home address, home telephone number, emergency contact information, or social security number of the officer or a family member of the officer. Exempts legitimate radio stations, television stations, and newspapers.

**Statute:** 39.04, *Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with Person in Custody*

**Effective Date:** 09/01/2015

**Legislation:** [SB 183](#); [HB 511](#)

Penal Code §39.04 relates to the violation of civil rights and improper sexual activity with individuals in custody. SB 183 expands subsections (a), (b), and (f) of that statute to include juvenile facilities.

House Bill 511 amends Code of Criminal Procedure Art. 18.20 8B(a)(1) and (2) and Penal Code §39.04(e)(1)(B) to include among those facilities “any place or facility designated for the detention of a person suspected of violating a provision of the federal Immigration and Nationality Act.”

**Statute:** 43.02, *Prostitution*

**Effective Date:** 09/01/2015

**Legislation:** [HB 10](#); [SB 825](#)

HB 10 changes: the F/2 punishment under (c)(3) for this offense now includes not only soliciting (A) someone younger than 18 YOA, but also someone (B) **represented to the actor** as being younger than 18 years of age; or (C) **believed by the actor** to be younger than 18 years of age.

SB 825 changes: there are often three distinct parties involved in the crime of prostitution—the pimp, the prostitute, and the purchaser—but the current statutory framework provides no distinction between the buyer and seller. The number of individuals arrested or charged with purchasing or attempting to purchase sex is a valuable measurement of the demand for commercial sex. Therefore, it is important to distinguish the roles of the buyers and sellers. This statutory change does **not** expressly create a new criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

Conduct constituting a prostitution offense applies if a person engages in the conduct in return for receipt of a fee or if a person engages in the conduct based on the payment of a fee by the actor or another person on behalf of the actor. The bill specifies that a prostitution offense is established regardless of whether the actor is offered or actually receives the fee or regardless of whether the actor or another person on behalf of the actor offers or actually pays the fee, as applicable. This paragraph that should be helpful to prosecutors, due to a drafting

error, was likely over-broad, and perhaps unconstitutional; the solution is for prosecutors not to request a jury charge under this subsection.

**Statute:** 43.26, *Possession or Promotion of Child Pornography*

**Effective Date:** 09/01/2015

**Legislation:** [HB 2291](#)

Simple possession of child pornography is a F/3; becomes a F/2 with one previous conviction and a F/1 with two or more previous convictions. Promotion is a F/2, but becomes a F/1 if actor has a previous conviction.

**Statute:** 46.02, *Unlawful Carrying Weapons*

**Effective Date:** 01/01/2016

**Legislation:** [HB 910](#)

Subsection (a-1)(1) is amended to allow for the holstered<sup>18</sup> open-carry, inside a motor vehicle or watercraft, of a handgun if the person is licensed to carry the gun. If the person is not licensed to carry, the weapon must be concealed as before.

**Statute:** 46.03, *Places Weapons Prohibited*

**Effective Date:** HB 554: 09/01/2015; SB 11: 08/01/2016, except for public junior colleges; then 08/01/2017

**Legislation:** [HB 554](#); [SB 11](#)

House Bill 554 amends the Penal Code to establish a defense to prosecution for the offense of possessing or carrying a **concealed** weapon in or into the **secured area** of an airport if the actor possessed at the screening checkpoint a **concealed** handgun the actor is licensed to carry and exited the checkpoint **immediately** on completion of the screening process and notification that the actor possessed the handgun. A peace officer is **prohibited from arresting an actor** for the offense unless the officer advises the actor of this defense to prosecution and gives the actor an opportunity to exit the screening checkpoint, and the actor does not immediately exit the checkpoint on completion of the screening process.

Senate Bill 11 deals with carrying licensed handguns on college campuses (*cf.* the new Government Code §411.2031, *Carrying of Handguns by License Holders on Certain Campuses*, toward the end of this document for a great deal more information on this particular topic). Senate Bill 11 amends PC §46.03(a) to deal with the issue of handguns on campuses, permitting the concealed carry of handguns on or in the premises, grounds, buildings, or passenger transportation vehicles of a college or university. It's important to remember that the changes deal exclusively with concealed handguns. "Note that this privilege is limited to *concealed* handguns; open carry is still prohibited on college campuses, etc., even if the person is licensed to do so elsewhere as of January 1, 2016."<sup>19</sup> Officers should also note the information in PC §46.035 below.

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<sup>18</sup> For purposes of the new law, "holstered" means a **belt holster** or a **shoulder holster**.

<sup>19</sup> Edmonds, S. (2015). *2015-2017 Legislative Update*. Austin, TX: TDCAA. (p. 12)

**Statute:** 46.035, *Unlawful Carrying of Handgun by License Holder*

**Effective Date:** 08/01/2016, except for public **junior** colleges; then 08/01/2017. See the description below for more information on other effective dates.

**Legislation:** [SB 11](#), [SB 273](#); [HB 910](#)

**Before getting into the details, please note the various effective dates above for these changes and note that there may be different rules for public vs private/independent colleges!** Senate Bill 11 adds public, private, and independent colleges and universities to the list of places where a person with an HL commits an offense if he or she violates the laws, rules, and regulations related to carrying the weapon.

A license holder commits an offense if the he carries a partially or wholly visible handgun, **regardless of whether the handgun is holstered**, on or about his person under the authority of Subchapter H, Chapter 411, Government Code, and intentionally displays the handgun in plain view of another person:

- (1) on the premises of an institution of higher education or private or independent institution of higher education; or
- (2) on any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area of an institution of higher education or private or independent institution of higher education.

According to the new subsection (a-2), a person with an HL commits an M/A offense if he carries a handgun **anywhere** on a **private or independent** college/university that has enacted rules prohibiting such possession and has given notice under PC §30.06. The new subsection (a-3) prohibits carrying a concealed handgun **in certain areas** of a **public** college/university if the entity has made the determination and passed rules about such and has provided notice under PC §30.06 with respect to the college's rules related to where a person may and may not carry handguns under the applicable law.

Subsection (b) has been updated to make illegal the carrying of a handgun in a holster or shoulder holster at or in the same places previously prohibited under §46.035 (e.g., bars, schools, correctional facilities, hospitals / churches / nursing homes / amusement parks, etc., that don't have the 30.06 notice). Think of it like this: *if it was illegal for you to carry your pistol to a place with your CHL, it's still illegal to carry it there with your HL regardless of whether the pistol is hidden or out in the open.*

Senate Bill 273, **effective 09/01/2015**, amends the Government Code and Penal Code to prohibit a state agency or a political subdivision from wrongfully posting notice excluding a concealed handgun license holder (Editor's note: concealed handgun license? Those don't exist anymore!) from carrying a handgun and to make an agency or subdivision found violating that prohibition civilly liable. For our purposes, the most important part of SB 273 is the change it makes to PC §46.035(c) [**emphasis** added]:

- (c) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed, **in the room or rooms** where a meeting of a governmental entity is held **and if the meeting is an open meeting subject to Chapter 551, Government Code, and the entity provided notice as required by that chapter.**

What is most interesting about this particular change is that (1.) it now prohibits carrying firearms only in the *room or rooms* where the governmental meeting is taking place; (2.) the meeting has to be one that is subject to the Open Meetings Act; and (3.) the governmental

entity must have provided notice of the meeting as required by that act. What this law does not change is the prohibition on carrying firearms into a courthouse or courtroom. **Those actions continue to be illegal.**<sup>20</sup> This change seems to be directed more toward, for example, the meeting of a water board or a council of governments committee.

Where it gets REALLY interesting is when you go back to the changes to (c) from HB 910, effective **January 1, 2016** (again, *emphasis* added): "A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, ***at any meeting of a governmental entity.***" So SB 273 says that carrying is illegal only at meetings subject to the Open Meetings Act; HB 910, though, says that all government meetings are protected. **Our advice: contact your local prosecutor for guidance!**

**Statute:** 46.05, *Prohibited Weapons*

**Effective Date:** 09/01/2015

**Legislation:** [SB 473](#)

The National Firearms Act (NFA) of 1934 classified short-barreled rifles and shotguns, suppressors and machine guns as "restricted." However, law-abiding citizens can still obtain these weapons through a lengthy, thorough process that includes sending to the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) a set of fingerprints and two passport photos for an FBI background check. Additionally, individuals must pay a \$200 federal tax and have their local chief law enforcement officer sign off on their paperwork.

Senate Bill 473 amends the Penal Code to **exclude** an item registered in the National Firearms Registration and Transfer Record maintained by the BATFE or classified as a curio or relic<sup>21</sup> by the U.S. DOJ from the items the intentional or knowing possession, manufacture, transport, repair, or sale of which constitutes a prohibited weapons offense. You can go [here](#) (scroll to the bottom of the page that opens when you click on the link) for the BATFE's C&R publications. S.B. 473 simply brings Texas into conformity with federal law and the laws of 40 other states by breaking them out in the Penal Code and adding an exception for weapons that have been properly processed through BATFE in accordance with the NFA.

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<sup>20</sup> *cf.* Penal Code §46.03, *Places Weapons Prohibited*, which forbids carrying firearms "on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court[.]" Premises means "a building or a portion of a building," so the entire courthouse should be covered.

<sup>21</sup> [According to BATFE](#), "27 CFR Section 478.11 defines C&R [Curios and Relics] firearms as those which are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons." "Firearms automatically attain C&R status when they are 50 years old. Any firearm that is at least 50 years old, and in its original configuration, would qualify as a C&R firearm. It is not necessary for such firearms to be listed in ATF's C&R list. Therefore, ATF does not generally list firearms in the C&R publication by virtue of their age." "However, if your C&R item is regulated under the National Firearms Act (NFA) and you desire removal from the provisions of the NFA, you must submit the firearm to the Firearms Technology Branch for evaluation and a formal classification."

**Statute:** 71.02, *Engaging in Organized Criminal Activity*

**Effective Date:** 09/01/2015

**Legislation:** [HB 11](#)

House Bill 11 adds PC §20.06, *Continuous Smuggling of Persons*, to the list of predicate offenses. If the smuggled individual became a victim of sexual assault, as defined by §22.011, or aggravated sexual assault, as defined by §22.021; or if the smuggled individual actually suffered serious bodily injury or death, the offense is a F/1 with a minimum punishment of 30 years.

#### **UNIT IV: Changes to the Texas Code of Criminal Procedure**

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

**Statute:** Art. 2.12, *Who Are Peace Officers*

**Effective Date:** 09/01/2015

**Legislation:** [HB 11](#)

There are two changes in Article 2.12: the first adds "members of the reserve officer corps" to these types of officers commissioned by DPS under subsection (4). The "reserve officer corps" is a new type of DPS specially-commissioned officer created under the Government Code's new §411.0208. The director of DPS may call the reserve officer corps into service at any time the director considers it necessary to have additional officers to assist the department in conducting background investigations, sex offender compliance checks, and other duties as determined necessary by the director. Officers in the reserve officer corps must have previously served with DPS and either resigned or retired from DPS in good standing. The second change to Art. 2.12 deletes the statutory provision for officers employed by the TxDSHS under §431.2471, HSC [food and drug enforcement].

**NEW Statute:** Article 2.139, *Reports Required for Officer-Involved Injuries or Deaths*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1036](#)

House Bill 1036 amends the CCP to require the office of the attorney general to create a form for reporting officer-involved injuries or deaths and a form for reporting certain injuries or deaths of peace officers. Among other provisions, the bill requires law enforcement agencies to complete and submit reports regarding such incidents to the office of the attorney general.

**Not later than the 30<sup>th</sup> day after the date of an officer-involved injury or death**, the law enforcement agency employing an officer involved in the incident **must complete and submit** a written or electronic report, using the form created under Art. 2.139, to the office of the attorney general and, if the agency maintains an Internet website, post a copy of the report on the agency's website. The form must include spaces to report only the following information:

- (1) the date on which the incident occurred;
- (2) the location where the incident occurred;
- (3) the age, gender, and race or ethnicity of each peace officer involved in the incident;
- (4) if known, the age, gender, and race or ethnicity of each injured or deceased person involved in the incident;
- (5) whether the person was injured or died as a result of the incident;

- (6) whether each injured or deceased person used, exhibited, or was carrying a deadly weapon during the incident;
- (7) whether each peace officer involved in the incident was on duty during the incident;
- (8) whether each peace officer involved in the incident was responding to an emergency call or a request for assistance and, if so, whether the officer responded to that call or request with one or more other peace officers; and
- (9) whether the incident occurred during or as a result of:
  - (A) the execution of a warrant; or
  - (B) a hostage, barricade, or other emergency situation.

**NEW Statute:** Article 2.139, *Video Recordings of Arrests for Intoxication Offenses*

**Effective Date:** 09/01/2015

**Legislation:** [HB 3791](#)

This bill requires that a person who is **stopped or arrested** for DWI, DWI with Child Passenger, Intoxication Assault, or Intoxication Manslaughter be entitled to receive **from the law enforcement agency** a copy of any video made by or at the direction of the peace officer of the stop, arrest, field sobriety tests, or the taking of a specimen of the person's breath or blood.

**NEW Statute:** Article 2.1395, *Reports Required for Certain Injuries or Deaths of Peace Officers*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1036](#)

Very similar to the report required for officer-involved shootings found in Article 2.139, the new Article 2.1395 tracks injuries and deaths of peace officers. HB 1036 amends the CCP to require the office of the attorney general to create a written and electronic form for the reporting by law enforcement agencies of incidents in which, while a peace officer is performing an official duty, a person who is not a peace officer discharges a firearm and causes injury or death to the officer. Among other provisions, the bill requires law enforcement agencies to complete and submit reports regarding such incidents to the office of the attorney general. The form must include spaces to report only the following information:

- (1) the date on which the incident occurred;
- (2) the location where the incident occurred;
- (3) the age, gender, and race or ethnicity of each injured or deceased peace officer involved in the incident;
- (4) if known, the age, gender, and race or ethnicity of each person who discharged a firearm and caused injury or death to a peace officer involved in the incident; and
- (5) whether the officer or any other person was injured or died as a result of the incident.

**Not later than the 30<sup>th</sup> day after the date of the occurrence of an incident described above,** the law enforcement agency employing the injured or deceased officer at the time of the incident **must complete and submit** a written or electronic report, using the form created under Art. 2.1395, to the office of the attorney general and, if the agency maintains an Internet website, post a copy of the report on the agency's website.

**NEW Statute:** 2.72, *Law Enforcement Response to Child Safety Check Alert*

**Effective Date:** 09/01/2015

**Legislation:** [HB 2053](#)

This new article works in conjunction with changes to the Family Code. It **requires** ("shall") a peace officer, if the officer locates a child or other person listed on the TCIC child safety check alert list established under §261.3022, Family Code,<sup>22</sup> to:

1. immediately contact DFPS on DFPS's dedicated law-enforcement telephone number for statewide intake;
2. request information from DFPS regarding the circumstances of the case involving the child or other person; and
3. request information from the child and the other person regarding the child's safety, well-being, and current residence.

Art. 2.72 authorizes a peace officer to temporarily detain the child or other person to ensure the safety and well-being of the child. A peace officer, if the officer determines that the circumstances described by §262.104, Family Code,<sup>23</sup> exist, may take temporary possession of the child without a court order as provided by that section. This new law **requires** the officer, if the officer does not take temporary possession of the child, to obtain the child's current address and any other relevant information and report that information to DFPS.

Lastly, this new article **requires** a peace officer who locates a child or other person listed on the TCIC child safety check alert list and who reports the child's or other person's current address and other relevant information to DFPS to report to TCIC that the child or other person has been located and to whom the child was released, as applicable.

**Statute:** 4.14, *Jurisdiction of Municipal Court*

**Effective Date:** 09/01/2015

**Legislation:** [HB 274](#)

House Bill 274 amends CCP Art. 4.14, Local Government Code [§54.001](#)(b), and Government Code [§29.003](#)(a) to raise the cap on a fine or penalty for the violation of a municipal rule, ordinance, or police regulation that governs the dumping of refuse from \$2,000 to \$4,000.

**Statute:** Art. 12.01, *Felonies*

**Effective Date:** 09/01/2015

**Legislation:** [HB 10](#), [HB 189](#)

House Bill 10 removes the statute of limitations for *Compelling Prostitution* under §43.05(a)(2), Penal Code.<sup>24</sup> House Bill 189 removes the statute of limitations for *Sexual Assault* "if probable cause exists to believe that the defendant has committed the same or a similar sexual offense against five or more victims."

Note, though, that the changes in law made to Article 12.01 do not apply to an offense if the prosecution of that offense becomes barred by limitation before 09/01/2015.

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<sup>22</sup> *Child Safety Check Alert List*

<sup>23</sup> *Taking Possession Of A Child In Emergency Without A Court Order*

<sup>24</sup> "...causes by any means a child younger than 18 years to commit prostitution, regardless of whether the actor knows the age of the child at the time the actor commits the offense."

**Statute:** 14.03, *Authority of Peace Officers*

**Effective Date:** 09/01/2015

**Legislation:** [SB 147](#)

Art. 14.03(a) is amended to remove references to consolidated Penal Code sections.

**Statute:** 14.06, *Must Take Offender Before Magistrate*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1396](#)

House Bill 1396 amends the list of offenses to which Article 14.06's "catch and release" (i.e., citations for certain M/B and M/A offenses) provision applies. Specifically, the following offenses may now be handled via arrest or, if the actor lives in the county in which the offense occurred, via a citation:

- (1) Section 481.121, HSC, if the offense if the offense is punishable under Subsection (b)(1), or (2) [i.e., M/B and M/A *Possession of Marijuana*];
- (1-a) Section 481.1161, HSC, if the offense is punishable under Subsection (b)(1) or (2) [i.e., M/B and M/A *POCS in PG 2-A*];
- (2) Section 28.03, PC, if the offense is punishable under Subsection (b)(2) [i.e., M/B *Criminal Mischief*];
- (3) Section 28.08, PC, if the offense is punishable under Subsection (b)(2) or (3) [i.e., M/B or M/A *Graffiti*];
- (4) Section 31.03, PC, if the offense is punishable under Subsection (e)(2)(A) [i.e., M/B *Theft*];
- (5) Section 31.04, PC, if the offense is punishable under Subsection (e)(2) [i.e., M/B *Theft of Service*];
- (6) Section 38.114, PC [*Contraband in Correctional Facility*] if punished as an M/B; and
- (7) Section 521.457, TC [DWLI - all variations].

**Statute:** Article 17.292, *Magistrate's Order for Emergency Protection*

**Effective Date:** **IMMEDIATELY for SB 112**; 09/01/2015 for SB 737

**Legislation:** [SB 112](#), [SB 737](#)

Code of Criminal Procedure Art. 17.292 is amended by SB 112 to authorize a magistrate, in an order for emergency protection and on finding good cause, to prohibit an arrested party from communicating in **any manner** with a person protected under the order or a member of the family or household of such a protected person, **except through the party's attorney or a person appointed by the court.**

Senate Bill 737 amends Art. 17.292 to require courts to send protective orders to law enforcement by the end of the next business day and to permit transmission in electronic form. The bill also requires orders to be sent to victims at the same time. In addition, S.B. 737 shortens the timeline that law enforcement has to enter the orders from the tenth day after receiving the order to the third day. Lastly, S.B. 737 amends §411.042, Government Code, to require the reporting of magistrates' orders for emergency protection to TCIC.

**Statute:** 18.01, *Search Warrant*

**Effective Date:** 09/01/2015

**Legislation:** [HB 326](#)

House Bill 326 amends the Code of Criminal Procedure to provide for a magistrate's authority to consider information communicated by telephone (i.e., a "telephonic search warrant") or other reliable electronic means in determining whether to issue a search warrant. The magistrate may examine an applicant for a search warrant and any person on whose

testimony the application is based. The applicant or other person must be placed under oath before the examination.

An applicant for a search warrant who submits information as authorized by this subsection must prepare a proposed duplicate original of the warrant and must read or otherwise transmit its contents **verbatim** to the magistrate. A magistrate must enter into an original search warrant the contents of a proposed duplicate original that are read to the magistrate. If the applicant transmits the contents by reliable electronic means, the transmission received by the magistrate may serve as the original search warrant.

The magistrate may modify a search warrant that is submitted as described above, but if the magistrate modifies the warrant, the magistrate **must**:

- (A) transmit the modified version to the applicant by reliable electronic means; or
- (B) file the modified original and direct the applicant to modify the proposed duplicate original accordingly.

A magistrate who issues a search warrant for which information is provided by telephone or reliable electronic means **must**:

- (A) sign the original documents;
- (B) enter the date and time of issuance on the warrant; and
- (C) transmit the warrant by reliable electronic means to the applicant or direct the applicant to sign the judge's name and enter the date and time on the duplicate original.

These provisions create a completely non-written search warrant tool. This does not limit technological means of conveying written and sworn affidavits or search warrants.

**Statute:** 18.02, *Grounds for Issuance* [of a search warrant]

**Effective Date:** 09/01/2015

**Legislation:** [HB 1396](#)

Article 18.02 CCP is amended to add (a)(14), "a cellular telephone or other wireless communications device, subject to Article 18.0215."

**NEW Statute:** 18.025, *Access to Cellular Telephone or Other Wireless Communications Device*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1396](#)

Article 18.0215 is added to deal specifically with the very important topic of cell phone searches. This is particularly timely in light of the US Supreme Court's recent ruling on those types of searches.<sup>25</sup> **☆☆☆ Please note that the Legislature used strange language in this bill. The law requires the warrant be signed by "a judge" — but "judge" isn't defined by the article. The word "magistrate" is almost always used in Chapter 18, but not in this article. We don't know yet whether or not this is going to become an issue, but you need to be aware of it. Our advice is to seek input from your local prosecutor on how to proceed. ☆☆☆**

Because of the importance of this new statute, it is included in its entirety below:

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<sup>25</sup> *Riley v. California* (2014)

- (a) A peace officer may not search a person's cellular telephone or other wireless communications device pursuant to a lawful arrest of the person without obtaining a warrant under this article.
- (b) A warrant under this article may be issued only by a judge in the same judicial district as the site of:
- (1) the law enforcement agency that employs the peace officer, if the cellular telephone or other wireless communications device is in the officer's possession; or
  - (2) the likely location of the telephone or device.
- (c) A judge may issue a warrant under this article only on the application of a peace officer. An application must be written and signed and sworn to or affirmed before the judge. The application must:
- (1) state the name, department, agency, and address of the applicant;
  - (2) identify the cellular telephone or other wireless communications device to be searched;
  - (3) state the name of the owner or possessor of the telephone or device to be searched;
  - (4) state the judicial district in which:
    - (A) the law enforcement agency that employs the peace officer is located, if the telephone or device is in the officer's possession; or
    - (B) the telephone or device is likely to be located; and
  - (5) state the facts and circumstances that provide the applicant with probable cause to believe that:
    - (A) criminal activity has been, is, or will be committed; and
    - (B) searching the telephone or device is likely to produce evidence in the investigation of the criminal activity described in Paragraph (A).
- (d) Notwithstanding any other law, a peace officer may search a cellular telephone or other wireless communications device without a warrant if:
- (1) the owner or possessor of the telephone or device consents to the search;
  - (2) the telephone or device is reported stolen by the owner or possessor; or
  - (3) the officer reasonably believes that:
    - (A) the telephone or device is in the possession of a fugitive from justice for whom an arrest warrant has been issued for committing a felony offense; or
    - (B) there exists an immediate life-threatening situation, as defined by Section 1, Article 18.20.
- (e) A peace officer must apply for a warrant to search a cellular telephone or other wireless communications device as soon as practicable after a search is conducted under Subsection (d)(3)(A) or (B). If the judge finds that the applicable situation under Subsection (d)(3)(A) or (B) did not occur and declines to issue the warrant, any evidence obtained is not admissible in a criminal action.

**Statute:** 18.04, *Contents of Warrant*

**Effective Date:** 09/01/2015

**Legislation:** [HB 644](#)

House Bill 644 requires that the issuing magistrate's name appear in "clearly legible handwriting or in typewritten form" in addition to his or her signature.

**NEW Statute** 18.065, *Execution of Warrant Issued by District Judge for DNA Specimen*

**Effective Date:** 09/01/2015

**Legislation:** [HB 2185](#)

House Bill 2185 amends the CCP to authorize a search warrant issued by a district court judge to collect a person's DNA specimen for the purpose of connecting the person to an offense to be executed in any Texas county. Case law has previously indicated district judges had statewide jurisdiction. This is now abundantly clear for DNA warrants; its impact on other search warrants is unclear.

**Statute:** 18.20, *Detection, Interception, and Use of Wire, Oral, or Electronic Communications*

**Effective Date:** 09/01/2015

**Legislation:** [HB 11](#)

House Bill 11 adds PC §§43.04 and 43.05 (*Aggravated Promotion of Prostitution and Compelling Prostitution*) to the list of offenses for which an intercept order may be issued.

**Statute:** 18.21, *Pen Registers and Trap and Trace Devices; Access to Stored Communications; Mobile Tracking Devices*

**Effective Date:** **IMMEDIATELY**

**Legislation:** [HB 3668](#)

HB 3668 adds certain specific arson investigators to the list of "Authorized Peace Officers" who are listed under Article 18.21(1)(2). Subsection (J) is added to the list of officers as follows: "a member of an arson investigating unit commissioned by a municipality, a county or the state."

**Statute:** 18.22, *Testing Certain Defendants or Confined Persons for Communicable Diseases*

**Effective Date:** **IMMEDIATELY**

**Legislation:** [HB 1595](#); [SB 1574](#)

HB 1595 and SB 1574 both made pretty dramatic changes to Art. 18.22 — changes that don't necessarily fit together well. Neither bill causes problems with the other, it's just that they say different things. According to TDCAA,<sup>26</sup> HB 1595 is in effect until 09/01/2015, when SB 1574 will also be in effect. Here's the *Reader's Digest* version of the changes:

HB 1595: Current law requires an arrested person who causes a peace officer to come into contact with the person's bodily fluids to undergo testing for communicable diseases. HB 1595 amends the CCP to also require such testing if an arrested person causes a **magistrate** or **correctional facility employee** to come into contact with the person's bodily fluids.

SB 1574: Subsection (a) is changed to make its testing provisions applicable to any arrested person who causes an "emergency response employee or volunteer" to contact the arrestee's bodily fluid. That term includes EMS, cops, detention officers, county jailers, and firefighters.

**NEW Statute:** 18.24, *Body Cavity Search During Traffic Stop*

**Effective Date:** 09/01/2015

**Legislation:** [HB 324](#)

In response to several high-profile incidents around the state, House Bill 324 creates new CCP Art. 18.24 requiring a search warrant before any body cavity search may be performed **during a traffic stop**. Defines "body cavity search" as an inspection that is conducted of a person's anal or vaginal cavity in any manner, but the term does not include a pat-down.

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<sup>26</sup> Edmonds, S. (2015). *2015-2017 Legislative Update*. Austin, TX: TDCAA. (p. 19)

**NEW Statute:** 38.50, *Retention and Preservation of Toxicological Evidence of Certain Intoxication Offenses*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1264](#)

This bill adds Art. 38.50, *Retention and Preservation of Toxicological Evidence of Certain Intoxication Offenses*, to the CCP. In section (a) it defines toxicological evidence. In section (b) it sets out the scope regarding the applicability of this section. In section (c) it establishes the retention limits for toxicological evidence collected pursuant to an investigation or prosecution of an offense under Chapter 49 of the Penal Code (i.e., intoxication offenses). Section (d) establishes the court as the entity responsible for setting the retention period and notifying both the defendant and the facility that has the evidence stored. Section (e) allows for the destruction of the evidence by the storage facility when the expiration period is met. Section (f) establishes this article as the controlling article if any conflict exists between it and Articles 2.21 or 38.43.

**Statute:** 42.12, *Community Supervision*

**Effective Date:** 09/01/2015

**Legislation:** [HB 372](#), [HB 2246](#)

House Bill 372 amends the Code of Criminal Procedure and Government Code to require a court that grants probation to a sex offender who is subject to certain restrictions on Internet access, and a parole panel that releases such a sex offender on parole or to mandatory supervision, to require the offender as a condition of the supervision or parole to submit to regular inspection or monitoring of each electronic device used by the defendant to access the Internet. The bill includes a sex offender assigned a numeric risk level of two (i.e., moderate) based on a sex offender risk assessment among the sex offenders subject to those Internet access restrictions on placement on community supervision or release to parole or mandatory supervision.

House Bill 2246 amends §13 of Article 42.12 by adding subsection (o), which allows a defendant whose license has been suspended for an offense under §§49.04-49.08, Penal Code,<sup>27</sup> to continue to operate a vehicle if the person obtains and uses an ignition interlock device and secures an occupational driver's license.

**Statute:** 43.05, *Capias Pro Fine Shall Recite*

**Effective Date:** 09/01/2015

**Legislation:** [SB 873](#)

Senate Bill 873 amends CCP Art. 43.05, *Capias Pro Fine Shall Recite*, to allow officers, rather than taking the defendant to jail, to take a defendant with a CPF for M/B or M/A to a another court in the same county with jurisdiction over M/A or M/B offenses or a county criminal law magistrate court in the same county, if the court that issued the capias pro fine was a county court or a statutory county court with M/A or M/B jurisdiction; or another court in the same county with jurisdiction over felony cases or a county criminal law magistrate court in the same county, if the court that issued the capias pro fine was a district court with felony jurisdiction.

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<sup>27</sup> *Driving While Intoxicated, Driving While Intoxicated With a Child Passenger, Flying While Intoxicated, Boating While Intoxicated, Assembling or Operating an Amusement Park Ride While Intoxicated, Intoxication Assault, or Intoxication Manslaughter*

**Statute:** 43.045, *Capias Pro Fine*

**Effective Date:** 09/01/2015

**Legislation:** [SB 873](#)

Much like the changes it makes to Art. 43.05, SB 873 amends Art. 45.045, *Capias Pro Fine*, to allow officers, rather than taking the defendant to jail, to take a defendant with a CPF for M/C to a justice of the peace court or county criminal law magistrate court with jurisdiction over M/C that is located in the same county, if the court that issued the capias pro fine was a justice of the peace court; or a municipal court that is located in the same municipality, if the court that issued the capias pro fine was a municipal court.

**NEW Statute:** Chapter 57A, *Confidentiality of Identifying Information of Victims of Stalking*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1293](#)

House Bill 1293 amends the CCP and Property Code [§92.0161\(c-1\)](#), *Right to Vacate and Avoid Liability Following Certain Sex Offenses or Stalking*, to provide for the use of a pseudonym by a victim of a stalking offense instead of the victim's name in all public files and records and legal proceedings concerning the offense. The bill requires the office of the attorney general to develop and distribute to all state law enforcement agencies a pseudonym form and provides for the implementation of the pseudonym by the law enforcement agency receiving a completed pseudonym form. The bill provides for limited disclosure of a stalking victim's identifying information and establishes M/C offenses for certain conduct involving the knowing disclosure of that information to a person not associated with the case.

House Bill 1293 requires a tenant who is a stalking victim seeking to terminate a lease, vacate, and avoid related liability and who is identified in the applicable law enforcement incident report by means of a pseudonym to provide a copy of the completed pseudonym form to the landlord.

**Statute:** 59.01, *Definitions* [Contraband Subject to Forfeiture]

**Effective Date:** 09/01/2015

**Legislation:** [HB 11](#)

House Bill 11 amends subsection (2) to include the new Penal Code §20.06 offense, *Continuous Smuggling of Persons*, in the list of offenses which can lead to a finding that an item or property is contraband.

**Statute:** 59.06, *Disposition of Forfeited Property*

**Effective Date:** 09/01/2015

**Legislation:** [HB 530](#)

House Bill 530 amends the Code of Criminal Procedure to create an exception to the restricted use of proceeds from criminal asset forfeiture for law enforcement purposes by allowing a certain percentage to be used to provide college scholarships to children of peace officers killed in the line of duty.

**Statutes:** Articles 63.009, *Law Enforcement Requirements*, and 63.0091, *Law Enforcement Requirements Regarding Reports of Certain Missing Children*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1793](#)

Every year, approximately 800,000 children go missing in the United States, many of whom become vulnerable to child sex trafficking. The 84<sup>th</sup> Legislature sought to provide Texas law enforcement agencies better tools to identify children who are at high risk for trafficking and other exploitative crimes. Many law enforcement agencies expressed the need to refine the parameters for data collection to include children <14 years of age categorized as being at high risk for such crimes. House Bill 1793 mandates law enforcement to consider age as a factor and report accordingly. The age "under 14" reflects current criteria set for the [Amber Alert reporting system](#) and the age under which there cannot be a defense to sexual assault of a child. The ability to report based on age more accurately identifies high-risk children.

**NEW Statute:** 63.0092, *Option to Designate Missing Child as High Risk*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1793](#)

This new statute applies to a report of a missing child who is  $\geq 14$  years of age and whom a local law enforcement agency or DPS determines is at a high risk of human trafficking, sexual assault, exploitation, abuse, or neglectful supervision. When entering information about the child into NCIC, the local law enforcement agency may indicate that the child is at a high risk of harm and may include any other relevant information.

**Statute:** 103.0025, *Alternative Payment Procedure for Certain Past Due Fines and Costs*

**Effective Date:** **IMMEDIATELY**

**Legislation:** [HB 121](#)

This new article permits courts to authorize peace officers to collect some past-due fines and costs after a CPF has been issued. If the court does so, the officer who executes the CPF (or who arrests the defendant) must inform the defendant of the alternative payment options he has, including the option of paying by credit card, and may accept a credit or debit payment on the court's behalf. Once the payment is made, the officer is allowed to release the defendant if appropriate.

## **UNIT V: Changes to the Texas Transportation Code**

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

**Statute:** 430.002, *Signs Erected by Neighborhood Association*

**Effective Date:** **IMMEDIATELY**

**Legislation:** [HB 745](#)

HB 745 amends §430.002 to allow a property owners' association to install a solar-powered light-emitting diode (LED) stop sign within subdivisions if the association receives the consent of the governing body of the political subdivision that maintains the road, highway, or street and pays for the installation and maintenance of the sign.

**Statutes:** §§471.003, *Telephone Service to Report Malfunction of Mechanical Safety Devices at Crossings*; 471.006, *Use of Bell and Whistle or Siren at Crossings; Offense*; 471.007, *Obstructing Railroad Crossing; Offense*; and 471.008, *Franchise to Obstruct Street Crossing*

**Effective Date:** **IMMEDIATELY**

**Legislation:** [HB 2496](#)

HB 2946 amends multiple sections of the TRC regarding intersections/grade crossings of railroad tracks and public highways. This bill repeals the following sections of the TRC: 471.003, 471.006, 471.007, and 471.008. The only one of these changes likely to have any effect at all on line-level peace officers is the repeal of §471.007, *Obstructing Railroad Crossing*, which prohibited railway companies from blocking a grade crossing for longer than 10 minutes. Now there is no question about it at all: **DON'T WRITE TICKETS TO TRAINS OR TRAIN CREWS!**

**NEW Statutes:** §§501.008, *Title for Autocycle*; 502.004, *Registration for Autocycle*; 521.085, *Type of Vehicle Authorized*; 545.416, *Riding on Motorcycle*; 547.617, *Motorcycle Footrests and Handholds Required*; and 661.0065, *Protective Headgear for Autocycle*

**Effective Date:** **IMMEDIATELY**

**Legislation:** [SB 449](#)

SB 449 amends the TRC by creating/amending several sections that relate to an Autocycle. This bill adds §501.008 to the Title Law and §502.004 to the Registration Law. Each section has the definition of an Autocycle:

A motor vehicle, other than a tractor, that is (1) designed to have when propelled not more than three wheels on the ground; (2) equipped with a steering wheel; (3) equipped with seating that does not require the operator to straddle or sit astride the seat; and (4) manufactured and certified to comply with federal safety standards requirements for a motorcycle.

For title and registration purposes, an Autocycle **IS** considered to be a motorcycle. Section 521.085(b) was amended to include an Autocycle. This means that for driver's license purposes, an Autocycle is **NOT** considered to be a motorcycle and a Class M license is **NOT** required to operate the vehicle. Section 545.416 was amended by adding letter (f). This means that for the transportation of passengers, an Autocycle **IS** considered to be a motorcycle. Section 547.617 was amended by adding letter (b). This means that for the requirements regarding handholds and footrests, an Autocycle is **NOT** considered to be a motorcycle. Section 661.0065 was added regarding protective headgear for Autocycles. This means that for helmet purposes, an Autocycle **IS** considered to be a motorcycle.

**NEW Statutes:** §§504.665, *In God We Trust License Plates* and 504.665, *Alamo License Plates*

**Effective Dates:** 09/01/2015 (In God We Trust); 01/01/2016 (Alamo)

**Legislation:** [HB 315](#); [HB 830](#)

House Bill 315 creates a new "In God We Trust" license plate. House Bill 830 creates a new Alamo license plate with an image of the Alamo and the word "Remember" at the bottom of the plate. Both have the same section number in the TRC.

**Statute:** 521.244, *Hearing; Order; Determination of Essential Need*

**Effective Date:** 09/01/2015

**Legislation:** [HB 2246](#)

House Bill 2246 expands those who can apply for an occupational driver's license even though the license have been suspended for an offense under §§49.04-49.08, Penal Code. The new subsection (e) allows for a person to be issued an occupational license without being required to establish an essential need as long as they maintain evidence of financial responsibility and have an ignition interlock device on each motor vehicle owned or operated by them. HB 2246 also specifies that a person who is restricted to the operation of a motor vehicle equipped with an ignition interlock device may not be subject to any (a)(1) time of travel, (2) reason for travel, (3) location of travel , or (b) number of hours of travel restrictions as part of TRC [§521.248](#) Order Requirements.

**Statute:** 521.249, *Notice to Department [of Public Safety]; Issuance of Occupational License*

**Effective Date:** 09/01/2015

**Legislation:** [HB 441](#)

House Bill 441 extends to the 45<sup>th</sup> day (rather than the 31<sup>st</sup> day), the amount of time that a certified court order may be used as a restricted license.

**Statute:** 521.274, *Renewal by Mail or Electronic Means*

**Effective Date:** **IMMEDIATELY**

**Legislation:** [HB 1814](#)

This bill requires DPS to allow for the online renewal of the driver's license of a person who is on active duty in the armed forces of the United States and is absent from the state and includes the spouse and dependent children of said individual.

**Statutes:** Chapter 522, *Commercial Driver's Licenses*, and Chapter 548, *Compulsory Inspection of Vehicles*

**Effective Date:** 01/01/2016, except for the addition of TRC §522.093, *Self-Certification of Medical Status*, which becomes effective on 01/30/2016.

**Legislation:** [HB 1888](#)

HB 1888 amends sections of the TRC in several areas. Most changes have to do with the creation of a CDL learner's permit. Other sections address self-certification of commercial drivers and the requirements for proof of inspection in order to register a vehicle in Texas. This bill is lengthy (34 pages!) and deals mostly with the creation of a CDL learner's permit.

HB 1888 also creates TRC §522.903 (effective 01/30/2016), which allows DPS to remove the commercial driver's license privilege from the holder of a license or permit if the holder fails to provide DPS a self-certification of operating status or fails to provide and maintain with DPS a current medical examiner's certificate. Changes to §548.256 allow for the owner of a vehicle that is out-of-state when the registration renewal application is filed to register the vehicle without having it inspected, provided the person has the vehicle inspected upon its return to the state. The bill also adds §548.605 which creates an offense for operating a vehicle and failing to comply with the inspection requirements. This is a Class C misdemeanor.

**Statute:** §§541.201, *Vehicles*, and 622.901, *Width Exceptions*

**Effective Date:** 09/01/2015

**Legislation:** [SB 971](#)

SB 971 expands the definition of an Implement of Husbandry to include towed vehicles used to spread fertilizer or chemicals and motor vehicles used to feed livestock. This definition has not changed in many decades and this change is fairly significant. For towed units used to spread fertilizer and agricultural chemicals, it means these vehicles will not have to be registered. For motor vehicles designed and adapted to deliver feed to livestock, it also means many regulations will not apply. Because implements of husbandry are exempt from almost all regulations, this could mean that a person driving a pickup that is used only to feed livestock would not need registration, insurance, inspection, or a driver's license to operate the vehicle.

**NEW Statute:** 545.0653, *Restriction on Use of Highway in Maintenance or Construction Work Zone*

**Effective Date:** 09/01/2015

**Legislation:** [HB 3225](#)

HB 3225 amends the TRC by creating §545.0653, which relates to lane restrictions for certain motor vehicles in highway construction or maintenance work zones. This bill gives the executive director of TxDOT or his designee the authority to restrict a commercial motor vehicle to a specific lane of traffic in a construction or maintenance work zone.

**Statute:** 545.404, *Unattended Motor Vehicle*

**Effective Date:** **IMMEDIATELY**

**Legislation:** [HB 2194](#)

TRC §545.404 states an operator may not leave a vehicle unattended without stopping the engine; locking the ignition; removing the key; setting the parking brake; and, if on a grade, turning the front wheels to the curb or edge of the highway. Section (b) has been added allowing an operator to start the vehicle from a remote location as long as the vehicle can not be moved without the key being placed in or near the vehicle and not be in violation of the aforementioned requirements. In plain English, HB 2194 amends TRC §545.404 to exempt the use of a remote starter or similar device from the offense of leaving a motor vehicle unattended.

**NEW Statute:** 547.306, *LED Ground Effect Lighting Equipment on Motorcycle*

**Effective Date:** 09/01/2015

**Legislation:** [SB 1918](#)

SB 1918 amends the TRC by creating §547.603, which permits the use of LED ground-effect lighting for use on motorcycles. This bill creates a new section that allows for LED lighting to be used to illuminate the body of the motorcycle or the ground below the motorcycle. The law also requires that the lighting be **non-flashing** and **amber** or **white**. Many motorcycles have used LED ground-effect lighting of all different colors for years. These lights were not regulated by the TRC and many officers did not know what action, if any, could be taken regarding said lighting. This law allows for the lighting but restricts the lighting to **non-flashing amber** or **white**. This means that any other color used for ground-effect lighting on a motorcycle will still be illegal.

**Statute:** 550.065, *Release of Certain Information Relating to Accidents*

**Effective Date:** **IMMEDIATELY**

**Legislation:** [HB 2633](#)

This bill expands the list of those who may purchase a crash report without requiring them to know certain facts about the accident. It also adds letter (c-1) that requires DPS to create a redacted accident report that may be requested by **any** person.

**Statute:** 551.252, *License Revocation*

**Effective Date:** 09/01/2015

**Legislation:** [HB 2246](#)

House Bill 2246 section (d)(1) states the court shall revoke the occupational license of a person who fails to maintain the required interlock device and shall reinstate the suspension of that person's driver's license.

**Statutes:** §§621.402, *Weighing Loaded Vehicle*, and 621.508, *Affirmative Defense for Operating Vehicle Over Maximum Allowable Axle Weight*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1252](#)

This bill adds Subsection (e) to §621.402, giving the Department of Public Safety rule-making authority to establish procedures for weight enforcement officers to ensure an accurate weight is obtained for a motor vehicle. It allows DPS to revoke or rescind the authority of a weight enforcement officer to weigh motor vehicles if the officer fails to comply with the rules. It also amends §621.508 by adding letter (b), which creates an affirmative defense to prosecution for a weight violation if the officer failed to follow the rules adopted by DPS.

**Statute:** 622.901, *Width Exceptions*

**Effective Date:** **IMMEDIATELY**

**Legislation:** [SB 1171](#)

SB 1171 amends §622.901 dealing with width exceptions and includes equipment used for timber production in the exceptions. This bill adds equipment used in the harvesting and production of timber to the list of items that are exempt from the maximum width requirement (i.e., 102") found in §621.201. It also amends §623.322 and reduces the cost of securing a timber permit from \$1,500.00 to \$900.00.

**Statute:** 622.902, *Length Exceptions*

**Effective Date:** **IMMEDIATELY**

**Legislation:** [SB 1338](#)

SB 1338 amends §622.902 by adding subsection (8), which creates an additional length exception for certain vehicles transporting harvest equipment used in a custom harvesting operation. This bill allows a truck-tractor combination that is transporting a harvest machine used in custom farming to exceed the length requirements of the TRC. It states that the overall length of the combination, excluding the length of the truck-tractor, may not exceed 81½' as long as the combination is traveling on a highway that is **NOT** a part of the Interstate Highway System **and** is located in a county with a population of fewer than 300,000 persons.

**Statute:** 644.101, *Certification of Certain Peace Officers*

**Effective Date:** **IMMEDIATELY**

**Legislation:** [HB 716](#)

House Bill 716 amends Transportation Code §644.101(b) to make a police officer of a municipality located in **San Patricio County** eligible to apply for certification to enforce commercial motor vehicle safety standards.

**Statute:** 683.015, *Auction Proceeds*

**Effective Date:** **IMMEDIATELY**

**Legislation:** [HB 1190](#)

Amends TRC §683.015 (f), *Auction Proceeds*, to authorize a law enforcement agency or an attorney representing the state to use excess funds from the auction of certain abandoned vehicles transferred into a municipality's or county's general revenue account to compensate property owners whose property was damaged as a result of a pursuit involving a federal law enforcement agency (previously simply said "law enforcement agency").

## **UNIT VI: Changes to the Texas Health and Safety Code**

**LEARNING OBJECTIVE:** The SWBAT recognize pertinent changes to the Texas Health and Safety Code.

**NEW Statute:** Various

**Effective Date:** 10/01/2015, except for the signage requirement from the Comptroller's Office, which goes into effect on 09/01/2015

**Legislation:** [SB 97](#)

Senate Bill 97 amends the Health and Safety Code, Education Code, and Penal Code to provide for the regulation of e-cigarettes. **This 24-page bill makes it an offense for a person to sell or give an e-cigarette to a person younger than 18 years of age (HSC §161.082, *Sale of Cigarettes, E-Cigarettes, or Tobacco Products to Persons Younger than 18 Years of Age Prohibited; Proof of Age Required*); for an individual younger than 18 years of age to possess or consume an e-cigarette (HSC §161.252, *Possession, Purchase, Consumption, or Receipt of Cigarettes, E-Cigarettes, or Tobacco Products by Minors Prohibited*); and for a person to operate [in other words, "smoke"] **an e-cigarette in certain public places** (e.g., schools, elevators, movie theaters, etc.).**

The bill establishes the duties of a retailer or other person regarding the sale and distribution of e-cigarettes and related accessories. The bill requires the Department of State Health Services (DSHS) to report on the status of e-cigarette use in Texas and establishes DSHS duties regarding the prevention of e-cigarette use by minors. The bill establishes requirements for a delivery sale order of e-cigarettes and requires a school district to prohibit the use of e-cigarettes at school-related or school-sanctioned activities.

Effective September 1, 2015, Senate Bill 97 requires the comptroller of public accounts to develop the warning notice sign that must be posted by each person selling e-cigarettes. Otherwise, the bill takes effect October 1, 2015.

**NEW Statute:** 431.171, *Designation of Consumer Commodity as Abusable Synthetic Substance*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1212](#)

This bill amends the Health and Safety Code to establish the authority of the commissioner of state health services to designate a consumer commodity that poses a threat to public health as **an abusable synthetic substance** and to emergency schedule a substance as a controlled substance to avoid an imminent hazard to public safety.

The commissioner may take the following into account when making the determination:

1. whether the commodity was sold at a price higher than similar commodities are ordinarily sold;
2. evidence of clandestine importation, manufacture, distribution, or diversion of the commodity from legitimate channels;
3. evidence suggesting the product was intended for human consumption, regardless of the packaging on the commodity; or
4. whether certain other factors suggested the commodity was an abusable synthetic substance intended for illicit drug use:
  - A. the appearance of the packaging of the commodity;
  - B. oral or written statements or representations of a person who sells, manufactures, distributes, or imports the commodity;
  - C. the methods by which the commodity is distributed; and
  - D. the manner in which the commodity is sold to the public.

**Statute:** 481.002, *Definitions*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1212](#); [SB 172](#); [SB 173](#)

**Editor's note:** Unfortunately, HB 1212 and SB 173 made multiple changes to the same sections of the same law. We've done our best to determine what those changes are when they're combined.

Senate Bill 172 changes the definition of abuse unit in PG 2-A to include, "if the controlled substance is in liquid **or solid form**, 40 micrograms of the controlled substance including any adulterant or dilutant."

Penalty Group 2-A, synthetic cannabinoids, is now included in subsections "(5) controlled substance" and "(6) controlled substance analogue." Thus, those two subsections now read as follows:

- (5) "Controlled substance" means a substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Group 1, 1-A, 2, 2-A, 3, or 4.
- (6) "Controlled substance analogue" means:
  - (A) a substance with a chemical structure substantially similar to the chemical structure of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, 2, or 2-A; or
  - (B) a substance specifically designed to produce an effect substantially similar to, or greater than, the effect of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, 2, or 2-A.

**NEW Statute:** 481.0355, *Emergency Scheduling*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1212](#)

Authorizes the commissioner to make emergency additions to drug schedules if certain conditions are met and the additions are in the best interests of public safety. This emergency schedule change is temporary and must be published.

**Statute:** 481.1031, *Penalty Group 2-A*

**Effective Date:** 09/01/2015

**Legislation:** [SB 173](#)

S.B. 173 amends HSC §481.1031(b) to read, "Penalty Group 2-A consists of any material, compound, mixture, or preparation that contains any quantity of a natural or synthetic chemical substance, including its salts, isomers, and salts of isomers, listed by name in this subsection or contained within one of the structural classes defined in this subsection..." and then dramatically revises the list of prohibited substances. In plain English: SB 173 makes it more difficult for chemists to change the chemical composition of "synthetic marijuana" to skirt the legal proscription on the possession of that material.

**Statutes:** §§481.106, *Classification of Controlled Substance Analogue*, and 481.123, *Defense to Prosecution for Offense Involving Controlled Substance Analogue*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1212](#); [SB 173](#)

House Bill 1212 adds PG 2-A, synthetic cannabinoids, to §481.106, and removes the "(a)(1) was not in any part intended for human consumption" affirmative defense from §481.123. Senate Bill 173 also adds Penalty Group 2-A to §481.106.

**Statute:** 481.119, *Offense: Manufacture, Delivery, or Possession of Miscellaneous Substances*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1424](#)

HB 1424 amends [§481.119](#) of the Health and Safety Code to include enhanced penalties for defendants convicted of the manufacture or delivery of certain controlled substances ("a controlled substance listed in a schedule by an action of the commissioner under this chapter but not listed in a penalty group"). This bill amends §481.119(a) by adding subsections (1) and (2). Subsection (1) enhances the penalty from an M/A to a SJF if the person has one prior conviction. Subsection (2) enhances the penalty to a F/3 if the person has two or more prior convictions for this offense. NOTE: in plain English, HB 1424 is designed to give us better tools with which to combat the continuing, statewide problem of manufacture and delivery of synthetic cannabinoids.

**NEW Statute:** Subchapter E, *Opioid Antagonists* (Chap. 483)

**Effective Date:** 09/01/2015

**Legislation:** [SB 1462](#)

An opioid antagonist is a drug used to completely or partially reverse a person's overdose due to opioids. These anti-overdose drugs usually are available only through a prescription. Some states have enacted legislation to make opioid antagonists available to first responders, health care professionals, or the friends or family of individuals at risk of overdosing on opioids. Senate Bill 1462 amends the Health and Safety Code to provide criminal and civil immunity for the prescription, distribution, administration, and possession of an opioid antagonist for the treatment of an opioid-related drug overdose.

SB 1462 establishes limitations on liability and disciplinary sanctions for certain acts and omissions relating to an opioid antagonist. These sections are lengthy. Essentially, anyone can have a standing prescription, anyone can possess them (regardless of prescription), and anyone can administer them without significant regulation or fear of legal recourse. Anyone can also refuse to administer them. The only legal requirement is that the person be acting in good faith with reasonable care.

**NEW Statute:** Chapter 484, *Abusable Synthetic Substances*

**Effective Date:** 09/01/2015

**Legislation:** [SB 461](#)

There are multiple changes that come from Senate Bill 461. This bill created an entirely new chapter in the HSC: Chapter 484, *Abusable Synthetic Substances*. As you have seen over the past several years, the synthetic cannabinoid market is huge, dangerous, and growing. It's difficult to fight, too, because manufacturers have traditionally simply changed a few ingredients to skirt legal proscriptions on their products. This new chapter is designed to give law enforcement and prosecutors a powerful new set of tools in this ongoing battle.

HSC §484.001: "Abusable synthetic substance" is defined as a substance that:

- (A) is not otherwise regulated under this title or under federal law;
- (B) is intended to mimic a controlled substance or controlled substance analogue;
- and
- (C) when inhaled, ingested, or otherwise introduced into a person's body:
  - (i) produces an effect on the central nervous system similar to the effect produced by a controlled substance or controlled substance analogue;
  - (ii) creates a condition of intoxication, hallucination, or elation similar to a condition produced by a controlled substance or controlled substance analogue; or
  - (iii) changes, distorts, or disturbs the person's eyesight, thinking process, balance, or coordination in a manner similar to a controlled substance or controlled substance analogue.

HSC §484.002, *Prohibited Acts*: A person commits an offense if in the course of business the person knowingly produces, distributes, sells, or offers for sale a mislabeled abusable synthetic substance. M/C unless actor has previous conviction under this new section or under [PC §32.42](#) (b)(4) [selling an adulterated or mislabeled commodity under the Deceptive Business Practices statute] and the adulterated or mislabeled commodity was an abusable synthetic substance, in which case the offense becomes an M/A.

HSC §484.003, *Civil Penalty*: The attorney general or a district, county, or city attorney may institute an action in district court to collect a civil penalty from a person who in the course of business produces, distributes, sells, or offers for sale a mislabeled abusable synthetic substance. The civil penalty may not exceed **\$25,000 a day for each offense**. **Each day an offense is committed constitutes a separate violation** for purposes of the penalty assessment. (editor's note: !!!!!!!)

HSC §484.004 *Affirmative Defense*: It is an affirmative defense to prosecution or liability under this chapter that:

- (1) the abusable synthetic substance was approved for use, sale, or distribution by the United States Food and Drug Administration or other state or federal regulatory agency with authority to approve the substance's use, sale, or distribution; and
- (2) the abusable synthetic substance was lawfully produced, distributed, sold, or offered for sale by the person who is the subject of the criminal or civil action.

HSC §484.005, *No Defense*: In a prosecution or civil action under this chapter, the fact that the abusable synthetic substance was in packaging labeled with "Not for Human Consumption," or other wording indicating the substance is not intended to be ingested, **is not a defense**.

**Statute:** Various

**Effective Date:** See below

**Legislation:** [SB 195](#)

In another of those "everything but the kitchen sink" bills, SB 195 makes multiple, very important changes to the Government Code and the Health & Safety Code. This 27-page bill transfers rule-making authority over the state's prescription drug monitoring program from DPS to the Texas State Board of Pharmacy. The Pharmacy Board is required to ensure that DPS has unrestricted access at all times to information submitted to the board regarding prescriptions for certain controlled substances. DPS will have access to this information through a secure electronic portal under its exclusive control. ***BOTTOM LINE: Some narcs may get cases referred to them from the Pharmacy Board rather than from DPS as was done in the past.***

Generally, this bill is effective on 09/01/2016; except §§481.003(a), 481.076(c), 481.0761(a), (e), and (f), 481.352, and 481.0761(g), HSC, which take effect immediately.

**NEW Statute:** Chapter 487, *Texas Compassionate-Use Act*

**Effective Date:** **IMMEDIATELY**

**Legislation:** [SB 339](#)

Senate Bill 339 amends the Health and Safety Code and Occupations Code to establish a physician's authority to prescribe low-THC cannabis to a patient with intractable epilepsy. The bill provides for the Department of Public Safety's licensing of low-THC cannabis dispensing organizations and registration of certain associated individuals. The bill requires DPS to establish and maintain a compassionate-use registry that contains information regarding prescribing physicians and records of low-THC cannabis dispensed by a dispensing organization to a patient under a prescription. The bill prohibits a political subdivision from prohibiting the cultivation, production, dispensing, or possession of low-THC cannabis and provides exemptions from the Texas Controlled Substances Act and the Texas Pharmacy Act for certain activities involving low-THC cannabis.

## **UNIT VII: Changes to other Texas statutes**

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

## OCCUPATIONS CODE

**NEW Statutes:** Occupations Code §§1701.651, *Definitions*; 1701.652, *Grants for Body Worn Cameras*; 1701.653, *Reporting*; 1701.654, *Interagency or Interlocal Contracts*; 1701.655, *Body Worn Camera Policy*; 1701.656, *Training*; 1701.657, *Recording Interactions with the Public*; 1701.658, *Use of Personal Equipment*; 1701.659, *Offense*; 1701.660, *Recordings as Evidence*; 1701.661, *Release of Information Recorded by Body Worn Camera*; 1701.662, *Body Worn Camera Recordings*; *Request for Attorney General Decision*; 1701.663, *Production of Body Worn Camera Recording in Response to Voluminous Public Information Requests*

**Effective Date:** 09/01/2015

**Legislation:** [SB 158](#)

Senate Bill 158 amends the Occupations Code by creating the new Subchapter N, *Body Worn Camera Program*. A law enforcement agency that receives a grant for the provision of body-worn cameras for its peace officers, or that otherwise operates a body-worn camera program, must adopt a policy for the use of body-worn cameras. The bill sets out certain guidelines and other provisions to be included in such a policy and requires an agency operating a program before the bill's effective date to submit any existing agency policy regarding the use of body-worn cameras to TCOLE to determine whether the policy complies with the bill's provisions. The bill specifies that training must be provided before an agency may operate a body-worn camera program and requires TCOLE, in consultation with DPS, LEMIT, the Caruth Police Institute at Dallas, and TPCA, to develop or approve a curriculum for such a training program.

The bill also requires the office of the governor to create and implement a grant program under which a grant to defray the cost of implementing a body-worn camera program and equipping peace officers with cameras may be awarded to certain law enforcement agencies.<sup>28</sup> The bill authorizes a law enforcement agency to enter into an interagency or interlocal contract to receive body-worn camera services and have the identified operations performed through a program established by the Department of Information Resources. Use of personal recording equipment is covered in the bill, as are procedures for public information requests and "voluminous" public information requests.

Because there are so many specific requirements and details contained in [Senate Bill 158](#), including the parameters of what departmental policies must include, it is **IMPERATIVE** that officers and administrators take time to read the actual enabling legislation and become familiar with its details.

## GOVERNMENT CODE

**NEW Statute:** Subchapter B-1, *Public Integrity Unit*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1690](#)

The Travis County District Attorney established the Public Integrity Unit in 1978 to investigate and prosecute crimes related to state government. Cases include fraud and financial crimes targeting various state programs and public corruption cases against state employees and

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<sup>28</sup> SB 158 refers to agencies "that employ officers who are engaged in traffic or highway patrol or otherwise regularly detain or stop motor vehicles or are primary responders who respond directly to calls for assistance from the public."

officials involving offenses in Travis County. The Legislature has funded the unit since the early 1980s. The unit's funding for fiscal 2014-2015 was vetoed by then-Governor Rick Perry.

The newly created §411.0253 creates a Public Integrity Unit within the Texas Rangers division of the Department of Public Safety. On receiving a formal or informal complaint regarding an offense against public administration or on request of a prosecuting attorney or law enforcement agency, the public integrity unit may perform an initial investigation into whether a person has committed an offense against public administration. If an initial investigation by the public integrity unit demonstrates a reasonable suspicion that an offense against public administration occurred, the matter shall be referred to the prosecuting attorney of the county in which venue is proper under §411.0256 or Chapter 13, Code of Criminal Procedure, as applicable (the prosecutor in either the county where the defendant resides or the county where the defendant resided when the defendant was elected to a statewide office subject to a residency requirement in the Texas Constitution).

Section 411.0258 deals with cooperation from local authorities: "To the extent allowed by law, a state agency or local law enforcement agency **shall cooperate** with the public integrity unit and prosecuting attorney by providing resources and information requested by the unit as necessary to carry out the purposes of this subchapter." Interestingly, subsection (b) clarifies that "information disclosed under this section is confidential and not subject to disclosure under Chapter 552" (i.e., the Texas [Public Information Act](#)).

Section 411.0252 specifically defines what acts are considered offenses against public administration.

**NEW Statute:** 411.0163, *Hiring Officers with Previous LE Experience*

**Effective Date:** 09/01/2015

**Legislation:** [HB 11](#)

Allows DPS to credit up to four years of experience as a peace officer in the state as years of service for the purpose of calculating the officer's salary when hiring new troopers.

**NEW Statute:** 411.0164, *50-Hour Workweek for Commissioned Officers*

**Effective Date:** 09/01/2015

**Legislation:** [HB 11](#)

This new law allows DPS to implement a 10-hour workday, 50-hour workweek for its troopers.

**NEW Statute:** 411.054, *Incident-Based Crime Statistics Reporting Goal*

**Effective Date:** 09/01/2015

**Legislation:** [HB 11](#)

DPS must create a plan to have all Texas agencies converted from UCR to [NIBRS](#) no later than **09/01/2019**. DPS must submit a progress report to the legislature no later than 01/01/2017 on how many have made the change (i.e., how much progress has been made in the conversion).

**Statutes:** §§411.142, *DNA Database*, and 411.1471, *DNA Records of Person Arrested For, Charged With, or Convicted of Certain Offenses*

**Effective Date:** 9/01/2015

**Legislation:** [HB 941](#)

Law enforcement authorities are required to collect DNA from convicted felons, those charged with certain felonies, those required by the state to register as sex offenders, and repeat offenders who are arrested for specific crimes. In addition, those convicted of or placed on

deferred adjudication for the misdemeanor crimes of public lewdness or indecent exposure are required to provide a sample for the purpose of creating a DNA record.

HB 941 expands the state's DNA database to include samples from those convicted of enticing a child. Courts now have to require defendants convicted of enticing a child to provide a sample for the purpose of creating a DNA record. Courts no longer have to require those placed on deferred adjudication for public lewdness or indecent exposure to submit a sample for the database. The bill requires DPS to destroy DNA samples collected solely to create a DNA record. The destruction would have to occur immediately after test results associated with the sample were entered into the state DNA and federal CODIS databases.

**Statute:** 411.1991, *Peace Officers*

**Effective Date:** 09/01/2015

**Legislation:** [HB 2604](#)

HB 2604 amends §411.1991 as it relates to an HL application submitted by a peace officer or a member of the state military forces. This streamlines the process for the aforementioned groups and makes the application process much more simple. This bill removes the requirement that a peace officer submit fingerprints or a letter from his/her agency in order to apply for an HL. An officer must submit only the following after 09/01/2015: the name and rank of the applicant; a current copy of the applicant's peace officer license; and evidence of employment as a peace officer. DPS is also required under letter (a-2) to adopt rules regarding the information required to be included in an application submitted by a member of the Texas military forces.

**Statute:** 411.386, *Notification to Department of Missing Senior Citizen*

**Effective Date:** **IMMEDIATELY**

**Legislation:** [HB 834](#)

House Bill 834 amends the Government Code to remove the criteria that a senior citizen reside in Texas from the required criteria for issuing a silver alert.

**NEW Statute:** 411.2031, *Carrying of Handguns by License Holders on Certain Campuses*

**Effective Date:** 08/01/2016, except for public junior colleges; then 08/01/2017

**Legislation:** [SB 11](#)

Senate Bill 11 amends the Government Code and Penal Code to authorize a CHL holder to carry a concealed handgun while on the campus of a public, private, or independent institution of higher education in Texas, except that after appropriate consultation a **private or independent institution may prohibit license holders from carrying handguns on its campus, any grounds or building on which a university-sponsored activity is being conducted, or certain university-owned vehicles.** Public, private, or independent institutions of higher education are authorized to establish regulatory provisions concerning the storage of handguns in dormitories or other residential facilities that are owned or leased and operated by the institution and located on the institution's campus.

The president or other chief executive officer of a **public** institution of higher education, after appropriate consultation, is **required** to establish "reasonable regulatory provisions" regarding carrying concealed handguns by license holders on the campus of the institution or premises located on the campus. **The establishment of regulatory provisions that generally ban a license holder from carrying a concealed handgun on the campus of a public institution of higher education or have that same effect is prohibited.**

A CHL holder commits an M/A offense if the license holder carries a partially or wholly visible handgun, regardless of whether the handgun is holstered, on or about the his body and intentionally or knowingly displays the handgun in plain view of another person on the premises of or on certain streets, walkways, driveways, or parking areas of a public, private, or independent institution of higher education; carries a handgun on the campus of a private or independent institution of higher education that has banned the carrying of handguns, regardless of whether the handgun is concealed, provided effective notice<sup>29</sup> is given; or intentionally carries a concealed handgun on a portion of the campus of a public institution of higher education that has adopted rules prohibiting such carrying, provided effective notice is given.

**Statute:** 411.209, *Wrongful Exclusion of Concealed Handgun License Holder*

**Effective Date:** 09/01/2015

**Legislation:** [SB 273](#)

Senate Bill 273 creates the new GC §411.209, *Wrongful Exclusion of Concealed Handgun License Holder*, which prohibits a state agency or a political subdivision from wrongfully posting notice excluding a concealed handgun license holder from carrying a handgun and to make an agency or subdivision civilly liable for doing so. A Texas citizen or a person licensed to carry a concealed handgun is authorized to file a complaint with the attorney general if the citizen or person provides the applicable agency or subdivision with written notice describing the violation and the violation is not cured within a specified time frame. The attorney general or appropriate county or district attorney may sue the agency or subdivision to collect a civil penalty if, after investigation, the attorney general determines that legal action is warranted and that the violation has not been properly cured.

**NEW Statute:** 423.0045, *Offense: Operation of Unmanned aircraft Over Critical Infrastructure Facility*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1481](#)

HB 1481 creates a new offense under the Government Code for operating unmanned aircraft (i.e., drones) above certain critical infrastructure facilities.

“Critical infrastructure facility” is specifically defined by HB 1481 as:

(A) one of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs that are posted on the property, are reasonably likely to come to the attention of intruders, and indicate that entry is forbidden:

- (i) a petroleum or alumina refinery;
- (ii) an electrical power generating facility, substation, switching station, or electrical control center;
- (iii) a chemical, polymer, or rubber manufacturing facility;
- (iv) a water intake structure, water treatment facility, wastewater treatment plant, or pump station;
- (v) a natural gas compressor station;
- (vi) a liquid natural gas terminal or storage facility;
- (vii) a telecommunications central switching office;
- (viii) a port, railroad switching yard, trucking terminal, or other freight transportation facility;

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<sup>29</sup> “Effective notice” means the PC [§30.06](#) notice.

- (ix) a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas;
  - (x) a transmission facility used by a federally licensed radio or television station;
  - (xi) a steelmaking facility that uses an electric arc furnace to make steel; or
  - (xii) a dam that is classified as a high hazard by the Texas Commission on Environmental Quality; or
- (B) any portion of an above ground oil, gas, or chemical pipeline that is enclosed by a fence or other physical barrier that is obviously designed to exclude intruders.

A person commits an offense if he flies a drone **lower than 400'** above a critical infrastructure facility; or if he allows the drone to **contact** any of the property; or if he allows the drone to **interfere with the operations** of or come within a distance close enough to **cause a disturbance** at the facility.

This new law does not apply to: law enforcement officers/agencies; federal, state, or government entities; the property owner, the facility owner; a person with FAA approval; or any person acting with the authority / written consent of one of these. First offense is an M/B; second and subsequent offenses are M/A.

**NEW Statute:** 437.2235, *Public Duty Justification*

**Effective Date:** **IMMEDIATELY**

**Legislation:** [SB 850](#)

Subchapter E, Chapter 437, Government Code, is amended by adding §437.2235, *Public Duty Justification*: "Section [9.21](#), Penal Code, applies to conduct of a service member of the Texas military forces ordered into service of this state by proper authority that is performed in the service member's official capacity."

**Statute:** 552.221, *Application of Public Information; Production of Public Information*

**Effective Date:** 09/01/2015

**Legislation:** [HB 685](#)

The Texas Attorney General has determined that a public information officer does not fulfill the officer's duty to produce requested public information by simply referring a requestor to the governmental body's website. Allowing a public information request to be fulfilled in such a manner will result in a reduction of the cost and time necessary to comply with open records requests and could also encourage governmental bodies to provide more public information on their websites, resulting in more information being readily available to the public. To achieve these purposes, HB 685 allows a political subdivision of the state to refer open records requestors to a specific location (i.e., URL) on the political subdivision's website in response to the request if the requested information is identifiable and readily available on that website.

**Statute:** 614.051, *Purchase of Firearm by Honorably Retired PO*

**Effective Date:** 09/01/2015

**Legislation:** [HB 2135](#)

House Bill 2135 amends the Government Code and Local Government Code to make statutory provisions relating to the purchase of an honorably retired or deceased peace officer's firearm

from a governmental entity.<sup>30</sup> An individual may purchase only one firearm from a governmental entity under this section. The LE agency sets the sale price for the weapon, which can't be more than the fair-market value for the firearm.

**Statute:** 614.127, *Lost or Stolen Cards*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1417](#)

House Bill 1417 amends the Government Code to require a law enforcement agency that issues an identification card to a peace officer, reserve law enforcement officer, or honorably retired peace officer to issue a duplicate card if the officer submits an affidavit stating that the card is lost or stolen.

**Statute:** 615.022, *Payment to Survivors*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1278](#)

HB 1278 amends §615.022 of the Government Code to increase the financial assistance paid to the survivors of certain law enforcement officers, firefighters, and other public safety employees killed in the line of duty from \$250,000 to **\$500,000**.

**NEW Statute:** 661.207, *Donation of Sick Leave*

**Effective Date:** 09/01/2015

**Legislation:** [HB 1771](#)

This new statute is specific to employees of state agencies. HB 1771 amends Chapter 661 of the Government Code by adding §661.207, which allows for the donation of sick leave by state employees. This bill allows a state employee to donate accrued sick leave to another employee of the same state agency (e.g., OAG-to-OAG, TCOLE-to-TCOLE, DPS-to-DPS, TDCJ-to-TDCJ, etc.) who has exhausted the employee's sick leave, including any time the individual may be eligible to withdraw from a sick leave pool.

**NEW Statute:** 2175.908, *Sale or Transfer of Law Enforcement Vehicle*

**Effective Date:** 09/01/2015

**Legislation:** [HB 473](#)

House Bill 473 amends the Government Code and Local Government Code to require that a marked law enforcement motor vehicle, before the sale of the vehicle to the public, have any equipment or insignia removed if the equipment or insignia could cause a reasonable person to believe that the vehicle is a law enforcement vehicle. Before the sale of a marked law enforcement motor vehicle to a security services contractor regulated by the DPS and licensed under the Private Security Act, each emblem or insignia that identifies the motor vehicle as a law enforcement vehicle must be removed.

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<sup>30</sup> HB 2135 amends Government Code §614.0505, *Definitions*, to clarify that "governmental entity" means "a state agency, a county, a municipality, or a joint board for which the constituent agencies are populous home-rule municipalities."

## **PROPERTY CODE**

**NEW Statute:** Chapter 24A, *Access to Residence or Former Residence to Retrieve Personal Property*  
**Effective Date:** 09/01/2015

**Legislation:** [HB 2486](#)

HB 2486 amends the Property Code by creating Chapter 24A, *Access to Residence or Former Residence to Retrieve Personal Property*, which deals with the right of a person to enter the person's residence or former residence while accompanied by a peace officer to recover certain personal property. This statute creates an offense for someone at the residence who interferes with the person or the officer attempting to retrieve the property. The bill establishes the procedures whereby a person who has been unable to enter their residence or former residence to retrieve personal property may petition a Justice Court for an order to enter, accompanied by a peace officer, the residence and retrieve items listed in the order. It requires the peace officer to inventory the items removed and provide a copy of the inventory to the current resident or leave a copy of the inventory in a conspicuous place. The officer must file the original inventory with the court that issued the order.

## **ALCOHOLIC BEVERAGE CODE**

**Statute:** 101.62, *Offensive Noise on Premises*

**Effective Date:** 09/01/2015

**Legislation:** [HB 2533](#)

This section of the ABC is repealed.

## **EDUCATION CODE**

**Statute:** 38.004, *Child Abuse Reporting and Programs*

**Effective Date:** 09/01/2015

**Legislation:** [HB 10](#)

House Bill 10 requires schools to report human trafficking in the same manner as child abuse.

**Statute:** §§51.204, *Trespass, Damage, Defacement*; 51.208, *Penalty; Courts Having Jurisdiction*; 51.209, *Unauthorized Persons; Refusal of Entry; Ejection, Identification*

**Effective Date:** 09/01/2015

**Legislation:** [HB 2629](#)

House Bill 2629 amends the Education Code to make statutory provisions relating to trespass, damage, or defacement occurring on the grounds of a public institution of higher education applicable to the grounds of certain private or independent institutions of higher education and, in addition, requires any person on the property of such a public, private, or independent institution to provide identification on request.

## **BUSINESS & COMMERCE CODE**

**NEW Statute:** Chapter 506, *Concealed Handgun Licenses as Valid Forms of Personal Identification*

**Effective Date:** 09/01/2015

**Legislation:** [HB 2739](#)

HB 2739 allows the use of a CHL as valid proof of identification and prohibits denying a CHL holder access to goods, services, or facilities because the license holder presented the CHL rather than a driver's license or other acceptable form of personal identification. However, a driver's license is still required instead of a CHL to rent or operate a vehicle. The bill does not

affect the types of identification that are required to access airport premises or pass through airport security; nor does it affect the requirement that a person carrying a handgun show both a driver's license (or identification certificate) in addition to a handgun license when demanded by a magistrate or peace officer.

## **FAMILY CODE**

### **NOTE ON TRUANCY DECRIMINALIZATION:**

[House Bill 2398](#), known as the "Truancy Decriminalization Bill," is a **79-page** monster. It made sweeping, massive, substantive changes to Texas' truancy statutes. If officers handle these cases they should get much more information at [www.TMCEC.com](http://www.TMCEC.com) and from the Office of Court Administration web site. Because TDCOA did such a fantastic job of summarizing these changes,<sup>31</sup> they're used here:

- Effective **09/01/2015**, all pending criminal truancy proceedings against students are null and void.
- All current and past truancy records must be expunged by courts.
- All future truancy cases are civil, not criminal, in a system modeled on juvenile law but handled by JPs and municipal courts.
- Schools must implement new graduated sanctions to divert/delay truants from the courts.
- Prosecutors have discretion to file truancy petitions or not to file them.
- Courts can dismiss cases *sua sponte*.<sup>32</sup>
- Most records eventually get sealed and/or destroyed.

**Statutes:** §§71.0021, *Dating Violence*; 71.004, *Family Violence*

**Effective Date:** 09/01/2015

**Legislation:** [SB 817](#)

The current sections of the Family Code dealing with issuance of protective orders in the case of abuse, specifically the definitions sections, refer to the applicant of the protective order as a "victim" instead of an "applicant for a protective order." There are many times when an "applicant for a protective order" is not a victim of abuse (e.g., a prosecutor, a parent, or a guardian), but is applying for the protective order on behalf of a victim of abuse. In addition, some judges either will not or are reluctant to issue protective orders until the perpetrator has been convicted, believing that a person is not a "victim" until that happens. S.B. 817 changes the language from "victim" to "applicant for a protective order." This bill also seeks to broaden the definition of "abuse" in the same section by incorporating, by reference, additional portions of the Family Code definition of "abuse."

**Statute:** 85.025, *Duration of Protective Orders*

**Effective Date:** **IMMEDIATELY**

**Legislation:** [HB 388](#)

House Bill 388 amends the Family Code to postpone the expiration of a protective order against a person confined or imprisoned on the order's expiration date to the second anniversary of the date the person was released from confinement or imprisonment if the sentence was for five years or less, or to the first anniversary of release if the sentence was for more than five years.

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<sup>31</sup> Texas District and County Attorneys Association *2015-2017 State and Federal Law Update* presentation, slides 170-171

<sup>32</sup> "On its own motion" - in other words, without being asked to do so by any other party.

**Statutes:** §§261.301, *Investigation of Report*; 261.3022, *Child Safety Check Alert List*; 261.3023, *Law Enforcement Response to Child Safety Check Alert*; 261.3024, *Removal from Child Safety Alert Check List*

**Effective Date:** September 1, 2015, except §5, which takes effect March 1, 2016

**Legislation:** [HB 2053](#)

HB 2053 amends the procedures for child abuse and neglect investigations during which the child or the child's family is missing. The Department of Family and Protective Services (DFPS) must report to DPS when DFPS is unable to locate the child or family during abuse and neglect investigations that are assigned the highest priority. DPS then would be required to conduct an investigation to find the child and family using all available resources, including the child safety check alert list of the Texas Crime Information Center (TCIC).

The bill eliminates the process in current law that requires a court to order local law enforcement to place a family under investigation on TCIC's alert list. Instead, the bill requires DPS, upon receiving notice from DFPS, to notify TCIC to place the child and the child's family on the alert list. HB 2053 also requires additional information, if available, to be included on the TCIC child safety check alert list, including:

- physical descriptions of the child and the family member alleged to have abused or neglected the child and a description of the motor vehicle suspected of transporting the child;
- the DFPS case number and a telephone number for the employee responsible for the investigation; and
- the location, date, and time when the child was last seen.