

Texas Legislative and Legal Update

88th Legislative Session



TCOLE Course
#3188

2023-2025

Disclaimer

This presentation is designed to provide an overview of the laws passed during the 88th legislative session and recent applicable case law. This presentation is not intended as legal advice. Participants are responsible for reading the applicable statutes and caselaw and contacting legal counsel for advice when necessary.



Course Objectives

1. Identify current training requirements.
2. Identify recent court opinions that will have or have had an impact on the administration of justice.
3. Recognize selected changes to the Texas Penal Code.
4. Recognize selected changes to the Texas Code of Criminal Procedures.
5. Recognize selected changes to the Texas Transportation Code.
6. Recognize selected changes to the Texas Health and Safety Code.
7. Recognize selected changes to other selected Texas statutes.



Topics

1. The Session in Review
2. Law and Order Bills
3. Notable Legislation
4. High Profile Bills
5. Penal Code
5. Code of Criminal Procedure
6. Transportation Code
7. Misc. Codes
8. Case Law Update

The Seal of the State of Texas is a circular emblem. It features a central five-pointed star with a smaller star in the center. Surrounding this central star are five smaller circles, each containing a different symbol: a ship, a plow, a sheaf of wheat, a cotton plant, and a star. The entire seal is encircled by a border containing the text "THE STATE OF TEXAS" and "1845".

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8th Session Property Tax Plan

SENATE BILL S. 1300

\$18.5 BILLION IN TAX RELIEF

SENATE BILL S. 1300 - A Disposition: Senate for Homestead Tax Relief

- HB 1000 creates an audit authority of a Joint 1000 Homestead Exemption for \$20 Million "Joint 1000 Homesteads"
- HB 1001 increases the 100 Homestead Exemption from \$400 to \$1K - a 15% increase
- HB 1002 increases the 100 Homestead Exemption from \$400 to \$1K, but also increases the 100 Homestead Exemption from \$400 to \$1K for all over 65 disabled homesteaders, over 65 homesteaders and 100 Homesteads

SENATE BILL S. 1300 - A Disposition: Senate for Homestead Tax Relief

- HB 1003 provides a total of \$10K in total Homestead Exemption to 2.07 Million over 65 disabled homesteaders!
- HB 3 triples the over-65 or disabled Homestead Exemption to \$30K from \$10K!
- \$30K Over-65 or disabled Homestead Exemption + \$70K 100 Homestead Exemption = \$100K Total Exemption



“Textit”

2:39 Jeff Leach @leach - 3/6/23
 Tweets Replies Media Likes
 If you believe that Texas should secede from the United States of America# - then yes. Unquivocally yes.
 Morgan McComb - 3/6/23
 @leachfortexas Are you accusing me of treasonous sedition? A person under the threat of living under the boot of...

“Drunk” Dade

By Eric Bradlow, Anthony Klimberg, and Ed Lammiman
Updated 5:27 PM EDT, Sat September 16, 2011



- The House and Senate adjourned by 7:00 pm on May 29, 2023.
- They did not pass any type of property tax relief.
- Governor Abbott calls the 1st (of four) special sessions to start at 9:00pm that evening.





88th Regular Session Statistics

House Bills (HBs) & Senate Bills (SBs)	
Filed	8,046
Sent to the Governor	1,246
Signed by the Governor	1,038
Filed without the Governor's signature	131
Signed by the Governor/line-item veto	1
Vetoed by the Governor	76

17



18



New Crimes in Texas

1. Failure to report pests to Texas A&M AgriLife Research. (Class C)
2. Improper use of an assistance or service animal. (\$3000 + C.S.)
3. Unlawful disclosure of judicial work product. (Class A)
4. Hiring an employee with a criminal record for a group home. (Class A)
5. Failure to provide notice concerning sale or purchase of trees or timber. (\$500)
6. Acting as an associate auctioneer without a license. (Class B)

19

New Crimes & Punishments

Felony Offenses – 18
Misd. Offenses – 31
Other – 9
Total – 58

Enhanced Punishments - 26

20

A Phillies fan tried — and failed — to bring an emotional support alligator to a game

Callie Luskoff-Freeman
The Sun Jan 10, 2017 | 11:00am



An emotional support alligator got bounced from a sporting event — and the spectacle actually didn't take place in Florida.

Hemery once told the Register that WMA, who boasts over 100,000 Twitter followers, likes to give hugs and is friendly.

My doctor wanted to put me on antidepressant medicine, and I have hearing aids. I hear pretty good when I have them and wear around town. I said OK. "Hemery said in 2016, 'My doctor asked about my hearing aids, so why not?'

Hemery, according to the *Washington Post*, has been in possession of WMA since 2016 when he was 14 months old, and helps various reporters find humans of color and other underrepresented



and recently took the alligator to an all-culture support group.

Gov. Greg Abbott vetoed 76 bills this session, nearing the state record

APR 18, 6:15 p.m. South Austin, Texas (AP) — Governor Greg Abbott has vetoed 76 bills this session, nearing the state record.



Times Staff Photo. Abbott signed 1,100 bills from the House and Senate during the 2017 legislative session.

The Governor's Veto

- HB4759 - Attack by a dangerous dog — says there are already laws that address this.
- HB4779 - Prosecution of the criminal offense of organized retail theft — says that this bill makes it harder to prosecute.
- SB 267 - Law enforcement agency accreditation, including a grant program to assist agencies in becoming accredited — victim of property tax fight.
- SB467 - Increasing the criminal penalty for the offense of criminal mischief involving impairment of a motor fuel pump — victim of property tax fight.

With Grace and a Sense of Humor



Law & Order Bills



Official Misconduct by Prosecutors Sec. 87.011, Local Gov't. Code

- Expands the definition of “official misconduct” to include the adoption or enforcement of a policy or categorically refusing to prosecute specific criminal offenses under state law.
- It is an exception if it is:
 - in compliance with state law, or
 - an injunction, judgment, or other court order.
- A petition for removal may be filed by any resident of the state.



Street Racing and Street Takeovers Sec. 71.02, Penal Code

- Expands the list of offenses constituting **organized criminal activity** to include committing the offense of **Obstructing Highway or Passageway (Sec. 42.03)** by engaging in a **reckless driving exhibition**.
- Also, expands the **definition of contraband** in the CCP include property used or intended to be used in the commission of obstructing a highway or another passageway by engaging in a reckless driving exhibition making it subject to **forfeiture**.



Racing; Impoundment of a Vehicle Sec. 545.420, Transportation Code

- If the vehicle is engaging in reckless driving exhibition under Penal Code 42.03(d) or (e), then a peace officer **shall** require the vehicle be taken to the **nearest** licensed vehicle storage facility unless it is evidence.
- But if it is seized as evidence, the vehicle can be taken to **any** vehicle storage facility.

Thomas Parkinson
Self
San Antonio, TX

Texas has one of the highest road death rates in the United States. As a firm reminder to everyone operating a motor vehicle on Texas roads, our roads are not a race track. There are much more effective ways to express one's masculinity without endangering the lives of others.



Tampering with an Elec. Monitoring Device (ELM) Sec. 38.112, Penal Code

- There is a new SJF for tampering with an ELM by knowingly removing or disabling the device by a person who:
 - is require to participate in an ELM program; and
 - knowingly removes a tracking device.
- SJF but F3 if on super-intensive supervision parole.
- Charge can be stacked.

NEW



Rural Law Enforcement Grant Program Ch. 30, Local Gov't. Code

- Requires the Comptroller to establish and administer financial assistance to prosecutor's offices, sheriff's offices, and constable's offices in qualified counties.



ALERT
TEXAS STATE UNIVERSITY

Active Shooter Training Sec. 1701.253, Occupation Code

- Requires 16 hours of active shooter training for recruits and officers as part of continuing education every 24 months.



Alzheimer's and Dementia Training Ch. 1701.253(j), Occupations Code

- Requires officers to receive specialized training on communication with persons with Alzheimer's and other forms of dementia to equip officers with techniques for recognizing symptoms, communicating effectively, utilizing alternatives to physical restraints and identifying signs of abuse, neglect, or exploitation.
- This will be incorporated into the CIT curriculum.



Child & Adult Sexual Abuse Training Sec. 1701.253 (q), Occupations Code

- TCOLE is required to consult with Sexual Assault Survivors' Task Force (SASTF) to establish basic education and training program on child sexual abuse and adult sexual assault, including best practices and trauma-informed response techniques to effectively recognize, investigate, and document such cases.
- Must be at least 8 hours.

SB 1402



Ellie's Law Child Fatality Investigation Training Sec. 1701.253, Occupations Code



Child Fatality Investigation Training Sec. 1701.253, Occupations Code

- TCOLE shall require an officer to complete a training program on investigating child fatalities, including:
 - the protocols for reporting and investigating child fatalities,
 - the differences between sudden unexpected infant death and sudden infant death syndrome, and
 - the relevant regulations applicable to child-care facilities.

SB 533



Paid Leave Protection for First Responders 177A, Local Gov't. Code

- Requires a city to provide to firefighters, police officers, and EMS personnel a leave of absence with full pay for a period commensurate with the nature of the line of duty illness or injury or at least **one year**.
 - After one year, the city may extend leave at full or reduced pay.
- Personnel can return to light duty while recovering from a temporary disability for at least one year.
- Similar to state civil service protection.

HB 471



Age for Beginning Police Officer Sec. 143.023, Local Gov't. Code

- Repeals Civil Service requirement relating to prohibiting a person who is 45 years of age or older from being certified for a beginning position in a police department.
- No longer an age limit to apply for beginning position.

HB 1661



Licensing of Veterans Local Gov't. Code 370.007 & Occ. Code 1701.3095

- TCOLE can now license a peace officer who is a **legal permanent resident** of the U.S. if the person is an honorably discharged veteran of the armed forces of the U.S. with at least 2 years of service and presents evidence that they have applied for U.S. citizenship.
 - But prohibits such peace officer from holding a supervisory position until the person becomes a U.S. citizen.

SB 252



Election to Adopt or Repeal Civil Service Sec. 143.004, Local Gov't. Code

- Ch. 143 allows cities to hold an election to adopt or repeal a civil service system for firefighters and police officers.
- This bill amends 143.004 to make this section applicable only to cities with a population of less than 900,000.

HB 4227



SRO's Use of Pepper Spray and Tasers 37.0021(j), Education Code

- A school officers or school security personnel performing security-related duties on school property or at a school-sponsored or a school-related activity **may not** restrain or use a **chemical irritant spray or Taser** on a student enrolled in **5th grade** or below unless the student poses a serious risk of harm to the student or another person.

SB 133

TCOLE Reauthorization Bill



TCOLE Reauthorization Bill

- **Advisory Committees** - TCOLE will establish advisory committees to make recommendations on programs, rules, and policies that TCOLE administrators to include:
 1. Minimum Standards for Law Enforcement Agencies;
 2. Examination of Licensee; and
 3. Misconduct Investigation and Hiring Procedures.



TCOLE Reauthorization Bill

- **Model policies** - Requires TCOLE to adopt certain model policies to guide procedures that include:
 - policies prescribing standards and procedures for the **medical and psychological examination** fit for duty;
 - policies prescribing minimum standards of conduct for officers with respect to:
 - pursuit of a suspect;
 - arrest and control tactics;
 - executing high-risk warrants; and
 - conducting traffic stops, including a uniform standard for conducting a traffic stop for an offense punishable by fine only;



TCOLE Reauthorization Bill

- **Model Policies Cont.**
 - policies establishing procedures applicable to **hiring and investigating alleged misconduct** of a police officer.



TCOLE Reauthorization Bill

- **Requires TCOLE to develop two databases:**

1. **Hiring Database**
 - Confidential database containing officer personnel records, license actions, misconduct reports which will be available for LE agencies for the purpose of hiring licensees
2. **Officer Service Reports**
 - Public facing “licensee lookup” database
 - Must include date of basic training, continuing education completed and current CE compliance, total number of training hours, date license was issued.
 - No photos, addresses or other confidential information will be contained.
 - Users of database must be registered, and activity will be tracked.

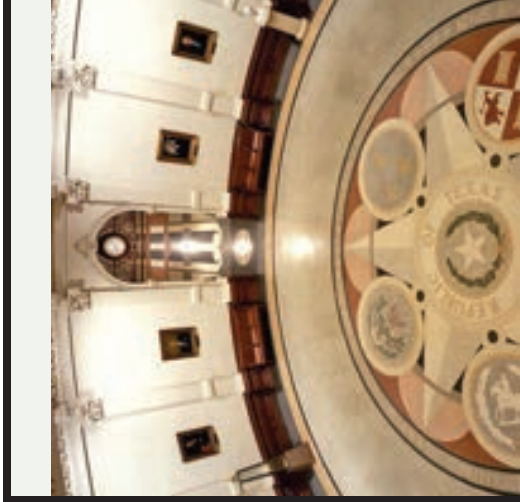
- **F5 Separation Form -**

- Removes Honorable, General, and Dishonorable service designations from the F5 Separation form.

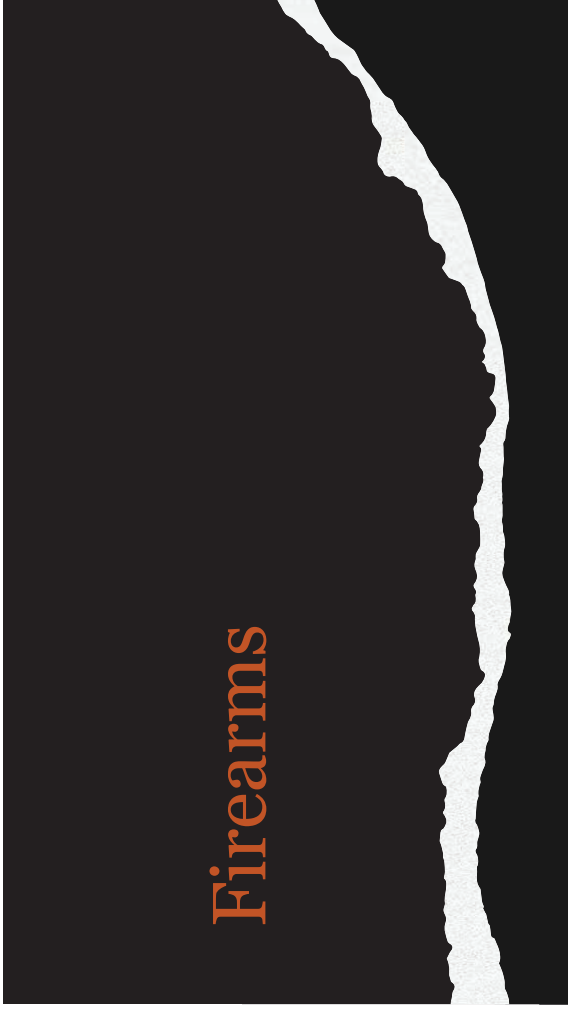


TCOLE Reauthorization Bill Sec. 17o1, Occupations Code

- Includes a new definition of “**misconduct**” is added to the Occ. Code and means:
 - a violation of law; or
 - any of the following that have been sustained by a law enforcement agency employing a license holder:
 - a violation of a law enforcement agency policy for which the agency may suspend, demote, or terminate a license holder’s employment; or
 - an allegation of untruthfulness against a license holder.
- **Subpoenas** – Authorizes TCOLE to compel production for inspection or copying of certain records that TCOLE is entitled under state law to access.



Notable Legislation



Firearms



Juveniles and Firearms Sec. 411, Gov't. Code

- This bill closes a loophole in state law that allowed people who had serious mental health issues as juveniles to legally purchase firearms.
- Now, a minor who receive inpatient mental health treatment will now be reported in the background check system that federally licensed dealers are required to check before they sell someone a firearm

SB 728

51



Prohibited Firearm Regulation Sec. 229.001, Local Gov't. Code

- Prohibits a municipality or county from adopting regulations that require an owner of a firearm to obtain liability insurance coverage for damages resulting from negligent or willful acts involving the use of the firearm.

HB 3137

52



2nd Amendment Financial Privacy Act Ch. 610, Business & Commerce Code

- Prohibits a person or entity involved in facilitating or processing an electronic payment transaction from assigning or requiring a merchant to use a firearm code.
- The AG can enforce this through a civil cause of action.

HB 2837

53



Weapons on Prohibited Places Sec. 46.03, Penal Code

- Prevents certain premises that are not owned by or under the control of a school or institution from prohibiting “**license to carry**” holders from bringing an otherwise concealed legal weapon onto the premises due to the presence of students on the same premises.
 - “Premises” is now property that is owned or under the control of a school.
 - Also includes “postsecondary educational institution” in this change.



Nonapplicability Sec. 46.15, Penal Code

- The defenses in this section now apply to **certain retired judicial officers** with a LTC (generally giving them the same protections as they had when they were on the bench).
- And also, creates a defense for a **district or county clerk** with an LTC to generally carry in prohibited places like judges, prosecutors, probation offices, etc.



School Safety Bill Education Code

- The district must ensure at least one armed security officer is present during regular school hours at each campus.
- Security Personnel – Districts are mandated to provide security through:
 - Using SROs provided by a local law enforcement;
 - Commissioning its own peace officers
 - Marshal or Guardian programs; and/or
 - Contracting with a licensed security services contactor.



School Safety Bill Education Code

- School Peace officers and SROs are currently required to complete TCOLE approved active shooter training once every four years.
- All employees must complete a mental health training to recognize kids that pose a threat to school safety.
- Student disciplinary and threat assessment records transfer with the student to a new school.
- Other provisions require more comprehensive security planning, security audits, and cooperation with local law enforcement agencies. *See HB 3 for all requirements.*

HB 3

58

Drugs



Fentanyl Poisoning Health & Safety and Penal Codes

- Moves a dozen fentanyl related drugs from PG 1 to add them to PG 1-B.
- Specifies that a **poisoning** occurs when:
 - the toxicology results reveals one or more PG 1-B controlled substances in an amount **considered to be lethal** by generally accepted scientific standards; or
 - following an autopsy, the results of the autopsy **are consistent** with one or more controlled substances included in PG 1-B as the cause of death.

HB 6

60



Criminal Homicide by Fentanyl Poisoning Health & Safety and Penal Codes

- If a poisoning occurred, the death certificate will list:
 - “(the name of the **Penalty 1-B substance**) **poisoning**” as the **cause** of death and,
 - list “**homicide**” as the **manner** of death (except as otherwise specifically established by the medical examiner).

NEW

HB 6

61



Criminal Homicide by Fentanyl Poisoning Health & Safety and Penal Codes

- Incorporates “poisoning” into the murder statute.
 - Similar to M&D of CS Causing Death/SBI but easier to prove
 - Strict liability on proof of knowledge if it is fentanyl related
 - No “good Samaritan” defense like we have in delivery statutes
 - First-degree felony
- Increases penalties for less than one gram to a F3.
- Now included as a predicate offense for EOCA.



HB 6

62

HB 3908

Tucker's Law

"Tucker's Law" to Require Fentanyl Awareness Education in Texas Schools Passes House

Senator Turner laid her son, Tucker, to rest after his death from fentanyl poisoning in 2021 and has pushed for legislation in his honor. KVVU/ABC News
May 10, 2023



LOCAL 3
HB 3908
Caption: CDE News, video review date



Tucker's Law (Fentanyl Education) Sec. 28.004, Education Code

- Requires education for grades 6 through 12 on Fentanyl Abuse Prevention and Drug Poisoning Awareness to include:
 1. suicide prevention;
 2. prevention of the abuse of and addiction to fentanyl;
 3. awareness of local school and community resources and any processes involved in accessing those resources; and
 4. health education that includes information about substance use and abuse, including youth substance use and abuse.
- Creates a Fentanyl Poisoning Awareness Week.
- Also, **HB 3144** designates October as Fentanyl Poisoning Awareness Month.

HB 3908

64

Narcan for Inst. of Higher Learning Health & Safety Code 461A

- EMS, medical personnel, and first responders at public and private colleges can now carry Narcan to respond to an opioid overdose.



SB 867

65

Regulation of Kratom Section 444, Health & Safety Code

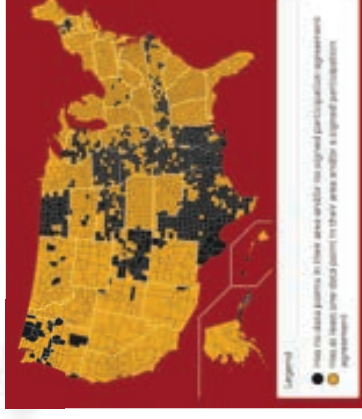
- Kratom comes from a tree in Southeast Asia and people have begun to consume it as a recreational drug for their psychotropic (mind-altering) effects.
- New rules regarding the manufacture, distribution and sale of Kratom products, including the proper labeling of the product and the prohibition of adding certain adulterants and diluents. (Civil Penalty if violated)
- Creates an offense if a person distributes, sells, or exposes for sale a Kratom product to an individual under 18. (Class C)
- Banned in other states.



SB 497



Overdose Mapping Sec. 161.045, Health and Safety Code



- ODMAP provides near real-time suspected overdose data across jurisdictions make it easier to respond to a sudden increase, or spike, in overdose events.
- Now EMS is required to report overdoses to law enforcement or the local health authority for inclusion in ODMAP.
- Also provides civil and criminal immunity for participation.

SB 1319

67

Human Trafficking



Border Security



69



Omnibus Human Trafficking Bill



Omnibus Human Trafficking Bill Overview

INCREASING INVESTIGATIVE AND PROSECUTORIAL TOOLS		
PROPOSAL	STATUTE	BACKGROUND
Add child grooming protections	Add new section to Chapter 21 of Penal Code or expand	This change will allow law enforcement to prevent harm to children by identifying and prosecuting traffickers' pre-harm activity in order to minimize victimization where there is evidence of enticement and/or coercion.
Increase penalties for human traffickers that are excessive force	Penal Code Chapter 20A	This modification will both deter human traffickers from using excessive force against victims while also adequately punishing those who do so.
Flag driver licenses for human trafficking	Code of Criminal Procedure Article 42.016	The differentiation between a sex offender and a human trafficker could assist law enforcement in identifying connections in cases across the state.
Allow entry in all human trafficking prosecutions involving children	Code of Criminal Procedure Article 38.072	Due to the trauma of entry and the trauma of testifying in court, allowing evidence of entry in cases involving all child victims of human trafficking would assist prosecutions.
Allow certain evidence, such as text messages, to be used in the relationship for human trafficking prosecutions	Add new section to Code of Criminal Procedure Article 38.372. See HB 2794 (KTR)	This gives prosecution more tools to explain the relationship and history of human traffickers.
Modify Code of Criminal Procedure Article 2.305 to increase effectiveness of HB 3860 data collection efforts	Code of Criminal Procedure Article 2.305	Changes would allow for 1) better tracking of cases and suspects, 2) protection for ongoing investigation and victims, 3) more comprehensive data collection, and 4) better tracking of compliance resulting in a more comprehensive data sample.



Omnibus Human Trafficking Bill Overview



Child Grooming Sec. 15.032, Penal Code



- This new offense is an attempt to criminalize preliminary acts that might lead to a child sex offense.



VICTIM PROTECTIONS		
PROPOSAL	STATUTE	BACKGROUND
Add protections for victims of human trafficking with significant disabilities	Penal Code Section 20A.02(7)	This amendment would protect adults with disabilities who are vulnerable to human trafficking, especially those with disabilities that affect their ability to assess safety or care for themselves without assistance.
Enhance child pornography sentences when multiple images are possessed or promoted	Penal Code Section 43.26	Often human trafficking prosecutions are unable to move forward but a prosecutor can still prove possession of child pornography. This change would give prosecutors more tools to enhance the punishment of traffickers in these situations.



Child Grooming Sec. 15.032, Penal Code

NEW

- It's an offense with intent to commit an offense under Chapter 43 (Public Indecency) or an offense involving sexual activity under Chapter 20A, 21, or 22,
- And knowingly **persuades, induces, entices, or coerces, or attempts to persuade, induce, entice, or coerce, a child younger than 18** years of age to engage in specific conduct that, under the circumstances surrounding the actor's conduct as the actor believes them to be, would be an offense under Chapter 43 or 20A, 21, or 22.

SB 1527

74



Child Grooming Sec. 15.032, Penal Code

- Seems to overlap with other "pre-crimes" such as Criminal Attempt, Criminal Solicitation, Criminal Solicitation of a Minor.
- F3, unless previously convicted of certain sex offenses, then F2
- Affirmative defenses include standard "boyfriend/girlfriend" and spousal defenses.
- **Intent may be difficult to prove with this offense and there are potential Constitutional issues so check with your local prosecutor before filing a case.**

NEW

SB 1527

75



College Campus Enhancements Sec. 12.502, Penal Code

- Enhances penalties of offenses that occur on college campuses linked (sort of) to trafficking such as:
 - Public Lewdness – SJF
 - Indecent Exposure – Class A Misd.
 - Invasive Visual Recording – F3
 - Voyeurism – Class B Misd.
- Defines "premises" for purposes of these offenses to include all buildings and real property of the school.

HB 3553

76



Trafficking of Persons Ch. 20A.02, Penal Code

- Now includes "**disabled individual**."
- Also, enhances trafficking to a first-degree felony if the offense:
 - results in **death** or **SBI** to person who is trafficked; or
 - if the actor used or exhibited a **deadly weapon** or **strangled** the trafficked person.
- Makes it a super aggravated felony (min. 25 years) if done within 1000 feet of a college or university
- SOL for trafficking disabled individuals is **10 years** from date offense discovered.

NEW

SB 1527

77



Solicitation of Prostitution Sec. 43.021, Penal Code

- Amends the second-degree felony enhancement if the actor **offers or agrees to pay the fee for the purpose** engaging in sexual conduct with a person younger than 18.
 - Changes the focus from the sex act to the payment of sex.
- Also, provides a one-degree enhancement if the offense occurred on or within 1,000 feet of the premise of a school or where an official school function or UIL event was taking place.

SB 1527

78



Compelling Prostitution of Disabled Individuals

Ch. 43.05(a)(3), Penal Code

- Makes it an offense if the person knowingly causes **by any means a disabled individual** to commit prostitution, regardless of whether the actor knows the individual is disabled at the time of the offense.
 - A **"Disabled individual"** means a person **older than 13** years of age who by reason of age or physical or mental disease, defect, or injury is substantially **unable to protect** the person's self from harm or to provide food, shelter, or medical care for the person's self.
- No SOL for this offense and lifetime registration as sex offender

SB 1527

79



- Definition of a child or minor

Fake Nudes of Real Students Cause an Uproar at a New Jersey High School
After boys shared faked pornographic images inside of female classrooms, both the school and the local police began investigating

See also



Possession of Child Pornography Ch. 43.26, Penal Code

- Punishment enhancements:
 - F1 for possession of videotape or film depicting a SAC offense
 - **F1 for possession of 50 or more photos**
 - **F2 for possession of 10-49 photos but can be an F1 if person commits possession and promotion**
- No longer an affirmative defense if the child was a spouse.
- **But see changes by SB 129**

HB 2700

80

SB 1527

81



Child Pornography Sec. 43.26, Penal Code

- Punishment enhancements:
 - **F1 for possession of more than 500 photos**
 - **F2 for possession of 100-499 photos**
 - **F3 for possession of less than 100 photos**
- F1 with minimum of 25 years if an employee at a:
 - child-care facility,
 - residential treatment center,
 - shelter or facility that served youth and received state funds, or
 - location receiving state funds for the care of a child depicted by the visual material.
- Also, punishment increased one degree if child younger than 10 (F1 would be minimum 15 years)
- **But see changes by SB 1527**
- **Generally, this statute will control based on the date signed.**

SB 129

83



Child Pornography Issues

- Do enhancements for possession images of “a child” limited to the same child or can it be different children?
- Does the reference to “videotape” or “film” include digital media common today?



Hearsay Statement of Outcry witness Art. 38.072. CCP

- Now allows outcry statements from victims, younger than 18, of assaultive offenses and sex offenses to be used during trial.
- The age was younger than 14.



SB 1527

84



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

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HOME > HUMAN TRAFFICKING SECTION > HUMAN TRAFFICKING CASE REPORT

Pro
coi

Human Trafficking Case Report

This reporting is mandatory pursuant to Article 2.305 of the Texas Code of Criminal Procedure. If you reside in a county with a population of 50,000 or more and you are one of the following specifically identified entities, you **MUST** submit reports in accordance with Article 2.305:

- The Department of Public Safety
- Municipal police departments
- Sheriff's departments
- Constable's offices
- County attorney's offices
- District attorney's offices
- Criminal district attorney's offices

Article 2.305 of the Texas Code of Criminal Procedure requires the above law enforcement and prosecutorial entities in counties with a population of 50,000 or more to submit human trafficking data to the Office of the Attorney General (OAG) in the manner and form prescribed by the Attorney General. Reports are due to the OAG on April 1 and October 1 of each year.

SB 1527

85



Smuggling of Persons Secs. 20.05 & 20.06, Penal Code

- Increases the term of imprisonment for smuggling of persons and continuous smuggling of persons to a minimum of 10 years.
- May allow a reduction to a minimum of five years if defendant provides significant cooperation or is related to smuggled individual.



Enhancements - Smuggling & Operation of a Stash House Penal Code

- Increase the penalty for the operation of a stash house from a class A misdemeanor to a F3 felony with a minimum term of imprisonment of five years.
- Enhanced to a F2 with a minimum term of imprisonment of five years if:
 - the property involved in the operation of a stash house was used to commit or facilitate the commission of an offense of **continuous smuggling of persons, continuous trafficking of persons, or compelling prostitution**;
 - it was shown on the trial of the offense that as a direct result of the commission of the offense, an individual became a **victim of sexual assault or aggravated sexual assault**; or
 - it was shown on the trial of the offense that as a direct result of the commission of the offense, an individual suffered **serious bodily injury or death**.



SB4 – Illegal Entry into This State Sec. 51, Penal Code

- Creates the offenses of illegal entry and illegal reentry into the state and would allow judges and magistrates to order certain persons to return to the foreign nation from which they entered in lieu of prosecution or adjudication.
 - It's a class B misd. if the person entered or attempted to enter the state from a foreign nation at any location other than a lawful port of entry.
 - It's a state-jail felony if the defendant had been previously convicted of illegal entry from a foreign nation.



SB4 – Illegal Entry into This State Sec. 51, Penal Code

- Creates an affirmative defense to prosecution that:
 - the federal government had granted the defendant asylum or lawful presence in the United States;
 - the defendant's conduct did not constitute a violation of federal law related to improper entry by an alien; or
 - the defendant was approved for benefits under the Deferred Action for Childhood Arrivals (DACA) program between June 15, 2012, and July 16, 2021.



SB4 – Other provisions (CCP 5B)



- Prohibits a peace officer from enforcing this offense if the person was on the premises or grounds of:
 - a public or private primary or secondary **school** for educational purposes;
 - a church, synagogue, or other established place of **religious worship**;
 - a **health care facility**, including a state facility that provided health care or a health care provider's office, if the person was there for the purpose of receiving medical treatment; or
 - a SAFE-ready facility or another facility that provided forensic medical examinations to sexual assault survivors, provided the person was there to obtain a **forensic medical examination** and treatment.



SB4 – Other provisions (CCP 5B)



- Provides **immunity** to state or local government officials, employees, or contractors for damages arising from a cause of action under state law resulting enforcement.
- The state and local governments would be required to **indemnify** an official, employee, or contractor for damages arising from a cause of action under federal law resulting from an action taken to enforce provisions related to illegal entry or reentry during the course and scope of the individual's duties on behalf of the state or local government.



Senate Bill 4 (4th Special Session 2023)



- Signed Dec. 18, 2023 by Gov. Abbott, was to be eff. March 4, 2024
- Enjoined by federal judge in Feb. 2024
- Reversed by 5th Circuit
- SCOTUS blocked law before ruling that it wouldn't block on a technicality
- Back to 5th Circuit, oral argument was 4/3/24.
- Stay tuned...

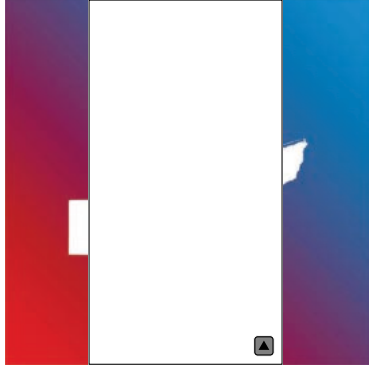


Arizona v. United States, SCOTUS (2012)

- By a vote of 5-3, the Court nullified three of the four provisions of the Arizona law because they either operated in areas solely controlled by federal policy, or they interfered with federal enforcement efforts.
- Those nullified sections were:
 - making it a crime to be in Arizona without legal papers,
 - making it a crime to apply for or get a job in the state, or
 - allowing police to arrest individuals who had committed crimes that could lead to their deportation.



Sen. Bettencourt (Co-author)



94

Organized Crime



Engaging in Organized Criminal Activity Chapter 71, Penal Code

- Five bills amended this chapter to take advantage of its enhanced penalties and added items such as:
 - Operation of a **Stash House (P.C. Sec. 20.07)** is now a predicate offense,
 - **Criminal mischief** (due to removing a catalytic converter) and **Unauthorized Possession of a Catalytic Converter** as predicate offenses,
 - A one-degree enhancement if a **deadly weapon** was used or exhibited, and
 - many other changes so please read the statute.



Racketeering (RICO) and Unlawful Debt Collection Ch. 72, Penal Code

- “Transnational gangs and criminal enterprises have proliferated in Texas through highly sophisticated, diversified, and widespread criminal activity but law enforcement entities lack statutory authority to target the financial assets of criminal enterprises.”
- This bill establishes provisions relating to civil and criminal actions for organized crime, racketeering, or unlawful debt collection offenses and the filing of racketeer-influenced and corrupt organization (RICO) liens with respect to such offenses.



Racketeering (RICO) and Unlawful Debt Collection Ch. 72, Penal Code

• “Racketeering” is defined as committing any of the following offenses:

- a felony offense under The Securities Act;
- kidnapping or aggravated kidnapping;
- operation of a stash house;
- perjury and other falsification offenses;
- resisting arrest, search, or transportation of a person;
- hindering apprehension or prosecution of a person;
- a public indecency offense; or
- engaging in organized criminal activity.



Racketeering (RICO) and Unlawful Debt Collection Ch. 72, Penal Code

• Creates **three** felony offenses for:

1. the **use of proceeds** derived from acquiring real property or in the establishment or operation of any enterprise;
 2. the **acquisition of an interest** in property or control of an enterprise through racketeering or unlawful debt collection; or
 3. the **employment by or association with** an enterprise conducting or participating in these offenses.
- These are second degree felonies.

NEW



Terroristic Offenses Chapter 76, Penal Code

• The legislature created a new anti-terrorism chapter since 34 states and the Dist. of Columbia has one.

• Sec. 76.02 Terrorism

- A new offense for a person who commits one of 15 felonies with the intent to:
 - Intimidate or coerce the public (**for what?**), or
 - Influence, by **intimidation** or coercion, the policy, conduct, or activities of the state, a political subdivision, or the U.S.
- The penalty is one-degree higher than the predicate offense.

• Sec. 76.03 Aiding in Commission of Terrorism

• Sec. 76.04 Hindering Prosecution of Terrorism



Terroristic Offenses Chapter 65, C.C.P.

- Creates a new, non-public, registry for people convicted of a state or federal terrorism type offense.
- Creates an offense for Failure to Register
 - Third-degree felony
 - Duty to register can be terminated when a judge decides they are no longer a threat – whatever that means.

NEW

High Profile Legislation

Anti-drag Show Bills



Sexually Oriented Performances Sec. 43.28, Penal Code

- It is a Class A misdemeanor for a person to engage in a **sexually oriented (not explicit) performance**:
 - on public property or in a place that could reasonably be expected to be viewed by a child, or
 - in the presence of an individual **younger than 18**.
- “**Sexually Oriented Performance**” is a visual performance that features a performer who is nude or engages in **sexual conduct** and that appeals to the prurient interest in sex.



Sexually Oriented Performances gesticulation noun

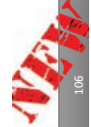
gestic-u·la·tion (je- sti- kyə- 'lā- shən ◀▶)

Synonyms of *gesticulation* >

1 : the act of making gestures

2 : **GESTURE**

especially: an expressive gesture made in showing strong feeling or in enforcing an argument



Sexually Oriented Performances?

HB 12



Sexually Oriented Performances?

HB 12



Sexually Oriented Performances Sec. 43.28, Penal Code

- Potential problems:
 - No definition of “performer” or “performance.”
 - No definition of “child” and the Penal Code uses several definitions.
 - May criminalize sexual conduct that occurs in private with young adults who are of the age of consent (17 years old) or older teenagers who are within the three-year Romeo-&-Juliet time frame for consensual behavior.



SB 12

109



Sexually Oriented Performances Ch. 769.002, Health & Safety Code

- Also prohibits a person who controlled the premises of a commercial enterprise from allowing a sexually oriented performance to be presented on the premises in the presence of an individual younger than 18.
- Violators would be liable for a civil penalty of up to \$10,000.



SB 12

110



Sexually Oriented Performances Sec. 243.0031, Local Gov't. Code

- Prohibits a city or county from authorizing a sexually oriented performance:
 - on public property, or
 - in the presence of an individual younger than 18.



SB 12

111



Sexually Oriented Performances Sec. 243.0031, Local Gov't. Code



SB 12

112

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Texas Regulatory Consistency Act Ch. 102A, CP&R Code

- Prohibits government from adopting, enforcing, or maintaining an ordinance, order, or rule regulating conduct in an area regulated by state law.
- Allows any person who is or may be harmed to bring an action against the governmental entity.
- Also, also allows a trade association representing the person to bring such an action.

HB 2127

113

+



Texas Regulatory Consistency Act Ch. 102A, CP&R Code



HB 2127

114

Penal Code



HB 165

116



Non-fatal Mass Shooting Event Sec. 1.07 & 3.03, Penal Code

- Defines a "mass shooting" as an event involving the use of a firearm to cause or try to cause serious bodily injury or death to **four** or more people.
- Elevates the penalty for aggravated assault from a second-degree felony to a first-degree felony if the offense was committed as part of a mass shooting.
- **Requires** the sentences to be served consecutively.



Defense for Medical Treatment to a Pregnant Woman Sec. 9.35, Penal Code

- Provides a justification for a physician or health care provider who provides treatment for an ectopic pregnancy or a previable premature rupture of membranes (PPROM).
- Mirrors the defense that applies to civil actions.

HB 3058

117



Capital Murder Sec. 19.03, Penal Code

Man faces capital murder charge in shooting death of North Texas police officer



By Will Green Staff Writer
Published: 10/12/2016 10:00 AM
Updated: 10/12/2016 10:00 AM
A man accused of shooting and killing a North Texas police officer faces a capital murder charge. The man, identified as [redacted], is accused of the shooting on [redacted] in [redacted]. The officer, [redacted], was shot in the chest and died of his wounds. The man is currently in custody and facing a capital murder charge. The case is being handled by the [redacted] District Attorney's Office.

SB 386

118



Capital Murder Sec. 19.03, Penal Code

- The defendant who shot and killed Officer Houston claimed that he didn't know he was a police officer.
- This change creates the presumption that a person charged with murdering a police officer or firefighter knew the person was a public servant if he or she was wearing a distinctive uniform or badge.
 - Tracks the language used in Aggravated Assault of a Public Servant (Sec. 22.01, P.C.).

SB 386

119



Indecent Exposure Sec. 21.08(b), Penal Code

- Enhances the penalty from a:
 - Class B misdemeanor to a Class A misdemeanor with a prior conviction, or
 - to a state jail felony if the defendant had been convicted of the same offense two or more times.

HB 1730

120



Unlawful Production or Distribution of Certain Sexually Explicit Videos Sec. 21.165, Penal Code

- Creates a new offense for the non-consensual production or distribution of a “deep-fake” video that appears to depict a person’s exposed intimate parts or the person engaged in sexual conduct.
- Class A misdemeanor.
- See also Deep Fake changes to Child Porn statutes.

NEW



<https://thegadgetflow.com/blog/what-are-deepfakes/>

SB 1361

121



Voyeurism Sec. 21.17, Penal Code

HB 2306

New way of charging someone if they commit this offense “remotely through the use of electronic means.”

122



Assault on Hospital Personnel Sec. 22.01(b), Penal Code

- Increases the penalty for assaulting any “hospital personnel” from a Class A misdemeanor to a third-degree felony.
- “Hospital Personnel” is defined as:
 - Nurses,
 - Physicians,
 - Physician Assistants,
 - Maintenance or janitorial staff, and
 - Other individuals who work in a hospital setting.



Increased Penalty for Agg. Assault 22.02(b), Penal Code

- Aggravated Assault is enhanced to a 1st degree-felony if the actor:
 - uses a deadly weapon during the assault, and
 - causes TBI or spine injury to another that resulted in a persistent vegetative state or irreversible paralysis.

Abandoning or Endangering a Child, Elderly Ind., or Disabled Ind. Sec. 22.041, Penal Code



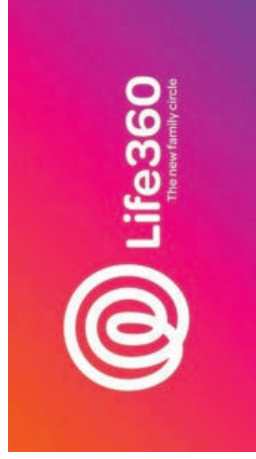
- Now includes elderly and disabled individuals to the offense of Abandoning or Endangering a Child.



Violation of Court Order or Bond Condition in a FV, Child Abuse, S.A. . . Sec. 25.07, Penal Code



- Adds a seventh manner of committing this offense to include non-consensual tracking or monitoring of personal property or vehicle of a protected person.



Protective Orders Arts. 17B.005 & 17.292, CCP

- Allow a judge to order in a P.O. or E.P.O., that a person **refrain from tracking or monitoring personal property or a motor vehicle** of the applicant. including by:
 - using a tracking application on a personal electronic device in the possession of the applicant or the family or household member,
 - a tracking device, or
 - physically following the applicant or the family or household member or causing another to physically follow the applicant or member.



Criminal Mischief – Power Supply Sec. 28.03, Penal Code

- Increases the penalty from a SJF to a F3 for impairing or interrupting a power supply or causing a public power supply to be diverted.





Damaging Critical Infrastructure Facility Sec. 28.09, Penal Code

NEW

- Creates an offense if a person intentionally or knowingly damages, destroys, vandalizes, or impairs the function of any critical infrastructure facility and causes an extended power outage.
 - Specifically applies to the electrical grid.
- Second-degree felony
- First-degree felony if damage is \$100,000 or more; or the actor uses a firearm, drone, cyber attack, or explosive weapon.
- Also, the penalty for manslaughter (F2) is enhanced to F1 if the defendant committed an offense under Section 28.09 and that conduct caused the death of an individual.

SB 947

131

Deputy Darren Almendarez Act

SB 224



Catalytic Converters Under Theft Statute Sec. 31.03, Penal Code

- Creates a rebuttable **presumption** of illegal possession, for those who possess one or more catalytic converters which have been removed from vehicles.
- Lists catalytic converters specifically in the **theft statute** when the cost of replacing the stolen catalytic converter is:
 - < \$30,000 = SJF
 - \$30,000 - \$150,000 = F3
 - \$150,000 - \$300,000 = F2
 - \$300,000+ = F1
- Possession of a firearm enhances the punishment one-degree.

SB 224

133



Unauthorized Possession of Catalytic Converters Sec. 31.21, Penal Code

NEW

- A person commits an offense if the person:
 - intentionally or knowingly possesses a catalytic converter that has been removed from a motor vehicle; and
 - is not a person who is **authorized to possess (not defined)** the catalytic converter.
- A person is **presumed** to be authorized to possess a catalytic converter that has been removed from a motor vehicle if the person:
 - is the owner of the vehicle; or
 - possesses in the ordinary course of the person's business, including metal recycling entities unless they know the catalytic converter was unlawfully removed or unlawfully obtained.
- The offense is a SJF but enhanced to a F3 if there is a prior conviction, conspiracy, or the actor is in possession of a firearm.

SB 224

134



Catalytic Converter Enhancements Sec. 28.03(b)(4)(E), Penal Code

- Also, amends the criminal mischief statute to make it a SJF if the loss is
 - **less than \$30,000**, and
 - **the property is a motor vehicle that is damaged, destroyed, or tampered with** during the removal or attempted removal.

SB 224

135



Regulatory Provisions for Catalytic Converters Sections 1956 and 2305, Occ. Code

- Tightens **regulations** on metal recycling entities and repair shops.
- Requires records to be kept and preserved for 2 years.
- Class A if metal recycling entity intentionally or knowingly fails to maintain a record as required by statute.
- Requires a metal recycling entity, on request, to permit a peace officer during usual business hours to enter the premise and inspect a record required to be maintained.

SB 224

136

Forgery Presumption Sec. 32.21, Penal Code

- Creates a presumption that a person in possession of forged money intended to use its entire value to obtain property or services.
- So, if a defendant purchased an item with a forged \$50 bill, but had \$2500 in forged bills in his possession, then the presumption is he intended to obtain property of a value equal to \$2500, and can be charged with a state jail, instead of a Class C.

HB 1910



Temporary Tags

HB 718 & HB 914





Temporary Tags Ch. 37, Penal Code

- Expands the definition of "governmental record" to include a temporary vehicle tag.
- Tampering with either tag is now a **Class A misdemeanor** (Tampering with Governmental Record).

HB 914

139



Temporary Tags Sec. 502.095, Transportation Code

- Repeals statutory requirements for the use of temporary license tags requires dealers to issue license plates to buyers.
- DMV will establish the maximum number of license plates that a dealer is authorized to obtain based on how long they have been in operation, sales data, expected growth and conditions that may affect sales.

HB 718

140



Failure to Identify Sec. 38.02, Penal Code

- Criminalizes the failure of a **driver** who is **lawfully detained** to:
 1. provide a driver's license upon request, and
 2. intentionally refuses to give the person's name, DL #, home address, or DOB.
- This is a Class C unless the person give a false or fictitious name to the officer.
- Giving a residence that is not on the DL is not a refusal if the given address is correct.
- *But see* Sec. 521.025, Transportation Code, requirement to display a license.

SB 1551

141



Operation of Drone Over Certain Facilities Sec. 38.115, Penal Code

- In 2013, the use of drones was regulated by the legislature which included prohibited locations such as critical infrastructure facilities, airports, military installations, and correctional facilities.
- The media challenged the prohibitions as unconstitutional and in 2022, won in federal court.
- Now criminalizes flying drones in or around detention facilities.
 - Class B misdemeanor
 - But a SJF if used to introduce contraband in the facility

SB 3075 & SB 1308

142



Failure to Report Assault, Neglect, or Omission of Care in Group Home Sec. 38.172, Penal Code

- Creates a new offense for failing to report bodily injury suffered by a group home resident due to assault, neglect, or omission in care to LE or DFPS.
 - Includes eight exceptions to includes hotels, retirement communities, dorms, and fraternity/sorority houses
 - Class A misdemeanor

NEW

SB 189

143



Improper Sexual Activity with Committed Person Sec. 39.041, Penal Code

- Creates a new offense for a Texas Civil Commitment Office (TCCO) officer, employee, contractor, or volunteer to have sex with a sexually violent predator committed to a TCCO facility unless they are married.
 - This offense is a third-degree felony.
- Also increases the punishment range for Public Lewdness and Indecent Exposure if committed as a sexually violent predator.

NEW



SB 1179

144



Harassment with a Burner Phone/Number Sec. 42.07(a), Penal Code

- A person commits an offense if,
 - with **intent** to harass, annoy, alarm, abuse, torment, or embarrass another, the person
 - makes** obscene, *intimidating*, or threatening telephone **calls** or other electronic **communications**
 - from a **temporary or disposable telephone number** provided by an internet application or other technological means.
 - But the “loophole” is unclear.



HB 1427

145



Stalking Sec. 42.072, Penal Code

- Expands the conduct** that is considered stalking to include conduct that the defendant knew or reasonably should have known the victim would regard as threatening to commit an offense (not limited to only threatening bodily injury or death).
- It also **expands the emotions** caused by the defendant’s conduct to include feeling “**terrified or intimidated**” among the other emotions already established under the current statute.
- Puts the factfinder into the position of the victim.

SB 1717

146



Unlawful Disclosure of Residence Address or Phone Number (Doxing) Sec. 42.074, Penal Code

- This somewhat mirrors the 2015 doxing offense that applies to public servants and for retaliation purposes.
 - Class B unless bodily injury occurs and then it's a Class A.
 - Defense – public servant such as the Central Appraisal District.

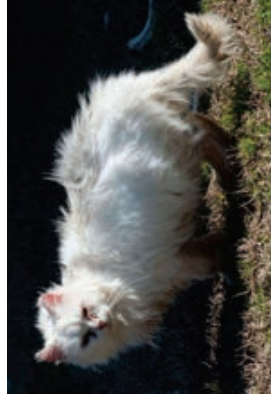


HB 611

147

Trap-Neuter-Release of Feral Cats Secs. 42.092, Penal Code

- To address the millions of feral cats in Texas, communities may choose Trap-Neuter-Return (TNR) programs as population control measures because they do not require euthanasia but these programs may violate animal cruelty laws.
- Provides a **defense** for cruelty to animal offenses in TNR programs.
- Also provides a **defense** that the person released or returned a wild animal in accordance with Texas wildlife laws and regulations.



148

HB 598

Ken Paxton to file criminal complaints against Texas House impeachment managers

These Assembly, General John Paxton said he will file criminal complaints against the group of impeachment managers who did not file impeachment charges. He accused the managers of violating a state law by releasing the personal information.

Source: AP Wirephoto



Source: AP Wirephoto

149



Possession of Animal by Person Convicted of Animal Cruelty

- This new offense bars a person convicted of certain animal cruelty-related offense from possession an animal for five years
- Class C misdemeanor
- Class B misdemeanor if prior conviction

NEW



150



Promotion of Prostitution Penal Code 43.03(b)

- To be a 1st degree felony, this bill removes the requirement in charging the pimp, to prove that the person/victim was younger than 18 years old and was **already “engaged in prostitution”** to be charged with Promotion.
- So now this will help protect minors, by making it a 1st degree if the defendant engages in conduct involving a person younger than 18, **regardless of whether they were engaged in prostitution**, at the time.

SB 1653

HB 1163

152



BWI with a Child Sec. 49.061, Penal Code

- Creates a criminal offense of boating while intoxicated with a child passenger and makes it a State Jail Felony.
- Enhances punishment to a third-degree felony if:
 - one prior conviction of intoxication manslaughter, or
 - two prior convictions of certain intoxication offenses.



Code of Criminal Procedure



Texas Legislative Council CCP Reorganization Project

- This multi-year project is recodification major sections of the CCP and included a 332 page bill this session.
- So things may not be where you think they are.

88TH LEGISLATURE PROPOSED CHAPTERS

The council has prepared illustrative versions of the following provisions for proposal to the 88th Legislature:

Articles of Chapter 2, Code of Criminal Procedure,

relating to powers and duties of officers

(Proposed Chapter 2A)

Articles of Chapter 2, Code of Criminal Procedure,

relating to law enforcement interactions with the public,

and Subchapter A, Chapter 170i, Occupations Code

(Proposed Chapter 2B)

Chapter 13, Code of Criminal Procedure

(Proposed Chapter 13A)

Chapter 31, Code of Criminal Procedure

(Proposed Chapter 31A)

Chapter 45, Code of Criminal Procedure

(Proposed Chapter 45A)

Chapter 55, Code of Criminal Procedure

(Proposed Chapter 55A)

154



Special Investigators Art. 2.122, CCP

- U.S. Border Patrol Agents, who have gone through certain training, are granted the power to arrest, search, and seize for any felony offense under state law that occurs at a port of entry or a border control traffic checkpoint and is incident to detention under federal law.



SB 602

155

The Natalia Cox Act Notice for Victims of Family Violence



The Natalia Cox Act Art. 2.1398, CCP

- It directs HHSC to use best practices to create a notice with standardized information to assist victims of family violence across the state by 12/01/23.
- The written notice will include contact information for the:
 - National Domestic Violence Hotline,
 - Texas Department of Public Safety victims' support services,
 - HHSC's family violence program, crime victims' rights, and
 - localized information for community resources for safety planning, shelter and protection.

SB 1325

157



The Natalia Cox Act Art. 2.1398, CCP

- It amends the Code of Criminal Procedure to **mandate peace officers** to provide the notice to possible victims of family violence and repeals CCP 5.04 – current notification provision.
- It amends the Education Code to mandate campus peace officers to provide the notice when responding to a disturbance call involving family violence.
- It amends the Family Code to mandate medical professionals to provide the notice when treating victims with injuries caused by family violence.

SB 1325

158



Protective Orders Ch. 7B, CCP

- The Office of Court Administration is now required to develop standardized forms and materials necessary to apply for, issue, deny, revise, rescind, serve, and enforce a protective order, a magistrate's order for emergency protection, or a temporary *ex parte* order.
- Will assist in the administration of the state registry based on this standardization.
- Completed by June 1, 2024



Extension on Statute of Limitations Art. 12.01, CCP

- Extends the SOL for the following felonies from three years to **five years** for:
 - continuous violence against the family;
 - assault against a person with whom the defendant had a dating, family, or household relationship or association; or
 - aggravated assault.
- Also extends the SOL for misdemeanor assault against a person with whom the defendant had a dating, family, or household relationship or association from within two years to within **three years** of the date of the commission of the crime.



Extension on Statute of Limitations Art. 12.01, CCP

- Extends the SOL on the following:
 - Abandoning or Endangering a Child – changed from 5 – 10 years (HB 1506)
 - Promotion or Possession of Child Porn – now 7 years (HB 1769)
 - Trafficking of Persons & Sex. Perf. of a Child – now 20 years from 18th birthday of the victim (HB 1769)
 - Burglary – no SOL if intent to commit sexual assault and DNA was collected without a match (HB 2019)



Tampering with Human Corpse/Evidence in a Homicide Art. 12.01(1), CCP

- **No statute of limitations** for tampering with physical evidence under Penal Code 37.09 if:
 - the evidence tampered with is a **human corpse**; or
 - the evidence tampered with is **related to a homicide**.





The Board has approved the proposed legislation and is ready to introduce it to the Legislature. The Board has also approved the proposed legislation and is ready to introduce it to the Legislature. The Board has also approved the proposed legislation and is ready to introduce it to the Legislature.

Extending SOL for Kidnapping Art. 12.01, CCP



- The statute of limitations is extended to 20 years from the victim's 18th birthday if the victim was younger than 17 when kidnapped.



School and Campus Police Officers Art. 18B.001(1), CCP

- School and campus officers are now authorized to obtain a warrant for prospective location information under Ch. 18B for persons who are suspected of committing serious offenses.



DPS Crime Laboratory Portal Art. 38.01, CCP

- Requires DPS to create a central computerized portal for requesting crime laboratory records and for transferring those records among crime laboratories, attorneys representing the state, and parties authorized to access the records as a part of discovery.
- Also, the DNA of sexual assault victims will not be permanently stored for use in criminal investigations.
 - Based on a situation out of San Francisco where DNA from victim was in the local database and was used to solve a property crime.

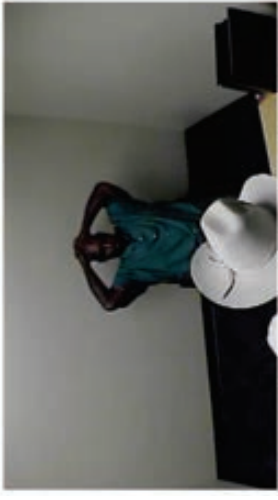
Hypnotically Induced Statements

Art. 38.24, CCP

- A statement made during or after a hypnotic session would be inadmissible against a defendant in a criminal trial if the hypnotic session was performed by a law enforcement agency for the purpose of investigating the offense that was the subject of trial.

Texas bans testimony based on police 'investigative hypnosis' in criminal trials

The new law effectively requires use of hypnosis by police officers to sharpen witness testimony is a controversial practice that was the subject of a Dallas Morning News investigation.



A person in a green shirt and white pants is sitting on a black couch, leaning back with their hands behind their head, appearing to be in a relaxed or hypnotic state.



Bentley's Law

Child Support for Victims of Intox. Manslaughter
Art. 42.0375, CCP

- Requires defendants convicted of intoxicated manslaughter to pay restitution to a child whose parent or guardian was the victim of the offense.
- A court would be required to determine the amount to be paid monthly for the support of the child until the child turned 18 or graduated high school.

New Tennessee law supports children of drunk driving victims



"Bentley's law is a good example of one way states can help those who have been affected by drunk driving."



Form of Crime Victim Notification

Art. 56A.0525, CCP

- This bill amends CCP to allow for victim notification by law enforcement (or others) electronically, including:
 - Text,
 - Videoconferencing,
 - Email,
 - Mail,
 - Through an anonymous online portal,
 - Telephone, or
 - Personal contact.



Sexual Assault Notification

Ch. 56A, CCP

- Under current law, when law enforcement **responds to domestic violence calls**, they must provide the victims with a written notification of their rights. (See the Natalia Cox Act)
- Now, a peace officer who responds to an incident involving sexual assault **SHALL** provide to the victim a **written notice** containing information about the rights of crime victims under CCP 56A.052.



Sexual Assault Notification Ch. 56A, CCP

- This must occur at the initial contact or at the earliest possible time after the initial contact with a sexual assault victim, and the officer **SHALL**:
 - provide a **written referral to nearest sexual assault program** and written information about the statewide electronic tracking system for SANE kits,
 - offer to request a **forensic medical** exam on behalf of the victim, and
 - **coordinate with local response team** to provide continuing care or investigate further.

SB 806

171



Sexual Assault Notification Ch. 56A, CCP

- Each law enforcement agency shall consult with a local sexual assault program or response team to develop the written notice required.
- Every two years, law enforcement agencies shall update the notice required.
- The notice must be in English and Spanish and include current contact information for a victim assistance coordinator and crime victim liaison.
- Bill provides verbiage for notice.

SB 806

172



Forensic Evidence in Sex. Assaults Ch. 56A, CCP

- The OAG Law Enforcement Request for Sexual Assault Exam form is no longer required starting 9/1/23.
- LE shall refer a victim for a forensic exam if:
 - reported to LE within 120 hours, or
 - if the victim is a child.



SB 1401

173



Crime Victim Compensation Art. 56B.003, CCP

- Revises state's crime victims' compensation program by:
 - expanding who is **eligible** for compensation (no longer must be an immediate family member and if household member, no longer must be related), and
 - increases the **amount** allowed for relocation expenses from \$2,000 to \$5,000 and increases the amount for lost wages for bereavement leave from \$1,000 to \$3,333.

SB 49

174



Address Confidentiality Program Art. 58.052, CCP

- The CCP created an address confidentiality program (ACP) administered by the AG to assist victims of family violence, sexual assault or abuse, stalking, or trafficking of persons in maintaining a confidential address.
- This change now allows for child abduction victims to be eligible for the ACP.
- “Child Abduction” means any conduct that constitutes an offense of unlawful restraint, kidnapping, aggravated kidnapping, or the unlawful taking from custody a person younger than 18 years of age.



LE Requirements for Missing Person or Child Art. 63.009 (persons) & 63.00905 (child), C.C.P.

- Requires LE:
 - who receives a report of a missing child to begin an investigation **immediately**, even if the child was missing from another jurisdiction,
 - who receives a report of a **missing person or child** to electronically submit to each municipal or county law enforcement agency within 200 miles information that may help determine the location within 48 hours;
 - requires uploading information on a missing **person or child** to the clearing house and NCIC missing person file within **two hours** after receiving the report and other information within **30 days**.
- Please read the sections for other LE requirements.

Tim's Law

- In March 2021, Timothy Perez was reported missing to the Austin Police Department. A few days later, the police department in Round Rock encountered Timothy.
- The Round Rock Police Department did not know Timothy was a missing person in distress. Timothy was not detained and was later found deceased.

Missing Person

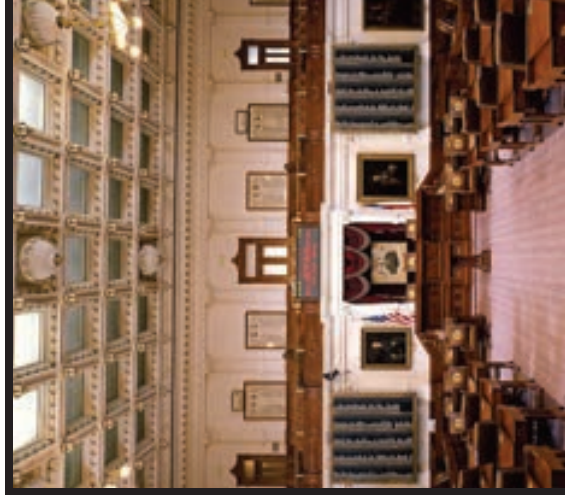
Timothy J. Perez

Round Rock, TX

Field	Value
First Name	Timothy
Last Name	Perez
DOB	03/11/1981
Sex	Male
Height	5'7"
Weight	160 lbs
Eye Color	Brown
Hair Color	Black
Build	Medium
Address	1234 Main St, Round Rock, TX 78664
Phone	(512) 123-4567
Emergency Contact	John Perez, (512) 987-6543

Call 281-309-9500

Info@TexasEquuSearch.org



Transportation Code



Optional Deaf or Hard of Hearing Chapter 521, Transportation Code

- Specifically allows an optional "deaf or hard of hearing" designation on Texas driver's licenses for individuals who are deaf and hard of hearing.
- This is intended to be a quicker notice for peace officers who interact with deaf or hard of hearing license holders.



HB 3132

179



Optional Health Cond. or Disability Designation Sec. 521, Transportation Code

- Allows for an optional designation on a driver's license or ID card stating the holder of the license or card has a health condition or disability that may impede effective communication with a peace officer.



HB 656

180



Driver's License Suspensions Sec. 521.457, Transportation Code

- Due to the repeal of the Driver Responsibility Program in 2019, some drivers fell into a cycle of suspended licenses due to unpaid charges.
- This change **prohibits a person's driver's license from being suspended for DWLI** and prohibits any current suspension period for DWLI from being extended if certain conditions are met.
- Does not apply to commercial driver's license or a person who was transporting hazardous materials or operating a commercial motor vehicle at the time of the offense.

HB 842

▲

Vehicle **Safety** Inspections

HB 3297

Vehicle Safety Inspections

- Repeals Transportation Code provisions mandating vehicle safety inspections for non-commercial vehicles and associated fees
- Still requires safety inspections for commercial vehicles and vehicle emission inspections in 17 metro area counties.
- Creates an Inspection Program Replacement fee which is \$7.50.

HB 3297



License/Permit Issued by Other Jurisdiction Sec. 522.015, Transportation Code

- An out-of-country CDL holder, who is not authorized to work in the United States under federal law, can operate a commercial motor vehicle only in a county that borders Mexico.
- Now, a Mexican CDL holder, operating a commercial motor vehicle outside the State's border counties, will be required to possess a federally issued work visa for the license to be valid.

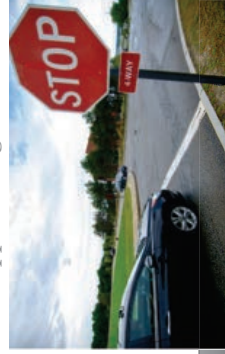
HB 4337

184



Stop Signs and Yield Signs Sec. 544.010, Transportation Code

- Clarifies where a driver must stop when approaching a stop sign by requiring a driver to stop either:
 - where there is a clearly marked line for stopping,
 - if no clear line exists, a driver must stop short of the crosswalk, or
 - if there is not a stop line or a marked crosswalk, a driver must stop at the place nearest the intersection where they can see approaching traffic.

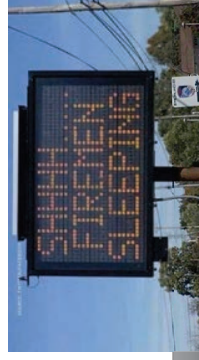


HB 3558



Removal of Property from a Roadway Sec. 545, Transportation Code

- Historically, peace officers can remove personal property from a roadway if it blocks the roadway or endangers public safety.
- Now fire department personnel can remove personal property if it meets the listed conditions to reduce the time needed to clear a roadway if officers have not arrived.



SB 1413

Who's at Fault?



Operation of Motorcycles on Road Sec. 545.0605, Transportation Code

- The operator of a motorcycle is entitled to full use of a traffic lane and are allowed to operate two side by side in a single lane.
- But a motorcycle operator is prohibited from operating the motorcycle between lanes of traffic moving in the same direction or passing a motor vehicle while in the same lane as the vehicle being passed unless the operator is an officer performing official duties.

HB 4122

188

Variable Speed on Roadway Sec. 545.353, Trans. Code

- Authorizes the Trans. Commission to establish a variable speed limit program to allow the temporary lowering of a **prima facie** speed limit to address inclement weather, congestion, construction, or other conditions that affected safe and orderly traffic movement on a road.



Racing on Highway; Impoundment Sec. 545.420, Transportation Code

- Expands situations where officers are required to impound vehicles used in street racing or reckless driving by **removing the requirements** that there had to be an accident with either (1) property damage or (2) bodily injury.

HB 3126

HB 3126

190



LED Ground Effect Lighting Sec. 547.306, Trans. Code

- Clarifies that the only type of LED ground effect lighting permitted by law on **motorcycles and mopeds** are **non-flashing amber or white lights**.

HB 3313

191

|| SB 904

Accessible Parking Spaces Sec. 681.011, Trans. Code

- In 2019, the Legislature changed the requirements for how accessible parking spaces are designated.
- TDLR made the changes to their requirements but now only inspects “new builds” for compliance.
- This created a two different systems.
 - If a handicap space is in general compliance with TDLR standards, you need a placard or other authorization to park and violators can be cited.
 - But now, a peace officer can only issue a warning for an accessible parking violation, but cannot issue a citation, if the space does not have sufficient identification designating its specific use for persons with disabilities.



Officer's Duty for License Suspension Sec. 724.032, Transportation Code

- The requirement that a peace officer take a person's driver's license into custody upon the refusal or failure of a blood or breath test for intoxication has been eliminated.
- Now, persons who refuse to provide a breath or blood specimen or who provide a specimen over the limit should retain possession of their driver's license.
- Peace officers are also no longer required to issue a temporary driving permit.

HB 4528

193



Use of a Sidewalk Sec. 552.006, Transportation Code

- Clarifies if a sidewalk is provided, pedestrians walking along a highway are required to use the sidewalk.
- If a sidewalk is not provided, a pedestrian is required to walk on the left side of the roadway or shoulder facing oncoming traffic.
- But this requirement is waived if the left side or shoulder is obstructed or unsafe.

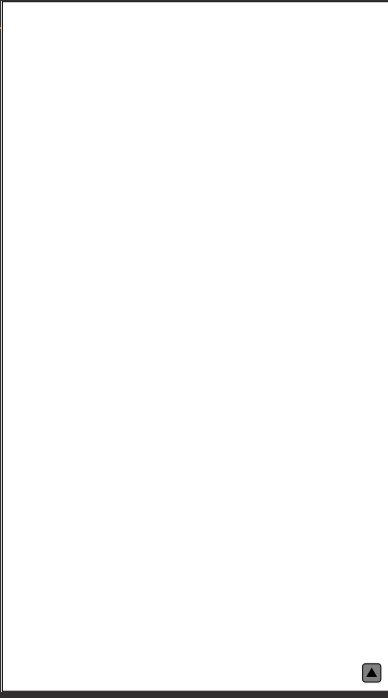
HB 1277

194

Miscellaneous Codes



Kyle & Ethan's Law



HB 420



Purchase or Furnishing Alcohol to a Minor Sec. 106.06, Alcohol Beverage Code

- Enhances these offenses to a state jail felony if the purchase or gift of alcohol to the minor, who then consumes said alcohol, causes serious bodily injury or death to another person.
- Also removes the mental state “criminal negligence” making it a strict liability crime.

Kobe & Gianna Act



Kobe and Gianna Bryant (Allen Berezovsky/Getty Images)

HB 420

197



Prohibited Publication of Certain Photos of Human Remains Ch. 672A, H&S Code

- Prohibits publishing a photograph of human remains obtained in the course and scope of the person's duties as an officer or employee of a subdivision of this state.
- May result in a civil penalty of \$10,000 per occurrence.
- Defenses include:
 - If done for law enforcement, scientific, educational, research, or medical purpose,
 - As part of a civil proceeding, or
 - As part of a documentary film or television show with the approval of the medial examiner and the remains are unidentifiable.

SB 997

199



Juvenile Curfews Prohibited Sec. 370.007, Local Gov't Code

- Cities are now prohibited from adopting or enforcing an order, ordinance, or other measure that imposes a curfew to regulate the movements or actions of persons younger than 18.
- There is an exception if it's implemented for emergency management.

HB 1819



DNA Records for Arrests & Convictions Sec. 411.1471, Gov't. Code

- Expands mandatory DNA collection to:
 - any person **arrested and booked** for a felony,
 - **convicted** of a Class A misdemeanor or offense under Title 5 (Persons Crimes) (except for the offense of Deadly Conduct), or
 - **convicted** of the following, punishable as Class A or B misd.:
 - Indecent Exposure, (21.08)
 - Enticing a Child (25.04), and
 - Sale, Dist. or Display of Harmful Material to a Child (43.24).
- The profile and records will be subject to an expunction order.

HB 3956

201



Duties Following DNA Match Sec. 420.0431, Gov't. Code

- Law enforcement agencies and the Department of Public Safety must provide additional information regarding a DNA match to a crime laboratory when comparing certain DNA profiles no later than the **fifth business day** after a request was made.

202



Use of Genetic Data by Law Enforcement Ch. 503A, Business & Commerce Code

- A direct-to-consumer genetic testing company may not disclose an individual's genetic data to a **law enforcement entity** or other governmental body unless:
 - the company first obtains the individual's express written consent; or
 - the entity or body obtains a warrant or complies with another valid legal process required by the company.

HB 2545

203



Border Operations Training Sec. 411.02093, Gov't. Code

- DPS will create and administer a specialized training program to prepare law enforcement officers to interdict, investigate, and prosecute criminal activity on the border.

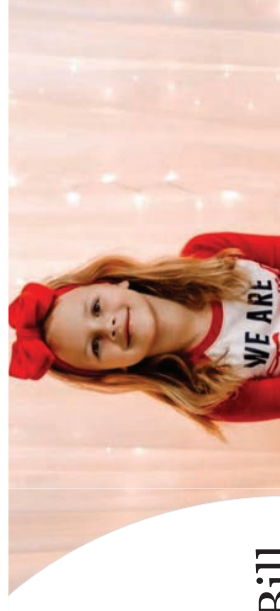


HB 1484

204

The **Athena** Strand Bill

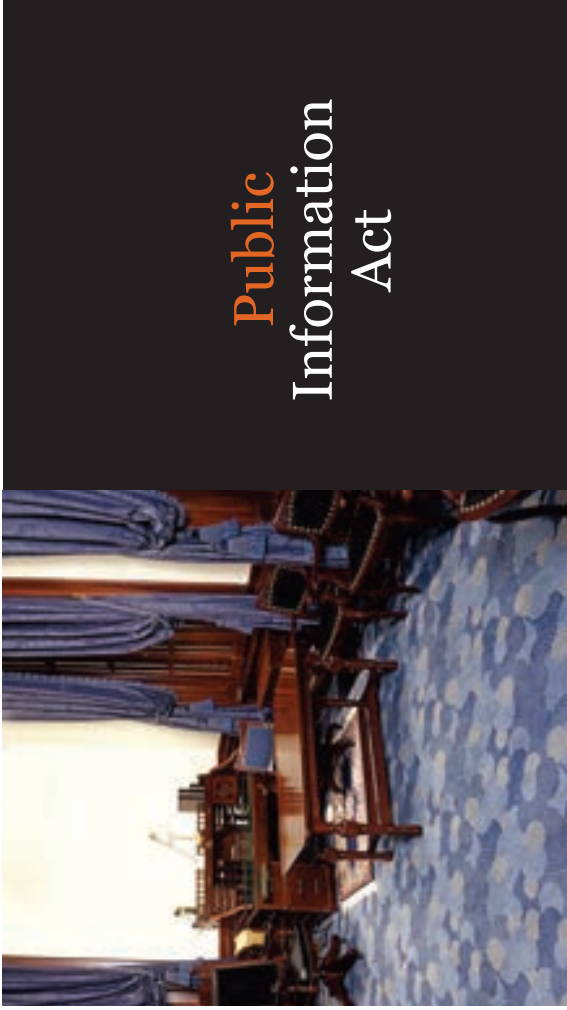
Athena Strand Bill Ch. 411, Gov't. Code



- Allows a local law enforcement agency activate an alert system within a 100-mile radius, or the adjacent counties, in which a there is a missing child even if the normal Amber Alert criteria are not met.

HB 3556





Public Information Act Sec. 552, Gov't. Code

- Requires a city to, **as soon as practicable**, but not later than 30 days after the AG issued an opinion, to:
 - provide an itemized estimate of charges for production of the information if applicable;
 - produce the information if required;
 - notify the requestor in writing that the governmental body was withholding the information as authorized by the opinion; or
 - notify the requestor in writing that the governmental body had filed suit against the attorney general regarding the information.

HB 3033

209



Public Information Act Sec. 552, Gov't. Code

- Requires a governmental body to submit its request through the attorney general's designated electronic filing system.

How Much Does It Cost?

You must pay an initial \$15 filing fee to submit materials online. After that, all future submissions associated with your initial filing are only \$5.

HB 3033

210



Public Information Act Sec. 552, Gov't. Code

- Strengthens the protections against potentially vexatious requestors by providing that a requestor who has exceeded a limit on the number of hours of production or inspection time for a single requestor may not:
 - inspect records on behalf of another requestor unless outstanding statements are paid in full, and
 - allows a governmental body to request photo identification from requestors to establish that the requestor has not exceeded such a time limit and has not concealed their identity;

HB 3033

211



Dead Suspect Loophole – PIA Sec. 552, Gov't. Code

- Traditionally, police departments do not have to disclose information that did not result in a conviction or deferred adjudication.
- Now, information can be made public if:
 - a **person (not limited to suspect)**, other than a peace officer, who was described by or depicted in the information, record, or notation was **deceased or incapacitated**, or
 - each person who was described by or depicted in the information, records, or notations **consented** to the release of the information.



Next of Kin Access - PIA Sec. 552.108, Gov't. Code

- After the Santa Fe school shooting, many next of kin of those who were killed or seriously injured requested to view the evidence to gain closure.
- However, under the Texas PIA, disclosing the evidence to the next of kin would require the evidence be disclosed to the public, including the media.
- The following changes are for families seeking access to critical information regarding their family members.



Public Information Act Sec. 552.108, Gov't. Code

- Prosecutor can allow a **family member** to view certain evidence, including a medical examiner's report and video evidence, without subjecting the evidence to disclosure. Access will be limited to:
 - a **medical examiner's report** and
 - video evidence of the crime**.
- The bill only applies to victims who have suffered personal injury or death as a result of criminal conduct.
- Can't duplicate or record this information.
- The prosecutor can require family members to sign a confidentiality agreement prior to viewing.
- This does not affect the confidentiality of information as it pertains to state or federal law.



Sedition Ch. 557, Gov't. Code

- Expands this offense to include acts intended to "destabilize" a state or local government and acts committed by mere threat of force of violence.

Prohibition of Tik Tok on Gov't. Devices Ch. 620, Gov't. Code

- All government entities in Texas shall adopt a policy prohibiting the installation or use of TikTok (or its successor app) or any app provided by ByteDance Limited on any device owned or leased by the governmental entity and requiring the removal of those apps from those devices.
- Includes a LE exception
- Effective June 14, 2023

SB 1893



216

HB 5202

217

DPS Violent Offender Database Sec. 411.1355, Gov't. Code



- Requires DPS to maintain a public database of **family violence offenders** who have been convicted of any of the following offenses on two or more occasions:
 - assault, sexual assault, aggravated assault, or aggravated sexual assault for which an affirmative finding of family violence was made;
 - continuous violence against the family or stalking; or
 - any combination of such offenses.
- All prior cases will be included and it will include name and photo.
- Seven years without a subsequent conviction can facilitate removal.
- Goes live January 1, 2024



Online Victim Notification Systems Sec. 772.0079, Gov't. Code

- Currently, in many major Texas cities, staffing issues within law enforcement and support services are causing delays in responses to active crime and incident reports.
 - But it is important that victims have access to prompt and accurate communication of information pertaining to their case.
- This bill requires the criminal justice division of the governor's office to establish and administer a grant program to provide financial assistance to a law enforcement agency for the purpose of purchasing or developing a **crime victim notification system**.

SB 2085

218

SB 2085

219



Online Victim Notification Systems Sec. 772.0079, Gov't. Code

- The notification system will notify the victim or the victim's family by email or text the following information:
 - Date the incident report was created and case number,
 - Investigator assigned,
 - Arrest date and arraignment date,
 - Dismissal if any and any other relevant information to the case, and
 - Provide the capability of attaching brochures, allowing the victim to check status of case.



Kids and Porn

- Requires a commercial entity that publishes sexual material harmful to minors on a website (must be 1/3 of content) to implement age-verification methods.
- Also, would implement liability for damages associated with a minor's access to this material.



Liability for Allowing Minors to Access Pornographic Material Ch. 129B, Civil Practice & Remedies

"TEXAS HEALTH AND HUMAN SERVICES WARNING: Pornography is potentially **biologically addictive**, is **proven to harm human brain development**, desensitizes brain reward circuits, increases conditioned responses, and weakens brain function."

"TEXAS HEALTH AND HUMAN SERVICES WARNING: Exposure to this content is **associated with low self-esteem and body image**, eating disorders, impaired brain development, and other emotional and mental illnesses."

"TEXAS HEALTH AND HUMAN SERVICES WARNING: Pornography increases the demand for **prostitution, child exploitation, and child pornography**."



Liability for Allowing Minors to Access Pornographic Material Ch. 129B, Civil Practice & Remedies

- Exempts news and news organizations, internet service providers, search engines, and cloud service providers if they just provide access to content not under their control.
- Creates liability for damages associated with a minor's access to this material.
- Texas A.G. can enjoin a business and a violation is up to a \$10,000 per day fine.
- Also requires warning on site to include:



Liability for Allowing Minors to Access Pornographic Material Ch. 129B, Civil Practice & Remedies

February 26, 2024 | Press Release

Attorney General Ken Paxton Sues Major Pornography Distributor for Violating Texas Age Verification Laws

Texas Attorney General Ken Paxton has filed a lawsuit against Ajia Global Entertainment, a major pornography distributor, for violating HB 1181, a Texas law that requires reasonable age verification measures to protect children from being exposed to obscene materials.

Ajia Global was one of the largest pornography websites that had obscene materials, including Pornhub. Instead of abiding by Texas law requiring purveyors of obscene material to institute age verification systems, the company knowingly provided access to the website to minors with pornographic content. Attorney General Paxton is seeking an injunction against Ajia Global to require appropriate age verification safeguards and potentially millions of dollars in civil penalties for failing to abide by the law.

Attorney General Ken Paxton's Office
Austin, Texas
Phone: 512.463.1000
Fax: 512.463.1001
Email: ken.paxton@ag.texas.gov
Website: www.ag.texas.gov

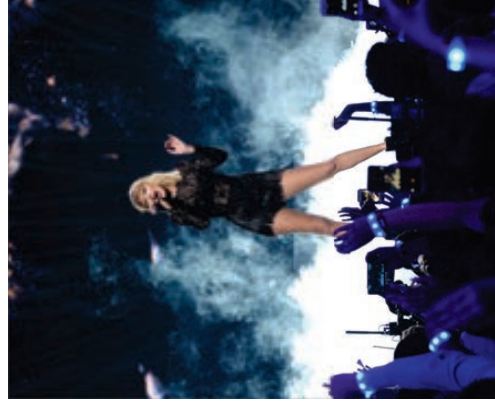
The Crown Act Ch. 21, Labor Code

- An employer, labor union, or employment agency cannot adopt or enforce a dress or grooming policy that discriminates against a hair texture or protective hairstyle commonly or historically associated with race.



The Texas Legislature Responds to Swift Fans

- Prohibits a person from using or creating a bot to do the following:
 - Purchase tickets excess online tickets,
 - Use multiple IP addresses/accounts/emails to purchase tickets,
 - Circumvent or disable an electronic queue/waiting period/presale codes, or
 - Circumvent or disable a security measure, access control system, or other control or measure that issued to facilitate authorized entry to an event.



Swifties Refuse to Shake it Off Ch. 328, Business & Commerce Code

- AG in charge of investigating.
- Civil penalty capped at \$10,000 for each violation.
- Also establishes that every ticket transaction in which a ticket is acquired to be sold in violation of the prohibition constitutes a separate violation for purposes of assessing a civil penalty.



COVID-19 Regulations Ch. 81B, Health & Safety Code

- Prohibit a governmental entity from implementing, ordering, or otherwise imposing a mandate to prevent the spread of COVID-19 that required:
 - a person to wear a face mask or other face covering;
 - a person to be vaccinated against COVID-19 (subject to federal rules); or
 - the closure of a private business or a public, open-enrollment charter, or private school.
- Limitations on mandates related to face masks would not apply to state supported living centers, facilities operated by the Texas Criminal Justice Department or the Texas Juvenile Justice Department, municipal or county jails, or hospitals or other health care facilities owned by a governmental entity.



COVID-19 Regulations Ch. 81D, Health & Safety Code

- Prohibits an employer from adopting or enforcing a mandate requiring an employee, contractor, applicant for employment, or applicant for a contract position to be vaccinated against COVID-19 as a condition of employment or a contract position.
- Prohibits an employer from taking an adverse action against an employee, contractor, applicant for employment, or applicant for a contract position for refusing to be vaccinated against COVID-19.
- There is an exception for certain health care facilities and physicians.
- \$50,000 penalty per violation.



Enforcement of Temp. *Ex Parte* Order Sec. 83.0025, Family Code

- Establishes that a temporary *ex parte* order is enforceable to the same extent and in the same manner as a final protective order
- Requires a law enforcement agency receiving a protective order to enter that order in the agency's computer records of outstanding warrants as notice that the order has been issued and is currently in effect.
 - This requirement replaces the provision in current law that makes such entry voluntary.



Reports of Child Abuse Sec. 261.104, Family code

- DFPS is no longer authorized to accept anonymous reports of abuse or neglect.
- Callers will now have to include:
 - the allegation,
 - the individual's name and telephone number; and
 - the individual's home address or, if the individual is a mandatory reporter, the individual's business address and profession.





Safe Haven (Baby Moses) Law Sec. 262, Family Code

- A “fire department” is added to the list as a “Designated Emergency Infant Care Provider.”
- Also, allows for a Provider to install a “Newborn Safety Device” if certain conditions are met.

SB 780

232

Safe Haven (Baby Moses Law) Baby Box



Illegal Voting Sec. 64.012(b), Election Code

87th Legislative Session



88th Legislative Session

- Enhances the penalty for illegal voting from a Class A misd. to a second-degree felony.



Transfer of Officer's Children Sec. 25.0344, Education Code

- Peace officers put themselves in harm's way in their communities on a daily basis so officers with school-aged children should be assured that their child is in a safe environment when attending school.
- So now peace officers are now allowed to transfer their child to another school district or campus of their choosing.
- But a school district is not required to provide transportation to a student who transfers to another campus or school district under this section.

HB 1243

234

HB 1959

235

Alyssa's Law Sec. 37.117, Education Code

- Panic buttons will be installed in every classroom in public schools that will notify law enforcement immediately while also sending necessary details to best respond to a threat.
- Location details are immediately provided to ensure that triage and treatment of those needing medical attention can be done urgently.
- Effective May 5, 2023



Personal Hazing Offense Sec. 37.152, Education Code

- Reports of hazing can now be made to law enforcement.
- Immunity for reporting hazing also extends to corporations and other entities that support student organizations.



SB 37

237



Sale or Purchase of Shark Fins Sec. 66.2161, Parks & Wildlife Code

- It is now an offense to buy, offer to buy, sell, or offer to sell shark fin or to possess shark fin with the purpose of sale.

HB 1819

239



Case Law Update



New York State Rifle & Pistol Association Inc. v. Bruen (2022)

- The state of New York requires a person to show a special need for self-protection to receive an unrestricted license to carry a concealed firearm outside the home.
- Nash and Koch applied for an unrestricted license to carry a handgun in public in NY.
- In 2015, NY only granted Nash a restricted license for hunting and target shooting only.
- In 2016, Nash asked to remove the restriction due to a string of robberies in his neighborhood, but it was denied after a hearing.
- Koch had been in the same position between 2008 and 2017,

241



New York State Rifle & Pistol Association Inc. v. Bruen (2022)

- **Issue:** Does New York's law requiring that applicants for unrestricted concealed-carry licenses demonstrate a special need for self-defense violate the Second Amendment?
- **Holding:** New York's proper-cause requirement for obtaining an unrestricted license to carry a concealed firearm violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms.

242



New York State Rifle & Pistol Association Inc. v. Bruen (2022)

- The Court announced that when considering 2nd Amendment challenges, the government must demonstrate that a challenged law is consistent with “the Nation’s historical tradition of firearm regulation.”

243



The Shifting Impact of Bruen & Limiting Legal Restrictions

- *Firearms Policy Coalition v. McCraw* (TX), 18–20-year-olds
- *U.S. v. Quiroz* (TX), felony indictment
- *Rainier Arms, et. al. v. ATF* (TX), pistol braces
- *U.S. v. Rahimi* (TX), domestic violence protective orders
 - *Cert.* granted 6/30/2023
- Other regulatory legal challenges:
 - drug users
 - sensitive places
 - obliterated serial numbers
 - assault weapons & large capacity magazines
 - ghost guns

244



U.S. v. Rahimi, *Cert. granted 6/30/2023*

- Rahimi got into an argument in 2019 with his girlfriend and knocked her to the ground and dragged her back to his car, causing her to hit her head on the car's dashboard.
- In a telephone call after the incident, Rahimi told the woman that he would shoot her if she told anyone about the assault.
- A few months later, a Texas state court entered a domestic violence restraining order against Rahimi. The order also barred Rahimi from possessing a gun and warned him that doing so while the order was in effect could be a federal felony.

245



U.S. v. Rahimi, *Cert. granted 6/30/2023*

- Roughly a year later, while the order was still in effect, Rahimi was a suspect in a series of shootings. When police officers searched his home pursuant to a warrant, they found (among other things) a pistol, a rifle, and ammunition – along with a copy of the restraining order.
- Rahimi was charged with violating the federal ban on the possession of a firearm by anyone who is the subject of a domestic violence restraining order. He pleaded guilty and was sentenced to just over six years in prison.
- The 5th Circuit initially upheld his conviction, but after *Bruen* the court of appeals issued a new opinion that threw out Rahimi's conviction.

246



U.S. v. Rahimi, *Cert. granted 6/30/2023*

- The DOJ appealed asking SCOTUS to reverse the ruling on the basis that “[g]overnments have long disarmed individuals who pose a threat to the safety of others,” and that the law “falls comfortably within that tradition.”
- Argued Nov. 7, 2023, awaiting decision.

247



Lange v. California (2021)

- In *United States v. Santana*, (1976), the Court recognized that the “hot pursuit” of a felony suspect created exigency that justified warrantless entry into a home.
- However, that case did not address hot pursuit of misdemeanor suspects.

248



Lange v. California (2021)

- A CHP officer observed a parked car “playing music very loudly,” and then the driver honked the horn four or five times despite there being no other vehicles nearby.
- Finding this behavior unusual, the officer began following Lange, intending to conduct a traffic stop. After following Lange for several blocks, the officer activated his overhead lights, and Lange “failed to yield.”
- Lange turned into a driveway and drove into a garage. The officer followed and interrupted the closing garage door. When asked whether Lange had noticed the officer, Lange replied that he had not.
- Based on evidence obtained from this interaction, Lange was charged with two Vehicle Code misdemeanors and an infraction.

249



Lange v. California (2021)

- Lange moved to suppress the evidence obtained in the garage. At the suppression hearing, the prosecutor argued that Lange committed a misdemeanor when he failed to stop after the officer activated his overhead lights and that the officer had probable cause to arrest Lange for this misdemeanor offense.
- Based on this probable cause, the prosecutor argued that exigent circumstances justified the officer’s warrantless entry into Lange’s garage.
- Lange’s attorney argued that a reasonable person in Lange’s position would not have thought he was being detained when the officer activated his overhead lights, and the officer should not have entered Lange’s garage without a warrant.

250



Lange v. California (2021)

- **Question:** Does the exigent circumstances exception to the Fourth Amendment’s warrant requirement apply when police are pursuing a suspect whom they believe committed a misdemeanor?
- **Holding:** Pursuit of a fleeing misdemeanor suspect does not categorically qualify as an exigent circumstance justifying a warrantless entry into a home.

251



Lombardo v. City of St. Louis, Missouri (2021)

- Gilbert was arrested in 2015 and after he allegedly suffered a mental-health crisis and tried to harm himself in jail, multiple officers entered his cell to subdue him.
- When Gilbert resisted violently, the officers handcuffed his hands and legs and restrained him on his stomach on the ground – known as a “prone restraint.”
- The officers continued applying pressure against Gilbert’s back while he struggled and audibly asked the officers to stop because he was in pain. After 15 minutes, Gilbert stopped breathing.

252



Lombardo v. City of St. Louis, Missouri (2021)

- Gilbert's parents sued alleging excessive force.
- The 8th Circuit dismissed the claims, holding that **no reasonable jury could find that officers had used excessive force** and therefore the officers could not be held liable.
- The dismissal was appealed to SCOTUS.

253



Lombardo v. City of St. Louis, Missouri (2021)

• Issue:

- Whether, when officers put a handcuffed and shackled person face-down on the floor and pushed into his back until he died, they are entitled to qualified immunity as a matter of law because the person struggled to breathe before dying.

• Holding:

- SCOTUS noted that in their (8th Cir.) decision it “**is unclear whether the court thought the use of a prone restraint—no matter the kind, intensity, duration, or surrounding circumstances—is per se constitutional so long as an individual appears to resist officers’ efforts to subdue him.**”

254



Lombardo v. City of St. Louis, Missouri (2021)

• Holding:

- Since the 8th Circuit either “failed to analyze such evidence or characterized it as ‘insignificant,’” SCOTUS concluded, it had not conducted the kind of “careful, context-specific analysis required by this Court’s excessive force precedent.”
- Case was remanded for further analysis.
- SCOTUS made clear that excessive force cases are fact and circumstance specific which require a thorough examination by the lower courts.

255



Counterman v. Colorado, (2023)

- This case started when Counterman sent a Facebook friend request to Whalen, a singer-songwriter then based in Denver whose career was on the rise.
- Over the next few years, Counterman sent messages to Whalen that she described as “weird” and “creepy,” and although she attempted to stop the messages by blocking him on Facebook, Counterman would simply create new accounts.
- When the messages became increasingly menacing – referring to having seen her in person and suggesting that she should die – Whalen’s mental health declined. She canceled appearances, started to carry a gun, and eventually left Colorado for the east coast.

256



Counterman v. Colorado, (2023)

- The severity of the situation prompted C.W. to contact local law enforcement to obtain a protective order, which resulted in Counterman's eventual arrest in May of 2016.
- Prosecutors in Colorado charged Counterman with stalking.
- At trial, he argued that his messages to Whalen were not "true threats" because he didn't actually intend to harm Whalen; instead, he contended, they were speech protected by the First Amendment.

257



Counterman v. Colorado, (2023)

- After he was found guilty as to the first count of stalking, Counterman was sentenced to prison but later appealed his motion to dismiss the charge, arguing his messages did not constitute "**true threats**" and, hence, could not lead to criminal prosecution.

258



Counterman v. Colorado, (2023)

- The trial court, applying Colorado law which adopts an **objective standard** (didn't matter whether he knew or intended the threatening nature of his speech), denied Counterman's motion to dismiss the charges.
- Counterman claimed his messages fell within the protections of the First Amendment because they could not be "true threats" if he did not have a **subjective understanding** that the messages were threatening.

259



Counterman v. Colorado, (2023)

- **Issues:**
 - First, does the First Amendment require the State to establish that the defendant was in some way aware of the **threatening** nature of their communications in a true threat case?
 - Second, what **mental state** should apply?
- **Holding:**
 - The Supreme Court held that the State must prove in true-threats cases that the defendant had some understanding of his statements' threatening character.
 - However, it would suffice if the defendant demonstrated a mental state of recklessness. That is, the prosecution must establish that the defendant consciously disregarded a substantial risk that their communications would be viewed as threatening violence.

260



Vega v. Tekoh, (2022)

- Tekoh worked as a patient transporter in a hospital in Los Angeles. After a patient accused him of sexual assault, hospital staff reported the allegation to the Los Angeles Sheriff's Department.
- During a custodial interrogation of Tekoh at his workplace the Deputy Vega failed to give Tekoh a Miranda warning.
- Vega emerged from that interrogation with Tekoh's handwritten statement that offered an apology for inappropriately touching the complainant.
- Tekoh was subsequently prosecuted for the alleged sexual assault, and at Tekoh's criminal trial, the government introduced his un-Mirandized statement.

261



Vega v. Tekoh, (2022)

- Tekoh charged in California state court, but a jury returned a verdict of not guilty.
- Following the acquittal on the criminal charge, Tekoh sued Vega under § 1983 alleging that Vega violated Tekoh's Fifth Amendment right against self-incrimination by taking his statement without first advising him of his Miranda rights.

262



Vega v. Tekoh, (2022)

- **Issue:** Is the use of an un-Mirandized statement against a defendant in a criminal case sufficient support a 42 U.S.C. § 1983 action?
- **Holding:** SCOTUS reversed the lower court decision holding that a *Miranda* violation does not provide a basis for a §1983 claim.
- SCOTUS pointed out that “At no point in the [Miranda] opinion did the Court state that a violation of its new rules constituted a violation of the Fifth Amendment right against compelled self-incrimination” but that it was a prophylactic rule enacted to help protect a constitutional right.

263



State of Texas v. Baldwin, Tex. Crim. App. 2022

- During a capital murder investigation, investigators obtained a search warrant for Baldwin's phone.
- In a motion to suppress, Appellee objected to the search warrant's supporting affidavit, which contained generic statements about the use of cell phones.

264



State of Texas v. Baldwin, Tex. Crim. App. 2022

- **Issue:**

- Under what circumstances may boilerplate language about cell phones be considered in a probable cause analysis?

- **Holding:**

- Boilerplate language may be used in an affidavit for the search of a cell phone, but to support probable cause, the language must be coupled with other facts and reasonable inferences that establish a nexus between the device and the offense.

The End

