

**LEGISLATIVE UPDATE
2011-2013**

PENAL CODE

Chapter 1. General Provisions

Section 1.07. Definitions. A “federal special investigator” is added to the list of special investigators in Article 2.122, Code of Criminal Procedure. [HB 3423, eff. 09-01-11]

Chapter 3. Multiple Prosecutions

Section. 3.03. Sentences for Offenses Arising Out of Same Criminal Procedure. Sentences may be stacked for offenses under Penal Code §20A.02 (Trafficking of Persons) or §43.05 (Compelling Prostitution). [SB 24, eff. 09-01-11]

Chapter 12. Punishments

Section 12.35. State Jail Felony Punishment. A state jail felony offense can be enhanced to a 3rd degree felony if the defendant has been previously convicted of Continuous Trafficking of Persons (new Penal Code §20A.03. [HB 3000, eff. 09-01-11]

Section 12.42. Penalties for Repeat and Habitual Felony Offenders *On Trial For First, Second, or Third Degree Felony.* Removes references to state jail felony enhancements and recodifies them under new §12.45. Prior state jail felony convictions cannot be used to enhance subsequent non-state jail felony convictions. [HB 3384, HB 3000, eff. 09-01-11]

Section 12.425. Penalties for Repeat and Habitual Felony Offenders on Trial for State Jail Felony.

(a) *If it is shown on the trial of a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two state jail felonies punishable under Section 12.35(a), on conviction the defendant shall be punished for a felony of the third degree.*

(b) *If it is shown on the trial of a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two felonies other than a state jail felony punishable under Section 12.35(a), and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction the defendant shall be punished for a felony of the second degree.*

(c) *If it is shown on the trial of a state jail felony for which punishment may be enhanced under Section 12.35 (c) that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a), on conviction the defendant shall be punished for a felony of the second degree.* [HB 3384, eff. 09-01-11]

Chapter 15. Preparatory Offenses

Section 15.031. Criminal Solicitation of a Minor. Adds offenses committed under Section 20A.02(a)(7) or (8) (Trafficking of Persons) and Sections 43.02 (Prostitution), 43.05(a)(2) (Compelling Prostitution) [SB 24, eff. 09-01-11]

Chapter 16. Criminal Instruments, Interception of Wire or Oral Communication, and Installation of Tracking Device

Section 16.01. Unlawful Use of Criminal Instrument or Mechanical Security Device. This section is amended to make it unlawful to also possess a “mechanical security device,” defined as a device designed or manufactured for use by a locksmith to perform services for a customer who seeks entry to a structure, motor vehicle, or other property. [HB 2577, eff. 09-01-11]

Chapter 19. Criminal Homicide

Section 19.03. Capital Murder. The death penalty is expanded to persons who murder a child under the age of 10 years, rather than 6 years. [SB 377, eff. 09-01-11]

Chapter 20. Kidnapping, Unlawful Restraint, and Smuggling of Persons

Section 20.05. Smuggling of Persons. Offense is now committed if a person intentionally transports an individual with intent to conceal the individual from a peace officer or special investigator or to flee from one of those officials attempting to arrest or detain the actor. It is still a state jail felony, but may be enhanced to a 3rd degree felony if the offense is committed for pecuniary benefit or done in a manner that endangers the transported individual. There is an affirmative defense if the actor is transporting someone to whom he is related within the 2nd degree of consanguinity or affinity. [HB 260, eff. 09-01-11]

Chapter 20A. Trafficking of Persons

Section 20A.01. Definitions

In this chapter:

- (1) “Child” means a person younger than 18 years of age.
- (2) “Forced labor or services means labor or services, *other than labor or services that constitute sexual conduct*, that are performed or provided by another person and obtained through an actor’s *use of force, fraud, or coercion*.
- (3) “Sexual conduct” has the meaning assigned by Section 43.25. [Sexual Performance by a Child]
- (4) “Traffic” means to transport, entice, recruit, harbor, provide, or otherwise obtain another person by any means. [SB 24, eff. 09-01-11]

Section 20A.02. Trafficking of Persons

- (a) A person commits an offense if the person knowingly:
 - (1) traffics another person with the intent that the trafficked person engage in

- forced labor or services;
- (2) *receives a benefit* from participating in a venture that involves an activity described by Subdivision (1), including by receiving labor or services the person knows are forced labor or services;
 - (3) *traffics another person and, through force, fraud, or coercion, causes the trafficked person to engage in conduct prohibited by:*
 - (A) *Section 43.02 (Prostitution);*
 - (B) *Section 43.03 (Promotion of Prostitution);*
 - (C) *Section 43.04 (Aggravated Promotion of Prostitution); or*
 - (D) *Section 43.05 (Compelling Prostitution).*
 - (4) *receives a benefit from participating in a venture that involves an activity described by Subdivision (3) or engages in sexual conduct with a person trafficked in the manner described in Subdivision (3);*
 - (5) *traffics a child with the intent that the trafficked child engage in forced labor or services;*
 - (6) *receives a benefit from participating in a venture that involves an activity described by Subdivision (5), including by receiving labor or services the person knows are forced labor or service;*
 - (7) *traffics a child and by any means the trafficked child to engage in, or become the victim of, conduct prohibited by:*
 - (A) *Section 21.02 (Continuous Sexual Abuse of Young Child or Children);*
 - (B) *Section 21.11 (Indecency With a Child);*
 - (C) *Section 22.011 (Sexual Assault);*
 - (D) *Section 22.021 (Aggravated Sexual Assault);*
 - (E) *Section 43.02 (Prostitution);*
 - (F) *Section 43.03 (Promotion of Prostitution);*
 - (G) *Section 43.04 (Aggravated Promotion of Prostitution);*
 - (H) *Section 43.05 (Compelling Prostitution);*
 - (I) *Section 43.25 (Sexual Performance by a Child);*
 - (J) *Section 43.251 (Employment Harmful to Children); or*
 - (K) *Section 43.26 (Possession or Promotion of Child Pornography); or*
 - (8) *receives a benefit from participating in a venture that involves an activity described by Subdivision (7) or engages in sexual conduct with a child trafficked in the manner described in Subdivision (7).*
- (b) Except as otherwise provided by this subsection, an offense under this section is a felony of the second degree. An offense under this section is a felony of the first degree if:
- (1) the applicable conduct constitutes an offense under *Subsection (a)(5), (6), (7), or (8)*, regardless of whether the actor knows the age of the child at the time the actor commits the offense; or
 - (2) the commission of the offense results in the death of the person who is trafficked.

- (c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.
- (d) *If the victim of an offense under Subsection (a)(7)(A) is the same victim as a victim of an offense under Section 21.02, a defendant may not be convicted of the offense under Section 21.02 in the same criminal action as the offense under Subsection (a)(7)(A) unless the offense under Section 21.02:*
 - (1) *is charged in the alternative;*
 - (2) *occurred outside the period in which the offense alleged under Subsection (a)(7)(A) was committed; or*
 - (3) *is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a)(7)(A).* [SB 24, eff. 09-01-11]

Section 20A.03. Continuous Trafficking of Persons.

- (a) *A person commits an offense if, during a period that is 30 or more days in duration, the person engages two or more times in conduct that constitutes an offense under Section 20A.02.*
- (b) *If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific conduct engaged in by the defendant constituted an offense under Section 20A.02 or on which exact date the defendant engaged in that conduct. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, engaged in conduct that constituted an offense under Section 20A.02.*
- (c) *If the victim of an offense under Subsection (a) is the same victim as a victim of an offense under Section 20A.02, a defendant may not be convicted of the offense under Section 20A.02 in the same criminal action as the offense under Subsection (a), unless the offense under Subsection 20A.02:*
 - (1) *is charged in the alternative;*
 - (2) *occurred outside the period in which the offense alleged under Subsection (a) was committed; or*
 - (3) *is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).*
- (d) *A defendant may not be charged with more than one count under Subsection (a) if all of the conduct that constitutes an offense under Section 20A.02 is alleged to have been committed against the same victim.*
- (e) *An offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years.* [HB 3000, eff.09-01-11] [In addition, Art. 12.01, CCP. was amended to provide that there are no limitations on prosecuting this offense, and it is considered a “violent offense” under Art. 17.032]

[**Note:** A number of amendments were made to the Code of Criminal Procedure, not included herein, with regard to the presentation of evidence in cases involving Section 43.05 (Compelling

Prostitution) and Section 20A.02 (Trafficking of Persons), such as exceptions to the Hearsay Rule for children, availability of children for testifying, etc. Offenses under Sections 43.05 and 20A.02 have been added to the list of offenses under Article 42.12, Section 3g, placing limitations on court-ordered community supervision. Also, persons convicted of violations of Section 20A.02(a)(3), (4), (7), or (8) must register as sex offenders.]

Chapter 21. Sexual Offenses

Section 21.02. Continuous Sexual Abuse of Young Child or Children. Adds offenses under Sections 20A.02(a)(7) or (8) (Trafficking of Persons) and 43.05(a)(2) (Compelling Prostitution) [SB 24, eff. 09-01-11]

Section 21.12. Improper Relationship Between Educator and Student.

- (a) An employee of a public or private primary or secondary school commits an offense if the employee:
 - (1) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the person works;
 - (2) *holds a certificate or permit issued as provided by Subchapter B, Chapter 21, Education Code, or is a person who is required to be licensed by a state agency as provided by Section 21.003(b), Education Code, and engages in sexual conduct, sexual intercourse, or deviate sexual intercourse with a person the employee knows is:*
 - (A) *enrolled in a public primary or secondary school in the same school district as the school at which the employee works; or*
 - (B) *a student participant in an educational activity that is sponsored by a school district or a public or private primary or secondary school, if:*
 - (i) *students enrolled in a public or private primary or secondary school are the primary participants in the activity; and*
 - (ii) *the employee provides education services to those participants; or*
 - (3) *engages in conduct described by Section 33.021, with a person described by Subdivision (1), or a person the employee knows is a person described by Subdivision (2)(A) or (B), regardless of the age of that person.*
- (b) An offense under this section is a felony of the second degree.
- (b-1) It is an affirmative defense to prosecution under this section that:
 - (1) *the actor was the spouse of the enrolled person at the time of the offense; or*
 - (2) *the actor was not more than three years older than the enrolled person and, at the time of the offense, the actor and the enrolled person were in a relationship that began before the actor's employment at a public or private primary or secondary school...* [HB 1610, eff. 09-01-11]

Chapter 22. Assaultive Offenses

Section 22.021. Aggravated Sexual Assault. Amends paragraph (a)(2)(ii) and (iii) by adding the elements of also placing the victim in fear that *any person will become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) [Trafficking of Persons]*, or that death, serious bodily injury, or kidnapping will be imminently inflicted on any person, or by acts or words occurring in the presence of the victim threaten to cause *any person to become the victim of an offense under Section 20A.02 (a)(3), (4), (7), or (8)*, or to *cause* the death, serious bodily injury, or kidnapping of any person. [SB 24, eff. 09-01-11]

Chapter 25. Offenses Against the Family

Section 25.01. Bigamy. Amended to clarify that it is a second degree felony if the victim is 17 years old, and a first degree if 16 or younger. [HB 253, eff. 09-01-11]

Section 25.03. Interference With Child Custody. It is now an offense to take or retain a child outside the country without the permission of the person entitled to possession of or access to the child if done with the intent to deprive that person of possession or access. This does not apply to certain victims of family violence who flee the country with a child. [HB 3439, SB 1551, eff. 09-01-11]

Section 25.07. Violation of Certain Court Orders or Conditions of Bond in a Family Violence Case. Adds another prohibition in a protective order for someone who “harms, threatens, or interferes with the care, custody, or control of a pet, companion animal, or assistance animal possessed by a person” protected by the order. [SB 279, eff. 09-01-11]

Section 25.08. Sale or Purchase of Child. This offense is enhanced from 3rd degree to 2nd degree felony if the offense is committed with the intent to commit Trafficking of Persons or Compelling Prostitution. [HB 2014, eff. 09-01-11]

Chapter 31. Theft

Section 31.01. Definitions. Takes the definition of “retail theft detector” and “shielding or deactivation instrument” from Sec. 31.15, and “retail merchandise” from Sec. 31.16, and moves them to this section so that they apply to all thefts. [HB 2482, eff. 09-01-11]

Section 31.03. Theft.

An additional 2nd degree felony is added where the value of the property stolen is less than \$200,000 and the property stolen is an ATM or the contents or components of an ATM. [SB 887, eff. 09-01-11]

A theft offense can also be enhanced to the next higher category if, during the

commission of the offense, the actor intentionally, knowingly, or recklessly:

- (A) *caused a fire exit alarm to sound or otherwise become activated;*
- (B) *deactivated or otherwise prevented a fire exit alarm or retail theft detector from sounding; or*
- (C) *used a shielding or deactivation instrument to prevent or attempt to prevent detection of the offense by a retail theft detector. [HB 2482, eff. 09-01-11]*

□ Stolen aluminum, bronze, or copper need no longer be “insulated or noninsulated tubing, rods, water gate stems, wire, or cable that consists of at least 50 percent” of that metal. Brass is also added to the list of metals. [SB 694, eff. 09-01-11]

Section 31.04. Theft of Service.

- (a) A person commits theft of service if, with intent to avoid payment for service that the actor knows is provided only for compensation:...
- (4) the actor intentionally or knowingly secures the performance of the service by agreeing to provide compensation and, after the service is rendered, fails to make *full* payment after receiving notice demanding payment.
- (d-1) *For purposes of Subsection (a)(4):*
 - (1) *if the compensation is or was to be paid on a periodic basis, the intent to avoid payment for a service may be formed at any time during or before a pay period; and*
 - (2) *the partial payment of wages alone is not sufficient evidence to negate the actor’s intent to avoid payment for a service.*

[SB 1024, eff. 09-01-11]

Section 31.16. Organized Retail Theft. Amends this section to make it a Class B Misdemeanor if the total value of the merchandise involved is less than \$50, a Class A if more than \$50 but less than \$500. It is a state jail felony if the value is \$500 but less than \$1,500; a 3rd degree felony if \$1,500 but less than \$20,000; 2nd degree if \$20,000 to \$99,999; 1st degree if \$100,000 or more. An offense under this section is can also be enhanced to the next higher degree if:

- (1) *during the commission of the offense, a person engaged in an activity described by Subsection (b) intentionally, knowingly, or recklessly:*
 - (A) *caused a fire exit alarm to sound or otherwise become activated;*
 - (B) *deactivated or otherwise prevented a fire exit alarm or retail theft detector from sounding; or*
 - (C) *used a shielding or deactivation instrument to prevent or attempt to prevent detection of the offense by a retail theft detector. [HB 2482, eff. 09-01-11]*

Section 31.17. Unauthorized Acquisition or Transfer of Certain Financial Information.

- (a) *In this section:*
 - (1) *“Check” has the meaning assigned by Section 3.104, Business & Commerce Code.*
 - (2) *“Credit card” and “debit card” have the meanings assigned by Section 32.21.*

- (3) *“Financial sight order or payment card information” means financial information that is:*
 - (A) *contained on either side of a check or similar sight order, check card, debit cards, or credit card; or*
 - (B) *encoded on the magnetic strip or stripe of a check card, debit card, or credit card.*
- (b) *A person commits an offense if the person, knowing that the person is not entitled to obtain or possess that financial information:*
 - (1) *obtains the financial sight order or payment card information of another by use of an electronic, photographic, visual imaging, recording, or other device capable of accessing, reading, recording, capturing, copying, imaging, scanning, reproducing, or storing in any manner the financial sight order or payment card information; or*
 - (2) *transfers to a third party information obtained as described by Subdivision (1).*
- (c) *An offense under Subsection (b)(1) is a Class B misdemeanor. An offense under Subsection (b)(2) is a Class A misdemeanor.*
- (D) *If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.*
[HB 1215, eff. 09-01-11]

Chapter 32. Fraud

Section 32.46. Securing Execution of a Document by Deception. Adds to the definition of “document” electronically stored data or other information that is retrievable in a readable, perceivable form. [SB 688, eff. 09-01-11]

Section 32.51. Fraudulent Use or Possession of Identifying Information. Amended to make “Social Security number” and “government issued identification number” their own type of “identifying information,” removing their linkage with the victim’s name and date of birth. [HB 1529, eff. 09-01-11]

Section 32.53. *Exploitation of Child, Elderly Individual, or Disabled Individual.*

- (a) *In this section:*
 - (1) *“Child,” “elderly individual,” and “disabled individual” have the meanings assigned by Section 22.04.*
 - (2) *“Exploitation” means the illegal or improper use of a child, elderly individual, or disabled individual or of the resources of a child, elderly individual, or disabled individual for monetary or personal benefit, profit, or gain.*
- (b) *A person commits an offense if the person intentionally, knowingly, or recklessly causes the exploitation of a child, elderly individual, or disabled individual.*
- (c) *An offense under this section is a felony of the third degree.*

- (d) *A person who is subject to prosecution under both this section and another section of this code may be prosecuted under either or both sections. Section 3.04 does not apply to criminal episodes prosecuted under both this section and another section of this code. If a criminal episode is prosecuted under both this section and another section of this code and sentences are assessed for convictions under both sections, the sentences shall run concurrently.*
- (e) *With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the Medicaid program. [SB 688, eff. 09-01-11]*

Section 32.54. Fraudulent or Fictitious Military Record.

- (a) *In this section:*
 - (1) *“Military record” means an enlistment record, occupation specialty, medal, award, decoration, or certification obtained by a person through the person’s service in the armed forces of the United States or the state military forces.*
 - (2) *“State military forces” has the meaning assigned by Section 431.001, Government Code.*
- (b) *A person commits an offense if the person:*
 - (1) *uses or claims to hold a military record that the person knows:*
 - (A) *is fraudulent;*
 - (B) *is fictitious or has otherwise not been granted or assigned to the person; or*
 - (C) *has been revoked; and*
 - (2) *uses or claims to hold that military record:*
 - (A) *in a written or oral advertisement or other promotion of a business; or*
 - (B) *with the intent to:*
 - (i) *obtain priority in receiving services or resources under Subchapter G, Chapter 302, Labor Code;*
 - (ii) *qualify for a veteran’s employment preference under Chapter 657, Government Code;*
 - (iii) *obtain a license or certificate to practice a trade, profession, or occupation;*
 - (iv) *obtain a promotion, compensation, or other benefit, or an increase in compensation or other benefit, in employment or in the practice of a trade, profession, or occupation;*
 - (v) *obtain a benefit, service, or donation from another person;*
 - (vi) *obtain admission to an educational program in this state; or*
 - (vii) *gain a position in state government with authority over another person, regardless of whether the actor receives compensation for the position.*
- (c) *An offense under this section is a Class C misdemeanor.*

- (d) *If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.* [SB 431, eff. 09-01-11]

Chapter 33. Computer Crimes

Section 33.01. Definitions. Adds definitions for “critical infrastructure facility” and “identifying information.” [HB 3396, eff. 09-01-11]

Section 33.02. Breach of Computer Security. Amends this section by separating into two offenses: (1) simply hacking into a computer, computer network, or computer system without consent, and (2) based upon the actor’s intent and the amount of damage done. Penalties differ based on the amount of damage, the intent of the actor, the actor’s prior record, but adds a defense if the action is done for a legitimate law enforcement purpose. [HB 3396, eff. 09-01-11]

Section 33.07. Online Impersonation.

- (a) *A person commits an offense if the person, without first obtaining the other person’s consent and with the intent to harm, defraud, intimidate, or threaten any person, uses the name or persona of another person to:*
- (1) *create a web page or a commercial social networking site or other Internet website; or*
 - (2) *post or send one or more messages on or through a commercial social networking site or other Internet website, other than on or through an electronic mail program or message board program....* [HB 1666, eff. 09-01-11]

Chapter 34. Money Laundering

Section 34.01. Definitions. Adds to the definition of “proceeds” to include funds from conduct constituting an offense under Section 151.7032, Tax Code (Failure to Pay Taxes Collected). [SB 934, eff. 09-01-11]

Chapter 35A. Medicaid Fraud

Section 35A.01. Definitions. Defines “high managerial agent” as a director, officer, or employee authorized to act on behalf of a provider and has duties of such responsibility that his conduct may reasonably be assumed to represent the policy or intent of the provider. [SB 688, eff. 09-01-11]

Section 35A.02. Medicaid Fraud. Also makes it a 3rd degree felony if the defendant submits 26-49 fraudulent claims under the Medicaid program, and a 2nd degree felony if submits 50 or more fraudulent claims. If the actor was a “high managerial agent,” the punishment is enhanced one level. The AG also has concurrent jurisdiction in prosecuting these offenses with the permission of the local prosecutor. [SB 544, SB 688, eff. 09-01-11]

Chapter 36. Bribery and Corrupt Influence

Section 36.05. Tampering With Witness. Upgrades the penalty to a 3rd degree felony, but if the official proceeding involves the prosecution of a criminal case, the penalty is the same as that of the case on trial. If the trial is a capital felony, then it is a 1st degree felony. [HB 1856, eff. 09-01-11]

Section 36.07. Acceptance of Honorarium. Clarifies that transportation, lodging, and meals accepted in connection with providing services at a seminar, conference, etc., are not reportable political contributions under the Election Code. [SB 1269, eff. 09-01-11]

Section 36.10. Non-Applicable. Same as Section 36.07. [SB 1269, eff. 09-01-11]

Chapter 37. Perjury and Other Falsification

Section. 37.08. False Report to Peace Officer, *Federal Special Investigator*, or Law Enforcement Employee. Adds “federal special investigators” to whom it is an offense to make a false report. [HB 3423, eff. 09-01-11]

Section 37.09. Tampering With or Fabricating Physical Evidence. Amended to create a defense for minor who delete certain “visual material” in accordance with new §43.261, although it makes reference to a subsection of that statute which doesn’t exist [§43.261(f)(3)(B)]. It also does not establish a defense for non-minor law enforcement or school officials who destroy that same material in an attempt to qualify for the bill’s new defense to prosecution for possession of child pornography under §43.26. [SB 407, eff.09-01-11]

Section 37.14. False Statement Regarding Child Custody Determination Made in Foreign Country. Added as a 3rd degree felony for knowingly making or causing to be made a false statement relating to a child custody determination made in a foreign country during a hearing held under certain provisions of the Family Code. [SB 1490, eff. 09-01-11]

Chapter 38. Evidence in Criminal Actions

Section. 38.04. Evading Arrest or Detention.

Adds “federal special investigator” as another type of official for which a person may be prosecuted for evading. Adds “watercraft” as a type of vehicle that can be used to evade. Use of a vehicle in flight is a 3rd degree felony, regardless of whether the actor has a previous conviction. It is also a 3rd degree felony to use a tire deflation device against a peace officer, and a 2nd degree felony if that causes serious bodily injury to another if done while in flight. [SB 496, SB 1416, HB 3423, eff. 09-01-11]

Using a “tire deflation device” is a 3rd degree felony if used against an officer while in flight, and a 2nd degree felony if the actor’s use of such device results in serious bodily injury while

in flight. [SB 1416, eff. 09-01-11]

Section 38.06. Escape. Expands this offense to include escape “from custody” by someone “lawfully detained,” but by failing to expand the definition of “custody” in §38.01 to include a warrantless detention, this amendment may be useless. [SB 844, eff. 09-01-11]

Section 38.14. Taking or Attempting to Take Weapon From Peace Officer, *Federal Special Investigator*, Employee or Official of Correctional Facility, Parole Officer, Community Supervision and Corrections Department Officer, or Commissioned Security Officer. Also applies statute to a “:federal special investigator.” [HB 3423, eff. 09-01-11]

Chapter 42. Disorderly Conduct and Related Offenses

Section 42.01. Disorderly Conduct. Clarifies that those sections relating to impermissible language, gestures, odors, noises, and fights do not apply to a student in the sixth or a lower grade who commit those prohibited acts on a public school campus during regular school hours; they are subject to school discipline, not the criminal justice system. [HB 359, eff. 0-9-01-11]

Section 42.055. Funeral Disruption. Amended to make it an offense to engage in proscribed picketing at a funeral beginning with the period three hours before service begins to three hours after the service ends. [HB 718, eff. 09-01-11]

Section 42.072. Stalking. Removes “following the other person,” and adds threatening injury or death “for an individual with whom the other person has a dating relationship,” who would be reasonably fearful of such threat. It also allows enhancement of punishment for prior convictions of a similar offense in another state, territory, tribal area, or under federal law. [SB 82, eff. 09-01-11]

Section 42.105. Cockfighting. Modeled after the dog fighting statute, Sec. 42.10, the offense gives an affirmative defense to show breeder and collectors of certain cockfighting equipment, as well as for scientific research and generally accepted and otherwise lawful animal husbandry or agricultural practices. The operation of a facility used for cockfighting is not explicitly criminalized. A spectator under 16 may not be prosecuted. Attending as a spectator is a Class C rather than a Class A misdemeanor. And using or permitting someone to use property for a cockfight is a Class A misdemeanor rather than a state jail felony. [HB 1043, eff. 09-01-11]

Chapter 43: Public Indecency

Section 43.02. Prostitution. This offense is enhanced to a 3rd degree felony if the person solicited in a public place for sexual conduct for hire is 14 to 16 years old, and a 2nd degree felony if the person solicited is younger than 14. It is also a Class A misdemeanor if the person has one or two previous convictions. [HB 2014, eff. 09-01-11]

Section 43.05. Compelling Prostitution

- (a) A person commits an offense if the person knowingly:
 - (1) Causes another by force, threat, or fraud to commit prostitution; or
 - (2) causes by any means a child younger than 18 years to commit prostitution, regardless of whether the actor knows the age of the child at the time the actor commits the offense.
- (B) An offense under *Subsection (a)(1)* is a felony of the second degree. *An offense under Subsection (a)(2) is a felony of the first degree.* [SB 24, eff. 09-01-11]

Section 43.251. Employment Harmful to Children.

☐ The penalty is increased to a 2nd degree felony, and a 1st degree felony if the child is younger than 14. [HB 2014, eff. 09-01-11]

☐ The penalty is a state jail felony if the defendant has one previous conviction of this offense, a 3rd degree felony if two or more previous convictions of this offense. [HB 290, eff. 09-01-11]

Section 43.26. Possession or Promotion of Child Pornography. Amended to provide a defense for law enforcement or school officials who obtain “sexting” evidence and destroy it within an “appropriate period.” But see §37.09 and §43.261 for problems created by this vague amendment. [SB 407, eff. 09-01-11]

Section 43.261. Electronic Transmission of Certain Visual Material Depicting Minor.

- (a) *In this section:*
 - (1) “Dating relationship” has the meaning assigned by Section 71.0021, Family Code.
 - (2) “Minor” means a person younger than 18 years of age.
 - (3) “Produce” with respect to visual material includes any conduct that directly contributes to the creation or manufacture of the material.
 - (4) “Promote” has the meaning assigned by Section 43.25.
 - (5) “Sexual conduct” has the meaning assigned by Section 43.25.
 - (6) “Visual material” has the meaning assigned by Section 43.26.
- (b) *A person who is a minor commits an offense if the person intentionally or knowingly:*
 - (1) *by electronic means promotes to another minor visual material depicting a minor, including the actor, engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material; or*
 - (2) *possesses in an electronic format visual material depicting another minor engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material.*
- (c) *An offense under Subsection (b)(1) is a Class C misdemeanor, except that the offense is:*
 - (1) *a Class B misdemeanor if it is shown on the trial of the offense that the actor:*

- (A) *promoted the visual material with intent to harass, annoy, alarm, abuse, torment, embarrass, or offend another; or*
- (B) *except as provided by Subdivision (2)(A), has previously been convicted one time of any offense under this section; or*
- (2) *a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been:*
 - (A) *convicted one or more times of an offense punishable under Subdivision (1)(A); or*
 - (B) *convicted two or more times of any offense under this section.*
- (d) *An offense under Subsection (b)(2) is a Class C misdemeanor, except that the offense is:*
 - (1) *a Class B misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted one time of any offense under this section; or*
 - (2) *a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted two or more times of any offense under this section.*
- (e) *It is an affirmative defense to prosecution under this section that the visual material:*
 - (1) *depicted only the actor or another minor:*
 - (A) *who is not more than two years older or younger than the actor and with whom the actor had a dating relationship at the time of the offense; or*
 - (B) *who was the spouse of the actor at the time of the offense; and*
 - (2) *was promoted or received only to or from the actor and the other minor.*
- (f) *It is a defense to prosecution under Subsection (b)(2) that the actor:*
 - (1) *did not produce or solicit the visual material;*
 - (2) *possessed the visual material only after receiving the material from another minor; and*
 - (3) *destroyed the visual material within a reasonable amount of time after receiving the material from another minor.*
- (g) *If conduct that constitutes an offense under this section also constitutes an offense under another law, the defendant may be prosecuted under this section, the other law, or both.*
- (h) *Notwithstanding Section 51.13, Family Code, a finding that a person has engaged in conduct in violation of this section is considered a conviction for the purposes of Subsections ©) and (d). [SB 407, eff. 09-01-11]*

Chapter 46. Weapons

Section 46.01. Definitions. Amended to add the definition of a “tire deflation device”: a device, including a caltrap or spike strip, that, when driven over, impedes or stops the movement of a wheeled vehicle by puncturing one or more of the vehicle’s tires, but does not include a traffic control device designed to puncture one or more tires when driven over in a specific direction and has a clearly visible warning sign. [SB 1416, eff. 09-01-11]

Section 46.02. Unlawful Carrying Weapons. Amended to allow a person to carry a handgun, illegal knife, or club inside of or enroute to a watercraft owned by or under the control of the person. [HB 25, eff. 09-01-11]

Section 46.05. Prohibited Weapons. Adds a “tire deflation device” to the list of prohibited weapons, except as an antique or curio or trying to sell to an appropriate agency. Unlike other weapons on the list, possession, manufacture, transportation, repair, or sale of a tire deflation device is a state jail felony. [SB 1416, eff. 09-01-11]

Section 46.15. Nonapplicability. Adds “watercraft” as a defense to prosecution. [HB 25, eff. 09-01-11]

Chapter 49. Intoxication and Alcoholic Beverage Offenses

Section. 49.04. Driving While Intoxicated. Amends to make a first conviction of DWI a Class A misdemeanor if, *at the time the analysis is performed*, the defendant has a blood alcohol concentration of 0.15 or more. [HB 1199, eff. 09-01-11]

Section 49.09. Enhanced Offenses and Penalties. The penalty for intoxication assault (§49.07) is increased to a 2nd degree felony if the serious bodily injury is “in the nature of a traumatic brain injury that results in a persistent vegetative state.” [HB 1199, eff. 09-01-11]

Chapter 71. Organized Crime

Section 71.02. Engaging in Organized Criminal Activity.

- The offense of Smuggling of Persons [20.05, PC] is added to the list of offenses relating to this section. [HB 260, eff. 09-01-11]
- The offenses of insurance fraud and Medicaid fraud are added to the list. [SB 688, eff. 09-01-11]
- Adds a subsection to include the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of the Occupations Code subtitle governing physicians. [SB 158, eff. 09-01-11]
- A subsection is added to include Tax Code felonies. [SB 934, eff. 09-01-11]

CODE OF CRIMINAL PROCEDURE

Chapter 2. General Duties of Officers

Article. 2.122. Special Investigators. Adds special agents of the Treasury Inspector General for Tax

Administration (replacing special agents of the Citizenship & Immigration Services), special agents of the Office of Inspector General of the Social Security Administration, and special agents of the Office of Inspector General of the Department of Veterans Affairs. [SB 150, SB 530, eff. 06-17-11]

Article 2.195. Duty to Report Warrant or Capias Information. This article was amended to require the Sheriff to report to NCIC each warrant or capias issued for a felony defendant who fails to appear in court, no later than the 30th day after the date the warrant or capias is issued. [HB 2472, eff. 09-01-11]

Article 2.271. Investigation of Certain Reports Alleging Abuse, Neglect, or Exploitation. Added to require a local law enforcement agency to promptly investigate a report of abuse, neglect, exploitation, or other similar complaint as required by new Health & Safety Code §260A.017. [SB 7, eff. 09-28-11]

Article 2.295. Report Required in Connection With Unauthorized Acquisition or Transfer of Certain Financial Information.

- (a) *A peace officer to whom an alleged violation of Section 31.17, Penal Code, is reported shall make a written report to the law enforcement agency that employs the peace officer that includes the following information:*
 - (1) *the name of the victim;*
 - (2) *the name of the suspect, if known;*
 - (3) *the type of financial sight order or payment card information obtained or transferred in violation of Section 31.17, Penal Code; and*
 - (4) *the results of any investigation.*
- (B) *On the victim's request, the law enforcement agency shall provide the report created under Subsection (a) to the victim. In providing the report, the law enforcement agency shall redact any otherwise confidential information that is included in the report, other than the information described by Subsection (a).* [HB 1215, eff. 09-01-11]

Article 2.31. County Jailers. *If a jailer licensed under Chapter 1701, Occupations Code, has successfully completed a training program provided by the sheriff, the jailer may execute lawful process issued to the jailer by any magistrate or court on a person confined in the jail at which the jailer is employed to the same extent that a peace officer is authorized to execute process under Article 2.13(b)(2), including:*

- (1) *a warrant under Chapter 15, 17, Or 18;*
- (2) *a capias under Chapter 17 or 23;*
- (3) *a subpoena under Chapter 20 or 24; or*
- (4) *an attachment under Chapter 20 or 24.* [SB 604, eff. 09-01-11; NOTE: SB 1233, which was passed subsequent to SB 604, provided the same authority, but without the training requirement.]

Chapter 5. Family Violence Prevention

Article 5.05. Reports and Records. A peace officer investigating a family violence incident must also include in the written report whether the suspect is a member of the state military forces or is serving on active duty in the United States armed forces. If so, written notice of the incident or disturbance must be sent by the PD to the staff judge advocate at “Joint Force Headquarters” or the provost marshal of the military installation where the suspect is assigned with the intent that the commanding officer will be notified. [HB 2624, eff. 09-01-11]

**Chapter 6. Preventing Offenses By the Act of Magistrates and Other Officers;
Education Concerning Consequences of Certain Offenses**

Article 6.09. Stalking Protective Order. Added to authorize a protective order for stalking, with a finding that probable causes exists to believe that stalking occurred and n the future. This order can be requested by the victim “at any proceeding” in which the defendant appears before a court in the case. [HB 1721, eff. 09-01-11]

Article 6.09. Educational Programs Concerning Certain Offenses Committed by Minors; Mandatory Court Attendance. [Same article number as in HB 1721] A minor charged with “:sexting” under Penal Code §43.261 requires a judge of a county court to take the minor’s plea in open court, with a parent required to be present, and the court can require the defendant to attend an educational program established by Section 37.218, Education Code. [SB 407, eff, 09-01-11]

**Chapter 7A. Protective Order for Certain Victims of
Trafficking or Sexual Assault**

Article 7A.01. Application for Protective Order

- (a) *The following persons may file an application for a protective order under the chapter without regard to the relationship between the applicant and the alleged offender:*
- (1) *a person who is the victim of an offense under Section 21.02, 21.11, 22.011, or 22.021, Penal Code;*
 - (2) *a person who is the victim of an offense under Section 20A(a)(3), (4), (7), or (8) or Section 43.05, Penal Code;*
 - (3) *a parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of an offense listed in Subdivision (1) or (2); or*
 - (4) *a prosecuting attorney acting on behalf of a person described by Subdivision (1) or (2).* [SB 24, eff. 09-01-11]

Article 7A.02. Temporary Ex Parte Order. The offense of stalking is added to the list of offenses for which a court may issue a temporary ex parte protective order. [SB 250, eff. 09-01-11]

Article 7A.03. Required Findings; Issuance of Protective Order. Amended to remove the requirement that a victim of a sexual assault applying for a protective order be younger than 18, or, regardless of age, be the subject of a threat that reasonably places the applicant in fear of further harm from the offender. The court only has to find that the applicant is the victim of a sexual assault. [HB

649, eff. 09-01-11]

Article 7A.035. Hearsay Statement of Child Victim. A new section that provides that an outcry statement made by a child victim of certain sex crimes who is younger than 14 is admissible in a hearing on an application for a protective order, if in a hearing outside the presence of a jury the court finds the statement is reliable and the child is able to testify or the court determines use of the statement in lieu of testimony is necessary to protect the welfare of the child. [HB 1721, eff. 09-01-11]

Chapter 7B. Protective Order for Victim of Trafficking of Persons

Article 7B.01 et seq. This chapter was added regarding the confidentiality of certain information regarding victims of trafficking of persons and the issuance and enforcement of protective orders to protect victims of trafficking of persons. [HB 2329, eff. 09-01-11]

Chapter 12. Limitation and Venue

Article 12.01. Felonies.

Subdivision (1) is amended to add a paragraph (G), providing that there is no limitation on prosecution of a person for trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code. Subdivision (2) is amended by adding paragraphs (G) and (H) providing a 10-year limitations on prosecution of persons for trafficking of persons under Section 20A.02(a)(1), (2), (3), or (4), Penal Code, and compelling prostitution under Section 43.05(a)(1), Penal Code. There is a 10-year limitation period from the 18th birthday of the victim for a person trafficking persons under Section 20A.02(a)(5) or (6), and compelling prostitution under Section 43.05 (a)(2), Penal Code. [SB 24, eff. 09-01-11]

The offense of bigamy is added with a limitations period of seven years. But the period is ten years from the 18th birthday of the victim is younger than 18 years of age when the offense is committed. [HB 253, eff. 09-01-11]

The offense of Medicaid fraud under Section 35A.02, Penal Code, is added with a limitations period of ten years. [SB 688, eff. 09-01-11]

Chapter 13. Venue

Article 13.075. Child Injured in One County and Residing in Another. Permits offenses involving a victim younger than 18 that involve offenses against the person or interference with child custody to be prosecuted in the county in which (1) an element of the offense occurred, (2) the defendant is apprehended, (3) the victim resides, or (4) the defendant resides. [SB 1551, eff. 09-01-11]

Article 13.12. Trafficking of Persons, False Imprisonment, and Kidnapping.

Venue for *trafficking of persons, smuggling of persons, false imprisonment, and kidnapping* is in:

- (1) the county in which the offense was committed; or
- (2) any county through, into, or out of which the person *trafficked*, falsely imprisoned, kidnapped, or transported may have been taken, [SB 24 & HB 260, eff. 09-01-11]

Article 13.271. Prosecution of Mortgage Fraud. Added to provide that a fraudulent real estate transaction may be prosecuted in the county where the property is located, or in any county in which any part of the transaction occurred, including the generation of documentation supporting the transaction. [SB 485, eff. 09-01-11]

Article 13.295. Unauthorized Acquisition or Transfer of Certain Financial Information. *An offense under Section 31.17, Penal Code, may be prosecuted in any county in which the offense was committed or in the county of residence of the person whose financial sight order or payment card information was unlawfully obtained or transferred.* [HB 1215, eff. 09-01-11]

Article 13.26. Stalking. *The offense of stalking may be prosecuted in any county in which an element of the offense occurred.* [SB 82, eff. 09-01-11]

Chapter 15. Arrest Under Warrant

Article 15.03. Magistrate May Issue Warrant or Summons. An “affiant” may now also “appear before” a magistrate issuing an arrest warrant or summons by means of an electronic broadcast system of image and sound, including Internet video conferencing. A recording of the communication must be preserved and made available to defense counsel. [HB 976, eff. 09-01-11]

Chapter 17. Bail

Article 17.02. Definition of “Bail Bond.” A cash bond shall be returned only to the person whose name is on the original receipt for the funds, even if it is the defendant. [HB 1658, eff. 09-01-11]

Article 17.025. A licensed jailer may take a bail bond. [HB 1070, eff. 06-17-11]

Article 17.153. Denial of Bail for Violation of Condition of Bond Where Child Alleged Victim. A court may revoke the bond and return the offender to custody also for trafficking a child or compelling prostitution. [HB 2014, eff. 09-01-11]

Chapter 18. Search Warrants

Article 18.07. Days Allowed for Warrant to Run. Where the search warrant is for data or information contained in or on a computer, cell phone, data storage device, etc., it is considered as “executed” within the 3-day time limit if the instruments themselves are seized before the time

expired. Recovery and analysis of the information or data itself can come after the time limit has expired. [HB 1891, eff. 09-01-11]

Article 18.21. Pen Registers and Trap and Trace Devices; Access to Stored Communications; Mobile Tracking Devices. Investigators commissioned by the Attorney General is added to the list of authorized peace officers who can possess, install, monitor, or operate certain devices under this article. [SB 6898, eff. 09-01-11]

Chapter 20. Duties and Powers of the Grand Jury

Article 20.151. Certain Testimony by Video Teleconferencing. With this new statute, and with the consent of the grand jury and the prosecutor, a peace officer can testify before the grand jury by means of a secure, encrypted, closed-circuit video conferencing system. [HB 2847, eff. 09-01-11]

Chapter 37. The Verdict

Article 37.07. Verdict Must be General; Separate Hearing on Proper Punishment. Adds subsection clarifying how evidence concerning the total pecuniary loss in a Medicaid fraud prosecution can be introduced and considered by a judge or jury in determining the appropriate punishment or restitution. [SB 688, eff. 09-01-11]

Chapter 38. Evidence in Criminal Actions

Article 38.074. Testimony of Child in Prosecution of Offense. Added to govern the testimony of a witness younger than 17 years in a criminal proceeding, including understanding the oath, discomfort on the stand, etc. [SB 578, eff. 09-01-11]

Article 38.20. Photograph and Live Lineup Identification Procedures.

Sec. 1. In this article, “institute” means the Bill Blackwood Law Enforcement Management Institute of Texas located at Sam Houston University.

Sec. 2. This article applies only to a law enforcement agency of this state or of a county, municipality, or other political subdivision of this state that employs peace officers who conduct photograph or live lineup identification procedures in the routine performance of the officers’ official duties.

Sec. 3. (a) Each law enforcement agency shall adopt, implement, and as necessary amend a detailed written policy regarding the administration of photograph and live lineup identification procedures in accordance with this article. A law enforcement agency may adopt:

(1) the model policy adopted under Subsection (b); or

(2) the agency’s own policy that, at a minimum, conforms to the requirements of Subsection (c).

(b) The institute, in consultation with large, medium, and small law enforcement agencies and with law enforcement associations, scientific experts in

eyewitness memory research, and appropriate organizations engaged in the development of law enforcement policy, shall develop, adopt, and disseminate to all law enforcement agencies in this state a model policy and associated training materials regarding the administration of photograph and live lineup identification procedures. The institute shall provide for a period of public comment before adopting the policy and materials.

(c) *The model policy or any other policy adopted by a law enforcement agency under Subsection (a) must:*

(1) *be based on:*

(A) *credible field, academic, or laboratory research on eyewitness memory;*

(B) *relevant policies, guidelines, and best practices designed to reduce erroneous eyewitness identifications and to enhance the reliability and objectivity of eyewitness identifications; and*

(C) *other relevant information as appropriate; and*

(2) *address the following topics:*

(A) *the selection of photograph and live lineup filler photographs or participants;*

(B) *instructions given to a witness before conducting a photograph or live lineup identification procedure;*

(C) *the documentation and preservation of results of a photograph or live lineup procedure, including the documentation of witness statements, regardless of the outcome of the procedure;*

(D) *procedures for administering a photograph or live lineup procedure to an illiterate person or a person with limited English language proficiency;*

(E) *for a live lineup identification procedure, if practicable, procedures for assigning an administrator who is unaware of which member of the live lineup is the suspect in the case or alternative procedures designed to prevent opportunities to influence the witness;*

(F) *for a photograph identification procedure, procedures for assigning an administrator who is capable of administering a photograph array in a blind manner or in a manner consistent with other proven or supported best practices designed to prevent opportunities to influence the witness; and*

(G) *any other procedures or best practices supported by credible research or commonly accepted as a means to reduce erroneous identifications and to enhance the objectivity and reliability of eyewitness identifications.*

Sec. 4. (a) *Not later than December 31 of each odd-numbered year, the institute shall review the model policy and training materials adopted under this article and*

shall modify the policy and materials as appropriate.

(b) *Not later than September 1 of each even-numbered year, each law enforcement agency shall review its policy adopted under this article and shall modify that policy as appropriate.*

Sec. 5. (a) *Any evidence or expert testimony presented by the state or the defendant on the subject of eyewitness identification is admissible only subject to compliance with the Texas Rules of Evidence. Evidence of compliance with the model policy or any other policy adopted under this article or with the minimum requirements of this article is not a condition precedent to the admissibility of an out-of-court eyewitness identification.*

(b) *Notwithstanding Article 38.23 as that article relates to a violation of a state statute, a failure to conduct a photograph or live lineup identification procedure in substantial compliance with the model policy or any other policy adopted under this article or with the minimum requirements of this article does not bar the admission of eyewitness identification testimony in the courts of this state. [HB 215, eff. 09-01-011]*

Article 38.43. Evidence Containing Biological Material. Among amendments, biological evidence must be retained and preserved in a case where there is an unapprehended offender associated with the offense for a period of not less than 40 years or until the applicable limitations have expired. DPS is to develop and adopt standards by September 1, 2012 for the collection and storage of such evidence. [SB 1616, eff. 06-17-11]

Article 38.45. Evidence Depicting or Describing Abuse of or Sexual Conduct By Child or Minor. Amended to apply its limitations on public dissemination, top include “sexting” evidence under Penal Code §43.261 and video recordings of forensic interviews of children under §38.071. [SB 407, eff. 09-01-11]

Article 38.46. ☐ Evidence in Aggregation Prosecution for Fraud or Theft Committed With Respect to Numerous Medicaid or Medicare Recipients. Lack of consent or effective consent to individual fraudulent transactions can be proven by either by direct or circumstantial evidence where part of a continuing scheme of fraud where victims have been aggregated [SB 1680, eff. 09-01-11]

☐ **Evidence in Prosecutions for Stalking.** (a) *In a prosecution for stalking, each party may offer testimony as to all relevant facts and circumstances that would aid the trier of fact in determining whether the actor’s conduct would cause a reasonable person to experience a fear described by Section 42.072(a)(3)(A), (B), or (C), Penal Code, including the facts and circumstances surrounding any existing or previous relationship between the actor and the alleged victim, a member of the alleged victim’s family or household, or an individual with whom the alleged victim has a dating relationship.*

(b) *This article does not permit the presentation of character evidence that would otherwise be inadmissible under the Texas Rules of Evidence or other applicable law. [SB 82, eff. 09-01-11]*

Chapter 39. Depositions and Discovery

Article 39.026. *Depositions of Medicaid or Medicare Recipients or Caregivers.* [Allows prosecution to depose alleged victims or witnesses to fraudulent acts, who are also Medicaid or Medicare recipients.] [SB 1680, eff. 09-01-11]

Article 39.15. *Discovery of Evidence Depicting or Describing Abuse or Sexual Conduct By Child or Minor.* Amended to apply its limitations on discovery to “sexting” evidence under Penal Code §43.261 and video recordings of forensic interviews with children under Art. 38.071, §2 and §5. [SB 407, eff. 09-01-11]

Chapter 42. Judgment and Sentence

Article 42.0182. *Notice of Family Violence Offenses Provided by Clerk of Court.* Added to require that the court’s clerk, upon conviction or deferred adjudication of a defendant who is military, to send notice of the court’s order to the appropriate military official. [HB 2624, eff. 09-01-11]

Article 42.025. *Sentencing Hearing at Secondary School.* With the permission of the defendant and the school district, a judge may conduct a sentencing hearing at a secondary school provided appropriate measures are taken to protect the children and it is a fair hearing. [HB 1113, eff. 09-01-11]

Article 42.12. *Community Supervision.*

Each presentence investigation is to include information as to the defendant’s military status, and, if so, make a determination as to deployment in a combat zone and if the defendant may be suffering from a post-traumatic stress disorder or a traumatic brain injury. If available, the defendant’s military discharge papers should be attached as well as any military records. [HB 2624, eff. 09-01-11]

A court may grant deferred adjudication to a person charged with murder only upon a finding that the defendant did not cause the death of the deceased, did not intend to kill the deceased, or did not anticipate that a human life would be taken. [HB 371, eff. 09-01-11]

If a person receives community supervision for cruelty to livestock animals, attack on assistance animal, cruelty to nonlivestock animals, or dog fighting. He can also be required to attend a “responsible pet owner course” provided by animal shelters. [HB 1103, eff. 09-01-11]

A new Section 20A is added providing for certain defendants on community supervision to be credited with additional time be educational achievement, certain payments, or completing treatment or rehabilitation programs. [HB 1205, eff. 09-01-11]

A judge may allow a defendant on community supervision for a drug offense to

perform up to 30 hours of “community outreach” in lieu of an equal number of community supervision hours. [HB 1113, eff. 09-01-11]

□ Added to authorize a judge who gives community supervision to a person convicted under Penal Code §43.261 to require the defendant to attend and successfully complete an education program under §37.218, Education Code. [SB 407, eff. 09-01-11]

Article 42.17. Finding Regarding Age-Based Offense. With respect to the offenses of indecency with a child and sexual assault, the court must find whether the defendant, at the time of the offense, was not more than four years older than the victim, who must be at least 15 years old, for the purpose of exempting a defendant from registering as a sex offender based on relevant and admissible evidence, and such exemption is in the best interest of both the victim and justice. [SB 198, eff. 09-01-11]

Chapter 44. Appeal and Writ of Error

Article 44.2811. Records Relating to Children Convicted of Fine-Only Misdemeanors. Added to make confidential all information relating to a child who is convicted of a Class C misdemeanor other than a traffic offense once the child has satisfied the judgment for that offense and any appeal has been affirmed. [HB 961, eff. 06-17-11]

Chapter 45. Justice and Municipal Courts

Article 42.015. Plea by Minor and Appearance of Parent. Amended to apply to a 17-year-old charged with a Class C misdemeanor “sexting” offense under Penal Code §43.261. [SB 407, eff. 09-01-11]

Article 45.0216. Expunction of Certain Conviction Records. Amended to apply to 17-year-olds charged with the Class C misdemeanor offense under Penal Code §43.261, which allows for *immediate* expunction for one never before convicted as an adult or adjudicated as a juvenile. [SB 407, eff. 09-01-11]

Article 45.0217. Confidential Records Related to the Conviction of a Child. Added to this chapter to make confidential all information relating to a child who is convicted of a Class C misdemeanor other than a traffic offense once the child has satisfied the judgment for the offense. The record is only available for inspection by a limited number of agencies or persons. [HB 961, eff. 06-17-11]

Article 45.0492. Community Service or Tutoring in Satisfaction of Fine or Costs for Certain Juvenile Defendants. In a lengthy statute, this article is added to the CCP providing for alternative discharge of a juvenile defendant’s fine or costs resulting from a Class C Misdemeanor, committed at the school in which the juvenile is enrolled. A JP or municipal judge can allow them to discharge all or part of the fine and costs by performing community service or attending a tutoring program, at a rate of \$50 for each eight hours completed. HB 1964 provides for the same except for the hourly

rate. [HB 350 & HB 1964, eff. 09-01-11]

Article 45.051. Suspension of Sentence and Deferral of Final Disposition. Amended to allow a judge to require a defendant under the age of 25 who is charged with a moving violation to complete an additional driving safety course designed for young drivers as detailed in a new Section 1001.111, Education Code. [SB 1330, eff. 09-01-11]

Article 45.056. Juvenile Case Managers. Amended to authorize payment for training, travel, and other necessary expenses of a juvenile case manager from a juvenile case manager fund, and the governing body of a juvenile case manager's employing governmental entity is required to adopt rules governing the conduct and training of such managers no later than December 1, 2011. [SB 61, SB 209, eff. 06-17-11]

Article 45.061. Proceedings Concerning Electronic Transmission of Certain Visual Material Depicting Minor. Added to authorize a JP or municipal judge to order a person convicted under Penal Code §43.261 to attend an education program under Section 37.218, Education Code. [SB 407, eff. 09-01-11]

Chapter 48. Pardon and Parole

Article 48.01. Governor May Pardon. Amends to provide that the governor may pardon any one who has successfully completed a period of deferred adjudication. [SB 144, eff. 01-01-12]

Chapter 49. Inquest Upon Dead Bodies

Subchapter C. Informed Consent for Postmortem Examination or Autopsy

Article 49.31 et sq. This subchapter governs "private" autopsies other than those ordered by TDCJ, a justice of the peace, or a medical examiner who determines the autopsy is required under Chapter 49. [HB 1009, eff. 09-01-11]

Chapter 55. Expunction of Criminal Records

Article 55.01. Right to Expunction. The article is amended to expand eligibility for an expunction. In certain cases where a certain amount of time has elapsed, a person may be entitled to an expunction before limitations have run. The requirement that a person not have been convicted of a felony in the five years preceding the date of arrest was repealed. These changes also apply retroactively. [SB 462, eff. 09-01-11]

Article 55.02. Procedure for Expunction. A court granting an "early" expunction shall allow the law enforcement agency and prosecutor to retain the expunged records. [SB 462, eff. 09-01-11]

Chapter 56. Rights of Crime Victims

Article 56.065. Medical Examination for Sexual Assault Victim Who Has Not Reported Assault; Costs. Makes confidential the identity of a victim by making confidential any record identifying persons in the chain of custody for a forensic medical examination under this chapter. [HB 2966, eff. 06-17-11]

Article 56.08. Notification of Rights by Attorney Representing the State. Amends to require the prosecutor, as far as reasonably practical, to notify the victim of the terms of any plea agreement to be presented to the court, and the judge, before such agreement, must inquire if notice has been given. [SB 1010, eff. 09-01-11]

**Chapter 57D. Confidentiality of Identifying Information
of Victims of Trafficking of Persons**

Articles 57D.01 et seq. Added to permit a victim of human trafficking to use a pseudonym in proceedings and records related to that offense. The AG's office until October 1, 2011 to develop a form for use. A public servant who knowingly and inappropriately discloses the confidential information is guilty of a Class C misdemeanor.[HB 2329, eff. 09-01-11]

Chapter 59. Forfeiture of Contraband

Article 59.01. Definitions. Property used in furtherance of Smuggling of Persons is also considered contraband. [HB 260, eff. 09-01-11]

Article 59.03. Seizure of Contraband. Amended to prohibit *any* peace officer from requesting, requiring, or in any manner inducing any person to execute a document purporting to waive the person's interest in or rights to property sized as contraband. Nor may a prosecutor do so until a notification of a forfeiture proceeding is filed. [SB 316, eff.09-01-11]

Article 59.06. Disposition of Forfeited Property. Amended with regard to post-judgment interest from those items seized and/or sold, DPS seizures where a default judgment mis entered, prohibited expenditures of forfeiture proceeds (expenses that essentially do not involve the detection, investigation, or prosecution of criminal offenses and abuse, victim or witness services, or training). There must also be a more detailed annual audit. [SB 316, eff. 09-01-11]

Article 59.061. Audits and Investigations. Added to authorize the state auditor to audit or investigate the handling of forfeited contraband and proceeds, and to turn any irregularities over to the AG. [SB 316, eff. 09-01-11]

Article 59.062. Enforcement. Added to authorize the AG to sue for injunctive relief, recover a civil penalty, or both in the event of a knowing violation of Chapter 59. [SB 316, eff. 09-01-11]

**Chapter 61. Compilation of Information Pertaining
to Criminal Combinations and Criminal Street Gangs**

Article 61.01. Definitions. Removes the Texas Juvenile Probation Commission and local juvenile probation departments from the definition of “law enforcement agency” for the purposes of this chapter. [SB 315, eff. 06-17-11]

Article 61.02. Criminal Combination and Criminal Street Gang Intelligence Database; Submission Criteria. Adds juvenile justice agencies as those required to compile information under this article. [SB 315, eff. 06-17-11]

Article 61.10. Texas Violent Gang Task Force. Amends this article by clarifying its purpose and expanding and changing the task force’s composition, encouraging cooperation with federal law enforcement agencies. [SB 315, eff. 06-17-11]

Chapter 63. Missing Children and Missing Persons

Article 63.001. Definitions. Also includes as part of the definition of “missing child” any child taken or retained without the permission of the child’s custodian, unless the taking or retention was prompted by family violence against the child or actor. [HB 3439, HB 2662, SB 1551, eff. 09-01-11]

Chapter 64. Motion for Forensic DNA Testing

Article 64.01. Motion. Added to define “biological material” as an item that is in possession of the State and that contains blood, semen, hair, saliva, skin, tissue or cells, fingernail scrapings, bone, bodily fluids, or other identifiable biological evidence that may be suitable for forensic DNA testing, and includes the contents of a sexual assault evidence collection kit. No longer requires that a convicted person show *why* the evidence he wants tested was not previously tested. [SB 122, eff. 09-01-11]

Article 64.035. Unidentified DNA Profiles. Added to require a convicting court to order any unidentified DNA profile resulting from an analysis made under this chapter to be compared with existing DNA profiles in state and federal DNA databases. [SB 122, eff. 09-01-11]

Chapter 102. Costs Paid by Defendant

Article 102.0174. Court Costs; Juvenile Case Manager Fund. Authorizes payment from a juvenile case manager fund for training, travel, office supplies, and other necessary expenses for a juvenile case manager, but not to supplement the salary. [SB 61, eff. 06-17-11]

MISCELLANEOUS

Alcoholic Beverage Code. Sections 106.04 through 106.06 are amended to provide an exemption from conviction of consumption, possession, or purchase of alcohol by a minor where that person reports a medical emergency for himself or another minor involving abuse of alcohol. [HB 3474, SB 1331, eff. 09-01-11]

Civil Practice & Remedies Code. Section 125.061 (“Public Nuisances”) is amended to provide that any graffiti offense under the Penal Code, regardless of extent of damage or location, may be the basis of a nuisance lawsuit. [HB 1622, eff. 09-01-11]

Natural Resources Code. Section 151.052 is added making it a criminal offense to harvest standing timber with knowledge that the harvesting is without the permission of the owner, or causing another to harvest standing timber without the permission of the owner. Based on value, punishment begins at a state jail felony and goes up to a first degree felony. [HB 613, eff. 09-01-11]

Human Resources Code. Title 12, Chapter 201 is added abolishing the Texas Youth Commission and Texas Juvenile Probation Commission and transferring their duties to a new Texas Juvenile Justice Department. [SB 653, eff. 09-01-11]

Family Code.

Sections 85.021 and 85.022 are amended to provide that pets, and companion and/or assistance animals may also be provided for in a protective order. [SB 279, eff. 09-01-11]

Sections 51.0412, 54.04, 54.045, and 54.042 are amended to allow a juvenile court to extend a juvenile’s determinate sentence probation to age 19. [SB 1208, eff. 09-01-11]

Section 85.025 is amended to permit a court to extend the term of a protective order beyond two years, depending on the record of the violator and the extent of the family violence. [SB 789, eff.09-01-11]

Sections 71.0021 and 82.002 are amended to include in the definition of “dating violence” an act committed against a victim because of the victim’s marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage, i.e., a third party may apply for a protective order against a current or former significant other’s ex-partner, family member, etc. [SB 116, eff. 06-17-11]

Section 54.02 is amended to subject a child to prosecution for homicide (including intoxication manslaughter) if the offense arises out of a criminal transaction for which the juvenile court retained jurisdiction (rather than certifying the child as an adult) if, before the date the juvenile court retained jurisdiction, one or more elements of the offense had not occurred. Thus, the juvenile court can change its mind, [SB 1617, eff. 09-01-11]

Section 51.095 is amended to provide that a juvenile court may accept a statement by a juvenile offender made to a federal or out-of-state peace officer as allowed under Art. 38.22, CCP for adult offenders. [HB 2337, eff. 09-01-11]

Section 54.0325 is added allowing for deferral of adjudication and dismissal of a first offender juvenile charged with a misdemeanor involving dating violence, if the juvenile successfully

completes a 12-week teen dating violence court program. [HB 2496, eff. 09-01-11]

Amends Section 51.08 to require Class C misdemeanor “sexting” charges to be transferred to a juvenile court, even if the court has implemented a juvenile case manager program, leaving only 17-year-olds to be prosecuted in a JP or municipal court. [SB 407, eff. 09-01-11]

Amends Section 51.13 to permit the use of a Child In Need of Supervision finding that a child engaged in “sexting” as a prior conviction to enhance the penalty for a subsequent offense under Penal Code §43.261, although other provisions of the Family Code permit sealing of CINS findings. [SB 407, eff. 09-01-11]

Adds Section 54.404 to authorize a judge to require a juvenile charged with “sexting” to attend and successfully complete an educational program under §37.218, Education Code. [SB 407, eff. 09-01-11]

Adds Section 58.003 makes it discretionary for a juvenile court to seal the records of a juvenile charged with “sexting” who has successfully completed an educational program under §37.218, Education Code. [SB 407, eff. 09-01-11]

Health and Safety Code.

Amends Section 481.103 to add Mephedrone, Methyline, MDPV, etc. (“bath salts”) to Penalty Group 2. [HB 2118, eff. 09-01-11]

Adds a new Section 481.1031 which creates a Penalty Group 2A for synthetic cannabinoids (i.e., “Spice,” “K2,” etc.), to be prosecuted under a new Section 481.1161 with the same penalty as Penalty Group 2 substances. Section 486.014 is amended to require businesses to record the sale of such substances and a new 486.0141 to further regulate and restrict the sales. Sections 486.0142 through 486.0146 further regulate business procedures. [SB 331, eff.09-01-11]

Adds a new Section 486.001 defining a “real time electronic logging system” to replace paper logs currently used by businesses in over-the-counter sales of ephedrine, pseudoephedrine, and norpseudoephedrine. [HB 1137, eff. 09-01-11]

Adds Section 481.1285 creating the offense of diversion of controlled substances by registrants, dispensers, and certain other persons, i.e., persons who have access the substances due to the nature of their employment. Conversion to one’s own use is a state jail felony, while diversion to another is a 3rd degree felony. Also, Section 481.129 is amended to criminalize “doctor shopping,” where a patient seeks out multiple doctors to prescribe excessive amounts of certain types of medication. It is a crime to obtain or attempt to obtain a controlled substance or a prescription for a controlled substance by misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact with intent to obtain the controlled substances that “are not medically necessary.” The penalty tracks the statute for fraud. [SB 158, eff. 09-01-11]

Chapter 169 (Sec. 169.001 et seq) s added to provide for a “first offender prostitution program” (“John School”) entitling the participant to an order of nondisclosure upon successful completion, provided the county or a city establishes the program. [HB 1994, eff. 06-17-11]

Parks and Wildlife Code. Section 31.099 is amended to also make it an offense to operate a motorboat in a circular course around any other watercraft in which the occupant is fishing, waterskiing, or a similar activity, unless retrieving a downed water-skier or other person engaged in a similar activity. [HB 596, eff. 06-17-11]

Local Government Code. Section 143.090 is added to the police & fire civil service statute preventing a PD or city from releasing the photo of a police officer unless the officer has been charged with an offense by indictment or information, the officer is party to a civil service hearing, the photograph is introduced as evidence in a judicial proceeding, or the officer gives written consent. [HB 2006, eff. 09-01-11]

Occupations Code.

Section 1903.256 is added to make it a Class C Misdemeanor to install a lawn irrigation system without a license. [HB 2507, eff. 09-01-11]

Section 2308.2565 is added requiring a vehicle storage facility accepting a towed vehicle, except where ordered by law enforcement, to report information about that vehicle to an appropriate law enforcement agency within two hours of receiving it. [HB 3510, eff. 09-01-11]

Section 1956.064 is amended to provide that a peace officer who has a reasonable suspicion to believe that an item of crafted precious metal in the possession of a precious metals dealer is stolen may place that item on hold for up to 60 days by issuing a written notice that specifically identifies the item and advises the dealer that he cannot melt, deface, alter, or dispose of that item until the hold is released in writing by a peace officer or a court order. [HB 2490, eff, 09-01-11]

Education Code.

Adds Section 132.024 making it a Class A Misdemeanor to solicit, disclose, receive, or use, or to authorize, permit, participate in, or acquiesce in another person’s use of information that identifies a prospective, current, or former student of a career school or college or his or her education records. [HB 2538, eff.09-01-11]

Adds Section 54.2081 providing conditions under which a peace officer in an appropriate degree program may apply for an exemption from payment of tuition and laboratory fees charged by a college for criminal justice courses. [HB 1163, eff. 06-17-11]

Adds Section 37.218 establishing a program on the dangers of students sharing visual

material depicting minors engaged in sexual conduct, as well as bullying. [SB 407, eff. 09-01-11]

Probate Code. Section 11B is added providing that probate fees may not be charged where the decedent was a law enforcement officer, firefighter, or others who died from personal injuries received in the course of performing official duties. Section 53.054 is added to the Estates Code to the same effect. [SB 543, eff. 09-01-11]

Government Code.

Section 614.124 is amended to provide that an honorably retired peace officer who holds a certificate of proficiency from TCLEOSE may request of the law enforcement agency an identification card as such. [HB 1083, eff. 06-17-11]

Section 411.0206 is added to allow DPS to abate or defer a mandatory DL suspension or revocation if the license holder presents evidence that the act or omission leading to the suspension or revocation was caused by a person against whom a criminal complaint has been filed for identity theft. [HB 2256, eff. 06-17-11]

Chapter 422, “Internet-Based Sexual Exploitation of Minor” (“Alicia’s Law”), is added to facilitate investigations of certain offenses involving the Internet-based sexual exploitation of a minor. A prosecutor or peace officer with an Internet Crimes Against Children task force may issue an administrative subpoena that requires the production of certain records and other documents relating to an investigation of such offense where the Internet, an electronic communication, or remote computing service has been used. The AG is required to assist in obtaining that subpoena. [HB 3746, eff. 09-01-11]

Section 411.049 is added to require DPS to keep track statistically of DWI offenses, and, on a DPS form, police agencies and prosecutors will be required to timely and completely report the information required by DPS. [SB 364, eff. 09-01-11]

Sections 552.024, 552.117, and 552.130 (“Public Information Act”) are amended to retain the confidentiality of emergency contact information, as well as a photocopy of an ID badge issued to an official or employee of a governmental body.

Adds a new Subchapter B-1, Sections 420.041 et seq, involving analysis of sexual assault evidence. Establishes timelines and procedures related to the collection, analysis, and preservation of sexual assault or DNA evidence. Law enforcement agencies are required to submit sexual assault evidence to an appropriate crime laboratory not later than 30 days after receiving it, and require persons submitting that evidence to start a written chain of custody. Crime labs must prioritize such cases, although lack of compliance by a law enforcement agency will not prohibit future submission or analysis of that evidence. The evidence is to remain confidential, and the victim or relative must give written consent to release the evidence in an evidence collection kit. [SB 1636, eff. 09-01-11]

Transportation Code.

Section 521.025 is amended that if a person is operating motor vehicle without a license and insurance, and is at fault in an accident that causes death or serious bodily injury, it is a Class A Misdemeanor. [SB 1608, eff. 09-01-11]

Section 545.157 is amended to require vehicles to change lanes or slow down when passing a stationary tow truck using alternately flashing lights while at the scene of an accident or hooking up a disabled vehicle on a roadway. [HB 378, eff. 09-01-11]

Sections 545.352 through 545.355, and 545.358 and 545.362 are amended to raise the maximum speed limit outside urban areas to 75 mph, and to remove the authority to set nighttime speed limits and lesser limits for trucks. The Texas Transportation Commission can also set a limit of 85 mph on designated portions of state highways. Smaller communities can reduce speed limits by as much as 10 mph on certain highways within their limits. HB 1353, eff. 09-01-11; HB 1201, HB 2596, eff. 06-17-11]

Section 643.253 is amended to make it a Class B misdemeanor for a second conviction of transporting household goods without a license, and a Class A misdemeanor for a third or more conviction. [HB 1523, eff.09-01-11]

Section 521.1211 is added to provide that a peace officer may apply for a DL that omits his or her residence address and substitutes an alternative address acceptable to DPS. [SB 1292, eff. 09-01-11]

Section 724.015 is amended to provide that if a DWI suspect refuses to submit to the taking of a specimen, the officer may apply for a warrant authorizing a specimen to be taken from the person. [SB 1787, eff. 09-01-11]

Section 521.042 is amended to provide that the driving record of a peace officer, firefighter, or EMS employee may not include information of an accident occurring while such persons are driving an official vehicle in the course and scope of official duty, if the damage resulting is less than \$1,000, or an investigation determines the official was not at fault. [HB 343, eff. 09-01-11]

Section 547.616 is added making it a Class C misdemeanor to use, attempt to use, install, operate, attempt to operate, purchase, see, or offer for sale a radar interference device. [HB 739, eff. 09-01-11]

Section 681.0111 is amended to make it an offense to alter a genuine disabled parking placard. [HB 1473, eff. 09-01-11]

Section 545.424 is amended to prohibit a person under 18 from operating a motor

vehicle while using a wireless communications device, except in an emergency. Likewise, a person under 17 with a restricted motorcycle license or moped license may not operate such vehicle while using a wireless communications device, except in an emergency. [HB 2466, eff. 09-01-11]

Section 545.145 is added, prohibiting a child younger than 18 years from riding in a watercraft being towed by a motor vehicle, except in a parade or on a beach. [HB 2981, eff. 09-01-11]