


Texas Legislative and Legal Update

88th Legislative Session




2023-2025

Presented by Warren Spencer
with thanks to Curtis Roward


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Disclaimer



This presentation is designed to provide an overview of some of the laws passed during the 88th legislative session and recent applicable case law. Participants are responsible for reading the applicable statutes, as well as consulting statutes for updates not included in this presentation. Participants should consult legal counsel for advice when necessary.

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88th Regular Session Statistics

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


3

New Crimes & Punishments

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


Enhanced Punishments – 26

4



Law & Order Bills

5




Official Misconduct by Prosecutors

Sec. 87.011, Local Gov't. Code

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

6




Street Racing and Street Takeovers Sec. 71.02, Penal Code

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

HB 1442 7

7



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


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

Thomas Parkinson
Self
San Antonio, TX

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

HB 2899 8

8



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

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


NEW

SB 1004 9

9

Active Shooter Training Sec. 1701.253, Occupation Code


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



ALERT
TEXAS STATE UNIVERSITY

SB 1852 10

10




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

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

HB 568 11

11



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

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

SB 1402 12

12



Child Fatality Investigation Training Sec. 1701.253, Occupations Code

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

SB 533

13



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

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

HB 471

14



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

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

HB 1661

15



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

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

SB 252

16



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

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

HB 4227

17




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

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

SB 133

18



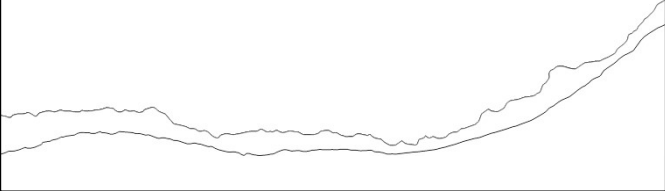
Worker's Comp. for Peace Officers Sec. 401.026, Labor Code

- Firefighters, peace officers, and emergency medical personnel can suffer serious injuries when traveling to an emergency call.
- However, the current law specifies that only firefighters or emergency medical personnel are covered by workers' compensation if seriously injured during such travel.
- This bill extends this coverage to peace officers.

HB 3335 19


19

TCOLE Reauthorization Bill



20

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TCOLE Reauthorization Bill

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

SB 1445 21

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TCOLE Reauthorization Bill

Model policies - Requires TCOLE to adopt certain model policies to guide procedures that include policies prescribing standards and procedures for the medical and psychological examinations for fitness for duty as well as policies establishing procedures applicable to hiring and investigating alleged misconduct of a police officer.

The most recent drafts of the model policies can be seen at:
https://www.tcole.texas.gov/content/tcole-commission-and-its-members?utm_medium=email&utm_source=govdelivery

SB 1445 22

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TCOLE Reauthorization Bill

- **Requires TCOLE to develop two databases:**
 1. Hiring Database
 - Confidential database containing officer personnel records, license actions, misconduct reports which will be available for LE agencies for the purpose of hiring licensees
 2. Officer Service Reports
 - Public facing "licensee lookup" database
 - Must include date of basic training, continuing education completed and current CE compliance, total number of training hours, date license was issued.
 - No photos, addresses or other confidential information will be contained.
 - Users of database must be registered, and activity will be tracked.
- **F5 Separation Form** -
 - Removes Honorable, General, and Dishonorable service designations from the F5 Separation form.

SB 1445 23

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TCOLE Reauthorization Bill Sec. 1701, Occupations Code

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

SB 1445 24

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25



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

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

SB 728

26

26



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

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

HB 3137

27

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

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

HB 2837

28

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Weapons on Prohibited Places Sec. 46.03, Penal Code

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

HB 1760

29

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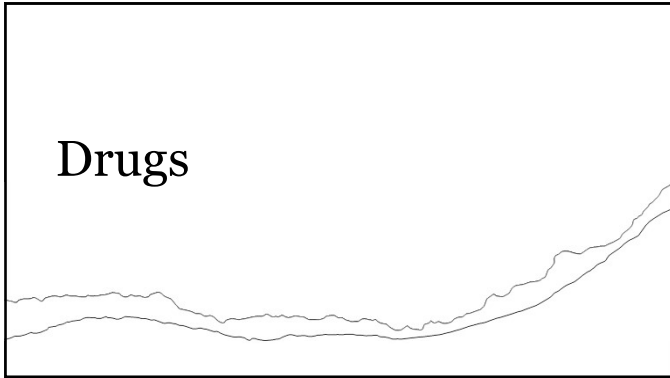


Nonapplicability Sec. 46.15, Penal Code

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

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Fentanyl Poisoning
Health & Safety and Penal Codes

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

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Criminal Homicide by Fentanyl Poisoning
Health & Safety and Penal Codes

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

NEW

33

Criminal Homicide by Fentanyl Poisoning
Health & Safety and Penal Codes

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

NEW

34

Regulation of Kratom
Section 444, Health & Safety Code


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

NEW

35



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Omnibus Human Trafficking Bill Overview

INCREASING INVESTIGATIVE AND PROSECUTORIAL TOOLS		
PROPOSAL	STATUTE	BACKGROUND
Add child grooming provisions	Add new section to Chapter 25 of Penal Code or expand	This change will allow law enforcement to prevent harm to child victims by giving authority for arrest of human trafficker's pre-harm activity in order to minimize victimization when there is evidence of enticement and/or solicitation.
Increase penalties for human traffickers that use excessive force	Penal Code Chapter 20A	This modification will both deter human traffickers from using serious force against victims while also adequately punishing those who do so.
Flag driver licenses for human trafficking	Code of Criminal Procedure Article 22.016	The differentiation between a sex offender and a human trafficker could assist law enforcement in identifying connections in cases across the state.
Allow outcry in all human trafficking prosecutions involving children	Code of Criminal Procedure Article 18.072	Due to the trauma of outcry and the trauma of testifying in court, allowing evidence of outcry in cases involving all child victims of human trafficking would assist prosecutions.
Allow certain evidence, including the nature of the relationship, for human trafficking prosecutions	Add new section to Code of Criminal Procedure Article 18.175, See HB 2794 (878)	This gives prosecutors more tools to explain the relationship and history of human traffickers.
Modify Code of Criminal Procedure Article 2.305 to increase effectiveness of FBI 3800 data collection efforts	Code of Criminal Procedure Article 2.305	Changes would allow for 1) better tracking of cases and suspects, 2) protection for ongoing investigation and victims, 3) more efficient use of state resources, and 4) more efficient tracking of compliance resulting in a more comprehensive data sample.

SB 1527 37

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Omnibus Human Trafficking Bill Overview

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

SB 1527 38

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Child Grooming Sec. 15.032, Penal Code

NEW

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

SB 1527 39

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Child Grooming Sec. 15.032, Penal Code

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

NEW

SB 1527 40

40




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

NEW

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

SB 1527 41

41




Solicitation of Prostitution Sec. 43.021, Penal Code

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

SB 1527 42

42




Compelling Prostitution of Disabled Individuals

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

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

SB 1527 43

43




Possession of Child Pornography

Ch. 43.26, Penal Code

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

SB 1527 44

44




Child Pornography

Sec. 43.26, Penal Code

- Punishment enhancements:
 - F1 for possession of more than 500 photos
 - F2 for possession of 100-499 photos
 - F3 for possession of less than 100 photos
- F1 with minimum of 25 years if an employee at a:
 - child-care facility,
 - residential treatment center,
 - shelter or facility that served youth and received state funds, or
 - location receiving state funds for the care of a child depicted by the visual material.
- Also, punishment increased one degree if child younger than 10 (F1 would be minimum 15 years)
- *But see* changes by SB 1527
- Generally, SB 129 will control because it was signed after SB 1527

SB 129 45

45



Child Pornography Issues

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

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Organized Crime



47

47




Engaging in Organized Criminal Activity

Chapter 71, Penal Code

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

SB 1900, HB 4635, HB 1442, SB 224, & HB 6 48

48




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

- “Racketeering” is defined as committing any of the following offenses:
 - a felony offense under The Securities Act;
 - kidnapping or aggravated kidnapping;
 - operation of a stash house;
 - perjury and other falsification offenses;
 - resisting arrest, search, or transportation of a person;
 - hindering apprehension or prosecution of a person;
 - a public indecency offense; or
 - engaging in organized criminal activity.

HB 4635

49




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

NEW

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

HB 4635

50




Terroristic Offenses Chapter 76, Penal Code

NEW

- The legislature created a new anti-terrorism chapter since 34 states and the Dist. of Columbia has one.
- **Sec. 76.02 Terrorism**
 - A new offense for a person who commits one of 15 felonies with the intent to:
 - Intimidate or coerce the public (for what?), or
 - Influence, by intimidation or coercion, the policy, conduct, or activities of the state, a political subdivision, or the U.S.
 - The penalty is one-degree higher than the predicate offense.
- **Sec. 76.03 Aiding in Commission of Terrorism**
- **Sec. 76.04 Hindering Prosecution of Terrorism**

SB 1518

51



Terroristic Offenses Chapter 65, C.C.P.

NEW

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


SB 1518

52

High Profile Legislation



53




Sexually Oriented Performances Sec. 43.28, Penal Code

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

NEW

SB 12

54




Sexually Oriented Performances Sec. 43.28, Penal Code

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

NEW

SB 12 55

55




Sexually Oriented Performances Ch. 769.002, Health & Safety Code

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

NEW

SB 12 56

56




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

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

NEW

SB 12 57

57



Sexually Oriented Performances: Sec. 243.0031, LGC; Ch. 769.002 H&SC; Sec. 43.28 PC held unconstitutional

Texas's anti-drag law is unconstitutional, federal judge rules, permanently blocking enforcement

The ruling from a Reagan appointee Justice Anthony Kennedy's ruling, defending itself from ADA's drag ban on an outdoor drag venue, the appeal is expected.

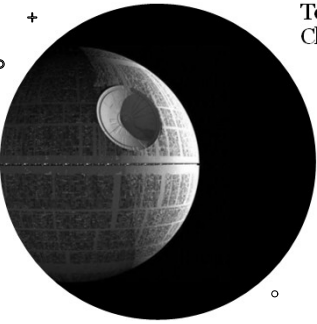
IN THE UNITED STATES DISTRICT COURT
FOR THE NINTH JUDICIAL DISTRICT OF TEXAS
WARRANT COUNTY

Plaintiffs,
vs.
Defendants.

Civil Action No. 23-21-2847

SB 12 58

58



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

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

HB 2127 59


59



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

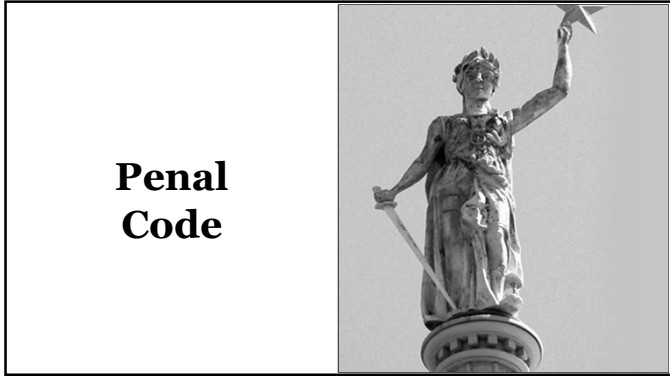
Judge declares new Texas law that would erode cities' power to enact local rules unconstitutional

A state law backed by Gov. Greg Abbott and business lobbying groups to stop other and counties from passing progressive policies is scheduled to take effect Friday, as Texas County judge declares it unconstitutional.




HB 2127 60

60




61

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

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

HB 165 62


62

 **Capital Murder**
 Sec. 19.03, Penal Code

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

SB 386 63

63

 **Indecent Exposure**
 Sec. 21.08(b), Penal Code

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

HB 1730 64

64

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


- Creates a new offense for the non-consensual production or distribution of a "deep-fake" video that appears to depict a person's exposed intimate parts or the person engaged in sexual conduct.
- Class A misdemeanor.



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

SB 1361 65

65



Voyeurism
 Sec. 21.17, Penal Code

HB 2306

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

66

66



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

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

SB 840

67

67



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

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

HB 28

68

68



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

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

NEW

HB 2187

69

69



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

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

HB 2715

70

70



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

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

HB 2715

71

71



Damaging Critical Infrastructure Facility Sec. 28.09, Penal Code

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

NEW

SB 947

72

72



Catalytic Converters Under Theft Statute Sec. 31.03, Penal Code

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

SB 224

73

73



Unauthorized Possession of Catalytic Converters Sec. 31.21, Penal Code

NEW

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

SB 224

74

74



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

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

SB 224

75

75

Forgery Presumption Sec. 32.21, Penal Code

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



HB 1910

76



Temporary Tags Ch. 37, Penal Code

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

HB 914

77

77



Temporary Tags Sec. 502.095, Transportation Code

- Repeals statutory requirements for the use of temporary license tags requires dealers to issue temporary metal license plates to buyers.
- DMV will establish the maximum number of license plates that a dealer is authorized to obtain based on how long they have been in operation, sales data, expected growth and conditions that may affect sales.
- Effective July 1, 2025.

HB 718

78

78



Failure to Identify Sec. 38.02, Penal Code

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

SB 1551

79

79



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

NEW

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

SB 3075 & SB 1308

80

80



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

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

NEW

SB 189

81

81



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

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



NEW

SB 1179

82

82



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

Team Bettencourt @bettencourt

"Burner" phones are typically disposed of quickly after being used and are difficult to track. They're being used to send obscene, intimidating, or threatening calls as well as other forms of communications as harassment. However, burner phone apps still store account information that can reveal the app user's identity. [Contact HB 1427 for more details](#) (located out of the Texas Senate 31-0 to "burn up" the burner phone loophole that doesn't identify this as a form of harassment)

HB 1427 recognizes the obvious by making sure if someone uses a burner phone or burner phone app to harass or send obscene, intimidating, or threatening phone calls or communications, they WILL be punished. #1427

HB 1427

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

HB 1427

83

83




Stalking Sec. 42.072, Penal Code

- Expands the conduct that is considered stalking to include conduct that the defendant knew or reasonably should have known the victim would regard as threatening to commit an offense (not limited to only threatening bodily injury or death).
- It also expands the emotions caused by the defendant's conduct to include feeling "terrified or *intimidated*" among the other emotions already established under the current statute.
- Puts the factfinder into the position of the victim.
- Consider the result in *Counterman v. Colorado (USSC 2023)*

SB 1717


84

84




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

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




HB 611 85

85



Possession of Animal by Person Convicted of Animal Cruelty


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



NEW

HB 598 86

86




Promotion of Prostitution Penal Code 43.03(b)

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

SB 1653


87

Code of Criminal Procedure



88

88



Texas Legislative Council CCP Reorganization Project

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

88TH LEGISLATURE PROPOSED CHAPTERS

The council has prepared nonsubstantive revisions of the following provisions for proposal to the 88th Legislature:

Articles of Chapter 2, Code of Criminal Procedure, relating to powers and duties of officers (Proposed Chapter 234)

Articles of Chapter 2, Code of Criminal Procedure, relating to law enforcement interactions with the public, and Subchapter N, Chapter 1701, Occupations Code (Proposed Chapter 238)

Chapter 13, Code of Criminal Procedure (Proposed Chapter 134)


Chapter 31, Code of Criminal Procedure (Proposed Chapter 314)

Chapter 45, Code of Criminal Procedure (Proposed Chapter 454)

Chapter 55, Code of Criminal Procedure (Proposed Chapter 554)


89

89




Special Investigators Art. 2.122, CCP

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



SB 602 90

90




The Natalia Cox Act Art. 2.1398, CCP

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

SB 1325 91

91




The Natalia Cox Act Art. 2.1398, CCP

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

SB 1325 92

92




Protective Orders Ch. 7B, CCP

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


SB 48 93

93




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

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



HB 1207 94


94



Hypnotically Induced Statements Art. 38.24, CCP


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

NEWS - POLITICS
Texas bans testimony based on police 'investigative hypnosis' in criminal trials
The new law effectively neuteres use of hypnosis by police officers to sharpen witness r controversial practice that was the subject of a Dallas Morning News investigation.



SB 338 95


95



Bentley's Law Child Support for Victims of Intox. Manslaughter Art. 42.0375, CCP

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

New Tennessee law supports children of drunk driving victims



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

HB 393 96

96



Form of Crime Victim Notification Art. 56A.0525, CCP

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

SB 2101

97

97



Sexual Assault Notification Ch. 56A, CCP

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

SB 806

98

98



Sexual Assault Notification Ch. 56A, CCP

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

SB 806

99

99



Sexual Assault Notification Ch. 56A, CCP

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

SB 806

100

100



Address Confidentiality Program Art. 58.052, CCP

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

HB 1161

101

101



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

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

HB 2660 & SB 2429

102

102



Transportation Code

103



Optional Deaf or Hard of Hearing Chapter 521, Transportation Code

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



HB 3132

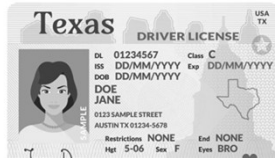
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104



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

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



HB 656

105

105



Driver's License Suspensions Sec. 521.457, Transportation Code

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

HB 842

106



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

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

HB 4337

107

107



Stop Signs and Yield Signs Sec. 544.010, Transportation Code

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



HB 3558

108



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

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



SB 1413

109



Operation of Motorcycles on Road Sec. 545.0605, Transportation Code

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

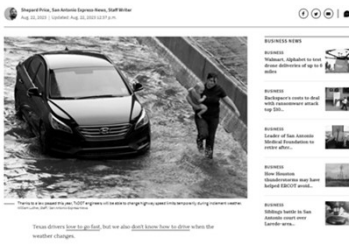
HB 4122

110

Variable Speed on Roadway Sec. 545.353, Trans. Code

Remember rain? The Lege does. A new law lets TxDOT drop highway speed limits in inclement weather.

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



HB 3126

111



Racing on Highway; Impoundment Sec. 545.420, Transportation Code

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

HB 3126

112



LED Ground Effect Lighting Sec. 547.306, Trans. Code

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

HB 3313

113

Accessible Parking Spaces Sec. 681.011, Trans. Code

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



SB 904

114



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

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

HB 4528

115

115



Use of a Sidewalk Sec. 552.006, Transportation Code

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

HB 1277

116

116

Miscellaneous Codes



117

117



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

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

HB 1819

118

118

Sedition Ch. 557, Gov't. Code

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



SB 1900

119

119




Kids and Porn

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

HB 1181

120

120




Liability for Allowing Minors to Access Pornographic Material

Ch. 129B, Civil Practice & Remedies

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

HB 1181 121

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Liability for Allowing Minors to Access Pornographic Material

Ch. 129B, Civil Practice & Remedies

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

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

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

HB 1181 122

122

The Crown Act

Ch. 21, Labor Code

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



THE DATA
THE CROWN RESEARCH STUDY (2019)


80% of Black women and 1.5X more Black women than white women have experienced hair discrimination.

"This recent study confirms what many Black women have experienced for years - that workplace and corporate grooming policies present a significant barrier to Black women getting to work and to celebrating their natural beauty."

READ REPORT

HB 29 123

123




COVID-19 Regulations

Ch. 81B, Health & Safety Code

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

SB 29 124

124




Enforcement of Temp. *Ex Parte* Order

Sec. 83.0025, Family Code

- Establishes that a temporary *ex parte* order is enforceable to the same extent and in the same manner as a final protective order rendered under Ch. 85. Ch. 85 mandates service of the order before it is enforceable.
- Requires a law enforcement agency receiving a protective order to enter that order in the agency's computer records of outstanding warrants as notice that the order has been issued and is currently in effect.
 - This requirement replaces the provision in current law that makes such entry voluntary.

HB 660 125


125



Reports of Child Abuse


Sec. 261.104, Family code

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



HB 63 126

126




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

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


SB 780 127

127



Illegal Voting Sec. 64.012(b), Election Code

87th Legislative Session




88th Legislative Session

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


HB 1243 128

128




Personal Hazing Offense Sec. 37.152, Education Code

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




SB 37 129

129



Case Law Update

130



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

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

131

131



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

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

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The Shifting Impact of *Bruen* & Limiting Legal Restrictions

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

133

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

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

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

- The DOJ appealed asking SCOTUS to reverse the ruling on the basis that “[g]overnments have long disarmed individuals who pose a threat to the safety of others,” and that the law “falls comfortably within that tradition.”
- Currently scheduled to be argued in 2024.

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Lange v. California (2021)

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

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Lange v. California (2021)

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

137

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

- **Issue:**
 - Whether, when officers put a handcuffed and shackled person face-down on the floor and pushed into his back until he died, they are entitled to qualified immunity as a matter of law because the person struggled to breathe before dying.
- **Holding:**
 - SCOTUS noted that in their (8th Cir.) decision it “is unclear whether the court thought the use of a prone restraint—no matter the kind, intensity, duration, or surrounding circumstances—is per se constitutional so long as an individual appears to resist officers' efforts to subdue him.”

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

• **Holding:**

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

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Counterman v. Colorado, (2023)

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

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Counterman v. Colorado, (2023)

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

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Counterman v. Colorado, (2023)

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

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Counterman v. Colorado, (2023)

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

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Counterman v. Colorado, (2023)

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

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Vega v. Tekoh, (2022)

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

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Vega v. Tekoh, (2022)

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

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Vega v. Tekoh, (2022)

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

147

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

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

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

- **Issue:**
 - Under what circumstances may boilerplate language about cell phones be considered in a probable cause analysis?
- **Holding:**
 - Boilerplate language may be used in an affidavit for the search of a cell phone, but to support probable cause, the language must be coupled with other facts and reasonable inferences that establish a nexus between the device and the offense.

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Until Next
Time...
The End



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