



# TEXAS JUDICIAL REPORT

## OFFICE OF COURT ADMINISTRATION TEXAS JUDICIAL COUNCIL

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Legislative Edition – 81<sup>st</sup> Legislature

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The 81<sup>st</sup> regular legislative session resulted in a number of new laws of interest to the judiciary, including laws resulting in:

- The creation of seven new district courts that will serve Bexar, Denton, Midland, Rockwall and Tarrant counties as well as the creation of eight new county courts at law in Bexar, Bosque, Fannin, Hidalgo and Navarro counties;
- Authority for commissioners courts to establish veterans court programs;
- Changes to judicial longevity pay;
- New and increased filing fees and court costs to support basic civil legal services for indigents, district court technology, and court records preservation;
- Further measures to protect the security of judges and their families; and
- Authorization for the Supreme Court to modify or suspend court procedures in the event of a disaster.

This report briefly summarizes new legislation directly impacting the Texas court system, judges, clerks, and other judicial actors. No attempt is made to cover substantive areas of the law in detail; other entities are expected to provide legislative updates on substantive legal topics. Additionally, the final pages of the report make reference to a few notable bills that were passed by the Legislature but vetoed by the governor.

We hope the report will be a useful resource for the judicial and legal community and all those interested in the administration of justice.

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**Additional Courts**

**HB 4833** – Effective 9/1/09.

Creates district courts in the following counties (court number, creation date, Gov’t Code provision):

- 1) Bexar (436<sup>th</sup> - 10/1/09 - § 24.580)
- 2) Bexar (437<sup>th</sup> - 12/15/09 - § 24.581)
- 3) Bexar (438<sup>th</sup> - 9/1/10 - § 24.582)
- 4) Denton (431<sup>st</sup> - 1/1/11 - § 24.575)
- 5) Midland (441<sup>st</sup> - 9/1/09 - § 24.585)
- 6) Rockwall (439<sup>th</sup> - 11/1/10 - § 24.583)
- 7) Tarrant (432<sup>nd</sup> - 9/1/09 - § 24.576)

Creates the following county courts at law (creation date, Gov’t Code provision):

- 1) Bexar No. 13 (9/1/09 - §§ 25.0171, 25.0172) – also created by HB 4741
- 2) Bexar No. 14 (9/1/09 - §§ 25.0171, 25.0172) – also created by HB 4741
- 3) Bexar No. 15 (9/1/09 - §§ 25.0171, 25.0172) – also created by HB 4741
- 4) Bosque (10/1/09 - §§ 25.0201, 25.0202) – also created by SB 2229
- 5) Fannin (9/1/09 - §§25.0761, 25.0762) – also created by HB 2232
- 6) Hidalgo No. 7 (9/1/11 - § 25.1101) – also created by HB 4793 and SB 2469
- 7) Hidalgo No. 8 (9/1/12 - § 25.1101) – also created by HB 4793 and SB 2469
- 8) Navarro (1/1/11 or earlier date as determined by commissioners court - §§ 25.1771, 25.1772) – also created by HB 1682

**See also Court Costs and Filing Fees; Court Jurisdiction; Problem-Solving Courts.**

**Appellate Courts**

**SB 408** – Effective 9/1/09.

Authorizes an appeal to the court of appeals from the judgment of a county-level court in a case that originated in small claims court. Under current law, there is no appeal of a small claims court decision beyond the county court level. Clarifies that in order to appeal a civil judgment of a district or county-level court to the court of appeals, the amount in controversy must be more than \$250. Also authorizes a county-level court that is hearing an appeal of an eviction suit to appoint an attorney who is willing to provide pro bono legal services in the matter to attend to the cause of a party who was in possession of the residence at the time the eviction suit was filed in the justice court and who has perfected appeal by means of a pauper’s affidavit. *See* §§ 22.220, 25.0020, 26.010, 28.053, Gov’t Code and § 51.012, Civ. Prac. & Rem. Code.

**See also Justices of the Peace and Municipal Judges.**

**SB 658** – Effective 9/1/09. (*Filing fee effective 1/1/10.*)

Creates an appellate judicial system for the Sixth Court of Appeals District in Texarkana. Requires the commissioners courts of counties in the district to set a filing fee of \$5 for each civil suit filed in the county-level courts and district courts in the district. *See* § 22.2071, Gov’t Code.

**See also Court Costs and Filing Fees.**

**SB 659** – Effective 9/1/09. (*Filing fee effective 1/1/10.*)

Creates an appellate judicial system for the Twelfth Court of Appeals District in Tyler. Requires the commissioners courts of counties in the district to set a filing fee of \$5 for each civil suit filed in the county-level courts and district courts in the district. *See* § 22.2131, Gov’t Code.

**See also Court Costs and Filing Fees.**

**SB 1208** – Effective 9/1/09. (*Filing fee effective 1/1/10.*)

Creates an appellate judicial system for the Seventh Court of Appeals District in Amarillo. Requires the commissioners courts of counties in the district to set a filing fee of \$5 for each civil suit filed in the county-level courts and district courts in the district. *See* § 22.2081, Gov’t Code.

**See also Court Costs and Filing Fees.**

**SB 1259** – Effective 6/19/09. (*Filing fee effective 6/19/09.*)

Creates an appellate judicial system for the Seventh Court of Appeals District in Amarillo. Requires commissioners courts of counties in the district to set a filing fee of \$5 for each civil suit filed in the county-level courts and district courts. Authorizes clerk of the Supreme Court and the courts of appeals to maintain electronic records and store them on microfilm. Requires the Supreme Court to adopt rules protecting personal information in records stored by appellate courts in an electronic format. Allows clerk of the Court of Criminal Appeals to accept all documents electronically and to store them on microfilm. *See* §§ 22.2081, 51.0045, 51.0046, 51.2045, 51.205, Gov’t Code.

**See also Court Costs and Fees; Court of Criminal Appeals.**

**SB 1650** – Effective 9/1/09.

In a matter subject to the Federal Arbitration Act, allows an appeal or writ of error to the court of appeals from the judgment or interlocutory order of a district court, county court at law, or county court under the same circumstances that an appeal from a federal district court’s order or decision would be permitted by 9 U.S.C. Section 16. *See* § 51.016, Civ. Prac. & Rem. Code.

### Associate Judges

**HB 1750** – Effective 6/19/09

Authorizes the appointment of criminal law magistrates in Brazoria County. *See* Subchapter 54, Gov’t Code.

**HB 4750** – Effective 6/19/09.

Authorizes the governing body of the City of White Settlement to appoint one or more magistrates to act on behalf of a municipal court of record or a municipal court in the City of White Settlement. Sets out requirements and functions of a magistrate. *See* § 30.01137, Gov’t Code.

**SB 407** – Effective 5/30/09.

Authorizes the appointment of part-time, rather than only full-time, magistrates to hear truancy related cases in counties with populations of two million or more. *See* § 54.1172, Gov’t Code.

**SB 742** – Effective 6/19/09.

Removes the two-year pre-appointment residency requirement for child support and child protection associate judges appointed under Subchapters B and C, Chapter 201, Family Code. Clarifies that a judge who is eligible for assignment under Section 74.054 of the Government Code is eligible for appointment as an associate judge under Subchapters B and C, Chapter 201 of the Family Code. Makes former or retired district court and statutory county court judges eligible for appointment as child support and child protection visiting associate judges. *See* §§ 201.1021, 201.113, 201.2021, 201.208, Fam. Code.

**SB 865** – Effective 9/1/09.

Omnibus child support legislation that amends various Family Code provisions and removes the requirement that a referring court, in a de novo hearing after a child support associate judge has issued a proposed order or judgment, can only consider testimony or other evidence in the record if the record was taken by a court reporter. *See* §§ 201.009, 201.015, Fam. Code.

**SB 1437** – Effective 9/1/09.

Authorizes a child support associate judge to hear post-trial motions in a Title IV-D case if a de novo review of the associate judge’s proposed order or judgment has not been requested. *See* § 201.104, Fam. Code.

### Court Clerks

**HB 1804** – Effective 9/1/09.

Authorizes service of process on non-resident defendants in delinquent property tax cases via substituted service on the secretary of state in a manner similar to that in which non-resident defendants may be served in other civil cases. Provides that duplicate copies of the process issued by the clerk be served on the secretary of state not

later than the 20<sup>th</sup> day before the date of return stated in the process. Requires the secretary of state to immediately mail a copy to the non-resident defendant. *See* § 17.091, Civ. Prac. & Rem. Code.

**HB 3352** – Effective 9/1/09.

Requires clerks to report to the Department of Public Safety (DPS) information necessary to prohibit the purchase of firearms by: persons ordered by a court to receive inpatient mental health services, persons acquitted by reason of insanity, persons determined to have mental retardation and committed to long-term residential care, persons for whom a court has appointed a guardian because the person lacks mental capacity, and persons who have been found to be incompetent to stand trial. Requires DPS to establish a procedure to provide the information to the FBI for use with the National Instant Criminal Background Check System and also to establish a system to correct DPS records. *See* §§ 411.052, 411.0521, Gov't Code; § 574.088, Health & Safety Code.

***See also Probate, Guardianships and Mental Health.***

**HB 3594** – Effective 9/1/09.

Provides for the preservation of biological evidence used to convict certain defendants in counties with populations of less than 100,000. In these counties, compliance with the preservation requirement is satisfied when the official in possession of the evidence (generally a prosecuting attorney or clerk) sends the evidence to the Department of Public Safety (DPS) which will provide storage. The preservation requirement applies only to biological evidence in cases in which the defendant was sentenced to 10 or more years in prison. *See* Art. 38.43, Code of Crim. Proc., § 411.052, Gov't Code.

***See also Criminal Law and Procedure.***

**HB 3601** – Effective 6/19/09.

Authorizes a county clerk to post official legal notices by electronic display instead of posting a physical document. Provides that an electronic display can be an electronic kiosk, bulletin board or internet website. *See* §§ 82.001; 82.002; 82.003; 82.004; 82.005; and 82.051, Local Gov't Code.

**HB 3637** – Effective 9/1/09. (*Fees effective 1/1/10.*)

Creates a \$4 court cost for county and district court technology that is to be assessed upon every conviction in a county court, statutory county court, or a district court. Increases the filing fee to support basic civil legal services for indigents from \$5 to \$10 in the statutory and constitutional county courts and from \$2 to \$6 in the justice courts. Requires clerks of county courts, statutory county courts and district

courts to collect a filing fee not to exceed \$10 in each civil case to be used for court records preservation. Provides for the appointment of pro bono attorneys in certain appeals of eviction suits. *See* Art. 102.0169, Code of Crim. Proc., § 133.153, Loc. Gov't Code and §§ 25.0020, 26.010, 51.708, Gov't Code.

***See also Court Costs and Filing Fees; Justices of the Peace and Municipal Courts.***

**HB 3671** – Effective 9/1/09.

Eliminates the requirement that documents to be delivered with a defendant transferred from a county to the Texas Department of Criminal Justice (TDCJ) include a copy of the arrest record for each offense. *See* Art. 42.09, Sec. 8(a), Code of Crim. Proc.

***See also Criminal Law and Procedure.***

**HB 4136** – Effective 6/19/09.

Requires the sealing of court records containing medical information of a child who is a victim of certain crimes in response to a request to seal the records. Provides for a hearing if the request is contested. Specifies that sealed medical records may be accessed in limited circumstances. Relieves a court clerk of any liability for failing to seal records that are ordered to be sealed unless the clerk acts in bad faith. *See* Chapter 57C, Code of Crim. Proc.

**HB 4464** – Effective 9/1/09

In criminal cases in which restitution is ordered, generally requires the judgment to reflect the name and address of a person or agency that will accept and forward restitution payments to the victim. This is a change from current law which generally requires that the victim's name and mailing address be reflected. *See* Arts. 42.01, Sec. 1 and 42.037(g), Code of Crim. Proc.

***See also Criminal Law and Procedure.***

**SB 1685** – Effective 6/19/09. (*Commissioners court may adopt filing fee as a part of any annual budget prepared after 6/19/09.*)

Authorizes a commissioners court to adopt a district court records archive fee of not more than \$5 to be assessed upon the filing of a suit or a cross-action, counterclaim, intervention, contempt action, motion for new trial, or a third-party petition in a district court. The filing fee must be approved as part of the county's annual budget. The filing fees go to support preservation and restoration in connection with a district court records archive. If such a fee is adopted, requires the district clerk to prepare an annual written plan for the preservation and restoration of the district court records archive. *See* §§ 51.305, 51.317, Gov't Code.

***See also Court Costs and Filing Fees.***

**SB 1774** – Effective 9/1/09.

Allows court clerks to deliver certain exhibits used in judicial proceedings to the county purchasing agent for disposal as surplus or salvage. Provides that the proceeds from disposal be split evenly between the county and the State's compensation to victims of crime fund. *See* Art. 2.21(f), (i), Code of Crim. Proc.

### Court Costs and Filing Fees

**HB 144** – Effective 6/19/09. (*Commissioners court may take action beginning 6/19/09 to put filing fee in place, but filing fee can not go into effect earlier than 10/1/09.*)

Permits the Bexar County Commissioners Court to authorize the collection of a filing fee not to exceed \$15 upon the filing of any civil case (other than a suit affecting the parent-child relationship for the adoption of a child or the termination of parental rights) in a district court, county court at law, or statutory probate court. The filing fees can only be used for the construction, renovation or improvement of the facilities that house the Bexar County courts. In order to assess the fee, Bexar County is required to spend one additional dollar on such facilities for every dollar spent from the filing fee money. *See* § 51.706, Gov't Code.

*See also* **Court Security and Facilities.**

**HB 666** – Effective 9/1/09. (*Court cost increase effective 1/1/10.*)

Increases the court cost paid upon conviction of a criminal offense to fund drug court problems from \$50 to \$60. *See* Art. 102.0178(a), Code of Crim. Proc.

*See also* **Problem-Solving Courts.**

**HB 3389** – Effective 9/1/09. (*Court cost effective 1/1/10.*)

Creates a \$0.10 court cost for deposit in the State's Civil Justice Data Repository Fund to be used by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). The court cost is to be assessed upon a conviction in a justice court, municipal court, county court, or county court at law for an offense involving the operation of a motor vehicle that is classified as a "moving violation" by the DPS. The list of moving violations can be found at 37 Tex. Admin. Code § 15.89(b) (2009). *See* Art. 102.022, Code of Crim. Proc.

*See also* **Justices of the Peace and Municipal Courts.**

**HB 3637** – Effective 9/1/09. (*Fees effective 1/1/10.*)

Creates a \$4 court cost for county and district court technology that is to be assessed upon every conviction in a county court, statutory county court, or a district court. Increases the filing fee to support basic civil legal services for indigents from \$5 to \$10 in the statutory and constitutional county courts and from \$2 to \$6 in the justice courts. Requires clerks of county courts, statutory county courts and district courts to collect a filing fee not to exceed \$10 in each civil case to be used for court records preservation. *See* Art. 102.0169, Code of Crim. Proc., § 133.153, Loc. Gov't Code and § 51.708, Gov't Code. *See also* **Court Clerks; Justices of the Peace and Municipal Courts.**

**HB 4424** – Effective 6/19/09. (*Filing fee effective 6/19/09.*)

Expands the assessment of the Domestic Relations Office (DRO) Initial Operations Filing Fee to include motions for modification and motions for enforcement (as opposed to original suits only). The amount is still not to exceed \$15. *See* §§ 110.006, 203.005, Fam. Code.

**HB 4529** – Effective 6/19/09. (*Filing Fee effective 6/19/09.*)

Increases the filing fee for court reporter service in civil cases from \$15 to \$30 in counties located on the Texas-Mexico border that contain a municipality with a population of 500,000 or more. *See* § 51.601, Gov't Code.

**HB 4833** – Effective 9/1/09. (*Fees effective 1/1/10.*)

Authorizes a veterans court program to collect from a program participant a reasonable program fee not to exceed \$1,000 and a testing, counseling, and treatment fee in an amount necessary to cover costs of testing, counseling, and treatment. *See* § 617.006, Gov't Code.

*See also* **Additional Courts; Court Jurisdiction; Problem-Solving Courts.**

**SB 61** – Effective 9/1/09. (*Court Cost effective 1/1/10. Change in fine amount effective 9/1/09.*)

Creates a new court cost of \$0.15 to be paid upon conviction of an offense under § 545.412(a), Transportation Code – failure to secure child in child passenger safety seat. The court costs are directed to the State to fund the purchase of child passenger safety seat systems for distribution to low-income families. The bill also changes the fine to be assessed for a violation of the offense to not more than \$25 for the first offense and not more than \$250 for the second or subsequent offense. Under current law, the

fine for an offense is to be not less than \$100 or more than \$200. *See* § 545.412, Transp. Code.

**SB 82** – Effective 9/1/09. (*Fee effective 9/1/09.*)

Requires a court that places a defendant on community supervision for conviction of an offense listed in Title 5, Penal Code that the Court determines involves family violence to order the defendant to pay \$100 to a family violence center. *See* Art. 42.12, Sec. 11(h), Code of Crim. Proc.

**SB 658** – Effective 9/1/09. (*Filing fee effective 1/1/10.*)

Creates an appellate judicial system for the Sixth Court of Appeals District in Texarkana. Requires the commissioners courts of counties in the district to set a filing fee of \$5 for each civil suit filed in the county-level courts and district courts in the district. *See* § 22.2071, Gov't Code.

**See also Appellate Courts.**

**SB 659** – Effective 9/1/09. (*Filing fee effective 1/1/10.*)

Creates an appellate judicial system for the Twelfth Court of Appeals District in Tyler. Requires the commissioners courts of counties in the district to set a filing fee of \$5 for each civil suit filed in the county-level courts and district courts in the district. *See* § 22.2131, Gov't Code.

**See also Appellate Courts.**

**SB 727** – Effective 9/1/09. (*Court cost effective 1/1/10.*)

Expands the pool of juveniles and adult defendants who are required to submit DNA samples to those placed on juvenile probation for certain offenses and those placed on adult community supervision in connection with a felony conviction. Adds to the current fee structure for DNA samples a \$50 DNA cost for juveniles sentenced to the Texas Youth Commission and a \$34 DNA cost for juveniles placed on probation and for adults required to submit a DNA sample when placed on community supervision. *See* Arts. 42.12(j) and 102.020, Code of Criminal Procedure; §§ 54.0409; 54.0462; 61.002, Fam. Code; and §§ 102.021; 102.0212; 411.141; 411.148, Gov't Code.

**See also Criminal Law and Procedure.**

**SB 1208** – Effective 9/1/09. (*Filing fee effective 1/1/10.*)

Creates an appellate judicial system for the Seventh Court of Appeals District in Amarillo. Requires the commissioners courts of counties in the district to set a filing fee of \$5 for each civil suit filed in the county-level courts and district courts in the district. *See* § 22.2081, Gov't Code.

**See also Appellate Courts.**

**SB 1224** – Effective 9/1/09. (*Filing fees eliminated effective 1/1/10.*)

Eliminates filing fees for petitions to expunge a criminal record related to an arrest if the defendant was acquitted, provided that the petition is filed within 30 days of the acquittal. *See* Art. 102.006, Code of Crim. Proc.

**See also Criminal Law and Procedure**

**SB 1259** – Effective 6/19/09. (*Filing fee effective 6/19/09.*)

Creates an appellate judicial system for the Seventh Court of Appeals District in Amarillo. Requires the commissioners courts of counties in the district to set a filing fee of \$5 for each civil suit filed in the county-level courts and district courts in the district. *See* § 22.2081, Gov't Code.

**See also Appellate Courts; Court of Criminal Appeals.**

**SB 1506** – Effective 9/1/09.

Allows a court to assess the cost of electronic monitoring or testing for controlled substances as court costs or to order the defendant to pay these costs directly as a condition of bond. Authorizes a magistrate to revoke bond and order the defendant arrested for failure to pay the costs of monitoring or testing for controlled substances if payment is ordered as a condition of bond and the magistrate determines that the defendant is financially able to pay. *See* Art. 17.44(c) and (e), Code of Crim. Proc.

**See also Magisterial Duties.**

**SB 1685** – Effective 6/19/09. (*Commissioners court may adopt filing fee as a part of any annual budget prepared after 6/19/09.*)

Authorizes a commissioners court to adopt a district court records archive fee of not more than \$5 to be assessed upon the filing of a suit or a cross-action, counterclaim, intervention, contempt action, motion for new trial, or a third-party petition in a district court. The filing fee must be approved as part of the county's annual budget. The filing fees go to support preservation and restoration in connection with a district court records archive. If such a fee is adopted, requires the district clerk to prepare an annual written plan for the preservation and restoration of the district court records archive. *See* §§ 51.305, 51.317, Gov't Code.

**See also Court Clerks.**

## Court Jurisdiction

**HB 4833** – Effective 9/1/09.

Expands jurisdiction of the Hunt County Courts at Law. Sets out jurisdiction of the Van Zandt County Court at Law (which will come into existence on 1/1/11). *See* §§ 25.1182, 25.2362, Gov't Code.

**See also Additional Courts; Court Costs and Filing Fees; Problem-Solving Courts.**

**SB 2230** – Effective 9/1/09.

Gives the five district courts in McLennan County concurrent jurisdiction with the county-level courts over misdemeanor cases. *See* Ch. 24, Gov't Code.

## Court of Criminal Appeals

**HB 1793** – Effective 9/1/09.

Requires justices of the peace and municipal judges to complete a two-hour course of instruction related to understanding relevant issues of child welfare and the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 *et seq.*) every judicial academic year that ends in a 0 or a 5. Requires the Court of Criminal Appeals to adopt rules for this purpose. *See* § 22.1105, Gov't Code.

**See also Judicial Education; Justices of the Peace and Municipal Judges.**

**HB 4314** – Effective 9/1/09.

Authorizes the Court of Criminal Appeals to adopt rules for the electronic filing of documents in capital cases. Requires the court to coordinate with the Supreme Court. *See* § 22.1095, Gov't Code.

**See also Criminal Law and Procedure; Supreme Court.**

**SB 1259** – Effective 6/19/09. (*Filing fee effective 6/19/09.*)

Creates an appellate judicial system for the Seventh Court of Appeals District in Amarillo. Requires the commissioners courts to set a \$5 filing fee for each civil suit filed in the county-level courts and district courts. Authorizes clerk of the Supreme Court and the courts of appeals to maintain electronic records and store them on microfilm. Requires the Supreme Court to adopt rules protecting personal information in records stored by appellate courts in an electronic format. Allows clerk of the Court of Criminal Appeals to accept all documents electronically and to store them on microfilm. *See* §§ 22.2081, 51.0045, 51.0046, 51.2045, 51.205, Gov't Code.

**See also Appellate Courts; Court Costs and Filing Fees.**

## Court Security and Facilities

**HB 144** – Effective 6/19/09. (*Commissioners court may take action beginning 6/19/09 to put filing fee in place, but filing fee can not go into effect earlier than 10/1/09.*)

Permits the Bexar County Commissioners Court to authorize the collection of a filing fee not to exceed \$15 upon the filing of any civil case (other than a suit affecting the parent-child relationship for the adoption of a child or the termination of parental rights) in a district court, county court at law, or statutory probate court. The filing fees can only be used for the construction, renovation or improvement of the facilities that house the Bexar County courts. In order to assess the fee, Bexar County is required to spend one additional dollar on such facilities for every dollar spent from the filing fee money. *See* § 51.706, Gov't Code.

**See also Court Costs and Filing Fees.**

**HB 559** – Effective 9/1/09.

Extends provisions for nondisclosure of certain personal information of judges in voter registration records and concealed handgun license records to justices of the peace. Also includes a justice of the peace in the definition of “state judge” to provide for the confidentiality of certain home address information in tax appraisal records. *See* § 13.0021(a)(2), Election Code; § 411.171(4-b), Gov't Code; § 25.025, Tax Code.

**See also Justices of the Peace and Municipal Courts; Open Records.**

**HB 598** – Effective 9/1/09.

Allows federal judges, state appellate court judges, state district judges, county court at law judges, and associate judges appointed under Chapter 201 of the Family Code (and their spouses) to omit their home addresses from their driver's licenses and list the street address of the courthouse instead. *See* §§ 521.001, 521.121, Gov't Code.

**See also Open Records.**

**SB 281** – Effective 9/1/09.

Allows the spouse of a federal judge or a state judge to take steps to keep his or her residence address confidential in certain public records such as voter registration applications, voter rolls, and property appraisal records. The term “state judge” includes judges and former and retired judges of appellate courts, district courts, county courts at law, and

associate judges appointed under Chapter 201 of the Family Code. *See* Chapters 13, 15, and 18, Election Code and § 25.025, Tax Code.

*See also* **Open Records**.

<b>Criminal Law and Procedure</b>
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**HB 107** – Effective 9/1/09.

Establishes a process for defendants who are confined in penal institutions to enter pleas of guilty or nolo contendere. Allows judgment and sentence in the absence of the defendant in certain felony cases if the defendant is imprisoned. The defendant and the prosecutor would have to enter into a written plea agreement and the sentence would have to be pronounced in accordance with the plea agreement. The defendant would have to make a written waiver of the right to be present at sentencing. *See* Arts. 27.19, 42.14, Code of Crim. Proc.

**HB 1060** – Effective 9/1/09.

Expands methods by which complaints or warrants may be transferred to include secure facsimile transmission and other secure electronic means. *See* Arts. 15.08, 15.09, 15.19, Code of Crim. Proc.

*See also* **Magisterial Duties**.

**HB 1544** – Effective 9/1/09.

Requires a court to dispose of a Class C misdemeanor without requiring a court appearance by the defendant if the court receives a plea and waiver after the time the defendant is scheduled to appear in court, but at least five business days before a scheduled trial date. Additionally, permits a court entering an order of deferral in a Class C misdemeanor to impose on the defendant a special expense in an amount not exceed the amount of the fine that could be imposed in the case. *See* Arts. 27.14(b), 45.051, Code of Crim. Proc. *See also* **Justices of the Peace and Municipal Judges**.

**HB 1711** – Effective 6/19/09 but “only if a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 81<sup>st</sup> Legislature.” As of now, no such appropriation has been made.

Requires the Texas Department of Criminal Justice (TDCJ) to develop a comprehensive plan to reduce recidivism and ensure the successful reentry and reintegration of offenders into the community after release from a correctional facility. TDCJ is authorized to contract and work with local governments, private vendors, and other entities to implement the plan. The plan must be adopted and implemented by January 1, 2010. Requires TDCJ to

create a reentry task force and, with the Office of Court Administration (OCA), supervise the work of the task force in coordinating the activities of various state agencies providing reintegration services to offenders making the transition from confinement to the free world. *See* § 501.092, 501.098, Gov’t Code.

**HB 2236** – Effective 9/1/09.

Requires a court that hears a defendant’s motion for continuance in a case of assault or sexual assault against a victim 17 years of age or younger, or a case of assault or sexual assault involving family violence, to consider the impact of the continuance on the victim, if requested to do so by the prosecutor. Requires the court to state on the record the reason for granting or denying the continuance, if requested to do so by the prosecutor or defense counsel. *See* §§ 29.14, 56.02(a), Code of Crim. Proc.

**HB 2465** – Effective 9/1/09.

Requires a court to order a prosecutor to take the deposition of an elderly or disabled witness or alleged victim no later than 60 days after the State files a deposition application. Extensions of the deadlines are possible. *See* Art. 39.025, Code of Crim. Proc.

**HB 3594** – Effective 9/1/09.

Provides for the preservation of biological evidence used to convict certain defendants in counties with populations of less than 100,000. In these counties, compliance with the preservation requirement is satisfied when the official in possession of the evidence (generally a prosecuting attorney or clerk) sends the evidence to the Department of Public Safety (DPS) which will provide storage. The preservation requirement applies only to biological evidence in cases in which the defendant was sentenced to 10 or more years in prison. *See* Art. 38.43, Code of Crim. Proc., § 411.052, Gov’t Code. *See also* **Court Clerks**.

**HB 3671** – Effective 9/1/09.

Eliminates the requirement that documents to be delivered with a defendant transferred from a county to the Texas Department of Criminal Justice (TDCJ) include a copy of the arrest record for each offense. *See* Art. 42.09, Sec. 8(a), Code of Crim. Proc. *See also* **Court Clerks**.

**HB 3751** – Effective 9/1/09.

Requires a magistrate to issue a no-contact order as a condition of bond for a defendant charged with certain offenses against a child younger than 14. A defendant who violates a condition of the bond and whose bail is therefore revoked may be taken into

custody and denied release on bail pending trial if, following a hearing, a judge or magistrate determines by a preponderance of the evidence that the defendant violated a condition of bond related to the safety of the victim or the community. After the defendant is placed in custody, the bond revocation discharges any sureties on the bond from any future liability on the bond. *See* Art. 17.41, Code of Crim. Proc.

***See also Magisterial Duties.***

**HB 4136** – Effective 6/19/09.

Requires a court, on its own motion or on a motion filed by an attorney representing the State, a defendant, a parent or guardian of a child victim, or a victim, to seal the medical records of a child who is a victim of certain violent or sexual offenses. *See* Chapter 57C, Code of Crim. Proc.

***See also Open Records.***

**HB 4314** – Effective 9/1/09.

Authorizes the Court of Criminal Appeals to adopt rules for the electronic filing of documents in capital cases. Requires the court to coordinate with the supreme court and its rules. *See* § 22.1095, Gov't Code.

***See also Court of Criminal Appeals; Supreme Court.***

**HB 4464** – Effective 9/1/09

In criminal cases in which restitution is ordered, generally requires the judgment to reflect the name and address of a person or agency that will accept and forward restitution payments to the victim. This is a change from current law which generally requires that the victim's name and mailing address be reflected. *See* Arts. 42.01, Sec. 1 and 42.037(g), Code of Crim. Proc.

***See also Court Clerks***

**SB 409** – Effective 5/27/09.

Prohibits a justice of the peace from charging a fee for the first copy of a document in criminal case that is issued to a defendant, an attorney representing a defendant or a prosecuting attorney. *See* § 118.124, Local Gov't Code.

***See also Justices of the Peace and Municipal Judges***

**SB 410** – Effective 9/1/09.

Clarifies that the statute of limitations for a misdemeanor prosecution initiated by a complaint is two years. Current law only references misdemeanors initiated by indictment or information, and the common charging instrument for a Class C

misdemeanor is a complaint. *See* Art. 12.02, Code of Crim. Proc.

***See also Justices of the Peace and Municipal Judges***

**SB 595** – Effective 9/1/09.

Prohibits defendants charged with possession or promotion of child pornography from retaining copies of the evidence to be used against them, including child pornography. Provides for controlled access discovery of property or material constituting child pornography by the defendant, the defendant's attorney and expert witnesses. Prohibits a court from making child pornography available during a criminal trial and requires the court to place property and materials constituting child pornography under seal at the conclusion of the trial. *See* Arts. 38.45; 39.14(a); and 39.15, Code of Crim. Proc.

***See also Open Records.***

**SB 727** – Effective 9/1/09.

Expands the pool of juveniles and adult defendants who are required to submit DNA samples to those placed on juvenile probation for certain offenses and those placed on adult community supervision in connection with a felony conviction. Adds to the current fee structure for DNA samples a \$50 DNA cost for juveniles sentenced to the Texas Youth Commission and a \$34 DNA cost for juveniles placed on probation and for adults required to submit a DNA sample when placed on community supervision. *See* Arts. 42.12(j) and 102.020, Code of Criminal Procedure; §§ 54.0409; 54.0462; 61.002, Fam. Code; and §§ 102.021; 102.0212; 411.141; 411.148, Gov't Code.

***See also Court Costs and Filing Fees***

**SB 743** – Effective 9/1/09.

Provides that a search warrant issued solely for DNA samples must be executed in 15 days, not three days like other search warrants. *See* Art. 18.07, Code of Crim. Proc.

***See also Magisterial Duties.***

**SB 1224** – Effective 9/1/09. (*Filing fees eliminated effective 1/1/10.*)

Permits a person acquitted of a misdemeanor to petition for expunction without paying a filing fee, if the person files the petition within 30 days of acquittal. Under current law, only a defendant acquitted of a felony is entitled to expunction without paying the filing fee. *See* Art. 102.006, Code of Crim. Proc.

***See also Court Costs and Filing Fees***

**SB 1236** – Effective 9/1/09.

Requires that certain citations issued for a Class C misdemeanor contain a prominently printed admonishment stating that defendants convicted of certain offenses constituting family violence are prohibited from possessing or purchasing firearms and advising defendants with questions to consult with an attorney. Requires a court to issue the same admonishment to a defendant charged with a misdemeanor involving family violence before accepting a plea of guilty or no contest. Provides that the citation serves as this admonishment if the defendant is charged with a misdemeanor punishable by fine only. Removes the requirement under current law that the court must admonish a defendant at arraignment, prior to accepting a plea of guilty or no contest, regarding possession or purchase of a firearm if the defendant is convicted of a misdemeanor involving family violence. *See* Arts. 14.06(b); 26.13(a); and 27.14(e), Code of Crim. Proc.

**SB 1557** – Effective 9/1/09.

Requires a sheriff, not later than 72 hours after receiving credible information that a defendant in custody has a mental illness or is a person with mental retardation, notify the magistrate of this information. Provides that, in most cases, a magistrate must order a local mental health or mental retardation authority to collect information and provide an assessment regarding whether the defendant has a mental illness or is a person with mental retardation within a specified time period. Allows a court to consider this assessment during the punishment phase, as part of the presentence investigation report or in connection with conditions of placement or community supervision. *See* Arts. 16.22; 17.032(b); and 42.12, sec. 11(d), Code of Crim. Proc.

*See also Magisterial Duties.*

**SB 1681** – Effective 9/1/09.

Prohibits a defendant from being convicted based on the testimony of a person to whom the defendant makes a statement against the defendant's interest during a time in which the person and the defendant are imprisoned in the same correctional facility, unless the testimony is corroborated by other evidence. *See* Art. 38.075, Code of Crim. Proc.

**SB 1832** – Effective 9/1/09.

Prohibits a defendant convicted of criminal solicitation of capital murder from being eligible for release on judge-ordered community supervision or release on mandatory supervision. Requires the defendant to serve 30 years or one-half of the defendant's sentence, before becoming eligible for

release on parole. *See* Art. 42.12, sec. 3g(a) and §§ 508.145(d) and 508.149(a), Gov't Code.

**SB 2340** – Effective 6/19/09.

Amends current law related to electronic monitoring and other alternative means to allow defendants to discharge fines and costs or to satisfy a term of confinement in county jail. Authorizes counties to operate, or contract with a private vendor to operate, an electronic monitoring program. Allows a court to revoke a defendant's participation in electronic monitoring if the defendant violates a condition of the court, including failure to pay for the program. Amends provisions regarding manual labor and volunteer work programs. *See* Arts. 42.032, sec. 6; 42.035(a), (d) and (e); 43.09(e); 43.10; 43.101(a), (b) and (d); 44.041(b), Code of Crim. Proc. and § 351.904, Local Gov't Code.

**Family Law**

**HB 72** – Effective 6/10/09.

Eliminates the 60-day waiting period before a divorce can be granted in cases in which a spouse has been convicted of an act of family violence against the petitioner or the petitioner has obtained a protective order against the other spouse for an act of family violence against the petitioner or a member of the petitioner's household. *See* § 6.702, Fam. Code.

**HB 704** – Effective 5/23/09.

Gives a young adult the permissive ability to request a court that had continuing, exclusive jurisdiction over the young adult on the day before that person's 18<sup>th</sup> birthday to render an order extending jurisdiction over the young adult. A "young adult" would be an individual between 18 and 21 years of age who was in the conservatorship of the Department of Family and Protective Services (DFPS) on the day of the individual's 18<sup>th</sup> birthday, and after the individual's 18<sup>th</sup> birthday, resided in foster care or received transitional living services from DFPS. *See* Subchapter G, Chapter 263, Fam. Code.

**HB 1506** – Effective 9/1/09

Permits a magistrate to require that a global positioning monitoring device be issued to an offender at the time the offender is released on bond for an offense involving family violence or to an offender who is the cause of an order for emergency protection resulting from an offense involving family violence, sexual assault, aggravated sexual assault, or stalking. *See* §§ 17.292 and 17.49, Code of Criminal Procedure.

*See also Magisterial Duties.*

**HB 1629** – Effective 5/23/09.

Concerns children for whom the Department of Family and Protective Services (DFPS) has been named managing conservator. Authorizes a juvenile court to communicate with the court of continuing jurisdiction over a child's DFPS case. Authorizes the appointment of an attorney ad litem for a child who is in the managing conservatorship of DFPS and who is committed to the Texas Youth Commission (TYC). Generally prohibits a court that conducts placement review hearings for a child in the managing conservatorship of DFPS from dismissing the DFPS case concerning the child when the child is committed to TYC. *See* §§ 32.001, 54.04, 107.0161, 264.0091, and Chapter 263, Fam. Code; §§ 61.0731, 61.0763, 61.0766, 61.0767, Hum. Res. Code.

*See also Juvenile Justice.*

**Indigent Defense**

**HB 498** – Effective 9/1/09.

Establishes an advisory panel on wrongful convictions to assist the Task Force on Indigent Defense (TFID) in conducting a study and preparing a report regarding the prevention of wrongful convictions. TFID's Director is the presiding officer of the advisory panel. Requires TFID to prepare a report regarding the results of the study by January 1, 2011.

**HB 2058** – Effective 9/1/09.

Creates separate standards for appellate lead counsel in capital cases in which the death penalty is sought. Requires a local selection committee (selected in each judicial region by the region's presiding judge) to amend its standards to conform with the new requirements within 75 days of September 1, 2009. *See* Art. 26.052, Code of Crim. Proc.

*See also Judicial Administration.*

**SB 1091** – Effective 9/1/09.

Creates a state Office of Capital Writs to handle state writs under Article 11.071 of the Code of Criminal Procedure and other post-conviction matters. Creates a Capital Writs Committee to recommend candidates for the director of the office, to be appointed by the Court of Criminal Appeals. Requires the presiding judges of the administrative judicial regions to complete a statewide list of competent counsel for appointments to represent defendants in applications for writs of habeas corpus by January 1, 2010. *See* Arts. 11.071, 26.04, 26.044, Code of Crim. Proc. and Chapter 78, Gov't Code.

*See also Judicial Administration.*

**Judicial Administration**

**HB 764** – Effective 9/1/09.

Amends the qualifications for a former or retired statutory probate judge to sit on assignment so that the qualifications are consistent with those of judges assigned under Chapter 74 of the Government Code. Requires that retired and former probate judges who serve on assignment have 96 months of active service, certify that they have never been publicly reprimanded by the State Commission on Judicial Conduct (SCJC), and demonstrate that they have completed the annual education requirements. *See* § 25.0022, Gov't Code.

**HB 1462** – Effective 9/1/09.

Allows state employees up to five hours of leave per month to participate in mandatory training or perform volunteer services for Court Appointed Special Advocates (CASA). *See* § 661.921, Gov't Code.

**HB 1831** – Effective 6/19/09 (Article 5) and 9/1/09 (Section 1.10).

Omnibus bill on disaster readiness. Section 1.10 includes the judicial branch in a new communications coordination group to be coordinated by the Governor's Division of Emergency Management. Article 5 allows the Supreme Court to modify or suspend court procedures in a disaster; allows local administrative rules to provide for the coordinated response for the transaction of essential functions in the event of a disaster; and includes the judicial branch in Chapter 418 of the Government Code dealing with Emergency Management. *See* §§ 22.0035, 74.093, 418.051, Gov't Code.

**HB 1861** – Effective 6/19/09.

Authorizes the Supreme Court to modify or suspend court procedures in a disaster; allows local administrative rules to provide for the coordinated response for the transaction of essential functions in the event of a disaster; and includes the judicial branch in Chapter 418 of the Government Code dealing with Emergency Management. *See* §§ 22.0035, 74.093, 418.002, Gov't Code.

**HB 1925** – Effective 9/1/09.

Removes the salary cap for court administrators who are appointed under Section 75.401, Gov't Code which provides for a court administrator system in certain counties. *See* § 75.401, Gov't Code.

**HB 2058** – Effective 9/1/09.

Creates separate standards for appellate lead counsel in capital cases in which the death penalty is sought. Requires a local selection committee (selected in each judicial region by the region’s presiding judge) to amend its standards to conform with the new requirements within 75 days of September 1, 2009. *See* Art. 26.052, Code of Crim. Proc.

*See also Indigent Defense.*

**SB 420** – Effective 6/19/09.

Repeals current law that permits a municipality to consider the amount of money collected from a municipal court when evaluating the performance of a municipal judge. *See* § 720.002(c), Transp. Code.

*See also Justices of the Peace and Municipal Judges.*

**SB 683** – Effective 9/1/09

Amends procedures for assigning a judge to a case in which a statutory probate court judge has been recused or disqualified. Also amends several Government Code provisions related to the powers of statutory probate court associate judges and requires the use of court reporter when a probate associate judge presides over a jury trial. *See* §§ 25.0022, 25.002201, 25.00255 and Subchapter G, Chapter 54, Gov’t Code.

*See also Probate, Guardianships, and Mental Health.*

**SB 1091** – Effective 9/1/09.

Creates a state Office of Capital Writs to handle state writs under Article 11.071 of the Code of Criminal Procedure and other post-conviction matters. Creates a Capital Writs Committee to recommend candidates for the director of the office, to be appointed by the Court of Criminal Appeals. Requires the presiding judges of the administrative judicial regions to complete a statewide list of competent counsel for appointments to represent defendants in applications for writs of habeas corpus by January 1, 2010. *See* Arts. 11.071, 26.04, 26.044, Code of Criminal Procedure and Chapter 78, Gov’t Code. *See also Indigent Defense.*

**SB 1369** – Effective 9/1/09. (*Provisions concerning the appointment of an attorney ad litem apply only to appointments on or after 12/1/09.*)

Requires the local administrative judge to establish and maintain a list of the attorneys who are qualified to serve and who have registered to serve as an attorney ad litem. Generally requires a court to appoint the attorney whose name appears first on the list when the appointment of an attorney ad litem is necessary. There are three major exceptions to the

first-name-on-the-list rule: (1) when special expertise is needed; (2) when the appointment is to be made pursuant to the Family Code, Health and Safety Code, Human Resources Code, Texas Trust Code, or Probate Code; and (3) when agreed upon by the parties and approved by the court. *See* §§ 74.092, 74.098, Gov’t Code.

*See also Other Court Actors.*

**SB 2217** – Effective 9/1/09.

Requires certain district judges in Harris County to designate one district court as the domestic violence district court. *See* § 24.112, Gov’t Code.

**Judicial Campaign Finance**

**HB 4060** – Effective 9/1/09.

Expands the time period in which a judicial candidate can accept campaign contributions to 120 days after the general election. Under current law, the deadline to accept contributions for a candidate who does not have an opponent in the general election is 120 days after the general primary election or 120 days after a runoff primary election. *See* § 253.153, Election Code.

**SB 1142** – Effective 6/19/09.

Removes requirement that candidates, officeholders, and specific-purpose committees for judicial district offices filled by voters of a single county file a campaign finance report with the county clerk of that county. These reports are already required to be filed with the Texas Ethics Commission. *See* §§ 254.066, 254.097, 254.130, Election Code.

**SB 1152** – Effective 9/1/09.

Prohibits a person from making or authorizing a political contribution to a candidate, officeholder, or political committee, or a person acting on their behalf, while in a courthouse. *See* § 253.039, Election Code.

**Judicial Compensation**

**HB 765** – Effective 6/19/09.

Requires commissioners courts to pay certain judges of statutory probate courts benefit replacement pay and longevity pay under the same conditions and in the same amount as district judges. *See* § 25.0023, Gov’t Code.

**SB 497** – Effective 9/1/09.

Changes the fixed rate of a judge or justice’s monthly longevity pay from \$20 for each year of service (maximum of 16 years of service) to 3.1 percent of

the judge's monthly salary. Additionally, authorizes (but does not compel) commissioners courts to provide longevity pay to certain judges who receive a salary paid by the State who previously served as statutory county court judges in the county and are not yet eligible for the state judicial longevity pay, but who would be entitled to longevity pay if they were to receive credit for service as a statutory county court judge. Clarifies that judicial longevity pay does not constitute additional salary for purposes of determining whether judge's salary exceeds statutory maximum. Directs constitutional county judges to file affidavits for state supplemental compensation with the Comptroller's judiciary section instead of with the Office of Court Administration. Directs the Comptroller's judiciary section (instead of the Texas Judicial Council) to pay the salary supplement due to district judges who preside over multidistrict litigation involving asbestos-related and silica-related injuries. *See* §§ 26.006, 659.0125, 659.0445, Gov't Code.

**SB 2298** – Effective 6/19/09.

Provides that a retired judge appointed to a multi-district litigation (MDL) pretrial court is entitled to receive the same compensation and benefits to which a district judge is entitled. *See* § 659.0125, Gov't Code.

**Judicial Education**

**HB 1793** – Effective 9/1/09.

Requires justices of the peace and municipal judges to complete a two-hour course of instruction related to understanding relevant issues of child welfare and the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 *et seq.*) every judicial academic year that ends in a 0 or a 5. Requires the Court of Criminal Appeals to adopt rules for this purpose. *See* § 22.1105, Gov't Code.

***See also Court of Criminal Appeals; Justices of the Peace and Municipal Judges.***

**HB 4009** – Effective 9/1/09.

Requires the Office of Court Administration (OCA) to assist the Health and Human Services Commission and the Department of Public Safety with development of training programs to increase awareness among judges, prosecutors, and law enforcement personnel of the needs of domestic victims of human trafficking and the availability of services for them. *See* § 531.384, Gov't Code.

**Juries**

**HB 319** – Effective 9/1/09.

Allows for an exemption from jury service if a person has custody of a child younger than 15 (as opposed to 10) who would be left without adequate supervision if the person were required to serve on a jury. *See* § 62.106(a), Gov't Code.

**HB 608** – Effective 9/1/09.

Authorizes a commissioners court to approve a post-trial counseling program for jurors or alternate jurors who served in all types (as opposed to limited types) of criminal trials involving graphic evidence or testimony. Also allows a juvenile board, with commissioners court approval, to establish a post-trial counseling program offering up to ten hours of assistance for jurors or alternate jurors who served in juvenile adjudication hearings that involved graphic evidence or testimony. *See* Art. 56.04(f), Code of Crim. Proc. and § 57.003(g), Fam. Code.

**HB 609** – Effective 9/1/09.

Requires that a jury in a juvenile adjudication hearing for a misdemeanor consist of the same number of jurors (six) as required in adult trials for a misdemeanor under Art. 33.01(b), Code of Crim. Proc. *See* § 54.03(c), Fam. Code.

***See also Juvenile Justice.***

**HB 1321** – Effective 9/1/09.

Requires a jury to be discharged if, after the charge is read, no alternate juror is available to replace a juror who is prevented from continuing to serve due to accident or illness. The bill does not affect the ability of the prosecutor and the defendant to agree to a verdict. Nor does the bill affect punishment by an 11-person jury in the event of illness or accident. *See* Art. 36.29, Code of Crim. Proc.

**HB 1665** – Effective 9/1/09.

Increases the penalties for a person who is called for jury service and who fails to attend court, fails to attend grand jury proceedings, or files a false claim of exemption from jury service to a range of \$100 to \$500 (from a range of \$10 to \$100). Allows a court in a criminal case to fine a person summoned for jury service who fails to attend court in an amount ranging from \$100 to \$500 (as opposed to the current law calling for a fine of not more than \$50). *See* § 62.111, Gov't Code, and Arts. 19.16, 35.01, Code of Crim. Proc.

**SB 397** – Effective 9/1/09.

Authorizes a county treasurer to reimburse jurors for service via electronic funds transfer, a cash

dispensing machine, a debit card or stored value card, or any other jury-reimbursement method that the county treasurer and the commissioners court determine is secure, accurate, cost-effective and convenient for persons who report for jury service. *See* § 113.048, Loc. Gov't Code, and §§ 61.001(f), 61.003(e), Gov't Code.

**SB 1274** – Effective 5/23/09.

Authorizes a county with a population of 3.3 million or more to summon prospective jurors to report to a justice court in the precinct adjacent to the precinct in which that person resides. Currently, a prospective juror may only be summoned to serve in the justice court in the precinct in which the juror resides. *See* § 62.412(a-1), Gov't Code.

*See also Justices of the Peace and Municipal Judges.*

**SB 1675** – Effective 9/1/09.

Clarifies statutory language that allows jurors to donate their reimbursements for jury service to the county board that serves abused and neglected children. Requires that jurors be provided with information containing a brief description of all programs to which jurors may donate their reimbursement money. *See* § 61.003(a),(a-2), Gov't Code.

### **Justices of the Peace and Municipal Judges**

**HB 400** – Effective 9/1/09.

Requires a court to assess a fee of not more than \$20 and dismiss a charge of illegally parking a vehicle with an expired disabled parking placard if the defendant remedies the violation within 20 days and the placard was not expired for more than 60 days. Also allows a court to dismiss a charge of illegally parking a vehicle in a disabled parking space if the vehicle displays a disabled parking placard that has not been expired for more than 60 days. *See* § 681.013, Transp. Code.

**HB 559** – Effective 9/1/09.

Extends provisions for nondisclosure of certain personal information of judges in voter registration records and concealed handgun license records to justices of the peace. Also includes a justice of the peace in the definition of “state judge” to provide for the confidentiality of certain home address information in tax appraisal records. *See* § 13.0021(a)(2), Election Code; § 411.171(4-b), Gov't Code; § 25.025, Tax Code.

*See also Court Security and Facilities; Open Records.*

**HB 586** – Effective 9/1/09.

Requires a court to allow a defendant to meet requirements for proving evidence of insurability in six month increments when the defendant's vehicle has been impounded for failure to maintain evidence of insurability. Current law prohibits an impounded vehicle from being released until the defendant shows evidence of insurability covering two years following the impoundment. Enables a defendant to meet this requirement in six month intervals, consistent with the way in which insurance policies are typically written. *See* § 601.262(c), Transp. Code.

**HB 1544** – Effective 9/1/09.

Requires a court to dispose of a Class C misdemeanor without requiring a court appearance by the defendant if the court receives a plea and waiver after the time the defendant is scheduled to appear in court, but at least five business days before a scheduled trial date. Additionally, permits a court entering an order of deferral in a Class C misdemeanor to impose on the defendant a special expense in an amount not exceed the amount of the fine that could be imposed in the case. *See* Arts. 27.14(b), 45.051, Code of Crim. Proc. *See also Criminal Law and Procedure.*

**HB 1793** – Effective 9/1/09.

Requires justices of the peace and municipal judges to complete a two-hour course of instruction related to understanding relevant issues of child welfare and the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 *et seq.*) every judicial academic year that ends in a 0 or a 5. Requires the Court of Criminal Appeals to adopt rules for this purpose. *See* § 22.1105, Gov't Code.

*See also Court of Criminal Appeals; Judicial Education.*

**HB 3389** – Effective 9/1/09. (*Court cost effective 1/1/10.*)

Creates a \$0.10 court cost for deposit in the State's Civil Justice Data Repository Fund to be used by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). The court cost is to be assessed upon a conviction in a justice court, municipal court, county court, or county court at law for an offense involving the operation of a motor vehicle that is classified as a “moving violation” by the DPS. The list of moving violations can be found at 37 Tex. Admin. Code § 15.89(b) (2009). *See* Art. 102.022, Code of Crim. Proc.

*See also Court Costs and Filing Fees.*

**HB 3637** – Effective 9/1/09. (*Fees effective 1/1/10.*) Creates a \$4 court cost for county and district court technology that is to be assessed upon every conviction in a county court, statutory county court, or a district court. Increases the filing fee to support basic civil legal services for indigents from \$5 to \$10 in the statutory and constitutional county courts and from \$2 to \$6 in the justice courts. Requires clerks of county courts, statutory county courts and district courts to collect a filing fee not to exceed \$10 in each civil case to be used for court records preservation. *See* Art. 102.0169, Code of Crim. Proc., § 133.153, Loc. Gov't Code and § 51.708, Gov't Code. ***See also Court Clerks; Court Costs and Filing Fees.***

**SB 408** – Effective 9/1/09. Authorizes an appeal to the court of appeals from the judgment of a county-level court in a case that originated in small claims court. Under current law, there is no appeal of a small claims court decision beyond the county court level. Clarifies that in order to appeal a civil judgment of a district or county-level court to the court of appeals, the amount in controversy must be more than \$250. Provides for the appointment of pro bono attorneys in certain appeals of eviction suits. *See* §§ 22.220, 25.0020, 26.010, 28.053, Gov't Code and § 51.012, Civ. Prac. & Rem. Code. ***See also Appellate Courts.***

**SB 409** – Effective 5/27/09. Prohibits a justice of the peace from charging a fee for the first copy of a document in criminal case that is issued to a defendant, an attorney representing a defendant or a prosecuting attorney. *See* § 118.124, Local Gov't Code. ***See also Criminal Law and Procedure.***

**SB 410** – Effective 9/1/09. Clarifies that the statute of limitations for a misdemeanor prosecution initiated by a complaint is two years. Current law only references misdemeanors initiated by indictment or information, and the common charging instrument for a Class C misdemeanor is a complaint. *See* Art. 12.02, Code of Crim. Proc. ***See also Criminal Law and Procedure.***

**SB 413** – Effective 9/1/09. Requires the state to file a complaint when a defendant fails to appear and enter a plea to a citation in a Class C misdemeanor case, which would effectively toll the statute of limitations for prosecuting the offense. *See* Art. 27.14(d), Code of Crim. Proc.

**SB 414** – Effective 9/1/09. Allows a defendant arrested pursuant to a capias pro fine (for failure to pay a fine) to appear before the court via two way electronic broadcast as an alternative to an in-person appearance. *See* Arts. 43.03(f) and 45.046(c), Code of Crim. Proc.

**SB 420** – Effective 6/19/09. Repeals current law that permits a municipality to consider the amount of money collected from a municipal court when evaluating the performance of a municipal judge. *See* § 720.002(c), Transp. Code. ***See also Judicial Administration.***

**SB 935** – Effective 9/1/09. Expands the list of persons authorized to conduct a marriage ceremony to include a judge of a municipal court. *See* § 2.202(a), Fam. Code.

**SB 1274** – Effective 5/23/09. Authorizes a county with a population of 3.3 million or more to summon prospective jurors to report to a justice court in the precinct adjacent to the precinct in which that person resides. Currently, a prospective juror may only be summoned to serve in the justice court in the precinct in which the juror resides. *See* § 62.412(a-1), Gov't Code. ***See also Juries.***

**SB 1504** – Effective 9/1/09. Authorizes a municipality with a population of 1.9 million or more and another municipality contiguous to it to enter into an agreement to provide for concurrent jurisdiction over offenses that are punishable by fine only and that occur on the boundary or within 200 yards of the boundary of the two municipalities. *See* Arts. 4.14(f) and 13.045, Code of Crim. Proc. and § 29.003(h), Gov't Code.

<b>Juvenile Justice</b>
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**HB 558** – Effective 9/1/09. Transfers jurisdiction of public intoxication cases against children under the age of 17 from juvenile courts to justice and municipal courts. *See* § 51.08, Fam. Code.

**HB 609** – Effective 9/1/09. Requires that a jury in a juvenile adjudication hearing for a misdemeanor consist of the same number of jurors (six) as required in adult trials for a misdemeanor under Art. 33.01(b), Code of Crim. Proc. *See* § 54.03(c), Fam. Code. ***See also Juries.***

## Magisterial Duties

### **HB 1629** – Effective 5/23/09.

Concerns children for whom the Department of Family and Protective Services (DFPS) has been named managing conservator. Authorizes a juvenile court to communicate with the court of continuing jurisdiction over a child's DFPS case. Authorizes the appointment of an attorney ad litem for a child who is in the managing conservatorship of DFPS and who is committed to the Texas Youth Commission (TYC). Generally prohibits a court that conducts placement review hearings for a child in the managing conservatorship of DFPS from dismissing the DFPS case concerning the child when the child is committed to TYC. *See* §§ 32.001, 54.04, 107.0161, 264.0091, and Chapter 263, Fam. Code; §§ 61.0731, 61.0763, 61.0766, 61.0767, Hum. Res. Code.

*See also Family Law.*

### **HB 1688** – Effective 9/1/09.

Requires that motions for new trials in juvenile cases be governed by Rule 21 of the Texas Rules of Appellate Procedure rather than by the Texas Rules of Civil Procedure. *See* § 56.01(b-1), Fam. Code.

### **HB 2386** – Effective 9/1/09

Authorizes a juvenile court to seal a juvenile offender's records immediately, rather than after two years, if the juvenile completes a drug court program. Provides for a hearing on the issue of sealing the records and a means for waiver of such a hearing in certain cases. *See* § 58.003, Fam. Code.

*See also Open Records.*

### **HB 4451** – Effective 9/1/09.

Authorizes a child discharged from Texas Youth Commission (TYC) due to mental retardation or mental illness to qualify for and receive continuity of care services through the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMI). Authorizes a child who is receiving services through TCOOMI as a TYC parolee to continue with treatment until the child reaches the parole completion date. *See* §§ 61.077, 61.0773, Hum. Res. Code; § 614.019, Health & Safety Code.

*See also Probate, Guardianships and Mental Health.*

### **SB 839** – Effective 9/1/09.

Juveniles certified to stand trial as an adult and convicted of capital murder would be given automatic life sentence and would be eligible for release on parole after serving 40 calendar years, rather than a sentence of life without the possibility of parole. *See* § 12.31(b), Penal Code.

### **HB 1060** – Effective 9/1/09.

Expands methods by which complaints or warrants may be transferred to include secure facsimile transmission and other secure electronic means. *See* Arts. 15.08, 15.09, 15.19, Code of Crim. Proc.

*See also Criminal Law and Procedure.*

### **HB 1506** – Effective 9/1/09

Permits a magistrate to require that a global positioning monitoring device be issued to an offender at the time the offender is released on bond for an offense involving family violence or to an offender who is the cause of an order for emergency protection resulting from an offense involving family violence, sexual assault, aggravated sexual assault, or stalking. *See* §§ 17.292 and 17.49, Code of Criminal Procedure.

*See also Family Law.*

### **HB 1949** – Effective 9/1/09.

Authorizes the Texas Department of Agriculture to seek an agriculture warrant from a magistrate in order to conduct inspections of items likely to contain plant pests or diseases or to conduct testing of plants, trap insects or treat plant diseases and pests. Provides that the warrant may only be issued by a magistrate authorized to issue a search warrant and only on a showing of probable cause as specified. Establishes an offense for intentionally interfering with the execution of an agriculture warrant. *See* §71.0083, Agric. Code.

### **HB 3751** – Effective 9/1/09.

Requires a magistrate to issue a no-contact order as a condition of bond for a defendant charged with certain offenses against a child younger than 14. A defendant who violates a condition of the bond and whose bail is therefore revoked may be taken into custody and denied release on bail pending trial if, following a hearing, a judge or magistrate determines by a preponderance of the evidence that the defendant violated a condition of bond related to the safety of the victim or the community. After the defendant is placed in custody, the bond revocation discharges any sureties on the bond from any future liability on the bond. *See* Art. 17.41, Code of Crim. Proc.

*See also Criminal Law and Procedure.*

### **SB 415** – Effective 9/1/09.

Authorizes a magistrate to release a person accused of a misdemeanor punishable by fine only without bond, and to order the accused to appear at a later

date for arraignment in the applicable justice court or municipal court, rather than in the county court or statutory county court. See Art. 15.17(b), Code of Crim. Proc.

**SB 743** – Effective 9/1/09.

Provides that a search warrant issued solely for DNA samples must be executed in 15 days, not three days like other search warrants. See Art. 18.07, Code of Crim. Proc.

**See also Criminal Law and Procedure.**

**SB 1506** – Effective 9/1/09.

Allows a court to assess the cost of electronic monitoring or testing for controlled substances as court costs or to order the defendant to pay these costs directly as a condition of bond. Authorizes a magistrate to revoke bond and order the defendant arrested for failure to pay the costs of monitoring or testing for controlled substances if payment is ordered as a condition of bond and the magistrate determines that the defendant is financially able to pay. See Art. 17.44(c) and (e), Code of Crim. Proc.

**See also Court Costs and Filing Fees.**

**SB 1557** – Effective 9/1/09.

Requires a sheriff, not later than 72 hours after receiving credible information that a defendant in custody has a mental illness or is a person with mental retardation, notify the magistrate of this information. Provides that, in most cases, a magistrate must order a local mental health or mental retardation authority to collect information and provide an assessment regarding whether the defendant has a mental illness or is a person with mental retardation within a specified time period. Allows a court to consider this assessment during the punishment phase, as part of the presentence investigation report or in connection with conditions of placement or community supervision. See Arts. 16.22; 17.032(b); and 42.12, sec. 11(d), Code of Crim. Proc.

**See also Criminal Law and Procedure.**

### Open Records

**HB 559** – Effective 9/1/09.

Extends provisions for nondisclosure of certain personal information of judges in voter registration records and concealed handgun license records to justices of the peace. Also includes a justice of the peace in the definition of “state judge” to provide for the confidentiality of certain home address information in tax appraisal records. See §

13.0021(a)(2), Election Code; § 411.171(4-b), Gov’t Code; § 25.025, Tax Code.

**See also Court Security and Facilities; Justices of the Peace and Municipal Courts.**

**HB 598** – Effective 9/1/09.

Allows federal judges, state appellate court judges, state district judges, county court at law judges, and associate judges appointed under Chapter 201 of the Family Code (and their spouses) to omit their home addresses from their driver’s licenses and list the street address of the courthouse instead. See §§ 521.001, 521.121, Gov’t Code.

**See also Court Security and Facilities.**

**HB 2386** – Effective 9/1/09.

Authorizes a juvenile court to seal a juvenile offender’s records immediately, rather than after two years, if the juvenile completes a drug court program. Provides for a hearing on the issue of sealing the records and a means for waiver of such a hearing in certain cases. See § 58.003, Fam. Code.

**See also Juvenile Justice.**

**HB 4136** – Effective 6/19/09.

Requires a court, on its own motion or on a motion filed by an attorney representing the State, a defendant, a parent or guardian of a child victim, or a victim, to seal the medical records of a child who is a victim of certain violent or sexual offenses. See Chapter 57C, Code of Crim. Proc.

**See also Criminal Law and Procedure.**

**SB 281** – Effective 9/1/09.

Allows the spouse of a federal judge or a state judge to take steps to keep his or her residence address confidential in certain public records such as voter registration applications, voter rolls, and property appraisal records. The term “state judge” includes judges and former and retired judges of appellate courts, district courts, county courts at law, and associate judges appointed under Chapter 201 of the Family Code. See Chapters 13, 15, and 18, Election Code and § 25.025, Tax Code.

**See also Court Security and Facilities.**

**SB 595** – Effective 9/1/09.

Prohibits defendants charged with possession or promotion of child pornography from retaining copies of the evidence to be used against them, including child pornography. Provides for controlled access discovery of property or material constituting child pornography by the defendant, the defendant’s attorney and expert witnesses. Prohibits a court from making child pornography available during a criminal trial and requires the court to place property

and materials constituting child pornography under seal at the conclusion of the trial. *See* Arts. 38.45; 39.14(a); and 39.15, Code of Crim. Proc.

**See also Criminal Law and Procedure**

**SB 1056** – Effective 6/19/09.

Authorizes the Department of Public Safety (DPS) to disclose to the Guardianship Certification Board and county clerks in guardianship proceedings criminal history record information that is the subject of a nondisclosure order. Also requires a court that convicts a child of a misdemeanor punishable by fine only that does not constitute conduct indicating a need for supervision to issue a nondisclosure order regarding criminal history record information related to the offense, lists agencies that may receive the information, and exempts the information from disclosure under the Public Information Act. *See* §§ 411.081, 411.0851, 552.142, 552.1425, Gov't Code.

**See also Probate, Guardianships and Mental Health.**

**SB 1068** – Effective 6/4/09.

Allows a governmental body that has received a request for information subject to the Public Information Act (PIA) to redact personal information without requesting an opinion from the attorney general. Enables the requestor to seek an attorney general's opinion in response to such a redaction. Also provides that in response to a request for information subject to the PIA, a governmental body may withhold information relating to an employee or officer if release of the information would subject the employee or officer to a substantial threat of physical harm. *See* §§ 552.024(c), 552.1175, 552.138, and 552.151, Gov't Code.

**SB 1930** – Effective 9/1/09

Allows a plaintiff who is a minor to use a confidential identity in a civil action based on sexual abuse. Entitles the judge, the parties, the parties' attorneys, and a person with a special order from the court to know the true identity of the minor plaintiff. Prohibits these persons from disclosing the plaintiff's identity and provides that such disclosure constitutes contempt. Forbids the Supreme Court from adopting rules inconsistent with these confidentiality provisions.

*See* § 30.013, Civ. Prac. & Rem. Code.

### Other Court Actors

**HB 4445** – Effective 9/1/11.

Creates a court interpreter's license with a "master" designation and a license with a "basic" designation.

Interpreters with a basic designation are only permitted to interpret in justice courts and municipal courts that are not municipal courts of record, other than proceedings before a court where the judge is acting as a magistrate. *See* § 57.002, 57.043, 57.046, Gov't Code.

**SB 1369** – Effective 9/1/09. (*Provisions concerning the appointment of an attorney ad litem apply only to appointments on or after 12/1/09.*)

Requires the local administrative judge to establish and maintain a list of the attorneys who are qualified to serve and who have registered to serve as an attorney ad litem. Generally requires a court to appoint the attorney whose name appears first on the list when the appointment of an attorney ad litem is necessary. There are three major exceptions to the first-name-on-the-list rule: (1) when special expertise is needed; (2) when the appointment is to be made pursuant to the Family Code, Health and Safety Code, Human Resources Code, Texas Trust Code, or Probate Code; and (3) when agreed upon by the parties and approved by the court. *See* §§ 74.092, 74.098, Gov't Code.

**See also Judicial Administration.**

### Probate, Guardianships and Mental Health

**HB 585** – Effective 6/19/09.

Strikes references to the court's "minutes" in the Probate Code and replaces them with "judge's probate docket" or "judge's guardianship docket." Deletes requirement that the judge sign probate minutes and guardianship minutes on a monthly basis. *See* various sections of the Probate Code.

**HB 587** – Effective 9/1/09.

Clarifies that a court in a guardianship proceeding may authorize payment of attorney's fees from the county treasury only if the court is satisfied that the attorney to whom the fees will be paid has not received and is not otherwise seeking payment for representing the person who filed an application to be appointed guardian of a proposed ward or for the appointment of another person as guardian. Clarifies that the court in a guardianship proceeding may authorize the payment of reasonable and necessary attorney's fees as determined by the court. *See* § 665B, Probate Code.

**HB 888** – Effective 6/19/09.

Relates to the 48-hour detention of a person for a mental health examination. Extends the time a person may be detained if the 48-hour period ends on a Saturday, Sunday, or legal holiday or before 4 p.m.

on the first succeeding business day to 4 p.m. (rather than 12 p.m.) on the first succeeding business day. *See* § 573.021, Health and Safety Code.

**HB 1460** – Effective 9/1/09

Requires that an application for probate of a written will state, if applicable, whether a marriage of the decedent was ever dissolved after the will was made, whether by divorce, annulment, or a declaration that the marriage was void. *See* § 81A, Texas Probate Code.

**HB 1461** – Effective 9/1/09

Requires that the application for probate of a will as a muniment of title state, if applicable, whether a marriage of the decedent was ever dissolved after the will was made, whether by divorce, annulment, or a declaration that the marriage was void. *See* § 89A, Texas Probate Code.

**HB 1969** – Effective 6/19/09

Provides that penalty clauses in wills and trusts for bringing a cause of action are ineffective in cases where a challenge to a will or trust is brought in good faith and with just cause. *See* § 64, Probate Code and §§ 111.035 and 112.038, Property Code.

**HB 2027** – Effective 9/1/09

Replaces the current Texas Anatomical Gift Act with the Revised Uniform Anatomical Gift Act, relating to the donation and use of parts or all of the human body after death. *See* Chapter 692A and §§ 241.153, 691.030, 693.002, 693.003, 693.005, 693.006, Health and Safety Code, § 512.401, Transportation Code, and § 651.407, Occupations Code.

**HB 2368** – Effective 9/1/09.

In addition to amending provisions related to trusts, amends provision regarding the appointment and compensation of guardian and attorneys ad litem. *See* §1104.021, Insurance Code and §§112.010, 113.029, 115.013, 115.014, 116.006 and 116.172 Property Code.

**HB 2502** – Effective 1/1/14.

Contains non-substantive revision of portions of the Probate Code applicable to decedents' estates. The proposed new code is the Estates and Guardianship Code. Also transfers and re-designates, but does not revise, portions of the Probate Code relating to independent administration and jurisdiction, venue of probate courts, the Durable Power of Attorney Act, and guardianship. *See* various sections of the Probate Code.

**HB 3080** – Effective 9/1/09.

Clarifies that the court in a guardianship proceeding is authorized, but not required, to set the guardian's compensation in an amount not exceeding five percent of the ward's gross income. Authorizes the court to modify the amount of compensation if it is unreasonably low, authorize payment of compensation on a quarterly basis, and reduce or eliminate the compensation under certain circumstances. Addresses compensation of an attorney who provides both guardianship services and legal services. Provides a mechanism for self-improving declarations of appointment of a guardian. Makes several changes in management trust provisions, including eligibility of persons and entities other than financial institutions to serve as trustee and provision for transfer of management trust property to a pooled trust. *See* various sections of the Probate Code.

**HB 3352** – Effective 9/1/09.

Requires clerks to report to the Department of Public Safety (DPS) information necessary to prohibit the purchase of firearms by: persons ordered by a court to receive inpatient mental health services, persons acquitted by reason of insanity, persons determined to have mental retardation and committed to long-term residential care, persons for whom a court has appointed a guardian because the person lacks mental capacity, and persons who have been found to be incompetent to stand trial. Requires DPS to establish a procedure to provide the information to the FBI for use with the National Instant Criminal Background Check System and also to establish a system to correct DPS records. *See* §§ 411.052, 411.0521, Gov't Code; § 574.088, Health & Safety Code.

***See also Court Clerks.***

**HB 4451** – Effective 9/1/09.

Authorizes a child discharged from Texas Youth Commission (TYC) due to mental retardation or mental illness to qualify for and receive continuity of care services through the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI). Authorizes a child who is receiving services through TCOOMMI as a TYC parolee to continue with treatment until the child reaches the parole completion date. *See* §§ 61.077, 61.0773, Hum. Res. Code; § 614.019, Health & Safety Code.

***See also Juvenile Justice.***

**SB 271** – Effective 6/19/09 (but implementation may be delayed until federal waiver, if necessary, is obtained).

Authorizes court to appoint Department of Aging and Disability Services (DADS) as successor guardian for

certain wards. Limits the number of such appointments to 55 per year, requires that the appointments be distributed equally throughout the state or as nearly equally as possible, and requires that the ward be located more than 100 miles from the court that created the guardianship. Also requires DADS to coordinate with area agencies on aging and other local entities on issues regarding informal caregivers. *See* §§ 161.076, 161.101, Hum. Res. Code; § 695 Probate Code.

**SB 408** – Effective 9/1/09 – except that changes made by Section 13 (putting the amendments made by Section 12 into a future recodification) will not be effective until 1/1/14.

Updates provisions of the Probate Code relating to jurisdiction of probate proceedings and proceedings regarding powers of attorney and certain trusts. Redefines the term “probate proceedings” and synonymous terms. Makes conforming changes in the Government Code and Property Code. Also sets forth the manner in which the Probate Code provisions that are updated by the bill are to be recodified as provisions of the future Estates and Guardianships Code (*see* HB 2502).

**SB 666** – Effective 9/1/09.

Requires the trustee of a charitable trust to obtain approval of the district court or statutory probate court in which the trust was created prior to changing the location in which the trust is administered to an out-of-state location. Authorizes the attorney general to bring an action to enforce the provision and authorizes the court to remove a trustee that fails to comply with the requirement. *See* § 113.029, Prop. Code.

**SB 683** – Effective 9/1/09

Amends procedures for assigning a judge to a case in which a statutory probate court judge has been recused or disqualified. Also amends several Government Code provisions related to the powers of statutory probate court associate judges and requires the use of court reporter when a probate associate judge presides over a jury trial. *See* §§ 25.0022, 25.002201, 25.00255 and Subchapter G, Chapter 54, Gov’t Code.

***See also Judicial Administration.***

**SB 917** – Effective 5/23/09.

Adds the Property Code definition of “charitable trust” to the Probate Code to clarify the concurrent jurisdiction of district courts and statutory probate courts in actions involving a charitable trust. *See* § 5, Probate Code.

**SB 1053** – Effective 9/1/09.

Provides that a person may not be appointed to serve as guardian if he or she does not have the required certification by the Guardianship Certification Board (GCB). Authorizes a court to remove, on the complaint of the GCB, a person who would be ineligible for appointment as a guardian because of the person's failure to maintain the required certification. *See* §§ 681, 761, Probate Code.

**SB 1055** – Effective 9/1/09.

Eliminates duplicative reporting requirements and imposes consistent and streamlined requirements for reports by private professional guardians, local guardianship programs and the Department of Aging and Disability Services to county clerks and the Guardianship Certification Board. *See* § 111.044, Gov’t Code; §§ 697, 697A, Probate Code.

**SB 1056** – Effective 6/19/09.

Authorizes the Department of Public Safety (DPS) to disclose to the Guardianship Certification Board and county clerks in guardianship proceedings criminal history record information that is the subject of a nondisclosure order. Also requires a court that convicts a child of a misdemeanor punishable by fine only that does not constitute conduct indicating a need for supervision to issue a nondisclosure order regarding criminal history record information related to the offense, lists agencies that may receive the information, and exempts the information from disclosure under the Public Information Act. *See* §§ 411.081, 411.0851, 552.142, 552.1425, Gov’t Code.

***See also Open Records.***

**SB 1057** – Effective 6/19/09.

Eliminates requirement that the county clerk must obtain criminal history record information on persons serving as guardians, proposed guardians, and local guardianship program employees and volunteers who provide guardianship services to the program's wards if the person holds a certificate issued by the Guardianship Certification Board (GCB) and the GCB conducted a criminal history check on the person. Authorizes the GCB to give the clerk the criminal history record information it obtained from the Department of Public Safety (DPS) and FBI. *See* §§ 411.1386, 411.1406 Gov’t Code; § 698, Probate Code.

**SB 2344** – Effective 9/1/09.

Revises examination and report requirements for a court to grant an application to create a guardianship for an incapacitated person other than a person whose alleged incapacity is mental retardation in guardianship proceedings. Also revises requirements

for an application in which the proposed ward's alleged capacity is mental retardation. *See* § 687, Probate Code.

### Problem-Solving Courts

**HB 666** – Effective 9/1/09. (*Court cost increase effective 1/1/10.*)

Increases the court cost paid upon conviction of a criminal offense to fund drug court problems from \$50 to \$60. *See* Art. 102.0178(a), Code of Crim. Proc.

*See also* **Court Costs and Filing Fees.**

**HB 4833** – Effective 9/1/09.

Authorizes a commissioners court to establish a veterans court program. *See* Ch. 617, Gov't Code. (NOTE: **SB 1940** contains identical provisions.)

*See also* **Additional Courts; Court Costs and Filing Fees; Court Jurisdiction.**

**SB 633** – Effective 6/19/09.

Reduces from three to two the number of counties or municipalities needed to establish a regional drug court. *See* § 469.0025, Health & Safety Code.

### Supreme Court

**HB 1861** – Effective 6/19/09.

Authorizes the Supreme Court to issue an order to modify or suspend procedures for the conduct of court proceedings in the event of a disaster for not more than 30 days. Provides that the chief justice may act on behalf of the Supreme Court in modifying or suspending procedures due to disaster, if the disaster prevents the Supreme Court as a whole from acting. Authorizes the Court of Criminal Appeals to act if the chief justice is unable to do so due to disaster; and allows the presiding judge of the Court of Criminal Appeals to act if disaster prevents the full court from doing so. Includes the role of the judiciary in emergency preparedness under other state law, and allows local court rules to provide for a coordinated response for the transaction of essential judicial functions in the event of a disaster. *See* §§ 22.035; 74.093(c); and 418.002, Gov't Code.

**HB 4314** – Effective 9/1/09.

Authorizes the Court of Criminal Appeals to adopt rules for the electronic filing of documents in capital cases. Requires the court to coordinate with the Supreme Court and its rules. *See* § 22.1095, Gov't Code.

*See also* **Court of Criminal Appeals; Criminal Law and Procedure.**

**SB 1259** – Effective 6/19/09.

Requires the commissioners courts in each county in the seventh appellate district to establish a judicial appellate system to assist in the disposition of cases on appeal and to defray costs incurred by the county. Provides for a \$5 mandatory filing fee in civil cases, the proceeds of which are used to support the appeals court. Allows the clerk of the Supreme Court or an appellate court to maintain records and documents in electronic storage format or on microfilm, and provides that such documents are considered originals. Requires the clerks of these courts to establish a records retention policy. Mandates that the Supreme Court adopt rules to protect personal information stored electronically by the Supreme Court or by appellate courts. Allows the clerk of the Court of Criminal Appeals to accept electronic documents and digital multimedia evidence. Requires a county or district clerk to accept electronic documents or digital multimedia evidence from the defendant if the clerk accepts them from the prosecutor. *See* §§ 22.2081; 51.0045; 51.0046; 51.1045; 51.105(a); 51.205; 101.06115; 101.08114; 101.10114; and 101.12123, Gov't Code and Art. 2.21(a) and (k), Code of Crim. Proc.

**SB 1448** – Effective 1/1/10 (Supreme Court must adopt rules no later than 1/1/10).

Requires a justice court in repair of residential property cases to hear the request within a specified time period. Provides for a limit awards in these cases. Gives precedence to appeals of judgments from justice courts in residential repair cases. Requires the Supreme Court to adopt rules of civil procedure applicable to orders of repair issued by a justice court. *See* § 92.0563, Prop. Code.

**SB 2279** – Effective 6/19/09.

Dedicates penalties recovered in civil actions brought by the attorney general under the Texas Deceptive Trade Practices Act to programs approved by the Supreme Court that provide basic civil legal services to the indigent. Provides that the total amount dedicated to civil legal services for the indigent cannot exceed \$10 million over the biennium. *See* § 402.007, Gov't Code.

### Vetoed Bills

**HB 3148**

Would have exempted certain young persons convicted of sexual offenses involving consensual sex from the requirement of registering as a sex offender. Would have established the requirements for petitioning the court for an order exempting the

person from sex offender registration requirements. Also would have modified the age difference between a defendant and victim or intended victim related to a finding of an age-based offense. In his veto proclamation, the Governor expressed concern that the bill allowed an exemption from registration for the sex offender regardless of the age of the victim. "While other provisions of the criminal code provide some protections against very young victims being re-victimized in the event that a court were to improvidently exempt their abusers from sex offender registration, I am not willing to take that gamble with the lives of young Texans."

#### **HB 3481**

Would have expanded the list of persons eligible for expunction of arrest records to include persons granted relief on the basis of actual innocence, persons released without charge or conviction under certain circumstances, persons acquitted by a court of appeals in certain cases, and persons who were never tried for an offense if the prosecutor recommends expunction. In vetoing the legislation, the Governor expressed concern about provisions in the proposal that would have allowed expunction 180 days after an arrest if no formal charges were filed, as compared with current law which generally results in a two year period before expunction is available. The shorter period proposed in HB 3481 could have required a prosecutor to reveal details of an investigation within 180 days of arrest, according to the Governor, who stated in his veto proclamation that "[e]xpunction statutes should not be used as a means of discovery or as a means to force a prosecutor to rush to file formal charges prematurely. Allowing a person to know the identities of witnesses or the nature of their evidence unnecessarily endangers both law enforcement and citizen witnesses prior to an indictment for murder, organized crime, sexual assaults and other serious offenses. House Bill No. 3481 precipitates an untenable injustice to victims and a hazard to public safety."

#### **HB 3515**

Would have created the Class C misdemeanor offense of failure to report barratry or solicitation of employment for a lawyer who acquires knowledge that would reasonably cause him or her to believe that a non-lawyer acting on behalf of a lawyer, committed barratry or solicited professional employment. According to his veto proclamation, the Governor objected to the bill because it would "make a lawyer not engaged in criminal conduct subject to criminal penalties because of the criminal conduct of others."

#### **HB 4068**

Would have authorized the Supreme Court to exercise the court's inherent authority to temporarily suspend any order, rule or procedural statutes on a case-by-case basis if a proceeding is affected by a disaster. Also would have authorized district and county court local rules to provide for the transaction of essential judicial functions in the event of a disaster. In vetoing this legislation, the governor noted that some of the bill's provisions conflicted with HB 1861, also passed this session. According to the Governor, ". . . enacting both would lead to time-consuming litigation to resolve these conflicts. . . . Because of these conflicts and because I believe House Bill No. 1861 provides a better framework for the judicial branch during a state of disaster, I am vetoing House Bill No. 4068."

**See HB 1861 (Supreme Court) and HB 1831 (Judicial Administration)**

#### **HB 4685**

Would have addressed jurisdiction of the courts in Titus County, in part by authorizing a district judge and the county judge to enter into specified agreements regarding jurisdiction. The Governor found the provisions authorizing agreements governing jurisdiction in violation of the Texas Constitution, Art. 5, Sec. 16. "Under the Texas Constitution, jurisdiction can be transferred only by state law and not by agreements between judges."

#### **SB 223**

Would have extended the Governor's power to grant pardons in criminal cases to persons who successfully complete deferred adjudication community supervision, not only persons convicted of a crime as under current law. Expressing his approval of this legislation as a "good bill," the Governor nonetheless "reluctantly" vetoed SB 223 because, in order for the bill to be effective, a constitutional amendment must be adopted to grant the additional authority to the governor. The joint resolution needed to place this amendment before the voters did not pass during the legislative session, thus rendering S.B. 223 without effect.

#### **SB 1440**

Addressed the need for the signature of a referring court on orders related to both child support and child protection issued by an associate judge. Would have altered provisions related to investigations of child abuse and neglect by the Department of Protective and Regulatory Services, including transporting a child for interviewing or investigation and obtaining records relevant to an investigation. Also addressed procedures for obtaining court orders in child abuse investigations. Noting that the bill established

guidelines for caseworkers rendered “uncertain” by the decision related to transporting a child to conduct an interview in *Gates v. Texas Dept of Protective and Regulatory Services*, the governor vetoed SB 1440, asserting that the measure “overreaches and may not give due consideration to the Fourth Amendment rights of a parent or guardian.” The governor then directed the department to study the *Gates* decision and to develop and recommend statewide procedures to follow when seeking court orders to aid investigations.

**SB 2038**

Would have required courts, executive branch agencies, and other entities to construe nonsubstantive revisions of Texas statutes such that no substantive effect is given to the revisions. In a message of disapproval attached to his veto, the Governor stated: “The plain words of a statute are the starting point for interpreting the law. Senate Bill 2038 would eliminate this fundamental principle. . . . Judges would no longer be able to apply the law simply by looking at its plain text.”

**SB 2325**

Would have made confidential and privileged the discussions, thought processes and individual votes of members of the State Commission on Judicial Conduct and the commission’s employees and special counsel unless expressly waived in writing. Also would have made the identity of any confidential complainant or informant to the commission confidential and privileged, unless waived in writing. The governor vetoed this measure because “the protections the commission needs in order to perform its duties are already provided in law.”