

**REPORT ON THE  
TEXAS LEGISLATURE  
85<sup>th</sup> SESSION:**

**AN URBAN PERSPECTIVE**



**BY  
THE EARL CARL INSTITUTE FOR LEGAL AND SOCIAL POLICY, INC.  
PVAMU TEXAS JUVENILE CRIME PREVENTION CENTER  
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## TABLE OF CONTENTS

About The Earl Carl Institute Center For Government Law .....	3
Center For Government Law Legislative Externs .....	3
Executive Summary.....	4
ELECTION.....	7
CRIMINAL JUSTICE.....	9
A. Human Trafficking.....	10
B. Criminal Procedure.....	15
C. Wrongful Convictions .....	26
D. Civil Rights.....	28
JUVENILE JUSTICE.....	29
FAMILY LAW.....	34
A. Conservatorship & Dissolution Of Marriage .....	34
B. Domestic Violence .....	37
C. Guardianship .....	39
D. Child Protective Services .....	41
HOUSING AND ENVIRONMENT .....	53
A. Property .....	53
EDUCATION.....	55
A. Primary And Secondary Education.....	55
B. Higher Education.....	58
HEALTHCARE.....	61
A. Mental Health .....	61
WILLS, ESTATE, AND PROBATE .....	64
WEALTH .....	67
LITIGATION .....	68
ABOUT THE EARL CARL INSTITUTE.....	72

## ABOUT THE EARL CARL INSTITUTE CENTER FOR GOVERNMENT LAW



**Zahra Buck Whitfield**  
Associate Director  
ECI Center for Government

The Center for Government Law was established to provide integrated academic and practical skills training in government administration and regulation to law students. Preparing students for the practice of law in the public sector is a primary goal of the Center. The Center serves as a bridge between government and academia by providing practical experience to students who assist government leaders in advancing research in a multitude of law and public policy arenas.

The Center also serves as a placement for Legislative Externs in the Thurgood Marshall School of Law Externship program. In the program, Thurgood Marshall Law students have a unique opportunity to connect doctrinal law and theory studied in the classroom with the actual practice of law under the guidance and supervision of experienced lawyers. It is expected that through this Externship program, students will develop professional values, skills and knowledge in accordance with specific educational goals.

The Center is responsible for a report each biennial Texas Legislative session on the impact of new legislation on TSU and the urban community. It is the goal of the center to become an authority and resource on urban issues for legislators and for policy organizations. The ECI Center for Government Law operates under the direct supervision of ECI's Associate Director, Zahra Buck Whitfield Esq. We hope you enjoy this Session's report.

### *Center for Government Law Legislative Externs*

ECI wishes to express our gratitude for the assistance of two exceptional law students in monitoring the legislation from the 85<sup>th</sup> Texas Legislature and for helping to compile this report. They share some of their experience here.



**Amber Walker**

“As rising third year law students at Thurgood Marshall School of Law, our time working with the Earl Carl Institute (ECI) on the 85<sup>th</sup> Legislative Update has by far been the most rewarding and immersive experiences that we have had the opportunity to be a part of. Our passion for public service has been fully realized in our capacity as legislative externs. Our experiences while working at ECI have ranged from visiting and working at the Texas Capitol to attending legislative debriefing meetings. This experience is one that we will continue to carry on our professional journeys.”



**Marshaun Williams**

## EXECUTIVE SUMMARY



**Sarah R. Guidry**  
Executive Director

Welcome to The Earl Carl Institute's *Report on the Texas Legislature, 85<sup>th</sup> Session: An Urban Perspective*. The Institute is pleased to once again provide our supporters with highlights from the 85th Legislative Session. We appreciate the assistance and support of our partner in this endeavor Prairie View A&M Texas Juvenile Crime Prevention Center.

We have attempted to cover issues of particular concern to the urban community, however, many of the highlights cover issues of particular concern to other traditionally disenfranchised communities as well. **In this report, bills that may be of particular importance are highlighted in light blue. Bills that can potentially impact areas in which African Americans are**

**overrepresented or underrepresented can be identified by highlights in light orange.**

**The legislation covered in this report falls under the following subject matters:**

- Elections
- Criminal Justice (Human Trafficking, Criminal Procedure, Wrongful Convictions, and Domestic Violence)
- Juvenile Justice
- Family Law
- Property
- Education
- Healthcare
- Wills, Estate and Probate
- Wealth and
- Litigation.

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

The 85<sup>th</sup> Legislature focused heavily on comprehensive Child Welfare and Foster Care reform. Much time was also spent on addressing various human issues including human trafficking as well as the "Sandra Bland Act" (S.B. 1849) and the Sanctuary Cities Bill (S.B.4). New laws were passed surrounding rules for attachment of a witness after a rape victim in Harris County was re-traumatized by being jailed pending her testimony (S.B. 291).

The legislature confirmed that it is okay to discriminate as long as it's based on a strongly held religious belief, even if it means you can continue interacting with the State including receipt of

State funding without repercussion and even if that means foster children not being able to find a foster home and sometimes sleeping in CPS offices. (H.B. 3859). Many are now wondering what has happened to separation of church and state. We heard a lot about bathrooms during both the regular session and the special session called by the Governor. This was met with opposition, including from Speaker of the House Joe Straus, and ultimately failed to make it out of either session. Seventeen year olds are still considered adults in the criminal justice system despite numerous brain studies discussed in recent Supreme Court cases that recognize that the brain doesn't mature until about 25 years old. The failure to raise the age of juvenile jurisdiction in Texas also fails to take into account to issues of security from potential rape in the adult system and that for all other purposes 17 year olds are not considered adults, e.g. they cannot vote in Texas, cannot join the armed services and cannot buy liquor in Texas.

One final note. In as much as this report is meant to enlighten you about what passed this session, our hope is that it also enlightens you about what did not pass—what still needs to be done—and why it is so important to vote and to be a voice at the table for change. Once again, this session, the Legislature did not look like Texas' demographics in regards to race, gender and educational attainment.

### **Some Session Highlights**

Child Protective Services Overhaul. As mentioned above, there were a slew of child welfare and foster care reform bills that were signed into law. Much of this was in response to a 260 page federal court ruling, issued on December 17, 2015, by Judge Janis Jack finding that the State of Texas violates the constitutional rights of children in the Permanent Managing Conservatorship of CPS. Many of the bills sought to redress these issues by passing bills related to CPS' organizational structure, staff salaries and caseloads, removal procedures, hearing procedures, funding to support kinship placement and extrajudicial solutions for families facing the potential removal of their children.

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

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

Criminal Justice Reforms. Several criminal justice reforms were enacted. New laws include:

- Measures to reduce wrongful convictions (H. B. 34)
  - ✓ Requirement to videotape certain confessions
  - ✓ Criteria for Using Informant Testimony
  - ✓ Methods for eyewitness identification-photo and line-up

- Reducing the burden of criminal records by creating nondisclosure procedures for certain convictions (H.B. 3016)
- Reducing debtor prisons—decriminalizing poverty (S.B. 1913)
- Measures for diverting persons with mental illnesses from the justice system to treatment systems (S.B. 292, S.B. 1849)
- Making data driven solutions more reliable in reviewing racial profiling—through consistency of racial classifications across law enforcement agencies (H.B. 3051)
- Requiring training for law enforcement on proper interaction with civilians during traffic stops and other in-person encounters (S. B. 30)

**Making Schools for all Students**—Understanding that sometimes children will be children the legislature adopted changes:

- Prohibiting on school use of exclusionary discipline on students in a grade level below 3<sup>rd</sup> except under very specific circumstances (H. B. 674)
- Creating solutions for addressing school bullying, including cyberbullying (S. B. 179)
- Creating funding under the transportation allotment for public school students subject to a high risk of violence while walking to school (S. B. 195)
- Mandating school instruction on proper interaction with peace officers during traffic stops and other in-person encounters (S. B. 30)

**Life and Death.** This session expansive changes were made to the Texas Estates Code. Those changes include:

- New rules related to durable powers of attorney (H. B. 1974)
- Changes to Transfer on Death Deeds to address the situation where the beneficiary fails to survive the transferor (S.B. 2150)
- Granting a tax deferral to a disabled veteran (H. B. 1101 | H.B. 217)
- Passage of the Uniform Partition of Heirs' Property Act to protect heirship property from being lost because of an inability to transfer fee simple title (S. B. 499)

There is so much information to share that we obviously could not include everything in one report. Please excuse us if you come across a new law that you believe should have been included in our report. In such case, please feel free to contact us for an analysis of that law. We put a great deal of effort and time into this compilation and truly hope that you enjoy this report. If we can be of service to other organizations and elected officials in policy changes, research or educational contributions, please do not hesitate to email us at [earlcarlinstitute@tmslaw.tsu.edu](mailto:earlcarlinstitute@tmslaw.tsu.edu) or call the Institute at 713-313-1139. It is always our pleasure to be of service to the community.

**ON BEHALF OF THE EARL CARL INSTITUTE AND TEXAS SOUTHERN UNIVERSITY'S THURGOOD MARSHALL SCHOOL OF LAW, PLEASE ENJOY!**



## ELECTION

1. **H.B. 25** (Simmons | Larson | Laubenberg | Davis | Sarah | Fallon) *Relating to the elimination of straight party voting.*

**Summary** – H.B. 25 eliminates straight-party voting for candidates for Texas.

**Codification:** Section 62.011, Election Code

**Effective Date:** September 1, 2020

2. **H.B. 1735** (Faircloth | Raney) *Relating to election officers and practices; increasing a criminal penalty; creating a criminal offense.*

**Summary** - H.B. 1735 amends the Election Code to authorize a county clerk, following an oral warning to the election judge or the election clerk and with the concurrence of the county chair of the same political party with which the judge or election clerk is affiliated or aligned, to remove, replace, or reassign an election judge or election clerk who causes a disruption in a polling location or willfully disobeys the provisions of the Election Code. The bill requires a resulting vacancy for an election judge to be filled in the same manner as an emergency appointment and a resulting vacancy for an election clerk to be filled by the presiding judge. The bill requires the presiding judge to appoint a replacement election clerk who is affiliated or aligned with the same political party as the original clerk, if possible.

H.B. 1735 requires members of the early voting ballot board and election officers appointed as part of the establishment and organization of a central counting station to repeat a specific oath aloud relating to faithfully performing the person's duty as an officer of the election and guarding the purity and integrity of the election. The bill requires a member or officer who arrives after the oath is made to repeat the oath aloud before performing any duties as a member or election officer and requires each member or officer, following administration of the oath, to be issued a form of identification, prescribed by the secretary of state, to be displayed by the member or officer during the member's hours of service on the board or during the officer's hours of service at the central counting station, respectively.

H.B. 1735 authorizes a county election officer who determines a ballot was incorrectly rejected or accepted by the early voting ballot board before the time set for convening the canvassing authority to petition a district court for injunctive or other relief as the court determines appropriate. The bill requires the county election officer, in an election ordered by the governor or by a county judge, to confer with and establish the agreement of the county chair of each political party before petitioning the district court.

**Codification:** Section 32.002; Subchapter A, Chapter 87; Subchapter G, Chapter 87; Subchapter A, Chapter 127; Election Code

**Effective Date:** September 1, 2017

3. **H.B. 2157** (Miller) *Relating to the requirements for a candidate's application or petition for a place on the ballot.*

**Summary** – H.B. 2157 amends the Election Code to specify that the signing and swearing to by a candidate for public office of the required application for a place on the ballot be done before a person authorized to administer oaths in Texas and that the circulator's affidavit required to be included along with each part of a petition filed in connection with such an application is to be executed before a person authorized to administer oaths in Texas.

**Codification:** Sections 141.031(a) and 141.065(a), Election Code

**Effective Date:** September 1, 2017

4. **H.B. 2323** (Israel) *Relating to the filing period for a place on the ballot in a special election to fill a vacancy.*  
**Summary** – H.B. 2323 amends the Election Code to specify that the filing deadline for an application for a place on the ballot for a special election to fill a vacancy in office, when the election is to be held on the date of the general election for state and county officers, is 6 p.m. of the 75th day before Election Day. The bill requires a declaration of write-in candidacy for a special election to fill a vacancy in office to be filed not later than the applicable filing deadline for an application for a place on a special election ballot.  
**Codification:** Section 201.054, Election Code  
**Effective Date:** September 1, 2017
5. **H.B. 2324** (Israel) *Relating to the deadline for volunteer deputy registrars to submit voter registration applications.*  
**Summary** – H.B. 2324 amends the Election Code to revise the deadline for a volunteer deputy voter registrar to submit completed voter registration applications to the voter registrar to reflect delivery not later than 5 p.m. of the next regular business day after the date to timely submit a voter registration application.  
**Codification:** Section 13.042, Election Code  
**Effective Date:** September 1, 2017
6. **H.B. 2559** (Reynolds) *Relating to public inspection of mail ballot applications.*  
**Summary** – H.B. 2559 amends the Election Code to change the day on which a copy of an application for a ballot to be voted by mail is considered available for public inspection from the first business day after the Election Day of the latest occurring election for which the application is submitted.  
**Codification:** Section 86.014(a), Election Code  
**Effective Date:** September 1, 2017
7. **H.B. 4034** (Bohac) *Relating to certain voter registration information.*  
**Summary** – H.B. 4034 amends the Election Code to require the early voting clerk to notify the voter registrar if an applicant provides a date of birth, driver's license number, or social security number on the applicant's application for an early voting ballot to be voted by mail or the applicant's federal postcard application that is different from or in addition to the information maintained by the voter registrar in accordance with applicable state law. The bill requires the voter registrar to update the voter's record with the information provided by the applicant.  
**Codification:** Section 16.031(a), Election Code  
**Effective Date:** Immediately
8. **S.B. 752** (Campbell) *Relating to the overseas military e-mail ballot program.*  
**Summary** – S.B. 752 amends the Election Code to make permanent the program under which a member of the U.S. armed forces who is on active duty overseas and eligible for hostile fire pay is allowed to return an early voting ballot by email. The bill repeals provisions requiring the secretary of state to operate the program as a pilot program until September 1, 2017, and providing for the expiration of provisions relating to the program on that date. The bill removes the specification that the number of eligible counties selected to participate in the program is determined by the secretary of state and instead requires the secretary of state to select any eligible county to participate in the program.

**S.B. 752 cont'd.**

**Codification:** Section 105.004(b), Election Code

**Effective Date:** September 1, 2017

9. **S.B. 957 (Campbell | Hinojosa)** *Relating to the content and numbering of propositions on the ballot.*

**Summary** – S.B. 957 amends the Election Code to require that each political subdivision's proposition on a ballot on which more than one measure is to be voted on be assigned a unique number or letter on the ballot. The bill requires the authority ordering the election to assign a letter of the alphabet to each proposition on the ballot that corresponds to its order on the ballot, unless the proposition is to be voted on statewide, in which case the bill requires the authority to assign a number to the measure that corresponds to its order on the ballot. The bill requires the secretary of state to prescribe procedures to implement provisions governing the ordering of and assignment of a unique number or letter, as applicable, to propositions in such an election in which such a ballot would appear. The bill requires a proposed constitutional amendment to be placed on the ballot before all other propositions.

**Codification:** Section 52.095, Election Code

**Effective Date:** September 1, 2017

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## CRIMINAL JUSTICE

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

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

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

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

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

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

**H.B. 62 cont'd.**

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

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

**Effective Date:** September 1, 2017

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

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

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

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

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

**Summary** – S.B. 47 requires the Office of Court Administration of the Texas Judicial System (OCA) to conduct a study on how records regarding misdemeanors punishable by fine only, other than traffic offenses, are held in different Texas counties. The bill requires the study to address, with respect to each county, the public availability of conviction records for misdemeanors punishable by fine only, the public availability of records relating to suspension of sentence and deferral of final disposition for misdemeanors punishable by fine only, the public availability of those conviction and suspension and deferral records that are related to a child younger than 18 years of age, whether public access to and availability of those aforementioned records have been expanded or restricted by the county over time, whether local agencies holding those records destroy those records, the reasons and criteria for any destruction of those records, and the retention schedule of each local agency holding those records, if the agency routinely destroys those records. The bill requires OCA, not later than January 1, 2019, to issue a report on the study to the lieutenant governor, the speaker of the House of Representatives, and the appropriate standing committees of the House of Representatives and the senate.

**Codification:** None

**Effective Date:** September 1, 2017

**Human Trafficking**

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

13. **H.B. 29** (Thompson, Senfronia/Huberty/Collier/Cook/Frullo) *Relating to prostitution and the trafficking of persons, civil racketeering related to trafficking, the prevention, investigation, and prosecution of and punishment for certain sexual offenses and offenses involving or related to trafficking, reimbursement of certain costs for criminal victims who are children, and the*

*release and reporting of certain information relating to a child; increasing criminal penalties; creating criminal offenses.*

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

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

H.B. 29 authorizes the attorney general to use information obtained in response to a demand, or any documentary material, product of discovery, or other record derived or created from the information as the attorney general determines necessary in the enforcement of the bill's provisions regarding civil racketeering related to trafficking of persons, including presentation before court. The bill prohibits the attorney general from releasing or disclosing information that is obtained in response to a demand or any documentary material, product of discovery, or other record derived from the information except under certain conditions as described by the bill. The bill exempts the civil investigative demand issued by the attorney general, any information obtained, maintained, or created in response to the demand, or any

documentary material, product of discovery, or other record derived or created during an investigation from the information, from state public information law and from disclosure, discovery, subpoena, or other means of legal compulsion for the release.

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

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

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

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

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

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

H.B. 29 amends the Penal Code to revise the conduct constituting the offense of prostitution by specifying an offense for a person who knowingly offers or agrees to receive a fee from another to engage in sexual conduct or who knowingly offers or agrees to pay a fee

to another person for the purpose of engaging in sexual conduct with that person or another. The bill repeals the specification that the offense of prostitution based on receipt of a fee is established regardless of whether the actor is offered or actually receives the fee and that the offense of prostitution based on the payment of a fee is established regardless of whether the actor or another person on behalf of the actor offers or actually pays the fee.

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

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

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

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

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

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

**Effective Date:** September 1, 2017

15. **H.B. 2529** (Leach | Minjarez) *Relating to the definition of coercion for purposes of the offense of trafficking of persons.*

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

**H.B. 2529 cont'd**

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

**Effective Date:** September 1, 2017

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

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

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

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

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

**Effective Date:** September 1, 2017

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

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

**S.B. 128 cont'd.**

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

**Effective Date:** Immediately

**Criminal Procedure**

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

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

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

**Effective Date:** September 1, 2017

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

**Summary** – H.B. 322 amends the Code of Criminal Procedure to entitle a person to expunction of all records and files relating to the person's arrest for the commission of a felony or misdemeanor if the person has been released and any charge has not resulted in a final conviction and is no longer pending, and there was no court-ordered community supervision for the offense, unless the offense is a Class C misdemeanor, provided that, at any time following the arrest, the court finds that the indictment or information charging the person with the commission of the offense was dismissed or quashed because the person completed a certain veterans treatment court program. The bill requires a trial court dismissing a case following a person's successful completion of such a veterans' treatment court program, if the trial court is a district court, or a district court in the county in which the trial court is located, to enter an order of expunction not later than the 30th day after the date the court dismisses the case or receives the information regarding that dismissal, as applicable. The bill requires the court, notwithstanding the 30-day time limit, to enter an order of expunction for a person who is entitled to an expunction based on the successful completion of such a veterans' treatment court program before the bill's effective date as soon as practicable after the court receives written notice from any party to the case about the person's entitlement to the expunction. The bill prohibits the court from charging any fee or assessing any cost for such an expunction.

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

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

**Effective Date:** September 1, 2017

20. **H.B. 1178** *Relating to the punishment for burglary and theft involving controlled substances.*

**Summary** – H.B. 1178 addresses the opioid abuse crisis by establishing penalties for a certain burglary or theft offense involving a controlled substance. It amends the Penal Code to establish a penalty of third degree felony for burglary if the premises is a building in which a controlled substance is generally stored, including a pharmacy, clinic, hospital, or nursing

facility, and the actor entered or remained concealed in that building with intent to commit a theft of a controlled substance. H.B. 1178 expands the conduct that constitutes a third degree felony theft offense to include theft of property that is a controlled substance, regardless of the value of the controlled substance.

**Codification:** Section 30.02, Penal Code

**Effective Date:** September 1, 2017

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

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

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

**Effective Date:** September 1, 2017

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

**Summary** - H.B. 3016 is an expansion of last session's "Second Chances" law (S.B.1902 by Senator Perry), whereby individuals convicted of one low-level offense (driving while intoxicated (DWI) under 0.15 blood alcohol level (BAC) and certain non-sexual, non-violent Class C misdemeanors), can apply for an order of nondisclosure (OND). An OND is akin to "sealing" records, with several exceptions, following a waiting period, whereby a prosecutor has a chance to object and a judge has discretion to rule on the application. In all cases, law enforcement can see through the "sealing," as can sensitive industries such as finance and education. It can also be looked through by individuals if required by federal law. The legislation is supported by a variety of stakeholders, from criminal justice reform advocates and Mothers Against Drunk Driving (MADD), to political leaders on the left and right.

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

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

Other requirements:

- Must have paid all fines, fees, and restitution.

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

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

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

**Effective Date:** September 1, 2017

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

**Summary** – H.B. 3019 amends the Penal Code to expand the conduct that constitutes injury to a child, elderly individual, or disabled individual to include an owner, operator, or employee of a boarding home facility intentionally, knowingly, recklessly, or with criminal negligence by omission causing to a child, elderly individual, or disabled individual who is a resident of that facility serious bodily injury; serious mental deficiency, impairment, or injury; or bodily injury. The bill includes a person with a mental illness among the individuals against whom conduct constituting an injury to a disabled individual applies.

**Codification:** Section 22.04, Penal Code

**Effective Date:** September 1, 2017

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

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

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

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

**Effective Date:** September 1, 2017

25. **H.B. 3165** (Moody) *Relating to certain pretrial procedures in criminal cases.*

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

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

**Effective Date:** September 1, 2017

26. **H.B. 3237** (Moody) *Relating to the return of executed search warrants and the public availability of search warrant affidavits.*

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

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

**Effective Date:** September 1, 2017

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

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

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

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

**Effective Date:** September 1, 2017

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

**Summary** – S.B. 256 amends the Code of Criminal Procedure to extend eligibility to participate in the address confidentiality program administered by the attorney general for certain victims of family violence, sexual assault or abuse, stalking, or trafficking of persons to a victim of a continuous sexual abuse of a young child offense and a victim of an indecency with a child offense if the victim meets with a victim's assistance counselor from a state or local agency or other entity that is identified by the attorney general as an entity that provides certain services or counseling to victims of such offenses. The bill includes civil legal services among those services. The bill establishes the following circumstances as an alternative to satisfying the program eligibility requirement to meet with such a counselor: the program applicant is protected under, or is filing an application on behalf of a victim who is the applicant's child or another person in the applicant's household and who is protected under, a specified temporary injunction or protective order; or the applicant possesses documentation of family violence, as identified by the rules adopted for program eligibility purposes, or of sexual assault or abuse or stalking, as described by statutory provisions relating to the right to vacate and avoid liability following certain sex offenses or stalking.

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

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

program administered by the attorney general and provided the registrar with proof of certification of that participation.

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

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

**Effective Date:** September 1, 2017

29. **S.B. 291** (Whitmire) *Relating to the issuance of a writ of attachment for certain witnesses.*

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

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

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

**Effective Date:** September 1, 2017

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

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

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

**Effective Date:** September 1, 2017

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

**Summary** – S.B. 527 Under previous law, a court is required to order a defendant to pay all or part of the cost of legal services provided to the defendant, if the defendant has the financial resources to do so. However, the court's authority to order such payment ends with the sentencing of the defendant. Senate Bill 527 amends the Code of Criminal Procedure to provide for a judge's discretion to order a defendant who at the time of sentencing to confinement or placement on community supervision did not have the financial resources to pay the maximum amount of costs associated with a court-appointed counsel to pay any unpaid portion of the amount if the judge determines that the defendant has the financial resources to pay the additional portion. The bill authorizes the judge to amend such an order on a subsequent determination that the defendant is indigent or demonstrates an inability to pay the amount ordered. The bill provides that a judge, in making such a determination, may only consider the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant. The bill prohibits the judge from revoking or extending the defendant's period of community supervision solely to collect the amount the defendant has been ordered to pay under the bill's provisions.

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

**Effective Date:** September 1, 2017

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

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

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

**Effective Date:** September 1, 2017

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

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

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

**Effective Date:** September 1, 2017

34. **S.B. 1264** (Huffman) *Relating to psychological counseling for certain grand jurors.*  
**Summary** – S.B. 1264 amends the Code of Criminal Procedure and Government Code to include a grand juror or alternate grand juror serving in a grand jury investigation involving graphic evidence or testimony among the jurors who, on request, are eligible to receive psychological counseling through a commissioners court-approved programs provided the grand juror or alternate grand juror requests the counseling not later than the 180th day after the date on which the grand jury is dismissed.  
**Codification:** Article 56.04(f), Code of Criminal Procedure; Section 61.003(a), Government Code  
**Effective Date:** September 1, 2017
35. **S.B. 1298** (Huffman) *Relating to the selection and summons of prospective grand jurors.*  
**Summary** – S.B. 1298 amends the Code of Criminal Procedure to increase from 125 to 250 the maximum number of prospective grand jurors that a district judge may direct to be selected and summoned. It also make changes to the qualifications for an individual to serve on a grand jury.  
**Codification:** Article 19.01, Code of Criminal Procedure  
**Effective Date:** September 1, 2017
36. **S.B. 1326** (Zaffirini) *Relating to procedures regarding criminal defendants who are or may be persons with a mental illness or an intellectual disability and to certain duties of the Office of Court Administration of the Texas Judicial System related to persons with mental illness.*  
**Summary** – S.B. 1326 requires sheriffs to provide notice to the relevant magistrate regarding a defendant suspected of having mental illness no later than four hours upon receipt of credible information that the person has a mental illness or intellectual disability; increase flexibility regarding bond availability for mentally ill, non-violent defendants; provide local communities with the authority to offer competency restoration and maintenance in any safe and clinically appropriate setting, including outpatient residential, community inpatient, and jail settings that meet appropriate standards; and broaden judicial discretion to choose the best use of local competency restoration options. These changes would not only ensure that criminal defendants with a mental illness are referred timely to adequate treatment options, but also help reduce backlogs in county jails and free up capacity in state hospitals for other persons who need treatment at a state mental health facility.  
**Codification:** Amends Articles 15.17, 16.22, 17.032, 32A.01, 46B.001, 46B.0095 of the Code of Criminal Procedure  
**Effective Date:** September 1, 2017
37. **S.B. 1343** (Hughes) *Relating to the capture, use, or recording of certain items for commercial purposes, including the prosecution of criminal offenses regarding unauthorized recordings.*  
**Summary** – S.B. 1343 amends the Business & Commerce Code and Code of Criminal Procedure to update statutory provisions relating to the offense of improper labeling of a recording and to require a court to order a person convicted of such an offense to make restitution to the applicable victim in an amount based on a calculation specified by the bill.  
**Codification:** Chapter 641.001(4), Business & Commerce Code; Article 42.037 and Article 59.01(2), Code of Criminal Procedure  
**Effective Date:** September 1, 2017

38. **S.B. 1584** (Garcia) *Relating to the conditions of community supervision.*

**Summary** – S.B. 1584 seeks to ensure that community supervision is more thoughtful and meaningful for each defendant. The bill make four changes to the Code of Criminal Procedure: First, the bill requires a judge to consider the results of a risk and needs assessment when determining the conditions of community supervision. Second, it requires that the community supervision departments use validated assessment tools. Third, the bill requires that conditions imposed are not duplicative. Lastly, the judge must consider the defendant’s ability to satisfy these conditions in conjunction with their work, education, community service, and financial obligations. Services for successful diversion include mental health and/or substance abuse treatment, education assistance, job training and placement, housing assistance, and other life skills training. This bill enables judges to create a comprehensive strategy to give the defendant the best opportunity for success. S.B. 1584 amends current law relating to the conditions of community supervision.

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

**Effective Date:** September 1, 2017

39. **S.B. 1649** (Watson) *Relating to increasing the punishment for certain conduct constituting the offense of criminal trespass.*

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

**Codification:** Section 30.05, Penal Code

**Effective Date:** September 1, 2017

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

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

S.B. 1913 authorizes a court, including a justice or municipal court, to impose a fine and costs at the punishment stage in a case in which the defendant entered a plea in open court only if the court makes a determination that the defendant has sufficient resources or income to pay all or part of the fine and costs. The bill requires the court, in making that determination, to consider the defendant's financial history and any other information relevant to the defendant's ability to pay. The bill prohibits a court, including a justice or municipal court, from issuing a

capias pro fine for the defendant's failure to satisfy a judgment according to its terms unless the court holds a hearing on the defendant's ability to satisfy the judgment and the defendant fails to appear at the hearing or, based on evidence presented at the hearing, the court makes either of the following determinations: the defendant is not indigent and has failed to make a good faith effort to discharge the fine or costs or the defendant is indigent, has failed to make a good faith effort to discharge the fine or costs by performing community service, and could have discharged the fine or costs by performing community service without experiencing any undue hardship. The bill requires the court to recall a capias pro fine if before the capias pro fine is executed the defendant voluntarily appears to resolve the amount owed.

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

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

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

S.B. 1913 prohibits a justice or municipal court judge from issuing an arrest warrant for a defendant's failure to appear, including failure to appear as required by a citation issued by a peace officer charging a person with a Class C misdemeanor other than a public intoxication offense, unless the justice or judge provides a notice containing certain specified information to the defendant by telephone or regular mail and the defendant fails to appear before the justice

or judge. The bill authorizes a defendant who receives such notice to request an alternative date or time to appear before the justice or judge if the defendant is unable to appear on the date and time included in the notice. The bill requires a justice or judge to recall an arrest warrant for the defendant's failure to appear if the defendant voluntarily appears and makes a good faith effort to resolve the arrest warrant before the warrant is executed.

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

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

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

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

S.B. 1913 amends the Transportation Code to establish that information of a past due fine, fee, or tax owed to a county by the owner of a motor vehicle that is provided to a county assessor-collector or to the Texas Department of Motor Vehicles (TxDMV) as grounds to

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

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

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

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

**Effective Date:** September 1, 2017

## **Wrongful Convictions**

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

41. **H.B. 34** (Smithee | Moody | Canales) *Relating to measures to prevent wrongful convictions.*

### **Summary:**

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

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

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

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

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

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

H.B. 34 requires the Texas Forensic Science Commission to conduct a study regarding the use of drug field test kits by law enforcement agencies in the state and to conduct a separate study regarding the manner in which crime scene investigations are conducted in Texas. The bill sets out requirements of the commission in conducting each study and requires the commission, not later than December 1, 2018, to submit to the governor, the lieutenant

governor, and each member of the legislature a written report for each study that summarizes the results of the applicable study and includes any legislative recommendations.

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

**Effective Date:** September 1, 2017

42. **S.B. 1253** (West) *Relating to the electronic recording and admissibility of certain custodial interrogations.*

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

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

**Effective Date:** September 1, 2017

### **Civil Rights**

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

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

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

**Effective Date:** September 1, 2017

44. **S.B. 1314** (Rodríguez) *Relating to the regulation of substance abuse facilities and programs for juveniles.*

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

S.B. 1314 amends the Health and Safety Code to exempt a juvenile justice facility and juvenile justice program as defined by those Family Code provisions from statutory provisions governing the regulation of chemical dependency treatment facilities.

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

**Effective Date:** September 1, 2017

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## JUVENILE JUSTICE

45. **H.B. 674** (Johnson, Eric | Giddings | Anchia | Collier | Hinojosa, Gina) *Relating to the suspension of a student enrolled in a grade level below grade three from public school and to a positive behavior program for public schools.*

**Summary** – H.B. 674 amends the Education Code to prohibit the placement of a public school student enrolled in a grade level below grade three in out-of-school suspension unless while on school property or while attending a school-sponsored or school-related activity on or off of school property the student engages in the following: conduct that contains the elements of the offense of the unlawful carrying of weapons or the intentional or knowing possession, manufacture, transport, repair, or sale of certain prohibited weapons; conduct that contains the elements of a violent offense of assault, sexual assault, aggravated assault, or aggravated sexual assault; or selling, giving, or delivering to another person or possessing, using, or being under the influence of any amount of marihuana, a controlled substance, a dangerous drug, or an alcoholic beverage. The bill applies beginning with the 2017-2018 school year.

**Codification:** Section 37.005, Education Code

**Effective Date:** Immediately

46. **H.B. 932** *Relating to the collection of information concerning the number of juvenile offenders committed to the Texas Juvenile Justice Department who have been in foster care.*

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

concerning the total number and percentage of children in TJJD custody during the preceding two years who have at any time been in foster care.

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

**Effective Date:** September 1, 2017

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

**Summary** – H.B. 1204 amends the Family Code to require a person who is conducting a preliminary investigation of a child referred to a juvenile court to, as appropriate, refer the case to a community resource coordination group (CRCG), a local-level interagency staffing group, or other community juvenile service provider for services under the bill's provisions if the person determines that the child is younger than 12 years of age, there is probable cause to believe the child engaged in delinquent conduct or conduct indicating a need for supervision, the child's case does not require referral to the prosecuting attorney, the child is eligible for deferred prosecution, and the child and the child's family are not currently receiving services under the bill's provisions and would benefit from receiving the services. The bill requires a CRCG, a local-level interagency staffing group, or other community juvenile services provider, on receipt of such a referral, to evaluate the child's case and make recommendations to the applicable juvenile probation department for appropriate services for the child and the child's family.

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

**Codification:** Section 53.01, Family Code

**Effective Date:** September 1, 2017

48. **H.B. 3705** (White) *Relating to local juvenile justice information systems.*

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

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

**Effective Date:** September 1, 2017

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

**Summary** – H.B. 3706 amends the Education Code to authorize a public school district's community-based dropout recovery education program to be offered at a campus or through the use of an online program that leads to a high school diploma and prepares the student to enter the workforce. The bill limits the application of existing program requirements to a campus-based program and requires an online program to include as a part of its curriculum credentials, certifications, or other course offerings that relate directly to employment

opportunities in Texas; to employ as faculty and administrators persons with baccalaureate or advanced degrees; to provide an academic coach and local advocate for each student; to use an individual learning plan to monitor each student's progress; to establish satisfactory requirements for the monthly progress of students according to standards set by the commissioner of education; to provide a monthly report to the student's school district regarding the student's progress; to perform satisfactorily according to performance indicators and accountability standards adopted for alternative education programs by the commissioner; and to comply with state public education law and rules adopted under that law. The bill authorizes a school district, to enable the district to provide an optional flexible school day program, to allow a student to enroll in a dropout recovery program in which courses are conducted online and exempts such an online course from the requirement that a course offered under an optional flexible school day program provide a certain amount of instructional time and be a certain school day length. The bill applies beginning with the 2017-2018 school year.  
**Codification:** Section 29.081, Education Code; Sections 29.0822(b) and (c), Education Code  
**Effective Date:** September 1, 2017

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

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

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

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

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

by TCOLE on or before January 1, 2018, to complete a civilian interaction training program not later than January 1, 2020.

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

**Effective Date:** September 1, 2017

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

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

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

S.B. 179 explicitly subjects an open-enrollment charter school to prohibitions, restrictions, or requirements, as applicable, relating to bullying prevention policies and procedures and imposed by Education Code provisions relating to public education or by a rule adopted under those provisions.

S.B. 179 amends the Civil Practice and Remedies Code to authorize a recipient of cyberbullying behavior who is younger than 18 years of age at the time the cyberbullying, as defined by the bill, occurs or a parent of or person standing in parental relation to the recipient to seek injunctive relief against the individual who was cyberbullying the recipient or, if the individual is younger than 18 years of age, against a parent of or person standing in parental relation to the individual. The bill authorizes a court to issue a temporary restraining order, temporary injunction, or permanent injunction appropriate under the circumstances to prevent

any further cyberbullying, including an order or injunction enjoining a defendant from engaging in cyberbullying or compelling a defendant who is a parent of or person standing in parental relation to an individual who is younger than 18 years of age to take reasonable actions to cause the individual to cease engaging in cyberbullying. The bill defines "cyberbullying" by reference to the applicable Education Code provisions, as amended by the bill. S.B. 179 entitles a plaintiff in an action for injunctive relief for the cyberbullying of a child to a temporary restraining order on showing that the plaintiff is likely to succeed in establishing that the individual was cyberbullying the recipient and expressly does not require the plaintiff to plead or prove that, before notice can be served and a hearing can be held, immediate and irreparable injury, loss, or damage is likely to result from past or future cyberbullying by the individual against the recipient.

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

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

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

**Effective Date:** September 1, 2017

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

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

**Codification:** Chapter 142, Human Resources Code

**Effective Date:** September 1, 2017

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

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

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

**Effective Date:** September 1, 2017

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## FAMILY LAW

### Conservatorship & Dissolution of Marriage

54. **H.B. 1043** (Relating to a court order authorizing temporary care of a minor child.)

**Summary** – H.B. 1043 amends the Family Code to allow certain relatives, who are seeking a court order for temporary authorization to care for a child, file a petition in district court in the relative's county of residence and the court is required to award temporary care of the child upon a finding that it is necessary to the child's welfare providing no objection is made by either the child's parent, conservator or guardian. The Temporary Care Order expires one year post issuance or earlier upon the Court's determination and may be renewed for an additional year. A request for termination of the Order may be made to the Court by the child's parent, conservator or guardian at any time. This Order has no effect upon parental, guardian or conservator's rights nor does it establish legal custody of the child.

**Codification:** Chapter 35, Family Code

**Effective Date:** June 1, 2017

55. **H.B. 1495** (Thompson, Senfronia) *Relating to the rendition of certain temporary orders during the pendency of a suit for modification of an order that provides for the conservatorship, support, or possession of or access to a child.*

**Summary** – H.B. 1495 amends the Family Code to prohibit a court from rendering, while a suit for modification of a temporary order that provides for the conservatorship, support, or possession of or access to a child is pending, an order that creates a designation of the person who has the exclusive right to decide the child's primary residence and an order that creates, changes, or eliminates a geographic area within which a conservator must maintain the child's primary residence under the final order.

**Codification:** Section 156.006(b), Family Code

**Effective Date:** September 1, 2017

56. **H.B. 1501** (Thompson, Senfronia) *Relating to child custody evaluations; creating an offense.*

**Summary** – H.B. 1501 amends the Family Code and Government Code to revise provisions relating to child custody evaluations and to make a child custody evaluator appointed in a suit affecting the parent-child relationship immune from liability for civil damages arising from an action taken, a recommendation made, or an opinion given in the suit. The bill establishes four years of age as the minimum age at which a child who is the subject of a suit may be interviewed and revises the elements required to be included in an evaluation.

House Bill 1501 entitles a child custody evaluator to obtain records from specified governmental entities that relate to any person residing in a residence subject to a child custody evaluation and creates a Class A misdemeanor offense for a person who recklessly discloses confidential record information so obtained. The bill also entitles a child custody evaluator to obtain from the Department of Public Safety criminal history record information that relates to a person involved in the evaluation and prohibits a child custody evaluator from releasing or disclosing the information to a person other than the court ordering the applicable evaluation, with certain exceptions.

**Codification:** Sections 107.009, 107.103, 107.108, 107.109, 107.1101, 107.1111, 107.113, Family Code; 411.1285, Government Code

**Effective Date:** September 1, 2017

57. **H.B. 2703** (Muñoz, Jr.) *Relating to a temporary order appointing a receiver in a suit for dissolution of a marriage.*

**Summary** – H.B. 2703 amends the Family Code to require a court, not later than the seventh day after the date a receiver is appointed for the preservation and protection of the property of the parties in a pending suit for dissolution of a marriage, to issue written findings of fact and conclusions of law in support of the receiver's appointment. The bill requires a court that dispenses with the issuance of a bond between the spouses in connection with the receiver's appointment to include in the court's findings an explanation of the reasons the court dispensed with the issuance of a bond.

**Codification:** Section 6.502, Family Code

**Effective Date:** September 1, 2017

58. **H.B. 3052** (Herrero) *Relating to certain protective orders and agreements involving families.*

**Summary - H.B. 3052** amends the Family Code to include among the acts a relative of a child may perform under an authorization agreement between the relative and the child's parent obtaining copies or originals of state-issued personal identification documents for the child, including the child's birth certificate, and to the extent authorized under federal law, copies or originals of federally issued personal identification documents for the child, including the child's social security card. The bill expands the prohibition against a parent executing an authorization agreement without a written order by the appropriate court if the appropriate court has continuing, exclusive jurisdiction over the child to include prohibiting a parent from executing the agreement without the required court order if any court has such jurisdiction over the child. The bill makes mandatory the conditional requirement for the parties to an authorization agreement to mail a copy of an executed agreement by first class mail or international first class mail to a parent who did not sign and is not a party to the agreement and changes the deadline by which the parties must mail a copy of the agreement in this manner from not later than the 45th day after the date the agreement is executed to not later than the 10th day after the date the authorization agreement is executed. The bill revises the statements an authorization agreement is required to contain to reflect the bill's changes.

**H.B. 3052 cont'd.**

**Codification:** Section 34.002(a), Section 34.004(b); Section 34.003 Family Code

**Effective Date:** September 1, 2017

59. **S.B. 495** (Uresti) *Relating to certain procedural measures in a suit affecting a parent-child relationship to protect a child against child neglect or physical or sexual abuse.*

**Summary** – S.B. 495 amends the Family Code to extend the rebuttable presumption in a child custody hearing that it is not in the best interest of a child for a parent to have unsupervised visitation to a situation in which credible evidence is presented of a history or pattern of past or present child neglect or abuse or family violence by any other person who resides in that parent's household or who is permitted by that parent to have unsupervised access to the child during the custody period. The bill authorizes a court to decline to enter a judgment on a mediated settlement agreement in a suit affecting the parent-child relationship if the court finds that the agreement would permit certain persons subject to sex offender registration to reside in the same household as the child or otherwise have unsupervised access to the child and finds that the agreement is not in the child's best interest.

**Codification:** Section 153.004 & 153.0017(e-1), Family Code

**Effective Date:** September 1, 2017

60. **S.B. 1237** (Rodríguez) *Relating to procedures in a suit for dissolution of a marriage or a suit affecting the parent-child relationship.*

**Summary** – S.B. 1237 amends the Family Code to update the procedures that are applied in a suit for dissolution of a marriage or a suit affecting the parent-child relationship. The bill establishes the following: the types of temporary orders that can be rendered and enforced by a trial court during an appeal; the conditions under which a trial court is prohibited from rendering or modifying an order to assist in the implementation of or to clarify the property division made or approved in a decree; the authority of a trial court in rendering or modifying certain temporary orders; and the written findings of fact and conclusions of law that must be included in the order in a suit for dissolution of a marriage in which the estate of the parties is divided.

**Codification:** Sections 6.709, 6.711, 9.007(c), 109.001-109.003, 153.258, 154.130, and 156.005, Family Code

**Effective Date:** September 1, 2017

61. **S.B. 1329** (Huffman) *Relating to the operation and administration of and practice in courts in the judicial branch of state government; increasing a fee.*

**Summary** – S.B. 1329 authorizes an associate judge to render a final order in a suit affecting the parent-child relationship if the parties waive the right to a de novo hearing before the court that referred the suit to the associate judge and to specify that such a waiver is made in writing before the start of a hearing conducted by the associate judge. The bill establishes that such a rendered order that is signed by the associate judge constitutes an order of the referring court and makes the date that such an order is signed by an associate judge the controlling date for the purpose of an appeal to, or a request for other relief relating to the order from, a court of appeals or the supreme court. The bill establishes that such an order signed by an associate judge before May 1, 2017, is a final order rendered as of the date the order was signed and that the legislature ratifies such an order. The bill establishes that the following types of final orders rendered and signed by an associate judge, if a party does not request a de novo hearing before the referring court, become final after the expiration of the prescribed period for filing a request

for such a hearing: a final order agreed to in writing as to both form and substance by all parties, a final default order, a temporary order, or a final order in a case in which a party properly files an unrevoked waiver that waives notice to the party of the final hearing or waives the party's appearance at the final hearing.

S.B. 1329 authorizes an associate judge to hear and render an order in a suit for the adoption of a child for whom the Department of Family and Protective Services has been named managing conservator.

**Codification:** Sections 101.034, 201.007(a) and (c), and 201.204, Family Code; Subchapter C, Chapter 24, Government Code

**Effective Date:** September 1, 2017

### **Domestic Violence**

62. **H.B. 3649** (Herrero | Guillen) *Relating to confidential communications of victims of certain family violence offenses.*

**Summary** – H.B. 3649 amends the Family Code to make a written or oral communication between a victim of family violence and an advocate who has at least 20 hours of training in assisting victims of family violence and is an employee or volunteer of a family violence center made in the course of advising, advocating for, counseling, or assisting the victim confidential and to prohibit such a communication from being disclosed. The bill grants a victim of family violence the privilege to refuse to disclose and to prevent another from disclosing such a confidential communication and establishes that the privilege may be claimed by a victim or a victim's attorney on a victim's behalf; a parent, guardian, or conservator of a victim under 18 years of age; or an advocate or a family violence center on a victim's behalf.

H.B. 3649 limits the circumstances under which such a confidential communication may be disclosed to disclosure to another individual employed by or volunteering for a family violence center for the purpose of furthering the advocacy process; to other persons in the context of a support group or group counseling in which a victim is a participant; or for the purposes of making a report under statutory provisions relating to an investigation of a report of child abuse or neglect or Human Resources Code provisions relating to a report of abuse, neglect, or exploitation of elderly persons, persons with disabilities, or persons receiving services from certain providers. The bill establishes that the Texas Rules of Evidence govern the disclosure of such a confidential communication in a criminal or civil proceeding by an expert witness who relies on facts or data from the communication to form the basis of the expert's opinion.

**Codification:** Subtitle C, Title 4, Family Code

**Effective Date:** September 1, 2017

63. **S.B. 257** (Taylor, Van) *Relating to judicial review of protective orders and the duration of those orders.*

**Summary** – S.B. 257 amends the Code of Criminal Procedure and Family Code to exempt a protective order issued to a victim of sexual assault or abuse, stalking, or trafficking from provisions authorizing a person who is the subject of such a protective order to seek judicial review of the order. The bill limits the ability of a person subject to a family violence protective order to challenge an order that is effective for longer than two years to two instances. The first of two motions may not be filed earlier than one year after the original order was rendered. If

the duration of the protective order exceeds two years, a second motion may not be filed earlier than one year after the conclusion of the first motion.

**Codification:** Section 85.025, Family Code; Article 7A.07(c), Code of Criminal Procedure

**Effective Date:** September 1, 2017

64. **S.B. 712** (Hinojosa) *Relating to the duration of certain protective orders against family violence.*

**Summary** – Senate Bill 712 amends the Family Code to trigger a court's authority to render a protective order that is effective for more than two years if the court finds that the subject of the protective order engaged in felony conduct involving family violence against the applicant or a member of the applicant's family or household, regardless of whether the person has been charged with or convicted of the offense.

**Codification:** Section 85.025, Family Code

**Effective Date:** September 1, 2017

65. **S.B. 1242** (Rodríguez) *Relating to the confidentiality of certain personal information of an applicant for or a person protected by a protective order.*

**Summary** – S.B. 1242 amends the Family Code to authorize a court, on request by an applicant for a protective order, to protect the applicant's mailing address by rendering an order requiring the applicant to disclose the applicant's mailing address to the court, designate a person to receive on behalf of the applicant any notice or documents filed with the court related to the application, and disclose the designated person's mailing address to the court; requiring the court clerk to strike the applicant's mailing address from the public records of the court, if applicable, and maintain a confidential record of the applicant's mailing address for use only by the court; and prohibiting the release of the information to the respondent. The bill includes among the notice requirements for an application for a protective order a requirement that the notice show the name and mailing address of the designated person, if applicable. The bill requires a court, on granting a request for confidentiality of certain information excluded from a protective order, to order the clerk to maintain a confidential record of the information for use only by a law enforcement agency for purposes of entering certain information required by Government Code provisions relating to the bureau of identification and records within the administrative division of the Department of Public Safety (DPS) into the statewide law enforcement information system maintained by DPS.

**Codification:** Subchapter A, Chapter 82, Family Code; Section 411.042, Government Code

**Effective Date:** September 1, 2017

66. **S.B. 1250** (West) *Relating to the admissibility of certain evidence in the prosecution of certain offenses involving family violence.*

**Summary** – S.B. 1250 amends the Code of Criminal Procedure to include a proceeding in the prosecution of a defendant for, or for an attempt or conspiracy to commit, the offense of injury to a child, elderly individual, or disabled individual committed against a person who is in or has been in a dating relationship with, or is in the family or household of, the defendant in the scope of provisions relating to the admissibility of certain evidence in the prosecution of certain offenses involving family violence.

**Codification:** Article 38.371(a), Code of Criminal Procedure and Section 25.07 or 25.072, Penal Code.

**Effective Date:** September 1, 2017

## **Guardianship**

67. **S.B. 36** (Zaffirini) *Relating to the regulation of certain guardianship programs.*

**Summary** – S.B. 36 Senate Bill 36 amends the Estates Code and Government Code to provide for the regulation of guardianship programs exclusive of guardianship provided by a program under contract with the Health and Human Services Commission. The bill requires a guardianship program to register with and hold a certificate issued by the Judicial Branch Certification Commission and requires a person who directly supervises an individual that will provide guardianship services to be appropriately certified. The commission must adopt standards to monitor and ensure the quality of services provided by a guardianship program and the Supreme Court of Texas must adopt rules and procedures for the management of the program registration certificate. The commission must make a publicly accessible updated list of all registered guardianship programs available on its website.

**Codification:** Subchapter H, Chapter 1104, Estates Code and Chapter 155, Government Code  
**Effective Date:** September 1, 2017

68. **S.B. 39** (Zaffirini) *Relating to guardianships for persons who have physical disabilities or who are incapacitated.*

**Summary** -S.B. 39 clarifies that children and siblings do not need court permission to intervene in guardianship cases involving their loved ones. This ensures that these immediate family members have an opportunity to state their position in court.

S.B. 39 also allows an application for guardianship to omit the address of any person with a guardian who was ever protected by a protective order, as opposed to just a person who is protected at the time the application is filed. This expands this privacy protection to a greater number of at-risk Texans.

S.B. 39 codifies the duties of a supporter under a supported decision-making agreement (SDMA), including the duties to act in good faith, to act within the authority granted in the agreement, to act loyally and without self-motivation, and to avoid conflicts of interest. This clarity regarding responsibilities under SDMAs encourages more persons to use this tool.

S.B. 39 clarifies the court procedure to remove an agent who has a power of attorney (POA) and is engaged in malfeasance and to appoint a successor agent named in the POA, so the court does not have to resort to a guardianship to protect a person. S.B. 39 provides for the automatic suspension of a POA when a guardianship of the estate is established. This change prevents situations where there are two persons, guardian of the estate and agent under POA, with conflicting authority to make financial decisions on behalf of the same person.

S.B. 39 amends current law relating to estates and to guardianships, substitutes for guardianships, and durable powers of attorney for persons with disabilities or who are incapacitated.

S. B. 39 also amends procedures for removal of an Independent Executor.

**Codification:** Section 751.051, 751.052, 751.054, 751.055 of the Estates Code

**Effective Date:** September 1, 2017

69. **S.B. 1016** (Creighton) *Relating to the appointment and duties of court investigators for certain courts in guardianship proceedings.*

**Summary** – S.B. 1016 amends the Estates Code to authorize the judge of a county court exercising its probate jurisdiction or a court created by statute and authorized to exercise original probate jurisdiction, other than a statutory probate court, to appoint a court investigator

if the appointment is authorized by the commissioners court. The bill authorizes the commissioner's court to authorize additional court investigators for a county if necessary and requires the commissioner's court to set the salary of a court investigator. The bill establishes that the appointment of a court investigator by the judge of a statutory probate court is governed by Government Code provisions relating to court investigators. The bill makes the requirement for a court investigator to supervise and serve as the chief court visitor for a court visitor program contingent on the court for which the investigator is appointed operating that type of program.

**Codification:** Sections 1002.009, 1054.152, and 1054.156, Estates Code

**Effective Date:** September 1, 2017

70. **S.B. 1559** (Taylor, Larry) *Relating to a fee exemption for guardianship proceedings of certain military service members and certain law enforcement officers, firefighters, and other first responders.*

**Summary** – S.B. 1559 amends the Estates Code to prohibit the clerk of a county court from charging or collecting from the estate of a proposed ward or ward a fee for the filing of a guardianship proceeding or a fee for any service rendered by the court regarding the administration of the guardianship if the court finds that the proposed ward or ward became incapacitated as a result of a personal injury sustained while in active service as a member of the U.S. armed forces in an area designated as a combat zone by the president of the United States or as the result of a personal injury sustained in the line of duty in the individual's position that would qualify an eligible survivor, under specified Government Code provisions, to financial assistance for survivors of certain law enforcement officers, fire fighters, and others. The bill, in temporary provisions set to expire September 1, 2019, establishes that the clerk of a county court is not required to refund a fee exempt under the bill's provisions that is paid before September 1, 2017. The bill's provisions apply to a guardianship proceeding that is pending or commenced on or after the bill's effective date.

**Codification:** Subchapter B, Chapter 1053, Estates Code

**Effective Date:** September 1, 2017

71. **S.B. 1709** (Zaffirini) *Relating to the requirement of a guardian to provide information regarding a ward's health and residence to certain relatives of the ward.*

**Summary** – S.B. 1709 amends the Estates Code to require a citation to appear and answer an application for guardianship personally served by a sheriff or other applicable officer on the proposed ward's parents or the proposed ward's spouse to contain a statement notifying the relative that, if a guardianship is created for the proposed ward, the relative is required to elect in writing in order to receive notice about the ward's health and residence from the guardian. The bill requires the notice containing information required in the citation issued on the filing of an application for guardianship mailed by the person filing the application to each adult child of the proposed ward and each adult sibling of the proposed ward to contain a statement notifying the relative that, if a guardianship is created for the proposed ward, the relative is required to elect in writing in order to receive notice about the ward's health and residence from the guardian.

S.B. 1709 limits the applicability of statutory provisions governing a guardian's duty to inform certain relatives about a ward's health and residence to such relatives against whom a protective order has not been issued to protect the ward, who have not been found by a court or other state agency to have abused, neglected, or exploited the ward, and who have elected in writing to receive such notice about the ward. The bill adds a temporary provision, set to

expire January 1, 2020, and applicable only to a guardianship created on or before the bill's effective date or created after the bill's effective date if the application for guardianship was pending on the bill's effective date, requiring a guardian, as soon as possible but not later than September 1, 2019, to provide notice to such a relative of the ward whose whereabouts are known or can reasonably be ascertained that the relative is required to elect in writing in order to receive notice about the ward's health and residence.

**Codification:** Sections 1151.056(a) and (g), Estates Code

**Effective Date:** September 1, 2017

72. **S.B. 1710** (Zaffirini) *Relating to applications for the complete restoration of a ward's capacity or modification of a guardianship.*

**Summary** – S.B. 1710 amends the Estates Code to prohibit a court, if the guardian of a ward who is the subject of an application for an order for complete restoration of the ward's capacity or for modification of a ward's guardianship has resigned, was removed, or has died, from requiring the appointment of a successor guardian before considering the application. That prohibition applies to such an application filed before, on, or after the bill's effective date. The bill establishes that the written letter or certificate from a physician otherwise required for such restoration or modification is not required before the appointment of a court investigator or guardian ad litem to investigate the circumstances of a ward who requests the restoration or modification by informal letter to the court. The bill requires the court, not later than the 30th day after the date the court receives such an informal letter from a ward, to send the ward a letter by certified mail acknowledging the receipt of the informal letter and advising the ward of the date on which the court appointed the court investigator or guardian ad litem and the contact information for the court investigator or guardian ad litem. The bill requires the court investigator or guardian ad litem to provide to the ward a report of the investigation's findings and conclusions.

**Codification:** Sections 1202.051 and 1202.054, Estates Code

**Effective Date:** September 1, 2017

### **Child Protective Services**

**\*\* (African American children were 45% of CPS removals in 2016 in Harris County while representing only about 20% of the general population. This population also remains in CPS custody longer than other races)**

73. **H.B. 4** (Burkett) *Relating to the relative or other designated caregiver placement program and to monetary assistance provided by the Department of Family and Protective Services to certain relative or designated caregivers; creating a criminal offense; creating a civil penalty.*

**Summary** - Interested parties note that children who are placed with certain relative or other designated caregivers have more stability and permanency in their lives and have better outcomes than children placed in non-relative caregiver or non-designated caregiver foster care. H.B. 4 seeks to improve outcomes by addressing the level of support for relative or other designated caregivers. House Bill 4 enacts Texas Family Code 264.755 (Caregiver Assistance Agreement) to allow DFPS to enter into monetary agreements with relatives providing care for children in temporary managing conservatorship. Families making less than or equal to 300% of the federal poverty level are eligible. The payments are capped at 50% of the basic foster

care rate for a child (about \$325.00 per child). Monetary assistance is available for one year with one six month extension for good cause.

**Codification:** Sections 264.755, 264.7551, and 264.762, Family Code

**Effective Date:** September 1, 2017 provided that this Act takes effect only if a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 85th Legislature. If the legislature does not appropriate money specifically for the purpose of implementing this Act, this Act has no effect.

74. **H.B. 5** (Frank) *Relating to the powers and duties of the Department of Family and Protective Services and the transfer of certain powers and duties from the Health and Human Services Commission.*

**Summary** - H.B. 5 seeks to better meet the needs of children in the foster care system and at-risk youth in Texas by removing DFPS from the state's health and human services system under the direction of the Health and Human Services Commission. H.B. 5 establishes DFPS as a stand-alone agency. References throughout the Family Code to the executive commissioner of Health and Human Services Commission (HHSC) are now in reference to the commissioner of DFPS; references to HHSC now mean DFPS. The commissioner of DFPS will be appointed by and report directly to the Governor and will be limited to a two-year term.

**Codification:** Section 58.0051, 58.0072, 107.152, 107.159, 107.160, 162.304, and Subchapter A, Chapter 261, Family Code

**Effective Date:** September 1, 2017 except Section 24 takes effect immediately.

75. **H.B. 7** (Wu) *Relating to child protective services suits by the Department of Family and Protective Services.*

**Summary** - H.B. 7 enacts new requirements for attorneys and guardians ad litem, new restrictions on DFPS related to pleadings and affidavits in support of petitions to remove children to foster care, and new duties on courts to ensure better services are delivered to youth who are transitioning out of foster care. House Bill 7 also eliminates group homes and creates five new license types: Child Placing Agency (CPA), General Residential Operation (GRO), Continuum of Care Operation, Specialized Child-Care Operation, and Cottage Home Operation.

More specifics (courtesy of One Voice Texas (OVT)):

- DFPS and Texas Juvenile Justice Department (TJJD) shall develop protocols and coordinate for sharing information to identify and coordinate services;
- DFPS and Judicial Commission shall review jury submission and make recommendations by 12/31/17 whether broad form or specific jury questions should be required;
- expands who GAL should interview to educators and child welfare service providers, requires that GAL have access to child's placement and be consulted regarding child's placement; that they evaluate whether child service providers are protecting the child's best interest; receive notification to attend all meetings related to child's service plan and attend court ordered mediation regarding the child's case;
- court orders may provide for continuing appointment of GAL or AAL for as long as child is in conservatorship;
- a court may not order TPR regarding a parent not following a court order if parent is able to show by preponderance of evidence that the parent was unable to but could not for a reason not attributable to parent's fault;

- DFPS may file solely or jointly for protective order of child if they have temporary managing conservatorship (TMC) and determine that the child is or has history of being a victim of maltreatment and is at risk of continued abuse or being taken illegally from the placement; DFPS must also certify they were unable to locate the child's parent or other respondent to the application and that the caregiver filing jointly hasn't abused the child;
- if child is in immediate danger can file ex-parte;
- at each court hearing the court shall review and include in a statement of findings whether there is the option of placing the child with family;
- parent voluntary agreement to temporarily place a child in the managing conservatorship of DFPS is not an admission of guilt;
- on request of parent attorney or AAL, DFPS before adversary hearing shall provide name of any person to be called as a witness, a copy of any offense report and copy of photos, videos or other recording to be presented as evidence;
- to suit for taking possession adds requirement that there is a continuing danger to the physical health and safety of a child and allowing the child to remain in the home would be contrary to his/her welfare;
- if non-indigent parent appears in opposition to the suit the court may postpone the full adversary hearing for 7 days to allow the parent to hire an attorney or to provide the parent's attorney time to respond to the petition;
- at each permanency hearing the court shall make a finding on whether returning the child home is safe and appropriate;
- notices to hearing must state that the individual may attend the hearings and be heard; the court shall determine if the child's caregiver is present and allow them to testify on information regarding the child;
- dismissal of suit after one year without extension shall be done without additional court order. 60 days before automatic dismissal, the court shall notify all parties;
- court can retain jurisdiction and not dismiss if DFPS or the court is on schedule to transition the child home to the parents while they complete their service plans;
- requires the supreme court to establish civil and appellate procedures to address conflicts between filing of a motion for new trial and filing of an appeal of a final order and the period for a court reporter to submit the trial record to an appellate court;
- if a court finds that a health care professional was consulted, but court declines to follow recommendation, they shall make findings as to why;
- person under 18 can be admitted to an inpatient mental health facility pursuant to an application for court-ordered mental health services/emergency detention or order for protective custody if DFPS requests admission and physician states opinions and reasons for it. Admission shall be treated as a significant event and court shall be notified within 3 business days;
- defines cottage home as sharing child-care administrator, homes all in same location, each home with 1 houseparent and not more than 6 children per home;
- requires converting group homes to agency foster homes (not more than 6 kids) or closing those homes (8-31-17)

**Codification:** Family Code multiple sections

**Effective Date:** September 1, 2017

76. **H.B. 88** (Martinez | Mando | Guillen | Gonzalez | Mary | Collier) *Relating to an unlawful employment practice by an employer whose leave policy does not permit an employee to use leave to care for the employee's foster child.*

**Summary** – H.B. 88 amends the Labor Code to make it an unlawful employment practice for an employer to administer a leave policy under which an employee is entitled to personal leave to care for or otherwise assist the employee's sick child that does not treat the employee's foster child in the same manner as an employee's biological or adopted child.

**Codification:** Section 21.0595, Labor Code

**Effective Date:** September 1, 2017

77. **H.B. 871** (Roberts | Frank | Miller | Wu | Klick) *Relating to child and family support services for families in crisis, including authorization agreements.*

**Summary** – H.B. 871 amends the Family Code to expand the class of persons with whom a parent of a child may enter into an authorization agreement to perform certain acts in regard to the child, including for a child placed under a parental child safety agreement, from only a grandparent, adult sibling, or adult aunt or uncle of the child to any adult caregiver authorized by a parent to provide temporary care for the child under an authorization agreement. The bill establishes that an authorization agreement between a child's parent and an adult caregiver does not subject the adult caregiver to any law or rule governing the licensing or regulation of a residential child-care facility. The bill establishes that a child who is the subject of such an authorization agreement is not considered to be placed in foster care and the parties to the authorization agreement are not subject to any law or rule governing foster care providers. The bill specifies that an authorization agreement is for a term of six months from the date the parties enter into the agreement and renews automatically for six-month terms unless an earlier expiration date is stated in the authorization agreement, the authorization agreement is terminated, or a court authorizes the continuation of the agreement. The bill revises the statement by the parent that is required to be contained in the authorization agreement to reflect those authorization agreement terms.

H.B. 871 requires the Department of Family and Protective Services (DFPS) to cooperate with nonprofit organizations, including faith-based organizations, in providing information to families in crisis regarding child and family services, including respite care, voluntary guardianship, and other support services available in the child's community. The bill establishes that DFPS does not incur any obligation as a result of providing such information and exempts DFPS from liability for damages arising out of the provision of that information. The bill prohibits DFPS from initiating an investigation of child abuse or neglect based solely on a request submitted to DFPS by a child's parent for information relating to child and family services available to families in crisis.

H.B. 871 amends the Human Resources Code to make statutory provisions relating to the prohibition against a person operating a childcare facility or child-placing agency without a license issued by DFPS inapplicable to a living arrangement in a caretaker's home involving one or more children or a sibling group in which the caretaker has a written authorization agreement with the parent of each child or sibling group to care for each child or sibling group; does not care for more than six children, excluding children who are related to the caretaker; and does not receive compensation for caring for any child or sibling group.

**Codification:** Chapter 34, Section 264.2642 and 264.2043, Family Code; Section 42.041(b), Human Resources Code

**Effective Date:** September 1, 2017

78. **H. B. 928** *Relating to assisting certain children who are in foster care or who have been adopted in the process of applying to institutions of higher education.*

**Summary** – H.B. 928 amends the Family Code to require a Department of Family and Protective Services (DFPS) employee who is a member of a community resource coordination group (CRCG) established under Government Code provisions relating to a memorandum of understanding for coordinating services for persons needing multiagency services to inform the group about certain tuition and fee waivers for institutions of higher education that are available to eligible children in foster care and to eligible adopted children. The bill requires such a DFPS employee to collaborate with the superintendent of each school district in the area served by the group and each school counselor assigned to a campus in that area to identify foster children and adopted children who are eligible for those tuition and fee waivers. The bill requires the DFPS employee, after identifying such eligible children, to facilitate each child's transition to an institution of higher education by assisting the child with the completion of any applications for admission or for financial aid, arranging and accompanying the child on campus visits, assisting the child in researching and applying for private or institution-sponsored scholarships, identifying whether the child is a candidate for appointment to a military academy, and assisting the child in registering and preparing for college entrance examinations, including arranging for the payment of any examination fees by DFPS.

**Codification:** Section 264.1211, Family Code

**Effective Date:** September 1, 2017

79. **H.B. 1410** (Ortega | Wu | Frank | Cain) *Relating to the ability of foster parents to intervene in certain suits affecting the parent-child relationship.*

**Summary** – H.B. 1410 amends the Family Code to condition the authorization for a court to grant leave for a foster parent to intervene in a pending suit requesting possessory conservatorship of a child filed by another person if there is satisfactory proof to the court that appointment of a parent as a sole managing conservator or both parents as joint managing conservators would significantly impair the child's physical health or emotional development on the condition that the foster parent would have standing to file an original suit affecting the parent-child relationship on the basis of the child's placement by the Department of Family and Protective Services in the foster parent's home if the foster parent would have standing to file an original suit as provided by Section 102.003(a)(12).

**Codification:** Section 102.004, Family Code

**Effective Date:** September 1, 2017

80. **H.B. 1521** (White) *Relating to the exchange of certain information between the Department of Family and Protective Services or certain foster care services contractors and a state or local juvenile justice agency.*

**Summary** – H.B. 1521 amends the Family Code to require a state or local juvenile justice agency and the Department of Family and Protective Services or certain foster care services contractors to, on request, exchange information that is necessary to improve and maintain community safety or that assists the applicable entity in the continuation of services for or providing services to youth who have received services from multiple juvenile service providers.

"Multi-system youth" means a person younger than 19 years of age and has received services from two or more juvenile service providers. "Personal health information" means personally identifiable info regarding multi-system youth's physical/mental health or the

provision of or payment for health care services including case management services. Clinical psychological notes or substance abuse treatment information is not included in this term.

A state or local juvenile justice agency shall share information in its possession or in its contractor's possession that is necessary to improve and maintain community safety or that will assist the department or contractor in service continuation or providing services to a multi-system your who is or has been in the custody or control of the juvenile justice agency.

**H.B. 1521 cont'd.**

**Codification:** Section 58.0052, Family Code

**Effective Date:** Immediately

81. **H.B. 1542** (Price | Frullo | Romero, Jr. | Bernal | Klick) *Relating to the definition of the least restrictive environment for the placement of children in foster care.*

**Summary** - H.B. 1542 also requires the department to consider the child's best interest in making a placement and whether the placement is (1) the least restrictive setting; (2) closest geographic proximity to child's home; (3) when developmentally appropriate, most able to meet child's identified needs and any of the child's expressed interests related to placement. "Least restrictive setting" as applied to placement means the most family-like setting. With respect to a child six years of age or older removed from the home that cannot be placed with a suitable relative or designated caregiver available for placement in a foster home, a cottage home is considered the least restrictive setting.

The Department of Family and Protective Services may not implement this act if it receives a formal determination from the U.S. Dept. of Health and Human Services that implementation will result in federal funding reduction under either Title Iv-E, Social Security Act (42 U.S.C. Section 670 et seq.) or a related source of federal funds.

**Codification:** Section 263.001(a), Section 264.107, Family Code

**Effective Date:** September 1, 2017

82. **H. B. 1549** – (Burkett | Kolkhorst) *Relating to the provision of services by the Department of Family and Protective Services, including child protective services and prevention and early intervention services.*

**Summary** -- This bill primarily implements changes in regards to the handling and reporting of child fatalities. It also require the Department of Family and Protective Services (DFPS) to establish web-based systems for case management and foster children's placement, collect, utilize, and report data, and increase DFPS prevention and early intervention services. The bill also require DFPS to designate current tenured caseworkers to conduct investigations involving child fatalities. In geographic areas with demonstrated need, DFPS would designate employees to serve as investigators and responders for afterhours reports of child abuse or neglect. Subject to an appropriation of funds, DFPS must develop and implement a caseload management system for CPS caseworkers and managers that ensures equity in the workload distribution, based on the complexity of each case.

**Codification:** Chapters 261, 264 and 265, Family Code; Chapter 40, Human Resources Code

**Effective Date:** September 1, 2017

83. **H.B. 1556** (González, Mary | Frank | Cook | Giddings | Simmons) *Relating to the appointment of foster parents and other qualified persons to serve as educational decision-makers for certain children in the conservatorship of the Department of Family and Protective Service*

**Summary** – H.B. 1556 amends current law relating to the appointment of foster parents and other qualified persons to serve as educational decision-makers for certain children in the

conservatorship of the Department of Family and Protective Services. If the Department of Family and Protective Services (DFPS) is the permanent managing conservator of a child, and a foster parent cares for the child, a foster parent can become the "special education decision maker" for the child under H.B. 1556. This is only if that foster parent's decision making rights have not been limited due to court intervention. The foster parent must complete training about the responsibilities of the education decision making process, and the foster parent may "opt out" of the role.

H.B. 1556 also sets requirements for appointment of surrogate parent appointments by courts. School districts would be required to appoint a surrogate parent if the district is unable to identify a parent for the child, or if the foster parent is unwilling to serve as the special education decision maker for the child.

**Codification:** Section 29.015, Education Code; Sections 107.031(c) and 263.0025, Family Code

**Effective Date:** September 1, 2017

84. **H.B. 3859** (Frank | Cook | Dale | Bonnen, Greg | Sanford) *Relating to protection of the rights of conscience for child welfare services providers.*

**Summary** – H.B. 3859 amends the Human Resources Code to prohibit a governmental entity, from discriminating or taking adverse action, as defined by the bill, against a child welfare services provider, as defined by the bill. The bill defines governmental entity as the state, a municipality or other political subdivision of the state, an agency of the state or of a municipality or other political subdivision, or a single source continuum contractor in Texas. The bill prohibits a governmental entity or any person that contracts with the state or operates under governmental authority to refer or place children for child welfare services from discriminating or taking adverse action against a child welfare services provider on the basis, wholly or partly, that the provider has acted according to sincerely held religious belief. This includes declining to facilitate or refer a person for child welfare services that conflict with, or under circumstances that conflict with, the provider's sincerely held religious beliefs; or providing children under the provider's control, care, guardianship, or direction with a religious education, including placement of children in private or parochial school; or declining to provide, facilitate, or refer a person for abortions, contraceptives, or drugs, devices, or services that are potentially abortion-inducing; or refusing to enter into a contract that is inconsistent with or would in any way interfere with or force a provider to surrender the rights created by the bill.

H.B. 3859 protects a child welfare services provider from being required to provide any service that conflicts with the provider's sincerely held religious beliefs. The bill requires a governmental entity or any person that operates under governmental authority to refer or place children for child welfare services to ensure that a secondary child welfare services provider is available in that catchment area to provide a child welfare service that a primary services provider declines to provide due to sincerely held religious beliefs. The bill defines "catchment area" as a geographic service area for providing child protective services or child welfare services identified as part of the foster care redesign under Section 264.126, Family Code.

**Codification:** Subtitle D, Title 2, Human Resources Code

**Effective Date:** September 1, 2017

85. **S.B. 11** (Schwertner/Nelson/Uresti) *Relating to the provision of child protective services and other health and human services by certain state agencies or under contract with a state agency, including foster care, child protective, relative and kinship caregiver support, prevention and early intervention health care, and adoption services.*

**Summary** – Under S.B. 11 by the end of 2019, the Department of Family and Protective Services would have to find eight areas in Texas to implement a new community-based care system and come up with a plan for implementation. The bill mandates a new model of delivery of foster and relative/kinship care called Community Based Foster Care or CBC. This new model is intended to delegate much of the decision-making about how foster care and kinship care services are provided to local decision-makers and communities throughout Texas, including placement and case management decisions currently performed by Department employees. There are many preliminary hurdles, including a lengthy and detailed readiness review that must be completed before CBC goes live in a catchment area.

The legislation also creates a pilot program for nonprofit organizations to handle behavioral health care for children and require managed care organizations be notified of a child's placement change within 24 hours. Children under conservatorship would have to have medical exams within three days of entering into the system, under the bill. Organizations that do not get children those medical exams by the end of three days would be fined.

The bill also makes other significant changes to CPS operations, definitions and court related procedures.

More specifics (courtesy of OVT):

- includes family violence as part of child maltreatment definition;
- adds to duties of Guardian Ad Litem (GAL) and Attorney Ad Litem (AAL) ascertaining if a child who is at least 16 years old, has received personal documents such as SS card;
- requires DFPS to ensure that a child placing agency (CPA), SSCC or other person placing a child for adoption has a copy of any portion of the Health Social Genetic Educational History (HSGEH) report;
- requires that prospective adoptive parents be allowed to view the HSGEH report and any other info on the child including whether mother drank during pregnancy and if child was diagnosed with Fetal Alcohol Spectrum Disorder;
- CPA/SSCC must provide prospective adoptive parent with access to research regarding underlying health and trauma issues that could impact child's development;
- adds to definition of abuse forcing/coercing child into marriage and exploitation as improper use of child or child's resources by employee, volunteer or other individual working in a facility or program; neglect also includes acts by these individuals and they are part of definition of person who has care, custody or control of a child;
- requires tracking of reports involving the same child even if resided in other households and by different alleged perpetrator; requires grouping reports of multiple children in the same household;
- requires automatic dismissal, without court order after 1yr if court has not commenced the trial or granted an extension;
- 24hrs after change in placement the managed care organization (MCO) must be notified and they shall give notice to the primary care physician (PCP) before end of 2nd business day;
- children who remain in conservatorship for more than 3 days and are removed due to sexual abuse, physical neglect or obvious physical injury or have a chronic medical

- condition or diagnosed mental illness receive an initial medical exam from a physician or other health care provider; vaccine other than tetanus may not be administered; guidelines should be developed for conducting the medical evaluation so they can be assessed for signs of child maltreatment, acute/chronic illness or mental health conditions, monitoring adjustment of being in care, having appropriate medical equipment and medications and caregivers having appropriate support and education; by 12/31/19 a report shall be submitted to the legislature;
- DFPS shall conduct a study by 12/31/18 on developing a program to recruit and provide training for young adult caregivers (18-36) to provide foster care to children 14+;
  - Must have plan in non-SSCC area that addresses substitute care capacity needs in that region, done in cooperation with advocates, faith-based entities etc.; plan must be submitted to and approved by the commissioner and updated annually and published on DFPS webpage;
  - requires in non SSCC areas that DFPS collaborate with CPAs to implement a single child plan of service;
  - SSCC must be a nonprofit with mission focused on child welfare or a governmental entity; must consider if provider has experience serving in that area;
  - contracts must establish a timeline for implementation of case management, access to DFPS data, single process of training caregivers, performance review of contractor at 18mo - after this review the department will be able to impose financial penalties or awards;
  - hiring preference to former DFPS employees, continuing community engagement through a group of stakeholders, and requires the contractor to comply with any court order;
  - DFPS shall develop a formal readiness review process for the contractor (including plan for avoiding conflict of interest) that must be developed before DFPS expands outside of Region 3b, can start earlier if process points to readiness; no later than 12/31/19
  - must have initial case transfer planning team to deal with data and file transfers;
  - must form Data Access and Standards Governing Council to develop protocols for the electronic transfer of data from the SSCC to DFPS;
  - the SSCC must assume the statutory duties of DFPS;
  - DFPS shall continue to be represented by county attorneys;
  - SSCC must provide notice of contract termination 60 days in advance; DFPS may terminate 30 days in advance; a contingency plan should be developed in each catchment area involving a transfer plan which should be submitted each year and six months before the end of the contract period;
  - DFPS may review and approve/disapprove a contractor's recommendation with regards to a child's permanency goal, but they are not restricted in ability to maintain oversight and review of process to maintain state and federal requirements, an internal dispute resolution process should be developed by DFPS;
  - FBSS pilot program in two regions of the state with a single non-profit focused on child welfare or a governmental entity; outcomes to be measured include a decrease in recidivism, increase in protective factors etc.;

- contractor must perform all statutory duties of DFPS and give preference to state employees who were in good standing, report as of 12/31/18;
- in Community Based Foster Care areas, must have training of caseworkers in the human trafficking task force training;
- requires governor to establish a grant program with faith-based communities (2yrs, not more than 300K);
- subject to funds, HHSC shall enter into agreements with institutions of higher Ed to conduct efficacy reviews of Prevention and Early Intervention (PEI) programs that have never been reviewed;
- SSCC providing therapeutic foster care shall ensure child receives a comprehensive assessment at least once every 90 days;
- MCOs and CPAs must ensure children receive comprehensive health exam with financial penalties for failure to comply (starting 8/31/18);
- MCO must notify specialists of placement change and coordinate transition of care;
- DFPS must develop a records retention policy that improves case prioritization and routing cases to the appropriate DFPS division;
- DFPS shall create a Case Management Vendor Quality and Oversight Assurance Division that will conduct assessments on fiscal and qualitative performance, dispute resolution and transfer of case management, HHSC shall contract with an outside vendor to develop a contract monitoring system and standards;
- create an Office of Data Analytics related to management and employee data;
- requires standardized policies for investigations of in and out of care maltreatment cases, requires child maltreatment investigation information to be provided to licensing;
- requires HHSC, DFPS and an outside vendor to develop performance quality metrics for FBSS and post-adoption services; shall complete reports on data and submit to workers, management and families receiving services

**Codification:** Chapter 45, Human Resources Code

**Effective Date:** September 1, 2017

**86. S.B. 213** (Menéndez) *Relating to the office of ombudsman for the Department of Family and Protective Services.*

**Summary** – S.B. 213 creates an ombudsman for the Department of Family and Protective Services (DFPS) and administratively attaches it to HHSC. This office will serve as a neutral party to assist individuals with complaints within DFPS. The committee substitute to S.B. 213 expands the current ombudsman for children and youth in foster care to serve as the ombudsman for DFPS. S.B. 213 also transfers the current Office of Consumer Affairs to the proposed ombudsman for DFPS. Further, S.B. 213 removes subpoena power from the ombudsman for DFPS. S.B. 213 amends current law relating to the office of ombudsman for the Department of Family and Protective Services. This law establishes a conflict of interest provision that does not allow ombudsman to be a person employed by state agency or person's spouse, anyone who owns or controls interest in a business entity or other organization receiving funds from DFPS or someone required to register as a lobbyist.

**Codification:** Chapter 531, Government Code

**S.B. 213 cont'd.**

**Effective Date:** September 1, 2017. This Act takes effect only if a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 85th Legislature.

87. **S.B. 738** (Kolkhorst) *Relating to the transfer of certain suits affecting the parent-child relationship.*

**Summary** – S.B. 738 requires all cases regarding the same children and same Child Protective Services (CPS) incident to be heard by the same judge/court. It requires DFPS to file the suit in the court of continuing, exclusive jurisdiction and where more than one court has continuing, exclusive jurisdiction of more than one child named in the petition that DFPS shall file with the court most recently exercised continuing, exclusive jurisdiction of a child named in the petition.

**Codification:** Sections 155.201, 155.204 and 262.203(a), Family Code

**Effective Date:** September 1, 2017. This Act takes effect only if a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 85th Legislature.

88. **S.B. 879** (Uresti) *Relating to a review of a person's disqualification to serve as a relative or other designated caregiver for a child.*

**Summary** – S.B. 879 requires the DFPS to conduct an investigation to determine whether a proposed placement with a relative or other designated caregiver is in the child's best interest. An individual disqualified from serving as a relative or other designated caregiver based on a conviction of a low-risk criminal offense may appeal the disqualification. The department must develop a list of criminal offenses it determines are low-risk criminal offenses and a procedure for DFPS regional administration to review decisions that disqualified persons from serving as kinship caregivers. The procedure will consider: when the conviction occurred; whether there are multiple convictions for low-risk offenses; and the likelihood future fraudulent activity will be committed. The list and procedure must be published on the department's website.

**Codification:** Section 264.754-755, Family Code

**Effective Date:** September 1, 2017

89. **S.B. 948** (Kolkhorst) *Relating to certain information provided to prospective adoptive parents by the Department of Family and Protective Services.*

**Summary** – S.B. 948 amends the Family Code to require the Department of Family and Protective Services (DFPS) to provide information to each person seeking to adopt a child placed for adoption by DFPS regarding the right of a child's sibling to file a suit for access to the child. The bill authorizes DFPS to provide the information on any form or application provided to prospective adoptive parents.

**Codification:** Subchapter A, Chapter 162, Family Code

**Effective Date:** September 1, 2017

90. **S.B. 999** (West) *Relating to procedures for taking possession of a child and for certain hearings in a suit affecting the parent-child relationship involving the Department of Family and Protective Services.*

**Summary** – S.B. 999 amends several sections of the Texas Family Code and duplicates many of the provisions in House Bill 7 relating to petitions filed by DFPS, procedures, evidence, and

orders related to removing a child to foster care. It incorporates into Section 262.201 the provisions currently found at 262.205 so that all court hearings on emergency and non-emergency petitions are within the same statute; section 262.205 is repealed. It adds a date by which a hearing on a non-emergency petition must be held, and conforms sections of Chapter 262 so that the requirements regarding grounds for removal stated in the petition, and the evidence required in the affidavit in support, are consistent across the three removal situations.

S.B. 999 amends the Family Code to revise and clarify provisions relating to procedures for transferring certain court proceedings and for taking possession of a child in a suit affecting the parent-child relationship involving the Department of Family and Protective Services. The bill, among other provisions, requires an original suit affecting the parent-child relationship filed by a governmental entity after taking possession of a child in an emergency without a court order to be supported by an affidavit stating certain facts. The bill also applies to a suit filed by a governmental entity requesting possession of a child who has not yet been taken into possession the procedures for a full adversary hearing regarding a child who has already been taken into possession, with certain exceptions.

More specifics (courtesy of OVT):

- removes the requirement that a person taking a child into possession without a court order in an emergency to protect the child's health and safety request a court to appoint an AAL for the child;
- under these circumstances there must be an affidavit stating facts sufficient to satisfy a person of ordinary prudence and caution that, based on the information available at the time the child was taken into possession there was an immediate danger to the child's physical health/safety or the child was a victim of sexual abuse or trafficking, the parent or person who had possession was using a controlled substance and the use constituted an immediate danger or the parent allowed the child to remain on premises where meth was being made;
- affidavit must also state there was no time for a full adversary hearing and reasonable efforts were made to prevent the removal of the child;
- sets a deadline for holding the full adversary hearing as not later than 30 days after date suit is filed; retains authority of a court to render a temporary restraining order;
- authorizes a court, for a non-indigent parent, to postpone the adversary hearing for good cause shown for not more than 7 days from the date of the parent's appearance.

**Codification:** Sections 155.201, 155.204(i) and Chapter 262, Family Code

**Effective Date:** September 1, 2017

**91. S.B. 1220 (Miles) *Relating to ensuring continuity of education and access to higher education, career information, and skills certification for foster care youth and former foster care youth.***

**Summary** – S.B. 1220 amends current law relating to ensuring continuity of education and access to higher education, career information, and skills certification for foster care youth and former foster care youth. There is no current legislation that assists in easing academic transitions or ensuring continuity of education for substitute care students. A substitute care student is a student in grade school who is registered as homeless (has no residence), lives within a foster care or group home system. These students can often be enrolled into several different schools over short spans of time, and because of the transitions it is important that school records follow the student. This bill would aid in making it easier and faster to transfer school records and academic needs as well as offering after-graduation opportunities.

S.B. 1220 develops systems that ease and accelerate transitions for substitute care students (foster care or homeless) from one school to another within the first few weeks of enrollment,

as well as assessing and meeting the needs of substitute care students with special needs. It supports transition of youth in care and homeless students from one school to next by requiring development of procedures to ensure that a new school relies on decisions made by the previous school regarding placement in courses or educational programs and places student in comparable courses/programs at the new school if available. S.B. 1220 also ensures these students have access to information regarding higher education, career information, and skill certifications.

**Codification:** Sections 25.007(b) and 25.007, Education Code; Chapter 264, Family Code;

**Effective Date:** September 1, 2017

92. **S.B. 1758** (Zaffirini) *Relating to requirements for the court in permanency hearings for children in the conservatorship of the Department of Family and Protective Services who are receiving transitional living services.*

**Summary** - S.B. 1758 amends the Family Code to require that an independent living skills assessment be conducted on a yearly basis starting when a child in DFPS care is 14 years of age to ensure that the transitional living skills necessary for the youth to be independent upon leaving care are understood, tracked, and adjusted as needed. This bill also would require DFPS to update the Preparation for Adult Living (PAL) program to ensure it is relevant, age-appropriate, and useful in ensuring youth are ready for adulthood. What's more, the bill requires that the judge presiding over the case hold DFPS accountable for conducting the independent living skills assessment, addressing the goals in the permanency plan, and providing youth with personal documentation currently required in statute during permanency hearings, particularly those that take place before the final order.

**Codification:** Section 263.306(a-1), Family Code

**Effective Date:** September 1, 2017

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## V. HOUSING AND ENVIRONMENT

### Property

93. **H.B. 1128** (Wray) *Relating to the date and time for the public sale of real property.*

**Summary-** H.B. 1128 amends the Civil Practice and Remedies Code to require a public sale of real property subject to a writ of execution to take place between 10 a.m. and 4 p.m. on the first Tuesday of a month or, if the first Tuesday of a month occurs on January 1 or July 4, between 10 a.m. and 4 p.m. on the first Wednesday of the month. The bill prohibits the Texas Supreme Court from amending or adopting rules in conflict with this requirement.

H.B. 1128 amends the Property Code to require a public sale at auction of real property under a power of sale conferred by a contract lien to be held between 10 a.m. and 4 p.m. on the first Wednesday of the month instead of the first Tuesday of a month if the first Tuesday occurs on January 1 or July 4.

H.B. 1128 amends the Tax Code to require a public sale of real property seized under a tax warrant or ordered sold pursuant to foreclosure of a tax lien, including a sale conducted by means of a public auction using online bidding and sale, to take place between 10 a.m. and 4 p.m. on the first Tuesday of a month or, if the first Tuesday of a month occurs on January 1 or July 4, between 10 a.m. and 4 p.m. on the first Wednesday of the month.

**H.B. 1128 cont'd.**

**Codification:** Sections 51.002, Property Code

**Effective Date:** September 1, 2017.

94. **H.B. 1257** *Relating to the prosecution of and punishment for the offense of criminal mischief involving property used for flood control purposes or a dam.*

**Summary** – Under Penal Code, sec. 28.03(b)(4), acts of criminal mischief that are a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) include:

- an act resulting in the financial loss of \$2,500 or more but less than \$30,000; and
- an act resulting in the financial loss of less than \$30,000 that impairs or interrupts public communications, public transportation, public gas or power supply, or other public services.

H.B. 1257 amends the Penal Code to expand the conduct that constitutes a state jail felony criminal mischief offense to include causing wholly or partly the impairment or interruption of property used for flood control purposes or a dam when the amount of pecuniary loss is less than \$30,000.

**Codification:** Section 28.03, Penal Code

**Effective Date:** September 1, 2017

95. **H.B. 3879** (Goldman | Cain) *Relating to nonlawyer representation in an appeal of an eviction suit.*

**Summary** – H.B. 3879 amends the Property Code to authorize an owner of a multifamily residential property to be represented in an appeal of an eviction suit for nonpayment of rent in a county or district court by the owner's authorized agent, who need not be an attorney, or, if the owner is a corporation or other entity, by an employee, owner, officer, or partner of the entity, who need not be an attorney.

**Codification:** Section 24.011, Property Code

**Effective Date:** September 1, 2017

96. **S.B. 1249** (West) *Relating to adverse possession of real property by a cotenant heir against other cotenant heirs.*

**Summary** – S. B. 1249 adds Section 16.0265 (*Adverse Possession by Cotenant Heir: 15-Year Combined Limitations Period*) to address the situation where heirship property owners are unable to secure resources to improve or sell their property because they need proof of title in fee simple to complete such a transaction. The bill authorizes one or more cotenant heirs of real property to acquire the interests of other cotenant heirs in the property by adverse possession if, for a continuous, uninterrupted 10-year period immediately preceding the filing of the affidavits of adverse possession as described by this law and

- the possessing cotenant heir or heirs hold the property in peaceable and exclusive possession; cultivate, use, or enjoy the property;
- pays all property taxes on the property not later than two years after the date the taxes become due; and
- no other cotenant heir has contributed to the property's taxes or maintenance, challenged a possessing cotenant heir's exclusive possession of the property, asserted any other claim against a possessing cotenant heir in connection with the property, such as the right to rental payments from a possessing cotenant heir, acted to preserve the cotenant heir's interest in the property by filing notice of the cotenant heir's claimed interest in the deed records of the county in which the property is located, or entered

into a written agreement with the possessing cotenant heir under which the possessing cotenant heir is allowed to possess the property but the other cotenant heir does not forfeit that heir's ownership interest.

The act requires a cotenant heir to file a controverting affidavit or bring suit to recover the cotenant heir's interest in real property adversely possessed by another cotenant heir under this section not later than the fifth anniversary of the date a right of adverse possession is asserted by the filing of the affidavits. S.B.1249 provides that if a controverting affidavit or judgment is not filed before the fifth anniversary of the date the affidavits are filed and no notice relating to certain actions by other cotenant heirs determining whether cotenant heirs are authorized to acquire interests by adverse possession was filed in the 10-year period preceding the filing of the affidavits, title vests in the adversely possessing cotenant heir or heirs through Adverse Possession, precluding all claims by other cotenant heirs. Authorizes a bona fide lender for value without notice accepting a voluntary lien against the real property to secure the adversely possessing cotenant heir's indebtedness or a bona fide purchaser for value without notice to conclusively rely on the affidavits if certain criteria are met.

**Codification:** Section 16.0265, Civil Practice and Remedies Code

**Effective Date:** September 1, 2017

97. **S.B. 1955** (Hughes) *Relating to expunction of a notice of lis pendens.*

**Summary** – S.B. 1955 amends the Property Code to make the statutory provision relating to the effect of a notice of lis pendens and any information derived from such notice after a certified copy of an order expunging the notice has been recorded also applicable to information that could be derived from the notice and authorizes an interest in the real property, after such recording, to be transferred or encumbered free of all matters asserted or disclosed in the notice and all claims or other matters asserted or disclosed in the action in connection with which the notice was filed.

**Codification:** Section 12.0071(f), Property Code

**Effective Date:** September 1, 2017

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## EDUCATION

### *Primary and Secondary Education*

98. **H.B. 357** (Huberty | Bernal | Lucio III | Guillen) *Relating to the eligibility of the children of certain first responders for free prekindergarten programs in public schools.*

**Summary-** H.B. 357 amends the Education Code to expand eligibility for a free prekindergarten class offered by a public school district to certain disadvantaged and other children of at least three years of age to include the child of a person eligible for the Star of Texas Award for being seriously injured, fatally injured, or killed in the line of duty as a peace officer, firefighter, or emergency medical first responder. The bill applies beginning with the 2017-2018 school year.

**Codification:** Section 29.153(b), Education Code

**Effective Date:** Effective immediately

99. **H.B. 674** (Johnson, Eric | Giddings | Anchia | Collier | Hinojosa, Gina) *Relating to the suspension of a student enrolled in a grade level below grade three from public school and to a positive behavior program for public schools.*

**Summary** – H.B. 674 amends the Education Code to prohibit the placement of a public school student enrolled in a grade level below grade three in out-of-school suspension unless while on school property or while attending a school-sponsored or school-related activity on or off of school property the student engages in the following: conduct that contains the elements of the offense of the unlawful carrying of weapons or the intentional or knowing possession, manufacture, transport, repair, or sale of certain prohibited weapons; conduct that contains the elements of a violent offense of assault, sexual assault, aggravated assault, or aggravated sexual assault; or selling, giving, or delivering to another person or possessing, using, or being under the influence of any amount of marihuana, a controlled substance, a dangerous drug, or an alcoholic beverage. The bill applies beginning with the 2017-2018 school year.

**Codification:** Section 37.005, Education Code

**Effective Date:** Immediately

100. **H.B. 1569** (Ashby) *Relating to the disclosure to public schools of certain records of students placed in residential facilities.*

**Summary** - H.B. 1569 requires a residential facility that provides 24-hour custody or care of a person 22 years of age or younger to provide to a public school district or open-enrollment charter school that provides educational services to a student placed in the facility, any information retained by the facility relating to the student's school records, behavioral history, and record of arrests or indictments. Under H.B. 1569, unless a juvenile pre-adjudication secure detention facility or post-adjudication secure correctional facility, any residential facility shall provide to a school district or charter school that provides educational services to a student placed in a facility the student's school records, including special education eligibility or services, behavioral intervention plans, disciplinary action related to school; behavioral history information not protected under other laws; conviction record or probation, community supervision, or parole status provided by law enforcement probation, corrections, or supervisions agencies.

**Codification:** Section 29.012, Education Code

**Effective Date:** Immediately

101. **H.B. 1593** (Bohac) *Relating to the engagement strategies included in a school district's family engagement plan.*

**Summary-** H.B. 1593 amends the Education Code to require family engagement strategies included in a public school district's family engagement plan to include programs and interventions that engage a family in supporting a student's learning at home.

**Codification:** Section 29.168(b), Education Code

**Effective Date:** On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

102. **S.B. 7** (Bettencourt) *Relating to improper relationships between educators and students and reporting of educator misconduct; creating a criminal offense and expanding the applicability of an existing offense; authorizing an administrative penalty.*

**Summary-** The goal of S.B. 7 is to reduce the risks faced by school districts and students by closing loopholes and providing penalties for conduct relating to an inappropriate relationship between an educator and a student. S.B. 7 amends current law relating to improper

relationships between educators and students and reporting of educator misconduct, creates a criminal offense and expands the applicability of an existing offense, and authorizes an administrative penalty. Also provides for a notice to parents about educator misconduct and that an applicant for a position with a school district, district of innovation, charter school, RESC, or SSA submit, using a form adopted by the Texas Education Agency (TEA), a pre-employment affidavit disclosing whether the applicant has ever been charged with, adjudicated for, or convicted of having an inappropriate relationship with a minor.

**Codification:** Section 21.12(a), Penal Code; Article 42 et al, Code of Criminal Procedure; Chapters 21 and 38, Education Code; Chapter 824, Government Code

**Effective Date:** September 1, 2017.

103. **S.B. 195** (Garcia) *Relating to funding under the transportation allotment for public school students subject to a high risk of violence while walking to school.*

**Summary** – S.B. 195 amends the Education Code to include among the purposes for which a public school district or county may apply for and receive additional transportation allotment funds the transportation of children living within two miles of the school they attend who would be subject to a high risk of violence if they walked to school. The bill establishes that an area presents a high risk of violence if law enforcement records indicate a high incidence of violent crimes in the area. The bill specifies the information a board of trustees requesting the additional funds for such purpose is required to provide to the commissioner of education. The bill authorizes a district or county to use all or part of any of the additional funds to support community walking transportation programs, including walking school bus programs, provided that the district or county requires each supported program to submit a financial report to the district or county each semester that covers services provided by the program for the benefit of the district or county.

**Codification:** Section 42.155(d), Education Code

**Effective Date:** September 1, 2017

104. **S.B. 1153** (Menéndez) *Relating to parental rights and information regarding certain intervention strategies used with public school students.*

**Summary** – S.B. 1153 amends the Education Code to specify that the written records of a public school district concerning a parent's child to which the parent is entitled access include records relating to assistance provided for learning difficulties, including information collected regarding any intervention strategies used with the child, and to subject an open-enrollment charter school to the parental right to that information. The bill requires the written explanation of options and requirements for providing assistance to students who have learning difficulties or who need or may need special education that the Texas Education Agency (TEA) is required to produce and provide to districts and that each district is required to provide to parents of district students to state that a parent is entitled at any time to request an evaluation of the parent's child for aids, accommodations, or services under the federal Rehabilitation Act of 1973. The bill subjects an open-enrollment charter school to requirements relating to that notice. S.B. 1153 applies beginning with the 2017-2018 school year.

**Codification:** Sections 12.104(b), 26.004, 26.0081, 26.0081, 42.006, Education Code

**Effective Date:** Immediately

105. **S.B. 1398** (Lucio) *Relating to the placement and use of video cameras in certain self-contained classrooms or other settings providing special education services.*

**Summary** – S.B. 1398 amends current law relating to the placement and use of video cameras in certain self-contained classrooms or other settings providing special education services. This bill clarifies that a request for cameras is limited to classrooms where the requesting parent has a child in regular attendance. The bill also contains numerous additional provisions that address issues districts, parents, and other stakeholders have reported that stand in the way of the successful implementation of S.B. 507 passed in the last legislative session. These include guidance on how long a district must continue to operate a camera, clarification on who may view video recordings of an alleged incident, and a timeline for installing and activating equipment. The focused provisions and enhanced guidance provided in S.B. 1398 assist districts in achieving the original bill's intent to provide protection for students with special needs.

**Codification:** Section 29.022, Education Code

**Effective Date:** Immediately

106. **S.B. 1566** (Kolkhorst) *Relating to certain powers and duties of the board of trustees of an independent school district and the governing body of an open-enrollment charter school and to abolishing certain county boards of education, boards of county school trustees, and offices of county school superintendent.*

**Summary** – S.B. 1566 gives school boards more flexibility in how they manage their district. The bill allows a board to meet directly with the district's chief business official or curriculum director and sets a specific timeline for when a district must provide requested information to their school board. The bill also allows use of an online dashboard of their choice, gives board members the responsibility of maximizing student academic achievement, and provides the Texas Education Agency a new tool to help struggling schools. S.B. 1566 amends current law relating to certain powers and duties of the board of trustees of an independent school district and the governing body of an open-enrollment charter school and to abolishing certain county boards of education, boards of county school trustees, and offices of county school superintendent.

**Codification:** Chapter 11, Education Code; Sections 12.064, 39.057(a) and 39.102(a), Education Code

**Effective Date:** September 1, 2017

### **Higher Education**

107. **H.B. 355** (Raney | Guillen | Clardy | Minjarez | Button) *Relating to prohibiting certain sex offenders from residing on the campus of a public or private institution of higher education.*

**Summary** - With the issue of sexual assault and rape being at the forefront of the campus safety discussions, it seems to be a statutory oversight that sex offenders on the Texas Department of Public Safety sex offender registry are allowed to live in an on-campus dormitory or on-campus housing facility. Given that studies show two in five Texas women and one in five Texas men will be sexually assaulted in their lifetime, and that approximately 23 percent of offenders commit some sort of sexual crime again, it is important to add this layer of protection to college students. H.B. 355 addresses this issue by prohibiting registered sex offenders from living in on campus dormitories or other housing facilities. The bill also enables institutions of higher education to decide if a registered sex offender who is rated at the lowest likelihood of reoffending can live in on-campus housing.

**Codification:** Subchapter B, Chapter 62, Code of Criminal Procedure

**Effective Date:** September 1, 2017

108. **H.B. 928** *Relating to assisting certain children who are in foster care or who have been adopted in the process of applying to institutions of higher education.*

**Summary** – H.B. 928 amends Subchapter B, Chapter 264 of the Family Code by adding Section 264.1211 defining "community resource coordination group" ("CRCG") as a coordination group established under a MOU under Section 531.055, Government Code. It requires DFPS representative of the community resource coordination group to inform other members of the group that higher education tuition and fee waivers are available to eligible children in foster care or who were adopted out of the foster care system. The bill further requires school districts and the DFPS representative to facilitate the transition of children eligible for tuition and fee waivers on the day preceding the child's 18th birthday to institutions of higher education by assisting the child in completing applications for admissions and financial aid; arranging and accompanying the child on campus visits; researching and applying for private or institution sponsored scholarships; identifying whether the child is a candidate for appointment to a military academy; registering and preparing for college entrance exams, including arranging for payment of exam fees; and coordinating contact between the child and a liaison officer designated under Section 61.0908, Education Code.

**Codification:** Subchapter B, Chapter 264, Family Code

**Effective Date:** September 1, 2017

109. **S.B. 4** (Perry) *Relating to the enforcement by campus police departments and certain local governmental entities of state and federal laws governing immigration and to related duties and liability of certain persons in the criminal justice system; providing a civil penalty; creating a criminal offense.*

**Summary**- S.B. 4 prohibits "sanctuary city" policies, which prohibit local law enforcement from inquiring about a person's immigration status and complying with detainer requests. These policies also often prohibit the sharing of information regarding a person's immigration status with the federal government. SB 4 requires local police to cooperate with federal immigration authorities and allowing police to inquire about the immigration status of people they lawfully detain. Under SB 4, local authorities are forbidden from adopting policies that prevent a peace officer from asking about a person's immigration status.

Failure to comply can result in a Class A misdemeanor charge — if law enforcement does not cooperate with federal immigration authorities by honoring requests to hold inmates who are subject to deportation. They also could face civil penalties: \$1,000 for a first offense and up to \$25,500 for subsequent infractions. These penalties also apply to public colleges.

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

**Effective Date:** Effective on 9/1/17

110. **S.B. 537** (Hinojosa) *Relating to requiring the disclosure of special course fees at public institutions of higher education.*

**Summary** – S.B. 537 amends the Education Code to require each public institution of higher education to include in the institution's online course catalog, for each course listed in the catalog, a description and the amount of any special course fee, including an online access fee or lab fee, to be charged specifically for the course. If the institution publishes a paper course catalog, the institution may publish any fees specifically charged for each course using the

amounts charged in the most recent academic year. The bill applies beginning with course catalogs published for the 2018-2019 academic year.

**Codification:** Subchapter A, Chapter 54, Education Code

**Effective Date:** September 1, 2017

111. **S.B. 968** (Watson) *Relating to a sexual assault policy at certain public and private institutions of higher education and to requiring those institutions to provide students and employees an option to electronically report certain offenses to the institution.*

**Summary** – S.B. 968 amends the Education Code to require each public, private, or independent institution of higher education to provide an option for a student enrolled at or an employee of the institution to electronically report to the institution an allegation of sexual harassment, sexual assault, dating violence, or stalking committed against or witnessed by the student or employee, regardless of the location at which the alleged offense occurred. The bill requires each institution to provide the electronic reporting option not later than January 1, 2018, and requires the electronic reporting option to enable a student or employee to report the alleged offense anonymously and be easily accessible through a clearly identifiable link on the institution's website home page. The bill requires a protocol for reporting sexual assault adopted under a campus sexual assault policy to comply with the bill's provisions and authorizes the Texas Higher Education Coordinating Board to adopt rules as necessary to administer the bill's provisions.

S.B. 968 defines "dating violence" as abuse or violence, or a threat of abuse or violence, against a person with whom the actor has or has had a social relationship of a romantic or intimate nature; "sexual assault" as sexual contact or intercourse with a person without the person's consent, including sexual contact or intercourse against the person's will or in a circumstance in which the person is incapable of consenting to the contact or intercourse; "sexual harassment" as unwelcome, sex-based verbal or physical conduct that in the employment context unreasonably interferes with an employee's work performance or creates an intimidating, hostile, or offensive work environment or in the education context is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities; and "stalking" as a course of conduct directed at a person that would cause a reasonable person to fear for the person's safety or to suffer substantial emotional distress.

This Act, applies beginning with the 2017-2018 academic year.

**Codification:** Sections 51.9363 and 51.9365, Education Code

**Effective Date:** Immediately

112. **S.B. 969** (Watson) *Relating to requiring certain public and private institutions of higher education to provide amnesty to students who report certain incidents, including sexual harassment, sexual assault, dating violence, or stalking.*

**Summary** – S.B. 969 amends the Education Code to prohibit a public, private, or independent institution of higher education from taking any disciplinary action against a student enrolled at the institution for a violation by the student of the institution's policies on student conduct if the student in good faith reports to the institution being the victim of, or a witness to, an incident of sexual assault and the violation of the institution's policies is in relation to the incident. This prohibition applies regardless of the location at which the incident occurred or the outcome of the institution's disciplinary process regarding the incident, if any, but does not apply to a student who reports the student's own commission of sexual assault or assistance in the commission of sexual assault. The bill establishes that a determination that a student is entitled

to amnesty is final and prohibits the determination from being revoked. The bill prohibits its provisions from being construed to limit an institution's ability to provide amnesty from application of the institution's policies in circumstances not described by the bill.

**Codification:** Chapter 51, Education Code

**Effective Date:** Immediately

113. **S.B. 1123** (Zaffirini) *Relating to conditions on the receipt of tuition and fee exemptions at public institutions of higher education for adopted students formerly in foster or other residential care.*

**Summary** – S.B. 1123 amends current law relating to conditions on the receipt of tuition and fee exemptions at public institutions of higher education for adopted students formerly in foster or other residential care. It exempts the tuition and fee exemption at public institutions of higher education for adopted students formerly in foster or other residential care from statutory provisions placing certain conditions on the continued receipt of tuition and fee exemptions or waivers at institutions of higher education.

**Codification:** Section 54.2001, Education Code

**Effective Date:** Immediately

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## HEALTHCARE

### Mental Health

114. **H.B. 1794** (Bell | Oliverson | Sheffield | Wray | Guerra) *Relating to the establishment of the Work Group on Mental Health Access for First Responders.*

**Summary - H.B. 1794** requires the Health and Human Services Commission (HHSC), not later than December 1, 2017, to establish the Work Group on Mental Health Access for First Responders to develop and make recommendations for improving access to mental health care services for first responders. The bill sets out the composition of the 15-member work group and designates its presiding officer.

H.B. 1794 requires the work group to develop recommendations to address the difference in access to mental health care services between volunteer fire departments and small law enforcement agencies, fire departments, and emergency medical services providers and large law enforcement agencies, fire departments, and emergency medical services providers; potential solutions for state and local governments to provide greater access to mental health care services for first responders; the sufficiency of first responder organizations' employee health insurance plans for obtaining access to mental health care services for first responders; the sufficiency of first responder organizations' human resources policies; the effectiveness of workers' compensation and other benefit claims for first responders; the feasibility of mental health training during the licensing or certification and renewal process for first responders; the effectiveness of methods for assessing a first responder's mental health care needs after a critical incident; the opportunities for public-private partnerships to provide mental health care services to first responders; and possible Texas-specific barriers, including stigmas, for first responders seeking mental health care services. The bill defines a "first responder organization" as a volunteer fire department or an organization, including a fire department,

law enforcement agency, or emergency medical services provider, of a political subdivision of the state that employs a first responder.

The bill requires the work group to develop a written report of those recommendations and to electronically deliver the report to the governor, the lieutenant governor, and all members of the legislature not later than January 1, 2019. The bill abolishes the work group and the bill's provisions expire June 1, 2019.

**Codification:** Section 421.095, Government Code.

**Effective Date:** September 1, 2017

115. **H.B. 2619** (Giddings | Price | Johnson, Jarvis | Uresti | Tomas) *Relating to grant programs to maintain peace officers' mental health and provide critical incident stress debriefing for certain officers.*

**Summary** – H.B. 2619 amends the Government Code to require the criminal justice division of the governor's office to establish and administer a grant program through which a law enforcement agency may apply for a grant to implement programs, practices, and services designed to address the direct or indirect emotional harm suffered by peace officers employed by the agency in the course of the officers' duties or as a result of the commission of crimes by other persons and to set out the authorized uses of the grant money awarded under that program. The bill makes information obtained in the administration of such a program, practice, or service confidential and exempt from disclosure under state public information law and prohibits a law enforcement agency from using any such information against a peace officer in a departmental proceeding.

**Codification:** Chapter 772, Government Code

**Effective Date:** September 1, 2017

116. **S.B. 292** (Huffman | Nelson | Schwertner) *Relating to the creation of grant programs to reduce recidivism, arrest, and incarceration of individuals with mental illness.*

**Summary** – S.B. 292 amends the Government Code to require the Health and Human Services Commission (HHSC) to establish a program to provide grants to county-based community collaborates for the purposes of reducing recidivism by, the frequency of arrests of, and incarceration of persons with mental illness and reducing the total waiting time for forensic commitment of persons with mental illness to a state hospital.

S.B. 292 requires a community collaborative, for each state fiscal year for which the collaborative seeks a grant, to submit a petition to HHSC not later than the 30th day of that fiscal year and sets out the information required to be included with a petition.

**Codification:** Subchapter B, Chapter 531, Government Code

**Effective Date:** September 1, 2017

117. **S.B. 613** (Whitmire) *Relating to services provided by the Health and Human Services Commission to sexually violent offenders who are incompetent to attend sex offender treatment.*

**Summary** – Current law requires the Health and Human Services Commission (HHSC) to coordinate with the Texas Civil Commitment Office to provide psychiatric services, disability services, and housing for a person who is a civilly committed sexually violent predator with an intellectual or developmental disability, mental illness, or physical disability that prevents the person from effectively participating in a sex offender treatment program. Senate Bill 613 amends the Health and Safety Code to instead require HHSC, after coordination with the office, to provide such services and housing for such a person. The bill also provides for

inpatient mental health services for certain committed persons who are unable to participate effectively in the program.

**Codification:** Section 841.0835, Health and Safety Code

**Effective Date:** September 1, 2017

118. **S.B. 1849 (Whitmire)** *Relating to interactions between law enforcement and individuals detained or arrested on suspicion of the commission of criminal offenses, to the confinement, conviction, or release of those individuals, and to grants supporting populations that are more likely to interact frequently with law enforcement.*

**Summary – The Sandra Bland Act.** The events leading up to Sandra Bland's unnecessary jailing and tragic death sparked a statewide and national discussion regarding criminal justice reform. S.B. 1849 aims to improve and correct Texas' criminal justice system to make it better for both law enforcement and the public and prevent future tragedies like Sandra Bland's. S.B. 1849 addresses a variety of criminal justice topics including bail reform, jail diversion, jail safety, officer training, racial profiling, data collection, officer discipline, and behavioral health.

S.B. 1849 requires a magistrate to release a defendant on personal bond unless good cause is shown otherwise if the defendant is examined by the local mental health or intellectual and developmental disability authority or a certain other mental health expert and an applicable expert, in a certain written assessment concludes that the defendant has a mental illness or is a person with an intellectual disability and is nonetheless competent to stand trial, and recommends mental health treatment or intellectual disability treatment for the defendant, as applicable.

S.B. 1849 also works to make our jails safer by improving training for jailers, requires jails to have access to health and mental health professionals, either in person or through tele-health, automated electronic sensors to ensure accurate cell checks, and an independent ombudsman office to oversee county jails. S.B. 1849 amends the Government code to require the commission shall adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of prisoners. The rules and procedures shall require that a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody.

S.B. 1849 also creates a grant program to ensure that all county jails will be able to afford these necessary changes. It also provides that if funding is available the jail should install automated electronic sensors or cameras to ensure accurate and timely in-person checks of cells or groups of cells confining at-risk individuals.

To make both officers and the public safer, S.B. 1849 increases officer training in general de-escalation and mental health de-escalation tactics. The use of de-escalation tactics helps ensure that both law enforcement and the public are able to go home safe. The bill requires DPS to adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras.

S.B. 1849 addresses race equity concerns by strengthening Texas' racial profiling law, as well as ensuring that the data Texas collects is robust, clear, and accurate. S.B. 1849 also creates a more uniform and transparent system to ensure officer discipline is more transparent.

This bill mandates that county jails divert inmates in Sheriff's custody with mental health and substance abuse issues toward treatment, make it easier for defendants with a mental illness

or intellectual disability to receive a personal bond and require that independent law enforcement agencies investigate jail deaths.

**Codification:** Chapter 16, Articles 17.032(b) and (c), Code of Criminal Procedure; Article 539.002, Government Code; Chapters 511 and 539, Government Code

**Effective Date:** September 1, 2017

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## WILLS, ESTATE, AND PROBATE

119. **H.B. 1877** (Murr) *Relating to a penalty for independent executors who misrepresent in an affidavit in lieu of the inventory, appraisal, and list of claims that certain beneficiaries received the inventory and appraisal.*

**Summary** - H.B. 1877 amends the Estates Code to authorize a court, on its own motion or on motion of any person interested in an estate, to fine an independent executor of the estate, after the independent executor has been cited to answer at a time and place fixed in the notice, in an amount capped at \$1,000 if the court finds that the executor misrepresented in an affidavit in lieu of the inventory, appraisal, and list of claims filed by the executor that all appropriate beneficiaries received a verified, full, and detailed inventory and appraisal as required by state law. The bill makes the independent executor and the executor's sureties, if any, liable for any such fine and for all damages and costs sustained by the executor's misrepresentation. The bill authorizes the recovery of the fine, damages, and costs in any court of competent jurisdiction.

**Codification:** Section 309.0575 Estates Code

**Effective Date:** September 1, 2017

120. **H.B. 1974** (Wray) *Relating to durable powers of attorney.*

**Summary** - H.B. 1974 amends the Estates Codes to revise and set out certain provisions applicable to a durable power of attorney, including provisions regarding the following: conditions under which a signature on a durable power of attorney is presumed genuine and under which a durable power of attorney is valid; the meaning and effect of a durable power of attorney in relation to the law of the relevant jurisdiction; the appointment, authority, and certain duties of agents; the duration and effect of termination of a durable power of attorney; the acceptance of and reliance on a durable power of attorney under certain circumstances; and judicial relief for specified persons with relation to the construction, validity, or enforceability of a durable power of attorney or an agent's conduct under a power of attorney. A durable power of attorney executed in this state or another is valid if it meets certain compliance standards. The meaning and effect of a durable power of attorney is determined by the law of the indicated jurisdiction, with exceptions. The procedures for the appointment of co-agents and successor agents, and the acceptance of appointment as an agent would be established.

HB 1974 requires removal of all references to ""attorney in fact"" from its content. It also requires text changes to the provisions related to a successor agent. It also requires the addition of a new section entitled "Grant of Specific Authority (Optional)" and provides that "Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death.". Finally, it

requires more Special Instructions related to agent compensation and co-agents' ability to act jointly or independently.

The durable power of attorney may grant an agent: general authority to a certain extent, the authority to make gifts, and the authority to create or change certain designations. In concurrence with existing powers, the agent or attorney in fact may enter into mineral transactions, perform all acts necessary in relation to the principal's mail, and other related duties.

Certain factors would lead to the termination of the durable power of attorney and the authority of the agent. Lastly, a cause of action for a refusal, and other civil remedies would be instituted.

**Codification:** Chapter 751, Estates Code

**Effective Date:** September 1, 2017

121. **H.B. 2207** (Kuempel) *Relating to procedures and fees for the deposit and safekeeping of wills.*

**Summary** – H.B. 2207 amends the Estates Code to authorize an attorney, business entity, or other person in possession of a testator's will to deposit the will with the county clerk of the county of the testator's last known residence if the attorney, business entity, or other person is unable to maintain custody of the will and, after a diligent search, the attorney, business entity, or other person is not able to contact or locate the testator. The bill requires the attorney, business entity, or other person to provide to the county clerk at the time the will is deposited the name and last known address of the testator and, if the will names an executor, the name and last known address, if available, of each executor named in the will, including any alternate executors. The bill increases from \$5 to \$10 the fee whose payment is required for a county clerk to receive and keep a deposited will. H.B. 2207 details the requirements of the clerk of the court to notify the person named as executor or the devisees named in the will, as applicable.

**Codification:** Section 252.001, Estates Code, Section 101.1014, Government Code, and Section 118.062, Local Government Code

**Effective Date:** September 1, 2017

122. **H.B. 2271** (Wray) *Relating to decedents' estates and certain posthumous gifts.*

**Summary** - H.B. 2271 amends the Estates Code to revise and set out certain provisions applicable to decedents' estates, including provisions regarding the following: the inclusion of an equitably adopted child in the statutory definition of "child"; the authorization for an independent executor to make certain distributions of property not specifically devised; certain transfers against which a multiple-party account is not effective; the definition of the decedent's next of kin for purposes of determining venue for a probate proceeding to admit a will to probate or for the granting of letters testamentary or of administration; the deadline by which an eligible institution must disburse funds and close a trust or escrow account in compliance with instructions from the applicable lawyer; the division of certain trusts with divorced individuals as joint settlors; certain conditions of liability and effectiveness applicable to the designation of a former spouse or relative of a former spouse on certain multiple-party accounts; a cause of action for a person aggrieved by an eligible institution that violates its duties regarding the disbursement and close of a lawyer trust or escrow account; and the accrual of certain survival rights as a member under a class. The bill repeals, among other provisions, certain provisions regarding procedures for the payment of inheritance tax.

More Specifics:

H.B. 2271 clarifies definitions that currently exist in the Estates Code, specifically:

- who is considered a decedent's next of kin;
- that the generation-skipping transfer tax is a separate tax from the estate tax; and
- that a child adopted by estoppel is treated the same as any other child and is a decedent's child.

H.B. 2271 clarifies the effect of divorce in certain testamentary and non-testamentary circumstances, including:

- that with regard to revocable trusts, divorce revokes certain provisions only as to a divorced settlor of the trust;
- that if a revocable trust is established by married persons who later divorce and then one dies, if not handled otherwise before death, the trust is to be divided; and
- that if married persons enter into a multiple-party account with survivorship provisions in favor of the other spouse or a relative of the other spouse who is not a common relative and the persons later divorce, the provisions in favor of the former spouse or former spouse's relative are ineffective.

H.B. 2271 updates requirements for administration of an estate by requiring the name of a person waiving service on a minor's behalf be reported to the court and clarify the time period for issuance of letters testamentary.

H.B. 2271 makes it clear that for class gifts, the time period for determining the persons who are class members is based on the date of death of the person designated as the measuring life, including for class members who are in gestation at the time of the person's death. H.B. 2271, makes a similar addition regarding gestation and class gifts in the Property Code to provide conformity between the two codes.

H.B. 2271 addresses various issues to aid in the efficient administration of a decedent's estate, including:

- providing clarity for the payment of estate taxes, when other assets of a decedent's estate are insufficient, a personal representative may obtain funds from an account passing because of a survivorship provision;
- increasing the value of an estate that may qualify for a small estate affidavit proceeding to \$75,000, an increase from the current amount of \$50,000 established in 1979;
- clarifying that the proof required for a muniment of title proceeding conforms to the existing statutory requirements for an application to seek this type of proceeding;
- updating the published claim notice requirements for counties that do not have a newspaper printed in them.

**Codification:** Section 22.004(a), 33.001, 112.103(a) and (b), 113.252(a), (b), and (c), 405.003(b) and (d), 456.003, and Chapter 123 Estates Code, and Chapter 112, Property Code

**Effective Date:** September 1, 2017

**123.S.B. 2150** (Huffman) *Relating to a revocable deed that transfers real property at the transferor's death.*

**Summary** - S.B. 2150 amends the Estates Code to revise the provision regarding the rules that apply on the death of a transferor to an interest in real property that is the subject of a transfer on death deed and owned by the transferor at death when a designated beneficiary fails to survive or predeceases the transferor, except as otherwise provided in the deed or in any other statute or the common law of the state governing a decedent's estate, to establish that the share of any designated beneficiary that fails to survive the transferor by 120 hours lapses and that such share is subject to and passes in accordance with statutory provisions governing the failure

of a devise in a testator's will as if the transfer on death deed were such a devise. The bill revises the statutory form that may be used to create a transfer on death deed to establish different transfer options based on whether or not certain beneficiaries survive the testator and to instruct the testator on the selection of one of the applicable and available elections to account for beneficiaries who predecease the testator.

**Codification:** Section 114.103(a) and 114.151, Estates Code

**Effective Date:** September 1, 2017

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## IX. WEALTH

124. **H.B. 217** (Canales | Moody | Collier) *Relating to the authority of certain persons to defer or abate the collection of ad valorem taxes on a person's residence homestead.*

**Summary** - H.B. 217 amends the Tax Code to entitle an individual to defer collection of a tax, abate a suit to collect a delinquent tax, or abate a sale to foreclose a tax lien if the tax was imposed against property that the individual owns and occupies as a residence homestead and the individual is qualified to receive an exemption under statutory provisions relating to exemptions on certain property owned by a disabled veteran.

**Codification:** Subchapter B, Chapter 21, Labor Code

**Effective Date:** September 1, 2017

125. **H.B. 1101** (Pickett | Guillen) *Relating to the authority of the chief appraiser of an appraisal district to require a person to file a new application to confirm the person's current qualification for the exemption from ad valorem taxation of the total appraised value of the residence homestead of a 100 percent disabled veteran.*

**Summary**- H.B. 1101 amends the Tax Code to prohibit the chief appraiser of an appraisal district from requiring a 100 percent disabled veteran allowed an applicable residence homestead property tax exemption to file a new application to determine the veteran's current qualification for the exemption if the veteran has a permanent total disability determined by the U.S. Department of Veterans Affairs under certain federal regulations.

**Codification:** Amends SECTION 1. Section 11.43, Tax Code by amending Subsection (c) and adding Subsection (r)

**Effective Date:** January 1, 2018.

126. **S.B. 499** (West) *Relating to the adoption of the **Uniform Partition of Heirs' Property Act**.*

**Summary** –S.B. 499 amends the Property Code to require a court, in an action to partition real property, to determine whether the property is heirs' property and on such a determination to require the property to be partitioned as provided for by the bill unless all of the cotenants otherwise agree in a record. As defined by this Act, “heirs property” is real property owned under the tenancy in common of ownership that is not subject to a written agreement governing partition of the property and that has the following attributes:

- one or more of the cotenants acquired title from a family member whether living or deceased;

- A significant percentage of the cotenants in terms of numbers or of interests held are related to each other or at least one of the cotenants who owns a substantial percentage of the undivided interests acquired title from a family member.

This Act implements these key protections by establishing a hierarchy of remedies in proceedings for the partition of heirs property:

- (1) a right of buyout of tenancy-in-common interest by those cotenants who did not petition the court for a forced sale of the property;
- (2) partition in kind of the property;
- (3) sale of the property by open-market sale (i.e., sale under commercially reasonable conditions designed to sell the property for its fair market value by listing and marketing the property through a licensed real estate broker); and
- (4) sale of the property by auction or similar mechanism, if the prior three remedies are not possible.

Finally, the Act improves the notice to owners of the pending action, and sets forth a test for determining when property should be divided or sold that supports the stated preference for a partition in kind.

**Codification:** Title 4, Property Code

**Effective Date:** September 1, 2017

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## LITIGATION

127. **H.B. 1020** (Smithee | Farrar) *Relating to volunteer practice by an inactive member of the State Bar of Texas.*

**Summary** – Since 1988, the State Bar of Texas' (state bar) Emeritus Attorney Participation Pro Bono Program (program) has allowed retired lawyers in good standing with the state bar to do pro bono work through Supreme Court of Texas-approved legal services organizations. The goal of the program is to increase the pool of pro bono attorneys in Texas. However, by limiting the program to retired attorneys, the program excludes a larger pool of attorneys who are inactive for other reasons, such as caregiving responsibilities. Attorneys who choose to go on inactive status are not permitted to participate in the program because the Texas Government Code prohibits inactive attorneys from practicing law in the state. H.B.1020 permits inactive members of the state bar to practice law for the sole purpose of providing probono legal services.

**Codification:** Section 81.053, Government Code

**Effective Date:** September 1, 2017

128. **H.B. 2776** (Smithee) *Relating to the right of certain appellants to supersede a judgment or order on appeal.*

**Summary** - H.B. 2776 amends the Government Code to require the Supreme Court of Texas to adopt rules to provide that the right of the state, a department of the state, and the head of such a department, which are exempt as an appellant from the requirement to file a bond for court costs incident to a suit filed by the entity or officer or for an appeal or writ of error taken

out by the entity or officer, to supersede a judgment or order on appeal is not subject to being counter-superseded under any other rule and to provide that counter-supersedeas remains available to parties in a lawsuit concerning a matter that was the basis of a contested case in an administrative enforcement action. The bill requires the Supreme Court to adopt such rules before May 1, 2018.

**Codification:** Section 22.004, Government Code

**Effective Date:** September 1, 2017

129. **H.B. 3649** (Herrero | Guillen) *Relating to confidential communications of victims of certain family violence offenses.*

**Summary** – H.B. 3649 amends the Family Code to make a written or oral communication between a victim of family violence and an advocate who has at least 20 hours of training in assisting victims of family violence and is an employee or volunteer of a family violence center made in the course of advising, advocating for, counseling, or assisting the victim confidential and to prohibit such a communication from being disclosed. The bill grants a victim of family violence the privilege to refuse to disclose and to prevent another from disclosing such a confidential communication and establishes that the privilege may be claimed by a victim or a victim's attorney on a victim's behalf; a parent, guardian, or conservator of a victim under 18 years of age; or an advocate or a family violence center on a victim's behalf.

H.B. 3649 limits the circumstances under which such a confidential communication may be disclosed to disclosure to another individual employed by or volunteering for a family violence center for the purpose of furthering the advocacy process; to other persons in the context of a support group or group counseling in which a victim is a participant; or for the purposes of making a report under statutory provisions relating to an investigation of a report of child abuse or neglect or Human Resources Code provisions relating to a report of abuse, neglect, or exploitation of elderly persons, persons with disabilities, or persons receiving services from certain providers. The bill establishes that the Texas Rules of Evidence govern the disclosure of such a confidential communication in a criminal or civil proceeding by an expert witness who relies on facts or data from the communication to form the basis of the expert's opinion.

**Codification:** Chapter 93, Family Code

**Effective Date:** September 1, 2017

130. **H.B. 3879** (Goldman | Cain) *Relating to nonlawyer representation in an appeal of an eviction suit.*

**Summary** – H.B. 3879 amends the Property Code to authorize an owner of a multifamily residential property to be represented in an appeal of an eviction suit for nonpayment of rent in a county or district court by the owner's authorized agent, who need not be an attorney, or, if the owner is a corporation or other entity, by an employee, owner, officer, or partner of the entity, who need not be an attorney.

**Codification:** Section 24.011, Property Code

**Effective Date:** September 1, 2017

131. **H.B. 4147** (Kacal) *Relating to a defendant's right to appeal from a judgment or conviction in a municipal court of record.*

**Summary** – H.B. 4147 amends the Government Code to clarify that a county court has jurisdiction of any appeal from a judgment or conviction in a municipal court of record located

in that county if the county does not have a county criminal court, county criminal court of appeal, municipal court of appeal, or county court at law.

**Codification:** Section 30.00014, Government Code

**Effective Date:** September 1, 2017

132. **S.B. 46** (Zaffirini) *Relating to allowing judges to use juror identification numbers when polling the jury.*

**Summary** – Under current law, the state and the defendant in a court proceeding each have a right to poll the jury, which is done by calling the name of each juror and then questioning the juror for purposes of establishing the jury’s verdict. Calling out a juror’s name in open court could pose a safety risk to the juror, particularly in controversial cases. To reduce this risk, S.B. 46 would authorize a judge, for the purposes of polling members of a jury to ascertain where each juror stands in relation to the verdict, to assign each juror an identification number to use in place of the juror’s name.

**Codification:** Article 37.05, Code of Criminal Procedure

**Effective Date:** September 1, 2017

133. **S.B. 259** (Huffines) *Relating to jury summons questionnaires.*

**Summary** – S.B. 259 amends the Government Code to add the option for a written jury summons to include the electronic address of the court’s website from which the jury summons questionnaire developed by the Office of Court Administration of the Texas Judicial System may be easily printed as an alternative to the summons including a copy of the questionnaire. The bill authorizes a county in which the district and criminal district judges adopt a plan for an electronic jury selection method to allow a person to complete and submit a jury summons questionnaire on the applicable court’s website.

**Codification:** Sections 62.0132(b) and (d), Government Code

**Effective Date:** September 1, 2017

134. **S.B. 291** (Whitmire) *Relating to the issuance of a writ of attachment for certain witnesses.*

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

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

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

**Effective Date:** September 1, 2017

135. **S.B. 302** (Watson | Hinojosa | Taylor, Van) *Relating to the continuation and functions of the state bar.*

**Summary** – S.B. 302 amends the State Bar Act, Government Code to, among other provisions, continue the existence of the State Bar until September 1, 2029. The bill provides for requirements applicable to any change in a state bar membership fee or other fee and requires the Supreme Court of Texas in establishing rules governing admission to the practice of law to ensure that no rule violates Civil Practice and Remedies Code provisions relating to religious freedom.

S.B. 302 requires the supreme court to ensure that an attorney has an opportunity to respond to all allegations of misconduct and sets out provisions relating to disciplinary rules, including provisions relating to issuance of a subpoena, attorney self-reporting of criminal offenses and disciplinary action taken by another state, a process to identify complaints suitable for settlement or an investigatory hearing, and sanction guidelines. The bill requires the chief disciplinary counsel to create and maintain a grievance tracking system and establish a process to regularly search the National Lawyer Regulatory Data Bank to identify a state bar member who is disciplined in another state. The bill authorizes the chief disciplinary counsel to hold investigatory and disciplinary hearings by teleconference. The bill requires the bar to obtain criminal history record information on each bar member whose information is already on file with the Department of Public Safety or the Board of Law Examiners.

S.B. 302 establishes the Committee on Disciplinary Rules and Referenda and provides procedures by which the committee proposes disciplinary rules and by which such rules are adopted or rejected. The bill requires the state bar to fund one full-time position of ombudsman for the attorney discipline system and sets out the powers and duties of that position.

**Codification:** Sections 81.003, 81.0201, 81.022, 81.024(a) and (b), 81.054(a), 81.115(b), and 411.1005(a); Government Code.

**Effective Date:** September 1, 2017

136. **S.B. 303** (Watson | Hinojosa | Taylor, Van) *Relating to the continuation and functions of the Board of Law Examiners.*

**Summary** – S.B. 303 amends the Government Code to, among other provisions, continue the Board of Law Examiners until September 1, 2029; to authorize the board to delegate routine decisions to the executive director of the board; and to revise board training requirements. The bill requires the Supreme Court of Texas, in adopting rules on eligibility for a license to practice law, to ensure that no rule violates Civil Practice and Remedies Code provisions relating to religious freedom and to adopt rules on licensing and examinations deadlines and a fee schedule. The bill requires the board to develop specific guidelines for determining the moral character and fitness of license applicants, overseeing probationary license holders, and granting waiver requests.

**Codification:** Sections 82.001(b), 82.006, 82.0073, 82.010, 82.033(d) and 82.027; Government Code

**Effective Date:** September 1, 2017

## ABOUT THE EARL CARL INSTITUTE

### **Background.**

The Earl Carl Institute for Legal and Social Policy, Inc. at the Thurgood Marshall School of Law seeks to identify, address, and offer solutions to issues that affect traditionally urban and disenfranchised communities. The Institute was established in 1992 by Professor Marcia Johnson and is a nonprofit corporation exempt from taxation under §501(c) (3) of the Internal Revenue Code.



The Institute was named in honor of Professor Earl Carl, a founding faculty member of the Law School. Professor Carl, blind from an early age, graduated from Fisk University before going on to earn his law degree from Yale University Law School. A symbol of personal triumph over misfortune, Professor Carl is a reminder that we are limited by only the barriers we choose not to overcome.

The Institute was initially designed to serve as a provider of resources for Thurgood Marshall students to enhance their research and writing skills. Over the past 20 years the Institute's programs have grown significantly and now also include training in legal advocacy, leadership, office management, and problem solving. The Institute promotes civil and human rights through the students' research, position papers, and other publications. A high percentage of Institute students pass the bar exam on their first attempt.

Through the production of papers, community education programs and media presentations, the Institute continues to make advances toward becoming a prominent research resource and authority with respect to its Core and Signature Project Initiatives.

From its beginning, the purpose of the Earl Carl Institute has been to meet, through an interdisciplinary approach, the legal and social needs of traditionally under-represented populations. The Institute is committed to the belief that social change can occur through a variety of educational and advocacy activities, client education, publications, and direct representation. The Institute believes problems that are intricately intertwined with the loss or impairment of individual rights can be addressed through activities that help eliminate poverty in the urban community.

### **Mission, Vision, and Core Beliefs of the Earl Carl Institute**

#### **The Mission of the Earl Carl Institute**

The mission of the Institute is to identify, address, and offer solutions to legal and social problems that affect traditionally urban and disenfranchised communities. The Institute, through interdisciplinary scholarship and advocacy, aims to develop the leadership, research, and advocacy skills of law students to encourage public service and to enable the students to effectively address problems of underserved communities.

#### **The Vision of the Earl Carl Institute**

The vision of the Institute is to serve as one of the nation's preeminent centers for research and advocacy on legal and social issues affecting underserved communities. We will serve as a leading

voice in promoting social justice and be recognized for excellence in our programs and the quality of our community engagement.

### **The Core Beliefs of the Earl Carl Institute**

The core beliefs of the Institute are --

- to promote excellence in education using an interdisciplinary approach to create excellent future leaders who will advance social justice;
- to provide an effective service delivery component to address the needs of individual citizens and advance community representation;
- to contribute to public discourse by producing high quality significant research that enhances public policy discussions;
- to provide accessibility to the Institute and its programs in order to foster an environment that promotes equality for traditionally underserved populations; and
- to have a significant role in facilitating awareness that contributes to the advancement of civil rights and social justice.

As the Institute evolves, it continues to work towards identifying potential implementable solutions to legal and social issues disproportionately impacting the minority community. The Institute will continue to pursue, through both academic and grassroots efforts, opportunities to promote policy changes for the betterment of the urban community and to fulfill the missions of the Institute, TMSL, and TSU.

### **Structure of the Earl Carl Institute**

*Institute Projects and Outcomes.* The Institute generally undertakes projects that are interdisciplinary in nature and have a disproportionate impact on minorities as well as one of three outcomes. These outcomes are (1) student development, (2) public policy initiatives, and (3) community education. In addition, each project is consistent with the purposes of one of the Institute's priority research areas: (1) Criminal Justice, (2) Education, (3) Family, and (4) Housing. By working in specific priority areas, the Institute seeks to create a high level of expertise in areas that significantly impact the urban community. In addition, all Institute projects support Law School strategic goals.

### **Institute Centers**

The Institute maintains three centers: the Center for Government Law, the Center for Civil Advocacy, and the Center for Criminal Justice.

### **The Center for Civil Advocacy**

Formerly known as the Institute for Trial Advocacy, The Center for Civil Advocacy (CCA) was established in November 2001 and provides Thurgood Marshall Law students an opportunity to gain practical experience by working with clients, witnesses, lawyers and courts. Sources for cases include the Houston Volunteer Lawyers Program, Lone Star Legal Aid, Texas Appleseed, Disability Rights Texas, other legal services organizations, community based organizations and churches. The clients represented through CCA are commonly low-income individuals and families.

The CCA currently sponsors two advocacy projects: the Opal Mitchell Lee Property Preservation Project (OMLPPP) and the ECI Juvenile Justice Project.

(1) *The Opal Mitchell Lee Property Preservation Program (OMLPPP)* was established in September of 2007, through a grant from Texas Access to Justice Foundation (TAJF). TAJF has continued to fund the project annually. The OMLPPP addresses the legal challenges lower income residents face in maintaining their real property and enhancing their wealth. The project's focus is to help economically disadvantaged communities retain and grow wealth through assistance with maintaining or obtaining real property. Studies have shown that 95% of the wealth of African Americans is in the value of their homes. The Project staffed by three full-time attorneys. On average, the Institute hires two students per semester to serve as student attorneys for the project. Services include actions involving probate, adverse possession, clearing title to property, partitions, mortgage, homeowner association and tax foreclosure defense, bankruptcy assistance, property tax exemptions, formation of nonprofit corporations to assist with community development, and consumer debt issues.



(2) *The Earl Carl Institute Juvenile Justice Project (JJP)* has operated since 2009 with financial support from the Thurgood Marshall School of Law and grants from the Litigation Section of the State Bar of Texas, Texas Bar Foundation and the Houston Endowment. The project is currently staffed by a full-time attorney who is an Equal Justice Works Fellow sponsored by the Texas Access to Justice Foundation and Greenberg Traurig Law Firm. The Earl Carl Institute's Juvenile Justice Project addresses the issue of disproportionate minority contact (DMC), through a holistic approach, by providing legal representation to children who are in multiple systems including the criminal justice system, disparate educational systems, the mental health system and foster care system. Our services include representation in school disciplinary/special education hearings, sealing of criminal records, direct legal representation in Class C Misdemeanor school ticket cases and truancy cases, direct representation in the juvenile delinquency, foster care, and mental health care systems.

EARL CARL INSTITUTE  
JUVENILE JUSTICE PROJECT

### **The Center for Criminal Justice**

The Center for Criminal Justice (CCJ) engages in research, analysis, collaboration, and actual innocence litigation to foster a fairer and more accountable justice system. The Center uses an interdisciplinary approach to address problems in the criminal justice system that disproportionately impacts the urban community. The goals of the Center are (1) to research criminal justice reform issues and recommend more effective policies, and (2) to provide students with an opportunity to hone their advocacy skills.

*The Thurgood Marshall School of Law Innocence Project (TMSLIP)* is operated under the auspices of the CCJ. The Innocence Project at Thurgood Marshall School of Law (TMSLIP) was created in June of 2007. In March of 2009, the Innocence Project began operating under the Earl Carl Institute for Legal and Social Policy, Inc. TMSLIP came to Institute with only 24 open services requests while other state funded law school innocence projects averaged over 1000 requests. By July 2015, the TMSLIP had over 3000 open requests for assistance. Further, the TMSLIP is poised to begin litigation in three cases by the end of this academic year.

The Project promotes student development by employing a full time supervising attorney as well as numerous law student investigators who review claims of actual innocence. Statistics show that, like most problems with our criminal justice system, the problem of wrongful conviction

impacts the African American community more than any other community. The disparate impact of wrongful conviction on the African American community is shown in Texas' DNA exonerations. Of the first 45 persons whose convictions were found to be wrongful as the result of post-conviction DNA tests, more than 80% are African American.

### **The Center for Government Law**

The Center for Government Law was established to provide integrated academic and practical skills training in government administration and regulation to law students. Preparing students for the practice of law in the public sector is a primary goal of the Center. The Center works with numerous governmental organizations on the local, state, and federal level. In addition, the Center is responsible for a report each biennial Texas Legislative session on the impact of new legislation on TSU and the urban community. It is the goal of the center to become an authority and resource on urban issues for legislators and for policy organizations.

VISIT US ON THE WEB AT [www.earlcarlinstitute.org](http://www.earlcarlinstitute.org) for more information.

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