# LEGISLATION AFFECTING

## Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD)

**AND**

## Community Supervision and Corrections Departments (CSCDs)

## 82nd LEGISLATIVE SESSION

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# Introduction

The following information regarding legislation enacted during the 82nd Legislative Session is limited to information affecting either TDCJ-CJAD or CSCDs.

Some of the enacted bills also contain information outside the scope of this presentation. Additional information regarding the legislation is available at the Texas Legislature Online website at www.legis.state.tx.us. The website allows users to search for bills by number, subject, author, sponsor, committee, or keyword and provides copies of the bill text, the committee's bill analysis, fiscal note, witness lists, House Research Organization's bill analysis, and enrolled summary.

Any additional resources listed after a bill are located in the Appendix at the end of this document.

# COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENTS

**House Bill 3691:** Community Justice Plans (CJP)
**Effective Date:** June 17, 2011

**Senate Bill 1055:** Community Justice Plans (CJP)
**Effective Date:** September 1, 2011

**Community Justice Council**

The bill provides that a CSCD director, or the director's designee, should be on the community justice council (council).

**Community Justice Plans**

A council must submit its CJP to TDCJ-CJAD by March 1st of each even-numbered year. The CJP must include a description of the programs and services the CSCD provides or intends to provide, including a separate description of any programs or services it intends to provide to enhance public safety, reduce recidivism, strengthen the investigation and prosecution of criminal offenses, improve programs and services available to victims of crime, and increase the amount of restitution collected from persons supervised by the CSCD; and an outline of the CSCD's projected programmatic and budgetary needs, based on the programs and services the CSCD both provides and intends to provide.

The bill requires TDCJ-CJAD to prepare a report regarding the programs and services contained in the CJPs submitted to TDCJ-CJAD. The report must include financial information relating to the programs and services, including information concerning the amount of state aid, and funding that is not state aid, used to support each program or service. A copy of the report, along with TDCJ's legislative appropriations request (LAR), must be submitted to the Texas Board of Criminal Justice (Board) for approval. The Board must consider the report when deciding whether to approve the LAR. A copy of the report must also be submitted to the Legislative Budget Board (LBB).

**Commitment Reduction Plan**

The bill authorizes a CSCD or a regional partnership of CSCDs to submit a commitment reduction plan to request additional state funding, not later than 80 days after the legislature adjourns. The bill sets forth the information that must be contained in the plan and it must be signed by the CSCD director or the director of each CSCD if submitted by a regional partnership. The bill authorizes TDCJ-CJAD to grant specified awards and provides for the repayment of certain funds if the targets are not met.

**Bill Impact**

Under prior law, the CJP was submitted each odd-numbered year.

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**House Bill 3691:** Judicial Districts (district)
**Effective Date:** June 17, 2011

In lieu of establishing a CSCD, House Bill 3691 authorizes a district to contract with a CSCD in another district to provide programs and services for its defendants. The Texas Board of Criminal Justice is required to adopt rules for this provision.

**Bill Impact**

Current law allows CSCDs to contract with each other for services or facilities. In 1982, the Attorney General issued an opinion, stating that joint CSCDs are not authorized, and that each judicial district was required to establish and maintain its own community supervision office. Op. Tex. Att'y Gen. No. MW-542 (1982). Under the new legislation, a district does not have to establish its own CSCD and instead, may contract with another CSCD for programs and services.

**Additional Resources**

- House Research Organization's Bill Analysis for HB 3691
- Texas Attorney General Opinion MW-542

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**Senate Bill 321:** Employee Firearms and Ammunition
**Effective Date:** September 1, 2011

Senate Bill 321 provides that an employer may not prohibit an employee who is licensed to carry a concealed handgun, or who otherwise lawfully possesses a firearm or ammunition, from transporting or storing the handgun or ammunition in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the employer provides for its employees.
The provision does not apply to certain locations, including where the possession of a firearm or ammunition is prohibited by state or federal law; a vehicle owned or leased by the employer that the employee may be required to use in the course and scope of his employment; a school district, charter school, private school, and certain property relating to oil, gas, and chemical manufacturing.

An employer may still prohibit an employee from possessing a firearm on its premises, but the bill narrowly defines "premises" to mean a building or a portion of a building. The term does

not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.

Except in cases of gross negligence, the employer is not liable for personal injury, death, or property damage arising out of an incident involving a firearm or ammunition stored in compliance with this law, including an action arising from the theft of the firearm or ammunition. The presence of the firearm or ammunition transported and stored in the manner described by this bill does not by itself constitute a failure by the employer to provide a safe workplace.

The bill establishes that an employer does not have a duty to patrol, inspect, or secure any parking area the employer provides for employees or any privately owned motor vehicle located in the parking area or to investigate, confirm, or determine an employee's compliance with laws related to the ownership or possession of a firearm or ammunition, or the transportation and storage of a firearm or ammunition.

**Bill Impact**

Prior law did not define premises, which could allow a CSCD to exclude firearms from its parking areas. CSCDs should review their employment and security policies to make sure they comply with SB 321.

Section 46.02, Unlawful Carrying Weapons, Texas Penal Code, allows a person, without a concealed handgun license, to carry a handgun in a motor vehicle that is owned by the person or under his/her control under certain circumstances.

**Additional Resources**

- House Research Organization's Bill Analysis for HB 681 (companion)

# COMMUNITY SUPERVISION OFFICERS

**House Bill 1907:** Secondary School Notifications
**Effective Date:** September 1, 2011

House Bill 1907 amends the notification requirements a CSCD must provide to a school district superintendent or a private school principal, or their designees, when a student transfers to another school or returns to the school. Oral or written notice must be provided the earlier of before the next school day or within 24 hours. The oral notice must include all pertinent details of the offense or conduct, including details of any assaultive behavior or other violence and any weapons possessed or used in the commission of the offense or conduct. Within seven days, written notice must be provided. It must include the same information provided orally, and include the name of the person who was notified orally and the date and time notice was provided.

If a supervisor learns of the failure of an officer to provide the required notification, the supervisor must report the failure to the CSCD director.

**Bill Impact**

Prior law provided that notice must be provided within 24 hours. The change in law only applies to offenses committed or conduct that occurs on or after September 1, 2011.

**Additional Resources**

- House Research Organization's Bill Analysis for HB 1907

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**Senate Bill 315:** Texas Violent Gang Task Force
**Effective Date:** June 17, 2011

Senate Bill 315 increases the membership of the task force to include six local law enforcement officers or local adult or juvenile community supervision personnel.

**Bill Impact**

Prior law provided for three local law enforcement or adult or juvenile community supervision personnel and a prosecuting attorney. The six members are designated by the governor.

# CONDITIONS OF COMMUNITY SUPERVISION

**House Bill 1103:** Animal Cruelty
**Effective Date:** September 1, 2011

House Bill 1103 authorizes a judge to require a person convicted of certain offenses to attend a responsible pet owner course sponsored by a municipal animal shelter as a condition of community supervision. The shelter must receive federal, state, county, or municipal funds and serve the county in which the court is located.

The condition is applicable to convictions for the following offenses:

- Cruelty To Livestock Animals
- Attack On Assistance Animal
- Cruelty To Nonlivestock Animals
- Dog Fighting

**Bill Impact**

The change in law takes effect September 1, 2011 and is not based on the offense date.

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**House Bill 1205:** Time Credits
**Effective Date:** September 1, 2011

House Bill 1205 authorizes a judge to grant specified time credits toward a person's period of community supervision, including deferred adjudication, for accomplishing certain conditions of supervision. It is applicable to offenses punishable as a state jail felony or a 3rd degree felony, except for: intoxication offenses, offenses involving family violence, kidnapping, arson, and registerable sex offenses. Defendants must also be current on their fines, costs, or fees and have paid their victim restitution.

| **Condition** | **Credit** |
|---|---|
| | |
| Earn a high school diploma or high school equivalency certificate | 90 Days |
| Earn an associate's degree | 120 Days |
| | |
| Full payment of court costs | 15 Days |
| Full payment of fines | 30 Days |
| Full payment of attorney fees | 30 Days |
| Full payment of restitution | 60 Days |

| | |
|---|---|
| Complete alcohol or substance abuse counseling or treatment | 90 Days |
| Complete vocational, technical, or career education or training program | 30 Days |
| Complete parenting class or parental responsibility program | 30 Days |
| Complete anger management program | 30 Days |
| Complete life skills training program | 30 Days |

For defendants on regular community supervision, the CSO must notify the court if the earned time credits plus the amount of the community supervision term completed allow or require the court to conduct a review for a reduction or termination of community supervision. Before conducting the review, the court must notify the state's attorney, the defendant, or if applicable, the defendant's attorney. The court must include the time credits when determining if the defendant has completed: (1) the lesser of one-third of the original community supervision period or two years of community supervision; or (2) the greater of one-half of the original community supervision period or two years of community supervision.

The bill authorizes a court to require a defendant to forfeit part or all of the time credit, if the court finds, after a hearing, that the defendant violated one or more conditions and modifies or continues the defendant's supervision or revokes the defendant's community supervision.

**Bill Impact**

The time credit provisions are only applicable to offenses committed on or after September 1, 2011. The mandated notice to the court regarding time credits would only be required for regular community supervision, as Article 42.12, Section 20, Texas Code of Criminal Procedure, is not applicable to deferred adjudication.

Under prior law, only the defendant and the DA were notified of the early termination review. The notice to the defendant's attorney would be applicable to any reviews after September 1, 2011 and is not based on the offense date.

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**House Bill 1994:** First Offender Prostitution Prevention Program (program)
**Effective Date:** June 17, 2011

House Bill 1994 authorizes a county commissioners' court or a local city government to establish a program for certain defendants charged with soliciting prostitution. The bill authorizes a participation fee up to $1000. A judge who administers the program may suspend a community supervision condition requiring the defendant to participate in a community service project.

Two years after completing the program, the defendant may petition the court for an order of non disclosure if the person has not previously been convicted of a felony. The non disclosure petition is applicable to both convictions and deferred adjudication.

**Bill Impact**

Ten percent of the fee would support victim services and five percent would support law enforcement training.

**Additional Resources**

- House Research Organization's Bill Analysis for HB 1994

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**House Bill 3474:** Purchase Alcohol for a Minor or Furnishing Alcohol to a Minor
**Effective Date:** September 1, 2011

House Bill 3474 requires certain community supervision conditions for a defendant charged with purchasing alcohol for a minor or furnishing alcohol to a minor, and who committed the offense at a gathering where participants were involved in the abuse of alcohol, including binge drinking or forcing or coercing individuals to consume alcohol. A judge must:

- require the defendant, in addition to any other community service hours mandated, to perform community service for not less than 20 hours and not more than 40 hours. If available, the community service must be related to the education or prevention of misuse of alcohol; if not available, the court may order community service appropriate to rehabilitative services;
- require the defendant to attend an approved alcohol awareness program; and
- order the Department of Public Safety to suspend the defendant's drivers license or permit for 180 days. If the defendant does not possess a license or permit, the order must prohibit one from being issued for 180 days.

**Bill Impact**

The conditions apply to both regular community supervision and deferred adjudication. The change in law applies only to an offense committed on or after September 1, 2011.

# EXPUNCTIONS, ORDERS OF NONDISCLOSURE, AND PARDONS

**House Bill 351:** Expunctions[1]
**Effective Date:** September 1, 2011

House Bill 351 amends the conditions under which a person is entitled to have all records and files relating to an arrest expunged. The bill provides that upon a pardon or a finding of actual innocence, the trial court must issue an expunction order and notify any entity or agency that has any record or file.

The bills provides for an expunction based upon certain time frames and conditions when a person has been released, and the charge, if any, has not resulted in a final conviction and is no longer pending and there was no court-ordered community supervision. Law enforcement agencies and the DA may retain the arrest records and files if the DA does not certify that the person's records and files are not needed for use in any criminal investigation or prosecution, including an investigation or prosecution of another person. The bill clarifies that expunctions are allowed when the indictment has been dismissed or quashed due to mistake, false information or lack of probable cause without having to wait for the statute of limitations to have expired. It also deletes the expunction requirement that a person cannot have been convicted of a felony in the five years preceding the date of an arrest.

Records may not be expunged if a revocation warrant was ever issued, or if a person intentionally or knowingly absconded after being released on bail.

**Bill Impact**

The change in law applies to an expunction of arrest records and files for any criminal offense committed before, on or after September 1, 2011, and to pardons and other relief granted before on or after the effective date.

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**House Bill 1106:** Orders of Nondisclosure
**Effective Date:** September 1, 2011

House Bill 1106 requires a judge to inform a defendant, before placing a defendant on deferred adjudication, of the person's right to petition the court for an order of nondisclosure, unless the defendant is ineligible for an order because of the instant offense or the defendant's criminal history.

[1] Senate Bill 462, effective 9-1-2011, contains identical provision as HB 351.

The bill requires a judge who dismisses the proceedings and discharges a defendant to provide the defendant with a copy of the order of dismissal and discharge and, if applicable, inform the defendant of the earliest date the defendant is eligible to file the petition for the order of nondisclosure.

**Bill Impact**

The notice to a defendant before placing them on deferred adjudication applies to a defendant placed on deferred adjudication on or after September 1, 2011, regardless of the offense date. The dismissal and discharge notice applies to an order entered after the effective date, regardless of the offense date.

**See Also**

- HB 1994 – Conditions of Community Supervision

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**Senate Joint Resolution 9:** Pardons
**Ballot Date:** November 8, 2011

**Senate Bill 144:** Pardons
**Effective Date:** January 1, 2012 (If SJR 9 approved by voters)

Senate Bill 144 and Senate Joint Resolution 9 provide that a person, 10 years after successfully completing a term of deferred adjudication, may apply for a pardon by submitting a written request to the Board of Pardons and Paroles for its consideration. Based upon the recommendation and advice of the Board of Pardons and Paroles, the governor may pardon that person.

**Bill Impact**

After being granted a pardon, the person's criminal history records could be expunged.

# MILITARY

**House Bill 2624:** Military Personnel
**Effective Date:** September 1, 2011

House Bill 2624 requires a peace officer who investigates a family violence incident or who responds to a disturbance call that may involve family violence to include in the written report whether the suspect is a member of the state military force or is currently serving in the federal armed forces. If so, a copy of the written report must be provided to the Joint Forces Headquarters or the provost marshal of the suspect's military installation in order to notify the suspect's commanding officer.

The bill requires a presentence investigation report (PSIR) to include information regarding whether the defendant is a current or former member of the state military forces or the armed forces. If the defendant has served in an active-duty status, a determination must be made on whether the defendant was deployed to a combat zone and whether the defendant may suffer from post-traumatic stress disorder or a traumatic brain injury. In addition, if available, a copy of the defendant's military discharge papers and military records must be included in the PSIR provided to the judge.

When an active-duty personnel has been convicted of, or granted deferred adjudication for, an offense constituting family violence or an Offense Against the Person (criminal homicide, kidnapping & unlawful restraint, trafficking of persons, sexual offenses, and assaultive offenses) under Title 5, Penal Code, the court clerk must provide written notice to the staff judge advocate at Joint Force Headquarters or the provost marshal of the defendant's assigned military installation in order to notify the commanding officer. If the defendant is named in a protective order, the clerk must also provide a copy notice, and if the order is modified or withdrawn, the court clerk must notify all parties who received a copy of the original order.

**Bill Impact**

The change in law applies to all investigations on or after September 1, 2011, and is not based on the offense date. TDCJ-CJAD has revised the PSIR to comply with the change in law.

**Additional Resources**

- House Research Organization's Bill Analysis for HB 2624

# MOTIONS TO REVOKE/ADJUDICATE

**Senate Bill 1681:** Fair Defense Act
**Effective Date:** September 1, 2011

Senate Bill 1681 provides that not later than 48 hours after a probationer has been arrested for violating the terms and conditions of community supervision, the person must be taken before the judge issuing the warrant, or if unavailable, the magistrate in the county the probationer was arrested, to receive the warnings applicable to an arrest for a new offense. The Article 15.17 hearing may be conducted either in person or by means of an electronic broadcasting system. Only the judge who ordered the arrest may authorize the person's release on bond.

The bill requires the court to appoint counsel for an indigent probationer for a revocation hearing and counsel for an indigent offender appealing a criminal conviction.

**Bill Impact**

Prior law provided that the probationer had a right to counsel at a revocation hearing, and some counties were not providing counsel for indigent defendants. The bill would also apply to motions to adjudicate as they are conducted in accordance with the revocation statute. The change in law applies to criminal proceedings that commence on or after September 1, 2011.

**Additional Resources**

- House Research Organization's Bill Analysis for SB 1681
- Resolution of the Texas Judicial Council

# OCCUPATIONAL LICENSING

**House Bill 1476:** Emergency Medical Services Personnel Certification (certification)
**Effective Date:** September 1, 2011

House Bill 1476 revokes a person's certification if the person has ever been convicted of or placed on deferred adjudication for a 3g offense. It also revokes the license of a person who committed an offense on or after September 1, 2009, which requires sex offender registration.

**Bill Impact**

Prior law only revoked the certification if the person was convicted of or placed on deferred adjudication for a 3g offense on or after September 1, 2009.

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**Senate Bill 263:** Physician License
**Effective Date:** September 1, 2011

Senate Bill 263 requires the Texas Medical Board to revoke the license of a physician granted deferred adjudication for sexual assault of a child, aggravated sexual assault of a child, or indecency with a child. The bill provides that persons arrested for these child molestation offenses may have their medical license suspended or restricted until final disposition of the case. The bill would prohibit the Texas Medical Board from granting probation to persons who had their license revoked, canceled, or suspended because of a felony conviction for these offenses unless it made certain findings.

**Bill Impact**

Prior law only required the license to be suspended after a conviction for the child molestation offenses. The change in law only applies to offenses committed after September 1, 2011.

# OFFENSES

**House Bill 3:** Deferred Adjudication and Sex Offenses
**Effective Date:** September 1, 2011

House Bill 3 prohibits a judge from granting deferred adjudication to a person charged with sexual assault or aggravated sexual assault if the person had a previous conviction for continuous sexual abuse of a young child, sexual assault, or aggravated sexual assault.

**Bill Impact**

The change in law applies only to an offense committed on or after September 1, 2011.

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**House Bill 371:** Deferred Adjudication and Murder
**Effective Date:** September 1, 2011

House Bill 371 prohibits a judge from granting deferred adjudication to a person charged with murder. The bill creates an exception if the judge determines that the person did not cause the death of the deceased, did not intend to kill the deceased or another, and did not anticipate that a human life would be taken.

**Bill Impact**

The change in law applies only to an offense committed on or after September 1, 2011.

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**House Bill 2014:** Trafficking of Persons
**Effective Date:** September 1, 2011

House Bill 2014 includes trafficking of persons and prostitution in the list of offenses that would prohibit issuing certain alcohol licenses to a person or premise. The bill expands the definition of contraband to include items used to commit the offenses of prostitution, trafficking of persons, or public indecency. The bill requires mandatory restitution for child victims of trafficking of persons and compelling prostitution offenses. It allows bond to be denied for the offenses of compelling prostitution and trafficking of persons when a child is the victim.

The bill adds compelling prostitution of a minor and trafficking of persons, if the offense involves commercial sex trafficking to the lists of offense requiring a parole or probation child safety zone condition. The bill includes trafficking of persons, prostitution involving minors

and compelling prostitution to the categories reported under the Texas Uniform Crime Reporting Program and Office of Court Administration Monthly Reporting program. The bill adds trafficking of persons, prostitution, and compelling prostitution to the list of enhanced penalty offenses and increases the penalties for the offense of prostitution and employment harmful to children.

**Bill Impact**

In 2009, the 81st Legislature created the Texas Human Trafficking Prevention Task Force. The task force's report to the Texas Legislature in January 2011, include legislative recommendations, which were incorporated into House Bill 2014 and Senate Bill 24.

The change in law only applies to offense committed on or after September 1, 2011.

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**Senate Bill 24:** Trafficking of Persons
**Effective Date:** September 1, 2011

Senate Bill 24 amends the offenses of trafficking of persons, aggravated sexual assault, and continuous sexual abuse of children. It provides for protective orders for victims of trafficking of persons and compelling prostitution offenses. For trafficking of persons and compelling prostitution offenses, the bill extends the statute of limitations and expands venue provisions. The bill also expands special testimony and evidentiary provisions for child victims in trafficking cases and allows involuntary termination of parent-child relationships when the parent has engaged in offenses involving commercial sex trafficking against a child.

The bill requires a person convicted of commercial sex trafficking to register as a sex offender with a lifetime registration requirement. The bill prohibits offenders convicted of trafficking of persons to be released to intensive supervision. The bill provides that offenders serving a current sentence or having a prior conviction for trafficking of persons or compelling prostitution may not be released to mandatory supervision. The bill adds trafficking of persons and compelling prostitution to the list of 3g offenses.

The bill allows sentences for trafficking of persons and compelling prostitution to run consecutively under certain circumstances. The bill provides for a life sentence for subsequent convictions for trafficking of persons.

**Bill Impact**

In 2009, the 81st Legislature created the Texas Human Trafficking Prevention Task Force. The task force's report to the Texas Legislature in January 2011, include legislative recommendations, which were incorporated into House Bill 2014 and Senate Bill 24.

The change in law only applies to offense committed on or after September 1, 2011. Only persons convicted of commercial sex trafficking on or after September 1, 2011, must register as a sex offender.

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**Senate Bill 407:** Sexting
**Effective Date:** September 1, 2011

Senate Bill 407 creates a new offense and provides a penalty when a minor, defined as a person younger than 18, intentionally or knowingly:

> (1) by electronic means promotes to another minor visual material depicting a minor, including the actor, engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material; or
> (2) possesses in an electronic format visual material depicting another minor engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material.

The bill creates penalties ranging from a Class C misdemeanor to a Class A misdemeanor and provides for a defense to prosecution.

The bill requires the Texas School Safety Center, in consultation with the Office of the Attorney General, to develop programs for school districts on the dangers of students sharing visual material depicting minors engaged in sexual conduct (educational program). The bill authorizes a judge, who grants community supervision to person convicted of or charged with the offense to require the person to attend and successfully complete an educational program or another equivalent educational program. The court is required to order the person or parents to pay the cost of the educational program, if financially able to make the payment.

**Bill Impact**

The change in law only applies to an offense committed on or after September 1, 2011.

**Additional Resources**

- House Research Organization's Bill Analysis for SB 407

# SENTENCING HEARING

**House Bill 1113:** Sentencing hearing at secondary school
**Effective Date:** September 1, 2011

House Bill 1113 authorizes a judge, under certain conditions, to order the sentencing hearing, or to accept the plea of a defendant who is to be placed on deferred adjudication for an offense involving possession, manufacture, or delivery of a controlled substance under the Texas Controlled Substances Act, in a secondary school. The judge must determine that the hearing would have educational value to students due to the nature of the offense and its consequences, the defendant and the school administration must agree, and appropriate measures must be taken to ensure the safety of the students and a fair hearing for the defendant that complies with all applicable laws and rules.

The bill authorizes a judge to require a defendant granted community supervision to perform up to 30 hours of community outreach in lieu of community service. Community outreach includes working in conjunction with a secondary school at the direction of the judge to educate students on the dangers and legal consequences of possessing, manufacturing, or delivering controlled substances. This provision is not applicable to a defendant who is physically or mentally incapable of participating in community outreach or who is a registered sex offender. A secondary school is not required to allow a defendant to perform community outreach at its school.

**Bill Impact**

The sentencing hearing and community outreach applies to a defendant charged with an offense involving possession, manufacture, or delivery of a controlled substance under the Texas Controlled Substances Act, who is sentenced or enters a plea of guilty or nolo contendere on or after September 1, 2011.

# SEX OFFENDERS

**Senate Bill 198:** Registration
**Effective Dates:** September 1, 2011

Senate Bill 198 amends the law regarding sex offender registration for offenders convicted of or placed on deferred adjudication for an offense under Section 21.11 (Indecency with a Child) or 22.011 (Sexual Assault). It requires a judge to make an affirmative finding if the judge finds that the defendant was not more than four years older than the victim and the victim was at least 15. A defendant who meets the age criteria may petition the court for an order exempting the person from registering as a sex offender.

At a hearing regarding the petition, the court may consider testimony from the victim, or a member of the victim's family, concerning the exemption, the relationship between the offender and victim, and any other evidence the court determines relevant and admissible. The court may grant the exemption, if it appears that it does not threaten public safety, the offender's conduct was consensual, and it is in the best interest of the victim and justice.

**Bill Impact**

There is no minimum period of registration, a person may petition the court on or after the day of sentencing or being placed on deferred adjudication. The right to petition the court is not based on offense date and is effective September 1, 2011. The required finding regarding age is only applicable to offenses committed on or after September 1, 2011.

# SUPERVISION OF OFFENDERS NOT ON COMMUNITY SUPERVISION

**Senate Bill 880:** Court Ordered Supervision
**Effective Date:** September 1, 2011

Senate Bill 880 authorizes a CSCD to operate programs for:

- the supervision of persons released on bail under:
  (A) Chapter 11, Habeas Corpus, Code of Criminal Procedure;
  (B) Chapter 17, Bail, Code of Criminal Procedure;
  (C) Article 44.04, Bond Pending Appeal, Code of Criminal Procedure; or
  (D) any other law;

- the supervision of a person subject to, or the verification of compliance with, a court order issued under:
  (A) Article 17.441, Code of Criminal Procedure, requiring a person to install a deep-lung breath analysis mechanism on each vehicle owned or operated by the person;
  (B) Chapter 469, Drug Court Programs, Health and Safety Code, issuing an occupational driver's license;
  (C) Section 49.09(h), Penal Code, requiring a person to install a deep-lung breath analysis mechanism on each vehicle owned or operated by the person; or
  (D) Subchapter L, Occupational Licenses, Chapter 521, Transportation Code, granting a person an occupational driver's license; and

- the supervision of a person not otherwise described above, if a court orders the person to submit to the supervision of, or to receive services from, the department.

The programs may include reasonable conditions related to the purpose of the program, including testing for controlled substances. The bill increases the administrative fee from $40 to $60.

**Bill Impact**

The increased administrative fee applies to a person who participates in a program or receives services from a CSCD on or after September 1, 2011, regardless of when the person first participated in the program or received services. The administrative fee is intended to cover the impact this new population will have on a CSCD. State funding dedicated for current community supervision programs and services will not be used to support this new population.

**Senate Bill 953:** Occupational Driver's License
**Effective Date:** September 1, 2011

Senate Bill 953 authorizes a court to order a person granted an occupational driver's license under Chapter 521, Subchapter L, Occupational License, Texas Transportation Code, to be supervised by a CSCD in order to verify compliance with the court's conditions, including:

- the hours of the day and days of the week the person may operate a motor vehicle;
- the reasons for which the person may operate a motor vehicle;
- areas or routes of travel permitted;
- that the person is restricted to the operation of a motor vehicle equipped with an ignition interlock device; and
- that the person must submit to periodic testing for alcohol or controlled substances.

The court may require supervision continue until the end of the suspension period and, for good cause, the court may modify or terminate the supervision. The bill increases the maximum administrative fee from $40 to $60 and authorizes a court to order the person to pay the CSCD an administrative fee between $25 and $60.

The bill authorizes a court to require periodic testing for controlled substances and alcohol when granting an occupational driver's license to a person whose driver's license was suspended under Chapter 524, Suspension of Driver's License for Failure to Pass Test for Intoxication, Chapter 724, Implied Consent, Texas Transportation Code, or for a DWI conviction. The court may specify the entity to conduct the testing.

**Bill Impact**

See Chapter 521, Subchapter O, Automatic Suspension, Transportation Code for a list of offenses that require a license to be suspended. It is applicable to convictions and regular community supervision, but not deferred adjudication.

The administrative fee is intended to cover the impact this new population will have on a CSCD. State funding dedicated for current community supervision programs and services will not be used to support this new population.

The change in law regarding an occupational license applies only to a person whose license is suspended as a result of an offense committed on or after September 1, 2011.

# VOTING

**House Bill 1226:** Voting Eligibility
**Effective Dates:** June 16, 2011

House Bill 1226 establishes that a person who has been granted deferred adjudication for a felony offense is not considered to have been finally convicted of the offense and is eligible to vote.

**Bill Impact**

A person would be eligible to vote in elections after June 16, 2011, if they met the remaining qualifications.

SUBJECT: Contracts for probation programs, services instead of stand-alone CSCD

COMMITTEE: Corrections — favorable, without amendment

VOTE: 7 ayes — Madden, Allen, Cain, Marquez, Perry, White, Workman

0 nays

2 absent — Hunter, Parker

WITNESSES: For — Doots Dufour, Diocese of Austin; (*Registered, but did not testify*: Joshua Houston, Texas Impact)

Against — None

On — Carey Welebob, Texas Department of Criminal Justice – Community Justice Assistance Division

BACKGROUND: Under Government Code, sec. 76.002 (a)(1), the district judges trying criminal cases in each judicial district are required to establish a community supervisions and corrections (probation) department (CSCD). Sec. 76.002(e) allows the Texas Board of Criminal Justice to adopt rules allowing community supervision and corrections departments to contract with one another for services or facilities, and the board has done so.

DIGEST: HB 3691 would require, instead of allow, the Texas Board of Criminal Justice to adopt rules allowing community supervision and corrections departments to contract with one another for services or facilities. The bill would authorize probation programs and services to be provided in a judicial district through a contract with a community supervision and corrections department in another judicial district, in lieu of requiring each judicial district to establish a department.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

SUPPORTERS SAY:

HB 3691 is needed to ensure that the current practice of obtaining probation services for three counties in the 394th Judicial district through a contract with a CSCD in a neighboring county can continue. While current law says that the Texas Board of Criminal Justice may adopt rules allowing one community supervision and corrections department to contract with another for services, the law also says that each judicial district shall establish a CSCD. A 1982 attorney general's opinion (MW-542) stated that each district is required to establish and maintain its own probation office. While no one has complained about the current situation, it would be best to clear up the confusion.

HB 3691 would do this by stating clearly that probation programs and services could be provided through a contract with a CSCD established for another judicial district, in lieu of establishing a stand-alone probation department. This would codify current practice and put to rest questions about the use of contracts with CSCDs for probation services. HB 3691 would deal only with contracts between two government entities. Requiring each district to create their own CSCD would increase costs and inefficiencies for districts that have found it beneficial to obtain probation services and programs through a contract with another CSCD.

OPPONENTS SAY:

No apparent opposition.

# The Attorney General of Texas

December 22, 1982

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Honorable G. Dwayne Pruitt
Terry County Attorney
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Opinion No. MW-542

Re: Whether one probation office may serve two judicial districts located in different counties

Dear Mr. Pruitt:

You have requested our opinion as to whether one joint probation office may serve two judicial districts in different counties. Your question concerns the legality of the situation which has existed in Terry, Yoakum, Hockley, and Cochran counties since apportionment legislation became effective on April 8, 1981. Article 199, V.T.C.S., §121 (121st Judicial District), §3.112 (286th Judicial District). All four counties had previously comprised only one judicial district and one probation office served all four counties. Under the new apportionment, Terry and Yoakum counties comprise the new 121st Judicial District, while Cochran and Hockley counties comprise the new 286th Judicial District.

Subsequent to the effective date of the apportionment legislation, the judges of the new 121st Judicial District and the new 286th Judicial District acted to continue the probation department under the same administrative structure. However, the same probation personnel are now employed by both judicial districts. The new probation office is known as the 121st and 286th Judicial Districts Probation Department. According to the Executive Director of the Texas Adult Probation Commission, this probation department has fully met the standards set by the commission for a probation officer for each district, and this method, in fact, appears to be the most efficient, cost-effective method of providing adequate probation services to these four counties.

Section 10 of article 42.12 of the Code of Criminal Procedure provides:

> For the purpose of providing adequate probation services, the district judge or district judges trying criminal cases in each judicial district in this state shall establish a probation office and

> employ, in accordance with standards set by the commission, district personnel as may be necessary to conduct presentence investigations, supervise and rehabilitate probationers, and enforce the terms and conditions of misdemeanor and felony probation. If two or more judicial districts serve a county, or a district has more than one county, one district probation department shall serve all courts and counties in the districts.

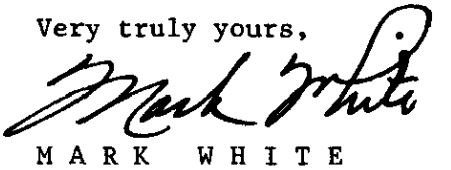
This provision clearly indicates that the legislature contemplated the establishment of one probation office "in each judicial district." Where the language of a statute is plain and unambiguous, it ordinarily will be literally construed. Trimmier v. Carlton, 264 S.W. 253, 258 (Tex. Civ. App. - Austin 1924), aff'd on other grounds, 296 S.W. 1070 (Tex. 1927); Brazos River Authority v. Graham, 354 S.W.2d 99, 109 (Tex. 1961).

Furthermore, section 10 itself creates two exceptions: a single district probation office is permitted (1) in a multi-district county (two or more judicial districts in a county; and (2) a multi-county district (a district includes more than one county). The statute does not authorize a single probation office for the situation you describe: a multi-county, multi-district area. Where a statute contains one or more specific exceptions, the usual implication is that no other exceptions are applicable, and that the statute should apply in all cases not excepted. State v. Richards, 301 S.W.2d 597, 600 (Tex. 1957); Federal Crude Oil Company v. Yount-Lee Oil Company, 52 S.W.2d 56, 60 (Tex. 1932).

S U M M A R Y

> A joint probation office for the 121st and 286th Judicial Districts is not authorized by statute, and is, hence, impermissible. Each district is required to establish and maintain its own distinct probation office.

Very truly yours,



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Prepared by Rick Gilpin
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Susan L. Garrison, Chairman
Jon Bible
Rick Gilpin
Patricia Hinojosa
Jim Moellinger
Bruce Youngblood

SUBJECT: Allowing licensees to store handguns in vehicles in workplace parking lots

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Deshotel, Orr, Garza, Quintanilla, Solomons, Workman

0 nays

3 absent — Bohac, Giddings, S. Miller

WITNESSES: For — David Carter; Mike Cox; Tara Mica, National Rifle Association; David Robertson; T.J. Scott; Raymond Smith; Alice Tripp, Texas State Rifle Association; *(Registered, but did not testify*: Michael Taylor)

Against — Luke Bellsnyder, Texas Association of Manufacturers; Charles Carpenter; Jeffrey Clark, Technology Association of America (Tech America); Cathy DeWitt, Texas Association of Business; Michael Golden, Texas Employment Law Council; Steve Harrison, Texas Trial Lawyers Association; Lee Parsley, Texas Civil Justice League; Hector Rivero, Texas Chemical Council; *(Registered, but did not testify*: Marty Allday, Copano Energy and Enbridge Energy; Pamela Bratton, Career Consultants Staffing Services and Meador Staffing Services; Stephanie Gibson, Texas Retailers Association; Robert (Bo) Gilbert, USAA; Kimberly Hall, First Data Corporation; Debbie Hastings, Texas Oil & Gas Association; Dennis Kearns, Texas Railroad Association; Andrew Lindsey, United Parcel Service; Karen Reagan, Walgreen Company; Mary Ann Reid, Greater Port Arthur Chamber of Commerce; James Rich, Greater Beaumont Chamber of Commerce; Lindsay Sander, Kinder Morgan and Mark West; Gyl Switzer, Mental Health America of Texas; Kathy Tatmon)

BACKGROUND: Government Code, sec. 411.203 does not limit the right of a public or private employer to prohibit people with concealed handgun licenses from carrying their concealed handguns on the premises of the business.

Penal Code, sec. 46.035 (f)(3) defines “premises” as a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.

DIGEST:

CSHB 681 would forbid an employer from prohibiting an employee who was legally authorized to have a firearm or ammunition from transporting or storing the firearm or ammunition in a locked, privately owned vehicle in an employer-provided parking lot.

Employers still could prohibit a concealed handgun licensee from carrying a weapon within the premises of the employer's business.

CSHB 681 would not authorize concealed handgun licensees to carry their weapons on property where it was prohibited by state or federal law. In addition, the bill would exclude:

- a vehicle owned or leased by the employer, unless carrying a weapon was part of the job description;
- a school district;
- an open-enrollment charter school or private school;
- property controlled by someone other than the employer that was subject to an oil, gas, or mineral lease executed before September 1, 2011, that prohibited possession of firearms on the property; and
- property owned or leased by a chemical manufacturer or oil and gas refiner whose business involved hazardous, combustible, or explosive materials, unless the parking area was outside of a secured and restricted area that contained the physical plant, was not open to the public, and was constantly monitored by security personnel.

The bill would provide immunity from liability to the employer for personal injury, death, property damage, or any other damages caused by an employee transporting or storing firearms or ammunition or by theft of the firearm or ammunition. The bill would apply only to legal actions occurring on or after it took effect on September 1, 2011.

SUPPORTERS SAY:

CSHB 681 would end an inconsistency in state law that prevents employees from storing their weapons in their vehicles in their employers' parking areas but does not prevent visitors or other nonemployees from doing so. Many companies in Texas have adopted "no firearms" policies that extend beyond the workplace and into parking areas that often are accessible to the general public and not secured. These restrictions frequently originate in a headquarters located outside of Texas or even the United States and do not account for the state's firearm transportation laws

and sporting culture. The bill would end this disparate treatment between employees and nonemployees who use the same parking areas.

Business concerns about potential violence should not be used to justify forcing employees to choose between protecting themselves and being disciplined or fired for violations of "no firearm" policies. Concerns about workplace safety should not end at the front door of a business. Workers have a right to protect themselves in the parking lot or during their daily commute. Some employers appear to be more concerned about their own liability than about the safety of their employees when they leave their offices. CSHB 681 would protect employers from liability while giving employees the right to self-defense.

CSHB 681 would protect the right to bear arms, which is guaranteed by both the U.S. and Texas constitutions. In February 2009, the U.S. Tenth Circuit Court of Appeals upheld similar Oklahoma legislation holding employers criminally liable for prohibiting employees from storing firearms in locked vehicles on company property (*Ramsey Winch Inc. v. Henry,* No. 07-5166, 10th Cir. 2009). The appeals court held that there were no specific Occupational Health and Safety Administration rules determining that storing firearms or ammunition in parking lots constituted a hazard. CSHB 681 would be similar to the Oklahoma statutes that have undergone close court scrutiny and would exceed the standards set in *Ramsey Winch Inc. v. Henry*.

CSHB 681 would reasonably exempt businesses that handled hazardous materials or areas that produced oil, gas, or other chemicals. The bill would provide an enforceable and uniform compromise for chemical manufacturers and oil and gas refiners as long as they permitted employees to store their weapons and ammunition in vehicles parked in secured and monitored areas. Legislators should not carve out special exceptions for other employers, regardless of their size or security procedures, to avoid a patchwork of regulation.

There is no empirical evidence that allowing firearms in vehicles leads to workplace violence. The bill would not interfere with business policies to forbid firearms inside the work areas or in company vehicles. Employers would be immune from liability if an unthinkable, but extremely unlikely, event occurred.

OPPONENTS SAY:

CSHB 681 would infringe on the basic constitutional rights of employers to control their property. It should always be the prerogative of the property owner and business owner to make decisions about his or her property, such as whether or not to allow weapons. Employers have the right to set the terms of employment, and this should include whether employees may bring concealed handguns onto property outside of the business. This is a logical extension of the employers' rights to ban concealed handguns from their premises.

The current uncertain economic times translate into an unstable mix of job-related emotions. The presence of weapons in employer parking lots could increase the likelihood that a heated dispute between a worker and a supervisor or among co-workers would escalate into tragedy. The gun owner or passersby also could be endangered if the firearm discharged accidentally.

OTHER OPPONENTS SAY:

Large employers that maintain a high level of security within their parking lots and campuses should receive the same exception granted to plants that handle hazardous materials. They can easily meet the standard for an enclosed parking lot not accessible to the public and continually monitored.

NOTES:

The committee substitute differs from the original version of the bill by adding exemptions for chemical manufacturers or oil and gas refineries.

The companion bill, SB 321 by Hegar, passed the Senate by 30-1 (Rodriguez) on March 15 and was reported favorably, as substituted, by the House Business and Industry Committee on April 6, making it eligible to be considered by the House in lieu of HB 681.

SUBJECT: School notification requirements for students involved with certain crimes

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Madden, Cain, Hunter, Marquez, Parker, Perry, Workman

0 nays

2 absent — Allen, White

WITNESSES: For — (*On committee substitute*: Paige Williams, Texas Classroom Teachers Association) (*On original bill*: (*Registered , but did not testify*: Portia Bosse, Texas State Teachers Association; Josh Sanderson, Association of Texas Professional Educators)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 15.27 establishes requirements for notifications that must be given to education officials and persons supervising students when students are arrested, referred, convicted, or adjudicated for certain criminal offenses or when other actions are taken related to the juvenile's case. The notification requirements apply to students in public and private schools and are required for any felony offense and for the misdemeanor offenses of unlawful restraint, indecent exposure, assault, deadly conduct, terroristic threat, organized crime, and certain drug and weapons offenses.

Law enforcement agencies and prosecutors must send the notices to school superintendents, who then must notify persons supervising a student.

DIGEST: CSHB 1907 would revise the deadlines that applied when notices about primary and secondary school students involved in certain crimes had to be passed from law enforcement officials, prosecutors, and probation and parole officials to superintendents, principals, and school personnel. The bill also would require that certain details be included in the notices and require that failures to make certain notices be reported to certain oversight boards.

The bill would take effect September 1, 2011, and would apply only to offenses committed on or after that date.

**Notifications upon arrest or referral.** Oral notifications that are currently required to be made by law enforcement agencies to school superintendents after a public school student has been arrested or referred to the juvenile system would have to be made within 24 hours or before – instead of on – the next school day, whichever was earlier. Superintendents would have to immediately – instead of promptly – notify instructional and support personnel who were responsible for supervising the student.

Written, confidential notices that law enforcement personnel currently have to mail to superintendents following an oral notice would have to include the facts in the oral notification, the name of person orally notified, and the date and time of the oral notification.

Superintendents would be required, instead of authorized, to consider information in the confidential notices when making a determination of whether there was reasonable belief that the student engaged in conduct that would be a felony offense. Superintendents of public schools and principals of private schools would be required, instead of authorized, to send the information in these notices to school district employees with direct supervisory responsibility over a student.

**Notices upon conviction, adjudication.** The bill also would change the deadline for prosecutors to give oral notices to superintendants when students were convicted or adjudicated or given deferred prosecution or deferred adjudication. These oral notices would have to occur within 24 hours or before – instead of on – the next school day, whichever was earlier.

Instead of having 24 hours to pass these notices to instructional and support personnel who have regular contact with the student, superintendents would have to do so within 24 hours or before the next school day, whichever was earlier.

**Notices when student on parole, probation enters school.** Notices to superintendents from parole or probation officials that currently must occur within 24 hours of a student transferring from another school or returning to a school would have to be done within 24 hours or before the

next school day, whichever was earlier. Instead of having 24 hours to notify instructional and support personnel who have regular contact with the student, superintendents would have to make the notification before the next school day or within 24 hours, whichever was earlier.

**Required details in the notices.** Oral and written notices given under CSHB 1907 would have to include all pertinent details of the offense or conduct, including details of assaultive behavior or other violence and the use and possession of weapons when committing the offense.

**Reporting failures to make notifications.** If school district boards of trustees learned of a failure to provide notice by a superintendent or a principal, the board would have to report the failure to the State Board for Educator Certification. The governing body of a private school would have to do the same, if the principal held a state-issued educator's certificate.

If superintendents learned of a failure of the head of a law enforcement agency to make a required notification, the superintendent or a principal would have to report the failure to the Commission on Law Enforcement Officer Standards and Education. Juvenile court judges or other juvenile officials who learned that a prosecutor failed to make a required notice would have to report the failure to the State Bar of Texas. Supervisors of parole and probation officials who learned of a failure to provide a required notice would have to report the failure to the director of the entity that employed the probation or parole officer.

SUPPORTERS SAY:

CSHB 1907 would improve the current system for notifying school officials about juveniles who were involved in the criminal justice system and could be dangerous. Currently, notification does not always occur in a timely manner, and sometimes teachers are not given enough information, putting them at risk. Teachers have been assaulted by students for whom they did not have full information, and other dangerous students have been placed in classrooms. CSHB 1907 would help solve this problem by requiring that notices occur in a timely fashion, by detailing what had to be in the notices, and by requiring reporting to oversight authorities if a required notice was not made.

To help teachers to protect themselves and to handle students appropriately, CSHB 1907 would require that notices of students involved with serious crimes be passed along within 24 hours or *before* – instead of

on – the next school day after certain events in the criminal or juvenile justice system. This change would mean that school officials and teachers got notifications before the school day started, instead of anytime during the day, allowing for proper handling of these students. CSHB 1907 also would ensure that school personnel overseeing a student knew the background of students they were supervising by requiring, instead of allowing, certain notifications.

The bill would establish new requirements for what had to be included in the notices. Currently, in some instances, teachers or other school personnel may learn only the name of a student's offense. That may not be enough information for teachers to appropriately protect themselves and handle students in the classroom. CSHB 1907 would require that notifications include details such as whether assaultive behavior or weapons were involved so that teachers could respond appropriately.

CSHB 1907 would put some teeth into current law by requiring that failure to provide the notices would result in the notification of the oversight body of the person who failed to follow the law. This would allow the oversight body to investigate a failure and take any appropriate action. For example, the State Board of Educator Certification could investigate a report of a superintendent who violated the law and could impose a range of penalties, from reprimand to more serious penalties, if appropriate.

The oversight bodies for superintendents, principals, law enforcement officials, prosecutors, and probation and parole officials should have the discretion to handle these cases as they see fit, rather than imposing a one-size-fits-all penalty. Requiring a specific penalty for all notification failures could result in the inappropriate handling of cases. For example, a first infraction for a case in which a failure to notify occurred due to an inadvertent oversight could be handled differently than an intentional failure that was not a first infraction. Reporting to these oversight bodies, even those without direct authority to act on the notifications, would help encourage compliance with CSHB 1907. Most state oversight bodies have broad authority to handle complaints against those they oversee.

OPPONENTS SAY:

The bill should specify a particular penalty for failing to provide a required notice so that the law was uniformly enforced. Requiring only that a failure to make a notification be reported to a person's oversight body, without direction concerning what to do with that information, could

give too much discretion to those bodies and could result in cases being handled inappropriately.

OTHER OPPONENTS SAY:

Some of the notifications to oversight bodies that would be required in CSHB 1907 might not be effective. For example, it might be pointless to notify the State Bar if prosecutors failed to make a notification since the bar does not handle this type of conduct.

NOTES:

The committee substitute made several changes to the original bill, including:

- requiring that superintendents immediately, instead of promptly, notify instructional and support personnel after receiving certain notifications
- removing provisions from the original bill that would have amended the law dealing with notification of students sent to disciplinary alternative education programs;
- eliminating provisions that would have established some discretion over school officials' admission of certain students on probation or parole; and
- adding provisions requiring notification of the oversight bodies of law enforcement officers, prosecutors, and probation and parole officials.

SUBJECT: Creating a first-offender prostitution solicitation prevention program

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Gallego, Hartnett, Aliseda, Burkett, Rodriguez, Zedler

1 nays — Carter

2 absent — Christian, Y. Davis

WITNESSES: For — Anita Johnson, Waco Police Dept.; Dennis Mark, Redeemed Ministries; Deek Moore, Austin Police Department and City of Austin; (*Registered, but did not testify:* Donald Baker, Austin Police Department; Chris Cunico, Texas Criminal Justice Coalition; Ashley Harris, Texans Care for Children; Diana Martinez, Tex Protects, the Texas Association for the Protection of Children; Susan Milam, National Association of Social Workers, Texas Chapter; Anne Olson, Christian Life Commission; Marsha Solana, Catholic Bishops of Texas; Gyl Switzer, Mental Health America of Texas)

Against — None

On — Vikrant Reddy, Texas Public Policy Foundation

BACKGROUND: Government Code, subch. F, sec. 411.081 relates to criminal history record information. Sec. 531.383 allows the Health and Human Services Commission (HHSC) to fund and award money under a grant program for organizations that assist domestic violence victims.

Code of Criminal Procedure, Art. 42.12 governs community supervision. Sec. 3g(a)(1) prohibits judges from ordering community supervision for persons convicted of certain crimes including, but not limited to, murder, capital murder, indecency with a child, aggravated robbery, and aggravated kidnapping.

Sec. 43.02(a)(2) of the Penal Code describes the offense of soliciting prostitution. Ch. 20A and secs. 43.02, 43.03, 43.04, or 43.05 of the Penal Code all relate to human trafficking and prostitution, respectively.

DIGEST:

CSHB 1994 would create a first-offender prostitution prevention program. The bill would grant authority to a county commissioners courts or local city government to establish a first-offender prostitution prevention program for defendants charged with soliciting prostitution. A defendant only would be eligible if the state's attorney consented and the presiding court determined that the defendant had not been previously convicted of human trafficking or prostitution-related offenses under Texas law. The defendant would be characterized as previously convicted if the defendant was found guilty, entered a guilty plea or no contest for a deferred adjudication, or was convicted under another state's laws for an offense similar to human trafficking or prostitution.

A defendant would be ineligible to participate in the program if the defendant had solicited prostitution from someone who was younger than 18 at the time of the offense. The court would have to offer an eligible defendant the opportunity to enter the program or to proceed with normal criminal proceedings.

The program's essential characteristics would include:

- the integration of services for case processing in the judicial system;
- a nonadversarial approach to promote public safety, reduce demand for commercial sex trade and trafficking through offender education, and protect participants' due process;
- the early identification of eligible participants;
- access to information, counseling, and services regarding sex addiction, sexually transmitted diseases, mental health, and substance abuse;
- goals and effectiveness monitoring;
- continuing education to ensure program effectiveness; and
- partnerships with public agencies and community organizations.

If a defendant successfully completed the program, the court would have to enter an order of nondisclosure as if the defendant had received a discharge and dismissal under sec. 5(c), Art. 42.12 of the Code of Criminal Procedure, as long as the defendant had not previously been convicted of a felony and was not convicted of any other felony during the two years following the defendant's program completion date.

If a defendant who chose to participate failed to attend any portion of the program, the court would be required immediately to issue an arrest warrant. The court would then proceed with the criminal case as if the defendant had never entered the program.

The program would have to:

- ensure that an eligible defendant had legal counsel before entering and while participating in the program;
- allow any participant to withdraw from the program at any time before a trial on the merits had begun;
- provide each participant with information, counseling, and services regarding sex addiction, STDs, mental health, and drug abuse; and
- provide each participant with classroom instruction related to prostitution prevention.

The program could employ a paid or unpaid person who was a health care-affiliated professional, former prostitute, family member of a person arrested for soliciting prostitution, member of an association or community adversely affected by prostitution or human trafficking, or employee of a nongovernmental law or advocacy organization focused on prostitution and human trafficking.

The program would have to create and publish local procedures to encourage maximum program participation of eligible defendants in the cities and counties where the defendants lived.

CSHB 1994 would authorize the lieutenant governor and the House speaker to assign oversight duties concerning the program to the appropriate legislative committees. A legislative committee or the governor could request an audit of the program. The program administrator would have to provide information about its performance when requested by the criminal justice division of the Governor's Office.

The program could collect a nonrefundable fee of no more than $1,000 from participants for:

- counseling and services fees;
- a victim services fee that would be 10 percent of counseling and services fees, to be deposited into general revenue (appropriated only to cover costs associated with the grant program under sec. 531.383 of the Government Code); and

- a law enforcement fee that would be 5 percent of the counseling and services fees, to be deposited into the county or city treasury to cover costs associated with personnel training on domestic violence, prostitution, and human trafficking.

The bill would authorize the judge or program director to set a deferred payment schedule or payment installment plan. CSHB 1994 would require the fees to be based on the participant's ability to pay.

The bill would authorize a judge to take certain actions to encourage program participation, such as by suspending a community service requirement. After a participant successfully completed the program, the court official could excuse the participant from any condition of community service for which the participant received suspension.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

SUPPORTERS SAY:

CSHB 1994 would help victims of the sex trade and human trafficking by effectively decreasing demand for these criminal activities. Addressing the problems on the demand side is necessary to confront the entire issue. Studies show that educating male solicitors is extremely effective. Many offenders think that these are victimless crimes, and the program would help them to understand the impact of these crimes on individuals and communities.

CSHB 1994 would ensure much lower recidivism and bring Texas to the forefront of states addressing the problems of the sex trade and human trafficking. There are approximately 40 such programs in the United States, not including programs in other countries. Waco, which modeled its program on those in San Francisco and Las Vegas, currently has the only one in Texas. Since its inception in 2002, the Waco program has had only three repeat offenders. On average, the recidivism rate in locales that have instituted similar programs has been very low.

The cost implications of the first-offender prostitution prevention program created by CSHB 1994 would be very positive. The permissive language of the bill would allow local courts and law enforcement to institute the program according to their needs. Because CSHB 1994 would require

10 percent of collected fees to be allocated to the state domestic violence grant program, 90 percent of the revenue would remain local.

The fee revenue would benefit law enforcement during lean economic times. For example, the one-day program in Waco charges a $350 fee and costs approximately $300 to 400 to administer. Therefore, the fee of one participant essentially pays for the class. The revenue that remains locally based has benefitted Waco law enforcement through the funding of equipment and other needs.

Since it generally is not cost effective to pursue criminal charges against solicitors, many are allowed to go unpunished. Therefore, the practical application of the program would be more effective to deter future crime than what often amounts to inaction. The treatment model presented by the bill would be less expensive than a more costly prosecution model, as it would cost more to pursue criminal charges against solicitors than to rehabilitate them.

OPPONENTS SAY:

CSHB 1994 would protect men who seek out prostitutes to engage in illegal sexual conduct. By allowing offenders to participate in the program without experiencing appropriate consequences, the bill would allow offenders to go unpunished.

NOTES:

The companion bill, SB 1060 by Van de Putte, was referred to the Senate Criminal Justice Committee on March 16.

SUBJECT: Notice to military in domestic violence cases

COMMITTEE: Defense and Veterans' Affairs — committee substitute recommended

VOTE: 8 ayes — Pickett, Sheffield, Berman, Farias, Flynn, Perry, Scott, V. Taylor

0 nays

1 absent — Landtroop

WITNESSES: For — Mike Gentry, Central Texas Family Violence Task Force and Texas Police Chiefs Association; Todd Jermstad, Central Texas Domestic Violence Task Force; Erica Surprenant, Texas Criminal Justice Coalition

Against — None

BACKGROUND: Family Code, sec. 85.042 requires a court clerk to send a copy of a domestic violence-related protective order to the chief of police and county sheriff where the protected person lives. If the order is modified or withdrawn, the clerk must notify the chief and the sheriff.

Code of Criminal Procedure, Art. 5.05 requires a peace officer investigating a domestic violence incident to include in the officer's written report: names of the suspect and complainant; date, time, and location of the incident; visible or reported injuries; and a description of the incident.

DIGEST: CSHB 2624 would require military officers to be notified if a member within their unit was named in a protective order. If a person named in the protective order was in the state military or active-duty armed forces, the court clerk would have to send a copy of the protective order to the staff judge advocate at Joint Force Headquarters or the provost marshal at the person's military installation. If the order was modified or withdrawn, the court would have to notify all parties who received a copy of the original order.

The bill also would require a peace officer investigating a domestic violence incident to include in his or her report whether the suspect or

complainant was a member of the state military or active-duty armed forces. If so, the peace officer would have to provide written notice of the incident to the staff judge advocate or provost marshal at the suspect's or complainant's military installation.

If a member of the state military or active-duty armed forces was convicted or put on probation in a homicide, kidnapping, assault, sexual assault, human trafficking, or domestic violence case, the court clerk would have to provide written notice of this to the staff judge advocate or the defendant's provost marshal.

CSHB 2624 also would require a presentence investigation to include information on whether the defendant was currently or formerly in the state military or active-duty armed forces. If so, the investigation would have to identify if the defendant was deployed to a combat zone and if he or she suffered from post-traumatic stress disorder (PTSD) or traumatic brain injury. The investigation report would have to include a copy of the defendant's military records and discharge papers.

The bill would take effect on September 1, 2011.

SUPPORTERS SAY:

Military officials often are unaware when members within their units are the subjects of a domestic violence investigation or protective order, or if they are defendants standing trial. It is vital to national security that the military be notified of these incidents, and CSHB would require that notice.

Unit cohesion is one of the most critical aspects to the success of the military, particularly in combat situations. Outside behavior, especially violence toward another person, significantly affects unit cohesion. Military officials need to be made aware of these circumstances so that they may take appropriate actions. This could include counseling or additional oversight, but would not necessarily be equivalent to double punishment or military discharge.

While presentencing investigations often are broad in scope and include a number of mitigating factors within a defendant's background, they do not always include military history. A person's service in the military, particularly if he or she served in a combat zone or suffered from PTSD or traumatic brain injury, affects a person's physical and mental condition enormously. While determining the defendant's sentence, judges need to

be aware of these important factors to be able to determine independently their severity and effect on the case.

OPPONENTS SAY:

The military does not have a right to information on incidents occurring outside their jurisdiction. Just as a defendant's right to privacy prevents domestic violence investigation information from being shared with supervisors at a workplace, military officials should not have access to their personnel's private lives.

Furthermore, while information regarding domestic violence may not result in military discharge, this information, which is not relevant to their service, could prevent them from certain promotions or assignments.

If a defendant is deemed fit to stand trial, meaning any mental or physical injuries do not prevent a court from ruling the defendant competent and sane, his or her military record should not be required in a presentencing investigation.

Currently, during a presentencing investigation, the court can be informed of any mitigating factors, including military history and physical or mental injuries. These factors already are applied by the court during sentencing decisions.

Additionally, there are many challenges in diagnosing and determining the severity of injuries like PTSD. Often these injuries have a severe impact on a person's mental state, but there are many cases where a misdiagnosis or a mild case should not have to be included in a presentencing investigation if it is irrelevant.

OTHER OPPONENTS SAY:

An alleged domestic violence victim could be deterred from reporting an incident to law enforcement if a peace officer had to notify the staff judge advocate or the complainant's provost marshal.

NOTES:

A planned floor amendment, acceptable to the author, would remove language requiring a peace officer to report a domestic violence incident involving a complainant who is in the state military or active-duty armed forces to the staff judge advocate or provost marshal at the suspect's or complainant's military installation.

The committee substitute revised language related to requiring a peace officer to provide written notice of a domestic violence incident to the staff judge advocate or provost marshal.

SUBJECT: Indigent defense appointments, withdrawals, and probation revocations

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Gallego, Hartnett, Aliseda, Burkett, Zedler

0 nays

1 present not voting — Carter

3 absent — Christian, Y. Davis, Rodriguez

SENATE VOTE: On final passage, April 29 — 31-0

WITNESSES: For — Andrea Marsh, Texas Fair Defense Project

Against — None

On — (*Registered, but did not testify:* Jim Bethke, Task Force on Indigent Defense)

BACKGROUND: Courts must appoint attorneys for indigent criminal defendants, for both trials and appeals. As part of the Fair Defense Act, Code of Criminal Procedure, art. 26.04 requires judges in each county to adopt countywide procedures for appointing attorneys for indigent defendants arrested for or charged with felonies or misdemeanors punishable by confinement.

Courts are required to appoint attorneys from a public appointment list using a system of rotation that complies with Code of Criminal Procedure, ch. 26 and other laws. Judges establish the appointment list and determine objective qualifications necessary to be on it. Judges may establish more than one appointment list graduated according to the degree of seriousness of the offense and the attorneys' qualifications. Art. 26.04 also allows counties to use public defender offices and other alternative programs to provide indigent defense if they meet specific criteria.

Code of Criminal Procedure, art. 42.12, sec. 21 deals with hearings held for a person accused of violating probation, and states that defendants

have a right to counsel at such hearings. Code of Criminal Procedure, art. 15.17 requires a magistrate to inform a person arrested on a new offense of his or her rights either in person or through an electronic broadcast system.

DIGEST:

SB 1681 would include appeals of convictions and probation revocation hearings for indigent defendants in the types of criminal proceedings for which courts had to appoint attorneys by using a public appointment list and a rotation system. Attorney appointment lists and attorney appointments through an alternative program could be graduated based on whether representation would be provided in trial court proceedings, appellate proceedings, or both.

An appointed attorney would be required to represent the defendant not until relieved of his duties, as under current law, but until the attorney was permitted or ordered by the court to withdraw as counsel. After a finding of good cause, before withdrawing as counsel for a defendant not represented by other counsel, the appointed attorney would be required to:

- advise the defendant of his or her right to file a motion for new trial and a notice of appeal;
- if the defendant wished to pursue either or both of those options, assist him or her in requesting prompt appointment of replacement counsel; and
- if replacement counsel were not appointed promptly and the defendant wished to pursue an appeal, file a timely notice of appeal.

For a person arrested on a motion to revoke probation, the arresting officer would be required to take the person before the judge who ordered the arrest for the violation of community supervision without any unnecessary delay, but no later than 48 hours after the person was arrested. If the judge was unavailable, the person could be brought before the county magistrate. The judge or magistrate would be required to perform all appropriate duties and could exercise all appropriate powers as provided under law, except that only the judge who ordered the arrest for the alleged violation could authorize the person's release on bail. The arrested person also could be taken before the judge or magistrate by means of an electronic broadcast system as under Code of Criminal Procedure, art. 15.17.

The bill would take effect September 1, 2011, and would apply to criminal proceedings that began on or after that date.

SUPPORTERS SAY:

SB 1681 would improve the state's indigent defense system in three important ways:

- by clarifying that the Fair Defense Act requirements for appointment of attorneys for indigent defendants applies to appeals in criminal cases and to probation revocation hearings;
- by ensuring continuous effective appointed counsel through all critical stages of the proceedings after withdrawal of an appointed counsel; and
- by authorizing magistrates to provide warnings to defendants arrested for motions to revoke probation.

These changes were recommended by the Task Force on Indigent Defense, which includes eight ex-officio members and five members appointed by the governor. The ex-officio members include the presiding judge of the court of criminal appeals, the chief justice of the Texas Supreme Court, and one Senate member and one House member. The mission of the task force is to promote justice and fairness for all indigent persons accused of criminal conduct. The Texas Judicial Council also passed resolutions, signed by the chief justice of the Texas Supreme Court, in favor of these improvements to indigent defense.

First, the bill would clarify that state law requiring the impartial appointment of attorneys for indigent defendants applies to appeals in criminal cases and to probation revocation hearings. While many judges currently use the mandated impartial appointment system when making appointments for appeals and probation revocation hearings, some do not.

Some of these judges claim that current law requiring the use of a rotation system does not state explicitly that the system must be used for appeals and probation revocation hearings. This violates the intent of the state's Fair Defense Act that competent attorneys be appointed in a fair, impartial way. It can give the appearance that judges disproportionately are appointing friends or donors or others with whom they have a relationship. SB 1681 would remedy this by stating clearly that the rotation appointment system be used for these proceedings. The goal of the Fair Defense Act is not to move cases as quickly as possible. Providing competent counsel fairly and impartially should not be sacrificed to dispose of cases quickly.

SB 1681 would not expand who qualified for an appointed attorney. Under current law, indigent defendants already must be appointed attorneys for appeals and probation revocation hearings. The bill would change how attorneys were appointed. This provision would have no fiscal impact for counties or the state.

Second, SB 1681 also would ensure continuous effective appointed counsel through all critical stages of proceedings after withdrawal of an appointed counsel. Before being permitted to withdraw from representation, appointed attorneys would be required to advise defendants of their rights to file a motion for new trial or appeal and would be required to help the defendants request appointment of new counsel to pursue those options.

Current law requires an appointed attorney to represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is relieved or replaced by the court after a finding of good cause. The law contemplates that attorneys will be relieved of duty before appeals are exhausted, but does not ensure that defendants will have continuous effective counsel through the appeals stage. In some cases, appointed attorneys have been allowed to withdraw after trial, and the defendants have been without effective representation during the 30-day window for filing a motion for a new trial. SB 1681 would ensure the effective assistance of counsel as representation transitions from trial counsel to appellate counsel.

Third, SB 1681 also would authorize magistrates to provide warnings to defendants arrested for motions to revoke probation. These warnings would include telling defendants of their rights to appointed counsel. The bill would require the warnings to be provided within 48 hours of arrest as under current law for an arrest for a new offense, but would not allow magistrates to release the defendant on bail.

Current law requires defendants to be brought before the judge that oversee their probation, which sometimes results in long delays in rural parts of the state where judges must sit in multiple counties. Some magistrates already provide these warnings now for both revocations and new offenses, but some only for new offenses. SB 1681 would provide clear authority for magistrates to provide warnings to defendants arrested for motions to revoke probation, which would better serve to inform defendants of their rights in a timely manner.

OPPONENTS SAY:

SB 1681 would take away judicial discretion for appointments for appeals and probation revocation hearings. In some cases, judges may choose not to use the rotation system to give defendants a competent attorney who also can move a case quickly.

For example, a judge may know that an attorney present in the courthouse could handle a case without delay or had particular expertise that would be useful on a case. Appointing that attorney could allow a defendant to be released sooner than if the judge used the rotation system.

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Apply Fair Defense Act to Probation Revocations and Appeals Appointments**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Task Force on Indigent Defense has reviewed the proposal related to applying the Fair Defense Act to attorney appointments for probation revocations and appeals;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Courts must appoint attorneys for indigent criminal defendants, for both trials and appeals. The Fair Defense Act (FDA) requires judges in each county to adopt countywide procedures for appointing attorneys for indigent defendants arrested for or charged with felonies or misdemeanors punishable by confinement. Courts are required to appoint attorneys from a public appointment list using a system of rotation, an alternative appointment program, or a public defender. While many believe the FDA system applies to attorney appointments for appeals and probation revocation hearings, some do not. Additionally, Art. 42.12, Code of Criminal Procedure, provides that a person arrested on a motion to revoke probation be brought back before the judge overseeing that probation. Particularly in rural parts of the state, that judge may not be sitting for an extended period of time, and therefore the probationer may not have the case heard, nor even receive the usual warnings expeditiously. Such warnings are usually provided by any magistrate if the arrest is for a new offense and defendants in motion to revoke cases would benefit from having those warnings provided.

Purpose

Clarify that the FDA procedures for appointing attorneys apply to appeals in criminal cases and to probation revocation hearings. Grant any magistrate the authority to give warnings to persons arrested on motions to revoke probation, such as the right to counsel; however any new authority should not include setting bond.

Wallace B. Jefferson

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

SUBJECT: Creating the offense of sexting and establishing educational programs

COMMITTEE: Criminal Jurisprudence — favorable, with amendment

VOTE: 6 ayes — Gallego, Burkett, Carter, Christian, Y. Davis, Zedler

0 nays

3 absent — Hartnett, Aliseda, Rodriguez

SENATE VOTE: On final passage, April 14 — 29-1 (Nichols)

WITNESSES: For — None

Against — Tracey Hayes, ACLU of Texas

On — Shannon Edmonds, Texas District and County Attorneys Association; Sharon Pruitt, Office of the Attorney General

DIGEST: **Sexting promotion and possession.** SB 407, as amended, would create for minors a new offense in the Penal Code for what is commonly known as "sexting." It would be an offense for a minor to intentionally or knowingly:

- *promote* by electronic means to another minor visual material depicting a minor, including the actor, engaging in sexual conduct, if the actor produced the visual material or knew that another minor produced it; or
- *possess* in electronic format visual material depicting another minor engaging in sexual conduct, if the actor produced the visual material or knew that another minor produced the visual material.

"Sexual conduct" would mean sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.

**Promotion penalties for 17-year-old**. For a 17-year-old minor, a promotion offense would be a class C misdemeanor (maximum fine of $500), but would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) if the minor:

- promoted the visual material with intent to harass, annoy, alarm, abuse, torment, embarrass, or offend another; or
- had been convicted once before for promotion or possession.

Promotion would be a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000), if the minor had been convicted one or more times of promotion with the intent to harass, annoy, alarm, abuse, torment, embarrass, or offend another or if previously convicted two or more times for promotion or possession.

**Possession penalties for a 17-year-old.** For a 17-year-old minor, a possession offense would be a class C misdemeanor, but would be a class B misdemeanor if the minor had previously been convicted once of possession or promotion, and would be a class A misdemeanor if the minor had previously been convicted two or more times of possession or promotion.

**Defenses.** An affirmative defense to prosecution would be created for sexting between minor spouses or between minors within two years of age of each and were dating at the time of the offense.

It would be a defense to prosecution for sexting possession if the actor did not produce or solicit the visual material, possessed the visual material only after receiving it from another minor, and destroyed the visual material within a reasonable amount of time after receiving it from another minor. It also would be a defense to prosecution for the offense of tampering with or fabricating physical evidence if the actor destroyed the visual materials according to this section.

It would be a defense to prosecution for possession or promotion of child pornography, for offenses committed after the effective date, if the actor was a law enforcement officer or a school administrator who:

- possessed the visual material in good faith solely as a result of an allegation of sexting;

- allowed other law enforcement or school administrative personnel to access the material only as appropriate based on the allegation; and
- took reasonable steps to destroy the material within an appropriate period following the allegation of sexting.

**Possession and promotion penalties for a minor under 17 years old.** For minors under 17, SB 407 would expand the definition of "conduct in need of supervision" in the Family Code to include possession and promotion sexting. A finding of possession or promotion sexting for a minor under 17 would be considered a conviction for the purposes of the enhanced penalties for this sexting offense.

**Jurisdiction.** A court would be required to waive its original jurisdiction of a misdemeanor sexting case punishable by fine only and transfer the case to juvenile court.

**Parental attendance at proceedings.** The judge would be required to take the defendant minor's plea in open court on a charge of sexting and would be required to issue a summons to compel the defendant's parent to be present during this and during all other proceedings relating to the case under most circumstances.

**Educational programs.** SB 407 would require the Texas School Safety Center, in consultation with the Office of the Attorney General, to develop programs for use by school districts by January 1, 2012, that addressed:

- the possible legal consequences of sexting;
- other possible consequences of sexting, including the negative effects on relationships, the loss of education and employment opportunities, and the possible removal from certain school programs or activities;
- the unique characteristics of the Internet and other networks that could affect sexting, including search and replication capabilities and a potential worldwide audience;
- the prevention of, identification of, response to, and reporting of incidents of bullying; and
- the connection shared by bullying, cyberbullying, harassment, and sexting.

Each school district would be required to make these programs available on a yearly basis, beginning with the 2012-2013 school year, by any means the district considered appropriate, to parents and students in a grade level the district considered appropriate.
If a court found that a defendant had committed a sexting offense or engaged in conduct indicating a need for supervision on the basis of sexting, the court could require the defendant to attend and successfully complete an educational program. The court would be required to have the defendant or defendant's parent pay for the educational program if the court determined they were financially able. The same provision would apply if a judge granted community supervision to a defendant for sexting.

**Expunction and sealing of records.** A minor convicted of a sexting offense only once, and not found to have engaged in conduct indicating a need for supervision based on sexting, could apply on or after the person's 17th birthday to have the conviction record expunged.

A juvenile court would be allowed to order the sealing of records for a child who engaged in conduct indicating a need for supervision based on sexting if the child attended and completed an educational program. The court could order the sealing of the records immediately and without a hearing or hold a hearing to determine whether to seal the records.

**Criminal evidence.** A court would have to allow discovery of property and material on the basis of sexting in the same way discovery of materials related to child pornography was allowed. A court could not disclose evidence to the public that was the basis of a sexting criminal proceeding.

**Effective date.** The bill would take effect September 1, 2011.

SUPPORTERS SAY:

SB 407 would create a new legal response to sexting that would not carry the life-altering consequences of a felony conviction and would help prevent sexting through education. The educational requirements of SB 407 would emphasize the criminal, emotional, and psychological consequences associated with the crime before kids engaged in the harmful activity. A school district would retain maximum flexibility in getting this information to parents and students in grade levels the school district deemed appropriate.

The act of sending a sexually explicit text message currently can be prosecuted under adult pornography laws, which can lead to felony

convictions and sex offender registration for life. Expanding the definition of conduct in need of supervision to include sexting for a child under 17 would make sexting a noncriminal offense within the original jurisdiction of the juvenile court. This would allow for a proactive judicial approach that included parental involvement, curfew restraints, and educational and probation requirements.

For a 17-year-old, both possession and promotion sexting would be capped at a class A misdemeanor. The penalty would be a C misdemeanor unless the minor promoted the content with the intent to harass, annoy, alarm, abuse, torment, embarrass, or offend another, which would make the penalty a class B misdemeanor. The penalties would be enhanced for repeat offenses.

An affirmative defense would be created for sexting between minor spouses or between minors within two years of age that were dating at the time of the offense. This mirrors an existing defense under the pornography statute, which is necessary because without the defense two minors could legally have sex, but could not "sext." A defense also would be created to protect the innocent recipient of an unsolicited sext. This defense to prosecution would apply if the minor did not produce or solicit the sext, possessed the sext only after receiving it from another minor, and destroyed the sext within a reasonable amount of time after receiving it. A defense to prosecution would also be created for law enforcement officers or school administrators in possession of a sext as a result of a sexting allegation.

SB 407 also would make sure sexting did not leave a stigma that prevented a young person from going to college or finding meaningful employment. The bill would allow people convicted of sexting to have their criminal records expunged and would allow certain minors under 17 to immediately seal their sexting records.

SB 407 is a timely and thoughtful response to a growing problem that must be met head on with both appropriate consequences and educational remedies.

OPPONENTS SAY:

Sexting reflects poor judgment, but a better response would be education, not criminalization. During adolescence, children have problems controlling their impulses and problems understanding the long-term consequences of their actions. Developmentally normal behaviors, such as

sexting, should not be criminalized just because the evidence of that behavior can now be recorded using today's technology. Very few minors are charged with child pornography now, because it is such a serious charge. This bill actually would criminalize behavior that is rarely prosecuted now.

SB 407 is well meaning, but the criminal justice system is just not equipped to handle the number of sexting cases necessary to fairly enforce the new law. According to the American Civil Liberties Union, at least 20 percent of youth have engaged in sexting, meaning that 1.5 million additional Texas youth would be subjected to the criminal justice system. This would be unworkable. Even more disturbing would be the possibility of selective enforcement against minorities and youth with special needs, which is possible given that the system already is under scrutiny for disproportionate treatment of those groups. Laws already exist to protect kids from harassment, bullying, child pornography, and obscenity. SB 407 would not protect children any better than those laws already do.

Sexting also could be considered a "free speech" activity, so criminalizing it likely would result in costly litigation for local communities. Youth also would have to abandon their privacy rights and share their phones just to prove their innocence. SB 407 would create more problems than it solved.

Education would be the best tool for preventing sexting. Parents and educators should inform teens about the need to respect their peers, privacy, and the potential long-term negative consequences of using electronic media for sexting. The State Board of Education's upcoming review of health curriculum would offer a good chance to address the issue.

OTHER OPPONENTS SAY:

While SB 407 is a step in the right direction, a class C misdemeanor is too low a punishment for a 17-year-old. This is child pornography, so the equivalent of a traffic ticket is grossly inappropriate given the content of some of these images. In addition, class C misdemeanor records usually are not used for enhancement purposes. A minor also would not be entitled to a court-appointed lawyer for a class C misdemeanor charge, which would be problematic for fair enforcement.

NOTES:

The committee amendment would add the defense to prosecution for law enforcement officers and school administrators who possessed a sext related to an alleged sexting offense.