

# 2021–2023 State and Federal Law Update 87<sup>th</sup> Legislative Session



Commission Course No. **3187**

Last revised **August 18, 2021**

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## CHANGES AND UPDATES TO THE COMMISSION ON LAW ENFORCEMENT

**LEARNING OBJECTIVE:** The SWBAT recognize selected changes and updates to the Commission on Law Enforcement and applicable TCOLE rules.

### Legislative Changes

There were several bills passed during the 87<sup>th</sup> session that will have an impact on TCOLE. The following is a list of some of the changes of which you should be aware:

- [HB786](#) amends the Occupations Code to require that each telecommunicator be trained in **telecommunicator cardiopulmonary resuscitation** as part of the basic licensing course and each continuing education unit. TCOLE will work with the appropriate subject matter experts to incorporate this training into the basic telecommunicator course and make the materials accessible for telecommunicators to complete for continuing education. The bill requires this action to be implemented as soon as practicable.
- [HB929](#), known as the “Botham Jean<sup>1</sup> Act,” requires an agency’s body-worn camera policy to ensure that a body-worn camera is activated for a law enforcement purpose only. The policy is required to include certain provisions, including provisions relating to the collection of a body-worn camera and the applicable video and audio recorded by the camera, as evidence. This bill mandates that a policy require a peace officer who is equipped with a body-worn camera and who’s actively participating in an investigation to keep the camera activated for the entirety of the officer's active participation in the investigation unless the camera has been deactivated in compliance with that policy. The bill authorizes a peace officer to choose not to activate a camera or to choose to discontinue a recording currently in progress for any encounter with a person that is not related to an investigation. TCOLE will update existing model body-worn camera policies and training materials to incorporate these changes.
- [HB2831](#) deals with the confinement in a county jail of persons with intellectual or developmental disabilities. TCOLE and the Texas Commission on Jail Standards<sup>2</sup> will jointly develop a training program of at least four hours for county jailers on interacting with persons with intellectual or developmental disabilities. The new training curriculum should be available by January 1, 2022.
- [HB3712](#) deals with the hiring and training of peace officers. Specifically, the minimum number of hours in the BPOC changed to no fewer than 720 from the current 696. The Commission is to work with [LEMIT](#) to produce training and model policies on the prohibition against chokeholds, the duty to intervene in the case of unnecessary force by another peace officer, and the duty to render necessary medical aid as soon as it can safely be rendered. Additionally, TCOLE will prescribe 16 of the 40 hours of continuing education required for peace officers each continuing education unit. These new curricula will be available no later than January 1, 2022; required rollout of the new 720-hour minimum BPOC by academies no later than July 1, 2022.

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<sup>1</sup> On 09/06/2018, an off-duty peace officer entered the Dallas apartment of 26-year-old Botham Jean and fatally shot him. The officer claimed she thought she had entered her own apartment and that Mr. Jean was a burglar.

<sup>2</sup> With the assistance of an advisory committee on confinement of persons with intellectual or developmental disabilities.

- [SB24](#) establishes new pre-employment screening procedures that hold both the *law enforcement officer* applying for a position and the *hiring law enforcement agency* accountable by requiring the agency to review pertinent records of prior conduct and activities and other background information about the officer before the officer may be hired by the agency. These records must be made available electronically in a way that ensures security and privacy, and the hiring agency must submit to TCOLE a confirmation form affirming that they have reviewed the documents or were not able to because the previous employing agency did not make them available. Failure of the agency head or his designee to comply is grounds for suspension of the agency head's license. TCOLE will create a secure file transfer system for agencies to provide and access background documents. This process applies to all hires on or after January 1, 2022.
- [SB64](#) requires TCOLE to develop a peer-support network for law enforcement officers that includes peer-to-peer support; training for peer-service coordinators and peers that includes suicide-prevention training; technical assistance for program development, peer-service coordinators, licensed mental health professionals, and peers; and identification, retention, and screening of licensed mental health professionals. TCOLE may contract with an institution of higher education to establish this program.

A law enforcement officer's participation in peer-to-peer support and other peer-to-peer services under the network is confidential. The bill prohibits that information from being disclosed under state public information law by TCOLE, the officer's employing agency, or any other state agency or political subdivision that employs a law enforcement officer participant. The bill prohibits an officer's participation from serving as the basis for a revocation, suspension, or denial of a license by TCOLE or from being considered in any proceeding related to the officer's licensure.

Additionally, SB64 requires TCOLE to submit to the Governor and the Legislature, not later than December 1 of each year, a report that includes the number of officers who received peer support through the network; the number of peers and peer-service coordinators trained; an evaluation of the services provided by the network; and recommendations for program improvements.

- [SB713](#) extends TCOLE for two years. The Commission will undergo a limited-scope sunset review leading up to the 88<sup>th</sup> Legislative Session.
- [SB785](#) standardizes the expiration of school marshal licenses to August 31<sup>st</sup> following the second date anniversary of the date the Commission licenses the person. Renewals also expire on August 31<sup>st</sup>. This is consistent with continuing education deadlines for other license types and allows for more marshals to train at the same time, making classes more efficient.
- [SB1191](#) clarifies that a peace officer providing security for extracurricular activities is not a school resource officer and therefore is not required to take the training required of a school resource officer.
- [SB198](#) provides a more convenient way for retired law enforcement officers to demonstrate weapons proficiency by allowing these officers to demonstrate proficiency to any qualified handgun instructor under Government Code [§411.190](#), Qualified Handgun Instructors and Approved Online Course Providers.

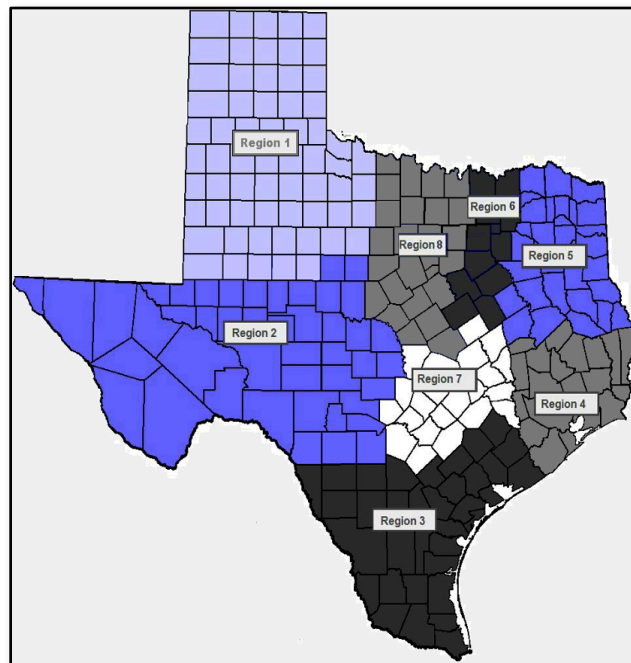
## Mandated Training Guidelines

Students are reminded that a TCOLE training cycle is four years, and a training unit is two years. The current training cycle runs from 09/01/2021 – 08/31/2025. The training cycle contains two units: 09/01/2021 – 08/31/2023 and 09/01/2023 – 08/31/2025.

There are multiple requirements under Texas law for various types of peace officers. The most up-to-date, accurate training document for Texas peace officers is found on the TCOLE web page. Please click on [THIS](#) link to access that document. The training requirements should be printed and included as part of this course. Please check the Commission's [Technical Assistance Bulletins page](#) or the [TCOLE webpage](#) for helpful guidance on these requirements. Your Field Service Agent can provide help, too. The FSAs are, as of the time of the production of this update, as follows:

### Supervisory Agent for Field Services: [Richard Gutierrez](#), 512-923-0916

<u>Location</u>	<u>Field Agent</u>	<u>Phone</u>
Region 1 - Panhandle	<a href="#">David Watkins</a>	512-939-9454
Region 2 - West Texas	<a href="#">Shain Burks</a>	512-354-6047
Region 3 - South Texas	<a href="#">Derry Minor</a>	361-290-8517
Region 4 - Southeast Texas	<a href="#">Doug Staudt</a>	512-578-6775
Region 5 - Northeast Texas	<a href="#">Carey McKinney</a>	903-948-0535
Region 6 - Northeast Central Texas	<a href="#">Tom Bickers</a>	512-696-7583
Region 7 - Central Texas	<a href="#">Jim Clifton</a>	512-750-6370
Region 8 - Northwest Central Texas	<a href="#">Lynn Beard</a>	325-998-4433



In 2016, TCOLE initiated the current **Academy Contract Evaluators** (ACE) program. The program has two agents, each assigned to approximately one-half of the state. The ACEs provide services, including periodic program reviews and evaluations for each of the contract training providers and academies, to assist in maintaining compliance with regulatory standards for training program and training documentation.

The Commission's ACEs are here to assist training providers in the providers' efforts to have superb educational and training offerings and to comply with Commission rules. The current ACEs are:

**EASTERN** and **SOUTHERN** portions of Texas:

Agent Mike Dickey

[michael.dickey@tcole.texas.gov](mailto:michael.dickey@tcole.texas.gov)

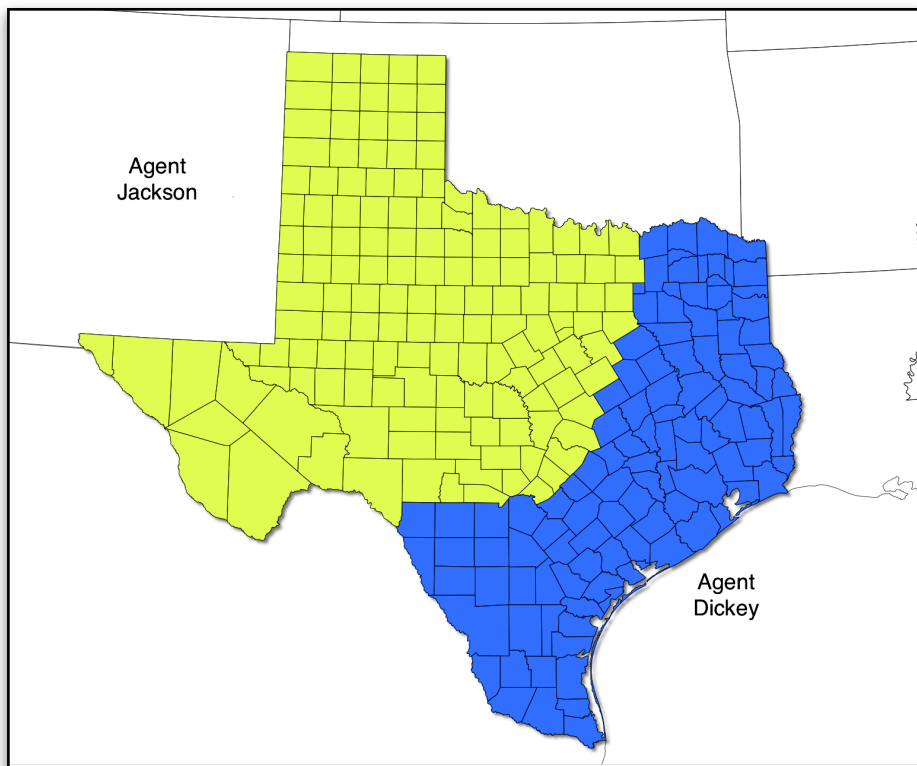
512-484-3846

**WESTERN, NORTHERN,** and **PANHANDLE** portions of Texas:

Agent Malcolm Jackson

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512-940-0635



## RELEVANT CASE LAW FROM THE US SUPREME COURT

**LEARNING OBJECTIVE:** The SWBAT recall selected cases handed down by the US Supreme Court in the last biennium.

### *Caniglia v. Strom*, [141 S. Ct. 1596 \(2021\)](#)

The SCOTUS ruled that the First Circuit erred in finding that warrantless removal of a petitioner's firearms from his home fell within the community caretaking exception, inferring from *Cady v. Dombrowski* a freestanding community caretaking exception that applied to both cars and homes, because what was reasonable for vehicles was different from what was reasonable for homes.

**TDCAA Case Summary:** <https://www.tdcaa.com/case-summaries/may-21-2021/>

### *Torres v. Madrid*, [141 S. Ct. 989 \(2021\)](#)

Suspect who was shot by police while fleeing the scene in her vehicle was seized within the meaning of the Fourth Amendment because the application of physical force to the body of a person with intent to restrain is a seizure, even if the force doesn't succeed in subduing the suspect. Worded another way, "The application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued."

**TDAA Case Summary:** <https://www.tdcaa.com/case-summaries/march-26-2021/>

### *Kansas v. Glover*, [140 S. Ct. 1183 \(2020\)](#)

Regarding whether police officers violate Fourth Amendment by initiating investigative traffic stops after running vehicle license plates and learning that the registered owner has a revoked driver's license, the Court held that when officer lacks information negating an inference that the owner is the driver of the vehicle, the stop is reasonable.

**TDCAA Case Summary:** <https://www.tdcaa.com/case-summaries/april-10-2020/>

### *Taylor v. Riojas*, [141 S. Ct. 52 \(2020\)](#)

Because any reasonable correctional officer should have realized that inmate Taylor's conditions of confinement offended the Eighth Amendment, the Fifth Circuit erred in granting the officers qualified immunity (the Fifth Circuit had granted the officers qualified immunity, saying "the law wasn't clearly established" that "prisoners couldn't be housed in cells teeming with human waste...for only six days.").

## CHANGES TO THE TEXAS PENAL CODE

**LEARNING OBJECTIVE:** The SWBAT identify selected changes and updates to the Texas Penal Code.

**§1.10, Enforcement of Certain Federal Laws Regulating Firearms, Firearm Accessories, and Firearm Ammunition [HB2622].** House Bill 2622, This act, known as "The Second Amendment Sanctuary State Act," prohibits law enforcement officers, agents of political subdivisions, and agents of the state from participation in enforcement of any new gun-control legislation which violates any of the guidelines set forth by this new chapter. This legislation imposes civil penalties and remedies for those political subdivisions that violate the new provisions, and it creates a process for the state to defend the parties against any suit brought by the federal government related to the lack of enforcement.

**§3.03, Sentences for Offenses Arising out of Same Criminal Episode [HB1403].** House Bill 1403 adds “any combination of offenses listed in subdivisions (1)-(6)” for imposing sentences concurrently or consecutively if the accused is found guilty of more than one offense arising out of the same criminal episode.

**§9.54, Limitation on Use of Force by Drone [HB1758].** House Bill 1758 creates this new statute regulating law enforcement use of force by drone. The statute authorizes law enforcement agencies that have an established policy required by this bill, enumerated in CCP Art. 2.33, to use a drone in the application of less-lethal force. It requires that the use of force be otherwise justified within Chapter 9. It prohibits the use of deadly force by drone. Please take time to read the definition of “drone” in the bill — it includes airborne drones and robots such as the one used in the Dallas, Texas, incident where five officers were shot and killed.

**§15.031, Criminal Solicitation of a Minor [HB1540].** House Bill 1540 adds PC §43.021, Solicitation of Prostitution, to the predicate offenses required under this statute.

**§20.05, Smuggling of Persons [SB576].** Senate Bill 576 makes several changes to the human smuggling statute. First, it removes “with the intent to obtain a pecuniary benefit” from the elements of the offense. Next, SB576 adds that the actor commits an offense when he knowingly “...assists, guides, or directs two or more individuals to enter or remain on agricultural land without the effective consent of the owner.” Further, it now is a F/2 offense if:

- the smuggling act was committed with intent to obtain a pecuniary benefit; or
- if, during the commission of the offense, the actor, another party to the offense, or an individual assisted, guided, or directed by the actor knowingly possessed a firearm; or
- the actor commits the offense under Subsection (a)(1)(B)<sup>3</sup>

**§20A.01, Definitions [HB1540].** House Bill 1540 adds the definition of “coercion” by way of destroying, concealing, or otherwise withholding government records or identifying information or documents from a trafficked person, by causing them to become intoxicated without their consent, or withholding alcohol or controlled substances from a trafficked person with a chemical dependency. It also adds the definition of “premises” and “school.”

**§20A.02, Trafficking of Persons [HB1540].** House Bill 1540 adds §43.021, Solicitation of Prostitution, to the list of defined offenses considered for child trafficking. It also makes trafficking offenses a F/1 when the actor recruited the victim from a shelter for runaway youth, foster children, homeless persons, or persons subjected to human trafficking, domestic violence, or sexual assault.

House Bill 1540 further makes trafficking a F/1 if it was committed within 1,000 feet of a school or event where a UIL-sanctioned event was taking place. Senate Bill 1831, the “No Trafficking Zone Act” and the “Julia Wells<sup>4</sup> Act,” also makes several substantive changes to the human trafficking statute. Specifically, it prescribes a minimum term of 25 years for an individual who

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<sup>3</sup> (a)(1)(B): “flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor.”

<sup>4</sup> Julia Wells was an 18-year-old Cleburne woman who was killed 20 days before her HS graduation. She died after she became a victim of human trafficking.



commits F/1 Trafficking of Persons in a location that was on the premises of or within 1,000 feet of the premises of a school; or on premises or within 1,000 feet of premises where an official school function was taking place, or an event sponsored or sanctioned by the UIL was taking place.

**§21.02, Continuous Sexual Abuse of a Young Child or Disabled Individual [HB375].** First, note the change in the offense title from “...Young Child or Children” to “...a Young Child or Disabled Individual.” House Bill 375 adds “disabled individual” to those protected by this statute. “Disabled individual” in this amended offense is defined the same way it’s defined in PC §22.021 (b), Aggravated Sexual Assault: “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.”

**§21.12, Improper Relationship Between Educator and Student [HB246].** House Bill 246 amends this statute by adding subsections (d-1) and (e). The new subsection (d-1) prohibits schools, school districts, or employees of such, from releasing the name of an employee accused of committing any offense under this section externally to the general public prior to the accused employee being indicted. Certain exceptions are made, however, to the prohibition; these exceptions are based on reporting requirements (e.g., to TEA, law enforcement, or as required by law), school policies, and religious law observed by the school.

**§22.011, Sexual Assault [SB1164].** Senate Bill 1164 adds two new situations in which sexual assault is considered to have occurred without the victim’s consent. Those two new situations are:

(13) the actor is a **coach or tutor** who causes the other person to submit or participate by using the actor’s power or influence to exploit the other person’s dependency on the actor; or

(14) the actor is a **caregiver hired to assist the other person with activities of daily life** and causes the other person to submit or participate by exploiting the other person’s dependency on the actor.

**§25.08, Sale or Purchase of Child [HB1540].** House Bill 1540 removes PC §43.02, Prostitution, and adds PC §43.021, Solicitation of Prostitution, to the list of predicate offenses that will enhance this crime from a F/3 into a F/2.

**§28.03, Criminal Mischief [SB516].** Senate Bill 516 amends this offense to establish a F/3 penalty for criminal mischief involving the whole or partial impairment or interruption of access to an ATM, regardless of the amount of the pecuniary loss. This makes stealing or damaging an ATM the same level of offense.

**§30.05, Criminal Trespass [HB1927].** As part of the “constitutional carry” changes, §30.05 is amended by adding Subsections (c) and (d-3) as follows:

(c) A person may provide notice that firearms are prohibited on the property by posting a sign at each entrance to the property that:

- (1) includes language that is identical to **or substantially similar to**<sup>5</sup> the following: "Pursuant to Section 30.05, Penal Code (criminal trespass), a person may not enter this property with a firearm";
- (2) includes the language described by Subdivision (1) in both English and Spanish;
- (3) appears in contrasting colors with block letters at least one inch in height; and
- (4) is displayed in a conspicuous manner clearly visible to the public.

(d-3) An offense under this section is a Class C misdemeanor punishable by a fine not to exceed \$200 if the person enters the property, land, or building with a firearm or other weapon and the sole basis on which entry on the property or land or in the building was forbidden is that entry with a firearm or other weapon was forbidden, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, land, or building with the firearm or other weapon, the actor:

- (1) personally received from the owner of the property or another person with apparent authority to act for the owner notice that entry with a firearm or other weapon was forbidden, as given through:
  - (A) notice under Subsection (b)(2)(A), including oral or written communication; or
  - (B) if the actor is unable to reasonably understand the notice described by Paragraph (A), other personal notice that is reasonable under the circumstances; and
- (2) subsequently failed to depart.

Additionally, HB1927 deletes the "shoulder or belt" specification from the holster requirement in subsection (f)(2)(B)(ii); it now simply reads as "in a holster."

**§§30.06, Trespass by License Holder with a Concealed Handgun, and 30.07, Trespass by a License Holder with an Openly Carried Handgun [HB1069 and HB1927].** House Bill 1069 deals with first responders authorized to carry handguns during the discharge of their duties. A new defense to prosecution is established for those first responders who are carrying and who meet the requirements enumerated in the newly created Chapter 179<sup>6</sup> of the Local Government Code, Authority of Certain First Responders to Carry Handgun.

As indicated in House Bill 1069, "first responder" means a public safety employee whose duties include responding rapidly to an emergency. The term includes fire protection personnel as defined by §419.021, Government Code, and emergency medical services personnel as defined by §773.003, Health and Safety Code. The term does **not** include: (A) volunteer emergency services personnel; (B) an emergency medical services volunteer, as defined by §773.003, Health and Safety Code; or (C) a peace officer or reserve law enforcement officer, as those terms are defined by §1701.001, Occupations Code, who is performing law enforcement duties.

House Bill 1927 also makes several changes to have §§30.06 and 30.07 conform to "constitutional carry." The references to §46.035, Unlawful Carrying of Handgun by License

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<sup>5</sup> Note that this is different than the "identical to" language you're familiar with in PC §§30.06 and 30.07.

<sup>6</sup> As explained later in this legal update document, the new LGC Chapter 179 applies only to (1) a municipality with a population of 30,000 or fewer that has not adopted Chapter 174; and (2) a county with a population of 250,000 or fewer that has not adopted Chapter 174. Chapter 174, The Fire and Police Employee Relations Act, is Texas' civil service law.

Holder, are excised from the definition of “license holder.” “License holder” now references the new PC §46.03 (c)(3): “a person licensed to carry a handgun under Subchapter H, Chapter 411, Government Code.” Furthermore, §46.035 is no longer referenced in the exception to the offense listed in §§30.06 (e) or 30.07 (e). That exception now reads, “It is an exception to the application of this 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 Section 46.03.” Lastly, §30.07 (f) no longer refers to shoulder or belt holsters; it says only that “It is not a defense to prosecution under this section that the handgun was carried in a holster.”

**§32.46, Fraudulent Securing of Document Execution [SB109].** Note the change in the offense title from the former “Securing Execution of Document by Deception” to the new name. Additionally, Senate Bill 109 clarifies the language of the statute by adding “without effective consent,” including consent given by “a person legally authorized to act for the owner.” It goes on to state that consent is not effective if it is induced by deception or coercion; if it’s given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property dispositions; or if it’s given by a person who by reason of advanced age is known by the actor to have a diminished capacity to make informed and rational decisions about the reasonable disposition of property.

**§32.55, Financial Abuse of Elderly Individual [HB1156]. NEW OFFENSE.** House Bill 1156 establishes a new offense dealing with financial crimes against those 65 years of age or older. This offense details the new definitions of “Financial Abuse” and “Financial Exploitation.” HB1156 further creates the prohibited conduct of “Financial Abuse” and “Financial Exploitation” of an elderly individual by those who have a legal authority or obligation to provide care for, or to manage the finances of, those individuals. These relationships are detailed within the statute. The prohibitions listed within this offense are extensive and very fact specific. Much of the prohibited conduct is substantively identical to those within the Theft and Misapplication of Fiduciary Property statutes. Section 35.22 includes an *in para materia* clause, which allows for prosecution under the new statute, any other applicable statute, **or both**. The level of offense follows the same value ladder established for Theft from the Elderly.

**§33.021, Online Solicitation of a Minor [HB1540 and SB1831].** House Bill 1540 and Senate Bill 1831 both increase to the punishment prescribed to the next higher category if the actor committed the offense during regular school hours **AND** the actor knew or reasonably should have known that the minor was enrolled in a public or private primary or secondary school at the time of the offense.

**§39.04, Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with Person in Custody or Under Supervision [SB312].** The punishment for an individual who “engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual in custody or, in the case of an individual in the custody of the Texas Juvenile Justice Department or placed in a juvenile facility, employs, authorizes, or induces the individual to engage in sexual conduct or a sexual performance,” is increased from a SJF to a F/2. Previously only offenses against *juveniles* were F/2; now *all* offenses under this section are F/2.

**§42.03, Obstructing Highway or Other Passageway [HB9 and SB1495].** House Bill 9 makes a change that enhances punishment under section (c) to a SJF if, in committing the offense, the actor knowingly:

- (1) Prevents the passage of an authorized emergency vehicle being operated as such; or
- (2) Obstructs access to a hospital or other emergency care facility.

Senate Bill 1495 makes substantive changes, too. That bill amends the offense to include enhancements for certain activities. The offense is a M/A if a person obstructs the highway to operate a motor vehicle while engaged in a reckless driving exhibition, as defined in this section. The offense is a SJF if the person is obstructing the highway while engaged in a reckless driving exhibition and the person has been previously convicted for this offense, is intoxicated, or another person suffers bodily injury because of the conduct.

**§42.07, Harassment [SB530].** Senate Bill 530 adds “publishing on an internet website, including social medial platforms, repeated electronic communications in a manner reasonably likely to cause emotional distress” to the ways a person may commit this offense. The bill also includes “unless the communications are made in connection with a matter of public concern.” The Texas District and County Attorneys’ Association in its August 12, 2021, legislative update course expressed serious concerns about how this new change will survive First Amendment challenges, so officers are **STRONGLY** encouraged to consult with their local DA, CA, or city attorney prior to charging under this new bill.

**§42.0601, False Report to Induce Emergency Response [SB1056]. NEW OFFENSE.** Senate Bill 1056 creates a new offense in response to what is colloquially known as “swatting.” According to the text of this new statute,

- it is unlawful to make or cause to be made a report of a criminal offense or emergency to a peace officer, law enforcement agency, 911 center, official or volunteer agency organized to deal with emergencies, or any other governmental employee or contractor who is authorized to receive reports of a criminal offense or emergency; **[IF]**
- the person knows that the report is false; **[AND]**
- the report causes an emergency response from a law enforcement agency or other emergency responder; and
- in making the report or causing the report to be made, the person is reckless with regard to whether the emergency response by a law enforcement agency or other emergency responder may directly result in bodily injury to another person.

This offense is a M/A, except that it is a SJF if the defendant has previously been convicted two or more times under this section. It becomes a F/3 if the false report was of a criminal offense to which a law enforcement agency or other emergency responder responded and someone suffered SBI or death as a direct result of lawful conduct arising out of that response.

**§42.13, Use of Laser Pointers [HB2366].** There are several major changes to this statute. The punishment range for this offense is **substantially** increased. While the offense itself is still generally a M/C, the new subsection (c)(1) makes it a F/**3** if the conduct causes bodily injury to the officer. Under the new subsection (c)(2), the conduct becomes a F/**1** if it causes serious bodily injury to the officer. The legislature also added a new subsection (d), stating that “If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law, **but not both.**”

**§43.01, Definitions [SB1831].** Two new definitions are added. “Premises,” the new subsection (1-f), is defined the way it is defined in HSC §481.134: “real property and all buildings and

appurtenances pertaining to the real property.” “School,” the new subsection (2-a), means “a public or private primary or secondary school.”

**§43.02, Prostitution [HB1540].** House Bill 1540 changes §42.02, Prostitution, from an offense that is committed by offering or accepting a fee for sex to an offense covering only accepting a fee, while offering a fee is made the offense of “Solicitation of Prostitution.” In simpler terms, §42.02 is for prostitutes and §43.021 is for Johns. The penalties for Johns under §42.021 are raised a degree higher than those for prostitutes under §42.02. House Bill 1540 also increases the punishment prescribed to the next-higher category if the actor committed the offense on or within 1,000 feet of a school or 1,000 feet from a location where a school function or UIL event was taking place. However, because some of the sections it enhances were moved there is a legislative conflict — **officers will need to seek advice from their local city, county, or district attorneys before making arrests.**

**§43.021, Solicitation of Prostitution [HB1540]. NEW OFFENSE.** House Bill 1540 creates this statute by moving several provisions<sup>7</sup> from §43.02, Prostitution. The new subsection 43.02 (a) states that a person commits an offense if the person knowingly offers or agrees to pay a fee to another person for the purpose of engaging in sexual conduct with that person or another. House Bill 1540 also increases the punishment for solicitation to a SJF unless previously convicted, in which case it becomes a F/3. Solicitation of persons younger than 18 YOA, or who were represented/believed to be younger than 18 YOA, is punished as before. House Bill 1540 also places this offense in a very large number of other statutes as a predicate offense or included sexual offender offense. Often it replaces Prostitution.

**§43.031, Online Promotion of Prostitution [HB1540].** House Bill 1540 adds PC §43.021, Solicitation of Prostitution, to the predicate offenses required to be charged under this statute.

**§43.041, Aggravated Online Promotion of Prostitution [HB1540].** House Bill 1540 adds PC §43.021, Solicitation of Prostitution [of five or more persons], to the predicate offenses required to be charged under this statute.

**§43.251, Employment Harmful to Children [SB315]. Effective 05/24/2021.** For purposes of this offense, Senate Bill 315 changes the definition of “child” in subsection (a)(1) from younger than 18 YOA to younger than **21** YOA. This change mirrors changes made by SB315 to multiple other codes as they relate to sexually oriented businesses, including the Alcoholic Beverage Code, the Labor Code, and the Business and Commerce Code.

**§46.01, Definitions [HB1069].** House Bill 1069 deals with first responders and volunteer emergency services personnel who may be authorized to carry firearms<sup>8</sup> during the course of their duties. It does so, in part, by amending the definition of “First Responder” in this chapter:

A "First responder" means a public safety employee whose duties include responding rapidly to an emergency. The term includes fire protection personnel as defined by §419.021, Government Code, and emergency medical services personnel as defined by §773.003, Health and Safety Code.

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<sup>7</sup> Specifically, §§43.02 (b) and (c-1).

<sup>8</sup> Please see our earlier footnote in reference to the new LGC Chapter 179.

The term does **not** include: (A) **volunteer** emergency services personnel; (B) an emergency medical services **volunteer**, as defined by §773.003, Health and Safety Code; or (C) a peace officer or reserve law enforcement officer, as those terms are defined by §1701.001, Occupations Code, who is performing law enforcement duties. [Note: **emphasis** added. The fire/EMS definition referenced in the statute applies only to permanent, full-time employees who meet the criteria in the Government Code.]

**FIREARMS-RELATED CHANGES, AKA “CONSTITUTIONAL CARRY”:** The changes in law brought about by House Bill 1927 are commonly referred to as “constitutional carry.” The enabling legislation is lengthy and quite complex -- the bill itself is 30+ pages. **Officers are strongly encouraged to read and research the bill.** The weapons-related section of this legal update document will be more detailed than the synopses of most other changes; this is because of the number and complicated nature of the changes. To give you an idea of why it is so important for you to dig into the details, the following is taken from the House Research Organization’s [enrolled bill summary](#) for House Bill 1927:

House Bill 1927, the Firearm Carry Act of 2021, amends the Code of Criminal Procedure, Education Code, Government Code, Health and Safety Code, Human Resources Code, Labor Code, Local Government Code, and Penal Code to make it legal for any person 21 years of age or older to carry a handgun, either openly in a holster or concealed, in a manner consistent with state and federal law without first obtaining a handgun license, provided they are not otherwise prohibited from possessing a firearm and have not been convicted of certain specific offenses within the preceding five years. The bill maintains prohibitions against carrying a weapon on certain premises and further maintains restrictions on the authority to carry a handgun on certain other premises, including college campuses, which is reserved as a privilege only of license holders.

Among other provisions, the bill requires the Department of Public Safety to develop and post on its website a course on firearm safety and handling that is accessible to the public free of charge and makes a person who has been arrested, charged, and convicted of an offense involving the unlawful carrying of a handgun on another's property before September 1, 2021, eligible to have all records and files relating to the arrest expunged. The bill revises penalties for certain conduct involving a handgun, including by increasing the penalty for unlawful possession by an individual who is prohibited from possessing a firearm on the basis of a felony or Class A misdemeanor family violence conviction or an applicable protective order, and establishes a defense to prosecution for carrying a weapon in a place where weapons are prohibited for a person carrying a handgun who promptly departs from a location after being notified that carrying a weapon at that location is prohibited.

**§46.02, Unlawful Carrying Weapons [HB1927 and SB550].** Getting into specifics for purposes of the changes to UCW, the statute now says that a person commits an offense if he intentionally, knowingly, or recklessly carries on or about his person a handgun while he’s **either younger**



than **21 YOA** or he's been convicted of certain specified offenses<sup>9</sup> in the **five years** immediately preceding the current violation; **and** he's not:

- (A) on the person's own premises or premises under the person's control; **or**
- (B) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control.

Subsection (a-1) now reads as follows: A person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft that is owned by the person or under the person's control at any time in which:

- (1) the handgun is in plain view, **unless the person is 21 years of age or older** or is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code, and the handgun is carried in a holster<sup>10</sup>; **or**
- (2) the person is:
  - (A) engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic or boating; or
  - (B) prohibited by law from possessing a firearm.

**IMPORTANT NOTE:** there is a legislative conflict relating to subsection (a-1)(2)(C), which refers to a member of a criminal street gang as defined by §71.01. **House Bill 1927** (signed by Gov. Abbott on June **16**, 2021) **removes subsection (a-1)(2)(C) from UCW**. According to HB1927, a new version of the prohibition is now contained in PC §46.04, Unlawful Possession of Firearm, subsection (a-1): "A person who is a member of a criminal street gang, as defined by Section 71.01, commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft." This new §46.04 (a-1) is punished as a M/A. **Senate Bill 550** (signed by Gov. Abbott on June **14**, 2021), **however, leaves subsection (a-1)(2)(C) the way it was before – in UCW**. Both bills were signed by the Governor.

**Officers and attorneys should check the provisions of the Code Construction Act with reference to situations when two or more bills conflict with one another or make changes to the same statute(s). Until the Legislature resolves the conflict, TCOLE recommends that officers contact their local DA, CA, or city attorney for guidance on how to proceed with gun charges related to gang members.**

The new subsection (a-5) relates to people who **openly display** their handguns or who carry handguns **without using a holster**: A person commits an offense if the person carries a handgun and intentionally displays the handgun in plain view of another person in a public place. It is an exception to the application of this subsection that the handgun was partially or wholly visible but was carried in a holster. Again, note that the statute no longer requires the holster to be a shoulder or belt holster.

The new (a-6) deals with intoxicated individuals: A person commits an offense if the person:

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<sup>9</sup> The offenses listed are PC §§22.01(a)(1) [**Assault Causing Bodily Injury**]; 22.05 [**Deadly Conduct**]; 22.07 [**Terroristic Threat**]; or 42.01(a)(7) or (8) [**Disorderly Conduct by (7) discharging a firearm in a public place other than a public road or a sport shooting range; or (8) displaying a firearm or other deadly weapon in a public place in a manner calculated to alarm**].

<sup>10</sup> Note that "shoulder or belt" was removed from the type of holster required.

- (1) carries a handgun while the person is intoxicated; and
- (2) is not:
  - (A) on the person's own property or property under the person's control or on private property with the consent of the owner of the property; or
  - (B) inside of or directly en route to a motor vehicle or watercraft:
    - (i) that is owned by the person or under the person's control; or
    - (ii) with the consent of the owner or operator of the vehicle or watercraft.

The new (a-7) deals with those who are prohibited from possessing a firearm under specific parts of PC §46.04, Unlawful Carrying of Handgun by License Holder. Specifically, it states that person commits an offense if the person:

- (1) intentionally, knowingly, or recklessly carries on or about his or her person a handgun; **[AND]**
- (2) is not:
  - (A) on the person's own premises or premises under the person's control; or
  - (B) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control; **and**
- (3) at the time of the offense, was prohibited from possessing a firearm under Section 46.04 (a) **[felon in possession of a firearm]**, (b) **[prohibited for five years under state law because of an Assault F/V conviction]**, or (c) **[protective orders]**.

The new subsection (a-8) creates an *in para materia* clause for those who are charged under the new (a-7): If conduct constituting an offense under Subsection (a-7) constitutes an offense under another provision of law, the actor may be prosecuted under Subsection (a-7) **or under both provisions**.

Last, but certainly not least, HB1927 adjusted the punishment range for parts of UCW. Those changes are listed in the new subsection (e). An offense under Subsection (a-7) is a F/2 with a minimum term of imprisonment of five years if the actor was prohibited from possessing a firearm under §46.04 (a) **[felon in possession of a firearm]**; or a F/3 if the actor was prohibited from possessing a firearm under §46.04 (b) **[prohibited for five years under state law because of an Assault F/V conviction]** or (c) **[protective orders]**.

**NOTE TO READERS: Please see charts UCW1 and UCW2 at the end of this handout (in the "Appendices" section) for a flowchart on §46.02.**

**§46.03, Places Weapons Prohibited [HB1920].** House Bill 1920 expands the definition of "secured area" under (c)(3) to now include "an aircraft parking area that is used by common carriers in air transportation but not by general aviation and to which access is controlled under federal law. The term does not include a baggage claim area, a motor vehicle parking area used by passengers, employees, or persons awaiting an arrival, or an area used by the public to pick up or drop off passengers or employees." Note that the addition clarifies that a parking lot, drop off, or pick-up lane, etc., does not count as a secured area of an airport for purposes of this offense.

Lastly, in addition to keeping the defense that was already listed in (e)(1), this legislation adds a new defense to prosecution as the new subsection (e)(2): "It is a defense to prosecution under Subsection (a)(5) that the actor was authorized by a federal agency or the airport operator to



possess a firearm in a secured area.” Refer to **§46.02, Unlawful Carrying Weapons**. Officers are **strongly** encouraged to read and research the full text of the bill.

**§46.035, Unlawful Carrying of Handgun by License Holder [HB1407]**. This legislative change adds another exception to this statute by creating the new subsection (a)(2). Interestingly, while (a)(1) *does* refer to a shoulder or belt holster (“It is an exception to the application of this subsection that the handgun was partially or wholly visible but was carried in a shoulder or belt holster by the license holder”), the new subsection (a)(2) *does not* (“It is an exception to the application of this subsection that the handgun was partially or wholly visible but was in a holster, and the handgun and the license holder were in a motor vehicle”).

**IMPORTANT NOTES:** although the bill itself is effective on September 1, 2021, Section Two of HB1407 states that “The change in law made by this Act applies only to an offense committed on or after January 1, 2022. An offense committed before January 1, 2022, is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose.” Also, **there is a legislative conflict relating to §46.035**. House Bill 1927 repeals §46.035, but several other bills make changes to the section. Until the Legislature clarifies the conflicting changes, officers should consult their local DA, CA, or city attorney for guidance under the Code Construction Act. According to the Texas District & County Attorneys Association<sup>11</sup>, House Bill 1927 most likely trumps the other changes. However, “despite our analysis, these changes made by HB 1407, HB 2112, and SB 550 will remain on the books even though HB 1927 repeals this offense.”

**§46.035, Unlawful Carrying of Handgun by License Holder [SB550]**. This Senate Bill removes the “shoulder or belt” language from the holster requirement. The language change related to holsters also applied to §30.05, Criminal Trespass, and §46.02, Unlawful Carrying Weapons. NOTE: please see footnote 11 at the bottom of this page for information on §46.035.

**§46.04, Unlawful Possession of Firearm [HB1927]**. Among multiple changes across various codes, HB1927 adds a new subsection (a-1): A person who is a member of a criminal street gang, as defined by Section 71.01, commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft. This new subsection in 46.04 is punished as a M/A. As a reminder, there is a conflict with this change and one other change in SB550. Please refer to **§46.02, Unlawful Carrying Weapons**. Officers are encouraged to read the notes related to this conflict.

**§46.05, Prohibited Weapons [HB957]**. House Bill 957 addresses firearm silencers and other firearm-related laws. Specifically, firearm silencer is **removed** from the list of prohibited weapons. This change to the Penal Code is coupled with several additions and changes to the Government Code. Included among those is GC §2.052, Not Subject to Federal Regulation, which states that “A firearm suppressor that is manufactured in this state and remains in this state is not subject to federal law or federal regulation, including registration, under the authority of the United States Congress to regulate interstate commerce.” Additionally, GC §2.053, Marketing of Firearm Suppressor, requires that “A firearm suppressor manufactured and sold in this state must have the words ‘**Made in Texas**’ clearly stamped on it.”

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<sup>11</sup> Edmonds, S. (2021). *2021-2023 Legislative Update: Highlighting the New Texas Laws Effective September 1, 2021*. Texas District & County Attorneys Association. See p. 15 of that book for Edmonds’ analysis of Penal Code §46.035.

In addition to the preceding changes, GC §2.102, State and Local Government Policy Regarding Enforcement of Federal Firearm Laws, mandates that Texas (including state, local, college or university, etc.) government entities “may not adopt a rule, order, ordinance, or policy under which the entity enforces, or by consistent action allows the enforcement of, a federal statute, order, rule, or regulation that purports to regulate a firearm suppressor if the statute, order, rule, or regulation imposes a prohibition, restriction, or other regulation that does not exist under the laws of this state.” House Bill 957 also removes the definition of “firearm silencer” from PC §46.01, Definitions.

Though it relates more to prosecutors than to law enforcement officers, it should be noted that HB 957, Section 5, does away with certain prosecution actions related to silencers: “An offense under Section 46.05(a)(6), Penal Code, as it existed immediately before the effective date of this Act, may not be prosecuted after the effective date of this Act. If on the effective date of this Act a criminal action is pending for an offense described by that subdivision, the action is dismissed on that date. However, a final conviction for an offense described by that subdivision that exists on the effective date of this Act is unaffected by this Act.”

**§46.06, Unlawful Transfer of Certain Weapons [SB162].** Adds to this statute making it a SJF offense to make a materially false statement on a state or federal firearms transfer form presented to a licensed firearms dealer.

**§46.15, Nonapplicability [HB1069].** House Bill 1069 establishes the ability for certain first responders to carry a handgun during the discharge of their duties. The bill states that §§46.02, Unlawful Carrying Weapons; 46.03, Places Weapons Prohibited; and 46.035, Unlawful Carrying of Handgun by License Holder, do not apply to a first responder (as defined in the legislation) who is carrying under the authority granted<sup>12</sup> in Chapter 179 Local Government Code.

**§48.05, Prohibited Camping<sup>13</sup> [HB1925]. NEW STATUTE.** A person commits a M/C offense if the person intentionally or knowingly camps in a public place without the effective consent of the officer or agency having the legal duty or authority to manage the public place. "Camp" means to reside temporarily in a place, with shelter. "Shelter" in this context includes a tent, tarpaulin, lean-to, sleeping bag, bedroll, blankets, or any form of temporary, semipermanent, or permanent shelter, other than clothing or any handheld device, designed to protect a person from weather conditions that threaten personal health and safety.

There is more to this bill. According to the Legislature’s [enrolled bill summary](#),

House Bill 1925 amends the Government Code, Local Government Code, and Penal Code to make it a Class C misdemeanor offense for a person to intentionally or knowingly camp in a public place without the effective consent of the officer or agency having the legal duty or authority to manage the public place, with certain exceptions. The bill requires a peace officer, before or at the time the officer issues a citation for the offense,

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<sup>12</sup> Please see our earlier footnote in reference to the new LGC Chapter 179.

<sup>13</sup> This bill was in reaction to the Austin City Council repealing a local camping ordinance. It still allows local ordinances so long as they are not lighter in punishment. This bill creates many impediments to prosecution that local ordinances do not. This new law may possibly have constitutional issues local ordinances do not have. Police should consult with their local city, county, or district attorney in deciding whether to proceed under this new state law or existing ordinance.

to make a reasonable effort to advise the person of an alternative place where they may lawfully camp and to contact an appropriate official or nonprofit organization to provide the person with information regarding the prevention of human trafficking or any other services that would reduce the likelihood of the person continuing to camp in the public place. If the person is arrested or detained solely for that offense, the arresting or detaining officer must ensure that all of the person's personal property not designated as contraband is preserved.

**Chapter 50, Fireworks [HB2366]. NEW STATUTE.** House Bill 2366 creates an entirely new chapter of the Penal Code: Chapter 50, which deals exclusively with fireworks. Thus far, the only two sections contained in Chapter 50 are §§50.01 and 50.02.

**§50.01, Definitions [HB2366]. NEW STATUTE.** "Consumer firework" and "fireworks" have the meanings assigned by [49 CFR §173.59](#):

- *Consumer firework.* Any finished firework device that is in a form intended for use by the public that complies with any limits and requirements of the APA Standard 87-1A (IBR, see [§ 171.7 of this subchapter](#)) and the construction, performance, chemical composition, and labeling requirements codified by the U.S. Consumer Product Safety Commission in [16 CFR parts 1500](#) and [1507](#). A consumer firework does not include firework devices, kits or components banned by the U.S. Consumer Product Safety Commission in [16 CFR 1500.17\(a\)\(8\)](#).
- *Fireworks.* Pyrotechnic articles designed for entertainment.

"Law enforcement officer" means a person who is a peace officer under Art. 2.12, CCP, or a person who is a federal law enforcement officer, as defined by [5 USC §8331 \(20\)](#).

**§50.02, Unlawful Use of Fireworks [HB2366]. NEW OFFENSE.** This offense states that a person commits an offense if he explodes or ignites fireworks with the intent to either interfere with the lawful performance of an LEO or flee from someone the actor knows is an LEO attempting to lawfully arrest or detain the actor. This offense is normally a SJF, but it becomes a F/2 if the actor uses a firework that is not a consumer firework (cf. the definitions in §50.01 above). If the actor's use of fireworks to commit the offense causes serious bodily injury to an LEO whom the actor knows to be an LEO lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a law enforcement officer, the offense becomes a F/1.

The legislature also added an *in para materia* clause to this new statute: if conduct constituting an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, **or both**.

## CHANGES TO THE TEXAS CODE OF CRIMINAL PROCEDURE.

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

**Art. 2.12, Who are Peace Officers [SB1550].** Senate Bill 1550 applies new rules for the creation of airport police. These rules were previously regulated by, and listed within, this article as items 11 and 12. Those are now combined into a single item 11 and replaced with a reference to

Chapter 23 of the Transportation Code<sup>14</sup>, which now governs airport police. Article 2.12 is renumbered accordingly.

**Art. 2.1387, Intervention Required for Excessive Force; Report Required [SB69].** This legislation creates a “duty to intervene to stop or prevent” in the event another peace officer’s force exceeds what is reasonable under the circumstances, violates state or federal law, unnecessarily risks bodily injury, or is not required to apprehend a person suspected of a criminal offense. This statute **requires** a prompt, detailed report of any witnessed incident of excessive force be delivered to the supervisor of the peace officer making the report. **Note that the report goes to the supervisor of the officer who witnesses and reports the incident, not to the supervisor of the officer whose actions are in question.**

**Art. 2.1397, Duties of Law Enforcement Agency Filing Case [SB111].** Senate Bill 111 extends the requirements of the Michael Morton Act **directly to law enforcement agencies**. Any law enforcement agency filing a case with the attorney representing the state shall submit to the attorney representing the state a **written statement** by an agency employee with knowledge of the case acknowledging that all documents, items, and information in the possession of the agency that are required to be disclosed to the defendant in the case under Art. 39.14 have been disclosed to the attorney representing the state. If at any time after the case is filed with the attorney representing the state the law enforcement agency discovers or acquires any additional document, item, or information required to be disclosed to the defendant under Art. 39.14, an agency employee shall promptly disclose the document, item, or information to the attorney representing the state. This requirement does not apply to Justice or Municipal courts.

NOTE: If you’re looking for information on this topic, TDCOA has an excellent, free, Michael Morton Act / Brady requirements video that can be used for the edification of officers who have questions. To watch that video, go to [THIS](#) page.

**Art. 2.305, Reporting Required Concerning Human Trafficking Cases [SB800].** Senate Bill 800 allows for the Attorney General to prescribe the manner and form of the required human trafficking report.

**Art. 2.33, Use of Neck Restraints During Search or Arrest Prohibited [SB69].** A peace officer may not intentionally use a chokehold, carotid artery restraint, or similar neck restraint in searching or arresting a person unless the restraint is necessary to prevent serious bodily injury or death to the officer or another person.

**Art. 2.33, Law Enforcement Policy on Use of Force by Drone [HB1758<sup>15</sup>].** This new article requires any law enforcement agency that uses drones, to establish a written policy on the use of force by drones, as described. This policy must be submitted to TCOLE by January 1<sup>st</sup> of every even-numbered year. This bill also creates Penal Code §9.54, which regulates the law enforcement use of force by means of a drone. For purposes of this bill , "drone" means an unmanned aircraft, watercraft, or ground vehicle **or a robotic device** that: (A) is controlled

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<sup>14</sup> TRC Title 3, *Aviation*, Chapter 23, *Airport Security Personnel*

<sup>15</sup> Senate Bill 69, Senate Bill 2212, and House Bill 1758 each create new articles numbered as “2.33,” so we now have three of them that say different things. It will require the Legislature’s work next session to clean up and renumber the redundancy.

remotely by a human operator; or (B) operates autonomously through computer software or other programming.

**Art. 2.33, Duty to Request and Render Aid [SB2212].** Senate Bill 2212 amends the Code of Criminal Procedure to require a peace officer who encounters an injured person while discharging the officer's official duties to immediately and as necessary request emergency medical services (EMS) personnel to provide the person with emergency medical services and, while waiting for EMS personnel to arrive, provide first aid or treatment to the person to the extent of the officer's skill and training. The bill provides exceptions to this requirement in certain circumstances when the officer is injured or when making the request or providing treatment would expose someone to a risk of bodily injury.

**Art.13.40, False Report to Induce Emergency Response [SB1056].** An offense under PC §42.0601, the new "swatting" law, may be prosecuted in any county in which the defendant resides; in which the false report was made; or in which a law enforcement agency or other emergency responder responded to the false report.

**Art. 14.03, Authority of Peace Officers [HB1927].** House Bill 1927 adds subsections (h)(1) and (h)(2) as part of the "constitutional carry" updates. Subsection (h)(1) states that peace officers acting in the lawful discharge of their duties may temporarily disarm a person at any time if they reasonably believe it is necessary for safety of the officer, another person, or the person himself. The peace officer shall return the handgun to the person before discharging the person from the scene if the officer determines that the person is not a threat to the officer, person, or another individual and if the person has not committed a violation that results in the arrest of the person.

The new subsection (h)(2) permits peace officers to disarm a person when the person enters a non-public, secure portion of a law enforcement facility<sup>16</sup> if the law enforcement agency provides a gun locker or other secure area where the peace officer can secure the person's handgun. The peace officer shall secure the handgun in the locker or other secure area at that time and shall return the handgun to the person immediately after the person leaves the nonpublic, secure portion of the law enforcement facility.

**Art. 15.051, Polygraph Examination of Complainant Prohibited [HB1172].** House Bill 1172 amends section (a) of this article to prohibit a peace officer or attorney representing the state from requesting or taking a polygraph examination of a person who charges or seeks to charge in a complaint of a sexual assault or other prohibited sexual conduct offenses. It changes the time from 96 hours to 120 hours<sup>17</sup> after a sexual assault, for law enforcement to request a forensic medical examination of the victim.

**Art. 16.22, Early Identification of Defendant Suspected of Having Mental Illness or Intellectual Disability [SB49].** Senate Bill 49 makes several changes to this article. First, it adds "if the defendant is no longer in custody" to the situations in (a)(2) wherein a magistrate is not required to order the interview and collection of information related to an inmate's mental

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<sup>16</sup> For purposes of this subsection, "law enforcement facility" and "nonpublic, secure portion of a law enforcement facility" have the meanings assigned by Government Code [§411.207](#), Authority of Peace Officer to Disarm.

<sup>17</sup> 120 hours is five days.

health status under subsection (a)(1). Next, it adds the following to the list of persons to whom a magistrate shall provide copies of the written report under subsection (b-1):

- the sheriff or other person responsible for the defendant’s medical records while the defendant is confined in county jail; and, as applicable,
  - any personal bond office established under Art. 17.42 for the county in which the defendant is being confined; or
  - the director of the office or department that is responsible for supervising the defendant while the defendant is released on bail and receiving mental health or intellectual and developmental disability services as a condition of bail.

**Art. 17.04, Requisites of a Personal Bond [SB49].** Along with the other changes SB49 makes to procedures dealing with inmates who may have mental health issues or developmental issues, that piece of legislation amends the requirements of Art. 17.04 as well. In particular, the oath<sup>18</sup> required by subsection (a)(3) is not required if the magistrate makes a determination under Art. 16.22 that the defendant has a mental illness or is a person with an intellectual disability, including by using the results of a previous determination under that article; **[or]** the defendant is released on personal bond under Art. 17.032; or the defendant is found incompetent to stand trial in accordance with Chapter 46B, Incompetency to Stand Trial.

**Art. 17.41, Condition Where Child Alleged Victim [HB1005<sup>19</sup>].** House Bill 1005 amends subsection (a) of this article to raise the age of child from “younger than 14” YOA to “younger than **18**” YOA. The “This article applies to a defendant charged with an offense under any of the following” portion now includes Penal Code Chapters 20A [Trafficking of Persons] and 43 [Public Indecency]. Penal Code §43.25 [Sexual Performance by a Child], however, is **removed**.

**Art. 17.081, Additional Requisites of Bail Bond Given by Certain Defendants [HB1005]. **NEW STATUTE****. In addition to the requirements of Art. 17.08, Requisites of a Bail Bond, a bail bond for a defendant charged with an offense under §§20A.02 [Trafficking of Persons], 20A.03 [Continuous Trafficking of Persons], 43.02 [Prostitution], 43.03 [Promotion of Prostitution], 43.031 [Online Promotion of Prostitution], 43.04 [Aggravated Promotion of Prostitution], 43.041 [Aggravated Online Promotion of Prostitution], or 43.05 [Compelling Prostitution], Penal Code, must include the address, ID number, and state of issuance as shown on a valid DL or ID card for the defendant and any surety, including any agent executing the bail bond on behalf of a corporation acting as surety.

**Art. 17.465, Conditions for Defendant Charged with Certain Trafficking or Prostitution Related Offenses Involving Adult Victims [HB1005]. **NEW STATUTE****. First, note that this new statute does not apply to a defendant to whom Article 17.41 applies. This new article states that a magistrate shall require, as a condition of release on bond, that a defendant charged with an offense under PC §§20A.02 [Trafficking of Persons], 20A.03 [Continuous Trafficking of Persons],

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<sup>18</sup> “I swear that I will appear before (the court or magistrate) at (address, city, county) Texas, on the (date), at the hour of (time, a.m. or p.m.) or upon notice by the court, or pay to the court the principal sum of (amount) plus all necessary and reasonable expenses incurred in any arrest for failure to appear.”

<sup>19</sup> Important Note on House Bill 1005: This is a complex piece of legislation. Even the [digest](#) from the House Research Organization is relatively complicated. Officers are **strongly** encouraged to read the bill in its entirety and study its requirements closely.



43.03 [Promotion of Prostitution], 43.031 [Online Promotion of Prostitution], 43.04 [Aggravated Promotion of Prostitution], 43.041 [Aggravated Online Promotion of Prostitution], or 43.05 [Compelling Prostitution], committed against a person **18 YOA or older**, may not:

1. communicate directly or indirectly with the victim; or
2. go to or near:
  - a. the residence, place of employment, or business of the victim; or
  - b. if applicable, a school, day-care facility, or similar facility where a dependent child of the victim is in attendance.

The magistrate shall specifically describe the prohibited locations and the minimum distances, if any, that the defendant must maintain from the locations.

**Art.17.50, Entry into Texas Crime Information Center of Certain Information in Cases Involving Violent Offenses; Duties of Magistrates, Sheriffs, and Department of Public Safety [HB766].**

This article requires magistrates to notify the sheriff's office when a defendant is placed on bond with conditions described by this chapter. The Sheriff is then required to enter that information into TCIC for as long as the defendant is subject to those conditions. This will have the same effect as entering protective orders.

**Art. 18B, Installation and Use of Tracking Equipment; Access to Communications [SB112 and HB3363].**

Both SB112 and HB3363 amend Art. 18B by adding the new Subchapter G-1, Prospective Location Information. This new subchapter establishes the regulations for obtaining search warrants or conducting emergency searches where the required disclosure of location information is created after the issuance of the warrant. These are warrants to "live track" cellular devices or other stored electronic information that provides current location information of the subscriber. This subchapter also contains the definitions for "Immediate life-threatening situation" and "Location information." Disclosures obtained prior to the issuance of a warrant, under exigent circumstances, will require a warrant to be issued within 48 hours for evidence resulting from the disclosure to be admissible. The new subchapter further establishes that the warrant will run for 60 days and then will require an extension to be filed. Each extension is for the same duration. The statute requires that the warrant be automatically sealed upon issuance until the duration expires.

The same language is contained in both pieces of legislation. Senate Bill 112 further amends Art. 18B.202 by elevating the previous requirement of *reasonable suspicion* to the establishment of *probable cause* to authorize installation of mobile tracking devices.

**Art. 18.067, Execution of Warrant for Blood Specimen in Intoxication Offense [SB1047]. NEW**

**ARTICLE.** This legislation creates Art. 18.067, allowing for a warrant for a blood specimen from a DWI suspect to be executed in any county adjacent to the county in which the warrant was issued. The warrant may be executed by any law enforcement officer authorized to make an arrest in the county of warrant execution. The specimen may be removed from the county in which it was seized and transported to the county where the warrant was issued without an additional court order.

**Art. 42.01991, Finding Regarding Agreement on Parole Eligibility for Certain Defendants [HB465].** House Bill 465 changes the eligibility for release on parole of persons serving sentences for trafficking of one or more child victims of human trafficking under Penal Code

§20A.02 (a)(5), (6), (7), or (8). Inmates are not eligible for parole for child trafficking offenses except as part of a plea agreement and the inmate must serve one-half of the sentence or 30 calendar years, whichever is less. In no event is the inmate eligible for release on parole in less than two calendar years.

**Art. 42A.511, Community Supervision for Certain Offenses Involving Animals [SB48].** Senate Bill 48 amends the CCP to authorize a judge who grants community supervision to a defendant convicted of Attack on an Assistance Animal (PC §42.091), Cruelty to Non-Livestock Animals (PC §42.092), Dog Fighting (PC §42.10), or Cockfighting (PC §42.105), to impose certain conditions relating to custody, possession, or control of any animals, residing in a household where animals are present, and participating in counseling or other appropriate treatment.

**Art. 42A.517, Community Supervision for Certain Offenses Involving Obstruction of Highway or Other Passageway [HB9].** Requires a court granting community supervision for a conviction of a SJF under §42.03 Penal Code<sup>20</sup>, to require that the defendant submit to not less than 10 days confinement in jail as a condition of the community supervision.

**Art. 44.2811, Records Relating to Certain Fine-Only Misdemeanors Committed by a Child [HB2669].** All records related to fine-only misdemeanors, other than a traffic offense, that are committed by a child and that are appealed, are confidential and may not be exposed to the public. This legislation also is also applied to Art. 45.217 regarding confidentiality of records related to fine-only misdemeanors committed by a child, limiting access to those agencies or groups listed in the statute. For purposes of this article, "child" means a person who is: (1) at least 10 years of age and younger than 17 years of age; and (2) charged with or convicted of an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14.

**Art. 45.014, Warrant of Arrest [HB569].** House Bill 569 adds an additional requirement for magistrates who plan to issue arrest warrants for defendants who fail to appear at their initial court setting, including FTA for those issued citations under CCP Art. 14.06 (b). This legislation adds subsection (D), which now requires the magistrate, along with the other requirements already in place, to provide by telephone or regular mail a notice that "the defendant may be entitled to a credit toward any fine or costs owed by the defendant if the defendant was confined in jail or prison after the commission of the offense for which the notice is given." Note that the confinement must have occurred **after** the offense for which the ticket was issued. The post-citation confinement does not need to have been related to the offense for which the original citation was issued.

**Art. 45.041, Judgment [HB80 and HB569].** There are several changes to this article. House Bill 80 adds the new subsection (b-6), which deals with defendants who are under the conservatorship of the Department of Family and Protective Services or who are in extended foster care as provided by Subchapter G<sup>21</sup>, Chapter 263, Family Code. Specifically, when imposing a fine and costs, the justice or judge may not require a defendant listed above to pay any amount of the fine and costs. Rather, in lieu of the payment of fine and costs, the justice or judge may require the defendant to perform community service.

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<sup>20</sup> *Obstructing Highway or Other Passageway*

<sup>21</sup> *Extended Jurisdiction After Child's 18<sup>th</sup> Birthday*



House Bill 569 also deals with M/C fines and costs. “The Bonton Farms<sup>22</sup> Act,” as HB 569 is known, changes the CCP to require a magistrate, when imposing a fine and costs in a case involving a fine-only misdemeanor, to credit the defendant for any time the defendant was confined in jail or prison while serving a sentence for another offense if that confinement occurred after the commission of the misdemeanor. The bill also raises the minimum rate at which the period of a defendant's confinement in jail may be used to satisfy an applicable fine and costs from \$100/day to \$150/day.

**Art. 56A.251, Request for Forensic Medical Examination [HB2462].** House Bill 2462 addresses new legislative requirements for the forensic examination of sexual assault victims. This article is amended by expanding the requirement that law enforcement obtain a consensual examination of the victim if the offense is reported within 120 hours of the assault. The previous threshold was 96 hours. If the victim is a minor and consent is provided, there is no reporting threshold. The previous language allowing law enforcement agencies to decline a request for a forensic exam under specific circumstances is stricken from the statute.

In any case where a sexual assault is reported to law enforcement, the agency must document, in the manner prescribed, if a forensic exam was requested and must maintain such records in accordance with retention policies.

Any law enforcement agency investigating a sexual assault is required to submit the physical evidence it possesses to an accredited crime lab within 30 days. This bill now requires that an agency notify TxDPS of a failure to comply with this requirement.

Finally, this bill details the requirements for health care providers and the Office of the Attorney General related to forensic sexual assault exams, the costs therein, and protocol for required exams.

**Art. 56A.3515, Presence of Sexual Assault Program Advocate or Other Victim’s Representative During Law Enforcement Interview [HB1172].** This new article requires officers investigating sexual assaults to offer the victim the opportunity to have an advocate from a sexual assault program, as defined by Government Code §420.003<sup>23</sup>, present during an interview.

**Art. 59.01, Definitions [HB 2315].** This house bill modifies the definition of “contraband” in CCP Art. 59.01 (2) to include property used or intended to be used in the commission of a racing violation under TRC §545.420, Racing on Highway, if the violation is a felony or M/A. As contraband, this property is subject to seizure and forfeiture. There is one exception: if the racing violation is a M/A due to the presence of an open container of alcohol, the property used in the commission of the offense is not considered contraband.

**Art. 63.009, Law Enforcement Requirements [HB1419].** House Bill 1419 requires a law enforcement agency, on receiving a report of a missing child or missing person, to enter the report into the **National Missing and Unidentified Persons System (NamUs)** within **60 days** of receiving the report the name of the missing child or person, all available identifying features, and all available information describing any person believed to have taken or retained the

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<sup>22</sup> According to [D Magazine](#), Bonton Farms is a South Dallas urban farm that “feeds people in one of southern Dallas’ many food deserts and helps employ formerly incarcerated men and women.”

<sup>23</sup> [GC 420.003 \(1-b\)](#) defines advocate as “a person who provides advocacy services as an employee or volunteer of a sexual assault program.”

missing child or person. The bill is known as “John and Joseph’s Law<sup>24</sup>.” This legislation adds similar requirements to Justice of the Peace and Medical Examiners by amending Art. 49.04 and Art. 49.25.

## CHANGES TO THE TEXAS TRANSPORTATION CODE

**LEARNING OBJECTIVE:** The SWBAT recall selected changes and updates to the Texas Transportation Code.

**§23.001, Establishment of Airport Police Force: Commissioning of Peace Officers. [SB1550].** Senate Bill 1550 relocates the authority for establishing airport police to this chapter and removes the definitions from the Code of Criminal Procedure. It allows airports under the control of political subdivisions or joint boards to establish independent police forces. Sections 23.002 and 23.003, which contained the previous special provisions for airport police and security, are repealed.

**§501.023, Application for Title [SB876].** Pursuant to this new legislation, a person is no longer required to apply for vehicle title and registration in their county of residence. A person may apply for vehicle title and registration at any county tax assessor-collector’s office willing to accept the application. If the tax assessor-collector’s office accepting the application is not the vehicle owner’s county of residence, that TAC must forward applicable fees and taxes to the vehicle owner’s county of residence.

**Chapters 502 and 504** (Note: various sections dealing with disabled veterans’ license plates) **[SB792].** Except for provisions requiring the Texas Department of Motor Vehicles to adopt rules for issuing the plates that include the international symbol of access, **this bill takes effect January 1, 2022.** Prior to this legislation, any vehicle bearing Disabled Veteran (DV) license plates was permitted to park in disabled parking spaces. This bill provides for Disabled Veteran license plates to be issued bearing the international symbol of access if requested by the applicant. A vehicle bearing Disabled Veteran license plates will no longer be permitted to park in parking spaces designated for disabled individuals unless the vehicle displays either Disabled Veteran license plates bearing the international symbol of access or a disabled parking placard.



The International Symbol of Access

**§502.0025, Extended Registration of Certain County Fleet Vehicles [SB1064]. NEW STATUTE.** This legislation creates TRC §502.0025, allowing for extended registration of exempt county-owned fleet vehicles for a registration period up to eight years. Vehicles subject to state inspection requirements are still required to obtain an annual state inspection. The TxDMV is tasked with developing a method of ensuring state inspection requirements are met throughout the duration of the extended registration period.

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<sup>24</sup> This law is named in honor of two Texans whose families searched for years to find them after the two, John Almendarez and Joseph Fritts, vanished in separate and unrelated incidents. You can click [HERE](#) for a report by KXAN on the cases.

**§502.0435, Online Registration Renewal [HB 2152]. NEW STATUTE.** This legislation creates TRC §502.0435 to require that any person eligible to renew a vehicle registration be permitted to renew the vehicle registration through an online registration system.

**§503.063, Buyer's Temporary Tags [HB 3927].** Among several other changes, HB3927 creates an exception for the state inspection requirement for certain vehicles issued a buyer's temporary tag. The exception applies if the vehicle will be titled, registered, and inspected in a different state after the sale. The exception also applies for antique vehicles and certain special-interest vehicles issued a buyer's temporary tag.

**§503.0632, Department Regulation of Temporary Tags and Access to Temporary Tag Databases [HB 3927].** The TxDMV is directed to establish the maximum number of temporary tags that a dealer or converter may obtain in a calendar year based on the dealer or converter's anticipated needs considering sales data, expected growth, expected market change, and other conditions that could influence sales.

**§503.067, Unauthorized Reproduction, Purchase, Use, or Sale of Temporary Tags [HB 3927].** This legislation adds specific language making it an offense to operate a vehicle that displays a temporary tag in violation of a provision of TRC Chapters [502](#) or [503](#). Violations are a M/C-level offense.

**Chapter 504, License Plates [HB 912, HB 1081, HB 1863, HB 1936, HB 3401, HB 4080, SB 791, SB 1123].** The above-listed bills authorize several new specialty license plates for the following groups / organizations:

- Borinqueneers<sup>25</sup> Congressional Gold Medal Recipient (TRC §504.315)
- Presidential Service Badge Recipient (TRC §504.327)
- Make-A-Wish logo (TRC §504.675)
- United States Army Special Forces (TRC §504.327)
- United States Navy SEALs (TRC §504.327)
- Autism Awareness (TRC §504.675)
- United States Navy Submarine Service (TRC §504.327)
- Family First organization (TRC §504.675)

**§521.1016, Personal Identification Certificate Issued to Victims and Children of Victims of Dating or Family Violence [SB798].** This legislation allows victims of dating or family violence

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<sup>25</sup> The 65th Infantry Regiment, made up mostly of Puerto Ricans, started as a volunteer regiment in 1899. The regiment participated in WWI, WWII, and the Korean War. The 65<sup>th</sup> saw extensive combat during the Korean War. The 65<sup>th</sup> Infantry Regiment is known by the nickname "Borinqueneers" (pronounced "boreen-kehneers"). According to the website [militaryhistoryonline](#), "The first part of the nickname refers to Puerto Rico's original name, given by the Taino natives, who called the island *Borinquen*. Today, many who were born in Puerto Rico refer to themselves as *Boricuas*. The second part of the nickname refers to 17<sup>th</sup>-century Caribbean pirates called Buccaneers." The National Guard [notes](#) that during the regiment's service in Korea, "the men of the 65<sup>th</sup> Infantry won four Distinguished Service Crosses and 125 Silver Stars. The 'Borinqueneers' were also awarded the Presidential and Meritorious Unit Commendations, two Korean Presidential Unit Citations and the Greek Gold Medal for Bravery." Click [HERE](#) to see an example of the Borinqueneer Congressional Gold Medal.

and the children of victims of dating or family violence to be issued a Texas driver's license or personal identification certificate at no cost.

**§521.102, Designator on Personal Identification Certificate Issued to Veteran [HB911].** House Bill 911 allows veterans to utilize the Texas Department of Public Safety's website to obtain and submit forms requesting a "VETERAN" designation on their Texas driver's license or personal identification certificate. The Department must make this online process available no later than January 1, 2022.

**§521.1211, Driver's License for Peace Officers and Prosecutors [HB368].** In addition to adding "and Prosecutors" to the title of this statute, House Bill 368 amends TRC §521.1211 to allow prosecutors to utilize their office address rather than their residence address as the address of record on their driver's license. "Prosecutor" is defined as a county attorney, district attorney, criminal district attorney, assistant county attorney, assistant district attorney, or assistant criminal district attorney. If the prosecutor moves to a new office address or ceases to be a prosecutor, they must notify TxDPS of the change within 30 days.

**§521.372, Suspension or License Denial [SB181].** Senate Bill 181 removes the requirement for an automatic driver's license suspension when a person is convicted of most misdemeanor drug offenses. A court may still order a license suspension for misdemeanor drug offenses if the court determines the suspension is in the interest of public safety. The period of suspension for felony drug offenses is changed from 180 days to 90 days and a person must complete a drug education program to lift the license suspension. If a person does not complete the required program, the license suspension will continue for a period of two years.

**§541.201, Vehicles [HB3665].** This house bill modifies the definition of "bicycle" in TRC §541.201 to include a device that is capable of being ridden solely by human power with three wheels, two of which are in parallel, if at least one of the wheels is more than 14 inches in diameter. Also included in the new definition is a device capable of being ridden solely by human power with any number of wheels when the device has adaptive technology that allows it to be ridden by a person with a disability.

**§545.001, Definitions [HB1759].** House Bill 1759 creates a definition for "on-track equipment" in the Texas Transportation Code that describes a car, rolling stock, equipment, or other device that is operated on a railroad track. House Bill 1759 additionally amends TRC §545.251, Obedience to Signal Indicating Approach of Train or Other On-Track Equipment, by adding "or other on-track equipment" to the title and by mandating that motor vehicles attempting to cross railroad tracks are required to yield the right-of-way to on-track equipment as if the equipment were a train.

**§545.157, Passing Certain Vehicles [HB2048].** This bill adds a new vehicle to the "Move Over/ Slow Down" law in TRC §545.157. Motorists are now required to vacate the nearest lane or reduce their speed to 20 MPH below the posted speed limit when passing a vehicle operated by or pursuant to a contract with a toll project entity. This change will protect service/assistance vehicles and highway maintenance and construction vehicles contracted by the toll authority as long as they are using visual signals that comply with the standards and specifications adopted under TRC §547.105, Lighting Standards for Certain Vehicles. These standards require the use of flashing amber lights and permit the use of flashing blue lights.

**§545.251, Obedience to Signal Indicating Approach of Train or Other On-Track Equipment [HB1759].** This HB adds “or other on-track equipment” to the title and requires motor vehicles attempting to cross railroad tracks to yield the right-of-way to on-track equipment as if the equipment were a train.

**§545.3051, Removal of Personal Property from Roadway or Right-of-Way [HB1257].** House Bill 1257 adds an unattended manufactured home to the definition of “personal property” in Texas Transportation Code §545.3051. Law enforcement agencies and other authorities are permitted to remove personal property from the roadway or highway right-of-way if the property is determined to block the roadway or endanger public safety. An unattended manufactured home can now be removed under this section.

**§545.3075, Overnight Parking of Commercial Motor Vehicle Near Certain Apartment Complexes [HB3286].** This legislation adds a process by which the owner or manager of certain apartment complexes can request signs prohibiting the parking of commercial motor vehicles near the apartment complex between 10:00 PM and 6:00 AM. The apartment complex must be in the unincorporated area of a county with a population of more than 3.3 million people<sup>26</sup>.

**§545.3531, Authority of District Engineer to Temporarily Lower Speed Limit at Highway Maintenance Activity Site [HB3282].** **NEW STATUTE; EFFECTIVE IMMEDIATELY.** This legislation adds TRC §545.3531 to allow TxDOT district engineers to lower speed limits if they determine that the normal, *prima facie* speed limit is not reasonable or safe due to highway maintenance activities. This lowering of the speed limit can occur without the approval of the Texas Transportation Commission. TxDOT must post the new speed limit and must cover all other speed limit signs in the area. Once the new speed limit signs are posted, the new limit is considered the reasonable and prudent speed for the purposes of speed enforcement.

**§545.4205, Interference with Peace Officer Investigation of Highway Racing or Reckless Driving Exhibition; Criminal Offense [SB1495].** **NEW STATUTE.** This new statute creates an offense that makes it a M/B to use a person’s body, car, or a barricade to knowingly impede or interfere with a peace officer’s investigation into highway racing or a reckless driving exhibition. If conduct constituting an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, **or both**.

**§545.428, Motor Vehicle Accident Involving Pedestrian or Other Vulnerable Road User Within Area of Crosswalk; Offense [SB1055].** **NEW STATUTE.** This bill creates an offense for operating a motor vehicle with criminal negligence within the area of a crosswalk and causing bodily injury to a pedestrian or a person operating a bicycle, motor-assisted scooter, electronic personal assistive mobility device, neighborhood electric vehicle, or golf cart. The offense is a M/A, except the offense is a SJF if it causes serious bodily injury. There is a defense to prosecution if the person or vehicle struck in the crosswalk was violating a provision of the Texas Transportation Code related to the use of the crosswalk or operation on a roadway.

This legislation also amends Texas Transportation Code §544.007, Traffic-Control Signals in General, to clarify that a vehicle facing a circular green signal must stop and yield right-of-way to pedestrians lawfully in the intersection or an adjacent crosswalk.

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<sup>26</sup> Based on the most current [data](#) from The County Information Program, Texas Association of Counties, the only county in Texas that meets the >3.3MM population requirement is Harris.

**§547.618, Equipment Required for Certain Automated Motor Vehicles [HB3026]. NEW STATUTE.** This house bill creates TRC §547.618 to exempt certain automated motor vehicles from some equipment requirements. Automated motor vehicles that are designed to be operated exclusively by the automated driving system (i.e., there is never a human operator) are not required to have equipment that would be relevant only to a human operator and that is not needed by the automated driving system. This section also creates an exception to allow automated motor vehicles to pass a state inspection without equipment that is normally required as long as the equipment is not necessary for the function of the automated motor vehicle.

**§547.701. Additional Equipment Requirements for School Buses and Other Buses Used to Transport Schoolchildren [SB445].** This bill allows a school bus to use its flashing warning signals when stopped on a highway to distribute food or technological equipment to students or the parents of students.

**§551.403, Operation Authorized in Certain Areas [HB1281].** This bill removes the requirement for a golf cart to bear a golf cart license plate when operated in a master planned community. It also expands the maximum distance golf carts may travel on public highways when used for golfing purposes – golf carts may now travel up to five miles from the location where they are normally parked to the golf course if the operation occurs during the daytime and the golf cart does not travel on roadways with a speed limit of more than 35 MPH.

Additionally, this bill adds to the number of counties that are permitted to authorize golf cart operation on highways in unincorporated areas of the county under TRC §551.404<sup>27</sup>. The roadway must not have a speed limit exceeding 35 MPH and the county must border or contain a portion of the Red River or border the Gulf of Mexico and have a population of fewer than 500,000 people. The county commissioner’s court must specifically authorize this operation.

**Chapter 622, Special Provisions and Exceptions for Oversize or Overweight Vehicles [SB 1815].** Senate Bill 1815 amends TRC Chapter 622 to include additional size and weight exceptions for certain vehicles. An automobile transporter that is stinger-steered may carry a load extending four feet beyond its front and six feet beyond its rear. A towaway trailer transporter combination may not be longer than 82 feet. Emergency vehicles are not subject to normal weight limitations as long as the vehicle does not exceed the manufacturer’s gross vehicle weight capacity or other specific weights added to TRC §622.952<sup>28</sup> by this legislation.

**§623.011, Permit for Excess Axle or Gross Weight [SB 1814].** This legislation requires the Texas Department of Motor Vehicles to make available on its website a searchable, downloadable list of all overweight permits issued by the Department under TRC §623.011. An overweight permit holder is liable for damages caused to roadways by a vehicle or load that exceeds the limitations of their permit; they must have a bond filed with the Department that will be payable to the county in which the roadway damage takes place in the event of roadway damage.

**§721.003, Exemption from Inscription Requirement for Certain State-Owned Motor Vehicles [SB795].** This legislation adds the Texas Military Department to the list of state agencies that

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<sup>27</sup> Operation on Highway Authorized by Municipality or Certain Counties

<sup>28</sup> Fire Department Vehicle



may exempt certain vehicles in their fleet from bearing the name of the agency on each side of the vehicle.

**§724.012, Taking of Specimen<sup>29</sup> [HB558].** House Bill 558 amends TRC §724.012 to require peace officers to take a specimen of a person's blood if the officer arrests the person for an intoxication-related offense involving the operation of a motor vehicle or watercraft in certain circumstances. The blood specimen is required if the person refuses to provide a specimen voluntarily and the officer reasonably believes that the person's intoxication resulted in a crash causing serious bodily injury or death. A mandatory breath or blood specimen is required if the crash is less severe but still requires a person to be transported to the hospital for treatment or if the suspect is arrested for any of the offenses described in §724.012 (b).

Language was also added stating that peace officer may not require the taking of a specimen unless the officer obtains a warrant or has probable cause to believe that exigent circumstances exist.

**§724.015, Information Provided by Officer Before Requesting Specimen [SB335].** The most important result of this bill is not mentioned in its text. Senate Bill 335 will result in a new DIC-24 form being required on September 1, 2021. Agencies and officers must be sure to replace their old forms with the NEW DIC-24. Failure to do so will give defense counsel the opportunity to object in the media, in suppression hearings, and during officer cross-examination! It also amends TRC §724.015 to require that an officer provide additional information to a suspect upon requesting a specimen of blood. The officer must advise the person that any specimen collected will be retained and preserved in accordance with the Texas Code of Criminal Procedure. When an officer requests a specimen and a person voluntarily consents to providing the specimen, the officer should request that the person sign a statement stating that they were informed of the consequences of refusing to provide a specimen and they are voluntarily providing the specimen.

## CHANGES TO THE TEXAS HEALTH AND SAFETY CODE

**§481.1022, Penalty Group 1-B [SB768]. NEW OFFENSE.** Senate Bill 768 creates the new penalty group 1-B which contains Fentanyl, alpha-methylfentanyl, and any other derivative of fentanyl. These substances are removed from Penalty Group 1.

**§481.1123, Manufacture or Delivery of Substance in Penalty Group 1-B [SB768]. NEW OFFENSE.** This new offense has a unique punishment structure. If the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 1-B the following amounts by aggregate weight, including adulterants or dilutants, the punishment levels are as indicated:

- <1g: SJF
- ≥1g but <4g: F/2
- ≥4g but <200g: F/1 with minimum **10** years in TDC and a fine of up to **\$20,000**

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<sup>29</sup> While this started as an attempt to legislate around [McNeely](#), it may have actually made getting blood more difficult. There is no judicial interpretation of what "probable cause of exigent circumstances" means in this bill; the US Constitution supersedes Texas law; and a search warrant trumps the Transportation Code, so the safest course of action is to obtain a warrant.

- ≥200g but <400g: F/1 with minimum **15** years in TDC and a fine of up to **\$200,000**
- ≥400g: F/1 with minimum **20** years in TDC and a fine of up to **\$500,000**

Possession of these substances remains within the PG1 possession statute<sup>30</sup> and continues to follow that punishment schedule. Other sections and statutes are amended to include these new chapters as applicable.

**§481.134, Drug-Free Zones [HB1540].** House Bill 1540 includes “in, on or within 1,000 feet of premises owned, rented or leased by a general residential operation operating as a residential treatment center” in the Drug-Free Zone penalty enhancements.

## OTHER CODES AFFECTED

### Alcoholic Beverage Code

**§106.17, Presence of Certain Minors on Permitted or Licensed Premises Operating as Sexually Oriented Business [SB315]. NEW OFFENSE. Effective 05/24/2021.** This new statute deals with the issue of young people at sexually oriented businesses. An individual younger than 18 years of age may not be on premises covered by a permit or license issued under the Texas Alcoholic Beverage Code if a sexually oriented business, as defined<sup>31</sup> by LGC §243.002, operates on the premises. The holder of a permit or license covering premises described above may not knowingly or recklessly allow an individual younger than 18 years of age to be on the premises. Licensees / Permittees who violate this new section of the TABC face suspension (or, for repeated violations, cancellation) of their license / permit.

### Business and Commerce Code

**§102.0031, Prohibition on Certain Activities by Business in Relation to a Child [SB315]. NEW STATUTE. Effective 05/24/2021.** A sexually oriented business may not allow an individual younger than 18 years of age to enter the premises of the business.

### Civil Practice and Remedies Code

**§98.007, Confidential Identity in Certain Actions [HB1540]. NEW STATUTE.** This new statute allows victims of trafficking to use a pseudonym in civil actions. Also see §301.0221 of the Government Code, Use of Pseudonym by Victims of Human Trafficking.

**§125.0017, Notice by Law Enforcement of Certain Activities [HB1540].** Note the change in the offense title from the former “Notice of Arrest for Certain Activities” to the new name. It allows a law enforcement agency to notify the property owner when they have reason to believe that prostitution, promotion of prostitution, aggravated promotion of prostitution, compelling prostitution of providing massage therapy or other massage services in violation of Chapter 455 of the Occupations Code, is occurring at a property leased to a person operating a massage establishment.

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<sup>30</sup> HSC §481.115, *Offense: Possession of Substance in Penalty Group 1 or 1-B*

<sup>31</sup> Section 243.002 of the LGC defines sexually oriented business as a “sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other commercial enterprise the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.”



**§125.005, Attorney’s Fees and Costs in Action Under Chapter [HB1540]. NEW STATUTE.** This new statute allows the prevailing party in common nuisance actions to be awarded reasonable attorney fees and costs associated with bringing the action.

### Education Code

**§37.086, Required Posting of Warning Signs of Increased Trafficking Penalties [HB1540 and SB1831].** House Bill 1540 and Senate Bill 1831 make identical changes to EC §37.086. Both pieces of legislation require schools to post warning signs, at locations specified in the statute, of the increased penalties for trafficking of persons. "Premises" in this context means real property and all buildings and appurtenances pertaining to the real property. The required wording on the signs and the design of the signs are specified by the legislation as well.

**§1001.1021, Human Trafficking Prevention Information [SB1831].** This legislation requires that information relating to human trafficking prevention be included in the curriculum of any driver education course or driving safety course held on or after September 1, 2022.

### Family Code

**§85.05, Agreed [Protective] Order [HB39].** This legislation makes civilly and criminally enforceable the agreed protective orders issued under Family Code §85.021, which can apply to any party. The enforcement mechanisms for these orders and those issued under Family Code §85.022, in reference to family violence and are civilly and criminally enforceable apply regardless of whether a court made a specific finding outlined in Family Code §85.001 that family violence had occurred and was likely to occur in the future.

The bill also revises who can file applications to rescind protective orders for specific offenses relating to sexual assault or abuse, stalking, or trafficking. Victims are now required to be 18 years old or older to file to have protective orders rescinded for all the specified offenses. House Bill 39 also makes changes to the time protective orders for certain offenses are in effect upon the respondent’s release from incarceration.

### Government Code

**Title 1, Chapter 2: Firearm Suppressor Regulation [HB957].** House Bill 957 addresses silencers manufactured in Texas and establishes new definitions related to such. This bill further regulates the ability of political subdivisions to establish firearm laws more stringent than the state. Additionally, this bill prohibits state, county, and local entities from taking part in the enforcement of federal firearm laws that are not consistent with state firearm laws. Failure to comply with the restrictions listed within the Government Code statutes can result in the agency being ineligible for state grant funds. Finally, this bill removes “a firearm silencer” from the list of prohibited weapons in the Penal Code.

**§71.0353, Trafficking of Persons Information [SB800].** Senate Bill 800 requires district and county courts at law to provide a report of Trafficking of Persons, Prostitution, and Compelling Prostitution to the Attorney General in addition to the Office of Court Administration of the Texas Judicial System.

**§301.0221, Use of Pseudonym by Victims of Human Trafficking [HB1540]. NEW STATUTE.** This new statute allows victims of trafficking to use a pseudonym in when testifying under oath to legislative committees. Also see §98.007<sup>32</sup> of the Civil Practice and Remedies Code.

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<sup>32</sup> Confidential Identity in Certain Actions

**§411.02097, Firearm Safety [HB1927].** As part of the “constitutional carry” updates, the TxDPS shall develop and post on the department’s Internet website a course on firearm safety and handling. The course must be accessible to the public free of charge.

**§411.184, Training Course for Certain First Responders [HB1069].** House Bill 1069 regulates the ability of certain first responders to carry a handgun during the course of their duties. This section of the Government Code is added to detail the extensive training required. The curriculum and licensing will be established by TxDPS.

The curriculum must include, but is not limited to, not more than 40 hours of training by a qualified handgun instructor with classroom training in self-defense; de-escalation techniques; tactical thinking as it relates to cover and concealment; methods to conceal and ensure the secure carrying of a concealed handgun; use of retention holsters and methods to ensure the secure carrying of an openly carried handgun and the consequences of the improper use of a handgun. There must also be field training in instinctive or reactive shooting, tactical shooting, shooting while moving, and shooting in low-light conditions.

The first responder must physically demonstrate proficiency in the techniques learned. Additionally, the first responder is required to re-certify **every year** in a course no longer than 10 hours and the first responder is responsible for the costs of the training, certification, and re-certification.

**§420.071, Confidential Communications and Records; Privilege [SB295].** Please note the change in the statute title from the former “Confidential Communications” to the new name. Senate Bill 295 includes any communication or record in the privilege to not disclose information shared between an advocate and a survivor of a sexual assault.

**§420.074, Disclosure of Privileged Communications or Other Information in Criminal Proceeding [SB295].** Please note the change in the statute title from the former “Criminal Subpoena” to the new name. Senate Bill 295 sets forth the process in which a criminal defendant may subpoena privileged communications. They must make a motion to review the communication or record not later than 30 days before trial. The communications or record will then be examined by the court, who will make a determination as to the relevance, materiality and exculpatory nature of the communication or record. The court will then disclose any relevant portion to the defendant.

**§508.145, Eligibility for Release on Parole; Computation of Parole Eligibility Date [HB465].** House Bill 465 changes the eligibility for release on parole of persons serving sentences for trafficking of one or more child victims under Penal Code §20A.02 (a)(5), (6), (7), or (8). Inmates are not eligible for parole for child trafficking offenses except as part of a plea agreement and the inmate must serve one-half of the sentence or 30 calendar years, whichever is less. In no event is the inmate eligible for release on parole in less than two calendar years.

**§511.009, General Duties [of the Texas Commission on Jail Standards] [SB49].** Previously, this statute required that TCJS “adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of prisoners. The rules and procedures shall require that a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody.” Senate Bill 49 adds the following to that requirement: “...and a prisoner with a mental illness be provided with each prescription medication that a qualified medical

professional or mental health professional determines is necessary for the care, treatment, or stabilization of the prisoner.”

**Chapter 614, Subchapter M, Accompanying or Filming of Peace Officers [HB54]. NEW STATUTE. Effective 05/26/2021.** House Bill 54, known as “Javier Ambler's Law<sup>33</sup>,” amends the Government Code to prohibit a state or local law enforcement agency from authorizing a person to accompany and film a peace officer acting in the line of duty for the purpose of producing a reality television program.

**§614.231, Definitions [HB54]. NEW STATUTE. Effective 05/26/2021.** To specify what is covered by this new law, the following definitions are put into place by House Bill 54: Subsection (1) defines “law enforcement agency” as “an agency of this state or a political subdivision of this state that employs peace officers other than game wardens.” Subsection (2) defines “reality television program” as “a nonfictional television program that features the same live subjects over the course of more than one episode primarily for entertainment purposes, but does not include reporting on a matter of public concern by a journalist as defined by Article 38.11, Code of Criminal Procedure<sup>34</sup>.”

**§614.232, Accompanying and Filming Peace Officers for Reality Television Program Prohibited [HB54]. NEW STATUTE. Effective 05/26/2021.** A law enforcement agency may not authorize a person to accompany and film a peace officer acting in the line of duty for the purpose of producing a reality television program.

#### Labor Code

**§51.016, Sexually Oriented Businesses [SB315]. Effective 05/24/2021.** Senate Bill 315 amends §51.016 of the Labor Code to prohibit the employment of individuals younger than **21** years of age at sexually oriented businesses. The statute previously set the minimum employment age at 18 YOA. This new prohibition does **not** apply to an independent contractor who contracts with a sexually oriented business solely to perform repair, maintenance, or construction services at the business.

#### Local Government Code

**Subtitle B, Title 4, Local Government Code, Chapter 120, Election for Reduction of Funding or Resources for Certain Primary Law Enforcement Agencies. [SB23].** This bill applies only to counties over 1,000,000 in population. The legislation requires a special election to be held if the county adopts a budget that includes

- (1) Reducing budget for the primary law enforcement agency responsible for policing, criminal investigation, and answering calls for service:
  - a. If the overall budget has remained constant or increased over the previous year;
  - b. Requires the percentage of reduction for law enforcement services to be in line with the percentage of reduction for other departments if the budget is decreased overall.

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<sup>33</sup> Javier Ambler died while being arrested on March 28, 2019. The circumstances of his arrest and the video of that arrest filmed by a reality television program sparked a controversy over the propriety of contracts with such programs and the retention of the video for evidentiary purposes.

<sup>34</sup> *Journalist's Qualified Testimonial Privilege in Criminal Proceedings*

Senate Bill 23 sets guidelines intended to prevent lowering the police-to-citizen ratio, and limit reallocation of law enforcement funding to other departments without specific voter approval. Several specific portions of the new Chapter 120 detail what must be made public in the event an election is called, limits the expenditure of public funds that may be used in a campaign related to such an election, and details the process by which complaints are reported and investigated.

In the event the State Comptroller determines a county has violated this statute, the comptroller may freeze the *ad valorem* tax rate of the county, preventing the adoption of an *ad valorem* rate that exceeds the county's no-new-revenue tax rate until the issue is addressed.

**Chapter 351, Subchapter J. [SB476]. NEW STATUTE.** Senate Bill 476 adds Subchapter J, which establishes the newly created Sexual Assault Response Teams. This legislation requires the creation of multidisciplinary sexual assault response teams by the commissioner's court of each county. The bill contains the applicable definitions and legislative requirements. Each commissioner's court **shall** establish such teams. Multi-county teams can be established so long as the member counties are contiguous and each county has a population of fewer than 250,000 persons. Each response team shall consist of the following persons:

- the chief administrator, or the chief administrator's designee, of a sexual assault program that provides services for the county;
- a prosecutor with jurisdiction over sexual assault cases involving adult victims;
- the Chief of Police, or designee, of the largest municipality within the county;
- the County Sheriff, or designee;
- either a sexual assault nurse examiner or forensic examiner from a facility that conducts sexual assault forensic exams for the county, or a representative from the largest health care provider in the county if the county does not have a SANE or forensic examiner from a facility that conducts sexual assault forensic exams for the county;
- a behavioral health services provider or a representative from the county health department if no behavioral health services provider exists; and
- other persons deemed necessary or requested by the response team.

The sexual assault response team shall meet no less than once quarterly. The team must also meet not later than the 90<sup>th</sup> day after the last day of a regular legislative session. The teams must be independent of child advocacy center multidisciplinary team meetings.

Senate Bill 476 additionally specifies the required response protocols which include, but are not limited to,

- Investigative and prosecutorial procedures for sexual assault cases with adult victims;
- interagency information sharing;
- notifications to survivors of the case status and court proceedings;
- biennial evaluations of the effectiveness of individual agency and interagency protocols and systems; and
- a minimum of four hours of annual, cross-agency training for the team members.

The purpose of the protocols developed is to ensure coordination between all agencies involved in sexual assault cases to increase the efficacy of response and to minimize survivor traumatization. The response team shall provide the protocol to each agency in the county that responds to disclosures of sexual assault.

This legislation further requires the team to conduct a minimum of biennial reports to the commissioner's court containing information, including:

- The number of sexual assault cases reported to each agency;
- the number of investigations resulting from those reports;
- the number of indictments presented and the disposition of those cases; and
- the number of reports of sexual assault for which no indictment was presented; or
- an explanation of why no such report was submitted to the commissioner's court.

The team may review only cases in which the victim has signed a written consent form specifying

- the information and records covered by the release,
- the reason and purpose for the release, and
- the person or agency to whom the information is to be released.

The sexual assault teams members must be appointed and conduct the first meeting by **December 1, 2021**. The enumerated written protocols must be established by **December 1, 2022**. Lastly, it is important to note that SB476 applies only to sexual assault cases involving **adult** victims.

**Chapter 179, Authority of Certain First Responders to Carry Handgun [HB1069]**. House Bill 1069 establishes the ability for certain first responders to carry a handgun during the discharge of their duties. This legislation is complex and should be read in detail by anyone who employs such first responders and who is attempting to comply with the requirements. To give the reader an idea of the complexity of this legislation, the House Research Organization's [enrolled bill summary](#) for House Bill 1069 reads as follows:

House Bill 1069 amends the Civil Practice and Remedies Code, Government Code, Local Government Code, and Penal Code to set out provisions relating to the carrying of a handgun by certain first responders employed or supervised by or providing services for certain municipalities and counties that have not adopted The Fire and Police Employee Relations Act. The bill requires the Department of Public Safety (DPS) to establish minimum standards for training and continuing education courses for applicable first responders who are handgun license holders and to issue a corresponding certificate upon their completion of the course. The bill provides for the authority of the first responders to carry a concealed or holstered handgun while on duty and to store a handgun on the premises of or in a vehicle owned or leased by the municipality or county. The bill requires the first responders to maintain liability insurance coverage for carrying a handgun that is not an essential part of their duties while on duty and sets out provisions relating to when the handgun may be discharged, the limited liability of municipalities and counties arising from that discharge, and handgun storage in locations where handgun carry is prohibited.

House Bill 1069 establishes a defense to prosecution for trespass by a handgun license holder with a handgun for these DPS-certified first responders who were engaged in the actual discharge of their duties while carrying the handgun and exempts them from certain unlawful weapon carry offenses under certain circumstances.

The best way to approach this is to break it down into small pieces. The new Chapter 179 applies only to (1) a **municipality** with a population of **30,000 or fewer** that has **not** adopted Chapter 174; and (2) a **county** with a population of **250,000 or fewer** that has **not** adopted Chapter 174. Chapter 174, The Fire and Police Employee Relations Act, is Texas' civil service law.

The bill includes some shielding from liability for the government entity or municipality that employs or supervises the first responder. It also prohibits those entities from establishing a "general prohibition" against such first responders from being able to carry.

To be eligible, the first responder must meet the new definition of first responder in §46.01 of the Penal Code; they must have an unexpired license to carry; they must have a current certificate of completion from the newly established training course detailed in Chapter 179 of the Government Code; and they must have a current \$1,000,000 liability insurance policy.

This law states that the employing or supervising government entity **may** establish a policy which allows for these first responders to carry. It further establishes that the first responder is authorized to carry **only** if their employing or supervising entity does have a policy in place. Though the employing or supervising entity cannot create a general prohibition, **there is no statutory requirement to generate such a policy**. The entity can, in its policy, prohibit carrying by a first responder based upon the actions of that first responder and the entity may limit the carrying of the handgun to ensure it does not interfere with first responders' duties.

The statute specifically states that "one or more complaints against a specific first responder" is grounds for the employing or supervising entity to prohibit that first responder from carrying while on duty. The bill does not specify what the complaint must allege, if the complaint must be investigated, or what the finding must be.

House Bill 1069 requires that the first responder have a means of securing the handgun when the weapon is not being carried. This means of storage must one that is approved by TxDPS<sup>35</sup>. The first responder is responsible for purchasing, or reimbursing their employer for the purchase of, such a device.

The statute states that the first responder is authorized to discharge the handgun **only in self-defense**<sup>36</sup> (neither defense of a third person nor any other Penal Code authorization is mentioned). Further, it specifically states that the **discharge of a handgun is outside the scope of the first responder's duties** and that the **employing entity** is not civilly liable for that action.

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<sup>35</sup> The legislation mandates that "The director [of TxDPS] by rule shall approve devices to enable a first responder to secure and store a handgun if the first responder, while on duty, is required to enter a location where carrying the handgun is prohibited by federal law or otherwise."

<sup>36</sup> Government Code §179.055, Discharge of Handgun: "A first responder may discharge a handgun while on duty only in self-defense."

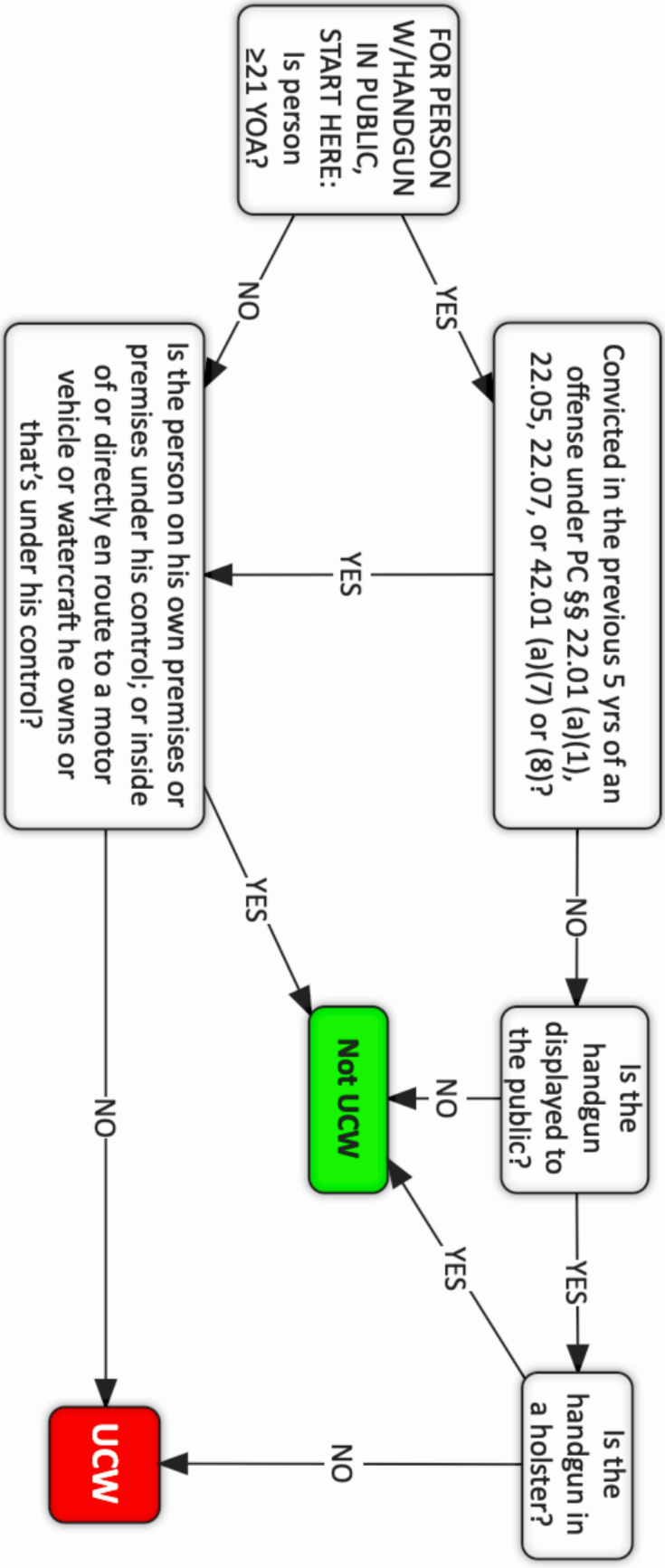
## Occupations Code

**§1701.451, Preemployment Procedure [SB24].** Mandates specific steps and responses required during preemployment background investigations before appointment of peace officers. This legislation places the responsibility of failure to conduct these steps on the agency head, with violations leading to possible license suspension of the agency head. This bill also clarifies that the release of personnel files to another agency for this purpose under this chapter holds no liability for the releasing agency when done in good faith.

**§1702.3876, Impersonating Private Investigator; Offense [HB1400]. NEW OFFENSE.** House Bill 1400 amends the Occupations Code to create the M/A offense of impersonating a private investigator. This offense is committed by either impersonating a private investigator “with the intent to induce another to submit to the person’s pretended authority or to rely on the person’s pretended acts of a private investigator;” or by (2) “knowingly purporting to exercise any function that requires licensure as a private investigator.” Second and subsequent convictions for this offense are a F/3.

## Appendicies

The following pages contain graphics or flowcharts that are designed to help the reader understand some of the changes to Texas law.



UCW1



