

SCAC MEETING AGENDA-AMENDED
Friday, June 18, 2021 [9:00 a.m. – 5:00 p.m.]
VIA ZOOM

1. WELCOME (C. BABCOCK)

2. STATUS REPORT FROM CHIEF JUSTICE HECHT

Chief Justice Hecht will report on Supreme Court actions and those of other courts related to the Supreme Court Advisory Committee since the April 16, 2021 meeting.

3. COMMENTS FROM JUSTICE BLAND

4. NEW SUBCOMMITTEE ASSIGNMENTS FOLLOWING LEGISLATURE SESSIONS

- (a) 2021-06-02 Referral Letter from Chief Justice Hecht with supporting Bills

I. MDL APPLICABILITY, FAMILY VIOLENCE PROTECTIVE ORDERS AND TIME LIMITS

Judicial Administration Sub-Committee Members:

Hon. Bill Boyce – Chair
Kennon Wooten – Vice-Chair
Nina Cortell
Hon. Tom Gray
Michael Hatchell
Prof. Lonny Hoffman
Hon. David Newell
Hon. David Peebles
Hon. Maria Salas-Mendoza

- (b) 2021-06-13 Report of Judicial Sub-Committee

II. URI-RELATED APPEALS

Appellate Sub-Committee Members:

Pamela Baron – Chair
Hon. Bill Boyce – Vice- Chair
Prof. Elaine Carlson
Prof. William Dorsaneo
Connie Pfeiffer
Richard Phillips
Scott Stolley
Charles Watson
Evan Young

(c) 2021-06-15 Report of Appellate Rules Sub-Committee

III. PROTECTION OF SENSITIVE DATA

Legislative Mandates Sub-Committee Members:

*Jim Perdue – Chair
Pete Schenckan – Vice-Chair
Prof. Elaine Carlson
Hon. David Evans
Robert Levy
Richard Orsinger*

(d) 2021-06-16 Report of Judicial Sub-Committee

IV. SEXUAL ASSAULT SURVIVOR PRIVILEGE

Evidence Sub-Committee Members:

*Gilbert Low – Chair
Hon. Harvey Brown – Vice-Chair
Hon. Levi Benton
Prof. Elaine Carlson
Marcy Greer
Prof. Lonny Hoffman
Roger Hughes
Hon. Peter Kelly*

V. OATHS IN DEPOSITIONS

167-206 Sub-Committee Members:

*Robert Meadows – Chair
Hon. Tracy Christopher – Vice Chair
Prof. Alexandra Albright
Manuel Berrelez
Hon. Harvey Brown
Alistair Dawson
David Jackson
Hon. Ana Estevez
Kimberly Phillips
Evan Young*

5. **ETHICAL GUIDELINES FOR MEDIATORS (Will give update if time allows)**

167-206 Sub-Committee Members:

Robert Meadows – Chair

Hon. Tracy Christopher – Vice Chair

Prof. Alexandra Albright

Manuel Berrelez

Hon. Harvey Brown

Alistair Dawson

David Jackson

Hon. Ana Estevez

Kimberly Phillips

Evan Young

- (e) March 29, 2021 Referral Letter from Chief Justice Hecht

Tab A



The Supreme Court of Texas

CHIEF JUSTICE
NATHAN L. HECHT

JUSTICES
EVA M. GUZMAN
DEBRA H. LEHRMANN
JEFFREY S. BOYD
JOHN P. DEVINE
JAMES D. BLACKLOCK
J. BRETT BUSBY
JANE N. BLAND
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CLERK
BLAKE A. HAWTHORNE

GENERAL COUNSEL
NINA HESS HSU

EXECUTIVE ASSISTANT
NADINE SCHNEIDER

PUBLIC INFORMATION OFFICER
OSLER McCARTHY

June 2, 2021

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker L.L.P.
cbabcock@jw.com

Re: Referral of Rules Issues

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters. Some require immediate attention, while others are longer-range initiatives. I have provided a complete list for the Committee's information.

Several matters arise from legislation passed by the 87th Legislature, which, if signed by the Governor, takes effect immediately or on September 1, 2021. The Committee should conclude its work on them by its June 18, 2021, meeting. Many of the changes may be simple and straightforward. They are:

MDL Applicability. Government Code §§ 74.161-.201 create the Judicial Panel on Multidistrict Litigation, and Rule of Judicial Administration 13 governs its operation. HB 2950, § 2 amends § 74.1625(a) to prohibit the MDL panel from transferring a Texas Medicaid Fraud Prevention Act action "brought by the consumer protection division of the attorney general's office." The amendment does not direct that Rule 13 be changed, but the Committee should consider whether the text of Rule 13.1 should be changed to reference or restate the statute.

Family Violence Protective Orders. Rule of Civil Procedure 107(h) states: "No default judgment shall be granted in any case until proof of service . . . [has] been on file with the clerk of the court ten days . . ." HB 39, § 2 amends Family Code § 85.006 to state: "Notwithstanding TRCP 107, a court may render a protective order that is binding on a respondent who does not attend a hearing if: (1) the respondent received service of the [protective order] application and notice of the hearing; and (2) proof of service was filed with the court before the time set for

hearing.” The Committee should consider whether Rule 107(h) should be changed or a comment added to reference or restate the statute.

Time Limits for Child Protection Cases. Rule of Judicial Administration 6 governs time standards for the disposition of cases. HB 567, § 10 adds Family Code § 263.4011 to require a 90-day period for rendering a final order in a child protection case after the date the trial commences. The Committee should consider whether Rule 6 should be changed or a comment added to reference or restate the statute.

Uri-Related Direct Appeals. Several bills add provisions to the Utilities Code to provide that certain district court judgments related to a Winter Storm Uri “may be reviewed only by direct appeal to the Supreme Court of Texas”: HB 1520, HB 4492, and SB 1580. The Committee should consider whether Rule of Appellate Procedure 57, governing direct appeals, should be changed or a comment added to reference or restate the statutes.

Protection of Sensitive Data. HB 1540 and HB 2669 add several statutes to protect sensitive data. HB 1540, § 4 adds Civil Practice and Remedies Code § 98.007 to permit a claimant in a trafficking suit to use a confidential identity and require a court use a confidential identity and maintain records in a confidential manner. § 98.007 also prohibits the Court from amending or adopting rules in conflict with § 98.007. HB 2669 amends Code of Criminal Procedure Art. 44.2811 and reenacts and amends Art. 45.0217 to make confidential a child’s criminal records related to certain misdemeanor offenses. The Committee should consider whether the sensitive data rules should be changed or a comment added to reference or restate the statutes.

Sexual Assault Survivor Privilege. SB 295, § 3 amends Gov’t Code § 420.071 to provide a sexual assault survivor with the privilege to refuse to disclose any communication with an advocate employed by or volunteering at a sexual assault program and related records. The Committee should consult with the State Bar of Texas Administration of Rules of Evidence Committee and consider whether Article V of the Texas Rules of Evidence, governing privileges, should be changed or a comment added to reference or restate the statute.

Oaths in Oral Depositions. HB 3774, § 17.07 adds Gov’t Code § 154.105 to allow court reporters to administer the oath to certain witnesses, even if they are not in the same location as the witness. The Committee should consider whether Rule of Civil Procedure 199.1(b), governing remote oral depositions, should be changed or a comment added to reference or restate the statute.

One other matter arising from legislation passed by the 87th Legislature requires rulemaking by May 1, 2022.

Seizure Exemption Rules and Form. HB 3774, § 15.01 adds Gov’t Code § 22.0042, which directs the Court to adopt rules that “establish a simple and expedited procedure for a judgment debtor to assert an exemption to the seizure of personal property by a judgment creditor or receiver” and a form for asserting such exemption. § 22.0042 also directs the Court to adopt rules that “require a court to stay a proceeding for a reasonable period, to allow for the assertion of [such] exemption” and “require a court to promptly set a hearing and stay proceedings until a

hearing is held, if a judgment debtor timely asserts [such] exemption.” The Committee should consult with justice court stakeholders and make recommendations.

Finally, there are several matters unrelated to recent legislation on which the Court requests the Committee’s recommendations.

Rule of Judicial Administration 7. In the attached report, the Remote Proceedings Task Force recommends updating Rule of Judicial Administration 7 to include remote proceedings. The Committee should make recommendations.

Rule of Civil Procedure 199.2. In the attached memorandum, the State Bar of Texas Court Rules Committee proposes amendments to Rule of Civil Procedure 199.2. The Committee should review the proposal and make recommendations.

Rule of Civil Procedure 226a. In the attached memorandum, the State Bar of Texas Rules Committee proposes adding implicit bias instructions to Rule of Civil Procedure 226a. The Committee should review the proposal and make recommendations.

As always, the Court is grateful for the Committee’s counsel and your leadership.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan L. Hecht", with a long horizontal flourish extending to the right.

Nathan L. Hecht
Chief Justice

Attachments

1 AN ACT
2 relating to the composition of and actions transferred by the
3 judicial panel on multidistrict litigation.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 74.161(a), Government Code, is amended
6 to read as follows:

7 (a) The judicial panel on multidistrict litigation consists
8 of five members designated from time to time by the [~~chief justice~~
9 ~~of the~~] supreme court. The members of the panel must be active,
10 former, or retired court of appeals justices or active
11 administrative judges.

12 SECTION 2. Section 74.1625(a), Government Code, is amended
13 to read as follows:

14 (a) Notwithstanding any other law, the judicial panel on
15 multidistrict litigation may not transfer:

16 (1) an action brought by the consumer protection
17 division of the attorney general's office under Subchapter E,
18 Chapter 17, Business & Commerce Code [~~, except an action~~
19 ~~specifically authorized by Section 17.50 of that code~~]; or

20 (2) an action brought under Chapter 36, Human
21 Resources Code.

22 SECTION 3. The changes in law made by this Act apply only to
23 an action commenced on or after the effective date of this Act. An
24 action commenced before the effective date of this Act is governed

1 by the law in effect immediately before the effective date of this
2 Act, and the former law is continued in effect for that purpose.

3 SECTION 4. This Act takes effect immediately if it receives
4 a vote of two-thirds of all the members elected to each house, as
5 provided by Section 39, Article III, Texas Constitution. If this
6 Act does not receive the vote necessary for immediate effect, this
7 Act takes effect September 1, 2021.

H.B. No. 2950

President of the Senate

Speaker of the House

I certify that H.B. No. 2950 was passed by the House on May 13, 2021, by the following vote: Yeas 127, Nays 15, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2950 was passed by the Senate on May 27, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____
Date

Governor

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AN ACT

relating to protective orders; making conforming changes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 85.005(a) and (b), Family Code, are amended to read as follows:

(a) To facilitate settlement, the parties to a proceeding may agree in writing to ~~[the terms of]~~ a protective order as provided by Sections ~~[Section]~~ 85.021 and 85.022. An agreement under this subsection is subject to the approval of the court. The court may not approve an agreement that requires the applicant for the protective order to do or refrain from doing an act under Section 85.022.

(b) ~~An [To facilitate settlement, a respondent may agree in writing to the terms of a protective order as provided by Section 85.022, subject to the approval of the court. The court may not approve an agreement that requires the applicant to do or refrain from doing an act under Section 85.022. The] agreed protective~~ order is enforceable civilly or criminally, regardless of whether the court makes the findings required by Section 85.001.

SECTION 2. Section 85.006(a), Family Code, is amended to read as follows:

(a) Notwithstanding Rule 107, Texas Rules of Civil Procedure, a [A] court may render a protective order that is binding on a respondent who does not attend a hearing if:

1 (1) the respondent received service of the application
2 and notice of the hearing; and
3 (2) proof of service was filed with the court before
4 the hearing.

5 SECTION 3. Section 85.026(a), Family Code, is amended to
6 read as follows:

7 (a) Each protective order issued under this subtitle,
8 including a temporary ex parte order, must contain the following
9 prominently displayed statements in boldfaced type, capital
10 letters, or underlined:

11 "A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR
12 CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN
13 JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

14 "NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS
15 ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY
16 PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS
17 VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT
18 UNLESS A COURT CHANGES THE ORDER."

19 "IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS
20 DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT
21 AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL
22 SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A
23 FIREARM OR AMMUNITION."

24 "IF A PERSON SUBJECT TO A PROTECTIVE ORDER IS RELEASED FROM
25 CONFINEMENT OR IMPRISONMENT FOLLOWING THE DATE THE ORDER WOULD HAVE
26 EXPIRED, OR IF THE ORDER WOULD HAVE EXPIRED NOT LATER THAN THE FIRST
27 ANNIVERSARY OF THE DATE THE PERSON IS RELEASED FROM CONFINEMENT OR

1 IMPRISONMENT, THE ORDER IS AUTOMATICALLY EXTENDED TO EXPIRE ON:
2 "(1) THE FIRST ANNIVERSARY OF THE DATE THE PERSON IS
3 RELEASED, IF THE PERSON WAS SENTENCED TO CONFINEMENT OR
4 IMPRISONMENT FOR A TERM OF MORE THAN FIVE YEARS; OR
5 "(2) THE SECOND ANNIVERSARY OF THE DATE THE PERSON IS
6 RELEASED, IF THE PERSON WAS SENTENCED TO CONFINEMENT OR
7 IMPRISONMENT FOR A TERM OF FIVE YEARS OR LESS."

8 "A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED
9 BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY
10 CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT
11 RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE
12 MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A
13 SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON
14 FOR AT LEAST TWO YEARS."

15 SECTION 4. Section 86.0011(a), Family Code, is amended to
16 read as follows:

17 (a) On receipt of an original or modified protective order
18 from the clerk of the issuing court, or on receipt of information
19 pertaining to the date of confinement or imprisonment or date of
20 release of a person subject to the protective order, a law
21 enforcement agency shall immediately, but not later than the third
22 business day after the date the order or information is received,
23 enter the information required by Section 411.042(b)(6),
24 Government Code, into the statewide law enforcement information
25 system maintained by the Department of Public Safety.

26 SECTION 5. Article 7B.001(a), Code of Criminal Procedure,
27 is amended to read as follows:

1 (a) The following persons may file an application for a
2 protective order under this subchapter without regard to the
3 relationship between the applicant and the alleged offender:

4 (1) a person who is the victim of an offense under
5 Section 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.021, [ex] 42.072,
6 or 43.05, Penal Code;

7 (2) any adult, including a parent or guardian, who is
8 acting on behalf of a victim described by Subdivision (1), if the
9 victim is younger than 18 years of age or an adult ward [a person who
10 is the victim of an offense under Section 20A.02, 20A.03, or 43.05,
11 Penal Code]; or

12 (3) ~~[a parent or guardian acting on behalf of a person~~
13 ~~younger than 17 years of age who is the victim of an offense listed~~
14 ~~in Subdivision (1)],~~

15 ~~[(4) a parent or guardian acting on behalf of a person~~
16 ~~younger than 18 years of age who is the victim of an offense listed~~
17 ~~in Subdivision (2)], or~~

18 ~~[(5)]~~ a prosecuting attorney acting on behalf of a
19 person described by Subdivision (1) or [r] (2) [r, (3), or (4)].

20 SECTION 6. Article 7B.001, Code of Criminal Procedure, is
21 amended to conform to Chapter 1066 (H.B. 1343), Acts of the 86th
22 Legislature, Regular Session, 2019, by adding Subsections (a-1) and
23 (a-2) and is further amended to read as follows:

24 (a-1) Except as provided by Subsection (a-2), if an
25 application has not yet been filed in the case under Subsection (a),
26 the attorney representing the state shall promptly file an
27 application for a protective order with respect to each victim of an

1 offense listed in Subdivision (1) of that subsection following the
2 offender's conviction of or placement on deferred adjudication
3 community supervision for the offense.

4 (a-2) The attorney representing the state may not file an
5 application under Subsection (a-1) with respect to a victim if the
6 victim requests that the attorney representing the state not file
7 the application. This subsection does not apply to a victim who is
8 younger than 18 years of age or who is an adult ward.

9 SECTION 7. Article 7B.003, Code of Criminal Procedure, is
10 amended to conform to Chapter 1066 (H.B. 1343), Acts of the 86th
11 Legislature, Regular Session, 2019, by adding Subsection (c) and is
12 further amended to read as follows:

13 (c) An offender's conviction of or placement on deferred
14 adjudication community supervision for an offense listed in Article
15 7B.001(a)(1) constitutes reasonable grounds under Subsection (a).

16 SECTION 8. Article 7B.007, Code of Criminal Procedure, is
17 amended to conform to Chapter 1066 (H.B. 1343), Acts of the 86th
18 Legislature, Regular Session, 2019, by adding Subsection (a-1) and
19 is further amended to read as follows:

20 (a-1) The court shall issue a protective order effective for
21 the duration of the lives of the offender and victim if the offender
22 is:

23 (1) convicted of or placed on deferred adjudication
24 community supervision for an offense listed in Article
25 7B.001(a)(1); and

26 (2) required under Chapter 62 to register for life as a
27 sex offender.

1 SECTION 9. Article 7B.007, Code of Criminal Procedure, is
2 amended by amending Subsection (b) and adding Subsection (b-1) to
3 read as follows:

4 (b) The following persons may file at any time an
5 application with the court to rescind the protective order:

6 (1) a victim of an offense listed in Article
7 7B.001(a)(1) who is 18 [~~17~~] years of age or older;

8 (2) subject to Subsection (b-1), [ex] a parent or
9 guardian acting on behalf of a victim of an offense listed in
10 Article 7B.001(a)(1) who is younger than 18 [~~17~~] years of age or an
11 adult ward; or

12 (3) a person not otherwise described by Subdivision
13 (1) or (2) who filed the application for the protective order.

14 (b-1) A [(2) a victim of an offense listed in Article
15 7B.001(a)(2) or a] parent or guardian may not file an application to
16 rescind the protective order under Subsection (b)(2) if the parent
17 or guardian is the alleged offender subject to the protective order
18 [acting on behalf of a victim who is younger than 18 years of age].

19 SECTION 10. Article 56A.052(d), Code of Criminal Procedure,
20 is amended to read as follows:

21 (d) This subsection applies only to a victim of an offense
22 under Section 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.021, 42.072,
23 or 43.05, Penal Code. A victim described by this subsection or a
24 parent or guardian of the victim, if the victim is younger than 18
25 years of age or an adult ward, is entitled to the following rights
26 within the criminal justice system:

27 (1) the right to be informed:

1 (A) that the victim or, if the victim is younger
2 than 18 years of age or an adult ward, the victim's parent or
3 guardian or another adult acting on the victim's behalf~~[, as~~
4 ~~applicable,~~] may file an application for a protective order under
5 Article [7B.001](#);

6 (B) of the court in which the application for a
7 protective order may be filed; ~~and~~

8 (C) that, on request of the victim or, if the
9 victim is younger than 18 years of age or an adult ward, on request
10 of the victim's parent or guardian or another adult acting on the
11 victim's behalf, ~~[as applicable, and subject to the Texas~~
12 ~~Disciplinary Rules of Professional Conduct,~~] the attorney
13 representing the state may, subject to the Texas Disciplinary Rules
14 of Professional Conduct, file the application for a protective
15 order on behalf of the requestor ~~[victim];~~ and

16 (D) that, subject to the Texas Disciplinary Rules
17 of Professional Conduct, the attorney representing the state
18 generally is required to file the application for a protective
19 order with respect to the victim if the defendant is convicted of or
20 placed on deferred adjudication community supervision for the
21 offense;

22 (2) the right to:

23 (A) request that the attorney representing the
24 state, subject to the Texas Disciplinary Rules of Professional
25 Conduct, file an application for a protective order described by
26 Subdivision (1); and

27 (B) be notified when the attorney representing

1 the state files an application for a protective order under Article
2 7B.001;

3 (3) if the victim or the victim's parent or guardian,
4 as applicable, is present when the defendant is convicted or placed
5 on deferred adjudication community supervision, the right to:

6 (A) be given by the court the information
7 described by Subdivision (1); and

8 (B) file an application for a protective order
9 under Article 7B.001 immediately following the defendant's
10 conviction or placement on deferred adjudication community
11 supervision if the court has jurisdiction over the application; and

12 (4) if the victim or the victim's parent or guardian,
13 as applicable, is not present when the defendant is convicted or
14 placed on deferred adjudication community supervision, the right to
15 be given by the attorney representing the state the information
16 described by Subdivision (1).

17 SECTION 11. Section 25.07, Penal Code, is amended by
18 amending Subsection (g) and adding Subsection (h) to read as
19 follows:

20 (g) An offense under this section is a Class A misdemeanor,
21 except the offense is:

22 (1) subject to Subdivision (2), a state jail felony if
23 it is shown at the trial of the offense that the defendant violated
24 an order issued under Subchapter A, Chapter 7B [~~as a result of an~~
25 ~~application filed under Article 7A.01(a-1)], Code of Criminal
26 Procedure, following the defendant's conviction of or placement on
27 deferred adjudication community supervision for an offense, if the~~

1 order was issued with respect to a victim of that offense; or

2 (2) a felony of the third degree if it is shown on the
3 trial of the offense that the defendant:

4 (A) has previously been convicted two or more
5 times of an offense under this section or two or more times of an
6 offense under Section 25.072, or has previously been convicted of
7 an offense under this section and an offense under Section 25.072;
8 or

9 (B) has violated the order or condition of bond
10 by committing an assault or the offense of stalking.

11 (h) For purposes of Subsection (g), a conviction under the
12 laws of another state for an offense containing elements that are
13 substantially similar to the elements of an offense under this
14 section or Section 25.072 is considered to be a conviction under
15 this section or Section 25.072, as applicable.

16 SECTION 12. The following provisions are repealed:

17 (1) Section 1, Chapter 1066 (H.B. 1343), Acts of the
18 86th Legislature, Regular Session, 2019, which amended Article
19 7A.01, Code of Criminal Procedure;

20 (2) Section 2, Chapter 1066 (H.B. 1343), Acts of the
21 86th Legislature, Regular Session, 2019, which amended Article
22 7A.03, Code of Criminal Procedure; and

23 (3) Section 3, Chapter 1066 (H.B. 1343), Acts of the
24 86th Legislature, Regular Session, 2019, which amended Article
25 7A.07, Code of Criminal Procedure.

26 SECTION 13. Section 85.005, Family Code, as amended by this
27 Act, applies only to a protective order approved by the court on or

1 after the effective date of this Act.

2 SECTION 14. Section 85.006, Family Code, as amended by this
3 Act, applies only to a protective order for which the respondent
4 receives service on or after the effective date of this Act.

5 SECTION 15. Sections 85.026 and 86.0011, Family Code, as
6 amended by this Act, apply only to a protective order issued on or
7 after the effective date of this Act.

8 SECTION 16. Subchapter A, Chapter 7B, Code of Criminal
9 Procedure, as amended by this Act, applies only to a protective
10 order for which an application is filed on or after the effective
11 date of this Act.

12 SECTION 17. Article 56A.052(d), Code of Criminal Procedure,
13 as amended by this Act, applies to a victim of criminally injurious
14 conduct for which a judgment of conviction is entered or a grant of
15 deferred adjudication community supervision is made on or after the
16 effective date of this Act, regardless of whether the criminally
17 injurious conduct occurred before, on, or after the effective date
18 of this Act.

19 SECTION 18. To the extent of any conflict, this Act prevails
20 over another Act of the 87th Legislature, Regular Session, 2021,
21 relating to nonsubstantive additions to and corrections in enacted
22 codes.

23 SECTION 19. This Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I certify that H.B. No. 39 was passed by the House on April 9, 2021, by the following vote: Yeas 145, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 39 on May 28, 2021, by the following vote: Yeas 146, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 39 was passed by the Senate, with amendments, on May 19, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____
Date

Governor

1 AN ACT
2 relating to the procedures and grounds for terminating the
3 parent-child relationship, for taking possession of a child, and
4 for certain hearings in a suit affecting the parent-child
5 relationship involving the Department of Family and Protective
6 Services.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 SECTION 1. Section 107.003(b), Family Code, is amended to
9 read as follows:

10 (b) In addition to the duties required by Subsection (a), an
11 attorney ad litem appointed for a child in a proceeding under
12 Chapter 262, ~~[or]~~ 263, or 264 shall:

- 13 (1) review the medical care provided to the child;
14 (2) in a developmentally appropriate manner, seek to
15 elicit the child's opinion on the medical care provided;
16 (3) for a child at least 16 years of age:
17 (A) advise the child of the child's right to
18 request the court to authorize the child to consent to the child's
19 own medical care under Section 266.010; and
20 (B) ascertain whether the child has received the
21 following documents:
22 (i) a certified copy of the child's birth
23 certificate;
24 (ii) a social security card or a

1 replacement social security card;

2 (iii) a driver's license or personal
3 identification certificate under Chapter 521, Transportation Code;
4 and

5 (iv) any other personal document the
6 Department of Family and Protective Services determines
7 appropriate; and

8 (4) seek to elicit in a developmentally appropriate
9 manner the name of any adult, particularly an adult residing in the
10 child's community, who could be a relative or designated caregiver
11 for the child and immediately provide the names of those
12 individuals to the Department of Family and Protective Services.

13 SECTION 2. Sections 107.004(d), (d-2), (d-3), and (e),
14 Family Code, are amended to read as follows:

15 (d) Except as provided by Subsection (e), an attorney ad
16 litem appointed for a child in a proceeding under Chapter 262, ~~[or]~~
17 263, or 264 shall:

18 (1) meet before each court hearing with:

19 (A) the child, if the child is at least four years
20 of age; or

21 (B) the individual with whom the child ordinarily
22 resides, including the child's parent, conservator, guardian,
23 caretaker, or custodian, if the child is younger than four years of
24 age; and

25 (2) if the child or individual is not present at the
26 court hearing, file a written statement with the court indicating
27 that the attorney ad litem complied with Subdivision (1).

1 (d-2) An attorney ad litem appointed to represent a child in
2 the managing conservatorship of the Department of Family and
3 Protective Services or a child who is the subject of a proceeding
4 under Chapter 264 shall, before each scheduled hearing under
5 Chapter 263 or 264, determine whether the child's educational needs
6 and goals have been identified and addressed.

7 (d-3) An attorney ad litem appointed to represent a child in
8 the managing conservatorship of the Department of Family and
9 Protective Services or a child who is the subject of a proceeding
10 under Chapter 264 shall periodically continue to review the child's
11 safety and well-being, including any effects of trauma to the
12 child, and take appropriate action, including requesting a review
13 hearing when necessary to address an issue of concern.

14 (e) An attorney ad litem appointed for a child in a
15 proceeding under Chapter 262, ~~[or]~~ 263, or 264 is not required to
16 comply with Subsection (d) before a hearing if the court finds at
17 that hearing that the attorney ad litem has shown good cause why the
18 attorney ad litem's compliance with that subsection is not feasible
19 or in the best interest of the child. Additionally, a court may, on
20 a showing of good cause, authorize an attorney ad litem to comply
21 with Subsection (d) by conferring with the child or other
22 individual, as appropriate, by telephone or video conference.

23 SECTION 3. Section 161.001(c), Family Code, is amended to
24 read as follows:

25 (c) Evidence of one or more of the following does not
26 constitute clear and convincing evidence sufficient for a court to
27 ~~[A court may not]~~ make a finding under Subsection (b) and order

1 termination of the parent-child relationship [~~based on evidence~~
2 ~~that the parent~~]:

- 3 (1) the parent homeschooled the child;
- 4 (2) the parent is economically disadvantaged;
- 5 (3) the parent has been charged with a nonviolent
6 misdemeanor offense other than:
 - 7 (A) an offense under Title 5, Penal Code;
 - 8 (B) an offense under Title 6, Penal Code; or
 - 9 (C) an offense that involves family violence, as
10 defined by Section 71.004 of this code;
- 11 (4) the parent provided or administered low-THC
12 cannabis to a child for whom the low-THC cannabis was prescribed
13 under Chapter 169, Occupations Code; [~~or~~]
- 14 (5) the parent declined immunization for the child for
15 reasons of conscience, including a religious belief; or
- 16 (6) the parent allowed the child to engage in
17 independent activities that are appropriate and typical for the
18 child's level of maturity, physical condition, developmental
19 abilities, or culture.

20 SECTION 4. Section 161.101, Family Code, is amended to read
21 as follows:

22 Sec. 161.101. PETITION ALLEGATIONS; PETITION AND MOTION
23 REQUIREMENTS. (a) A petition for the termination of the
24 parent-child relationship is sufficient without the necessity of
25 specifying the underlying facts if the petition alleges in the
26 statutory language the ground for the termination and that
27 termination is in the best interest of the child.

1 (b) A petition or motion filed by the Department of Family
2 and Protective Services in a suit for termination of the
3 parent-child relationship is subject to Chapter 10, Civil Practice
4 and Remedies Code, and Rule 13, Texas Rules of Civil Procedure.

5 SECTION 5. Section 261.001(4), Family Code, is amended to
6 read as follows:

7 (4) "Neglect" means an act or failure to act by a
8 person responsible for a child's care, custody, or welfare
9 evidencing the person's blatant disregard for the consequences of
10 the act or failure to act that results in harm to the child or that
11 creates an immediate danger to the child's physical health or
12 safety and:

13 (A) includes:

14 (i) the leaving of a child in a situation
15 where the child would be exposed to an immediate danger [~~a~~
16 ~~substantial risk~~] of physical or mental harm, without arranging for
17 necessary care for the child, and the demonstration of an intent not
18 to return by a parent, guardian, or managing or possessory
19 conservator of the child;

20 (ii) the following acts or omissions by a
21 person:

22 (a) placing a child in or failing to
23 remove a child from a situation that a reasonable person would
24 realize requires judgment or actions beyond the child's level of
25 maturity, physical condition, or mental abilities and that results
26 in bodily injury or an immediate danger [~~a substantial risk~~] of
27 [~~immediate~~] harm to the child;

1 (b) failing to seek, obtain, or follow
2 through with medical care for a child, with the failure resulting in
3 or presenting an immediate danger [~~a substantial risk~~] of death,
4 disfigurement, or bodily injury or with the failure resulting in an
5 observable and material impairment to the growth, development, or
6 functioning of the child;

7 (c) the failure to provide a child
8 with food, clothing, or shelter necessary to sustain the life or
9 health of the child, excluding failure caused primarily by
10 financial inability unless relief services had been offered and
11 refused;

12 (d) placing a child in or failing to
13 remove the child from a situation in which the child would be
14 exposed to an immediate danger [~~a substantial risk~~] of sexual
15 conduct harmful to the child; or

16 (e) placing a child in or failing to
17 remove the child from a situation in which the child would be
18 exposed to acts or omissions that constitute abuse under
19 Subdivision (1)(E), (F), (G), (H), or (K) committed against another
20 child;

21 (iii) the failure by the person responsible
22 for a child's care, custody, or welfare to permit the child to
23 return to the child's home without arranging for the necessary care
24 for the child after the child has been absent from the home for any
25 reason, including having been in residential placement or having
26 run away; or

27 (iv) a negligent act or omission by an

1 employee, volunteer, or other individual working under the auspices
2 of a facility or program, including failure to comply with an
3 individual treatment plan, plan of care, or individualized service
4 plan, that causes or may cause substantial emotional harm or
5 physical injury to, or the death of, a child served by the facility
6 or program as further described by rule or policy; and

7 (B) does not include:

8 (i) the refusal by a person responsible for
9 a child's care, custody, or welfare to permit the child to remain in
10 or return to the child's home resulting in the placement of the
11 child in the conservatorship of the department if:

12 (a) ~~(i)~~ the child has a severe
13 emotional disturbance;

14 (b) ~~(ii)~~ the person's refusal is
15 based solely on the person's inability to obtain mental health
16 services necessary to protect the safety and well-being of the
17 child; and

18 (c) ~~(iii)~~ the person has exhausted
19 all reasonable means available to the person to obtain the mental
20 health services described by Sub-subparagraph (b); or

21 (ii) allowing the child to engage in
22 independent activities that are appropriate and typical for the
23 child's level of maturity, physical condition, developmental
24 abilities, or culture [~~Subparagraph (ii)~~].

25 SECTION 6. Section 262.116(a), Family Code, is amended to
26 read as follows:

27 (a) The Department of Family and Protective Services may not

1 take possession of a child under this subchapter based on evidence
2 that the parent:

- 3 (1) homeschooled the child;
- 4 (2) is economically disadvantaged;
- 5 (3) has been charged with a nonviolent misdemeanor
6 offense other than:

- 7 (A) an offense under Title 5, Penal Code;
- 8 (B) an offense under Title 6, Penal Code; or
- 9 (C) an offense that involves family violence, as
10 defined by Section 71.004 of this code;

11 (4) provided or administered low-THC cannabis to a
12 child for whom the low-THC cannabis was prescribed under Chapter
13 169, Occupations Code; ~~or~~

14 (5) declined immunization for the child for reasons of
15 conscience, including a religious belief;

16 (6) allowed the child to engage in independent
17 activities that are appropriate and typical for the child's level
18 of maturity, physical condition, developmental abilities, or
19 culture; or

20 (7) tested positive for marihuana, unless the
21 department has evidence that the parent's use of marihuana has
22 caused significant impairment to the child's physical or mental
23 health or emotional development.

24 SECTION 7. Section 262.201, Family Code, is amended by
25 amending Subsections (e), (g), (h), and (n) and adding Subsections
26 (g-1) and (q) to read as follows:

27 (e) The court may, for good cause shown, postpone the full

1 adversary hearing for not more than seven days from the date of the
2 attorney's appointment to provide the attorney time to respond to
3 the petition and prepare for the hearing. The court may shorten or
4 lengthen the extension granted under this subsection if the parent
5 and the appointed attorney agree in writing. If the court postpones
6 the full adversary hearing, the court shall extend a temporary
7 order, temporary restraining order, or attachment issued by the
8 court under Section 262.102(a) [~~or Section 262.1131~~] for the
9 protection of the child until the date of the rescheduled full
10 adversary hearing.

11 (g) In a suit filed under Section 262.101 or 262.105, at the
12 conclusion of the full adversary hearing, the court shall order the
13 return of the child to the parent, managing conservator, possessory
14 conservator, guardian, caretaker, or custodian entitled to
15 possession from whom the child is removed unless the court finds
16 sufficient evidence to satisfy a person of ordinary prudence and
17 caution that:

18 (1) there was a danger to the physical health or safety
19 of the child, including a danger that the child would be a victim of
20 trafficking under Section 20A.02 or 20A.03, Penal Code, which was
21 caused by an act or failure to act of the person entitled to
22 possession and for the child to remain in the home is contrary to
23 the welfare of the child;

24 (2) the urgent need for protection required the
25 immediate removal of the child and reasonable efforts, consistent
26 with the circumstances and providing for the safety of the child,
27 were made to eliminate or prevent the child's removal; and

1 (3) reasonable efforts have been made to enable the
2 child to return home, but there is a substantial risk of a
3 continuing danger if the child is returned home.

4 (g-1) In a suit filed under Section 262.101 or 262.105, if
5 the court does not order the return of the child under Subsection
6 (g) and finds that another parent, managing conservator, possessory
7 conservator, guardian, caretaker, or custodian entitled to
8 possession did not cause the immediate danger to the physical
9 health or safety of the child or was not the perpetrator of the
10 neglect or abuse alleged in the suit, the court shall order
11 possession of the child by that person unless the court finds
12 sufficient evidence to satisfy a person of ordinary prudence and
13 caution that, specific to each person entitled to possession:

14 (1) the person cannot be located after the exercise of
15 due diligence by the Department of Family and Protective Services,
16 or the person is unable or unwilling to take possession of the
17 child; or

18 (2) reasonable efforts have been made to enable the
19 person's possession of the child, but possession by that person
20 presents a continuing danger to the physical health or safety of the
21 child caused by an act or failure to act of the person, including a
22 danger that the child would be a victim of trafficking under Section
23 20A.02 or 20A.03, Penal Code.

24 (h) In a suit filed under Section 262.101 or 262.105, if the
25 court finds sufficient evidence to make the applicable finding
26 under Subsection (g) or (g-1) [~~satisfy a person of ordinary~~
27 prudence and caution that there is a continuing danger to the

1 ~~physical health or safety of the child and for the child to remain~~
2 ~~in the home is contrary to the welfare of the child],~~ the court
3 shall issue an appropriate temporary order under Chapter 105.

4 (n) If the [The] court does not order possession of [shall
5 place] a child by a [removed from the child's custodial parent with
6 the child's noncustodial] parent, managing conservator, possessory
7 conservator, guardian, caretaker, or custodian entitled to
8 possession under Subsection (g) or (g-1), the court shall place the
9 child [or] with a relative of the child [if placement with the
10 noncustodial parent is inappropriate,] unless the court finds that
11 the placement with [the noncustodial parent or] a relative is not in
12 the best interest of the child.

13 (g) On receipt of a written request for possession of the
14 child from a parent, managing conservator, possessory conservator,
15 guardian, caretaker, or custodian entitled to possession of the
16 child who was not located before the adversary hearing, the
17 Department of Family and Protective Services shall notify the court
18 and request a hearing to determine whether the parent, managing
19 conservator, possessory conservator, guardian, caretaker, or
20 custodian is entitled to possession of the child under Subsection
21 (g-1).

22 SECTION 8. Section 263.002, Family Code, is amended by
23 amending Subsection (c) and adding Subsection (d) to read as
24 follows:

25 (c) At each permanency hearing before the final order, the
26 court shall review the placement of each child in the temporary
27 managing conservatorship of the department who has not been

1 returned to the child's home. At the end of the hearing, the court
2 shall order the department to return the child to the child's parent
3 or parents unless the court finds, with respect to each parent,
4 that:

5 (1) there is a continuing danger to the physical
6 health or safety of the child; and

7 (2) returning the child to the child's parent or
8 parents [~~The court shall make a finding on whether returning the~~
9 ~~child to the child's home is safe and appropriate, whether the~~
10 ~~return is in the best interest of the child, and whether it]~~ is
11 contrary to the welfare of the child [~~for the child to return home~~].

12 (d) This section does not prohibit the court from rendering
13 an order under Section 263.403.

14 SECTION 9. Section 263.401, Family Code, is amended by
15 adding Subsection (b-3) to read as follows:

16 (b-3) A court shall find under Subsection (b) that
17 extraordinary circumstances necessitate the child remaining in the
18 temporary managing conservatorship of the department if:

19 (1) a parent of a child has made a good faith effort to
20 successfully complete the service plan but needs additional time;
21 and

22 (2) on completion of the service plan the court
23 intends to order the child returned to the parent.

24 SECTION 10. Subchapter E, Chapter 263, Family Code, is
25 amended by adding Section 263.4011 to read as follows:

26 Sec. 263.4011. RENDERING FINAL ORDER; EXTENSION. (a) On
27 timely commencement of the trial on the merits under Section

1 263.401, the court shall render a final order not later than the
2 90th day after the date the trial commences.

3 (b) The 90-day period for rendering a final order under
4 Subsection (a) is not tolled for any recess during the trial.

5 (c) The court may extend the 90-day period under Subsection
6 (a) for the period the court determines necessary if, after a
7 hearing, the court finds good cause for the extension. If the court
8 grants a good cause extension under this subsection, the court
9 shall render a written order specifying:

- 10 (1) the grounds on which the extension is granted; and
11 (2) the length of the extension.

12 (d) A party may file a mandamus proceeding if the court
13 fails to render a final order within the time required by this
14 section.

15 SECTION 11. Section 263.403(a-1), Family Code, is amended
16 to read as follows:

17 (a-1) Unless the court has granted an extension under
18 Section 263.401(b), the department or the parent may request the
19 court to retain jurisdiction for an additional six months as
20 necessary for a parent to complete the remaining requirements under
21 ~~[in] a service plan [and specified]~~ in a transition monitored
22 return under Subsection (a)(2)(B) [the temporary order that are
23 mandatory for the child's return].

24 SECTION 12. Section 264.203, Family Code, is amended to
25 read as follows:

26 Sec. 264.203. REQUIRED PARTICIPATION. (a) The department
27 may file a suit requesting [Except as provided by Subsection (d),]

1 the court to render a temporary ~~[on request of the department may]~~
2 order requiring the parent, managing conservator, guardian, or
3 other member of the ~~[subject]~~ child's household to:

4 (1) participate in the services for which the
5 department makes a referral or services the department provides or
6 purchases for:

7 (A) alleviating the effects of the abuse or
8 neglect that has occurred; ~~[or]~~

9 (B) reducing a continuing danger to the physical
10 health or safety of the child caused by an act or failure to act of
11 the parent, managing conservator, guardian, or other member of the
12 child's household ~~[the reasonable likelihood that the child may be~~
13 ~~abused or neglected in the immediate or foreseeable future]; or~~

14 (C) reducing a substantial risk of abuse or
15 neglect caused by an act or failure to act of the parent, managing
16 conservator, guardian, or member of the child's household; and

17 (2) permit the child and any siblings of the child to
18 receive the services.

19 (b) A suit requesting an order under this section may be
20 filed in a court with jurisdiction to hear the suit in the county in
21 which the child is located ~~[The department may request the court to~~
22 ~~order the parent, managing conservator, guardian, or other member~~
23 ~~of the child's household to participate in the services whether the~~
24 ~~child resides in the home or has been removed from the home].~~

25 (c) Except as otherwise provided by this subchapter, the
26 suit is governed by the Texas Rules of Civil Procedure applicable to
27 the filing of an original lawsuit ~~[If the person ordered to~~

1 ~~participate in the services fails to follow the court's order, the~~
2 ~~court may impose appropriate sanctions in order to protect the~~
3 ~~health and safety of the child, including the removal of the child~~
4 ~~as specified by Chapter 262].~~

5 (d) The petition shall be supported by a sworn affidavit by
6 a person based on personal knowledge and stating facts sufficient
7 to support a finding that:

8 (1) the child has been a victim of abuse or neglect or
9 is at substantial risk of abuse or neglect; and

10 (2) there is a continuing danger to the physical
11 health or safety of the child caused by an act or failure to act of
12 the parent, managing conservator, guardian, or other member of the
13 child's household unless that person participates in services
14 requested by the department [If the court does not order the person
15 to participate, the court in writing shall specify the reasons for
16 not ordering participation].

17 (e) In a suit filed under this section, the court may render
18 a temporary restraining order as provided by Section 105.001.

19 (f) The court shall hold a hearing on the petition not later
20 than the 14th day after the date the petition is filed unless the
21 court finds good cause for extending that date for not more than 14
22 days.

23 (g) The court shall appoint an attorney ad litem to
24 represent the interests of the child immediately after the filing
25 but before the hearing to ensure adequate representation of the
26 child. The attorney ad litem for the child shall have the powers
27 and duties of an attorney ad litem for a child under Chapter 107.

1 (h) The court shall appoint an attorney ad litem to
2 represent the interests of a parent for whom participation in
3 services is being requested immediately after the filing but before
4 the hearing to ensure adequate representation of the parent. The
5 attorney ad litem for the parent shall have the powers and duties of
6 an attorney ad litem for a parent under Section 107.0131.

7 (i) Before commencement of the hearing, the court shall
8 inform each parent of:

9 (1) the parent's right to be represented by an
10 attorney; and

11 (2) for a parent who is indigent and appears in
12 opposition to the motion, the parent's right to a court-appointed
13 attorney.

14 (j) If a parent claims indigence, the court shall require
15 the parent to complete and file with the court an affidavit of
16 indigence. The court may consider additional evidence to determine
17 whether the parent is indigent, including evidence relating to the
18 parent's income, source of income, assets, property ownership,
19 benefits paid in accordance with a federal, state, or local public
20 assistance program, outstanding obligations, and necessary
21 expenses and the number and ages of the parent's dependents. If the
22 court determines the parent is indigent, the attorney ad litem
23 appointed to represent the interests of the parent may continue the
24 representation. If the court determines the parent is not
25 indigent, the court shall discharge the attorney ad litem from the
26 appointment after the hearing and shall order the parent to pay the
27 cost of the attorney ad litem's representation.

1 (k) The court may, for good cause shown, postpone any
2 subsequent proceedings for not more than seven days after the date
3 of the attorney ad litem's discharge to allow the parent to hire an
4 attorney or to provide the parent's attorney time to prepare for the
5 subsequent proceeding.

6 (l) An order may be rendered under this section only after
7 notice and hearing.

8 (m) At the conclusion of the hearing, the court shall deny
9 the petition unless the court finds sufficient evidence to satisfy
10 a person of ordinary prudence and caution that:

11 (1) abuse or neglect has occurred or there is a
12 substantial risk of abuse or neglect or continuing danger to the
13 physical health or safety of the child caused by an act or failure
14 to act of the parent, managing conservator, guardian, or other
15 member of the child's household; and

16 (2) services are necessary to ensure the physical
17 health or safety of the child.

18 (n) If the court renders an order granting the petition, the
19 court shall:

20 (1) state its findings in the order;

21 (2) make appropriate temporary orders under Chapter
22 105 necessary to ensure the safety of the child; and

23 (3) order the participation in specific services
24 narrowly tailored to address the findings made by the court under
25 Subsection (m).

26 (o) If the court finds that a parent, managing conservator,
27 guardian, or other member of the child's household did not cause the

1 continuing danger to the physical health or safety of the child or
2 the substantial risk of abuse or neglect, or was not the perpetrator
3 of the abuse or neglect alleged, the court may not require that
4 person to participate in services ordered under Subsection (n).

5 (p) Not later than the 90th day after the date the court
6 renders an order under this section, the court shall hold a hearing
7 to review the status of each person required to participate in the
8 services and the child and the services provided, purchased, or
9 referred. The court shall set subsequent review hearings every 90
10 days to review the continued need for the order.

11 (q) An order rendered under this section expires on the
12 180th day after the date the order is signed unless the court
13 extends the order as provided by Subsection (r) or (s).

14 (r) The court may extend an order rendered under this
15 section on a showing by the department of a continuing need for the
16 order, after notice and hearing. Except as provided by Subsection
17 (s), the court may extend the order only one time for not more than
18 180 days.

19 (s) The court may extend an order rendered under this
20 section for not more than an additional 180 days only if:

21 (1) the court finds that:

22 (A) the extension is necessary to allow the
23 person required to participate in services under the plan of
24 service time to complete those services;

25 (B) the department made a good faith effort to
26 timely provide the services to the person;

27 (C) the person made a good faith effort to

1 complete the services; and

2 (D) the completion of the services is necessary
3 to ensure the physical health and safety of the child; and

4 (2) the extension is requested by the person or the
5 person's attorney.

6 (t) At any time, a person affected by the order may request
7 the court to terminate the order. The court shall terminate the
8 order on finding the order is no longer needed.

9 SECTION 13. The following provisions of the Family Code are
10 repealed:

11 (1) Section 262.113;

12 (2) Section 262.1131; and

13 (3) Sections 262.201(b) and (j).

14 SECTION 14. Section 161.101, Family Code, as amended by
15 this Act, applies only to a petition or motion filed by the
16 Department of Family and Protective Services on or after the
17 effective date of this Act. A petition or motion filed by the
18 department before that date is governed by the law in effect on the
19 date the petition or motion was filed, and the former law is
20 continued in effect for that purpose.

21 SECTION 15. The changes in law made by this Act apply only
22 to a suit filed by the Department of Family and Protective Services
23 on or after the effective date of this Act. A suit filed by the
24 department before that date is governed by the law in effect on the
25 date the suit was filed, and the former law is continued in effect
26 for that purpose.

27 SECTION 16. This Act takes effect September 1, 2021.

H.B. No. 567

President of the Senate

Speaker of the House

I certify that H.B. No. 567 was passed by the House on April 1, 2021, by the following vote: Yeas 143, Nays 5, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 567 was passed by the Senate on April 28, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____
Date

Governor

1 AN ACT
2 relating to certain extraordinary costs incurred by certain gas
3 utilities relating to Winter Storm Uri and a study of measures to
4 mitigate similar future costs; providing authority to issue bonds
5 and impose fees and assessments.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 1232.002, Government Code, is amended to
8 read as follows:

9 Sec. 1232.002. PURPOSE. The purpose of this chapter is to
10 provide a method of financing for:

11 (1) the acquisition or construction of buildings;

12 [~~and~~]

13 (2) the purchase or lease of equipment by executive or
14 judicial branch state agencies; and

15 (3) customer rate relief bonds authorized by the
16 Railroad Commission of Texas in accordance with Subchapter I,
17 Chapter 104, Utilities Code.

18 SECTION 2. Section 1232.066(a), Government Code, is amended
19 to read as follows:

20 (a) The board's authority under this chapter is limited to
21 the financing of:

22 (1) the acquisition or construction of a building;

23 (2) the purchase or lease of equipment; [~~or~~]

24 (3) stranded costs of a municipal power agency; or

1 (4) customer rate relief bonds approved by the
2 Railroad Commission of Texas in accordance with Subchapter I,
3 Chapter 104, Utilities Code.

4 SECTION 3. Subchapter C, Chapter 1232, Government Code, is
5 amended by adding Section 1232.1072 to read as follows:

6 Sec. 1232.1072. ISSUANCE OF OBLIGATIONS FOR FINANCING
7 CUSTOMER RATE RELIEF PROPERTY. (a) The definitions in Section
8 104.362, Utilities Code, apply to terms used in this section.

9 (b) The authority may create an issuing financing entity for
10 the purpose of issuing customer rate relief bonds approved by the
11 Railroad Commission of Texas in a financing order, as provided by
12 Subchapter I, Chapter 104, Utilities Code.

13 (c) An issuing financing entity created under this section
14 is a duly constituted public authority and instrumentality of the
15 state and is authorized to issue customer rate relief bonds on
16 behalf of the state for the purposes of Section 103, Internal
17 Revenue Code of 1986 (26 U.S.C. Section 103).

18 (d) The issuing financing entity must be governed by a
19 governing board of three members appointed by the authority. A
20 member of the governing board may be a current or former director of
21 the authority. A member of the governing board serves without
22 compensation but is entitled to reimbursement for travel expenses
23 incurred in attending board meetings.

24 (e) The issuing financing entity must be formed in
25 accordance with, be governed by, and have the powers, rights, and
26 privileges provided for a nonprofit corporation organized under the
27 Business Organizations Code, including Chapter 22 of that code,

1 subject to the express exceptions and limitations provided by this
2 section and Subchapter I, Chapter 104, Utilities Code. A single
3 organizer selected by the executive director of the authority shall
4 prepare the certificate of formation of the issuing financing
5 entity under Chapters 3 and 22, Business Organizations Code. The
6 certificate of formation must be consistent with the provisions of
7 this section.

8 (f) The authority shall establish the issuing financing
9 entity to act on behalf of the state as its duly constituted
10 authority and instrumentality to issue customer rate relief bonds
11 approved under Subchapter I, Chapter 104, Utilities Code.

12 (g) On a request to the authority from the Railroad
13 Commission of Texas, the authority shall direct an issuing
14 financing entity to issue customer rate relief bonds in accordance
15 with a financing order issued by the railroad commission as
16 provided in Subchapter I, Chapter 104, Utilities Code.

17 (h) Before the issuance of any customer rate relief bonds,
18 the authority and the Railroad Commission of Texas shall ensure
19 that adequate provision is made in any financing order for the
20 recovery of all issuance costs and all other fees, costs, and
21 expenses of the authority, the issuing financing entity, and any
22 advisors or counsel hired by the authority or the entity for the
23 purposes of this section during the life of the customer rate relief
24 bonds.

25 (i) Customer rate relief bonds are limited obligations of
26 the issuing financing entity payable solely from customer rate
27 relief property and any other money pledged by the issuing

1 financing entity to the payment of the bonds and are not a debt of
2 this state, the Railroad Commission of Texas, the authority, or a
3 gas utility.

4 (j) The Railroad Commission of Texas shall ensure that
5 customer rate relief charges are imposed, collected, and enforced
6 in an amount sufficient to pay on a timely basis all bond
7 obligations, financing costs, and bond administrative expenses
8 associated with any issuance of customer rate relief bonds.

9 (k) The authority and the Railroad Commission of Texas have
10 all the powers necessary to perform the duties and responsibilities
11 described by this section. This section shall be interpreted
12 broadly in a manner consistent with the most cost-effective
13 financing of customer rate relief property, including regulatory
14 assets, extraordinary costs, and related financing costs approved
15 by the Railroad Commission of Texas in accordance with Subchapter
16 I, Chapter 104, Utilities Code.

17 (l) Any interest on the customer rate relief bonds is not
18 subject to taxation by and may not be included as part of the
19 measurement of a tax by this state or a political subdivision of
20 this state.

21 (m) The authority shall make periodic reports to the
22 Railroad Commission of Texas and the public regarding each
23 financing made in accordance with Section 104.373(b), Utilities
24 Code, and if required by the applicable financing order.

25 (n) The issuing financing entity shall issue customer rate
26 relief bonds in accordance with and subject to other provisions of
27 Title 9 applicable to the authority.

1 (o) The issuing financing entity may exercise the powers
2 granted to the governing body of an issuer with regard to the
3 issuance of obligations and the execution of credit agreements
4 under Chapter 1371. A purpose for which bonds, obligations, or
5 other evidences of indebtedness are issued under this section and
6 Subchapter I, Chapter 104, Utilities Code, constitutes an eligible
7 project for purposes of Chapter 1371 of this code.

8 (p) Assets of an issuing financing entity may not be
9 considered part of any state fund and must be held outside the state
10 treasury. The liabilities of the issuing financing entity may not
11 be considered to be a debt of the state or a pledge of the state's
12 credit. An issuing financing entity must be self-funded from
13 customer rate relief property and established in accordance with
14 Subchapter I, Chapter 104, Utilities Code. A state agency may
15 provide money appropriated for the purpose to the issuing financing
16 entity to provide for initial operational expenses of the issuing
17 financing entity.

18 SECTION 4. Section 1232.108, Government Code, is amended to
19 read as follows:

20 Sec. 1232.108. LEGISLATIVE AUTHORIZATION REQUIRED. Except
21 as permitted by Section 1232.1072, 1232.109, 2166.452, or 2166.453,
22 before the board may issue and sell bonds, the legislature by the
23 General Appropriations Act or other law must have authorized:

24 (1) the specific project for which the bonds are to be
25 issued and sold; and

26 (2) the estimated cost of the project or the maximum
27 amount of bonded indebtedness that may be incurred by the issuance

1 and sale of bonds for the project.

2 SECTION 5. Chapter 104, Utilities Code, is amended by
3 adding Subchapter I to read as follows:

4 SUBCHAPTER I. CUSTOMER RATE RELIEF BONDS

5 Sec. 104.361. PURPOSE; RAILROAD COMMISSION DUTY. (a) The
6 purpose of this subchapter is to reduce the cost that customers
7 would otherwise experience because of extraordinary costs that gas
8 utilities incurred to secure gas supply and provide service during
9 Winter Storm Uri, and to restore gas utility systems after that
10 event, by providing securitization financing for gas utilities to
11 recover those costs. The securitization financing mechanism
12 authorized by this subchapter will:

13 (1) provide rate relief to customers by extending the
14 period during which the costs described by this subsection are
15 recovered from customers; and

16 (2) support the financial strength and stability of
17 gas utility companies.

18 (b) The railroad commission shall ensure that
19 securitization provides tangible and quantifiable benefits to
20 customers, greater than would have been achieved absent the
21 issuance of customer rate relief bonds.

22 Sec. 104.362. DEFINITIONS. In this subchapter:

23 (1) "Ancillary agreement" means a financial
24 arrangement entered into in connection with the issuance or payment
25 of customer rate relief bonds that enhances the marketability,
26 security, or creditworthiness of customer rate relief bonds,
27 including a bond, insurance policy, letter of credit, reserve

1 account, surety bond, interest rate or currency swap arrangement,
2 interest rate lock agreement, forward payment conversion
3 agreement, credit agreement, other hedging arrangement, or
4 liquidity or credit support arrangement.

5 (2) "Authority" means the Texas Public Finance
6 Authority.

7 (3) "Bond administrative expenses" means all costs and
8 expenses incurred by the railroad commission, the authority, or any
9 issuing financing entity to evaluate, issue, and administer
10 customer rate relief bonds issued under this subchapter, including
11 fees and expenses of the authority, any bond administrator, and the
12 issuing financing entity, fees for paying agents, trustees, and
13 attorneys, and fees for paying for other consulting and
14 professional services necessary to ensure compliance with this
15 subchapter, applicable state or federal law, and the terms of the
16 financing order.

17 (4) "Bond obligations" means the principal of a
18 customer rate relief bond and any premium and interest on a customer
19 rate relief bond issued under this subchapter, together with any
20 amount owed under a related ancillary agreement or credit
21 agreement.

22 (5) "Credit agreement" has the meaning assigned by
23 Section [1371.001](#), Government Code.

24 (6) "Customer rate relief bonds" means bonds, notes,
25 certificates, or other evidence of indebtedness or ownership the
26 proceeds of which are used directly or indirectly to recover,
27 finance, or refinance regulatory assets approved by the railroad

1 commission, including extraordinary costs and related financing
2 costs, and that are:

3 (A) issued by an issuing financing entity under a
4 financing order; and

5 (B) payable from and secured by customer rate
6 relief property and amounts on deposit in any trust accounts
7 established for the benefit of the customer rate relief bondholders
8 as approved by the applicable financing order.

9 (7) "Customer rate relief charges" means the amounts
10 authorized by the railroad commission as nonbypassable charges to
11 repay, finance, or refinance regulatory assets, including
12 extraordinary costs, financing costs, bond administrative
13 expenses, and other costs authorized by the financing order:

14 (A) imposed on and included in customer bills of
15 a gas utility that has received a regulatory asset determination
16 under Section 104.365;

17 (B) collected in full by a gas utility that has
18 received a regulatory asset determination under Section 104.365, or
19 its successors or assignees, or a collection agent, as servicer,
20 separate and apart from the gas utility's base rates; and

21 (C) paid by all existing or future customers
22 receiving service from a gas utility that has received a regulatory
23 asset determination under Section 104.365 or its successors or
24 assignees, even if a customer elects to purchase gas from an
25 alternative gas supplier.

26 (8) "Customer rate relief property" means:

27 (A) all rights and interests of an issuing

1 financing entity or any successor under a financing order,
2 including the right to impose, bill, collect, and receive customer
3 rate relief charges authorized in the financing order and to obtain
4 periodic adjustments to those customer rate relief charges as
5 provided in the financing order and in accordance with Section
6 104.370; and

7 (B) all revenues, collections, claims, rights to
8 payments, payments, money, or proceeds arising from the rights and
9 interests specified by Paragraph (A), regardless of whether the
10 revenues, collections, claims, rights to payments, payments,
11 money, or proceeds are imposed, billed, received, collected, or
12 maintained together with or commingled with other revenues,
13 collections, rights to payments, payments, money, or proceeds.

14 (9) "Financing costs" means any of the following:

15 (A) interest and acquisition, defeasance, or
16 redemption premiums that are payable on customer rate relief bonds;

17 (B) a payment required under an ancillary
18 agreement or credit agreement or an amount required to fund or
19 replenish reserve or other accounts established under the terms of
20 an indenture, ancillary agreement, or other financing document
21 pertaining to customer rate relief bonds;

22 (C) issuance costs or ongoing costs related to
23 supporting, repaying, servicing, or refunding customer rate relief
24 bonds, including servicing fees, accounting or auditing fees,
25 trustee fees, legal fees or expenses, consulting fees,
26 administrative fees, printing fees, financial advisor fees or
27 expenses, Securities and Exchange Commission registration fees,

1 issuer fees, bond administrative expenses, placement and
2 underwriting fees, capitalized interest, overcollateralization
3 funding requirements including amounts to fund or replenish any
4 reserve established for a series of customer rate relief bonds,
5 rating agency fees, stock exchange listing and compliance fees,
6 filing fees, and any other bond administrative expenses; and

7 (D) the costs to the railroad commission of
8 acquiring professional or consulting services for the purpose of
9 evaluating extraordinary costs under this subchapter.

10 (10) "Financing order" means an order adopted under
11 Section 104.366 approving the issuance of customer rate relief
12 bonds and the creation of customer rate relief property and
13 associated customer rate relief charges for the recovery of
14 regulatory assets, including extraordinary costs, related
15 financing costs, and other costs authorized by the financing order.

16 (11) "Financing party" means a holder of customer rate
17 relief bonds, including a trustee, a pledgee, a collateral agent,
18 any party under an ancillary agreement, or other person acting for
19 the holder's benefit.

20 (12) "Gas utility" means:

21 (A) an operator of natural gas distribution
22 pipelines that delivers and sells natural gas to the public and that
23 is subject to the railroad commission's jurisdiction under Section
24 102.001; or

25 (B) an operator that transmits, transports,
26 delivers, or sells natural gas or synthetic natural gas to
27 operators of natural gas distribution pipelines and whose rates for

1 those services are established by the railroad commission in a rate
2 proceeding filed under this chapter.

3 (13) "Issuing financing entity" means a special
4 purpose nonmember, nonstock, nonprofit public corporation
5 established by the authority under Section 1232.1072, Government
6 Code.

7 (14) "Nonbypassable" means a charge that:

8 (A) must be paid by all existing or future
9 customers receiving service from a gas utility that has received a
10 regulatory asset determination under Section 104.365 or the gas
11 utility's successors or assignees, even if a customer elects to
12 purchase gas from an alternative gas supplier; and

13 (B) may not be offset by any credit.

14 (15) "Normalized market pricing" means the average
15 monthly pricing at the Henry Hub for the three months immediately
16 preceding the month during which extraordinary costs were incurred,
17 plus contractual adders to the index price and other non-indexed
18 gas procurement costs.

19 (16) "Regulatory asset" includes extraordinary costs:

20 (A) recorded by a gas utility in the utility's
21 books and records in accordance with the uniform system of accounts
22 prescribed for natural gas companies subject to the provisions of
23 the Natural Gas Act (15 U.S.C. Section 717 et seq.) by the Federal
24 Energy Regulatory Commission and generally accepted accounting
25 principles; or

26 (B) classified as a receivable or financial asset
27 under international financial reporting standards under the

1 railroad commission's authorization in the Notice of Authorization
2 for Regulatory Asset Accounting for Local Distribution Companies
3 Affected by the February 2021 Winter Weather Event issued February
4 13, 2021.

5 (17) "Servicer" means, with respect to each issuance
6 of customer rate relief bonds, the entity identified by the
7 railroad commission in the financing order as servicer responsible
8 for collecting customer rate relief charges from participating gas
9 utilities, remitting all collected funds to the applicable issuing
10 financing entity or the bond trustee, calculating true-up
11 adjustments, and performing any other duties as specified in the
12 financing order.

13 (18) "Winter Storm Uri" means the North American
14 winter storm that occurred in February 2021.

15 Sec. 104.363. EXTRAORDINARY COSTS. For the purposes of
16 this subchapter, extraordinary costs are the reasonable and
17 necessary costs related to Winter Storm Uri, including carrying
18 costs, placed in a regulatory asset and approved by the railroad
19 commission in a regulatory asset determination under Section
20 104.365.

21 Sec. 104.364. JURISDICTION AND POWERS OF RAILROAD
22 COMMISSION AND OTHER REGULATORY AUTHORITIES. (a) The railroad
23 commission may authorize the issuance of customer rate relief bonds
24 if the requirements of Section 104.366 are met.

25 (b) The railroad commission may assess to a gas utility
26 costs associated with administering this subchapter. Assessments
27 must be recovered from rate-regulated customers as part of gas

1 cost.

2 (c) The railroad commission has exclusive, original
3 jurisdiction to issue financing orders that authorize the creation
4 of customer rate relief property. Customer rate relief property
5 must be created and vested in an issuing financing entity and does
6 not constitute property of the railroad commission or any gas
7 utility.

8 (d) Except as provided by Subsection (c), this subchapter
9 does not limit or impair a regulatory authority's plenary
10 jurisdiction over the rates, charges, and services rendered by gas
11 utilities in this state under Chapter 102.

12 Sec. 104.365. REGULATORY ASSET DETERMINATION. (a) The
13 railroad commission, on application of a gas utility to recover a
14 regulatory asset, shall determine the regulatory asset amount to be
15 recovered by the gas utility. A gas utility may request recovery of
16 a regulatory asset under this subchapter only if the regulatory
17 asset is related to Winter Storm Uri.

18 (b) A gas utility desiring to participate in the customer
19 rate relief bond process under a financing order by requesting
20 recovery of a regulatory asset must file an application with the
21 railroad commission on or before the 60th day after the effective
22 date of the Act enacting this subchapter.

23 (c) If the railroad commission does not make a final
24 determination regarding the regulatory asset amount to be recovered
25 by a gas utility before the 151st day after the gas utility files
26 the application, the railroad commission is considered to have
27 approved the regulatory asset amount requested by the gas utility.

1 (d) The regulatory asset determination is not subject to
2 reduction, impairment, or adjustment by further action of the
3 railroad commission, except as authorized by Section 104.370.

4 (e) The regulatory asset determination is not subject to
5 rehearing by the railroad commission and may be appealed only to a
6 Travis County district court by a party to the proceeding. The
7 appeal must be filed not later than the 15th day after the date the
8 order is signed by the railroad commission.

9 (f) The judgment of the district court may be reviewed only
10 by direct appeal to the Supreme Court of Texas. The appeal must be
11 filed not later than the 15th day after the date of entry of
12 judgment.

13 (g) All appeals shall be heard and determined by the
14 district court and the Supreme Court of Texas as expeditiously as
15 possible with lawful precedence over other matters. Review on
16 appeal shall be based solely on the record before the railroad
17 commission and briefs to the court and limited to whether the
18 financing order:

19 (1) complies with the constitution and laws of this
20 state and the United States; and

21 (2) is within the authority of the railroad commission
22 to issue under this subchapter.

23 (h) The railroad commission shall establish a schedule,
24 filing requirements, and a procedure for determining the prudence
25 of the costs included in a gas utility's regulatory asset.

26 (i) To the extent a gas utility subject to this subchapter
27 receives insurance proceeds, governmental grants, or other sources

1 of funding that compensate or otherwise reimburse or indemnify the
2 gas utility for extraordinary costs following the issuance of
3 customer rate relief bonds, the gas utility may record the amount in
4 a regulatory liability account and that amount shall be reviewed in
5 a future proceeding. If an audit conducted under a valid gas
6 purchase agreement identifies a change of greater than five percent
7 to the total amount of the gas supply costs incurred during the
8 event for which regulatory asset recovery was approved, the gas
9 utility may record the amount in a regulatory asset or regulatory
10 liability account and that amount shall be reviewed for recovery in
11 a future proceeding.

12 Sec. 104.366. FINANCING ORDERS AND ISSUANCE OF CUSTOMER
13 RATE RELIEF BONDS. (a) If the railroad commission determines that
14 customer rate relief bond financing for extraordinary costs is the
15 most cost-effective method of funding regulatory asset
16 reimbursements to be made to gas utilities, the railroad
17 commission, after the final resolution of all applications filed
18 under Section 104.365, may request the authority to direct an
19 issuing financing entity to issue customer rate relief bonds.
20 Before making the request, the railroad commission must issue a
21 financing order that complies with this section.

22 (b) To make the determination described by Subsection (a),
23 the railroad commission must find that the proposed structuring,
24 expected pricing, and proposed financing costs of the customer rate
25 relief bonds are reasonably expected to provide benefits to
26 customers by:

27 (1) considering customer affordability; and

1 (2) comparing:
2 (A) the estimated monthly costs to customers
3 resulting from the issuance of customer rate relief bonds; and
4 (B) the estimated monthly costs to customers that
5 would result from the application of conventional recovery methods.
6 (c) The financing order must:
7 (1) include a finding that the use of the
8 securitization financing mechanism is in the public interest and
9 consistent with the purposes of this subchapter;
10 (2) detail the total amount of the regulatory asset
11 determinations to be included in the customer rate relief bond
12 issuance;
13 (3) authorize the recovery of any tax obligation of
14 the gas utilities arising or resulting from:
15 (A) receipt of customer rate relief bond
16 proceeds; or
17 (B) collection or remittance of customer rate
18 relief charges through the gas utilities' gas cost recovery
19 mechanism or other means that the railroad commission determines
20 reasonable;
21 (4) authorize the issuance of customer rate relief
22 bonds through an issuing financing entity;
23 (5) include a statement of:
24 (A) the aggregated regulatory asset
25 determination to be included in the principal amount of the
26 customer rate relief bonds, not to exceed \$10 billion for any
27 separate bond issue;

1 (B) the maximum scheduled final maturity of the
2 customer rate relief bonds, not to exceed 30 years, except that the
3 legal final maturity may be longer based on rating agency and market
4 considerations; and

5 (C) the maximum interest rate that the customer
6 rate relief bonds may bear, not to exceed the maximum net effective
7 interest rate allowed by law;

8 (6) provide for the imposition, collection, and
9 mandatory periodic formulaic adjustment of customer rate relief
10 charges in accordance with Section 104.370 by all gas utilities and
11 successors of gas utilities for which a regulatory asset
12 determination has been made under Section 104.365 to ensure that
13 the customer rate relief bonds and all related financing costs will
14 be paid in full and on a timely basis by customer rate relief
15 charges;

16 (7) authorize the creation of customer rate relief
17 property in favor of the issuing financing entity and pledge of
18 customer rate relief property to the payment of the customer rate
19 relief bonds;

20 (8) direct the issuing financing entity to disperse
21 the proceeds of customer rate relief bonds, net of bond issuance
22 costs, reserves, and any capitalized interest, to gas utilities for
23 which a regulatory asset determination has been made under Section
24 104.365 and include the amounts to be distributed to each
25 participating gas utility;

26 (9) provide that customer rate relief charges be
27 collected and allocated among customers of each gas utility for

1 which a regulatory determination has been made under Section
2 104.365 through uniform monthly volumetric charges to be paid by
3 customers as a component of the gas utility's gas cost or in another
4 manner that the railroad commission determines reasonable; and

5 (10) reflect the commitment made by a gas utility
6 receiving proceeds that the proceeds are in lieu of recovery of
7 those costs through the regular ratemaking process or other
8 mechanism to the extent the costs are reimbursed to the gas utility
9 by customer rate relief bond financing proceeds.

10 (d) The financing order may provide for a centralized
11 servicer to coordinate with participating gas utilities who bill
12 and collect customer rate relief charges and to provide certain
13 collection and forecast data required for calculating true-up
14 adjustments. The financing order may not provide for the railroad
15 commission, the authority, the issuing financing entity, or a
16 participating utility to act as servicer.

17 (e) The principal amount determined by the railroad
18 commission must be increased to include an amount sufficient to:

19 (1) pay the financing costs associated with the
20 issuance, including all bond administrative expenses to be paid
21 from the proceeds of the bonds;

22 (2) reimburse the authority and the railroad
23 commission for any costs incurred for the issuance of the customer
24 rate relief bonds and related bond administrative expenses;

25 (3) provide for any applicable bond reserve fund; and

26 (4) capitalize interest for the period determined
27 necessary by the railroad commission.

1 (f) The authority, consistent with this subchapter and the
2 terms of the financing order, shall:

3 (1) direct an issuing financing entity to issue
4 customer rate relief bonds at the railroad commission's request, in
5 accordance with the requirements of Chapter 1232, Government Code,
6 and other provisions of Title 9, Government Code, that apply to bond
7 issuance by a state agency;

8 (2) determine the methods of sale, types of bonds,
9 bond forms, interest rates, principal amortization, amount of
10 reserves or capitalized interest, and other terms of the customer
11 rate relief bonds that in the authority's judgment best achieve the
12 economic goals of the financing order and effect the financing at
13 the lowest practicable cost; and

14 (3) reimburse the railroad commission, the authority,
15 or any issuing financing entity for bond administrative expenses
16 and other costs authorized under this subchapter.

17 (g) To the extent authorized in the applicable financing
18 order, an issuing financing entity may enter into credit agreements
19 or ancillary agreements in connection with the issuance of customer
20 rate relief bonds.

21 (h) The financing order becomes effective in accordance
22 with its terms. The financing order, together with the customer
23 rate relief property and the customer rate relief charges
24 authorized by the financing order, is irrevocable and not subject
25 to reduction, impairment, or adjustment by further action of the
26 railroad commission, except as provided under Subsection (j) and
27 authorized by Section 104.370.

1 (i) The railroad commission shall issue a financing order
2 under this section not later than the 90th day following the date of
3 the conclusion of all proceedings filed under Section 104.365.

4 (j) A financing order is not subject to rehearing by the
5 railroad commission. A financing order may be appealed only to a
6 Travis County district court by a party to the proceeding. The
7 appeal must be filed not later than the 15th day after the date the
8 financing order is signed by the railroad commission.

9 (k) The judgment of the district court may be reviewed only
10 by direct appeal to the Supreme Court of Texas. The appeal must be
11 filed not later than the 15th day after the date of entry of
12 judgment.

13 (1) All appeals shall be heard and determined by the
14 district court and the Supreme Court of Texas as expeditiously as
15 possible with lawful precedence over other matters. Review on
16 appeal shall be based solely on the record before the railroad
17 commission and briefs to the court and is limited to whether the
18 financing order:

19 (1) complies with the constitution and laws of this
20 state and the United States; and

21 (2) is within the authority of the railroad commission
22 to issue under this subchapter.

23 (m) The railroad commission shall transmit a financing
24 order to the authority after all appeals under this section have
25 been exhausted.

26 (n) The authority shall direct an issuing financing entity
27 to issue customer rate relief bonds as soon as practicable and not

1 later than the 180th day after receipt of a financing order issued
2 under this section, except that the authority may cause the
3 issuance after the 180th day if necessary based on bond market
4 conditions, the receipt of necessary approvals, and the timely
5 receipt of necessary financial disclosure information from each
6 participating gas utility.

7 (o) The issuing financing entity shall deliver customer
8 rate relief bond proceeds net of upfront financing costs in
9 accordance with the applicable financing order.

10 (p) For the benefit of the authority, the issuing financing
11 entity, holders of customer rate relief bonds, and all other
12 financing parties, the railroad commission shall guarantee in a
13 financing order that the railroad commission will take all actions
14 in the railroad commission's powers to enforce the provisions of
15 the financing order to ensure that customer rate relief charge
16 revenues are sufficient to pay on a timely basis scheduled
17 principal and interest on the customer rate relief bonds and all
18 related financing costs and bond administrative expenses.

19 (q) The railroad commission shall make periodic reports to
20 the public regarding each financing.

21 Sec. 104.367. PROPERTY RIGHTS. (a) Customer rate relief
22 bonds are the limited obligation solely of the issuing financing
23 entity and are not a debt of a gas utility or a debt or a pledge of
24 the faith and credit of this state or any political subdivision of
25 this state.

26 (b) Customer rate relief bonds are nonrecourse to the credit
27 or any assets of this state or the authority. A trust fund created

1 in connection with the issuance of customer rate relief bonds is not
2 subject to Subtitle B, Title 9, Property Code.

3 (c) The rights and interests of an issuing financing entity
4 or the successor under a financing order, including the right to
5 receive customer rate relief charges authorized in the financing
6 order, are only contract rights until pledged in connection with
7 the issuance of the customer rate relief bonds, at which time the
8 rights and interests become customer rate relief property.

9 (d) Customer rate relief property created under a financing
10 order is vested ab initio in the issuing financing entity. Customer
11 rate relief property constitutes a present property right for
12 purposes of contracts concerning the sale or pledge of property,
13 notwithstanding that the imposition and collection of customer rate
14 relief charges depends on further acts of the gas utility or others
15 that have not yet occurred. The financing order remains in effect,
16 and the customer rate relief property continues to exist, for the
17 same period as the pledge of the state described by Section 104.374.

18 (e) All revenue and collections resulting from customer
19 rate relief charges constitute proceeds only of a property right
20 arising from the financing order.

21 (f) An amount owed by an issuing financing entity under an
22 ancillary agreement or a credit agreement is payable from and
23 secured by a pledge and interest in the customer rate relief
24 property to the extent provided in the documents evidencing the
25 ancillary agreement or credit agreement.

26 Sec. 104.368. PROPERTY INTEREST NOT SUBJECT TO SETOFF,
27 COUNTERCLAIM, SURCHARGE, OR DEFENSE. The interest of an issuing

1 financing entity or pledgee in customer rate relief property,
2 including the revenue and collections arising from customer rate
3 relief charges, is not subject to setoff, counterclaim, surcharge,
4 or defense by the gas utility or any other person or in connection
5 with the bankruptcy of the gas utility, the authority, or any other
6 entity. A financing order remains in effect and unabated
7 notwithstanding the bankruptcy of the gas utility, the authority,
8 an issuing financing entity, or any successor or assignee of the gas
9 utility, authority, or issuing financing entity.

10 Sec. 104.369. CUSTOMER RATE RELIEF CHARGES NONBYPASSABLE.
11 A financing order must include terms ensuring that the imposition
12 and collection of the customer rate relief charges authorized in
13 the order are nonbypassable.

14 Sec. 104.370. TRUE-UP MECHANISM. (a) A financing order
15 must include a formulaic true-up charge adjustment mechanism that
16 requires that the customer rate relief charges be reviewed and
17 adjusted at least annually by the servicer or replacement servicer,
18 including a subservicer or replacement subservicer, at time periods
19 and frequencies provided in the financing order, to:

20 (1) correct any overcollections or undercollections
21 of the preceding 12 months; and

22 (2) ensure the expected recovery of amounts sufficient
23 to provide for the timely payment of customer rate relief bond
24 principal and interest payments and other financing costs.

25 (b) True-up charge adjustments must become effective not
26 later than the 30th day after the date the railroad commission
27 receives a true-up charge adjustment letter from the servicer or

1 replacement servicer notifying the railroad commission of the
2 pending adjustment.

3 (c) Any administrative review of true-up charge adjustments
4 must be limited to notifying the servicer of mathematical or
5 clerical errors in the calculation. The servicer may correct the
6 error and refile a true-up charge adjustment letter, with the
7 adjustment becoming effective as soon as practicable but not later
8 than the 30th day after the date the railroad commission receives
9 the refiled letter.

10 Sec. 104.371. SECURITY INTERESTS; ASSIGNMENT; COMMINGLING;
11 DEFAULT. (a) Customer rate relief property does not constitute an
12 account or general intangible under Section 9.106, Business &
13 Commerce Code. The creation, granting, perfection, and enforcement
14 of liens and security interests in customer rate relief property
15 that secures customer rate relief bonds are governed by Chapter
16 1208, Government Code.

17 (b) The priority of a lien and security interest perfected
18 under this section is not impaired by any later adjustment of
19 customer rate relief charges under a mechanism adopted under
20 Section 104.370 or by the commingling of funds arising from
21 customer rate relief charges with other funds. Any other security
22 interest that may apply to those funds is terminated when the funds
23 are transferred to a segregated account for the issuing financing
24 entity or a financing party. If customer rate relief property has
25 been transferred to a trustee or another pledgee of the issuing
26 financing entity, any proceeds of that property must be held in
27 trust for the financing party.

1 (c) If a default or termination occurs under the customer
2 rate relief bonds, a district court of Travis County, on
3 application by or on behalf of the financing parties, shall order
4 the sequestration and payment to the financing parties of revenue
5 arising from the customer rate relief charges.

6 Sec. 104.372. BOND PROCEEDS IN TRUST. (a) The issuing
7 financing entity may deposit proceeds of customer rate relief bonds
8 issued by the issuing financing entity under this subchapter with a
9 trustee selected by the issuing financing entity or the proceeds
10 may be held by the comptroller in a dedicated trust fund outside the
11 state treasury in the custody of the comptroller.

12 (b) Bond proceeds, net of the financing costs and reserves
13 described by Subdivisions (2) and (3), including investment income,
14 must be held in trust for the exclusive benefit of the railroad
15 commission's policy of reimbursing gas utility costs and applied in
16 accordance with the financing order. The issuing financing entity
17 shall deliver the net proceeds, as provided in the applicable
18 financing order, to:

19 (1) reimburse each gas utility the regulatory asset
20 amount determined to be reasonable for that gas utility in the
21 financing order;

22 (2) pay the financing costs of issuing the bonds; and

23 (3) provide bond reserves or fund any capitalized
24 interest, as applicable.

25 (c) On full payment of the customer rate relief bonds and
26 any related financing costs, any customer rate relief charges or
27 other amounts held as security for the bonds shall be used to

1 provide credits to gas utility customers as provided in the
2 financing order.

3 Sec. 104.373. REPAYMENT OF CUSTOMER RATE RELIEF BONDS. (a)
4 As long as any customer rate relief bonds or related financing costs
5 remain outstanding, uniform monthly volumetric customer rate
6 relief charges must be paid by all current and future customers that
7 receive service from a gas utility for which a regulatory asset
8 determination has been made under Section 104.365. A gas utility
9 and its successors, assignees, or replacements shall continue to
10 bill and collect customer rate relief charges from the gas
11 utility's current and future customers until all customer rate
12 relief bonds and financing costs are paid in full.

13 (b) The authority shall report to the railroad commission
14 the amount of the outstanding customer rate relief bonds issued by
15 the issuing financing entity under this subchapter and the
16 estimated amount of annual bond administrative expenses.

17 (c) All revenue collected from the customer rate relief
18 charges shall be remitted promptly by the applicable servicers to
19 the issuing financing entity or the bond trustee for the customer
20 rate relief bonds to pay bond obligations and ongoing financing
21 costs, including bond administrative expenses, to ensure timely
22 payment of bond obligations and financing costs.

23 (d) Customer rate relief property, including customer rate
24 relief charges, may be applied only as provided by this subchapter.

25 (e) Bond obligations are payable only from sources provided
26 for payment by this subchapter.

27 Sec. 104.374. PLEDGE OF STATE. (a) Customer rate relief

1 bonds issued under this subchapter and any related ancillary
2 agreements or credit agreements are not a debt or pledge of the
3 faith and credit of this state or a state agency or political
4 subdivision of this state. A customer rate relief bond, ancillary
5 agreement, or credit agreement is payable solely from customer rate
6 relief charges as provided by this subchapter.

7 (b) Notwithstanding Subsection (a), this state, including
8 the railroad commission and the authority, pledges for the benefit
9 and protection of the financing parties and the gas utility that
10 this state will not take or permit any action that would impair the
11 value of customer rate relief property, or, except as permitted by
12 Section 104.370, reduce, alter, or impair the customer rate relief
13 charges to be imposed, collected, and remitted to financing parties
14 until the principal, interest and premium, and contracts to be
15 performed in connection with the related customer rate relief bonds
16 and financing costs have been paid and performed in full. Each
17 issuing financing entity shall include this pledge in any
18 documentation relating to customer rate relief bonds.

19 (c) Before the date that is two years and one day after the
20 date that an issuing financing entity no longer has any payment
21 obligation with respect to customer rate relief bonds, the issuing
22 financing entity may not wind up or dissolve the financing entity's
23 operations, may not file a voluntary petition under federal
24 bankruptcy law, and neither the board of the issuing financing
25 entity nor any public official nor any organization, entity, or
26 other person may authorize the issuing financing entity to be or to
27 become a debtor under federal bankruptcy law during that period.

1 The state covenants that it will not limit or alter the denial of
2 authority under this subsection, and the provisions of this
3 subsection are hereby made a part of the contractual obligation
4 that is subject to the state pledge made in this section.

5 Sec. 104.375. TAX EXEMPTION. (a) The sale or purchase of
6 or revenue derived from services performed in the issuance or
7 transfer of customer rate relief bonds issued under this subchapter
8 is exempt from taxation by this state or a political subdivision of
9 this state.

10 (b) A gas utility's receipt of customer rate relief charges
11 is exempt from state and local sales and use taxes and utility gross
12 receipts taxes and assessments, and is excluded from revenue for
13 purposes of franchise tax under Section 171.1011, Tax Code.

14 Sec. 104.376. RECOVERABLE TAX EXPENSE. A tax obligation of
15 the gas utility arising from receipt of customer rate relief bond
16 proceeds or from the collection or remittance of customer rate
17 relief charges is an allowable expense under Section 104.055.

18 Sec. 104.377. ISSUING FINANCING ENTITY OR FINANCING PARTY
19 NOT PUBLIC UTILITY. An issuing financing entity or financing party
20 may not be considered to be a public utility or person providing
21 natural gas service solely by virtue of the transactions described
22 by this subchapter.

23 Sec. 104.378. NO PERSONAL LIABILITY. A commissioner of the
24 railroad commission, a railroad commission employee, a member of
25 the board of directors of the authority, an employee of the
26 authority, or a director, officer, or employee of any issuing
27 financing entity is not personally liable for a result of an

1 exercise of a duty or responsibility established under this
2 subchapter.

3 Sec. 104.379. CATASTROPHIC WEATHER EVENT STUDY. (a) The
4 railroad commission shall conduct a study on measures to mitigate
5 catastrophic weather events, including measures to:

6 (1) establish natural gas storage capacity to ensure a
7 reliable gas supply, including location, ownership, and other
8 pertinent factors regarding gas storage capacity;

9 (2) assess the advantages and disadvantages of
10 requiring local distribution companies to use hedging tactics to
11 avoid volatile customer rates; and

12 (3) assess the advantages and disadvantages of
13 prohibiting spot market purchases during a catastrophic weather
14 event that contribute to volatile customer rates.

15 (b) Not later than December 1, 2022, the railroad commission
16 shall report the railroad commission's findings to the governor,
17 the lieutenant governor, and the speaker of the house of
18 representatives.

19 (c) This section expires August 31, 2023.

20 Sec. 104.380. SEVERABILITY. After the date customer rate
21 relief bonds are issued under this subchapter, if any provision in
22 this title or portion of this title or related provisions in Title
23 9, Government Code, are held to be invalid or are invalidated,
24 superseded, replaced, repealed, or expire for any reason, that
25 occurrence does not affect the validity or continuation of this
26 subchapter or any other provision of this title or related
27 provisions in Title 9, Government Code, that are relevant to the

1 issuance, administration, payment, retirement, or refunding of
2 customer rate relief bonds or to any actions of a gas utility, its
3 successors, an assignee, a collection agent, or a financing party,
4 which shall remain in full force and effect.

5 SECTION 6. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I certify that H.B. No. 1520 was passed by the House on April 20, 2021, by the following vote: Yeas 139, Nays 5, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1520 on May 28, 2021, by the following vote: Yeas 130, Nays 12, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1520 was passed by the Senate, with amendments, on May 26, 2021, by the following vote: Yeas 29, Nays 2.

Secretary of the Senate

APPROVED: _____
Date

Governor

AN ACT

1
2 relating to financing certain costs associated with electric
3 markets; granting authority to issue bonds; authorizing fees.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 404.0241, Government Code, is amended by
6 adding Subsections (b-1), (b-2), (b-3), (b-4), and (b-5) to read as
7 follows:

8 (b-1) Notwithstanding any other law, directly or indirectly
9 through a separately managed account or other investment vehicle,
10 the comptroller shall invest not more than \$800 million of the
11 economic stabilization fund balance to finance the default balance
12 as defined by Section 39.602, Utilities Code, to be repaid by ERCOT
13 market participants through default charges established by the
14 Public Utility Commission of Texas. The interest rate charged in
15 connection with the debt obligations must be calculated by adding
16 the rate determined by the Municipal Market Data Municipal Electric
17 Index, as published by Refinitiv TM3, based on the credit rating of
18 the independent organization, as defined by Section 39.602,
19 Utilities Code, plus 2.5 percent. The term of the debt obligations
20 may not exceed 30 years.

21 (b-2) A person may not bring a civil action against this
22 state, the Texas Treasury Safekeeping Trust Company, or an
23 employee, independent contractor, or official of this state,
24 including the comptroller, for any claim, including breach of

1 fiduciary duty or violation of any constitutional, statutory, or
2 regulatory requirement, in connection with any action, inaction,
3 decision, divestment, investment, report, or other determination
4 made or taken in connection with Subsections (b-1), (b-4), and
5 (b-5).

6 (b-3) A person who brings an action described by Subsection
7 (b-2) is liable to the defendant for the defendant's costs and
8 attorney's fees resulting from the action.

9 (b-4) The comptroller shall manage the investments required
10 by Subsection (b-1) as a separate investment portfolio. The
11 comptroller shall provide separate accounting and reporting for the
12 investments in that portfolio. The comptroller shall credit to that
13 portfolio all payments, distributions, interest, and other
14 earnings on the investments in that portfolio.

15 (b-5) The comptroller has any power necessary to accomplish
16 the purposes of managing and investing the assets of the portfolio
17 described by Subsection (b-4). In managing the assets of that
18 portfolio, through procedures and subject to restrictions the
19 comptroller considers appropriate, the comptroller may acquire,
20 sell, transfer, or otherwise assign the investments as appropriate,
21 taking into consideration the purposes, terms, distribution
22 requirements, and other circumstances of that portfolio then
23 prevailing.

24 SECTION 2. Section 39.002, Utilities Code, is amended to
25 read as follows:

26 Sec. 39.002. APPLICABILITY. This chapter, other than
27 Sections 39.151, 39.1516, 39.155, 39.157(e), 39.159, 39.203,

1 39.904, 39.9051, 39.9052, and 39.914(e), and Subchapters M and N,
2 does not apply to a municipally owned utility or an electric
3 cooperative. Sections 39.157(e), 39.203, and 39.904, however,
4 apply only to a municipally owned utility or an electric
5 cooperative that is offering customer choice. If there is a
6 conflict between the specific provisions of this chapter and any
7 other provisions of this title, except for Chapters 40 and 41, the
8 provisions of this chapter control.

9 SECTION 3. Section 39.151, Utilities Code, is amended by
10 adding Subsection (j-1) to read as follows:

11 (j-1) Notwithstanding Subsection (j) of this section,
12 Section 39.653(c), or any other law, the independent system
13 operator in the ERCOT power region may not reduce payments to or
14 uplift short-paid amounts to a municipally owned utility that
15 becomes subject to the jurisdiction of that independent system
16 operator on or after May 29, 2021, and before December 30, 2021,
17 related to a default on a payment obligation by a market participant
18 that occurred before May 29, 2021.

19 SECTION 4. Subchapter D, Chapter 39, Utilities Code, is
20 amended by adding Section 39.159 to read as follows:

21 Sec. 39.159. AMOUNTS OWED TO INDEPENDENT ORGANIZATION BY
22 MARKET PARTICIPANTS. (a) The commission shall require that all
23 market participants fully and promptly pay to the independent
24 organization certified under Section 39.151 for the ERCOT power
25 region all amounts owed to the independent organization, or provide
26 for the full and prompt payment of those amounts owed, which must
27 be calculated solely according to the protocols of the independent

1 organization in effect during the period of emergency and subject
2 to the jurisdiction of the commission, to qualify, or to continue
3 to qualify, as a market participant in the ERCOT power region.

4 (b) The independent organization shall report to the
5 commission that a market participant is in default for the failure
6 to pay, or provide for the full and prompt payment of, all amounts
7 owed to the independent organization as calculated in accordance
8 with this section. The commission may not allow the defaulting
9 market participant to continue to be a market participant in the
10 ERCOT power region for any purpose or allow the independent
11 organization to accept the defaulting market participant's loads or
12 generation for scheduling in the ERCOT power region until all
13 amounts owed to the independent organization by the market
14 participant as calculated in this section are fully paid.

15 (c) The commission and the independent organization shall
16 pursue collection in full of amounts owed to the independent
17 organization by any market participant to reduce the costs that
18 would otherwise be borne by other market participants or their
19 customers.

20 SECTION 5. Chapter 39, Utilities Code, is amended by adding
21 Subchapters M and N to read as follows:

22 SUBCHAPTER M. WINTER STORM URI DEFAULT BALANCE FINANCING

23 Sec. 39.601. PURPOSE. (a) The purpose of this subchapter is
24 to address the Winter Storm Uri default balance, as defined by
25 Section 39.602, in a manner that benefits the public interest by:

26 (1) enabling the independent organization to finance
27 the payment of the default balance with debt obligations; and

1 (2) authorizing the commission to contract with the
2 comptroller under Section 404.0241, Government Code, to finance the
3 payment of the default balance with debt obligations.

4 (b) Financing the default balance in the manner provided by
5 this subchapter will:

6 (1) allow wholesale market participants that are owed
7 money to be paid in a more timely manner;

8 (2) replenish financial revenue auction receipts
9 temporarily used by the independent organization to reduce the
10 Winter Storm Uri-related amounts short-paid to the wholesale market
11 participants; and

12 (3) allow the wholesale market to repay the default
13 balance over time.

14 (c) The legislature finds that the financing authorized by
15 this subchapter serves the public purpose of preserving the
16 integrity of the electricity market in the ERCOT power region.

17 (d) The proceeds of debt obligations issued under this
18 subchapter must be used solely for the purpose of financing default
19 balances that otherwise would be or have been uplifted to the
20 wholesale market.

21 (e) The commission shall ensure that the structuring and
22 pricing of debt obligations issued under this subchapter result in
23 the lowest financing costs consistent with market conditions and
24 the terms of the commission's order. The present value calculation
25 must use a discount rate equal to the proposed interest rate on the
26 debt obligations.

27 Sec. 39.602. DEFINITIONS. In this subchapter:

1 (1) "Default balance" means an amount of money of not
2 more than \$800 million that includes only:

3 (A) amounts owed to the independent organization
4 by competitive wholesale market participants from the period of
5 emergency that otherwise would be or have been uplifted to other
6 wholesale market participants;

7 (B) financial revenue auction receipts used by
8 the independent organization to temporarily reduce amounts
9 short-paid to wholesale market participants related to the period
10 of emergency; and

11 (C) reasonable costs incurred by a state agency
12 or the independent organization to implement a debt obligation
13 order under Sections 39.603 and 39.604, including the cost of
14 retiring or refunding existing debt.

15 (2) "Default charges" means charges assessed to
16 wholesale market participants to repay amounts financed under this
17 subchapter to pay the default balance.

18 (3) "Independent organization" means the independent
19 organization certified under Section 39.151 for the ERCOT power
20 region.

21 (4) "Period of emergency" means the period beginning
22 12:01 a.m., February 12, 2021, and ending 11:59 p.m., February 20,
23 2021.

24 Sec. 39.603. DEBT OBLIGATION ORDER. (a) On application by
25 the independent organization, the commission by order may authorize
26 the independent organization to establish a debt financing
27 mechanism to finance the default balance if the commission finds

1 that the debt obligations are needed to preserve the integrity of
2 the wholesale market and the public interest, after considering:

3 (1) the need to timely replenish financial revenue
4 auction receipts used by the independent organization to reduce
5 amounts short-paid to wholesale market participants;

6 (2) the interests of wholesale market participants
7 that are owed balances; and

8 (3) the potential effects of uplifting those balances
9 to the wholesale market without a financing vehicle.

10 (b) The order must state:

11 (1) the default balance to be financed; and

12 (2) the period over which the default charges must be
13 assessed to repay the debt obligations, which may not exceed 30
14 years.

15 (c) The order must include an adjustment mechanism
16 requiring the independent organization to adjust default charges to
17 refund, over the remaining period of the default charges, any
18 payments made by a market participant toward unpaid obligations
19 from the period of emergency that were included in the financed
20 default balance.

21 (d) The independent organization shall collect from and
22 allocate among wholesale market participants the default charges
23 using the same allocated pro rata share methodology under which the
24 charges would otherwise be uplifted under the protocols in effect
25 on March 1, 2021. The default charges must be assessed on all
26 wholesale market participants, including market participants who
27 are in default but still participating in the wholesale market and

1 who enter the market after a debt obligation order is issued under
2 this subchapter, and may be based on periodically updated
3 transaction data to prevent market participants from engaging in
4 behavior designed to avoid the default charges.

5 (e) Not later than the 30th day after the date the
6 independent organization receives a default charge payment from a
7 wholesale market participant, the independent organization shall
8 remit the payment to the comptroller toward repayment of debt
9 obligations in which the comptroller made an investment under
10 Section 404.0241(b-1), Government Code, if applicable.

11 (f) Notwithstanding another provision of this subchapter,
12 default charges may not be collected from or allocated to a market
13 participant that:

14 (1) otherwise would be subject to a default charge
15 solely as a result of acting as a central counterparty
16 clearinghouse in wholesale market transactions in the ERCOT power
17 region; and

18 (2) is regulated as a derivatives clearing
19 organization, as defined by Section 1a, Commodity Exchange Act (7
20 U.S.C. Section 1a).

21 (g) Not later than the 90th day after the date the
22 independent organization files an application for an order under
23 Subsection (a), the commission shall issue an order described by
24 Subsection (a) or an order denying the application. The order
25 becomes effective in accordance with its terms and the order,
26 together with the default charges authorized in the order, shall be
27 irrevocable and not subject to reduction, impairment, or adjustment

1 by further action of the commission after the order takes effect.
2 Notwithstanding this requirement, the commission may refinance any
3 debt obligations created by an order issued under this subchapter
4 if the commission determines that the refinancing is in the public
5 interest, considering the interest of both the ERCOT market and the
6 state's interest in the economic stabilization fund, and otherwise
7 meets the requirements of this subchapter.

8 (h) An order described by Subsection (a) or (g) is not
9 subject to rehearing by the commission. The order may be reviewed by
10 appeal by a party to the proceeding to a Travis County district
11 court that is filed not later than the 15th day after the date the
12 order is signed by the commission. The judgment of the district
13 court may be reviewed only by a direct appeal to the Supreme Court
14 of Texas that is filed not later than the 15th day after the date of
15 the entry of judgment. All appeals shall be heard and determined by
16 the district court and the Supreme Court of Texas as expeditiously
17 as possible with lawful precedence over other matters. Review on
18 appeal shall be based solely on the record before the commission and
19 briefs to the court and shall be limited to whether the order
20 conforms to the constitution and laws of this state and the United
21 States and is within the authority of the commission under this
22 chapter.

23 (i) A debt obligation issued under this section is a
24 nonrecourse debt secured solely by the default charges explicitly
25 assessed to repay the obligation. The independent organization's
26 obligations authorized under this section do not create personal
27 liability for the independent organization.

1 Sec. 39.604. COMMISSION-AUTHORIZED FINANCING. (a) The
2 commission may contract with another state agency with expertise in
3 public financing to establish a debt financing mechanism for the
4 payment of the default balance as defined in this subchapter, under
5 an order that meets the requirements of Section 39.603. This
6 section does not apply to a default balance securitized under
7 Subchapter D, Chapter 41.

8 (b) The contracted state agency and any issuer, along with
9 the independent organization, must be a party to the commission's
10 proceedings that address the issuance of an order.

11 (c) In addition to the other applicable requirements of this
12 subtitle, an order issued under this section must:

13 (1) require the sale, assignment, or other transfer to
14 the contracted state agency of default charges created by the order
15 and, following that sale, assignment, or transfer, require that
16 default charges paid under any order be created, assessed, and
17 collected as the property of the contracted state agency, subject
18 to subsequent sale, assignment, or transfer by the contracted state
19 agency as authorized under this subchapter;

20 (2) authorize:

21 (A) the issuance of debt obligations by the
22 contracted state agency secured by a pledge of default charge
23 revenue, and the application of the proceeds of those debt
24 obligations, net of issuance costs, to the independent
25 organization; or

26 (B) the acquisition of default charge revenue
27 from the independent organization by the contracted state agency,

1 financed:

2 (i) by a loan by an issuer to the contracted
3 state agency of the proceeds of debt obligations, net of issuance
4 costs; or

5 (ii) by the acquisition by an issuer from
6 the contracted state agency of the default charge revenue and in
7 each case the pledge of the revenue to the repayment of the loan or
8 other debt obligation, as applicable; and

9 (3) authorize the independent organization to serve as
10 collection agent to collect the default charges and transfer the
11 collected default charges to the contracted state agency or the
12 issuer, as appropriate.

13 (d) After issuance of the order, the contracted state agency
14 shall arrange for the issuance of debt obligations, as specified by
15 the order, by the contracted state agency or another issuer
16 selected by the contracted state agency and approved by the
17 commission.

18 (e) Debt obligations issued pursuant to an order issued
19 under this section are secured only by the default charge revenue
20 and any other funds pledged under the bond documents. No assets of
21 the state or the independent organization are subject to claims by
22 the holders of the debt obligations. Following assignment of the
23 default charge revenue, the independent organization does not have
24 any beneficial interest or claim of right in the revenue.

25 (f) Effective on the date the first debt obligations are
26 issued under this subchapter, if any provision of this title or
27 portion of this title is held to be invalid or is invalidated,

1 superseded, replaced, or repealed, or expires for any reason, that
2 occurrence does not affect the validity or continuation of this
3 subchapter or any other provision of this title that is relevant to
4 the issuance, administration, payment, retirement, or refunding of
5 debt obligations authorized under this subchapter or to any actions
6 of the independent organization, its successors, an assignee, a
7 collection agent, the contracted state agency, or an issuer and
8 those provisions shall remain in full force and effect.

9 Sec. 39.605. DEFAULT CHARGES NONBYPASSABLE. An order
10 issued under Section 39.603 or 39.604 must:

11 (1) include terms ensuring that the imposition and
12 collection of default charges authorized in the order shall be
13 nonbypassable by wholesale market participants; and

14 (2) authorize the independent organization to
15 establish appropriate fees and other methods for pursuing amounts
16 owed from entities exiting the wholesale market.

17 Sec. 39.606. TRUE-UP MECHANISM. An order issued under
18 Section 39.603 or 39.604 must include a mechanism requiring that
19 default charges be reviewed and adjusted at least annually, not
20 later than the 45th day after the anniversary date of the issuance
21 of the order, to:

22 (1) correct over-collections or under-collections
23 over the preceding 12 months; and

24 (2) ensure the expected recovery of amounts sufficient
25 to timely provide all payments of debt service.

26 Sec. 39.607. TAX EXEMPTION. The transfer and receipt of
27 default charges are exempt from state and local sales and use,

1 franchise, and gross receipts taxes.

2 Sec. 39.608. PROPERTY RIGHTS. (a) The rights and interests
3 of the independent organization or its successor under a debt
4 obligation order issued under this subchapter, including the right
5 to impose, collect, and receive default charges, shall be only
6 contract rights until they are first transferred to an assignee or
7 pledged in connection with an investment agreement entered into
8 under Section 404.0241, Government Code, or the issuance of debt
9 obligations, at which time they will become default property, as
10 described by Subsection (b).

11 (b) Default property shall constitute a present property
12 right for purposes of contracts concerning the sale or pledge of
13 property, even though the imposition and collection of default
14 charges depends on further acts of the independent organization or
15 others that have not yet occurred. A debt obligation order issued
16 under this subchapter shall remain in effect and the property shall
17 continue to exist for the same period as the pledge of the state
18 described by Section 39.609.

19 (c) All revenues and collections resulting from default
20 charges shall constitute proceeds only of the default property
21 arising from the debt obligation order.

22 Sec. 39.609. PLEDGE OF STATE. Debt obligations issued
23 pursuant to this subchapter, including any bonds, are not a debt or
24 obligation of the state and are not a charge on its full faith and
25 credit or taxing power. The state pledges, however, for the benefit
26 and protection of financing parties and the independent
27 organization that it will not take or permit any action that would

1 impair the value of default property, or reduce, alter, or impair
2 the default charges to be imposed, collected, and remitted to
3 financing parties, until the principal, interest and premium, and
4 any other charges incurred and contracts to be performed in
5 connection with the related debt obligations have been paid and
6 performed in full. Any party issuing a debt obligation under this
7 subchapter is authorized to include this pledge in any
8 documentation relating to the obligation.

9 SUBCHAPTER N. WINTER STORM URI UPLIFT FINANCING

10 Sec. 39.651. PURPOSE; USE OF PROCEEDS. (a) The purpose of
11 this subchapter is to address the Winter Storm Uri uplift balance
12 by:

13 (1) enabling the independent organization certified
14 under Section 39.151 for the ERCOT power region to finance the
15 uplift balance on behalf of wholesale market participants through
16 debt obligations; and

17 (2) authorizing the commission to contract with
18 another state agency to finance the payment of the uplift balance
19 with debt obligations or use any another financial mechanism
20 consistent with this subchapter for that purpose.

21 (b) Financing the uplift balance in the manner provided by
22 this subchapter will allow wholesale market participants who were
23 assessed extraordinary uplift charges due to consumption during the
24 period of emergency to pay those charges over a longer period of
25 time, alleviating liquidity issues and reducing the risk of
26 additional defaults in the wholesale market.

27 (c) The legislature finds that authorizing financing under

1 this subchapter serves the public purpose of allowing the
2 commission to stabilize the wholesale electricity market in the
3 ERCOT power region.

4 (d) The proceeds of debt obligations issued under this
5 subchapter must be used solely for the purpose of financing
6 reliability deployment price adder charges and ancillary service
7 costs that exceeded the commission's system-wide offer cap and were
8 uplifted to load-serving entities based on consumption during the
9 period of emergency. A load-serving entity that receives proceeds
10 from the debt obligations may use the proceeds solely for the
11 purposes of fulfilling payment obligations directly related to such
12 costs and refunding such costs to retail customers who have paid or
13 otherwise would be obligated to pay such costs.

14 (e) The commission shall ensure that the structuring and
15 pricing of the debt obligations results in the lowest uplift
16 charges consistent with market conditions and the terms of the
17 order issued under this subchapter. The present value calculation
18 must use a discount rate equal to the proposed interest rate on the
19 debt obligations.

20 Sec. 39.652. DEFINITIONS. In this subchapter:

21 (1) "Independent organization" means the independent
22 organization certified under Section 39.151 for the ERCOT power
23 region.

24 (2) "Load-serving entity" means a municipally owned
25 utility, an electric cooperative, or a retail electric provider.

26 (3) "Period of emergency" means the period beginning
27 12:01 a.m., February 12, 2021, and ending 11:59 p.m., February 20,

1 2021.

2 (4) "Uplift balance" means an amount of money of not
3 more than \$2.1 billion that was uplifted to load-serving entities
4 on a load ratio share basis due to energy consumption during the
5 period of emergency for reliability deployment price adder charges
6 and ancillary services costs in excess of the commission's
7 system-wide offer cap, excluding amounts securitized under
8 Subchapter D, Chapter 41. The term does not include amounts that
9 were part of the prevailing settlement point price during the
10 period of emergency.

11 (5) "Uplift charges" means charges assessed to
12 load-serving entities to repay amounts financed under this
13 subchapter to pay the uplift balance and reasonable costs incurred
14 by a state agency or the independent organization to implement a
15 debt obligation order under Section 39.653, 39.654, or 39.655,
16 including the cost of retiring or refunding existing debt.

17 Sec. 39.653. DEBT OBLIGATION ORDER. (a) The independent
18 organization shall file an application with the commission to
19 establish a debt financing mechanism for the payment of the uplift
20 balance if the commission finds that such financing will support
21 the financial integrity of the wholesale market and is necessary to
22 protect the public interest, considering the impacts on both
23 wholesale market participants and retail customers.

24 (b) An order issued under this section must:

25 (1) state the uplift balance to be financed;

26 (2) state the period over which the uplift charges
27 must be assessed to repay the debt obligations, which may not exceed

1 30 years; and

2 (3) provide the process for remitting the proceeds of
3 the financing to load-serving entities who were exposed to the
4 costs included in the uplift balance, including a requirement for
5 the load-serving entities to submit documentation of their
6 exposure.

7 (c) The independent organization shall assess uplift
8 charges to all load-serving entities on a load ratio share basis,
9 which may be translated to a kWh charge, including load serving
10 entities who enter the market after an order has been issued under
11 this subchapter, but excluding the load of entities that opt out
12 under Subsection (d).

13 (d) The commission shall develop a one-time process that
14 allows municipally owned utilities, electric cooperatives, river
15 authorities, a retail electric provider that has the same corporate
16 parent as each of the provider's customers, a retail electric
17 provider that is an affiliate of each of the provider's customers,
18 and transmission-voltage customers served by a retail electric
19 provider to opt out of the uplift charges by paying in full all
20 invoices owed for usage during the period of emergency.
21 Load-serving entities and transmission-voltage customers that opt
22 out under this subsection shall not receive any proceeds from the
23 uplift financing.

24 (e) An order issued under this section must include a
25 requirement that any load-serving entity that receives proceeds
26 from the financing that exceed the entity's actual exposure to
27 uplift charges from consumption during the period of emergency

1 notify the independent organization and remit any excess receipts.
2 Any payments received under this subsection must be credited
3 against the uplift balance to reduce the remaining uplift charges.

4 (f) Not later than the 90th day after the date the
5 independent organization files an application for an order under
6 Subsection (a), the commission shall issue an order described by
7 Subsection (a) or an order denying the application. The order
8 becomes effective in accordance with its terms and the order,
9 together with the uplift charges authorized in the order, shall be
10 irrevocable and not subject to reduction, impairment, or adjustment
11 by further action of the commission after it takes effect.
12 Notwithstanding this requirement, the commission may refinance any
13 debt obligations created by an order under this subchapter if the
14 commission determines that the refinancing is in the public
15 interest and otherwise meets the requirements of this subchapter.

16 (g) An order issued under this section is not subject to
17 rehearing by the commission. An order may be reviewed by appeal by a
18 party to the proceeding to a Travis County district court filed not
19 later than the 15th day after the date the order is signed by the
20 commission. The judgment of the district court may be reviewed only
21 by direct appeal to the Supreme Court of Texas filed not later than
22 the 15th day after the date of the entry of judgment. All appeals
23 shall be heard and determined by the district court and the Supreme
24 Court of Texas as expeditiously as possible with lawful precedence
25 over other matters. Review on appeal shall be based solely on the
26 record before the commission and briefs to the court and shall be
27 limited to whether the order conforms to the constitution and laws

1 of this state and the United States and is within the authority of
2 the commission under this chapter.

3 (h) A debt obligation issued under this section is a
4 nonrecourse debt secured solely by the uplift charges explicitly
5 assessed to repay the obligation. The independent organization's
6 obligations authorized under this section do not create personal
7 liability for the independent organization.

8 (i) This section does not apply to any balance securitized
9 under Subchapter D, Chapter 41.

10 Sec. 39.654. COMMISSION-AUTHORIZED FINANCING. (a) The
11 commission may contract with another state agency with expertise in
12 public financing to establish a debt financing mechanism to finance
13 the payment of the uplift balance under an order that meets the
14 requirements of Section 39.653.

15 (b) The contracted state agency and any issuer must be a
16 party to the commission's proceedings that address the issuance of
17 an order along with the independent organization.

18 (c) In addition to the other applicable requirements of this
19 subtitle, an order issued under this section must:

20 (1) require the sale, assignment, or other transfer to
21 the contracted state agency of uplift charges created by the order
22 and, following that sale, assignment, or transfer, require that
23 uplift charges paid under any order be created, assessed, and
24 collected as the property of the contracted state agency, subject
25 to subsequent sale, assignment, or transfer by the contracted state
26 agency as authorized under this subchapter;

27 (2) authorize:

1 (A) the issuance of debt obligations by the
2 contracted state agency secured by a pledge of uplift charge
3 revenue, and the application of the proceeds of those debt
4 obligations, net of issuance costs, to the independent
5 organization; or

6 (B) the acquisition of uplift charge revenue from
7 the independent organization by the contracted state agency,
8 financed:

9 (i) by a loan by an issuer to the contracted
10 state agency of the proceeds of debt obligations, net of issuance
11 costs; or

12 (ii) by the acquisition by an issuer from
13 the contracted state agency of the uplift charge revenue and in each
14 case the pledge of the revenue to the repayment of the loan or debt
15 obligations, as applicable; and

16 (3) authorize the independent organization to serve as
17 collection agent to collect the uplift charges and transfer the
18 collected uplift charges to the contracted state agency or the
19 issuer, as appropriate.

20 (d) After issuance of the order, the contracted state agency
21 shall arrange for the issuance of debt obligations, as specified by
22 the order, by the contracted state agency or another issuer
23 selected by the contracted state agency and approved by the
24 commission.

25 (e) Debt obligations issued pursuant to an order issued
26 under this section are secured only by the uplift charge revenue and
27 any other funds pledged under the bond documents. No assets of the

1 state or the independent organization are subject to claims by the
2 holders of the debt obligations. Following assignment of the
3 uplift charge revenue, the independent organization does not have
4 any beneficial interest or claim of right in the revenue.

5 Sec. 39.655. OTHER FINANCIAL MECHANISM. The commission may
6 use a financial mechanism other than the mechanisms described by
7 Sections 39.653 and 39.654 that meets the requirements of this
8 subchapter to accomplish the purposes of this subchapter.

9 Sec. 39.656. UPLIFT CHARGES NONBYPASSABLE. An order issued
10 under Section 39.653, 39.654, or 39.655 must:

11 (1) include terms ensuring that the imposition and
12 collection of uplift charges authorized in the order shall be
13 nonbypassable, except for entities excluded under Section
14 39.653(d); and

15 (2) authorize the independent organization to
16 establish appropriate fees and other methods for pursuing amounts
17 owed from entities exiting the wholesale market.

18 Sec. 39.657. TRUE-UP. An order shall include a mechanism
19 requiring that uplift charges be reviewed and adjusted at least
20 annually, not later than the 45th day after the anniversary date of
21 the issuance of the debt obligations, to:

22 (1) correct over-collections or under-collections
23 over the preceding 12 months; and

24 (2) ensure the expected recovery of amounts sufficient
25 to timely provide all payments of debt service and other required
26 amounts and charges in connection with the debt obligations.

27 Sec. 39.658. TAX EXEMPTION. Transactions involving the

1 transfer and ownership of uplift property and the receipt of uplift
2 charges are exempt from state and local income, sales, franchise,
3 gross receipts, and other taxes or similar charges.

4 Sec. 39.659. SEVERABILITY. Effective on the date the first
5 debt obligations are issued under this subchapter, if any provision
6 in this title or portion of this title is held to be invalid or is
7 invalidated, superseded, replaced, repealed, or expires for any
8 reason, that occurrence does not affect the validity or
9 continuation of this subchapter or any other provision of this
10 title that is relevant to the issuance, administration, payment,
11 retirement, or refunding of debt obligations or to any actions of
12 the independent organization, its successors, an assignee, a
13 collection agent, or a financing party, which shall remain in full
14 force and effect.

15 Sec. 39.660. CUSTOMER CHARGES. All load-serving entities
16 that receive offsets to specific uplift charges from the
17 independent organization under this subchapter must adjust
18 customer invoices to reflect the offsets for any charges that were
19 or would otherwise be passed through to customers under the terms of
20 service with the load-serving entity, including by providing a
21 refund for any offset charges that were previously paid. An
22 electric cooperative, including an electric cooperative that
23 elects to receive offsets, shall not otherwise become subject to
24 rate regulation by the commission and receipt of offsets does not
25 affect the applicability of Chapter 41 to an electric cooperative.

26 Sec. 39.661. ENFORCEMENT. The commission may use any
27 enforcement mechanism established by Chapter 15 or this chapter,

1 including revocation of certification by the commission, against
2 any entity that fails to remit excess receipts from the uplift
3 balance financing under Section 39.653(e) or otherwise
4 misappropriates or misuses amounts received from the uplift balance
5 financing this subchapter.

6 Sec. 39.662. PROPERTY RIGHTS. (a) The rights and interests
7 of the independent organization or its successor under a debt
8 obligation order issued under this subchapter, including the right
9 to impose, collect, and receive uplift charges authorized in a debt
10 obligation order under this subchapter, shall be only contract
11 rights until they are first transferred to an assignee or pledged in
12 connection with the issuance of a financing agreement entered into
13 under Section 39.654(a) or the issuance of debt obligations, at
14 which time they will become uplift property, as described by
15 Subsection (b).

16 (b) Uplift property shall constitute a present property
17 right for purposes of contracts concerning the sale or pledge of
18 property, even though the imposition and collection of uplift
19 charges depends on further acts of the independent organization or
20 others that have not yet occurred. A debt obligation order issued
21 under this subchapter shall remain in effect and the property shall
22 continue to exist for the same period as the pledge of the state
23 described by Section 39.663.

24 (c) All revenues and collections resulting from uplift
25 charges shall constitute proceeds only of the uplift property
26 arising from the debt obligation order.

27 Sec. 39.663. PLEDGE OF STATE. Debt obligations issued

1 pursuant to this subchapter, including any bonds, are not a debt or
2 obligation of the state and are not a charge on its full faith and
3 credit or taxing power. The state pledges, however, for the benefit
4 and protection of financing parties and the independent
5 organization that it will not take or permit any action that would
6 impair the value of uplift property, or reduce, alter, or impair the
7 uplift charges to be imposed, collected, and remitted to financing
8 parties, until the principal, interest and premium, and any other
9 charges incurred and contracts to be performed in connection with
10 the related debt obligations have been paid and performed in full.
11 Any party issuing a debt obligation under this subchapter is
12 authorized to include this pledge in any documentation relating to
13 the obligation.

14 Sec. 39.664. LEGAL ACTIONS INVOLVING PRICING OR UPLIFT
15 ACTIONS. A load-serving entity that receives proceeds from the
16 financing under this subchapter shall return an amount of the
17 proceeds equal to any amount of money received by the entity due to
18 litigation seeking judicial review of pricing or uplift actions
19 taken by the commission or the independent organization in
20 connection with the period of emergency.

21 SECTION 6. The independent organization to which Section
22 39.653(a), Utilities Code, applies shall file the application
23 required by that section not later than the 30th day after the
24 effective date of this Act.

25 SECTION 7. Sections 404.0241(b-2) and (b-3), Government
26 Code, as added by this Act, apply only to a cause of action that
27 accrues on or after the effective date of this Act.

H.B. No. 4492

1 SECTION 8. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2021.

H.B. No. 4492

President of the Senate

Speaker of the House

I certify that H.B. No. 4492 was passed by the House on May 6, 2021, by the following vote: Yeas 129, Nays 15, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 4492 on May 28, 2021, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 4492 on May 30, 2021, by the following vote: Yeas 116, Nays 18, 2 present, not voting.

Chief Clerk of the House

H.B. No. 4492

I certify that H.B. No. 4492 was passed by the Senate, with amendments, on May 26, 2021, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 4492 on May 30, 2021, by the following vote: Yeas 25, Nays 6.

Secretary of the Senate

APPROVED: _____

Date

Governor

1 AN ACT
2 relating to the use of securitization by electric cooperatives to
3 address certain weather-related extraordinary costs and expenses
4 and to the duty of electric utility market participants to pay
5 certain amounts owed.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Chapter 41, Utilities Code, is amended by adding
8 Subchapter D to read as follows:

9 SUBCHAPTER D. MARKET PARTICIPATION AND SECURITIZATION

10 Sec. 41.151. PURPOSE. (a) The purpose of this subchapter
11 is to enable electric cooperatives to use securitization financing
12 to recover extraordinary costs and expenses incurred due to the
13 abnormal weather events that occurred in this state in the period
14 beginning 12:00 a.m., February 12, 2021, and ending at 11:59 p.m.,
15 February 20, 2021. This type of debt will reduce the cost of
16 financing the extraordinary costs and expenses relative to the
17 costs that would be incurred using conventional electric
18 cooperative financing methods. The proceeds of the securitized
19 bonds shall be used solely for the purposes of financing or
20 refinancing the extraordinary costs and expenses, including costs
21 relating to consummation and administration of the securitized
22 financing. The board of each electric cooperative involved in the
23 financing shall ensure that securitization provides tangible and
24 quantifiable benefits to its members, greater than would have been

1 achieved absent the issuance of securitized bonds. Each board that
2 chooses to securitize under this subchapter shall ensure that the
3 structuring and pricing of the securitized bonds are consistent
4 with market conditions and the terms of the financing order. This
5 subchapter may be used by a group of electric cooperatives to issue
6 securitized bonds in a combined securitization transaction.

7 (b) A cooperative that owes the independent organization
8 certified under Section 39.151, Utilities Code, for the ERCOT power
9 region amounts incurred as a result of operations during the period
10 beginning 12:01 a.m., February 12, 2021, and ending at 11:59 p.m.,
11 February 20, 2021, shall:

12 (1) use all means necessary to securitize the amount
13 owed the independent organization, calculated solely according to
14 the protocols of the independent organization in effect during the
15 period of emergency promulgated subject to the approval of the
16 commission; and

17 (2) fully repay the amount described by Subdivision
18 (1) immediately upon receipt of the securitized amount along with
19 any additional amounts necessary to fully satisfy the amount owed.

20 Sec. 41.152. DEFINITIONS. In this subchapter:

21 (1) "Assignee" means any individual, corporation, or
22 other legally recognized entity, including a special purpose
23 entity, to which an interest in securitized property is
24 transferred, other than as security.

25 (2) "Board" means the governing body of an electric
26 cooperative.

27 (3) "Combined securitization transaction" means the

1 issuance of securitized bonds under this subchapter in a
2 transaction involving at least two electric cooperatives acting
3 together.

4 (4) "Extraordinary costs and expenses" means:

5 (A) costs and expenses incurred by an electric
6 cooperative for electric power and energy purchased during the
7 period of emergency in excess of what would have been paid for the
8 same amount of electric power and energy at the average rate
9 incurred by the electric cooperative for electric power and energy
10 purchased during the month of January 2021;

11 (B) costs and expenses incurred by an electric
12 cooperative to generate and transmit electric power and energy
13 during the period of emergency, including fuel costs, operation and
14 maintenance expenses, overtime costs, and all other costs and
15 expenses that would not have been incurred but for the abnormal
16 weather events; and

17 (C) any charges imposed on the electric
18 cooperative or on a power supplier to the electric cooperative that
19 were passed on to the electric cooperative by the applicable
20 regional transmission organization or independent system operator,
21 resulting from defaults by other market participants of the
22 regional transmission organization or independent system operator
23 for costs relating to the period of emergency.

24 (5) "Financing order" means an order of a board
25 approving the issuance of securitized bonds, which may be through
26 participation in a combined securitization transaction, and the
27 creation of securitized charges for the recovery of qualified

1 costs.

2 (6) "Financing party" means a holder of securitized
3 bonds, including trustees, collateral agents, and other persons
4 acting for the benefit of the holder.

5 (7) "Qualified costs" means up to 100 percent of an
6 electric cooperative's:

7 (A) extraordinary costs and expenses;

8 (B) costs of issuing, supporting, repaying,
9 servicing, and refinancing the securitized bonds, whether incurred
10 or paid upon issuance of the securitized bonds or over the life of
11 the securitized bonds or the refunded securitized bonds, whether
12 incurred directly or allocated in a combined securitization
13 transaction; and

14 (C) any costs of retiring and refunding the
15 electric cooperative's existing debt securities initially issued
16 to finance the extraordinary costs and expenses including interest
17 accrued on debt securities over their term, whether incurred
18 directly or allocated in a combined securitization transaction.

19 (8) "Period of emergency" means the period beginning
20 12:00 a.m., February 12, 2021, and ending 11:59 p.m., February 20,
21 2021.

22 (9) "Securitized bonds" means bonds, debentures,
23 notes, certificates of participation or of beneficial interest, or
24 other evidences of indebtedness or ownership that are issued by an
25 electric cooperative, its successors, or an assignee of the
26 electric cooperative or group of electric cooperatives under a
27 financing order or financing orders, that have a term not longer

1 than 30 years, and that are secured by or payable, primarily, from
2 securitized property and the proceeds thereof and, in a combined
3 securitization transaction, securitized property contributed by
4 other electric cooperatives. If certificates of participation,
5 beneficial interest, or ownership are issued, references in this
6 subchapter to principal, interest, or premium shall refer to
7 comparable amounts under those certificates.

8 (10) "Securitized charges" means nonbypassable
9 amounts to be charged for the use or availability of electric
10 services, approved by the board under a financing order to recover
11 qualified costs, that shall be collected by an electric
12 cooperative, its successors, an assignee, or other collection
13 agents as provided for in the financing order.

14 (11) "Securitized property" means the property right
15 created under this subchapter, including the right, title, and
16 interest of the electric cooperative or its assignee:

17 (A) in and to the securitized charges established
18 under a financing order, including all rights to obtain adjustments
19 in accordance with Section 41.157 and the financing order;

20 (B) to be paid the amount that is determined in a
21 financing order to be the amount that the electric cooperative or
22 its transferee is lawfully entitled to receive under this
23 subchapter and the proceeds thereof; and

24 (C) in and to all revenue, collections, claims,
25 payments, money, or process of or arising from the securitized
26 charges that are the subject of a financing order.

27 Sec. 41.153. FINANCING ORDERS; TERMS. (a) The board shall

1 adopt a financing order to recover the electric cooperative's
2 qualified costs consistent with the standards in Section 41.151.

3 (b) The financing order shall detail the amount of qualified
4 costs to be recovered and the period over which the nonbypassable
5 securitized charges shall be recovered, which period may not exceed
6 30 years.

7 (c) Securitized charges shall be collected and allocated
8 among customers in the manner provided by the financing order.

9 (d) A financing order becomes effective in accordance with
10 its terms, and the financing order, together with the securitized
11 charges authorized in the order, after it takes effect, is
12 irrevocable and not subject to denial, rescission, reduction,
13 impairment, adjustment, or other alteration by further action of
14 the board or by action of any regulatory or other governmental body
15 of this state, except as permitted by Section 41.157. A financing
16 order issued under this subchapter has the same force and effect of
17 a financing order issued under Chapter 39.

18 (e) A financing order may be reviewed by appeal by a member
19 of the electric cooperative to a district court in the county where
20 the electric cooperative is domiciled, filed not later than the
21 15th day after the date the financing order is adopted by the board.
22 The judgment of the district court may be reviewed only by direct
23 appeal to the Supreme Court of Texas filed not later than the 15th
24 day after the date of the entry of judgment. All appeals shall be
25 heard and determined by the district court and the Supreme Court of
26 Texas as expeditiously as possible with lawful precedence over
27 other matters. Review on appeal shall be based solely on the

1 financing order adopted by the board, other information considered
2 by the board in adopting the resolutions, and briefs to the court
3 and shall be limited to whether the financing order conforms to the
4 constitution and laws of this state and the United States and is
5 within the authority of the board under this subchapter.

6 (f) The board or, in a combined securitization transaction,
7 the boards of all participating electric cooperatives, may adopt a
8 financing order or financing orders providing for retiring and
9 refunding securitized bonds on making a finding that the future
10 securitized charges required to service the new securitized bonds,
11 including transaction costs, will be less than the future
12 securitized charges required to service the securitized bonds being
13 refunded. After the indefeasible repayment in full of all
14 outstanding securitized bonds and associated financing costs, the
15 board shall adjust the related securitized charges accordingly.

16 Sec. 41.154. PROPERTY RIGHTS. (a) The rights and interests
17 of an electric cooperative or its subsidiary, affiliate, successor,
18 financing party, or assignee under a financing order, including the
19 right to impose, collect, receive, and enforce the payment of
20 securitized charges authorized in the financing order, shall be
21 only contract rights until the property is first transferred or
22 pledged to an assignee or financing party, as applicable, in
23 connection with the issuance of securitized bonds, at which time
24 the property becomes securitized property.

25 (b) Securitized property that is specified in the financing
26 order constitutes a present vested property right for all purposes,
27 including for purposes of Sections 16 and 17, Article I, Texas

1 Constitution, Section 10, Article I, United States Constitution,
2 and the Fifth Amendment to the United States Constitution, and the
3 laws of this state and the United States, even if the imposition and
4 collection of securitized charges depend on further acts of the
5 electric cooperative or others that may not have yet occurred.

6 (c) Securitized property shall exist regardless of whether
7 securitized charges have been billed, have accrued, or have been
8 collected and notwithstanding the fact that the value or amount of
9 the property is dependent on the future provision of service to
10 customers by the electric cooperative or its successors or assigns.

11 (d) On the issuance of the securitized bonds and the
12 financing order, and when the requirements of Section 41.159 are
13 met, the securitized charges, including their nonbypassability,
14 are irrevocable, final, nondiscretionary, and effective without
15 further action by the electric cooperative or any other person or
16 governmental authority. The financing order shall remain in effect
17 and the property shall continue to exist for the same period as the
18 pledge of the state described in Section 41.160.

19 (e) All revenue, collections, claims, payments, money, or
20 proceeds of or arising from or relating to securitized charges
21 shall constitute proceeds of the securitized property arising from
22 the financing order.

23 Sec. 41.155. NO SETOFF. The interest of an assignee or
24 pledgee in securitized property and in the revenues and collections
25 arising from that property are not subject to setoff, counterclaim,
26 surcharge, recoupment, or defense by the electric cooperative or
27 any other person or in connection with the bankruptcy of the

1 electric cooperative or any other entity. A financing order shall
2 remain in effect and unabated notwithstanding the bankruptcy of the
3 electric cooperative, its successors, or assignees.

4 Sec. 41.156. NO BYPASS. (a) A financing order shall
5 include terms ensuring that the imposition and collection of
6 securitized charges authorized in the order shall be nonbypassable
7 and apply to all customers connected to the electric cooperative's
8 system assets and taking service, regardless of whether the system
9 assets continue to be owned by the electric cooperative.

10 (b) The electric cooperative, its servicer, any entity
11 providing electric transmission or distribution services, and any
12 retail electric provider providing services to a retail customer in
13 the electric cooperative's certificated service area as it existed
14 on the date of enactment of this subchapter are entitled to collect
15 and must remit, consistent with this subchapter and any financing
16 order adopted under this subchapter, the securitized charges from
17 the retail customers and from retail customers that switch to new
18 on-site generation. Such retail customers are required to pay the
19 securitized charges.

20 Sec. 41.157. TRUE-UP. (a) A financing order shall be
21 reviewed and adjusted promptly if after its adoption there are
22 additional charges, reductions, or refunds of extraordinary costs
23 and expenses, to:

24 (1) ensure that there is not an over-collection or an
25 under-collection of extraordinary costs and expenses; and

26 (2) ensure that collections on the securitized
27 property will be sufficient to timely make all periodic and final

1 payments of principal, interest, fees, and other amounts and to
2 timely fund all reserve accounts, if any, related to the
3 securitized bonds.

4 (b) A financing order shall also include a mechanism
5 requiring that securitized charges be reviewed by the board and
6 adjusted at least annually, not later than the 45th day after the
7 anniversary date of the issuance of the securitized bonds, to:

8 (1) correct over-collections or under-collections of
9 the preceding 12 months; and

10 (2) ensure the expected recovery of amounts sufficient
11 to timely provide all payments of debt service and other required
12 amounts and charges in connection with the securitized bonds.

13 (c) The electric cooperatives that are members of a
14 generation and transmission cooperative may include in their
15 financing orders the ability to allocate any true-up amounts over
16 the retail customers of all electric cooperatives that are members
17 of the same generation and transmission cooperative.

18 (d) In a combined securitization transaction, each
19 generation and transmission cooperative may calculate all
20 adjustments and determinations relevant to each true-up by each
21 electric cooperative member of the generation and transmission
22 cooperative participating in the securitization transaction, with
23 the adjustments being allocated across the electric cooperatives in
24 the manner agreed to by all of the participating electric
25 cooperatives under their financing orders.

26 (e) A governmental authority may not disapprove of or alter
27 any adjustments made or proposed to be made under this subchapter

1 other than to correct computation or other manifest errors.

2 Sec. 41.158. TRUE SALE. An agreement by an electric
3 cooperative or assignee to transfer securitized property that
4 expressly states that the transfer is a sale or other absolute
5 transfer signifies that the transaction is a true sale and is not a
6 secured transaction and that title, legal and equitable, has passed
7 to the entity to which the securitized property is transferred. The
8 transaction shall be treated as an absolute sale regardless of
9 whether the purchaser has any recourse against the seller, or any
10 other term of the parties' agreement, including the seller's
11 retention of an equity interest in the securitized property, the
12 fact that the electric cooperative acts as the collector of
13 securitized charges relating to the securitized property, or the
14 treatment of the transfer as a financing for tax, financial
15 reporting, or other purposes.

16 Sec. 41.159. SECURITY INTERESTS; ASSIGNMENT; COMMINGLING;
17 DEFAULT. (a) Securitized property does not constitute an account
18 or general intangible under Section 9.106, Business & Commerce
19 Code. The transfer, sale, or assignment, or the creation,
20 granting, perfection, and enforcement of liens and security
21 interests in securitized property are governed by this section and
22 not by the Business & Commerce Code. Securitized property shall
23 constitute property for all purposes, including for contracts
24 securing securitized bonds, regardless of whether the securitized
25 property revenues and proceeds have accrued.

26 (b) A valid and enforceable transfer, sale, or assignment,
27 or lien and security interest, as applicable, in securitized

1 property may be created only by a financing order and the execution
2 and delivery of a transfer, sale, or assignment, or security
3 agreement, as applicable, with a financing party in connection with
4 the issuance of securitized bonds. The transfer, sale, assignment,
5 or lien and security interest, as applicable, shall attach
6 automatically from the time that value is received for the
7 securitized bonds and, on perfection through the filing of notice
8 with the secretary of state in accordance with the rules prescribed
9 under Subsection (d), shall be a continuously perfected transfer,
10 sale, and assignment, or lien and security interest, as applicable,
11 in the securitized property and all proceeds of the property,
12 whether accrued or not, shall have priority in the order of filing
13 and take precedence over any subsequent judicial or other lien
14 creditor. If notice is filed before the 10th day after the date
15 value is received for the securitized bonds, the transfer, sale, or
16 assignment, or security interest, as applicable, shall be perfected
17 retroactive to the date value was received. Otherwise, the
18 transfer, sale, or assignment, or security interest, as applicable,
19 shall be perfected as of the date of filing.

20 (c) Transfer, sale, or assignment of an interest in
21 securitized property to an assignee shall be perfected against all
22 third parties, including subsequent judicial or other lien
23 creditors, when the financing order becomes effective, transfer
24 documents have been delivered to the assignee, and a notice of that
25 transfer has been filed in accordance with the rules prescribed
26 under Subsection (d). However, if notice of the transfer has not
27 been filed in accordance with this subsection before the 10th day

1 after the delivery of transfer documentation, the transfer of the
2 interest is not perfected against third parties until the notice is
3 filed.

4 (d) The secretary of state shall implement this section by
5 establishing and maintaining a separate system of records for the
6 filing of notices under this section and prescribing the rules for
7 those filings based on Chapter 9, Business & Commerce Code, adapted
8 to this subchapter and using the terms defined in this subchapter.

9 (e) The priority of a lien and security interest perfected
10 under this section is not impaired by any later modification of the
11 financing order under Section 41.157 or by the commingling of funds
12 arising from securitized charges with other funds, and any other
13 security interest that may apply to those funds shall be terminated
14 when they are transferred to a segregated account for the assignee
15 or a financing party. If securitized property has been transferred
16 to an assignee, any proceeds of that property shall be held in trust
17 for the assignee.

18 (f) Securitized bonds shall be secured by a statutory lien
19 on the securitized property in favor of the owners or beneficial
20 owners of securitized bonds. The lien shall automatically arise on
21 issuance of the securitized bonds without the need for any action or
22 authorization by the electric cooperative or the board. The lien
23 shall be valid and binding from the time the securitized bonds are
24 executed and delivered. The securitized property shall be
25 immediately subject to the lien, and the lien shall immediately
26 attach to the securitized property and be effective, binding, and
27 enforceable against the electric cooperative, its creditors, their

1 successors, assignees, and all others asserting rights therein,
2 regardless of whether those persons have notice of the lien and
3 without the need for any physical delivery, recordation, filing, or
4 further act. The lien is created by this subchapter and not by any
5 security agreement, but may be enforced by any financing party or
6 their representatives as if they were secured parties under Chapter
7 9, Business & Commerce Code. On application by or on behalf of the
8 financing parties, a district court in the county where the
9 electric cooperative is domiciled may order that amounts arising
10 from securitized charges be transferred to a separate account for
11 the financing parties' benefit.

12 (g) The statutory lien is a continuously perfected security
13 interest and has priority over any other lien, created by operation
14 of law or otherwise, that may subsequently attach to that
15 securitized property or proceeds thereof unless the owners or
16 beneficial owners of securitized bonds as specified in the trust
17 agreement or indenture have agreed in writing otherwise. The
18 statutory lien is a lien on the securitized charges and all
19 securitized charge revenues or other proceeds that are deposited in
20 any deposit account or other account of the servicer or other person
21 in which securitized charge revenues or other proceeds have been
22 commingled with other funds.

23 (h) The statutory lien is not adversely affected or impaired
24 by, among other things, the commingling of securitized charge
25 revenues or other proceeds from securitized charges with other
26 amounts regardless of the person holding those amounts.

27 (i) The electric cooperative, any successor or assignee of

1 the electric cooperative, or any other person with any operational
2 control of any portion of the electric cooperative's system assets,
3 whether as owner, lessee, franchisee, or otherwise, and any
4 successor servicer of collections of the securitized charges shall
5 be bound by the requirements of this subchapter and shall perform
6 and satisfy all obligations imposed under this subchapter in the
7 same manner and to the same extent as did its predecessor, including
8 the obligation to bill, adjust, and enforce the payment of
9 securitized charges.

10 (j) If a default or termination occurs under the securitized
11 bonds, the financing parties or their representatives may foreclose
12 on or otherwise enforce their lien and security interest in any
13 securitized property as if they were secured parties under Chapter
14 9, Business & Commerce Code, and on application by the electric
15 cooperative or by or on behalf of the financing parties, a district
16 court in the county where the electric cooperative is domiciled may
17 order that amounts arising from securitized charges be transferred
18 to a separate account for the financing parties' benefit, to which
19 their lien and security interest shall apply. On application by or
20 on behalf of the financing parties, a district court in the county
21 where the electric cooperative is domiciled shall order the
22 sequestration and payment to them of revenues arising from the
23 securitized charges.

24 Sec. 41.160. PLEDGE OF STATE. Securitized bonds are not a
25 debt or obligation of the state and are not a charge on its full
26 faith and credit or taxing power. The state pledges, however, for
27 the benefit and protection of assignees, financing parties, and the

1 electric cooperative, that it will not take or permit, or permit any
2 agency or other governmental authority or political subdivision of
3 the state to take or permit, any action that would impair the value
4 of securitized property, or, except as permitted by Section 41.157,
5 reduce, alter, or impair the securitized charges to be imposed,
6 collected, and remitted to financing parties, until the principal,
7 interest and premium, and any other charges incurred and contracts
8 to be performed in connection with the related securitized bonds
9 have been paid and performed in full. Any party issuing securitized
10 bonds is authorized to include this pledge in any documentation
11 relating to those bonds.

12 Sec. 41.161. TAX EXEMPTION. Transactions involving the
13 transfer and ownership of securitized property and the receipt of
14 securitized charges are exempt from state and local income, sales,
15 franchise, gross receipts, and other taxes or similar charges.

16 Sec. 41.162. NOT PUBLIC UTILITY. An assignee or financing
17 party may not be considered to be a public utility, electric
18 cooperative, or person providing electric service solely by virtue
19 of the transactions described in this subchapter.

20 Sec. 41.163. SEVERABILITY. Effective on the date the first
21 securitized bonds are issued under this subchapter, if any
22 provision in this title or portion of this title is held to be
23 invalid or is invalidated, superseded, replaced, repealed, or
24 expires for any reason, that occurrence does not affect the
25 validity or continuation of this subchapter or any other provision
26 of this title that is relevant to the issuance, administration,
27 payment, retirement, or refunding of securitized bonds or to any

1 actions of the electric cooperative, its successors, an assignee, a
2 collection agent, or a financing party, which shall remain in full
3 force and effect.

4 SECTION 2. Section 39.002, Utilities Code, is amended to
5 read as follows:

6 Sec. 39.002. APPLICABILITY. This chapter, other than
7 Sections 39.1516, 39.155, 39.157(e), 39.159, 39.160, 39.203,
8 39.904, 39.9051, 39.9052, and 39.914(e), does not apply to a
9 municipally owned utility or an electric cooperative. Sections
10 39.157(e), 39.203, and 39.904, however, apply only to a municipally
11 owned utility or an electric cooperative that is offering customer
12 choice. If there is a conflict between the specific provisions of
13 this chapter and any other provisions of this title, except for
14 Chapters 40 and 41, the provisions of this chapter control.

15 SECTION 3. Subchapter D, Chapter 39, Utilities Code, is
16 amended by adding Sections 39.159 and 39.160 to read as follows:

17 Sec. 39.159. CHARGES FOR CERTAIN MARKET PARTICIPANTS.
18 Notwithstanding any other law, no default or uplift charge or
19 repayment may be allocated to or collected from a market
20 participant that:

21 (1) otherwise would be subject to an uplift charge
22 solely as a result of acting as a central counterparty
23 clearinghouse in wholesale market transactions in the ERCOT power
24 region; and

25 (2) is regulated as a derivatives clearing
26 organization, as defined by the Commodity Exchange Act (7 U.S.C.
27 Section 1a).

1 Sec. 39.160. DEFAULT OF MARKET PARTICIPANT. (a) The
2 commission shall require that all market participants pay or make
3 provision for the full and prompt payment of amounts owed
4 calculated solely according to the protocols in effect during the
5 period of emergency to the independent organization certified under
6 Section 39.151 for the ERCOT power region to qualify, or to continue
7 to qualify, as a market participant in the ERCOT power region.

8 (b) If a market participant has failed to fully repay all
9 amounts calculated solely under the protocols in effect during the
10 period of emergency of the independent organization certified under
11 Section 39.151 for the ERCOT power region, the independent
12 organization shall report the market participant as in default to
13 the commission. The commission may not allow the independent
14 organization to accept the defaulting market participant's loads or
15 generation for scheduling in the ERCOT power region, or allow the
16 defaulting market participant to be a market participant in the
17 ERCOT power region for any purpose, until all amounts owed to the
18 independent organization by the market participant as calculated
19 under the protocols are paid in full.

20 (c) The commission and the independent organization
21 certified under Section 39.151 for the ERCOT power region shall
22 pursue collection in full of amounts owed to the independent
23 organization by the defaulting market participant.

24 SECTION 4. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

1 Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1580 passed the Senate on April 28, 2021, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 28, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1580 passed the House, with amendment, on May 25, 2021, by the following vote: Yeas 144, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

1 AN ACT
2 relating to regulation of certain facilities and establishments
3 with respect to, civil remedies for certain criminal activities
4 affecting, and certain criminal offenses involving health, safety,
5 and welfare; creating a criminal offense; increasing criminal
6 penalties.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 SECTION 1. Section 11.44(b), Alcoholic Beverage Code, is
9 amended to read as follows:

10 (b) The commission shall deny an application for a permit or
11 license for any location of an applicant who submitted a prior
12 application that expired or was voluntarily surrendered before the
13 hearing on the application was held on a protest involving
14 allegations of prostitution, a shooting, stabbing, or other violent
15 act, or an offense involving drugs, ~~or~~ trafficking of persons, or
16 drink solicitation as described by Section 104.01 before the third
17 anniversary of the date the prior application expired or was
18 voluntarily surrendered.

19 SECTION 2. Section 11.46(c), Alcoholic Beverage Code, is
20 amended to read as follows:

21 (c) The commission shall deny for a period of one year after
22 cancellation an application for a mixed beverage permit or private
23 club registration permit for a premises where a license or permit
24 has been canceled during the preceding 12 months as a result of:

1 (1) a shooting, stabbing, or other violent act; ~~[7]~~ or
2 (2) ~~[as a result of]~~ an offense involving drugs,
3 prostitution, ~~[or]~~ trafficking of persons, or drink solicitation as
4 described by Section 104.01.

5 SECTION 3. Section 61.42(c), Alcoholic Beverage Code, as
6 effective September 1, 2021, is amended to read as follows:

7 (c) The commission shall deny for a period of one year an
8 application for a retail dealer's on-premise license or a wine and
9 malt beverage retailer's permit for a premises where a license or
10 permit has been canceled during the preceding 12 months as a result
11 of:

12 (1) a shooting, stabbing, or other violent act; ~~[7]~~ or
13 (2) ~~[as a result of]~~ an offense involving drugs,
14 prostitution, ~~[or]~~ trafficking of persons, or drink solicitation as
15 described by Section 104.01.

16 SECTION 4. Chapter 98, Civil Practice and Remedies Code, is
17 amended by adding Section 98.007 to read as follows:

18 Sec. 98.007. CONFIDENTIAL IDENTITY IN CERTAIN ACTIONS. (a)
19 In this section, "confidential identity" means:

20 (1) the use of a pseudonym; and
21 (2) the absence of any other identifying information,
22 including address, telephone number, and social security number.

23 (b) Except as otherwise provided by this section, in an
24 action under this chapter, the court shall:

25 (1) make it known to the claimant as early as possible
26 in the proceedings of the action that the claimant may use a
27 confidential identity in relation to the action;

1 (2) allow a claimant to use a confidential identity in
2 all petitions, filings, and other documents presented to the court;

3 (3) use the confidential identity in all of the court's
4 proceedings and records relating to the action, including any
5 appellate proceedings; and

6 (4) maintain the records relating to the action in a
7 manner that protects the confidentiality of the claimant.

8 (c) In an action under this chapter, only the following
9 persons are entitled to know the true identifying information about
10 the claimant:

11 (1) the judge;

12 (2) a party to the action;

13 (3) the attorney representing a party to the action;

14 and

15 (4) a person authorized by a written order of a court
16 specific to that person.

17 (d) The court shall order that a person entitled to know the
18 true identifying information under Subsection (c) may not divulge
19 that information to anyone without a written order of the court. A
20 court shall hold a person who violates the order in contempt.

21 (e) Notwithstanding Section 22.004, Government Code, the
22 supreme court may not amend or adopt rules in conflict with this
23 section.

24 (f) A claimant is not required to use a confidential
25 identity as provided by this section.

26 SECTION 5. Section 125.0017, Civil Practice and Remedies
27 Code, as added by Chapter 858 (H.B. 2552), Acts of the 85th

1 Legislature, Regular Session, 2017, is amended to read as follows:

2 Sec. 125.0017. NOTICE BY LAW ENFORCEMENT OF [~~ARREST FOR~~
3 CERTAIN ACTIVITIES. If a law enforcement agency has reason to
4 believe [~~makes an arrest related to~~] an activity described by
5 Section 125.0015(a)(6), (7), or (18) has occurred [~~that occurs~~] at
6 property leased to a person operating a massage establishment as
7 defined by Section 455.001, Occupations Code, [~~not later than the~~
8 ~~seventh day after the date of the arrest,~~] the law enforcement
9 agency may [~~shall~~] provide written notice by certified mail to each
10 person maintaining the property of the alleged activity [~~arrest~~].

11 SECTION 6. Section 125.0025(b), Civil Practice and Remedies
12 Code, is amended to read as follows:

13 (b) Except as provided by Section 125.005 [~~125.003(d)~~], on a
14 finding that a web address or computer network is a common nuisance,
15 the sole remedy available is a judicial finding issued to the
16 attorney general.

17 SECTION 7. Sections 125.004(a-1) and (a-2), Civil Practice
18 and Remedies Code, are amended to read as follows:

19 (a-1) Proof in the form of a person's arrest or the
20 testimony of a law enforcement agent that an activity described by
21 Section 125.0015(a)(6) or (7) is committed at a place licensed as a
22 massage establishment under Chapter 455, Occupations Code, or
23 advertised as offering massage therapy or massage services, after
24 notice [~~of an arrest~~] was provided to the defendant in accordance
25 with Section 125.0017, is prima facie evidence that the defendant:

- 26 (1) knowingly tolerated the activity; and
27 (2) did not make a reasonable attempt to abate the

1 activity.

2 (a-2) Proof that an activity described by Section
3 125.0015(a)(18) is committed at a place maintained by the
4 defendant, after notice [~~of an arrest~~] was provided to the
5 defendant in accordance with Section 125.0017, is prima facie
6 evidence that the defendant:

- 7 (1) knowingly tolerated the activity; and
8 (2) did not make a reasonable attempt to abate the
9 activity.

10 SECTION 8. Section 125.004(a-3), Civil Practice and
11 Remedies Code, as added by Chapter 858 (H.B. 2552), Acts of the 85th
12 Legislature, Regular Session, 2017, is amended to read as follows:

13 (a-3) For purposes of Subsections (a-1) and (a-2), notice is
14 considered to be provided to the defendant the earlier of:

- 15 (1) seven days after the postmark date of the notice
16 provided under Section 125.0017; or
17 (2) the date the defendant actually received notice
18 under Section 125.0017.

19 SECTION 9. Subchapter A, Chapter 125, Civil Practice and
20 Remedies Code, is amended by adding Section 125.005 to read as
21 follows:

22 Sec. 125.005. ATTORNEY'S FEES AND COSTS IN ACTION UNDER
23 CHAPTER. In an action brought under this chapter, the court may
24 award a prevailing party reasonable attorney's fees in addition to
25 costs incurred in bringing the action. In determining the amount of
26 attorney's fees, the court shall consider:

- 27 (1) the time and labor involved;

- 1 (2) the novelty and difficulty of the questions;
2 (3) the expertise, reputation, and ability of the
3 attorney; and
4 (4) any other factor considered relevant by the court.

5 SECTION 10. Section 125.070(d), Civil Practice and Remedies
6 Code, is amended to read as follows:

7 (d) A district, county, or city attorney or the attorney
8 general may sue for money damages on behalf of the state or a
9 governmental entity. If the state or a governmental entity
10 prevails in a suit under this section, the state or governmental
11 entity may recover:

- 12 (1) actual damages;
13 (2) a civil penalty in an amount not to exceed \$20,000
14 for each violation; and
15 (3) court costs and attorney's fees in accordance with
16 Section 125.005.

17 SECTION 11. Section 140A.002, Civil Practice and Remedies
18 Code, is amended to read as follows:

19 Sec. 140A.002. CIVIL RACKETEERING. A person or enterprise
20 commits racketeering if, for financial gain, the person or
21 enterprise commits an offense under Chapter 20A, Penal Code
22 (trafficking of persons) [~~and the offense or an element of the~~
23 ~~offense.~~

- 24 ~~[(1) occurs in more than one county in this state, or~~
25 ~~[(2) is facilitated by the use of United States mail,~~
26 ~~e-mail, telephone, facsimile, or a wireless communication from one~~
27 ~~county in this state to another].~~

1 SECTION 12. Section 140A.102(b), Civil Practice and
2 Remedies Code, is amended to read as follows:

3 (b) Following a final determination of liability under this
4 chapter, the court may issue an appropriate order, including an
5 order that:

6 (1) requires a person to divest any direct or indirect
7 interest in an enterprise;

8 (2) imposes reasonable restrictions on the future
9 activities or investments of a person that affect the laws of this
10 state, including prohibiting a person from engaging in the type of
11 endeavor or enterprise that gave rise to the racketeering offense,
12 to the extent permitted by the constitutions of this state and the
13 United States;

14 (3) requires the dissolution or reorganization of an
15 enterprise involved in the suit;

16 (4) orders the recovery of reasonable fees, expenses,
17 and costs incurred in obtaining injunctive relief or civil remedies
18 or in conducting investigations under this chapter, including court
19 costs, investigation costs, attorney's fees, witness fees, and
20 deposition fees;

21 (5) orders payment to the state of an amount equal to:

22 (A) the gain acquired or maintained through
23 racketeering; or

24 (B) the amount for which a person is liable under
25 this chapter;

26 (6) orders payment to the state of a civil penalty by a
27 person or enterprise found liable for racketeering, in an amount

1 not to exceed \$250,000 for each separately alleged and proven act of
2 racketeering;

3 (7) orders payment of damages to the state for
4 racketeering shown to have materially damaged the state; and ~~[or]~~

5 (8) orders that property attached under Chapter 61 be
6 used to satisfy an award of the court, including damages,
7 penalties, costs, and fees.

8 SECTION 13. Section 140A.104(d), Civil Practice and
9 Remedies Code, is amended to read as follows:

10 (d) An enterprise may not be held liable under this chapter
11 based on the conduct of a person ~~[an agent]~~ unless the finder of
12 fact finds by a preponderance of the evidence that a director or
13 high managerial agent performed, authorized, requested, commanded,
14 participated in, ratified, or recklessly tolerated the unlawful
15 conduct of the person ~~[agent]~~.

16 SECTION 14. Articles 42A.453(a) and (c), Code of Criminal
17 Procedure, are amended to read as follows:

18 (a) In this article, "playground," "premises," "school,"
19 "video arcade facility," and "youth center" have the meanings
20 assigned by Section 481.134, Health and Safety Code, and "general
21 residential operation" has the meaning assigned by Section 42.002,
22 Human Resources Code.

23 (c) If a judge grants community supervision to a defendant
24 described by Subsection (b) and the judge determines that a child as
25 defined by Section 22.011(c), Penal Code, was the victim of the
26 offense, the judge shall establish a child safety zone applicable
27 to the defendant by requiring as a condition of community

1 supervision that the defendant:

2 (1) not:

3 (A) supervise or participate in any program that:

4 (i) includes as participants or recipients
5 persons who are 17 years of age or younger; and

6 (ii) regularly provides athletic, civic, or
7 cultural activities; or

8 (B) go in, on, or within 1,000 feet of a premises
9 where children commonly gather, including a school, day-care
10 facility, playground, public or private youth center, public
11 swimming pool, ~~or~~ video arcade facility, or general residential
12 operation operating as a residential treatment center; and

13 (2) attend psychological counseling sessions for sex
14 offenders with an individual or organization that provides sex
15 offender treatment or counseling as specified or approved by the
16 judge or the defendant's supervision officer.

17 SECTION 15. Subchapter B, Chapter 301, Government Code, is
18 amended by adding Section 301.0221 to read as follows:

19 Sec. 301.0221. USE OF PSEUDONYM BY VICTIMS OF HUMAN
20 TRAFFICKING. (a) Each legislative committee shall allow a witness
21 who is the victim of an offense under Section 20A.02 or 20A.03,
22 Penal Code, to give testimony to the committee relating to the
23 witness's experience as a victim of trafficking of persons using a
24 pseudonym instead of the witness's name.

25 (b) The name of a witness who uses a pseudonym authorized by
26 Subsection (a) is confidential and may not be included in any public
27 records of the committee.

1 SECTION 16. Section 481.134(a), Health and Safety Code, is
2 amended by adding Subdivision (8) to read as follows:

3 (8) "General residential operation" has the meaning
4 assigned by Section 42.002, Human Resources Code.

5 SECTION 17. Sections 481.134(b), (c), (d), (e), and (f),
6 Health and Safety Code, are amended to read as follows:

7 (b) An offense otherwise punishable as a state jail felony
8 under Section 481.112, 481.1121, 481.113, 481.114, or 481.120 is
9 punishable as a felony of the third degree, and an offense otherwise
10 punishable as a felony of the second degree under any of those
11 sections is punishable as a felony of the first degree, if it is
12 shown at the punishment phase of the trial of the offense that the
13 offense was committed:

14 (1) in, on, or within 1,000 feet of premises owned,
15 rented, or leased by an institution of higher learning, the
16 premises of a public or private youth center, or a playground; ~~or~~

17 (2) in, on, or within 300 feet of the premises of a
18 public swimming pool or video arcade facility; or

19 (3) by any unauthorized person 18 years of age or
20 older, in, on, or within 1,000 feet of premises owned, rented, or
21 leased by a general residential operation operating as a
22 residential treatment center.

23 (c) The minimum term of confinement or imprisonment for an
24 offense otherwise punishable under Section 481.112(c), (d), (e), or
25 (f), 481.1121(b)(2), (3), or (4), 481.113(c), (d), or (e),
26 481.114(c), (d), or (e), 481.115(c)-(f), 481.1151(b)(2), (3), (4),
27 or (5), 481.116(c), (d), or (e), 481.1161(b)(4), (5), or (6),

1 481.117(c), (d), or (e), 481.118(c), (d), or (e), 481.120(b)(4),
2 (5), or (6), or 481.121(b)(4), (5), or (6) is increased by five
3 years and the maximum fine for the offense is doubled if it is shown
4 on the trial of the offense that the offense was committed:

5 (1) in, on, or within 1,000 feet of the premises of a
6 school, the premises of a public or private youth center, or a
7 playground; ~~or~~

8 (2) on a school bus; or

9 (3) by any unauthorized person 18 years of age or
10 older, in, on, or within 1,000 feet of premises owned, rented, or
11 leased by a general residential operation operating as a
12 residential treatment center.

13 (d) An offense otherwise punishable under Section
14 481.112(b), 481.1121(b)(1), 481.113(b), 481.114(b), 481.115(b),
15 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.120(b)(3), or
16 481.121(b)(3) is a felony of the third degree if it is shown on the
17 trial of the offense that the offense was committed:

18 (1) in, on, or within 1,000 feet of any real property
19 that is owned, rented, or leased to a school or school board, the
20 premises of a public or private youth center, or a playground; ~~or~~

21 (2) on a school bus; or

22 (3) by any unauthorized person 18 years of age or
23 older, in, on, or within 1,000 feet of premises owned, rented, or
24 leased by a general residential operation operating as a
25 residential treatment center.

26 (e) An offense otherwise punishable under Section
27 481.117(b), 481.119(a), 481.120(b)(2), or 481.121(b)(2) is a state

1 jail felony if it is shown on the trial of the offense that the
2 offense was committed:

3 (1) in, on, or within 1,000 feet of any real property
4 that is owned, rented, or leased to a school or school board, the
5 premises of a public or private youth center, or a playground; ~~or~~

6 (2) on a school bus; or

7 (3) by any unauthorized person 18 years of age or
8 older, in, on, or within 1,000 feet of premises owned, rented, or
9 leased by a general residential operation operating as a
10 residential treatment center.

11 (f) An offense otherwise punishable under Section
12 481.118(b), 481.119(b), 481.120(b)(1), or 481.121(b)(1) is a Class
13 A misdemeanor if it is shown on the trial of the offense that the
14 offense was committed:

15 (1) in, on, or within 1,000 feet of any real property
16 that is owned, rented, or leased to a school or school board, the
17 premises of a public or private youth center, or a playground; ~~or~~

18 (2) on a school bus; or

19 (3) by any unauthorized person 18 years of age or
20 older, in, on, or within 1,000 feet of premises owned, rented, or
21 leased by a general residential operation operating as a
22 residential treatment center.

23 SECTION 18. Section 42.002, Human Resources Code, is
24 amended by adding Subdivision (25) to read as follows:

25 (25) "Grounds" means, with regard to property, the
26 real property, whether fenced or unfenced, of the parcel of land on
27 which is located any appurtenant building, structure, or other

1 improvement, including a public or private driveway, street,
2 sidewalk or walkway, parking lot, and parking garage on the
3 property.

4 SECTION 19. Sections 42.042(e), (g), and (g-2), Human
5 Resources Code, are amended to read as follows:

6 (e) The executive commissioner shall promulgate minimum
7 standards that apply to licensed child-care facilities and to
8 registered family homes covered by this chapter and that will:

9 (1) promote the health, safety, and welfare of
10 children attending a facility or registered family home;

11 (2) promote safe, comfortable, and healthy physical
12 facilities and registered family homes for children;

13 (3) ensure adequate supervision of children by
14 capable, qualified, and healthy personnel;

15 (4) ensure adequate and healthy food service where
16 food service is offered;

17 (5) prohibit racial discrimination by child-care
18 facilities and registered family homes;

19 (6) require procedures for parental and guardian
20 consultation in the formulation of children's educational and
21 therapeutic programs;

22 (7) prevent the breakdown of foster care and adoptive
23 placement; ~~and~~

24 (8) ensure that a child-care facility or registered
25 family home:

26 (A) follows the directions of a child's physician
27 or other health care provider in providing specialized medical

1 assistance required by the child; and

2 (B) maintains for a reasonable time a copy of any
3 directions from the physician or provider that the parent provides
4 to the facility or home; and

5 (9) ensure that a child's health, safety, and welfare
6 are adequately protected on the grounds of a child-care facility or
7 registered family home.

8 (g) In promulgating minimum standards the executive
9 commissioner may recognize and treat differently the types of
10 services provided by and the grounds appurtenant to the following:

- 11 (1) listed family homes;
- 12 (2) registered family homes;
- 13 (3) child-care facilities, including general
14 residential operations, cottage home operations, specialized
15 child-care homes, group day-care homes, and day-care centers;
- 16 (4) child-placing agencies;
- 17 (5) agency foster homes;
- 18 (6) continuum-of-care residential operations;
- 19 (7) before-school or after-school programs; and
- 20 (8) school-age programs.

21 (g-2) The executive commissioner by rule shall adopt
22 minimum standards that apply to general residential operations that
23 provide comprehensive residential and nonresidential services to
24 persons who are victims of trafficking under Section 20A.02, Penal
25 Code. In adopting the minimum standards under this subsection, the
26 executive commissioner shall consider:

- 27 (1) the special circumstances, ~~and~~ needs, and

1 precautions required of victims of trafficking of persons; ~~and~~
2 (2) the role of the general residential operations in
3 assisting, ~~and~~ supporting, and protecting victims of trafficking
4 of persons; and
5 (3) the vulnerability of victims of trafficking of
6 persons on the grounds of a general residential operation operating
7 as a residential treatment center.

8 SECTION 20. Subchapter C, Chapter 42, Human Resources Code,
9 is amended by adding Section 42.068 to read as follows:

10 Sec. 42.068. REQUIRED POSTING OF NO TRESPASSING NOTICE;
11 CRIMINAL PENALTY. (a) Each general residential operation
12 operating as a residential treatment center shall post "No
13 Trespassing" notices on the grounds of the general residential
14 operation in the following locations:

15 (1) parallel to and along the exterior boundaries of
16 the general residential operation's grounds;

17 (2) at each roadway or other way of access to the
18 grounds;

19 (3) for grounds not fenced, at least every five
20 hundred feet along the exterior boundaries of the grounds;

21 (4) at each entrance to the grounds; and

22 (5) at conspicuous places reasonably likely to be
23 viewed by intruders.

24 (b) Each "No Trespassing" notice posted on the grounds of a
25 general residential operation operating as a residential treatment
26 center must:

27 (1) state that entry to the property is forbidden;

1 (2) include a description of the provisions of
2 Section 30.05, Penal Code, including the penalties for violating
3 Section 30.05, Penal Code;

4 (3) include the name and address of the person under
5 whose authority the notice is posted;

6 (4) be written in English and Spanish; and

7 (5) be at least 8-1/2 by 11 inches in size.

8 (c) The executive commissioner by rule shall determine and
9 prescribe the requirements regarding the placement, installation,
10 design, size, wording, and maintenance procedures for the "No
11 Trespassing" notices.

12 (d) The commission shall provide without charge to each
13 general residential operation operating as a residential treatment
14 center the number of "No Trespassing" notices required to comply
15 with this section and rules adopted under this section.

16 (e) A person who operates a general residential operation
17 operating as a residential treatment center commits an offense if
18 the commission provides "No Trespassing" notices to the facility
19 and the person fails to display the "No Trespassing" notices on the
20 operation's grounds as required by this section before the end of
21 the 30th business day after the date the operation receives the
22 notices. An offense under this subsection is a Class C misdemeanor.

23 SECTION 21. Section 20A.01, Penal Code, is amended by
24 adding Subdivisions (1-a), (2-a), and (2-b) to read as follows:

25 (1-a) "Coercion" as defined by Section 1.07 includes:

26 (A) destroying, concealing, confiscating, or
27 withholding from a trafficked person, or threatening to destroy,

1 conceal, confiscate, or withhold from a trafficked person, the
2 person's actual or purported:

3 (i) government records; or

4 (ii) identifying information or documents;

5 (B) causing a trafficked person, without the
6 person's consent, to become intoxicated, as defined by Section
7 49.01, to a degree that impairs the person's ability to appraise the
8 nature of or resist engaging in any conduct, including performing
9 or providing labor or services; or

10 (C) withholding alcohol or a controlled
11 substance to a degree that impairs the ability of a trafficked
12 person with a chemical dependency, as defined by Section 462.001,
13 Health and Safety Code, to appraise the nature of or resist engaging
14 in any conduct, including performing or providing labor or
15 services.

16 (2-a) "Premises" has the meaning assigned by Section
17 481.134, Health and Safety Code.

18 (2-b) "School" means a public or private primary or
19 secondary school.

20 SECTION 22. Sections 20A.02, Penal Code, is amended by
21 amending Subsections (a) and (b) and adding Subsection (b-1) to
22 read as follows:

23 (a) A person commits an offense if the person knowingly:

24 (1) traffics another person with the intent that the
25 trafficked person engage in forced labor or services;

26 (2) receives a benefit from participating in a venture
27 that involves an activity described by Subdivision (1), including

1 by receiving labor or services the person knows are forced labor or
2 services;

3 (3) traffics another person and, through force, fraud,
4 or coercion, causes the trafficked person to engage in conduct
5 prohibited by:

6 (A) Section 43.02 (Prostitution);

7 (B) Section 43.03 (Promotion of Prostitution);

8 (B-1) Section 43.031 (Online Promotion of
9 Prostitution);

10 (C) Section 43.04 (Aggravated Promotion of
11 Prostitution);

12 (C-1) Section 43.041 (Aggravated Online
13 Promotion of Prostitution); or

14 (D) Section 43.05 (Compelling Prostitution);

15 (4) receives a benefit from participating in a venture
16 that involves an activity described by Subdivision (3) or engages
17 in sexual conduct with a person trafficked in the manner described
18 in Subdivision (3);

19 (5) traffics a child with the intent that the
20 trafficked child engage in forced labor or services;

21 (6) receives a benefit from participating in a venture
22 that involves an activity described by Subdivision (5), including
23 by receiving labor or services the person knows are forced labor or
24 services;

25 (7) traffics a child and by any means causes the
26 trafficked child to engage in, or become the victim of, conduct
27 prohibited by:

- 1 (A) Section 21.02 (Continuous Sexual Abuse of
2 Young Child or Children);
- 3 (B) Section 21.11 (Indecency with a Child);
- 4 (C) Section 22.011 (Sexual Assault);
- 5 (D) Section 22.021 (Aggravated Sexual Assault);
- 6 (E) Section 43.02 (Prostitution);
- 7 (E-1) Section 43.021 (Solicitation of
8 Prostitution);
- 9 (F) Section 43.03 (Promotion of Prostitution);
- 10 (F-1) Section 43.031 (Online Promotion of
11 Prostitution);
- 12 (G) Section 43.04 (Aggravated Promotion of
13 Prostitution);
- 14 (G-1) Section 43.041 (Aggravated Online
15 Promotion of Prostitution);
- 16 (H) Section 43.05 (Compelling Prostitution);
- 17 (I) Section 43.25 (Sexual Performance by a
18 Child);
- 19 (J) Section 43.251 (Employment Harmful to
20 Children); or
- 21 (K) Section 43.26 (Possession or Promotion of
22 Child Pornography); or
- 23 (8) receives a benefit from participating in a venture
24 that involves an activity described by Subdivision (7) or engages
25 in sexual conduct with a child trafficked in the manner described in
26 Subdivision (7).
- 27 (b) Except as otherwise provided by this subsection and

1 Subsection (b-1), an offense under this section is a felony of the
2 second degree. An offense under this section is a felony of the
3 first degree if:

4 (1) the applicable conduct constitutes an offense
5 under Subsection (a)(5), (6), (7), or (8), regardless of whether
6 the actor knows the age of the child at the time of the offense;

7 (2) the commission of the offense results in the death
8 of the person who is trafficked; ~~[or]~~

9 (3) the commission of the offense results in the death
10 of an unborn child of the person who is trafficked; or

11 (4) the actor recruited, enticed, or obtained the
12 victim of the offense from a shelter or facility operating as a
13 residential treatment center that serves runaway youth, foster
14 children, the homeless, or persons subjected to human trafficking,
15 domestic violence, or sexual assault.

16 (b-1) An offense under this section is a felony of the first
17 degree punishable by imprisonment in the Texas Department of
18 Criminal Justice for life or for a term of not more than 99 years or
19 less than 25 years if it is shown on the trial of the offense that
20 the actor committed the offense in a location that was:

21 (1) on the premises of or within 1,000 feet of the
22 premises of a school; or

23 (2) on premises or within 1,000 feet of premises
24 where:

25 (A) an official school function was taking place;

26 or

27 (B) an event sponsored or sanctioned by the

1 University Interscholastic League was taking place.

2 SECTION 23. Section 30.05(a), Penal Code, is amended to
3 read as follows:

4 (a) A person commits an offense if the person enters or
5 remains on or in property of another, including residential land,
6 agricultural land, a recreational vehicle park, a building, a
7 general residential operation operating as a residential treatment
8 center, or an aircraft or other vehicle, without effective consent
9 and the person:

10 (1) had notice that the entry was forbidden; or

11 (2) received notice to depart but failed to do so.

12 SECTION 24. Section 30.05(b), Penal Code, is amended by
13 adding Subdivision (13) to read as follows:

14 (13) "General residential operation" has the meaning
15 assigned by Section 42.002, Human Resources Code.

16 SECTION 25. Section 30.05(d), Penal Code, is amended to
17 read as follows:

18 (d) An offense under this section is:

19 (1) a Class B misdemeanor, except as provided by
20 Subdivisions (2) and (3);

21 (2) a Class C misdemeanor, except as provided by
22 Subdivision (3), if the offense is committed:

23 (A) on agricultural land and within 100 feet of
24 the boundary of the land; or

25 (B) on residential land and within 100 feet of a
26 protected freshwater area; and

27 (3) a Class A misdemeanor if:

1 (A) the offense is committed:
2 (i) in a habitation or a shelter center;
3 (ii) on a Superfund site; or
4 (iii) on or in a critical infrastructure
5 facility;

6 (B) the offense is committed on or in property of
7 an institution of higher education and it is shown on the trial of
8 the offense that the person has previously been convicted of:

9 (i) an offense under this section relating
10 to entering or remaining on or in property of an institution of
11 higher education; or

12 (ii) an offense under Section 51.204(b)(1),
13 Education Code, relating to trespassing on the grounds of an
14 institution of higher education; [~~or~~]

15 (C) the person carries a deadly weapon during the
16 commission of the offense; or

17 (D) the offense is committed on the property of
18 or within a general residential operation operating as a
19 residential treatment center.

20 SECTION 26. Section 71.028(a), Penal Code, is amended to
21 read as follows:

22 (a) In this section:

23 (1) "General residential operation" has the meaning
24 assigned by Section 42.002, Human Resources Code.

25 (2) "Institution of higher education," "playground,"
26 "premises," "school," "video arcade facility," and "youth center"
27 have the meanings assigned by Section 481.134, Health and Safety

1 Code.

2 (3) [~~2~~] "Shopping mall" means an enclosed public
3 walkway or hall area that connects retail, service, or professional
4 establishments.

5 SECTION 27. Section 71.028(c), Penal Code, is amended to
6 read as follows:

7 (c) Except as provided by Subsection (d), the punishment
8 prescribed for an offense described by Subsection (b) is increased
9 to the punishment prescribed for the next highest category of
10 offense if the actor is 17 years of age or older and it is shown
11 beyond a reasonable doubt on the trial of the offense that the actor
12 committed the offense at a location that was:

13 (1) in, on, or within 1,000 feet of any:

14 (A) real property that is owned, rented, or
15 leased by a school or school board;

16 (B) premises owned, rented, or leased by an
17 institution of higher education;

18 (C) premises of a public or private youth center;

19 [~~or~~]

20 (D) playground; or

21 (E) general residential operation operating as a
22 residential treatment center;

23 (2) in, on, or within 300 feet of any:

24 (A) shopping mall;

25 (B) movie theater;

26 (C) premises of a public swimming pool; or

27 (D) premises of a video arcade facility; or

1 (3) on a school bus.

2 SECTION 28. Chapter 43, Penal Code, is amended by adding
3 Section 43.021, and a heading is added to that section to read as
4 follows:

5 Sec. 43.021. SOLICITATION OF PROSTITUTION.

6 SECTION 29. Sections 43.02(b) and (c-1), Penal Code, are
7 transferred to Section 43.021, Penal Code, as added by this Act,
8 redesignated as Sections 43.021(a) and (b), Penal Code,
9 respectively, and amended to read as follows:

10 (a) ~~[(b)]~~ A person commits an offense if the person
11 knowingly offers or agrees to pay a fee to another person for the
12 purpose of engaging in sexual conduct with that person or another.

13 (b) ~~[(c-1)]~~ An offense under Subsection (a) ~~[(b)]~~ is a state
14 jail felony ~~[Class A misdemeanor]~~, except that the offense is:

15 (1) a ~~[state jail]~~ felony of the third degree if the
16 actor has previously been convicted of an offense under Subsection
17 (a) or under Section 43.02(b), as that law existed before September
18 1, 2021 ~~[(b)]~~; or

19 (2) a felony of the second degree if the person with
20 whom the actor agrees to engage in sexual conduct is:

21 (A) younger than 18 years of age, regardless of
22 whether the actor knows the age of the person at the time of the
23 offense;

24 (B) represented to the actor as being younger
25 than 18 years of age; or

26 (C) believed by the actor to be younger than 18
27 years of age.

1 SECTION 30. Section 43.021, Penal Code, as added by this
2 Act, is amended by adding Subsection (c) to read as follows:

3 (c) A conviction may be used for purposes of enhancement
4 under this section or enhancement under Subchapter D, Chapter 12,
5 but not under both this section and that subchapter. For purposes of
6 enhancement of penalties under this section or Subchapter D,
7 Chapter 12, a defendant is considered to have been previously
8 convicted of an offense under this section or under Section
9 43.02(b), as that law existed before September 1, 2021, if the
10 defendant was adjudged guilty of the offense or entered a plea of
11 guilty or nolo contendere in return for a grant of deferred
12 adjudication, regardless of whether the sentence for the offense
13 was ever imposed or whether the sentence was probated and the
14 defendant was subsequently discharged from community supervision.

15 SECTION 31. Section 25.06(a), Alcoholic Beverage Code, as
16 effective September 1, 2021, is amended to read as follows:

17 (a) The commission shall deny an original application for a
18 wine and malt beverage retailer's permit if the commission finds
19 that the applicant, or the applicant's spouse, during the five
20 years immediately preceding the application, was finally convicted
21 of a felony or one of the following offenses:

- 22 (1) prostitution or solicitation of prostitution;
- 23 (2) a vagrancy offense involving moral turpitude;
- 24 (3) bookmaking;
- 25 (4) gambling or gaming;
- 26 (5) an offense involving controlled substances as
27 defined in Chapter 481, Health and Safety Code, or other dangerous

1 drugs;

2 (6) a violation of this code resulting in the
3 cancellation of a license or permit, or a fine of not less than
4 \$500;

5 (7) more than three violations of this code relating
6 to minors;

7 (8) bootlegging; or

8 (9) an offense involving firearms or a deadly weapon.

9 SECTION 32. Section 69.06(a), Alcoholic Beverage Code, is
10 amended to read as follows:

11 (a) The commission shall deny an original application for a
12 retail dealer's on-premise license if the commission finds that the
13 applicant or the applicant's spouse, during the five years
14 immediately preceding the application, was finally convicted of a
15 felony or one of the following offenses:

16 (1) prostitution or solicitation of prostitution;

17 (2) a vagrancy offense involving moral turpitude;

18 (3) bookmaking;

19 (4) gambling or gaming;

20 (5) an offense involving controlled substances as
21 defined in the Texas Controlled Substances Act, including an
22 offense involving a synthetic cannabinoid, or an offense involving
23 other dangerous drugs;

24 (6) a violation of this code resulting in the
25 cancellation of a license or permit, or a fine of not less than
26 \$500;

27 (7) more than three violations of this code relating

1 to minors;

2 (8) bootlegging; or

3 (9) an offense involving firearms or a deadly weapon.

4 SECTION 33. Section [125.0015](#)(a), Civil Practice and
5 Remedies Code, is amended to read as follows:

6 (a) A person who maintains a place to which persons
7 habitually go for the following purposes and who knowingly
8 tolerates the activity and furthermore fails to make reasonable
9 attempts to abate the activity maintains a common nuisance:

10 (1) discharge of a firearm in a public place as
11 prohibited by the Penal Code;

12 (2) reckless discharge of a firearm as prohibited by
13 the Penal Code;

14 (3) engaging in organized criminal activity as a
15 member of a combination as prohibited by the Penal Code;

16 (4) delivery, possession, manufacture, or use of a
17 substance or other item in violation of Chapter [481](#), Health and
18 Safety Code;

19 (5) gambling, gambling promotion, or communicating
20 gambling information as prohibited by the Penal Code;

21 (6) prostitution as described by Section [43.02](#), Penal
22 Code, solicitation of prostitution as described by Section [43.021](#),
23 Penal Code, promotion of prostitution as described by Section
24 [43.03](#), Penal Code, or aggravated promotion of prostitution as
25 described by Section [43.04](#), [~~prohibited by the~~] Penal Code;

26 (7) compelling prostitution as prohibited by the Penal
27 Code;

- 1 (8) commercial manufacture, commercial distribution,
2 or commercial exhibition of obscene material as prohibited by the
3 Penal Code;
- 4 (9) aggravated assault as described by Section 22.02,
5 Penal Code;
- 6 (10) sexual assault as described by Section 22.011,
7 Penal Code;
- 8 (11) aggravated sexual assault as described by Section
9 22.021, Penal Code;
- 10 (12) robbery as described by Section 29.02, Penal
11 Code;
- 12 (13) aggravated robbery as described by Section 29.03,
13 Penal Code;
- 14 (14) unlawfully carrying a weapon as described by
15 Section 46.02, Penal Code;
- 16 (15) murder as described by Section 19.02, Penal Code;
- 17 (16) capital murder as described by Section 19.03,
18 Penal Code;
- 19 (17) continuous sexual abuse of young child or
20 children as described by Section 21.02, Penal Code;
- 21 (18) massage therapy or other massage services in
22 violation of Chapter 455, Occupations Code;
- 23 (19) employing a minor at a sexually oriented business
24 as defined by Section 243.002, Local Government Code;
- 25 (20) trafficking of persons as described by Section
26 20A.02, Penal Code;
- 27 (21) sexual conduct or performance by a child as

1 described by Section 43.25, Penal Code;

2 (22) employment harmful to a child as described by
3 Section 43.251, Penal Code;

4 (23) criminal trespass as described by Section 30.05,
5 Penal Code;

6 (24) disorderly conduct as described by Section 42.01,
7 Penal Code;

8 (25) arson as described by Section 28.02, Penal Code;

9 (26) criminal mischief as described by Section 28.03,
10 Penal Code, that causes a pecuniary loss of \$500 or more; or

11 (27) a graffiti offense in violation of Section 28.08,
12 Penal Code.

13 SECTION 34. Article 17.45, Code of Criminal Procedure, is
14 amended to read as follows:

15 Art. 17.45. CONDITIONS REQUIRING AIDS AND HIV INSTRUCTION.
16 A magistrate may require as a condition of bond that a defendant
17 charged with an offense under Section 43.02 or 43.021, Penal Code,
18 receive counseling or education, or both, relating to acquired
19 immune deficiency syndrome or human immunodeficiency virus.

20 SECTION 35. Article 42A.751(a), Code of Criminal Procedure,
21 is amended to read as follows:

22 (a) At any time during the period of community supervision,
23 the judge may issue a warrant for a violation of any condition of
24 community supervision and cause a defendant convicted under Section
25 43.02 or 43.021, Penal Code, Chapter 481, Health and Safety Code, or
26 Sections 485.031 through 485.035, Health and Safety Code, or placed
27 on deferred adjudication community supervision after being charged

1 with one of those offenses, to be subject to:

2 (1) the control measures of Section 81.083, Health and
3 Safety Code; and

4 (2) the court-ordered-management provisions of
5 Subchapter G, Chapter 81, Health and Safety Code.

6 SECTION 36. Section 62.001(5), Code of Criminal Procedure,
7 is amended to read as follows:

8 (5) "Reportable conviction or adjudication" means a
9 conviction or adjudication, including an adjudication of
10 delinquent conduct or a deferred adjudication, that, regardless of
11 the pendency of an appeal, is a conviction for or an adjudication
12 for or based on:

13 (A) a violation of Section 21.02 (Continuous
14 sexual abuse of young child or children), 21.09 (Bestiality), 21.11
15 (Indecency with a child), 22.011 (Sexual assault), 22.021
16 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct),
17 Penal Code;

18 (B) a violation of Section 43.04 (Aggravated
19 promotion of prostitution), 43.05 (Compelling prostitution), 43.25
20 (Sexual performance by a child), or 43.26 (Possession or promotion
21 of child pornography), Penal Code;

22 (B-1) a violation of Section 43.021
23 (Solicitation of Prostitution) [~~43.02 (Prostitution)~~], Penal Code,
24 if the offense is punishable as a felony of the second degree [~~under~~
25 ~~Subsection (c-1)(2) of that section~~];

26 (C) a violation of Section 20.04(a)(4)
27 (Aggravated kidnapping), Penal Code, if the actor committed the

1 offense or engaged in the conduct with intent to violate or abuse
2 the victim sexually;

3 (D) a violation of Section 30.02 (Burglary),
4 Penal Code, if the offense or conduct is punishable under
5 Subsection (d) of that section and the actor committed the offense
6 or engaged in the conduct with intent to commit a felony listed in
7 Paragraph (A) or (C);

8 (E) a violation of Section 20.02 (Unlawful
9 restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping),
10 Penal Code, if, as applicable:

11 (i) the judgment in the case contains an
12 affirmative finding under Article 42.015; or

13 (ii) the order in the hearing or the papers
14 in the case contain an affirmative finding that the victim or
15 intended victim was younger than 17 years of age;

16 (F) the second violation of Section 21.08
17 (Indecent exposure), Penal Code, but not if the second violation
18 results in a deferred adjudication;

19 (G) an attempt, conspiracy, or solicitation, as
20 defined by Chapter 15, Penal Code, to commit an offense or engage in
21 conduct listed in Paragraph (A), (B), (C), (D), (E), (K), or (L);

22 (H) a violation of the laws of another state,
23 federal law, the laws of a foreign country, or the Uniform Code of
24 Military Justice for or based on the violation of an offense
25 containing elements that are substantially similar to the elements
26 of an offense listed under Paragraph (A), (B), (B-1), (C), (D), (E),
27 (G), (J), (K), or (L), but not if the violation results in a

1 deferred adjudication;

2 (I) the second violation of the laws of another
3 state, federal law, the laws of a foreign country, or the Uniform
4 Code of Military Justice for or based on the violation of an offense
5 containing elements that are substantially similar to the elements
6 of the offense of indecent exposure, but not if the second violation
7 results in a deferred adjudication;

8 (J) a violation of Section 33.021 (Online
9 solicitation of a minor), Penal Code;

10 (K) a violation of Section 20A.02(a)(3), (4),
11 (7), or (8) (Trafficking of persons), Penal Code; or

12 (L) a violation of Section 20A.03 (Continuous
13 trafficking of persons), Penal Code, if the offense is based partly
14 or wholly on conduct that constitutes an offense under Section
15 20A.02(a)(3), (4), (7), or (8) of that code.

16 SECTION 37. Section 11.066, Education Code, is amended to
17 read as follows:

18 Sec. 11.066. ELIGIBILITY FOR SERVICE BY TRUSTEE CONVICTED
19 OF CERTAIN OFFENSES. A person is ineligible to serve as a member of
20 the board of trustees of a school district if the person has been
21 convicted of a felony or an offense under Section 43.021
22 [~~43.02(b)~~], Penal Code.

23 SECTION 38. Section 51.03(b), Family Code, is amended to
24 read as follows:

25 (b) Conduct indicating a need for supervision is:

26 (1) subject to Subsection (f), conduct, other than a
27 traffic offense, that violates:

1 (A) the penal laws of this state of the grade of
2 misdemeanor that are punishable by fine only; or

3 (B) the penal ordinances of any political
4 subdivision of this state;

5 (2) the voluntary absence of a child from the child's
6 home without the consent of the child's parent or guardian for a
7 substantial length of time or without intent to return;

8 (3) conduct prohibited by city ordinance or by state
9 law involving the inhalation of the fumes or vapors of paint and
10 other protective coatings or glue and other adhesives and the
11 volatile chemicals itemized in Section 485.001, Health and Safety
12 Code;

13 (4) an act that violates a school district's
14 previously communicated written standards of student conduct for
15 which the child has been expelled under Section 37.007(c),
16 Education Code;

17 (5) notwithstanding Subsection (a)(1), conduct
18 described by Section 43.02 or 43.021 [~~43.02(a) or (b)~~], Penal Code;
19 or

20 (6) notwithstanding Subsection (a)(1), conduct that
21 violates Section 43.261, Penal Code.

22 SECTION 39. Section 261.001(1), Family Code, is amended to
23 read as follows:

24 (1) "Abuse" includes the following acts or omissions
25 by a person:

26 (A) mental or emotional injury to a child that
27 results in an observable and material impairment in the child's

1 growth, development, or psychological functioning;

2 (B) causing or permitting the child to be in a
3 situation in which the child sustains a mental or emotional injury
4 that results in an observable and material impairment in the
5 child's growth, development, or psychological functioning;

6 (C) physical injury that results in substantial
7 harm to the child, or the genuine threat of substantial harm from
8 physical injury to the child, including an injury that is at
9 variance with the history or explanation given and excluding an
10 accident or reasonable discipline by a parent, guardian, or
11 managing or possessory conservator that does not expose the child
12 to a substantial risk of harm;

13 (D) failure to make a reasonable effort to
14 prevent an action by another person that results in physical injury
15 that results in substantial harm to the child;

16 (E) sexual conduct harmful to a child's mental,
17 emotional, or physical welfare, including conduct that constitutes
18 the offense of continuous sexual abuse of young child or children
19 under Section 21.02, Penal Code, indecency with a child under
20 Section 21.11, Penal Code, sexual assault under Section 22.011,
21 Penal Code, or aggravated sexual assault under Section 22.021,
22 Penal Code;

23 (F) failure to make a reasonable effort to
24 prevent sexual conduct harmful to a child;

25 (G) compelling or encouraging the child to engage
26 in sexual conduct as defined by Section 43.01, Penal Code,
27 including compelling or encouraging the child in a manner that

1 constitutes an offense of trafficking of persons under Section
2 20A.02(a)(7) or (8), Penal Code, solicitation of prostitution under
3 Section 43.021 [~~43.02(b)~~], Penal Code, or compelling prostitution
4 under Section 43.05(a)(2), Penal Code;

5 (H) causing, permitting, encouraging, engaging
6 in, or allowing the photographing, filming, or depicting of the
7 child if the person knew or should have known that the resulting
8 photograph, film, or depiction of the child is obscene as defined by
9 Section 43.21, Penal Code, or pornographic;

10 (I) the current use by a person of a controlled
11 substance as defined by Chapter 481, Health and Safety Code, in a
12 manner or to the extent that the use results in physical, mental, or
13 emotional injury to a child;

14 (J) causing, expressly permitting, or
15 encouraging a child to use a controlled substance as defined by
16 Chapter 481, Health and Safety Code;

17 (K) causing, permitting, encouraging, engaging
18 in, or allowing a sexual performance by a child as defined by
19 Section 43.25, Penal Code;

20 (L) knowingly causing, permitting, encouraging,
21 engaging in, or allowing a child to be trafficked in a manner
22 punishable as an offense under Section 20A.02(a)(5), (6), (7), or
23 (8), Penal Code, or the failure to make a reasonable effort to
24 prevent a child from being trafficked in a manner punishable as an
25 offense under any of those sections; or

26 (M) forcing or coercing a child to enter into a
27 marriage.

1 SECTION 40. Section 71.0353, Government Code, is amended to
2 read as follows:

3 Sec. 71.0353. TRAFFICKING OF PERSONS INFORMATION. As a
4 component of the official monthly report submitted to the Office of
5 Court Administration of the Texas Judicial System, a district court
6 or county court at law shall report the number of cases filed for
7 the following offenses:

8 (1) trafficking of persons under Section 20A.02, Penal
9 Code;

10 (2) prostitution under Section 43.02, Penal Code;

11 (3) solicitation of prostitution under Section
12 43.021, Penal Code; and

13 (4) [~~3~~] compelling prostitution under Section
14 43.05, Penal Code.

15 SECTION 41. Section 402.035(d), Government Code, is amended
16 to read as follows:

17 (d) The task force shall:

18 (1) collaborate, as needed to fulfill the duties of
19 the task force, with:

20 (A) United States attorneys' offices for all of
21 the federal districts of Texas; and

22 (B) special agents or customs and border
23 protection officers and border patrol agents of:

24 (i) the Federal Bureau of Investigation;

25 (ii) the United States Drug Enforcement
26 Administration;

27 (iii) the Bureau of Alcohol, Tobacco,

1 Firearms and Explosives;

2 (iv) United States Immigration and Customs
3 Enforcement; or

4 (v) the United States Department of
5 Homeland Security;

6 (2) collect, organize, and periodically publish
7 statistical data on the nature and extent of human trafficking in
8 this state, including data described by Subdivisions (4)(A), (B),
9 (C), (D), and (E);

10 (3) solicit cooperation and assistance from state and
11 local governmental agencies, political subdivisions of the state,
12 nongovernmental organizations, and other persons, as appropriate,
13 for the purpose of collecting and organizing statistical data under
14 Subdivision (2);

15 (4) ensure that each state or local governmental
16 agency and political subdivision of the state and each state or
17 local law enforcement agency, district attorney, or county attorney
18 that assists in the prevention of human trafficking collects
19 statistical data related to human trafficking, including, as
20 appropriate:

21 (A) the number of investigations concerning,
22 arrests and prosecutions for, and convictions of:

23 (i) the offense of trafficking of persons;

24 (ii) the offense of forgery or an offense
25 under Chapter 43, Penal Code, if the offense was committed as part
26 of a criminal episode involving the trafficking of persons; and

27 (iii) an offense punishable as a felony of

1 the second degree under Section 43.021 [~~43.02(e-1)(2)~~], Penal Code,
2 regardless of whether the offense was committed as part of a
3 criminal episode involving the trafficking of persons;

4 (B) demographic information on persons who are
5 convicted of offenses described by Paragraph (A) and persons who
6 are the victims of those offenses;

7 (C) geographic routes by which human trafficking
8 victims are trafficked, including routes by which victims are
9 trafficked across this state's international border, and
10 geographic patterns in human trafficking, including the country or
11 state of origin and the country or state of destination;

12 (D) means of transportation and methods used by
13 persons who engage in trafficking to transport their victims; and

14 (E) social and economic factors that create a
15 demand for the labor or services that victims of human trafficking
16 are forced to provide;

17 (5) work with the Texas Commission on Law Enforcement
18 to develop and conduct training for law enforcement personnel,
19 victim service providers, and medical service providers to identify
20 victims of human trafficking;

21 (6) work with the Texas Education Agency, the
22 Department of Family and Protective Services, and the Health and
23 Human Services Commission to:

24 (A) develop a list of key indicators that a
25 person is a victim of human trafficking;

26 (B) develop a standardized curriculum for
27 training doctors, nurses, emergency medical services personnel,

1 teachers, school counselors, school administrators, and personnel
2 from the Department of Family and Protective Services and the
3 Health and Human Services Commission to identify and assist victims
4 of human trafficking;

5 (C) train doctors, nurses, emergency medical
6 services personnel, teachers, school counselors, school
7 administrators, and personnel from the Department of Family and
8 Protective Services and the Health and Human Services Commission to
9 identify and assist victims of human trafficking;

10 (D) develop and conduct training for personnel
11 from the Department of Family and Protective Services and the
12 Health and Human Services Commission on methods for identifying
13 children in foster care who may be at risk of becoming victims of
14 human trafficking; and

15 (E) develop a process for referring identified
16 human trafficking victims and individuals at risk of becoming
17 victims to appropriate entities for services;

18 (7) on the request of a judge of a county court, county
19 court at law, or district court or a county attorney, district
20 attorney, or criminal district attorney, assist and train the judge
21 or the judge's staff or the attorney or the attorney's staff in the
22 recognition and prevention of human trafficking;

23 (8) examine training protocols related to human
24 trafficking issues, as developed and implemented by federal, state,
25 and local law enforcement agencies;

26 (9) collaborate with state and local governmental
27 agencies, political subdivisions of the state, and nongovernmental

1 organizations to implement a media awareness campaign in
2 communities affected by human trafficking;

3 (10) develop recommendations on how to strengthen
4 state and local efforts to prevent human trafficking, protect and
5 assist human trafficking victims, curb markets and other economic
6 avenues that facilitate human trafficking and investigate and
7 prosecute human trafficking offenders;

8 (11) examine the extent to which human trafficking is
9 associated with the operation of sexually oriented businesses, as
10 defined by Section 243.002, Local Government Code, and the
11 workplace or public health concerns that are created by the
12 association of human trafficking and the operation of sexually
13 oriented businesses;

14 (12) develop recommendations for addressing the
15 demand for forced labor or services or sexual conduct involving
16 victims of human trafficking, including recommendations for
17 increased penalties for individuals who engage or attempt to engage
18 in solicitation of prostitution with victims younger than 18 years
19 of age; and

20 (13) identify and report to the governor and
21 legislature on laws, licensure requirements, or other regulations
22 that can be passed at the state and local level to curb trafficking
23 using the Internet and in sexually oriented businesses.

24 SECTION 42. Section 411.042(b), Government Code, is amended
25 to read as follows:

26 (b) The bureau of identification and records shall:

27 (1) procure and file for record photographs, pictures,

1 descriptions, fingerprints, measurements, and other pertinent
2 information of all persons arrested for or charged with a criminal
3 offense or convicted of a criminal offense, regardless of whether
4 the conviction is probated;

5 (2) collect information concerning the number and
6 nature of offenses reported or known to have been committed in the
7 state and the legal steps taken in connection with the offenses, and
8 other information useful in the study of crime and the
9 administration of justice, including information that enables the
10 bureau to create a statistical breakdown of:

11 (A) offenses in which family violence was
12 involved;

13 (B) offenses under Sections 22.011 and 22.021,
14 Penal Code; and

15 (C) offenses under Sections 20A.02, 43.02
16 [~~43.02(a)~~], 43.021 [~~43.02(b)~~], 43.03, 43.031, 43.04, 43.041, and
17 43.05, Penal Code;

18 (3) make ballistic tests of bullets and firearms and
19 chemical analyses of bloodstains, cloth, materials, and other
20 substances for law enforcement officers of the state;

21 (4) cooperate with identification and crime records
22 bureaus in other states and the United States Department of
23 Justice;

24 (5) maintain a list of all previous background checks
25 for applicants for any position regulated under Chapter 1702,
26 Occupations Code, who have undergone a criminal history background
27 check as required by that chapter, if the check indicates a Class B

1 misdemeanor or equivalent offense or a greater offense;

2 (6) collect information concerning the number and
3 nature of protective orders and magistrate's orders of emergency
4 protection and all other pertinent information about all persons
5 subject to active orders, including pertinent information about
6 persons subject to conditions of bond imposed for the protection of
7 the victim in any family violence, sexual assault or abuse,
8 indecent assault, stalking, or trafficking case. Information in the
9 law enforcement information system relating to an active order
10 shall include:

11 (A) the name, sex, race, date of birth, personal
12 descriptors, address, and county of residence of the person to whom
13 the order is directed;

14 (B) any known identifying number of the person to
15 whom the order is directed, including the person's social security
16 number or driver's license number;

17 (C) the name and county of residence of the
18 person protected by the order;

19 (D) the residence address and place of employment
20 or business of the person protected by the order;

21 (E) the child-care facility or school where a
22 child protected by the order normally resides or which the child
23 normally attends;

24 (F) the relationship or former relationship
25 between the person who is protected by the order and the person to
26 whom the order is directed;

27 (G) the conditions of bond imposed on the person

1 to whom the order is directed, if any, for the protection of a
2 victim in any family violence, sexual assault or abuse, indecent
3 assault, stalking, or trafficking case;

4 (H) any minimum distance the person subject to
5 the order is required to maintain from the protected places or
6 persons; and

7 (I) the date the order expires;

8 (7) grant access to criminal history record
9 information in the manner authorized under Subchapter F;

10 (8) collect and disseminate information regarding
11 offenders with mental impairments in compliance with Chapter 614,
12 Health and Safety Code; and

13 (9) record data and maintain a state database for a
14 computerized criminal history record system and computerized
15 juvenile justice information system that serves:

16 (A) as the record creation point for criminal
17 history record information and juvenile justice information
18 maintained by the state; and

19 (B) as the control terminal for the entry of
20 records, in accordance with federal law and regulations, federal
21 executive orders, and federal policy, into the federal database
22 maintained by the Federal Bureau of Investigation.

23 SECTION 43. Section 411.1471(a), Government Code, is
24 amended to read as follows:

25 (a) This section applies to a defendant who is:

26 (1) arrested for a felony prohibited under any of the
27 following Penal Code sections:

- 1 (A) Section 19.02;
- 2 (B) Section 19.03;
- 3 (C) Section 20.03;
- 4 (D) Section 20.04;
- 5 (E) Section 20.05;
- 6 (F) Section 20.06;
- 7 (G) Section 20A.02;
- 8 (H) Section 20A.03;
- 9 (I) Section 21.02;
- 10 (J) Section 21.11;
- 11 (K) Section 22.01;
- 12 (L) Section 22.011;
- 13 (M) Section 22.02;
- 14 (N) Section 22.021;
- 15 (O) Section 25.02;
- 16 (P) Section 29.02;
- 17 (Q) Section 29.03;
- 18 (R) Section 30.02;
- 19 (S) Section 31.03;
- 20 (T) Section 43.03;
- 21 (U) Section 43.04;
- 22 (V) Section 43.05;
- 23 (W) Section 43.25; or
- 24 (X) Section 43.26; or

25 (2) convicted of an offense:

- 26 (A) under Title 5, Penal Code, other than an
- 27 offense described by Subdivision (1), that is punishable as a Class

1 A misdemeanor or any higher category of offense, except for an
2 offense punishable as a Class A misdemeanor under Section 22.05,
3 Penal Code; or

4 (B) under Section 21.08, 25.04, 43.021
5 [~~43.02(b)~~], or 43.24, Penal Code.

6 SECTION 44. Section 81.093(a), Health and Safety Code, is
7 amended to read as follows:

8 (a) A court may direct a person convicted of an offense
9 under Section 43.02 or 43.021, Penal Code, under Chapter 481 (Texas
10 Controlled Substances Act), or under Sections 485.031 through
11 485.035 to be subject to the control measures of Section 81.083 and
12 to the court-ordered management provisions of Subchapter G.

13 SECTION 45. The heading to Chapter 169, Health and Safety
14 Code, is amended to read as follows:

15 CHAPTER 169. FIRST OFFENDER SOLICITATION OF PROSTITUTION
16 PREVENTION PROGRAM

17 SECTION 46. Section 169.001, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 169.001. FIRST OFFENDER SOLICITATION OF PROSTITUTION
20 PREVENTION PROGRAM; PROCEDURES FOR CERTAIN DEFENDANTS. (a) In
21 this chapter, "first offender solicitation of prostitution
22 prevention program" means a program that has the following
23 essential characteristics:

24 (1) the integration of services in the processing of
25 cases in the judicial system;

26 (2) the use of a nonadversarial approach involving
27 prosecutors and defense attorneys to promote public safety, to

1 reduce the demand for the commercial sex trade and trafficking of
2 persons by educating offenders, and to protect the due process
3 rights of program participants;

4 (3) early identification and prompt placement of
5 eligible participants in the program;

6 (4) access to information, counseling, and services
7 relating to sex addiction, sexually transmitted diseases, mental
8 health, and substance abuse;

9 (5) a coordinated strategy to govern program responses
10 to participant compliance;

11 (6) monitoring and evaluation of program goals and
12 effectiveness;

13 (7) continuing interdisciplinary education to promote
14 effective program planning, implementation, and operations; and

15 (8) development of partnerships with public agencies
16 and community organizations.

17 (b) If a defendant successfully completes a first offender
18 solicitation of prostitution prevention program, regardless of
19 whether the defendant was convicted of the offense for which the
20 defendant entered the program or whether the court deferred further
21 proceedings without entering an adjudication of guilt, after notice
22 to the state and a hearing on whether the defendant is otherwise
23 entitled to the petition, including whether the required time
24 period has elapsed, and whether issuance of the order is in the best
25 interest of justice, the court shall enter an order of
26 nondisclosure of criminal history record information under
27 Subchapter E-1, Chapter 411, Government Code, as if the defendant

1 had received a discharge and dismissal under Article 42A.111, Code
2 of Criminal Procedure, with respect to all records and files
3 related to the defendant's arrest for the offense for which the
4 defendant entered the program if the defendant:

5 (1) has not been previously convicted of a felony
6 offense; and

7 (2) is not convicted of any other felony offense
8 before the second anniversary of the defendant's successful
9 completion of the program.

10 SECTION 47. Sections 169.002(a), (b), (d), (e), and (f),
11 Health and Safety Code, are amended to read as follows:

12 (a) The commissioners court of a county or governing body of
13 a municipality may establish a first offender solicitation of
14 prostitution prevention program for defendants charged with an
15 offense under Section 43.021 [~~43.02(b)~~], Penal Code.

16 (b) A defendant is eligible to participate in a first
17 offender solicitation of prostitution prevention program
18 established under this chapter only if:

19 (1) the attorney representing the state consents to
20 the defendant's participation in the program; and

21 (2) the court in which the criminal case is pending
22 finds that the defendant has not been previously convicted of:

23 (A) an offense under Section 20A.02, 43.02(b), as
24 that law existed before September 1, 2021 [~~43.02~~], 43.021, 43.03,
25 43.031, 43.04, 43.041, or 43.05, Penal Code;

26 (B) an offense listed in Article 42A.054(a), Code
27 of Criminal Procedure; or

1 (C) an offense punishable as a felony under
2 Chapter 481.

3 (d) A defendant is not eligible to participate in the first
4 offender solicitation of prostitution prevention program if the
5 defendant offered or agreed to hire a person to engage in sexual
6 conduct and the person was younger than 18 years of age at the time
7 of the offense.

8 (e) The court in which the criminal case is pending shall
9 allow an eligible defendant to choose whether to participate in the
10 first offender solicitation of prostitution prevention program or
11 otherwise proceed through the criminal justice system.

12 (f) If a defendant who chooses to participate in the first
13 offender solicitation of prostitution prevention program fails to
14 attend any portion of the program, the court in which the
15 defendant's criminal case is pending shall issue a warrant for the
16 defendant's arrest and proceed on the criminal case as if the
17 defendant had chosen not to participate in the program.

18 SECTION 48. Section 169.003(a), Health and Safety Code, is
19 amended to read as follows:

20 (a) A first offender solicitation of prostitution
21 prevention program established under this chapter must:

22 (1) ensure that a person eligible for the program is
23 provided legal counsel before volunteering to proceed through the
24 program and while participating in the program;

25 (2) allow any participant to withdraw from the program
26 at any time before a trial on the merits has been initiated;

27 (3) provide each participant with information,

1 counseling, and services relating to sex addiction, sexually
2 transmitted diseases, mental health, and substance abuse; and

3 (4) provide each participant with classroom
4 instruction related to the prevention of the solicitation of
5 prostitution.

6 SECTION 49. Sections 169.004, 169.005, and 169.006, Health
7 and Safety Code, are amended to read as follows:

8 Sec. 169.004. OVERSIGHT. (a) The lieutenant governor and
9 the speaker of the house of representatives may assign to
10 appropriate legislative committees duties relating to the
11 oversight of first offender solicitation of prostitution
12 prevention programs established under this chapter.

13 (b) A legislative committee or the governor may request the
14 state auditor to perform a management, operations, or financial or
15 accounting audit of a first offender solicitation of prostitution
16 prevention program established under this chapter.

17 (c) A first offender solicitation of prostitution
18 prevention program established under this chapter shall:

19 (1) notify the criminal justice division of the
20 governor's office before or on implementation of the program; and

21 (2) provide information regarding the performance of
22 the program to the division on request.

23 Sec. 169.005. REIMBURSEMENT FEES. (a) A first offender
24 solicitation of prostitution prevention program established under
25 this chapter may collect from a participant in the program a
26 nonrefundable reimbursement fee for the program in a reasonable
27 amount not to exceed \$1,000, from which the following must be paid:

1 (1) a counseling and services reimbursement fee in an
2 amount necessary to cover the costs of the counseling and services
3 provided by the program; and

4 (2) a law enforcement training reimbursement fee, in
5 an amount equal to five percent of the total amount paid under
6 Subdivision (1), to be deposited to the credit of the treasury of
7 the county or municipality that established the program to cover
8 costs associated with the provision of training to law enforcement
9 personnel on domestic violence, prostitution, and the trafficking
10 of persons.

11 (b) Reimbursement fees collected under this section may be
12 paid on a periodic basis or on a deferred payment schedule at the
13 discretion of the judge, magistrate, or program director
14 administering the first offender solicitation of prostitution
15 prevention program. The fees must be based on the participant's
16 ability to pay.

17 Sec. 169.006. SUSPENSION OR DISMISSAL OF COMMUNITY SERVICE
18 REQUIREMENT. (a) To encourage participation in a first offender
19 solicitation of prostitution prevention program established under
20 this chapter, the judge or magistrate administering the program may
21 suspend any requirement that, as a condition of community
22 supervision, a participant in the program work a specified number
23 of hours at a community service project.

24 (b) On a participant's successful completion of a first
25 offender solicitation of prostitution prevention program, a judge
26 or magistrate may excuse the participant from any condition of
27 community supervision previously suspended under Subsection (a).

1 SECTION 50. Section 455.202(d)(2), Occupations Code, is
2 amended to read as follows:

- 3 (2) "Sexual contact" includes:
- 4 (A) any touching of any part of the genitalia or
5 anus;
- 6 (B) any touching of the breasts of a female
7 without the written consent of the female;
- 8 (C) any offer or agreement to engage in any
9 activity described in Paragraph (A) or (B);
- 10 (D) kissing without the consent of both persons;
- 11 (E) deviate sexual intercourse, sexual contact,
12 sexual intercourse, indecent exposure, sexual assault,
13 prostitution, solicitation of prostitution, and promotion
14 [~~promotions~~] of prostitution as described in Chapters 21, 22, and
15 43, Penal Code, or any offer or agreement to engage in such
16 activities;
- 17 (F) any behavior, gesture, or expression that may
18 reasonably be interpreted as inappropriately seductive or sexual;
19 or
- 20 (G) inappropriate sexual comments about or to a
21 client, including sexual comments about a person's body.

22 SECTION 51. Section 15.031(b), Penal Code, is amended to
23 read as follows:

- 24 (b) A person commits an offense if, with intent that an
25 offense under Section 20A.02(a)(7) or (8), 21.02, 21.11, 22.011,
26 22.021, 43.02, 43.021, 43.05(a)(2), or 43.25 be committed, the
27 person by any means requests, commands, or attempts to induce a

1 minor or another whom the person believes to be a minor to engage in
2 specific conduct that, under the circumstances surrounding the
3 actor's conduct as the actor believes them to be, would constitute
4 an offense under one of those sections or would make the minor or
5 other believed by the person to be a minor a party to the commission
6 of an offense under one of those sections.

7 SECTION 52. Section 25.08(c), Penal Code, is amended to
8 read as follows:

9 (c) An offense under this section is a felony of the third
10 degree, except that the offense is a felony of the second degree if
11 the actor commits the offense with intent to commit an offense under
12 Section 20A.02, 43.021 [~~43.02~~], 43.05, or 43.25.

13 SECTION 53. Section 25.081(c), Penal Code, is amended to
14 read as follows:

15 (c) An offense under this section is a felony of the third
16 degree, except that the offense is a felony of the second degree if
17 the actor commits the offense with intent to commit an offense under
18 Section 20A.02, 43.021 [~~43.02~~], 43.05, 43.25, 43.251, or 43.26.

19 SECTION 54. Section 43.01, Penal Code, is amended by adding
20 Subdivision (6) to read as follows:

21 (6) "Solicitation of prostitution" means the offense
22 defined in Section 43.021.

23 SECTION 55. Section 43.031(a), Penal Code, is amended to
24 read as follows:

25 (a) A person commits an offense if the person owns, manages,
26 or operates an interactive computer service or information content
27 provider, or operates as an information content provider, with the

1 intent to promote the prostitution of another person or facilitate
2 another person to engage in prostitution or solicitation of
3 prostitution.

4 SECTION 56. Section 43.041(a), Penal Code, is amended to
5 read as follows:

6 (a) A person commits an offense if the person owns, manages,
7 or operates an interactive computer service or information content
8 provider, or operates as an information content provider, with the
9 intent to promote the prostitution of five or more persons or
10 facilitate five or more persons to engage in prostitution or
11 solicitation of prostitution.

12 SECTION 57. Section 93.013(a), Property Code, is amended to
13 read as follows:

14 (a) Notwithstanding a provision in a lease to the contrary,
15 a tenant's right of possession terminates and the landlord has a
16 right to recover possession of the leased premises if the tenant is
17 using the premises or allowing the premises to be used for the
18 purposes of prostitution as described by Section 43.02, Penal Code,
19 solicitation of prostitution as described by Section 43.021, Penal
20 Code, promotion of prostitution as described by Section 43.03,
21 Penal Code, aggravated promotion of prostitution as described by
22 Section 43.04, Penal Code, [ex] compelling prostitution[7] as
23 described [prohibited] by Section 43.05, [the] Penal Code, or
24 trafficking of persons as described by Section 20A.02, Penal Code.

25 SECTION 58. Subchapter C, Chapter 37, Education Code, is
26 amended by adding Section 37.086 to read as follows:

27 Sec. 37.086. REQUIRED POSTING OF WARNING SIGNS OF INCREASED

1 TRAFFICKING PENALTIES. (a) In this section:

2 (1) "Premises" has the meaning assigned by Section
3 481.134, Health and Safety Code.

4 (2) "School" means a public or private primary or
5 secondary school.

6 (b) Each school shall post warning signs of the increased
7 penalties for trafficking of persons under Section 20A.02(b-1)(2),
8 Penal Code, at the following locations:

9 (1) parallel to and along the exterior boundaries of
10 the school's premises;

11 (2) at each roadway or other way of access to the
12 premises;

13 (3) for premises not fenced, at least every five
14 hundred feet along the exterior boundaries of the premises;

15 (4) at each entrance to the premises; and

16 (5) at conspicuous places reasonably likely to be
17 viewed by all persons entering the premises.

18 (c) The agency, in consultation with the human trafficking
19 prevention task force created under Section 402.035, Government
20 Code, shall adopt rules regarding the placement, installation,
21 design, size, wording, and maintenance procedures for the warning
22 signs required under this section. The rules must require that each
23 warning sign:

24 (1) include a description of the provisions of Section
25 20A.02(b-1), Penal Code, including the penalties for violating that
26 section;

27 (2) be written in English and Spanish; and

1 (3) be at least 8-1/2 by 11 inches in size.

2 (d) The agency shall provide each school without charge the
3 number of warning signs required to comply with this section and
4 rules adopted under this section. If the agency is unable to
5 provide each school with the number of signs necessary to comply
6 with Subsection (b), the agency may:

7 (1) provide to a school fewer signs than the number
8 necessary to comply with that section; and

9 (2) prioritize distribution of signs to schools based
10 on reports of criminal activity in the areas near that school.

11 SECTION 59. Section 33.021, Penal Code, is amended by
12 adding Subsection (f-1) to read as follows:

13 (f-1) The punishment for an offense under this section is
14 increased to the punishment prescribed for the next higher category
15 of offense if it is shown on the trial of the offense that:

16 (1) the actor committed the offense during regular
17 public or private primary or secondary school hours; and

18 (2) the actor knew or reasonably should have known
19 that the minor was enrolled in a public or private primary or
20 secondary school at the time of the offense.

21 SECTION 60. Section 43.01, Penal Code, is amended by adding
22 Subdivisions (1-f) and (2-a) to read as follows.

23 (1-f) "Premises" has the meaning assigned by Section
24 481.134, Health and Safety Code.

25 (2-a) "School" means a public or private primary or
26 secondary school.

27 SECTION 61. Section 43.02, Penal Code, is amended by adding

1 Subsection (c-2) to read as follows:

2 (c-2) The punishment prescribed for an offense under
3 Subsection (b) is increased to the punishment prescribed for the
4 next highest category of offense if it is shown on the trial of the
5 offense that the actor committed the offense in a location that was:

6 (1) on the premises of or within 1,000 feet of the
7 premises of a school; or

8 (2) on premises or within 1,000 feet of premises
9 where:

10 (A) an official school function was taking place;
11 or

12 (B) an event sponsored or sanctioned by the
13 University Interscholastic League was taking place.

14 SECTION 62. The following provisions are repealed:

15 (1) Section 125.0017, Civil Practice and Remedies
16 Code, as added by Chapter 1135 (H.B. 240), Acts of the 85th
17 Legislature, Regular Session, 2017;

18 (2) Section 125.003(d), Civil Practice and Remedies
19 Code;

20 (3) Section 125.004(a-3), Civil Practice and Remedies
21 Code, as added by Chapter 1135 (H.B. 240), Acts of the 85th
22 Legislature, Regular Session, 2017;

23 (4) Section 125.068, Civil Practice and Remedies Code;
24 and

25 (5) Section 20A.02(a-1), Penal Code.

26 SECTION 63. (a) Sections 11.44(b), 11.46(c), and 61.42(c),
27 Alcoholic Beverage Code, as amended by this Act, apply to an

1 application for an alcoholic beverage permit or license filed on or
2 after the effective date of this Act or pending on the effective
3 date of this Act.

4 (b) Section 98.007, Civil Practice and Remedies Code, as
5 added by this Act, applies only to an action filed on or after the
6 effective date of this Act.

7 (c) The change in law made to Chapters 125 and 140A, Civil
8 Practice and Remedies Code, by this Act applies only to a cause of
9 action that accrues on or after the effective date of this Act. A
10 cause of action that accrues before the effective date of this Act
11 is governed by the law applicable to the cause of action immediately
12 before the effective date of this Act, and that law is continued in
13 effect for that purpose.

14 (d) Except as otherwise provided by this section, the
15 changes in law made by this Act apply only to an offense committed
16 on or after the effective date of this Act. An offense committed
17 before the effective date of this Act is governed by the law in
18 effect on the date the offense was committed, and the former law is
19 continued in effect for that purpose. For purposes of this section,
20 an offense was committed before the effective date of this Act if
21 any element of the offense occurred before that date.

22 SECTION 64. The Texas Education Agency is required to
23 implement the change in law made by Section 37.086(d), Education
24 Code, as added by this Act, only if the legislature appropriates
25 money specifically for that purpose. If the legislature does not
26 appropriate money specifically for that purpose, the agency may,
27 but is not required to, implement the change in law made by Section

H.B. No. 1540

1 37.086(d), Education Code, as added by this Act, using other
2 appropriations available for that purpose.

3 SECTION 65. This Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I certify that H.B. No. 1540 was passed by the House on April 14, 2021, by the following vote: Yeas 149, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1540 on May 28, 2021, by the following vote: Yeas 145, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1540 was passed by the Senate, with amendments, on May 20, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

1 AN ACT
2 relating to the confidentiality of a child's criminal records
3 related to certain misdemeanor offenses.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Article 44.2811, Code of Criminal Procedure, as
6 amended by Chapters 1257 (H.B. 528), 1319 (S.B. 394), and 1407 (S.B.
7 393), Acts of the 83rd Legislature, Regular Session, 2013, is
8 reenacted and amended to read as follows:

9 Art. 44.2811. RECORDS RELATING TO CERTAIN [~~OR RECEIVING~~
10 ~~DEFERRED DISPOSITION FOR~~] FINE-ONLY MISDEMEANORS COMMITTED BY A
11 CHILD. All records and files and information stored by electronic
12 means or otherwise, from which a record or file could be generated,
13 relating to a criminal case for a fine-only misdemeanor, other than
14 a traffic offense, that is committed by a child and that is appealed
15 are confidential and may not be disclosed to the public except as
16 provided under Article 45.0217(b). [~~(a) This article applies only~~
17 ~~to a misdemeanor offense punishable by fine only, other than a~~
18 ~~traffic offense.~~

19 [~~(b) All records and files and information stored by~~
20 ~~electronic means or otherwise, from which a record or file could be~~
21 ~~generated, relating to a child who is convicted of and has satisfied~~
22 ~~the judgment for or who has received a dismissal after deferral of~~
23 ~~disposition for an offense described by Subsection (a) are~~
24 ~~confidential and may not be disclosed to the public except as~~

1 ~~provided under Article 45.0217(b).~~

2 SECTION 2. Article 45.0217, Code of Criminal Procedure, as
3 amended by Chapters 1257 (H.B. 528), 1319 (S.B. 394), and 1407 (S.B.
4 393), Acts of the 83rd Legislature, Regular Session, 2013, is
5 reenacted and amended to read as follows:

6 Art. 45.0217. CONFIDENTIAL RECORDS RELATED TO CHARGES
7 AGAINST OR ~~[THE]~~ CONVICTION OF ~~[OR DEFERRAL OF DISPOSITION FOR]~~ A
8 CHILD. (a) ~~[This article applies only to a misdemeanor offense~~
9 ~~punishable by fine only, other than a traffic offense.~~

10 ~~[(a-1)]~~ Except as provided by Article 15.27 and Subsection
11 (b), all records and files, including those held by law
12 enforcement, and information stored by electronic means or
13 otherwise, from which a record or file could be generated, relating
14 to a child who is charged with, is convicted of, is found not guilty
15 of, had a charge dismissed for, or is granted deferred disposition
16 for a fine-only misdemeanor ~~[for or who has received a dismissal~~
17 ~~after deferral of disposition for an]~~ offense other than a traffic
18 offense ~~[described by Subsection (a)]~~ are confidential and may not
19 be disclosed to the public.

20 (b) Information subject to Subsection (a) ~~[(a-1)]~~ may be
21 open to inspection only by:

- 22 (1) judges or court staff;
- 23 (2) a criminal justice agency for a criminal justice
24 purpose, as those terms are defined by Section 411.082, Government
25 Code;
- 26 (3) the Department of Public Safety;
- 27 (4) an attorney for a party to the proceeding;

1 (5) the child defendant; or

2 (6) the defendant's parent, guardian, or managing
3 conservator.

4 (c) In this article, "child" has the meaning assigned by
5 Article 45.058(h).

6 SECTION 3. This Act takes effect September 1, 2021.

H.B. No. 2669

President of the Senate

Speaker of the House

I certify that H.B. No. 2669 was passed by the House on April 16, 2021, by the following vote: Yeas 145, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2669 was passed by the Senate on May 19, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____
Date

Governor

1 AN ACT
2 relating to the confidential and privileged communications and
3 records of victims of certain sexual assault offenses.
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
5 SECTION 1. The heading to Subchapter D, Chapter 420,
6 Government Code, is amended to read as follows:
7 SUBCHAPTER D. CONFIDENTIAL COMMUNICATIONS AND RECORDS
8 SECTION 2. The heading to Section 420.071, Government Code,
9 is amended to read as follows:
10 Sec. 420.071. CONFIDENTIAL COMMUNICATIONS AND RECORDS;
11 PRIVILEGE.
12 SECTION 3. Section 420.071, Government Code, is amended by
13 amending Subsections (a), (b), and (c) and adding Subsection (c-1)
14 to read as follows:
15 (a) Any [A] communication, including an oral or written
16 communication, between an advocate and a survivor~~[, or a person~~
17 ~~claiming to be a survivor,~~] that is made in the course of advising,
18 counseling, or assisting ~~[providing sexual assault advocacy~~
19 ~~services to]~~ the survivor is confidential ~~[and may not be disclosed~~
20 ~~except as provided by this subchapter]~~.
21 (b) Any [A] record created by, provided to, or maintained by
22 an advocate is confidential if the record relates to the services
23 provided to a survivor or contains ~~[of]~~ the identity, personal
24 history, or background information of the [a] survivor or

1 information concerning the victimization of the [a] survivor [that
2 ~~is created by or provided to an advocate or maintained by a sexual~~
3 ~~assault program is confidential and may not be disclosed except as~~
4 ~~provided by this subchapter].~~

5 (c) In any civil, criminal, administrative, or legislative
6 proceeding, subject to Section 420.072, a survivor has a privilege
7 to refuse to disclose and to prevent another from disclosing, for
8 any purpose, a communication or record that is confidential under
9 this section.

10 (c-1) Except as provided by this subsection, the
11 unauthorized disclosure of a portion of a confidential
12 communication or record does not constitute a waiver of the
13 privilege provided by Subsection (c). If a portion of a
14 confidential communication or record is disclosed, a party to the
15 relevant court or administrative proceeding may make a motion
16 requesting that the privilege be waived with respect to the
17 disclosed portion. The court or administrative hearing officer, as
18 applicable, may determine that the privilege has been waived only
19 if:

20 (1) the disclosed portion is relevant to a disputed
21 matter at the proceeding; and

22 (2) waiver is necessary for a witness to be able to
23 respond to questioning concerning the disclosed portion. [A person
24 ~~who receives information from a confidential communication or~~
25 ~~record as described by this subchapter may not disclose the~~
26 ~~information except to the extent that disclosure is consistent with~~
27 ~~the authorized purposes for which the information was obtained.]~~

1 SECTION 4. Section 420.072, Government Code, is amended to
2 read as follows:

3 Sec. 420.072. DISCLOSURE OF CONFIDENTIAL COMMUNICATION OR
4 RECORD [~~EXCEPTIONS~~]. (a) A communication ~~or~~ [~~a~~] record [~~, or~~
5 ~~evidence~~] that is confidential under Section 420.071 [~~this~~
6 ~~subchapter~~] may only be disclosed [~~in court or in an administrative~~
7 ~~proceeding~~] if:

8 (1) the communication or record [~~proceeding is brought~~
9 ~~by the survivor against an advocate or a sexual assault program or~~
10 ~~is a criminal proceeding or a certification revocation proceeding~~
11 ~~in which disclosure~~] is relevant to the claims or defense of an
12 [~~the~~] advocate or sexual assault program in a proceeding brought by
13 the survivor against the advocate or program; [~~or~~]

14 (2) the survivor has waived the privilege established
15 under Section 420.071(c) with respect to the communication or
16 record;

17 (3) the survivor or other appropriate person consents
18 in writing to the disclosure as provided by Section 420.073;

19 (4) an [~~or 420.0735, as applicable.~~]

20 [~~(b) A communication, a record, or evidence that is~~
21 ~~confidential under this subchapter may be disclosed only to:~~

22 [~~(1) medical or law enforcement personnel if the~~
23 advocate determines that, unless the disclosure is made, there is a
24 probability of:

25 (A) imminent physical danger to any person; or

26 (B) [~~for whom the communication, record, or~~
27 ~~evidence is relevant or if there is a probability of~~] immediate

1 mental or emotional injury to the survivor;

2 (5) [(2) a governmental agency if] the disclosure is
3 necessary:

4 (A) to comply with:

5 (i) Chapter 261, Family Code; or

6 (ii) Chapter 48, Human Resources Code; or

7 (B) [required or authorized by law,

8 [(3) a qualified person to the extent necessary] for a
9 management audit, a financial audit, a program evaluation, or
10 research, except that a report of the [~~research,~~] audit, [~~or~~]
11 evaluation, or research may not directly or indirectly identify a
12 survivor;

13 (6) the disclosure is made to an employee or volunteer
14 of the sexual assault program after [(4) a person authorized to
15 receive the disclosure as a result of written consent obtained
16 under Section 420.073 or 420.0735; or

17 [(5)] an advocate or a person under the supervision of
18 a counseling supervisor who is participating in the evaluation or
19 counseling of or the provision of services to [advocacy for] the
20 survivor determines that the disclosure is necessary to facilitate
21 the provision of services to the survivor; or

22 (7) the communication or record is in the possession,
23 custody, or control of the state and a court, after conducting an in
24 camera review of the communication or record, determines the
25 communication or record is exculpatory, provided that the
26 disclosure is limited to the specific portion of the communication
27 or record that was determined to be exculpatory in relation to a

1 defendant in a criminal case.

2 (b) Regardless of whether written consent has been given by
3 a parent or legal guardian under Section 420.073(a), a person may
4 not disclose a [(c) A] communication or [a] record [or evidence]
5 that is confidential under Section 420.071 [this subchapter may not
6 be disclosed] to a parent or legal guardian of a survivor who is a
7 minor or to a guardian appointed under Title 3, Estates Code, of an
8 adult survivor, if applicable, if the person [an advocate or a
9 sexual assault program] knows or has reason to believe that the
10 parent or guardian of the survivor is a suspect or accomplice in the
11 sexual assault of the survivor.

12 (c) Notwithstanding Subsections (a) and (b), the Texas
13 Rules of Evidence govern the disclosure of a communication or
14 record that is confidential under Section 420.071 in a criminal or
15 civil proceeding by an expert witness who relies on facts or data
16 from the communication or record to form the basis of the expert's
17 opinion.

18 SECTION 5. Section 420.074, Government Code, is amended to
19 read as follows:

20 Sec. 420.074. DISCLOSURE OF PRIVILEGED COMMUNICATIONS OR
21 OTHER INFORMATION IN CRIMINAL PROCEEDING [SUBPOENA]. (a) Subject
22 to the provisions [Notwithstanding any other provision] of this
23 chapter, not later than the 30th day before the date of the trial, a
24 defendant in a criminal proceeding may make a motion for disclosure
25 of a communication or record that is privileged under this chapter.
26 The motion must include a supporting affidavit showing reasonable
27 grounds to believe the privileged communication or record contains

1 exculpatory evidence.

2 (b) The defendant shall serve the motion on the attorney
3 representing the state and the person who holds the privilege with
4 regard to the communication or record at issue.

5 (c) The court shall order the privileged communication or
6 record to be produced for the court under seal and shall examine the
7 communication or record in camera if the court finds by a
8 preponderance of the evidence that:

9 (1) there is a good-faith, specific, and reasonable
10 basis for believing that the privileged communication or record is
11 relevant, material, and exculpatory upon the issue of guilt for the
12 offense charged; and

13 (2) the privileged communication or record would not
14 be duplicative of other evidence or information available or
15 already obtained by the defendant.

16 (d) The court [a person] shall disclose to the defendant and
17 to the state only the evidence that the court finds to be
18 exculpatory on the issue of guilt for the offense charged [a
19 communication, a record, or evidence that is confidential under
20 this chapter for use in a criminal investigation or proceeding in
21 response to a subpoena issued in accordance with law].

22 SECTION 6. The change in law made by this Act applies to any
23 communication or record described by Section 420.071, Government
24 Code, as amended by this Act, regardless of the date the
25 communication is made or the record is created.

26 SECTION 7. This Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 295 passed the Senate on April 19, 2021, by the following vote: Yeas 31, Nays 0; May 11, 2021, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 14, 2021, House granted request of the Senate; May 29, 2021, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 295 passed the House, with amendments, on May 5, 2021, by the following vote: Yeas 145, Nays 0, one present not voting; May 14, 2021, House granted request of the Senate for appointment of Conference Committee; May 28, 2021, House adopted Conference Committee Report by the following vote: Yeas 135, Nays 9, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

1 AN ACT
2 relating to the operation and administration of and practice and
3 procedure related to proceedings in the judicial branch of state
4 government.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 ARTICLE 1. DISTRICT COURTS

7 SECTION 1.01. (a) Effective January 1, 2022, Section
8 24.129(b), Government Code, is amended to read as follows:

9 (b) The 27th, 146th, 169th, 264th, ~~and~~ 426th, and 478th
10 judicial districts have concurrent jurisdiction in Bell County.

11 (b) Effective January 1, 2022, Subchapter C, Chapter 24,
12 Government Code, is amended by adding Section 24.60022 to read as
13 follows:

14 Sec. 24.60022. 478TH JUDICIAL DISTRICT (BELL COUNTY). (a)
15 The 478th Judicial District is composed of Bell County.

16 (b) The terms of the 478th District Court begin on the first
17 Mondays in January, April, July, and October.

18 (c) Section 24.129, relating to the 27th District Court,
19 contains provisions applicable to both that court and the 478th
20 District Court.

21 (c) The 478th Judicial District is created on January 1,
22 2022.

23 SECTION 1.02. (a) Subchapter C, Chapter 24, Government
24 Code, is amended by adding Section 24.60027 to read as follows:

1 Sec. 24.60027. 482ND JUDICIAL DISTRICT (HARRIS COUNTY).

2 The 482nd Judicial District is composed of Harris County.

3 (b) The 482nd Judicial District is created on the effective
4 date of this Act.

5 SECTION 1.03. (a) Effective January 1, 2022, Subchapter C,
6 Chapter 24, Government Code, is amended by adding Section 24.60030
7 to read as follows:

8 Sec. 24.60030. 485TH JUDICIAL DISTRICT (TARRANT COUNTY).

9 (a) The 485th Judicial District is composed of Tarrant County.

10 (b) The 485th District Court shall give preference to
11 criminal matters.

12 (b) The 485th Judicial District is created on January 1,
13 2022.

14 SECTION 1.04. (a) Effective October 1, 2022, Subchapter C,
15 Chapter 24, Government Code, is amended by adding Section 24.60025
16 to read as follows:

17 Sec. 24.60025. 480TH JUDICIAL DISTRICT (WILLIAMSON
18 COUNTY). The 480th Judicial District is composed of Williamson
19 County.

20 (b) The 480th Judicial District is created on October 1,
21 2022.

22 SECTION 1.05. (a) Effective January 1, 2022, Subchapter C,
23 Chapter 24, Government Code, is amended by adding Section 24.60026
24 to read as follows:

25 Sec. 24.60026. 481ST JUDICIAL DISTRICT (DENTON COUNTY).

26 The 481st Judicial District is composed of Denton County.

27 (b) The 481st Judicial District is created on January 1,

1 2022.

2 SECTION 1.06. (a) Effective September 1, 2022, Subchapter
3 C, Chapter 24, Government Code, is amended by adding Section
4 24.60028 to read as follows:

5 Sec. 24.60028. 483RD JUDICIAL DISTRICT (HAYS COUNTY). The
6 483rd Judicial District is composed of Hays County.

7 (b) The 483rd Judicial District is created on September 1,
8 2022.

9 SECTION 1.07. (a) Subchapter C, Chapter 24, Government
10 Code, is amended by adding Section 24.60029 to read as follows:

11 Sec. 24.60029. 484TH JUDICIAL DISTRICT (CAMERON COUNTY).
12 (a) The 484th Judicial District is composed of Cameron County.

13 (b) The 484th District Court shall give preference to
14 juvenile matters under Title 3, Family Code.

15 (b) The 484th Judicial District is created on the effective
16 date of this Act.

17 SECTION 1.08. (a) Effective October 1, 2022, Section
18 24.120(b), Government Code, is amended to read as follows:

19 (b) The 19th, 54th, 74th, 170th, ~~and~~ 414th, and 474th
20 district courts have concurrent jurisdiction in McLennan County.

21 (b) Effective October 1, 2022, Subchapter C, Chapter 24,
22 Government Code, is amended by adding Section 24.60097 to read as
23 follows:

24 Sec. 24.60097. 474TH JUDICIAL DISTRICT (MCLENNAN COUNTY).
25 The 474th Judicial District is composed of McLennan County.

26 (c) The 474th Judicial District is created on October 1,
27 2022.

1 SECTION 1.09. (a) Effective January 1, 2023, Subchapter C,
2 Chapter 24, Government Code, is amended by adding Section 24.60098
3 to read as follows:

4 Sec. 24.60098. 475TH JUDICIAL DISTRICT (SMITH COUNTY). The
5 475th Judicial District is composed of Smith County.

6 (b) The 475th Judicial District is created January 1, 2023.

7 SECTION 1.10. (a) Effective September 1, 2022, Subchapter
8 C, Chapter 24, Government Code, is amended by adding Section
9 24.60099 to read as follows:

10 Sec. 24.60099. 476TH JUDICIAL DISTRICT (HIDALGO COUNTY).
11 The 476th Judicial District is composed of Hidalgo County.

12 (b) The 476th Judicial District is created on September 1,
13 2022.

14 ARTICLE 2. STATUTORY COUNTY COURTS AND CONSTITUTIONAL COUNTY
15 COURTS

16 SECTION 2.01. Section 25.00211(a), Government Code, is
17 amended to read as follows:

18 (a) Beginning on the first day of the state fiscal year, the
19 state shall annually compensate each county that collects the
20 additional fees under Section 51.704 in an amount equal to 60
21 percent of the annual base salary the state pays to a district judge
22 as set by the General Appropriations Act in accordance with Section
23 659.012(a) [~~\$40,000~~] for each statutory probate court judge in the
24 county.

25 SECTION 2.02. Section 25.0172(p), Government Code, is
26 amended to read as follows:

27 (p) The county clerk shall keep a separate docket for each

1 county court at law. The county clerk shall appoint a deputy clerk
2 for each county court at law. [~~An appointment of a deputy clerk of~~
3 ~~County Court at Law No. 2 or 3 takes effect when it is confirmed in~~
4 ~~writing by the judge of the court to which the deputy clerk is~~
5 ~~assigned and the deputy clerk serves at the pleasure of the judge of~~
6 ~~the court to which he is assigned.] A deputy clerk must take the
7 constitutional oath of office and may be required to furnish bond in
8 an amount, conditioned and payable, as required by the county
9 clerk. A deputy clerk must attend all sessions of the court to
10 which the deputy clerk [~~he~~] is assigned. A deputy clerk acts in the
11 name of the county clerk and may perform any official act or service
12 required of the county clerk and shall perform any other service
13 required by the judge of a county court at law. The deputy clerks
14 may act for one another in performing services for the county courts
15 at law, but a deputy is not entitled to receive additional
16 compensation for acting for another deputy. If a vacancy occurs,
17 the county clerk shall immediately appoint another deputy clerk as
18 provided by this subsection. [~~A deputy clerk of a county court at~~
19 ~~law is entitled to the same amount of compensation as received by~~
20 ~~the deputy clerks of the other county courts at law in Bexar County.~~
21 ~~The commissioners court shall pay the salary of a deputy clerk in~~
22 ~~equal monthly installments from county funds.]~~~~

23 SECTION 2.03. Section 25.0173(g), Government Code, is
24 amended to read as follows:

25 (g) The county clerk shall appoint a deputy clerk for each
26 statutory probate court. [~~An appointment takes effect when it is~~
27 ~~confirmed in writing by the judge of the court to which the deputy~~

1 ~~clerk is assigned.]~~ A deputy clerk serves at the pleasure of the
2 judge of the court to which the deputy clerk is assigned. A deputy
3 clerk must take the constitutional oath of office, and the county
4 clerk may require the deputy clerk to furnish a bond in an amount,
5 conditioned and payable, as required by law. A deputy clerk acts in
6 the name of the county clerk and may perform any official act or
7 service required of the county clerk and shall perform any other
8 service required by the judge of a statutory probate court. A
9 deputy clerk must attend all sessions of the court to which the
10 deputy clerk [he] is assigned. [~~A deputy clerk is entitled to~~
11 ~~receive an annual salary set by the judge in an amount that does not~~
12 ~~exceed the amount paid the deputies of the county courts at law of~~
13 ~~Bexar County. The salary shall be paid in equal monthly~~
14 ~~installments as provided by law for the payment of salaries of~~
15 ~~deputy clerks.]~~

16 SECTION 2.04. (a) Effective January 1, 2022, Sections
17 [25.0631](#)(b) and (c), Government Code, are amended to read as
18 follows:

19 (b) Denton County has the following statutory probate
20 courts:

21 (1) [~~one statutory probate court, the~~] Probate Court
22 of Denton County; and

23 (2) Probate Court Number 2 of Denton County.

24 (c) The statutory county courts of Denton County sit in the
25 county seat or at another location in the county as assigned by the
26 local administrative statutory county court judge. The statutory
27 probate courts [~~court~~] of Denton County sit [~~sits~~] in the county

1 seat and may conduct docket matters at other locations in the county
2 as the statutory probate court judges consider [~~judge considers~~]
3 necessary for the protection of wards or mental health respondents
4 or as otherwise provided by law.

5 (b) Section 25.0632(i), Government Code, is amended to read
6 as follows:

7 (i) A judge of a statutory probate court is subject to
8 assignment as provided by Section 25.0022. On request by the judge
9 of a Denton County statutory county court, a judge of a statutory
10 probate court may be assigned by the regional presiding judge to the
11 requesting judge's court pursuant to Chapter 74. A statutory
12 probate court judge assigned to a statutory county court by the
13 regional presiding judge may hear any matter pending in the
14 requesting judge's court.

15 (c) Section 25.0633(e), Government Code, is amended to read
16 as follows:

17 (e) The County Court at Law No. 2 of Denton County has
18 jurisdiction:

19 (1) over all civil causes and proceedings, original
20 and appellate, prescribed by law for county courts; and

21 (2) regardless of the amount in controversy sought,
22 over:

23 (A) eminent domain cases as provided by Section
24 21.001, Property Code, for statutory county courts; and

25 (B) direct and inverse condemnation cases.

26 (d) The Probate Court Number 2 of Denton County is created
27 on January 1, 2022.

1 SECTION 2.05. (a) Effective October 1, 2022, Subchapter C,
2 Chapter 25, Government Code, is amended by adding Sections 25.1331
3 and 25.1332 to read as follows:

4 Sec. 25.1331. KENDALL COUNTY. Kendall County has one
5 statutory county court, the County Court at Law of Kendall County.

6 Sec. 25.1332. KENDALL COUNTY COURT AT LAW PROVISIONS. (a)
7 In addition to the jurisdiction provided by Section 25.0003 and
8 other law, a county court at law in Kendall County has:

9 (1) concurrent jurisdiction with the district court in
10 state jail, third degree, and second degree felony cases on
11 assignment from a district judge presiding in Kendall County and
12 acceptance of the assignment by the judge of the county court at law
13 to:

- 14 (A) conduct arraignments;
- 15 (B) conduct pretrial hearings;
- 16 (C) accept guilty pleas and conduct sentencing;
- 17 (D) conduct jury trials and nonjury trials;
- 18 (E) conduct probation revocation hearings;
- 19 (F) conduct post-trial proceedings; and
- 20 (G) conduct family law cases and proceedings; and

21 (2) jurisdiction in:
22 (A) Class A and Class B misdemeanor cases;
23 (B) probate proceedings;
24 (C) disputes ancillary to probate, eminent
25 domain, condemnation, or landlord and tenant matters relating to
26 the adjudication and determination of land titles and trusts,
27 whether testamentary, inter vivos, constructive, resulting, or any

1 other class or type of trust, regardless of the amount in
2 controversy or the remedy sought;

3 (D) eminent domain; and

4 (E) appeals from the justice and municipal
5 courts.

6 (b) A judge of a county court at law shall be paid a total
7 annual salary set by the commissioners court in an amount that is
8 not less than \$1,000 less than the annual salary received by a
9 district judge with equivalent years of service as a judge, as
10 provided under Section 25.0005, to be paid out of the county
11 treasury by the commissioners court.

12 (c) The district clerk serves as clerk of a county court at
13 law in matters of concurrent jurisdiction with the district court,
14 and the county clerk serves as clerk of a county court at law in all
15 other matters. Each clerk shall establish a separate docket for a
16 county court at law.

17 (d) The official court reporter of a county court at law is
18 entitled to receive the same compensation and to be paid in the same
19 manner as the court reporters of the district court in Kendall
20 County.

21 (b) The County Court at Law of Kendall County is created on
22 October 1, 2022.

23 SECTION 2.06. (a) Section 25.1571, Government Code, is
24 amended to read as follows:

25 Sec. 25.1571. MCLENNAN COUNTY. McLennan County has the
26 following statutory county courts:

27 (1) County Court at Law of McLennan County; [~~and~~]

1 (2) County Court at Law No. 2 of McLennan County; and

2 (3) County Court at Law No. 3 of McLennan County.

3 (b) Section [25.1572](#), Government Code, is amended by
4 amending Subsections (a), (d), and (i) and adding Subsections (b),
5 (c), and (e) to read as follows:

6 (a) In addition to the jurisdiction provided by Section
7 [25.0003](#) and other law and except as limited by Subsection (b), a
8 county court at law in McLennan County has jurisdiction in third
9 degree felony cases and jurisdiction to conduct arraignments,
10 conduct pretrial hearings, accept guilty pleas, and conduct
11 probation revocation hearings in felony cases.

12 (b) On request of a district judge presiding in McLennan
13 County, the regional presiding judge may assign a judge of a county
14 court at law in McLennan County to the requesting judge's court
15 under Chapter [74](#). A county court at law judge assigned to a
16 district court may hear any matter pending in the requesting
17 judge's court.

18 (c) A county court at law does not have jurisdiction in:

19 (1) suits on behalf of the state to recover penalties
20 or escheated property;

21 (2) misdemeanors involving official misconduct; or

22 (3) contested elections.

23 (d) A judge of a county court at law shall be paid an annual
24 base salary set by the commissioners court in an amount not less
25 than \$1,000 less than the annual base salary the state pays to a
26 district judge as set by the General Appropriations Act in
27 accordance with Section [659.012](#) with equivalent years of service as

1 the judge [of not more than \$20,000]. A county court at law judge's
2 and a district judge's annual base salaries do not include
3 contributions and supplements paid by the county [Each judge
4 receives the same amount as salary. The salary shall be paid out of
5 the county treasury by the commissioners court].

6 (e) The district clerk serves as clerk of a county court at
7 law in matters of concurrent jurisdiction with the district court.
8 The county clerk serves as the clerk of a county court at law in all
9 other matters. Each clerk shall establish a separate docket for a
10 county court at law.

11 (i) The official court reporter of a county court at law is
12 entitled to receive a salary set by the judge of a county court at
13 law with the approval of the commissioners court [the same
14 compensation and to be paid in the same manner as the court
15 reporters of the district courts in McLennan County].

16 (c) The County Court at Law No. 3 of McLennan County is
17 created on the effective date of this Act.

18 SECTION 2.07. (a) Section 25.1721, Government Code, is
19 amended to read as follows:

20 Sec. 25.1721. MONTGOMERY COUNTY. Montgomery County has the
21 following statutory county courts:

- 22 (1) County Court at Law No. 1 of Montgomery County;
23 (2) County Court at Law No. 2 of Montgomery County;
24 (3) County Court at Law No. 3 of Montgomery County;
25 (4) County Court at Law No. 4 of Montgomery County;
26 [and]
27 (5) County Court at Law No. 5 of Montgomery County;

1 and

2 (6) County Court at Law No. 6 of Montgomery County.

3 (b) The County Court at Law No. 6 of Montgomery County is
4 created on the effective date of this Act.

5 SECTION 2.08. Sections 25.1972(a) and (b), Government Code,
6 are amended to read as follows:

7 (a) In addition to the jurisdiction provided by Section
8 25.0003 and other law, and except as limited by Subsection (b), a
9 county court at law in Reeves County has:

10 (1) concurrent jurisdiction with the district court:

11 (A) in disputes ancillary to probate, eminent
12 domain, condemnation, or landlord and tenant matters relating to
13 the adjudication and determination of land titles and trusts,
14 whether testamentary, inter vivos, constructive, resulting, or any
15 other class or type of trust, regardless of the amount in
16 controversy or the remedy sought;

17 (B) over civil forfeitures, including surety
18 bond forfeitures without minimum or maximum limitation as to the
19 amount in controversy or remedy sought;

20 (C) in all actions by or against a personal
21 representative, in all actions involving an inter vivos trust, in
22 all actions involving a charitable trust, and in all actions
23 involving a testamentary trust, whether the matter is appertaining
24 to or incident to an estate;

25 (D) in proceedings under Title 3, Family Code;

26 and

27 (E) in family law cases and proceedings ~~any~~

1 ~~proceeding involving an order relating to a child in the possession~~
2 ~~or custody of the Department of Family and Protective Services or~~
3 ~~for whom the court has appointed a temporary or permanent managing~~
4 ~~conservator];~~

5 (2) jurisdiction in mental health matters, original or
6 appellate, provided by law for constitutional county courts,
7 statutory county courts, or district courts with mental health
8 jurisdiction, including proceedings under:

9 (A) Chapter 462, Health and Safety Code; and

10 (B) Subtitles C and D, Title 7, Health and Safety
11 Code;

12 (3) jurisdiction over the collection and management of
13 estates of minors, persons with a mental illness or intellectual
14 disability, and deceased persons; and

15 (4) jurisdiction in all cases assigned, transferred,
16 or heard under Sections 74.054, 74.059, and 74.094.

17 (b) A county court at law does not have jurisdiction of:

18 (1) felony cases, except as otherwise provided by law;

19 (2) misdemeanors involving official misconduct unless
20 assigned under Sections 74.054 and 74.059; or

21 (3) contested elections~~[, or~~

22 [~~(4) except as provided by Subsections (a)(1)(D) and~~
23 ~~(E), family law cases].~~

24 SECTION 2.09. (a) Effective January 1, 2023, Section
25 25.2071(a), Government Code, is amended to read as follows:

26 (a) San Patricio County has the following ~~[one]~~ statutory
27 county courts:

1 (1) [court,] the County Court at Law of San Patricio
2 County; and
3 (2) the County Court at Law No. 2 of San Patricio
4 County.

5 (b) Effective January 1, 2023, Section 25.2072, Government
6 Code, is amended by amending Subsections (a), (d), and (m) and
7 adding Subsections (g-1) and (g-2) to read as follows:

8 (a) In addition to the jurisdiction provided by Section
9 25.0003 and other law, a county court at law in San Patricio County
10 has concurrent jurisdiction with the district court except that a
11 county court at law does not have jurisdiction of:

12 (1) felony criminal matters; and
13 (2) civil cases in which the matter in controversy
14 exceeds the maximum amount provided by Section 25.0003 [in matters
15 involving the juvenile and child welfare law of this state].

16 (d) ~~[The judge of a county court at law shall be paid an~~
17 ~~annual salary in an amount of not less than \$43,000.]~~ The judge of a
18 county court at law is entitled to receive travel and necessary
19 office expenses, including administrative and clerical assistance.

20 (g-1) The county clerk serves as clerk of a county court at
21 law except in family law cases. In family law cases, including
22 juvenile and child welfare cases, the district clerk serves as
23 clerk of a county court at law. The district clerk shall establish
24 a separate family law docket for each county court at law.

25 (g-2) The commissioners court shall provide the deputy
26 clerks, bailiffs, and other personnel necessary to operate the
27 county courts at law.

1 (m) The judge of the county court and the judges [~~judge~~] of
2 the [~~a~~] county courts [~~court~~] at law may agree on a plan governing
3 the filing, numbering, and docketing of cases within the concurrent
4 jurisdiction of their courts and the assignment of those cases for
5 trial. The plan may provide for the centralized institution and
6 filing of all such cases with one court, clerk, or coordinator
7 designated by the plan and for the systemized assignment of those
8 cases to the courts participating in the plan, and the provisions of
9 the plan for the centralized filing and assignment of cases shall
10 control notwithstanding any other provisions of this section. If
11 the judges of the county court and the county courts [~~court~~] at law
12 are unable to agree on a filing, docketing, and assignment of cases
13 plan, a board of judges composed of the district judges and the
14 county court at law judges for San Patricio County [~~the presiding~~
15 ~~judge of the 36th Judicial District~~] shall design a plan for the
16 [~~both~~] courts.

17 (c) The County Court at Law No. 2 of San Patricio County is
18 created January 1, 2023.

19 SECTION 2.10. Effective January 1, 2023, Section
20 [25.2223](#)(1), Government Code, is amended to read as follows:

21 (1) The County Criminal Court No. 5 of Tarrant County and
22 the County Criminal Court No. 6 of Tarrant County shall give
23 preference to cases brought under Title 5, Penal Code, involving
24 family violence as defined by Section [71.004](#), Family Code, and
25 cases brought under Sections [25.07](#), [25.072](#), and [42.072](#), Penal Code.

26 SECTION 2.11. (a) Effective October 1, 2022, Section
27 [25.2481](#), Government Code, is amended to read as follows:

1 Sec. 25.2481. WILLIAMSON COUNTY. Williamson County has the
2 following statutory county courts:

- 3 (1) County Court at Law No. 1 of Williamson County;
4 (2) County Court at Law No. 2 of Williamson County;
5 (3) County Court at Law No. 3 of Williamson County;
6 ~~and~~
7 (4) County Court at Law No. 4 of Williamson County;
8 and
9 (5) County Court at Law No. 5 of Williamson County.

10 (b) The County Court at Law No. 5 of Williamson County is
11 created on October 1, 2022.

12 SECTION 2.12. (a) Sections 26.006(a) and (b), Government
13 Code, are amended to read as follows:

14 (a) A county judge is entitled to an annual salary
15 supplement from the state in an amount equal to 18 percent of the
16 state base salary paid to a district judge as set by the General
17 Appropriations Act in accordance with Section 659.012(a) if at
18 least 18 ~~[40]~~ percent of the:

- 19 (1) functions that the judge performs are judicial
20 functions; or
21 (2) total hours that the judge works are in the
22 performance of judicial functions.

23 (b) To receive a supplement under Subsection (a), a county
24 judge must file with the comptroller's judiciary section an
25 affidavit stating that at least 18 ~~[40]~~ percent of the:

- 26 (1) functions that the judge performs are judicial
27 functions; or

1 (2) total hours that the judge works are in the
2 performance of judicial functions.

3 (b) The changes in law made by this section take effect on
4 the effective date of this Act and apply only to a salary payment
5 for a pay period beginning on or after that date. A salary payment
6 for a pay period beginning before the effective date of this Act is
7 governed by the law in effect on the date the pay period began, and
8 that law is continued in effect for that purpose.

9 ARTICLE 3. JUSTICE AND MUNICIPAL COURTS

10 SECTION 3.01. Article 4.14(g), Code of Criminal Procedure,
11 is amended to read as follows:

12 (g) A municipality may enter into an agreement with a
13 contiguous municipality or a municipality with boundaries that are
14 within one-half mile of the municipality seeking to enter into the
15 agreement to establish concurrent jurisdiction of the municipal
16 courts in the municipalities and provide original jurisdiction to a
17 municipal court in which a case is brought as if the municipal court
18 were located in the municipality in which the case arose, for:

19 (1) all cases in which either municipality has
20 jurisdiction under Subsection (a) or (b); and

21 (2) cases that arise under Section 821.022, Health and
22 Safety Code.

23 SECTION 3.02. Subchapter B, Chapter 45, Code of Criminal
24 Procedure, is amended by adding Article 45.0241 to read as follows:

25 Art. 45.0241. ACCEPTANCE OF DEFENDANT'S PLEA. A justice or
26 judge may not accept a plea of guilty or plea of nolo contendere
27 from a defendant in open court unless it appears to the justice or

1 judge that the defendant is mentally competent and the plea is free
2 and voluntary.

3 SECTION 3.03. Article 103.003, Code of Criminal Procedure,
4 is amended by adding Subsection (a-1) to read as follows:

5 (a-1) The clerk of a municipal court may collect money
6 payable to the municipal court under this title.

7 SECTION 3.04. Article 103.0081, Code of Criminal Procedure,
8 is amended to read as follows:

9 Art. 103.0081. UNCOLLECTIBLE FINES AND FEES. (a) Any
10 officer authorized by this chapter to collect a fine, fee, or item
11 of cost may request the trial court in which a criminal action or
12 proceeding was held to make a finding that a fine, fee, or item of
13 cost imposed in the action or proceeding is uncollectible if the
14 officer believes:

- 15 (1) the defendant is deceased;
16 (2) the defendant is serving a sentence for
17 imprisonment for life or life without parole; or
18 (3) the fine, fee, or item of cost has been unpaid for
19 at least 15 years.

20 (b) On a finding by a court that any condition described by
21 Subsections (a)(1)-(3) is true, the court may order the officer to
22 designate the fine, fee, or item of cost as uncollectible in the fee
23 record. The officer shall attach a copy of the court's order to the
24 fee record.

25 SECTION 3.05. Section 29.003(i), Government Code, is
26 amended to read as follows:

27 (i) A municipality may enter into an agreement with a

1 contiguous municipality or a municipality with boundaries that are
2 within one-half mile of the municipality seeking to enter into the
3 agreement to establish concurrent jurisdiction of the municipal
4 courts in the municipalities and provide original jurisdiction to a
5 municipal court in which a case is brought as if the municipal court
6 were located in the municipality in which the case arose, for:

7 (1) all cases in which either municipality has
8 jurisdiction under Subsection (a) or (b); and

9 (2) cases that arise under Section 821.022, Health and
10 Safety Code, or Section 65.003(a), Family Code.

11 SECTION 3.06. Section 292.001(d), Local Government Code, is
12 amended to read as follows:

13 (d) A justice of the peace court may not be housed or
14 conducted in a building located outside the court's precinct except
15 as provided by Section 27.051(f) or 27.0515, Government Code, or
16 unless the justice of the peace court is situated in the county
17 courthouse in a county with a population of at least 305,000
18 [~~275,000~~] persons and the county seat of which is located in the
19 Llano Estacado region of this state [~~but no more than 285,000~~
20 ~~persons~~].

21 ARTICLE 4. JUVENILE JUSTICE AND FAMILY COURTS

22 SECTION 4.01. Subchapter H, Chapter 6, Family Code, is
23 amended by adding Section 6.712 to read as follows:

24 Sec. 6.712. DATE OF MARRIAGE REQUIREMENT IN FINAL DECREE.

25 (a) In a suit for dissolution of a marriage in which the court
26 grants a divorce, the court shall state the date of the marriage in
27 the decree of divorce.

1 (b) This section does not apply to a suit for dissolution of
2 a marriage described by Section 2.401(a)(2).

3 SECTION 4.02. Section 51.02, Family Code, is amended by
4 adding Subdivision (3-a) to read as follows:

5 (3-a) "Dual status child" means a child who has been
6 referred to the juvenile justice system and is:

7 (A) in the temporary or permanent managing
8 conservatorship of the Department of Family and Protective
9 Services;

10 (B) the subject of a case for which family-based
11 safety services have been offered or provided by the department;

12 (C) an alleged victim of abuse or neglect in an
13 open child protective investigation; or

14 (D) a victim in a case in which, after an
15 investigation, the department concluded there was reason to believe
16 the child was abused or neglected.

17 SECTION 4.03. Section 51.04(h), Family Code, is amended to
18 read as follows:

19 (h) A judge exercising jurisdiction over a child in a suit
20 instituted under Subtitle E, Title 5, may refer any aspect of a suit
21 involving a dual status ~~the~~ child that is instituted under this
22 title to the appropriate associate judge appointed under Subchapter
23 C, Chapter 201, serving in the county and exercising jurisdiction
24 over the child under Subtitle E, Title 5, if the associate judge
25 consents to the referral. The scope of an associate judge's
26 authority over a suit referred under this subsection is subject to
27 any limitations placed by the court judge in the order of referral.

1 SECTION 4.04. Section 51.0414(a), Family Code, is amended
2 to read as follows:

3 (a) The juvenile court may transfer a dual status child's
4 case, including transcripts of records and documents for the case,
5 to a district or statutory county court located in another county
6 that is exercising jurisdiction over the child in a suit instituted
7 under Subtitle E, Title 5. A case may only be transferred under this
8 section with the consent of the judge of the court to which the case
9 is being transferred.

10 SECTION 4.05. Sections 107.004(d) and (e), Family Code, are
11 amended to read as follows:

12 (d) Except as provided by Subsection (e), an attorney ad
13 litem appointed for a child in a proceeding under Chapter 262, ~~[or]~~
14 263, or 264 shall:

15 (1) meet before each court hearing with:

16 (A) the child, if the child is at least four years
17 of age; or

18 (B) the individual with whom the child ordinarily
19 resides, including the child's parent, conservator, guardian,
20 caretaker, or custodian, if the child is younger than four years of
21 age; and

22 (2) report to the court whether ~~[if the child or~~
23 ~~individual is not present at the court hearing, file a written~~
24 ~~statement with the court indicating that]~~ the attorney ad litem:

25 (A) complied with Subdivision (1); or

26 (B) requests that the court find good cause for
27 noncompliance because compliance was not feasible or in the best

1 interest of the child under Subsection (e).

2 (e) An attorney ad litem appointed for a child in a
3 proceeding under Chapter 262, ~~[or]~~ 263, or 264 is not required to
4 comply with Subsection (d) before a hearing if the court finds at
5 that hearing that the attorney ad litem has shown good cause why the
6 attorney ad litem's compliance with that subsection is not feasible
7 or in the best interest of the child. Additionally, a court may, on
8 a showing of good cause, authorize an attorney ad litem to comply
9 with Subsection (d) by conferring with the child or other
10 individual, as appropriate, by telephone or video conference.

11 SECTION 4.06. The change in law made by Section 6.712,
12 Family Code, as added by this article, applies only to a suit for
13 dissolution of a marriage filed on or after the effective date of
14 this Act. A suit for dissolution of a marriage filed before the
15 effective date of this Act is governed by the law in effect on the
16 date the suit was filed, and the former law is continued in effect
17 for that purpose.

18 ARTICLE 5. MAGISTRATES AND MAGISTRATE COURTS

19 SECTION 5.01. Article 4.01, Code of Criminal Procedure, is
20 amended to read as follows:

21 Art. 4.01. WHAT COURTS HAVE CRIMINAL JURISDICTION. The
22 following courts have jurisdiction in criminal actions:

- 23 1. The Court of Criminal Appeals;
- 24 2. Courts of appeals;
- 25 3. The district courts;
- 26 4. The criminal district courts;
- 27 5. The magistrates appointed by the judges of the

1 district courts of Bexar County, Dallas County, Tarrant County, or
2 Travis County that give preference to criminal cases and the
3 magistrates appointed by the judges of the criminal district courts
4 of Dallas County or Tarrant County;

5 6. The county courts;

6 7. All county courts at law with criminal
7 jurisdiction;

8 8. County criminal courts;

9 9. Justice courts;

10 10. Municipal courts;

11 11. The magistrates appointed by the judges of the
12 district courts of Lubbock County; ~~and~~

13 12. The magistrates appointed by the El Paso Council
14 of Judges;

15 13. The magistrates appointed by the Collin County
16 Commissioners Court;

17 14. The magistrates appointed by the Brazoria County
18 Commissioners Court or the local administrative judge for Brazoria
19 County; and

20 15. The magistrates appointed by the judges of the
21 district courts of Tom Green County.

22 SECTION 5.02. Section 54.1502, Government Code, is amended
23 to read as follows:

24 Sec. 54.1502. JURISDICTION. A magistrate has concurrent
25 criminal jurisdiction with:

26 (1) the judges of the justice of the peace courts of
27 Burnet County; and

1 (2) a municipal court in Burnet County, if approved by
2 a memorandum of understanding between the municipality and Burnet
3 County.

4 SECTION 5.03. Chapter 54, Government Code, is amended by
5 adding Subchapter PP to read as follows:

6 SUBCHAPTER PP. BRAZORIA COUNTY CRIMINAL LAW MAGISTRATE COURT

7 Sec. 54.2501. CREATION. The Brazoria County Criminal Law
8 Magistrate Court is a court with the jurisdiction provided by this
9 subchapter.

10 Sec. 54.2502. APPOINTMENT. (a) On recommendation from the
11 local administrative judge, the commissioners court of Brazoria
12 County may appoint one or more full- or part-time judges to preside
13 over the criminal law magistrate court for the term determined by
14 the commissioners court. The local administrative judge shall
15 appoint one or more full- or part-time judges to preside over the
16 criminal law magistrate court if the commissioners court is
17 prohibited by law from appointing a judge.

18 (b) To be eligible for appointment as a judge of the
19 criminal law magistrate court, a person must meet all the
20 requirements and qualifications to serve as a district court judge.

21 (c) A judge of the criminal law magistrate court is entitled
22 to the salary set by the commissioners court. The salary may not be
23 less than the annual base salary paid to a district judge under
24 Chapter 659.

25 (d) A judge appointed under this section serves at the
26 pleasure of the commissioners court or the local administrative
27 judge, as applicable.

1 Sec. 54.2503. JURISDICTION. (a) Except as provided by this
2 subsection, the criminal law magistrate court has the criminal
3 jurisdiction provided by the constitution and laws of this state
4 for county courts at law. The criminal law magistrate court does
5 not have jurisdiction to:

6 (1) hear a trial of a misdemeanor offense, other than a
7 Class C misdemeanor, on the merits if a jury trial is demanded; or

8 (2) hear a trial of a misdemeanor, other than a Class C
9 misdemeanor, on the merits if a defendant pleads not guilty.

10 (b) The criminal law magistrate court has the jurisdiction
11 provided by the constitution and laws of this state for
12 magistrates. A judge of the criminal law magistrate court is a
13 magistrate as that term is defined by Article 2.09, Code of Criminal
14 Procedure.

15 (c) Except as provided by this subsection, the criminal law
16 magistrate court has the criminal jurisdiction provided by the
17 constitution and laws of this state for a district court. The
18 criminal law magistrate court does not have jurisdiction to:

19 (1) hear a trial of a felony offense on the merits if a
20 jury trial is demanded;

21 (2) hear a trial of a felony offense on the merits if a
22 defendant pleads not guilty;

23 (3) sentence in a felony case unless the judge in whose
24 court the case is pending assigned the case to the criminal law
25 magistrate court for a guilty plea and sentence; or

26 (4) hear any part of a capital murder case after
27 indictment.

1 (d) A criminal law magistrate court may not issue writs of
2 habeas corpus in felony cases but may hear and grant relief on a
3 writ of habeas corpus issued by a district court and assigned by the
4 district court to the criminal law magistrate court.

5 (e) A felony or misdemeanor indictment or information may
6 not be filed in or transferred to the criminal law magistrate court.

7 (f) A judge of the criminal law magistrate court shall
8 exercise jurisdiction granted by this subchapter over felony and
9 misdemeanor indictments and informations only as judge presiding
10 for the court in which the indictment or information is pending and
11 under the limitations set out in the assignment order by the
12 assigning court or as provided by local administrative rules.

13 (g) The criminal law magistrate court has concurrent
14 criminal jurisdiction with the justice courts located in Brazoria
15 County.

16 Sec. 54.2504. POWERS AND DUTIES. (a) The criminal law
17 magistrate court or a judge of the criminal law magistrate court may
18 issue writs of injunction and all other writs necessary for the
19 enforcement of the jurisdiction of the court and may issue
20 misdemeanor writs of habeas corpus in cases in which the offense
21 charged is within the jurisdiction of the court or of any other
22 court of inferior jurisdiction in the county. The court and the
23 judge may punish for contempt as provided by law for district
24 courts. A judge of the criminal law magistrate court has all other
25 powers, duties, immunities, and privileges provided by law for:

26 (1) justices of the peace when acting in a Class C
27 misdemeanor case;

1 (2) county court at law judges when acting in a Class A
2 or Class B misdemeanor case; and

3 (3) district court judges when acting in a felony
4 case.

5 (b) A judge of the criminal law magistrate court may hold an
6 indigency hearing and a capias pro fine hearing. When acting as the
7 judge who issued the capias pro fine, a judge of the criminal law
8 magistrate court may make all findings of fact and conclusions of
9 law required of the judge who issued the capias pro fine. In
10 conducting a hearing under this subsection, the judge of the
11 criminal law magistrate court is empowered to make all findings of
12 fact and conclusions of law and to issue all orders necessary to
13 properly dispose of the capias pro fine or indigency hearing in
14 accordance with the provisions of the Code of Criminal Procedure
15 applicable to a misdemeanor or felony case of the same type and
16 level.

17 (c) A judge of the magistrate court may accept a plea of
18 guilty or nolo contendere from a defendant charged with a
19 misdemeanor or felony offense.

20 Sec. 54.2505. TRANSFER AND ASSIGNMENT OF CASES. (a) Except
21 as provided by Subsection (b) or local administrative rules, the
22 local administrative judge or a judge of the criminal law
23 magistrate court may transfer between courts a case that is pending
24 in the court of any magistrate in the criminal law magistrate
25 court's jurisdiction if the case is:

26 (1) an unindicted felony case;

27 (2) a Class A or Class B misdemeanor case if an

1 information has not been filed; or

2 (3) a Class C misdemeanor case.

3 (b) A case may not be transferred from or to the magistrate
4 docket of a district court judge, county court at law judge, or
5 justice of the peace without the consent of the judge of the court
6 to which it is transferred.

7 (c) Except as provided by Subsection (d) or local
8 administrative rules, the local administrative judge may assign a
9 judge of the criminal law magistrate court to act as presiding judge
10 in a case that is pending in the court of any magistrate in the
11 criminal law magistrate court's jurisdiction if the case is:

12 (1) an unindicted felony case;

13 (2) a Class A or Class B misdemeanor case if an
14 information has not been filed; or

15 (3) a Class C misdemeanor case.

16 (d) A case may not be assigned to a district court judge,
17 county court at law judge, or justice of the peace without the
18 assigned judge's consent.

19 (e) This section applies only to the district courts, county
20 courts at law, and justice courts in the county.

21 Sec. 54.2506. PROCEEDING THAT MAY BE REFERRED. A district
22 judge, county court at law judge, or justice of the peace may refer
23 to a judge of the criminal law magistrate court any criminal case or
24 matter relating to a criminal case for any proceeding other than
25 presiding over a criminal trial on the merits, whether or not the
26 trial is before a jury.

27 Sec. 54.2507. OATH OF OFFICE. A judge of the criminal law

1 magistrate court must take the constitutional oath of office
2 prescribed for appointed officers.

3 Sec. 54.2508. JUDICIAL IMMUNITY. A judge of the criminal
4 law magistrate court has the same judicial immunity as a district
5 judge.

6 Sec. 54.2509. CLERK. The clerk of a district court or
7 county court at law that refers a proceeding to a magistrate under
8 this subchapter shall perform the statutory duties necessary for
9 the magistrate to perform the duties authorized by this subchapter.

10 Sec. 54.2510. SHERIFF. The county sheriff, either in
11 person or by deputy, shall attend the criminal law magistrate court
12 as required by the judge of that court.

13 Sec. 54.2511. WITNESSES. (a) A witness who is sworn and who
14 appears before a magistrate is subject to the penalties for perjury
15 and aggravated perjury provided by law.

16 (b) A referring court may fine or imprison a witness or
17 other court participant for failure to appear after being summoned,
18 refusal to answer questions, or other acts of direct contempt
19 before a magistrate.

20 SECTION 5.04. Chapter 54, Government Code, is amended by
21 adding Subchapter QQ to read as follows:

22 SUBCHAPTER QQ. CRIMINAL LAW MAGISTRATES IN TOM GREEN COUNTY

23 Sec. 54.2601. APPOINTMENT. (a) The judges of the district
24 courts of Tom Green County, with the consent and approval of the
25 commissioners court of Tom Green County, shall jointly appoint the
26 number of magistrates set by the commissioners court to perform the
27 duties authorized by this subchapter.

1 (b) Each magistrate's appointment must be made with the
2 approval of at least two-thirds of all the judges described in
3 Subsection (a).

4 (c) If the number of magistrates is less than the number of
5 district judges, each magistrate shall serve equally in the courts
6 of those judges.

7 Sec. 54.2602. QUALIFICATIONS. To be eligible for
8 appointment as a magistrate, a person must:

9 (1) be a resident of this state; and

10 (2) have been licensed to practice law in this state
11 for at least four years.

12 Sec. 54.2603. COMPENSATION. (a) A full-time magistrate is
13 entitled to the salary determined by the commissioners court of Tom
14 Green County. The salary may not be less than an amount equal to the
15 salary, supplements, and allowances paid to a justice of the peace
16 of Tom Green County as set by the annual budget of Tom Green County.

17 (b) A magistrate's salary is paid from the county fund
18 available for payment of officers' salaries.

19 (c) The salary of a part-time magistrate is equal to the
20 per-hour salary of a full-time magistrate. The per-hour salary is
21 determined by dividing the annual salary by a 2,080 work-hour year.
22 The judges of the courts trying criminal cases in Tom Green County
23 shall approve the number of hours for which a part-time magistrate
24 is to be paid.

25 Sec. 54.2604. JUDICIAL IMMUNITY. A magistrate has the same
26 judicial immunity as a district judge.

27 Sec. 54.2605. TERMINATION OF SERVICES. (a) A magistrate

1 who serves a single court serves at the will of the judge.

2 (b) The services of a magistrate who serves more than one
3 court may be terminated by a majority vote of all the judges whom
4 the magistrate serves.

5 Sec. 54.2606. PROCEEDING THAT MAY BE REFERRED. (a) A judge
6 may refer to a magistrate any criminal case or matter relating to a
7 criminal case for proceedings involving:

8 (1) a negotiated plea of guilty or no contest and
9 sentencing before the court;

10 (2) a bond forfeiture, remittitur, and related
11 proceedings;

12 (3) a pretrial motion;

13 (4) a writ of habeas corpus;

14 (5) an examining trial;

15 (6) an occupational driver's license;

16 (7) a petition for an order of expunction under
17 Chapter 55, Code of Criminal Procedure;

18 (8) an asset forfeiture hearing as provided by Chapter
19 59, Code of Criminal Procedure;

20 (9) a petition for an order of nondisclosure of
21 criminal history record information or an order of nondisclosure of
22 criminal history record information that does not require a
23 petition provided by Subchapter E-1, Chapter 411;

24 (10) a motion to modify or revoke community
25 supervision or to proceed with an adjudication of guilty;

26 (11) setting conditions, modifying, revoking, and
27 surrendering of bonds, including surety bonds;

1 (12) specialty court proceedings;
2 (13) a waiver of extradition; and
3 (14) any other matter the judge considers necessary
4 and proper.

5 (b) A judge may refer to a magistrate a civil case arising
6 out of Chapter 59, Code of Criminal Procedure, for any purpose
7 authorized by that chapter, including issuing orders, accepting
8 agreed judgments, enforcing judgments, and presiding over a case on
9 the merits if a party has not requested a jury trial.

10 (c) A magistrate may accept a plea of guilty from a
11 defendant charged with misdemeanor, felony, or both misdemeanor and
12 felony offenses.

13 (d) A magistrate may select a jury. A magistrate may not
14 preside over a criminal trial on the merits, whether or not the
15 trial is before a jury.

16 (e) A magistrate may not hear a jury trial on the merits of a
17 bond forfeiture.

18 (f) A judge of a designated juvenile court may refer to a
19 magistrate any proceeding over which a juvenile court has exclusive
20 original jurisdiction under Title 3, Family Code, including any
21 matter ancillary to the proceeding.

22 Sec. 54.2607. ORDER OF REFERRAL. (a) To refer one or more
23 cases to a magistrate, a judge must issue an order of referral
24 specifying the magistrate's duties.

25 (b) An order of referral may:

26 (1) limit the powers of the magistrate and direct the
27 magistrate to report only on specific issues, perform particular

- 1 acts, or only receive and report on evidence;
2 (2) set the time and place for the hearing;
3 (3) prescribe a closing date for the hearing;
4 (4) provide a date for filing the magistrate's
5 findings;
6 (5) designate proceedings for more than one case over
7 which the magistrate shall preside;
8 (6) direct the magistrate to call the court's docket;
9 and
10 (7) provide the general powers and limitations of
11 authority of the magistrate applicable to any case referred.
12 Sec. 54.2608. POWERS. (a) Except as limited by an order of
13 referral, a magistrate to whom a case is referred may:
14 (1) conduct hearings;
15 (2) hear evidence;
16 (3) compel production of relevant evidence;
17 (4) rule on admissibility of evidence;
18 (5) issue summons for the appearance of witnesses;
19 (6) examine witnesses;
20 (7) swear witnesses for hearings;
21 (8) make findings of fact on evidence;
22 (9) formulate conclusions of law;
23 (10) rule on a pretrial motion;
24 (11) recommend the rulings, orders, or judgment to be
25 made in a case;
26 (12) regulate proceedings in a hearing;
27 (13) accept a plea of guilty from a defendant charged

1 with misdemeanor, felony, or both misdemeanor and felony offenses;
2 (14) select a jury;
3 (15) accept a negotiated plea on probation revocation;
4 (16) conduct a contested probation revocation
5 hearing;
6 (17) sign a dismissal in a misdemeanor case;
7 (18) in any case referred under Section 54.656(a)(1),
8 accept a negotiated plea of guilty or no contest and:
9 (A) enter a finding of guilty and impose or
10 suspend the sentence; or
11 (B) defer adjudication of guilty; and
12 (19) perform any act and take any measure necessary
13 and proper for the efficient performance of the duties required by
14 the order of referral.
15 (b) A magistrate may sign a motion to dismiss submitted by
16 an attorney representing the state on cases referred to the
17 magistrate, or on dockets called by the magistrate, and may
18 consider adjudicated cases at sentencing under Section 12.45, Penal
19 Code.
20 (c) A magistrate has all the powers of a magistrate under
21 the laws of this state and may administer an oath for any purpose.
22 Sec. 54.2609. COURT REPORTER. At the request of a party in
23 a felony case, the court shall provide a court reporter to record
24 the proceedings before the magistrate.
25 Sec. 54.2610. WITNESS. (a) A witness who appears before a
26 magistrate and is sworn is subject to the penalties for perjury
27 provided by law.

1 (b) A referring court may issue attachment against and may
2 fine or imprison a witness whose failure to appear after being
3 summoned or whose refusal to answer questions has been certified to
4 the court.

5 Sec. 54.2611. PAPERS TRANSMITTED TO JUDGE. At the
6 conclusion of the proceedings, a magistrate shall transmit to the
7 referring court any papers relating to the case, including the
8 magistrate's findings, conclusions, orders, recommendations, or
9 other action taken.

10 Sec. 54.2612. JUDICIAL ACTION. (a) A referring court may
11 modify, correct, reject, reverse, or recommit for further
12 information any action taken by the magistrate.

13 (b) If the court does not modify, correct, reject, reverse,
14 or recommit an action of the magistrate, the action becomes the
15 decree of the court.

16 (c) At the conclusion of each term during which the services
17 of a magistrate are used, the referring court shall enter a decree
18 on the minutes adopting the actions of the magistrate of which the
19 court approves.

20 Sec. 54.2613. MAGISTRATE. (a) If a magistrate appointed
21 under this subchapter is absent or unable to serve, the judge
22 referring the case may appoint another magistrate to serve for the
23 absent magistrate.

24 (b) A magistrate serving for another magistrate under this
25 section has the powers and shall perform the duties of the
26 magistrate for whom the magistrate is serving.

27 Sec. 54.2614. CLERK. The clerk of a district court that

1 refers a proceeding to a magistrate under this subchapter shall
2 perform the statutory duties necessary for the magistrate to
3 perform the duties authorized by this subchapter.

4 SECTION 5.05. Section 54.653(b), Government Code, is
5 repealed.

6 ARTICLE 6. ELECTRONIC FILING SYSTEM

7 SECTION 6.01. Section 72.031(a), Government Code, is
8 amended by adding Subdivision (5) to read as follows:

9 (5) "State court document database" means a database
10 accessible by the public and established or authorized by the
11 supreme court for storing documents filed with a court in this
12 state.

13 SECTION 6.02. Section 72.031(b), Government Code, is
14 amended to read as follows:

15 (b) The office as authorized by supreme court rule or order
16 may:

17 (1) implement an electronic filing system for use in
18 the courts of this state;

19 (2) allow public access to view information or
20 documents in the state court document database; and

21 (3) charge a reasonable fee for additional optional
22 features in the state court document database.

23 ARTICLE 7. TRANSFER OF CASES

24 SECTION 7.01. Section 155.207, Family Code, is amended to
25 read as follows:

26 Sec. 155.207. TRANSFER OF COURT FILES. (a) Not later than
27 the 10th working day after the date an order of transfer is signed,

1 the clerk of the court transferring a proceeding shall send, using
2 the electronic filing system established under Section 72.031,
3 Government Code, to the proper court in the county to which transfer
4 is being made:

5 (1) a transfer certificate and index of transferred
6 documents [~~the pleadings in the pending proceeding and any other~~
7 ~~document specifically requested by a party~~];

8 (2) [~~certified copies of all entries in the minutes,~~
9 [~~3~~] a [~~certified~~] copy of each final order;

10 (3) [~~and~~

11 [~~4~~] a [~~certified~~] copy of the order of transfer
12 signed by the transferring court;

13 (4) a copy of the original papers filed in the
14 transferring court;

15 (5) a copy of the transfer certificate and index of
16 transferred documents from each previous transfer; and

17 (6) a bill of any costs that have accrued in the
18 transferring court.

19 (a-1) The clerk of the transferring court shall use the
20 standardized transfer certificate and index of transferred
21 documents form created by the Office of Court Administration of the
22 Texas Judicial System under Section 72.037, Government Code, when
23 transferring a proceeding under this section.

24 (b) The clerk of the transferring court shall keep a copy of
25 [~~the~~] transferred pleadings [~~and other requested documents. If the~~
26 ~~transferring court retains jurisdiction of another child who was~~
27 ~~the subject of the suit, the clerk shall send a copy of the~~

1 ~~pleadings and other requested documents to the court to which the~~
2 ~~transfer is made and shall keep the original pleadings and other~~
3 ~~requested documents].~~

4 (c) The ~~[On receipt of the pleadings, documents, and orders~~
5 ~~from the transferring court, the]~~ clerk of the transferee court
6 shall:

7 (1) accept documents transferred under Subsection
8 (a);

9 (2) docket the suit; and

10 (3) [shall] notify, using the electronic filing system
11 established under Section 72.031, Government Code ~~[the judge of the~~
12 ~~transferee court]~~, all parties, the clerk of the transferring
13 court, and, if appropriate, the transferring court's local registry
14 that the suit has been docketed.

15 (c-1) The clerk of the transferee court shall physically or
16 electronically mark or stamp the transfer certificate and index of
17 transferred documents to evidence the date and time of acceptance
18 under Subsection (c), but may not physically or electronically mark
19 or stamp any other document transferred under Subsection (a).

20 (d) The clerk of the transferring court shall send a
21 certified copy of the order directing payments to the transferee
22 court:

23 (1) [r] to any party ~~[or employer]~~ affected by the
24 ~~[that]~~ order, and, if appropriate, to the local registry of the
25 transferee court using the electronic filing system established
26 under Section 72.031, Government Code; and

27 (2) to an employer affected by the order

1 electronically or by first class mail.

2 (e) The clerks of both the transferee and transferring
3 courts may each produce under Chapter 51, Government Code,
4 certified or uncertified copies of documents filed in a case
5 transferred under this section, but shall also include a copy of the
6 transfer certificate and index of transferred documents with each
7 document produced.

8 (f) Sections 80.001 and 80.002, Government Code, do not
9 apply to the transfer of documents under this section.

10 SECTION 7.02. Section 51.3071, Government Code, is amended
11 to read as follows:

12 Sec. 51.3071. TRANSFER OF CASES. (a) If a case is
13 transferred from a district court to a county court, the clerk of
14 the district court shall [~~may~~] send to the county clerk using the
15 electronic filing system established under Section 72.031 [~~in~~
16 ~~electronic or paper form~~]:

17 (1) a transfer certificate and index of transferred
18 documents [~~certified transcript of the proceedings held in the~~
19 ~~district court~~];

20 (2) a copy of the original papers filed in the
21 transferring [~~district~~] court; [~~and~~]

22 (3) a copy of the order of transfer signed by the
23 transferring court;

24 (4) a copy of each final order;

25 (5) a copy of the transfer certificate and index of
26 transferred documents from each previous transfer; and

27 (6) a bill of any [~~the~~] costs that have accrued in the

1 transferring [~~district~~] court.

2 (b) The clerk of the transferring court shall use the
3 standardized transfer certificate and index of transferred
4 documents form created by the Office of Court Administration of the
5 Texas Judicial System under Section 72.037 when transferring a case
6 under this section.

7 (c) The clerk of the transferee court shall accept documents
8 transferred under Subsection (a) and docket the case.

9 (d) The clerk of the transferee court shall physically or
10 electronically mark or stamp the transfer certificate and index of
11 transferred documents to evidence the date and time of acceptance
12 under Subsection (c), but may not physically or electronically mark
13 or stamp any other document transferred under Subsection (a).

14 (e) Sections 80.001 and 80.002 do not apply to the transfer
15 of documents under this section.

16 SECTION 7.03. Section 51.403, Government Code, is amended
17 to read as follows:

18 Sec. 51.403. TRANSFER OF CASES. (a) If a case is
19 transferred from a county court to a district court, the clerk of
20 the county court shall send to the district clerk using the
21 electronic filing system established under Section 72.031 [~~in~~
22 ~~electronic or paper form~~]:

23 (1) a transfer certificate and index of transferred
24 documents [~~certified transcript of the proceedings held in the~~
25 ~~county court~~];

26 (2) a copy of the original papers filed in the
27 transferring [~~county~~] court; [~~and~~]

1 (3) a copy of the order of transfer signed by the
2 transferring court;

3 (4) a copy of each final order;

4 (5) a copy of the transfer certificate and index of
5 transferred documents from each previous transfer; and

6 (6) a bill of any [the] costs that have accrued in the
7 transferring [county] court.

8 (a-1) The clerk of the transferring court shall use the
9 standardized transfer certificate and index of transferred
10 documents form created by the Office of Court Administration of the
11 Texas Judicial System under Section 72.037 when transferring a case
12 under this section.

13 (a-2) The clerk of the transferee court shall accept
14 documents transferred under Subsection (a) and docket the case.

15 (a-3) The clerk of the transferee court shall physically or
16 electronically mark or stamp the transfer certificate and index of
17 transferred documents to evidence the date and time of acceptance
18 under Subsection (a-2), but may not physically or electronically
19 mark or stamp any other document transferred under Subsection (a).

20 (b) If civil or criminal jurisdiction of a county court is
21 transferred to a district court, the clerk of the county court shall
22 send using the electronic filing system established under Section
23 72.031 a certified copy of the judgments rendered in the county
24 court that remain unsatisfied[~~7 in electronic or paper form,~~] to
25 the district clerks of the appropriate counties.

26 (c) Sections 80.001 and 80.002 do not apply to the transfer
27 of documents under this section.

1 SECTION 7.04. Subchapter C, Chapter 72, Government Code, is
2 amended by adding Section 72.037 to read as follows:

3 Sec. 72.037. TRANSFER CERTIFICATE AND INDEX OF TRANSFERRED
4 DOCUMENTS FORM. (a) The office shall develop and make available a
5 standardized transfer certificate and an index of transferred
6 documents form to be used for the transfer of cases and proceedings
7 under Section 155.207, Family Code, and Sections 51.3071 and 51.403
8 of this code.

9 (b) In developing a form under this section, the office
10 shall consult with representatives of county and district clerks.

11 SECTION 7.05. As soon as practicable after the effective
12 date of this Act, the Office of Court Administration of the Texas
13 Judicial System shall adopt rules and develop and make available
14 all forms and materials required by Section 72.037, Government
15 Code, as added by this Act.

16 ARTICLE 8. HABEAS CORPUS

17 SECTION 8.01. Section 3(b), Article 11.07, Code of Criminal
18 Procedure, is amended to read as follows:

19 (b) An application for writ of habeas corpus filed after
20 final conviction in a felony case, other than a case in which the
21 death penalty is imposed, must be filed with the clerk of the court
22 in which the conviction being challenged was obtained, and the
23 clerk shall assign the application to that court. When the
24 application is received by that court, a writ of habeas corpus,
25 returnable to the Court of Criminal Appeals, shall issue by
26 operation of law. The clerk of that court shall make appropriate
27 notation thereof, assign to the case a file number (ancillary to

1 that of the conviction being challenged), and forward a copy of the
2 application by certified mail, return receipt requested, by secure
3 electronic mail, or by personal service to the attorney
4 representing the state in that court, who shall answer the
5 application not later than the 30th [~~15th~~] day after the date the
6 copy of the application is received. Matters alleged in the
7 application not admitted by the state are deemed denied.

8 SECTION 8.02. Section 5(a), Article [11.072](#), Code of
9 Criminal Procedure, is amended to read as follows:

10 (a) Immediately on filing an application, the applicant
11 shall serve a copy of the application on the attorney representing
12 the state[~~7~~] by:

13 (1) [~~either~~] certified mail, return receipt
14 requested;

15 (2) [~~or~~] personal service;

16 (3) electronic service through the electronic filing
17 manager authorized by Rule 21, Texas Rules of Civil Procedure; or

18 (4) a secure electronic transmission to the attorney's
19 e-mail address filed with the electronic filing system as required
20 under Section [80.003](#), Government Code.

21 SECTION 8.03. Section 3(b), Article [11.07](#), Code of Criminal
22 Procedure, as amended by this Act, applies only to an application
23 for a writ of habeas corpus filed on or after the effective date of
24 this Act. An application filed before the effective date of this
25 Act is governed by the law in effect on the date the application was
26 filed, and the former law is continued in effect for that purpose.

27 SECTION 8.04. Section 5(a), Article [11.072](#), Code of

1 Criminal Procedure, as amended by this Act, applies only to an
2 application for a writ of habeas corpus filed on or after the
3 effective date of this Act. An application filed before the
4 effective date of this Act is governed by the law in effect when the
5 application was filed, and the former law is continued in effect for
6 that purpose.

7 ARTICLE 9. PUBLICATION OF CITATION FOR RECEIVERSHIP

8 SECTION 9.01. Section 64.101(c), Civil Practice and
9 Remedies Code, is amended to read as follows:

10 (c) Except as provided by Section 17.032, the [The] citation
11 shall be published on the public information Internet website
12 maintained as required by Section 72.034, Government Code, as added
13 by Chapter 606 (S.B. 891), Acts of the 86th Legislature, Regular
14 Session, 2019, and in a newspaper of general circulation:

15 (1) once in the county in which the missing person
16 resides; and

17 (2) once in each county in which property of the
18 missing person's estate is located.

19 SECTION 9.02. Section 51.103(b), Estates Code, is amended
20 to read as follows:

21 (b) Proof of service consists of:

22 (1) if the service is made by a sheriff or constable,
23 the return of service;

24 (2) if the service is made by a private person, the
25 person's affidavit;

26 (3) if the service is made by mail:

27 (A) the certificate of the county clerk making

1 the service, or the affidavit of the personal representative or
2 other person making the service, stating that the citation or
3 notice was mailed and the date of the mailing; and

4 (B) the return receipt attached to the
5 certificate or affidavit, as applicable, if the mailing was by
6 registered or certified mail and a receipt has been returned; and

7 (4) if the service is made by publication:

8 (A) a statement [~~an affidavit~~]:

9 (i) made by the Office of Court
10 Administration of the Texas Judicial System or an employee of the
11 office;

12 (ii) that contains or to which is attached a
13 copy of the published citation or notice; and

14 (iii) that states the date of publication
15 on the public information Internet website maintained as required
16 by Section 72.034, Government Code, as added by Chapter 606 (S.B.
17 891), Acts of the 86th Legislature, Regular Session, 2019; and

18 (B) an affidavit:

19 (i) made by the publisher of the newspaper
20 in which the citation or notice was published or an employee of the
21 publisher;

22 (ii) that contains or to which is attached a
23 copy of the published citation or notice; and

24 (iii) that states the date of publication
25 printed on the newspaper in which the citation or notice was
26 published.

27 SECTION 9.03. Section 1051.153(b), Estates Code, is amended

1 to read as follows:

2 (b) Proof of service consists of:

3 (1) if the service is made by a sheriff or constable,
4 the return of service;

5 (2) if the service is made by a private person, the
6 person's affidavit;

7 (3) if the service is made by mail:

8 (A) the certificate of the county clerk making
9 the service, or the affidavit of the guardian or other person making
10 the service that states that the citation or notice was mailed and
11 the date of the mailing; and

12 (B) the return receipt attached to the
13 certificate, if the mailing was by registered or certified mail and
14 a receipt has been returned; and

15 (4) if the service is made by publication:

16 (A) a statement ~~[an affidavit]~~ that:

17 (i) is made by the Office of Court
18 Administration of the Texas Judicial System or an employee of the
19 office;

20 (ii) contains or to which is attached a copy
21 of the published citation or notice; and

22 (iii) states the date of publication on the
23 public information Internet website maintained as required by
24 Section 72.034, Government Code, as added by Chapter 606 (S.B.
25 891), Acts of the 86th Legislature, Regular Session, 2019; and

26 (B) an affidavit that:

27 (i) is made by the publisher of the

1 newspaper in which the citation or notice was published or an
2 employee of the publisher;

3 (ii) contains or to which is attached a copy
4 of the published citation or notice; and

5 (iii) states the date of publication
6 printed on the newspaper in which the citation or notice was
7 published.

8 ARTICLE 10. EVIDENCE

9 SECTION 10.01. Section 2, Article 38.01, Code of Criminal
10 Procedure, is amended by adding Subdivision (4-a) to read as
11 follows:

12 (4-a) "Forensic examination or test not subject to
13 accreditation" means an examination or test described by Article
14 38.35(a)(4)(A), (B), (C), or (D) that is exempt from accreditation.

15 SECTION 10.02. Article 38.01, Code of Criminal Procedure,
16 is amended by adding Section 3-b to read as follows:

17 Sec. 3-b. CODE OF PROFESSIONAL RESPONSIBILITY. (a) The
18 commission shall adopt a code of professional responsibility to
19 regulate the conduct of persons, laboratories, facilities, and
20 other entities regulated under this article.

21 (b) The commission shall publish the code of professional
22 responsibility adopted under Subsection (a).

23 (c) The commission shall adopt rules establishing sanctions
24 for code violations.

25 (d) The commission shall update the code of professional
26 responsibility as necessary to reflect changes in science,
27 technology, or other factors affecting the persons, laboratories,

1 facilities, and other entities regulated under this article.

2 SECTION 10.03. Sections 4(a), (a-1), (b-1), and (c),
3 Article 38.01, Code of Criminal Procedure, are amended to read as
4 follows:

5 (a) The commission shall:

6 (1) develop and implement a reporting system through
7 which a crime laboratory may report professional negligence or
8 professional misconduct;

9 (2) require a crime laboratory that conducts forensic
10 analyses to report professional negligence or professional
11 misconduct to the commission; and

12 (3) investigate, in a timely manner, any allegation of
13 professional negligence or professional misconduct that would
14 substantially affect the integrity of:

15 (A) the results of a forensic analysis conducted
16 by a crime laboratory;

17 (B) an examination or test that is conducted by a
18 crime laboratory and that is a forensic examination or test not
19 subject to accreditation; or

20 (C) testimony related to an analysis,
21 examination, or test described by Paragraph (A) or (B).

22 (a-1) The commission may initiate [~~for educational~~
23 ~~purposes~~] an investigation of a forensic analysis or a forensic
24 examination or test not subject to accreditation, without receiving
25 a complaint[~~7~~] submitted through the reporting system implemented
26 under Subsection (a)(1), [~~that contains an allegation of~~
27 ~~professional negligence or professional misconduct involving the~~

1 ~~forensic analysis conducted~~] if the commission determines by a
2 majority vote of a quorum of the members of the commission that an
3 investigation of the [~~forensic~~] analysis, examination, or test
4 would advance the integrity and reliability of forensic science in
5 this state.

6 (b-1) If the commission conducts an investigation under
7 Subsection (a)(3) of a crime laboratory that is not accredited
8 under this article or the investigation involves a forensic
9 examination or test not subject to accreditation [~~is conducted~~
10 ~~pursuant to an allegation involving a forensic method or~~
11 ~~methodology that is not an accredited field of forensic science~~],
12 the investigation may include the preparation of a written report
13 that contains:

14 (1) observations of the commission regarding the
15 integrity and reliability of the applicable [~~forensic~~] analysis,
16 examination, or test conducted;

17 (2) best practices identified by the commission during
18 the course of the investigation; or

19 (3) other recommendations that are relevant, as
20 determined by the commission.

21 (c) The commission by contract may delegate the duties
22 described by Subsections (a)(1) and (3) and Sections 4-d(b)(1),
23 (b-1), and (d) to any person the commission determines to be
24 qualified to assume those duties.

25 SECTION 10.04. Section 4-a(c), Article 38.01, Code of
26 Criminal Procedure, is amended to read as follows:

27 (c) The commission by rule may establish voluntary

1 licensing programs for forensic examinations or tests [~~disciplines~~
2 ~~that are~~] not subject to accreditation [~~under this article~~].

3 SECTION 10.05. Section 4-d(b-1), Article 38.01, Code of
4 Criminal Procedure, is amended to read as follows:

5 (b-1) As part of the accreditation process established and
6 implemented under Subsection (b), the commission may:

7 (1) establish minimum standards that relate to the
8 timely production of a forensic analysis to the agency requesting
9 the analysis and that are consistent with this article and
10 applicable laws;

11 (2) validate or approve specific forensic methods or
12 methodologies; and

13 (3) establish procedures, policies, standards, and
14 practices to improve the quality of forensic analyses conducted in
15 this state.

16 SECTION 10.06. Article 38.01, Code of Criminal Procedure,
17 is amended by adding Section 14 to read as follows:

18 Sec. 14. FUNDING FOR TRAINING AND EDUCATION. The
19 commission may use appropriated funds for the training and
20 education of forensic analysts.

21 SECTION 10.07. Section 2254.002(2), Government Code, is
22 amended to read as follows:

23 (2) "Professional services" means services:

24 (A) within the scope of the practice, as defined
25 by state law, of:

26 (i) accounting;

27 (ii) architecture;

- 1 (iii) landscape architecture;
 - 2 (iv) land surveying;
 - 3 (v) medicine;
 - 4 (vi) optometry;
 - 5 (vii) professional engineering;
 - 6 (viii) real estate appraising; ~~[or]~~
 - 7 (ix) professional nursing; or
 - 8 (x) forensic science;
- 9 (B) provided in connection with the professional
- 10 employment or practice of a person who is licensed or registered as:
- 11 (i) a certified public accountant;
 - 12 (ii) an architect;
 - 13 (iii) a landscape architect;
 - 14 (iv) a land surveyor;
 - 15 (v) a physician, including a surgeon;
 - 16 (vi) an optometrist;
 - 17 (vii) a professional engineer;
 - 18 (viii) a state certified or state licensed
 - 19 real estate appraiser; ~~[or]~~
 - 20 (ix) a registered nurse; or
 - 21 (x) a forensic analyst or forensic science
 - 22 expert; or
- 23 (C) provided by a person lawfully engaged in
- 24 interior design, regardless of whether the person is registered as
- 25 an interior designer under Chapter 1053, Occupations Code.
- 26 ARTICLE 11. JURY SERVICE
- 27 SECTION 11.01. Sections 61.003(a) and (c), Government Code,

1 are amended to read as follows:

2 (a) Each person who reports for jury service shall be
3 personally provided a form letter that when signed by the person
4 directs the county treasurer to donate all, or a specific amount
5 designated by the person, of the person's daily reimbursement under
6 this chapter to:

7 (1) the compensation to victims of crime fund
8 established under Subchapter J, Chapter 56B, Code of Criminal
9 Procedure;

10 (2) the child welfare, child protective services, or
11 child services board of the county appointed under Section 264.005,
12 Family Code, that serves abused and neglected children;

13 (3) any program selected by the commissioners court
14 that is operated by a public or private nonprofit organization and
15 that provides shelter and services to victims of family violence;

16 (4) any other program approved by the commissioners
17 court of the county, including a program established under Article
18 56A.205, Code of Criminal Procedure, that offers psychological
19 counseling in criminal cases involving graphic evidence or
20 testimony; ~~or~~

21 (5) a veterans treatment court program established by
22 the commissioners court as provided by Chapter 124; or

23 (6) a veterans county service office established by
24 the commissioners court as provided by Subchapter B, Chapter 434.

25 (c) The county treasurer shall:

26 (1) send all donations made under Subsection (a)(1) to
27 the comptroller, at the time and in the manner prescribed by the

1 attorney general, for deposit to the credit of the compensation to
2 victims of crime fund;

3 (2) deposit donations made to the county child welfare
4 board under Subsection (a)(2) in a fund established by the county to
5 be used by the child welfare board in a manner authorized by the
6 commissioners court of the county; and

7 (3) send all donations made under Subsection (a)(3),
8 ~~[or]~~ (a)(4), or (a)(6) directly to the program or office, as
9 applicable, specified on the form letter signed by the person who
10 reported for jury service.

11 SECTION 11.02. Section 62.202(b), Government Code, is
12 amended to read as follows:

13 (b) The district judge may draw a warrant on the jury fund or
14 other appropriate fund of the county in which the civil case is
15 tried to cover the cost of buying and transporting the meals to the
16 jury room. The judge may spend a reasonable amount ~~[Not more than~~
17 ~~\$3]~~ per meal ~~[may be spent]~~ for a juror serving on a jury in a civil
18 case.

19 SECTION 11.03. Section 434.032, Government Code, is amended
20 by adding Subsection (c) to read as follows:

21 (c) The commissioners court of a county that maintains an
22 office:

23 (1) may not consider a juror's donation to the office
24 of the juror's daily reimbursement under Section 61.003 for
25 purposes of determining the county's budget for the office; and

26 (2) may use donations described by Subdivision (1)
27 only to supplement, rather than supplant, amounts budgeted by the

1 county for the office.

2 ARTICLE 12. SPECIALTY COURT PROGRAMS

3 SECTION 12.01. Chapter 121, Government Code, is amended by
4 adding Sections 121.003 and 121.004 to read as follows:

5 Sec. 121.003. APPOINTMENT OF PRESIDING JUDGE OR MAGISTRATE
6 FOR REGIONAL SPECIALTY COURT PROGRAM. A judge or magistrate of a
7 district court or statutory county court who is authorized by law to
8 hear criminal cases may be appointed to preside over a regional
9 specialty court program recognized under this subtitle only if:

10 (1) the local administrative district and statutory
11 county court judges of each county participating in the program
12 approve the appointment by majority vote or another approval method
13 selected by the judges; and

14 (2) the presiding judges of each of the administrative
15 judicial regions in which the participating counties are located
16 sign an order granting the appointment.

17 Sec. 121.004. JURISDICTION AND AUTHORITY OF JUDGE OR
18 MAGISTRATE IN REGIONAL SPECIALTY COURT PROGRAM. (a) A judge or
19 magistrate appointed to preside over a regional specialty court
20 program may hear any misdemeanor or felony case properly
21 transferred to the program by an originating trial court
22 participating in the program, regardless of whether the originating
23 trial court and specialty court program are in the same county. The
24 appointed judge or magistrate may exercise only the authority
25 granted under this subtitle.

26 (b) The judge or magistrate of a regional specialty court
27 program may for a case properly transferred to the program:

- 1 (1) enter orders, judgments, and decrees for the case;
2 (2) sign orders of detention, order community service,
3 or impose other reasonable and necessary sanctions;
4 (3) send recommendations for dismissal and expunction
5 to the originating trial court for a defendant who successfully
6 completes the program; and
7 (4) return the case and documentation required by this
8 subtitle to the originating trial court for final disposition on a
9 defendant's successful completion of or removal from the program.

10 (c) A visiting judge assigned to preside over a regional
11 specialty court program has the same authority as the judge or
12 magistrate appointed to preside over the program.

13 SECTION 12.02. Section 124.003(b), Government Code, is
14 amended to read as follows:

15 (b) A veterans treatment court program established under
16 this chapter shall make, establish, and publish local procedures to
17 ensure maximum participation of eligible defendants in the program
18 [~~county or counties in which those defendants reside~~].

19 SECTION 12.03. Sections 124.006(a) and (d), Government
20 Code, are amended to read as follows:

21 (a) A veterans treatment court program that accepts
22 placement of a defendant may transfer responsibility for
23 supervising the defendant's participation in the program to another
24 veterans treatment court program that is located in the county
25 where the defendant works or resides or in a county adjacent to the
26 county where the defendant works or resides. The defendant's
27 supervision may be transferred under this section only with the

1 consent of both veterans treatment court programs and the
2 defendant.

3 (d) If a defendant is charged with an offense in a county
4 that does not operate a veterans treatment court program, the court
5 in which the criminal case is pending may place the defendant in a
6 veterans treatment court program located in the county where the
7 defendant works or resides or in a county adjacent to the county
8 where the defendant works or resides, provided that a program is
9 operated in that county and the defendant agrees to the placement.
10 A defendant placed in a veterans treatment court program in
11 accordance with this subsection must agree to abide by all rules,
12 requirements, and instructions of the program.

13 SECTION 12.04. (a) Section 121.003, Government Code, as
14 added by this Act, applies only to the appointment of a judge or
15 magistrate to preside over a regional specialty court program that
16 occurs on or after the effective date of this Act.

17 (b) Section 121.004, Government Code, as added by this Act,
18 applies to a case pending in a regional specialty court program on
19 or after the effective date of this Act.

20 ARTICLE 13. PROTECTIVE ORDERS

21 SECTION 13.01. Section 72.151(3), Government Code, is
22 amended to read as follows:

23 (3) "Protective order" means:

24 (A) an order issued by a court in this state under
25 Chapter 83 or 85, Family Code, to prevent family violence, as
26 defined by Section 71.004, Family Code;

27 (B) an order issued by a court in this state under

1 Subchapter A, Chapter 7B, Code of Criminal Procedure, to prevent
2 sexual assault or abuse, stalking, trafficking, or other harm to
3 the applicant; or

4 (C) [~~The term includes~~] a magistrate's order
5 for emergency protection issued under Article 17.292, Code of
6 Criminal Procedure, with respect to a person who is arrested for an
7 offense involving family violence.

8 SECTION 13.02. Section 72.152, Government Code, is amended
9 to read as follows:

10 Sec. 72.152. APPLICABILITY. This subchapter applies only
11 to:

12 (1) an application for a protective order filed under:
13 (A) Chapter 82, Family Code;
14 (B) Subchapter A, Chapter 7B, Code of Criminal
15 Procedure; or

16 (C) [~~B~~] Article 17.292, Code of Criminal
17 Procedure, with respect to a person who is arrested for an offense
18 involving family violence; and

19 (2) a protective order issued under:
20 (A) Chapter 83 or 85, Family Code;
21 (B) Subchapter A, Chapter 7B, Code of Criminal
22 Procedure; or

23 (C) [~~B~~] Article 17.292, Code of Criminal
24 Procedure, with respect to a person who is arrested for an offense
25 involving family violence.

26 SECTION 13.03. Sections 72.154(b) and (d), Government Code,
27 are amended to read as follows:

1 (b) Publicly accessible information regarding each
2 protective order must consist of the following:

- 3 (1) the court that issued the protective order;
4 (2) the case number;
5 (3) the full name, county of residence, birth year,
6 and race or ethnicity of the person who is the subject of the
7 protective order;
8 (4) the dates the protective order was issued and
9 served; and
10 (5) ~~[the date the protective order was vacated, if~~
11 ~~applicable, and~~
12 ~~[(6)]~~ the date the protective order expired or will
13 expire, as applicable.

14 (d) The office may not allow a member of the public to access
15 through the registry any information related to:

- 16 (1) a protective order issued under Article 7B.002 or
17 17.292, Code of Criminal Procedure, or Chapter 83, Family Code; or
18 (2) a protective order that was vacated.

19 SECTION 13.04. Section 72.155(a), Government Code, is
20 amended to read as follows:

21 (a) The registry must include a copy of each application for
22 a protective order filed in this state and a copy of each protective
23 order issued in this state, including an ~~[a vacated or]~~ expired
24 order, or a vacated order other than an order that was vacated as
25 the result of an appeal or bill of review from a district or county
26 court. Only an authorized user, the attorney general, a district
27 attorney, a criminal district attorney, a county attorney, a

1 municipal attorney, or a peace officer may access that information
2 under the registry.

3 SECTION 13.05. Section 72.157, Government Code, is amended
4 by amending Subsection (b) and adding Subsection (b-1) to read as
5 follows:

6 (b) Except as provided by Subsection (b-1), for ~~For~~ a
7 protective order that is vacated or that has expired, the clerk of
8 the applicable court shall modify the record of the order in the
9 registry to reflect the order's status as vacated or expired. The
10 clerk shall ensure that a record of a vacated order is not
11 accessible by the public.

12 (b-1) For a protective order that is vacated as the result
13 of an appeal or bill of review from a district or county court, the
14 clerk of the applicable court shall notify the office not later than
15 the end of the next business day after the date the protective order
16 was vacated. The office shall remove the record of the order from
17 the registry not later than the third business day after the date
18 the notice from the clerk was received.

19 SECTION 13.06. Section 72.158(a), Government Code, is
20 amended to read as follows:

21 (a) The office shall ensure that the public may access
22 information about protective orders, other than information about
23 vacated orders or orders under Article 7B.002 or 17.292, Code of
24 Criminal Procedure, or Chapter 83, Family Code, through the
25 registry, only if:

26 (1) a protected person requests that the office grant
27 the public the ability to access the information described by

1 Section 72.154(b) for the order protecting the person; and

2 (2) the office approves the request.

3 SECTION 13.07. Section 72.152, Government Code, as amended
4 by this Act, applies only to an application for a protective order
5 filed or a protective order issued on or after the effective date of
6 this Act.

7 SECTION 13.08. As soon as practicable after the effective
8 date of this Act, the Office of Court Administration of the Texas
9 Judicial System shall:

10 (1) remove the record of any protective orders that
11 have been vacated as the result of an appeal or bill of review from a
12 district or county court from the protective order registry
13 established under Subchapter F, Chapter 72, Government Code, as
14 amended by this Act; and

15 (2) ensure that the records of vacated orders, other
16 than orders described by Subdivision (1) of this section that are
17 removed from the registry, are not accessible by the public.

18 ARTICLE 14. DISTRICT AND COUNTY ATTORNEYS

19 SECTION 14.01. Section 43.137, Government Code, is amended
20 by adding Subsections (c) and (d) to read as follows:

21 (c) In addition to exercising the duties and authority
22 conferred on district attorneys by general law, the district
23 attorney represents the state in the district and inferior courts
24 in Ector County in all criminal cases, juvenile matters under Title
25 3, Family Code, and matters involving children's protective
26 services.

27 (d) The district attorney has no power, duty, or privilege

1 in any civil matter, other than civil asset forfeiture and civil
2 bond forfeiture matters.

3 SECTION 14.02. Subchapter B, Chapter 45, Government Code,
4 is amended by adding Section 45.168 to read as follows:

5 Sec. 45.168. ECTOR COUNTY. (a) It is the primary duty of
6 the county attorney in Ector County to represent the state, Ector
7 County, and the officials of the county in all civil matters, other
8 than asset forfeiture and bond forfeiture matters for which the
9 district attorney is responsible, pending before the courts of
10 Ector County and any other court in which the state, Ector County,
11 or the county officials have matters pending.

12 (b) The county attorney has no power, duty, or privilege in
13 Ector County relating to criminal matters, juvenile matters under
14 Title 3, Family Code, or matters involving children's protective
15 services.

16 SECTION 14.03. Section 43.137, Government Code, as amended
17 by this Act, and Section 45.168, Government Code, as added by this
18 Act, apply only to a proceeding commenced on or after the effective
19 date of this Act. A proceeding commenced before the effective date
20 of this Act is governed by the law in effect on the date the
21 proceeding was commenced, and the former law is continued in effect
22 for that purpose.

23 ARTICLE 15. APPELLATE COURTS

24 SECTION 15.01. Subchapter A, Chapter 22, Government Code,
25 is amended by adding Section 22.0042 to read as follows:

26 Sec. 22.0042. RULES REGARDING EXEMPTIONS FROM SEIZURE OF
27 PROPERTY; FORM. (a) The supreme court shall adopt rules that:

1 (1) establish a simple and expedited procedure for a
2 judgment debtor to assert an exemption to the seizure of personal
3 property by a judgment creditor or a receiver appointed under
4 Section 31.002, Civil Practice and Remedies Code;

5 (2) require a court to stay a proceeding, for a
6 reasonable period, to allow for the assertion of an exemption under
7 Subdivision (1); and

8 (3) require a court to promptly set a hearing and stay
9 proceedings until a hearing is held, if a judgment debtor timely
10 asserts an exemption under Subdivision (1).

11 (b) Rules adopted under this section shall require the
12 provision of a notice in plain language to a judgment debtor
13 regarding the right of the judgment debtor to assert one or more
14 exemptions under Subsection (a)(1). The notice must:

15 (1) be in English with an integrated Spanish
16 translation that can be readily understood by the public and the
17 court;

18 (2) include the form promulgated under Subsection (c);

19 (3) list all exemptions under state and federal law to
20 the seizure of personal property; and

21 (4) provide information for accessing free or low-cost
22 legal assistance.

23 (c) Rules adopted under this section shall include the
24 promulgation of a form in plain language for asserting an exemption
25 under Subsection (a)(1). A form promulgated under this subsection
26 must:

27 (1) be in English with an integrated Spanish

1 translation that can be readily understood by the public and the
2 court; and

3 (2) include instructions for the use of the form.

4 (d) A court shall accept a form promulgated under Subsection
5 (c) unless the form has been completed in a manner that causes a
6 substantive defect that cannot be cured.

7 SECTION 15.02. Not later than May 1, 2022, the Supreme Court
8 of Texas shall adopt rules and promulgate forms under Section
9 22.0042, Government Code, as added by this article.

10 ARTICLE 16. MISDEMEANOR CASES

11 SECTION 16.01. The heading to Article 45.0445, Code of
12 Criminal Procedure, is amended to read as follows:

13 Art. 45.0445. RECONSIDERATION OF SATISFACTION OF FINE OR
14 COSTS.

15 SECTION 16.02. Article 66.252, Code of Criminal Procedure,
16 is amended by adding Subsection (b-1) to read as follows:

17 (b-1) At any time before final disposition of the case, the
18 justice or judge of a court having jurisdiction of the case of a
19 misdemeanor described by Subsection (b)(3) may order a law
20 enforcement officer to use the uniform incident fingerprint card to
21 take the fingerprints of an offender who is charged with the
22 misdemeanor, but was not placed under custodial arrest at the time
23 of the offense.

24 SECTION 16.03. The changes in law made by this article apply
25 only to a misdemeanor case that is initially filed in a justice or
26 municipal court on or after the effective date of this Act,
27 regardless of whether the offense for which the case is filed

1 occurred before, on, or after the effective date of this Act.

2 ARTICLE 17. COURT REPORTERS

3 SECTION 17.01. Chapter 42, Code of Criminal Procedure, is
4 amended by adding Article 42.25 to read as follows:

5 Art. 42.25. FILING OF REPORTER NOTES. A court reporter may
6 comply with Rule 13.6, Texas Rules of Appellate Procedure, by
7 electronically filing with the trial court clerk not later than the
8 20th day after the expiration of the time the defendant is allotted
9 to perfect the appeal the untranscribed notes created by the court
10 reporter using computer-aided software.

11 SECTION 17.02. Section 52.001(a)(4), Government Code, is
12 amended to read as follows:

13 (4) "Shorthand reporter" and "court reporter" mean a
14 person who is certified as a court reporter, apprentice court
15 reporter, or provisional court reporter under Chapter 154 to engage
16 [engages] in shorthand reporting.

17 SECTION 17.03. Section 52.011, Government Code, is amended
18 to read as follows:

19 Sec. 52.011. PROVISION OF SIGNED DEPOSITION CERTIFICATE;
20 CERTIFICATE REQUIREMENTS [CERTIFICATION]. (a) A court reporting
21 firm representative or a court reporter who reported a deposition
22 for a case shall complete and sign a deposition certificate, known
23 as the further certification.

24 (b) On request of a court reporter who reported a deposition
25 for a case, a court reporting firm shall provide the reporter with a
26 copy of the deposition certificate [~~document related to the~~
27 ~~deposition, known as the further certification,~~] that the reporter

1 has signed or to which the reporter's signature has been applied.

2 (c) The deposition certificate must include:

3 (1) a statement that the deposition transcript was
4 submitted to the deponent or the deponent's attorney for
5 examination and signature;

6 (2) the date the transcript was submitted to the
7 deponent or the deponent's attorney;

8 (3) the date the deponent returned the transcript, if
9 returned, or a statement that the deponent did not return the
10 transcript;

11 (4) a statement that any changes the deponent made to
12 the transcript are reflected in a separate document attached to the
13 transcript;

14 (5) a statement that the transcript was delivered in
15 accordance with Rule 203.3, Texas Rules of Civil Procedure;

16 (6) the amount charged for preparing the original
17 deposition transcript;

18 (7) a statement that a copy of the certificate was
19 served on all parties to the case; and

20 (8) the date the copy of the certificate was served on
21 the parties to the case.

22 SECTION 17.04. Section 52.046(d), Government Code, is
23 amended to read as follows:

24 (d) A judge of a county court or county court at law shall
25 appoint a [~~certified~~] shorthand reporter to report the oral
26 testimony given in any contested probate matter in that judge's
27 court.

1 SECTION 17.05. Section 154.001(a)(4), Government Code, is
2 amended to read as follows:

3 (4) "Shorthand reporter" and "court reporter" mean a
4 person who is certified as a court reporter, apprentice court
5 reporter, or provisional court reporter under this chapter to
6 engage ~~[engages]~~ in shorthand reporting.

7 SECTION 17.06. Section 154.101(e), Government Code, is
8 amended to read as follows:

9 (e) A person may not assume or use the title or designation
10 "court recorder," "court reporter," or "shorthand reporter," or any
11 abbreviation, title, designation, words, letters, sign, card, or
12 device tending to indicate that the person is a court reporter or
13 shorthand reporter, unless the person is certified as a shorthand
14 reporter or provisional court reporter by the supreme court.
15 Nothing in this subsection shall be construed to either sanction or
16 prohibit the use of electronic court recording equipment operated
17 ~~[by a noncertified court reporter pursuant and]~~ according to rules
18 adopted or approved by the supreme court.

19 SECTION 17.07. Section 154.105, Government Code, is amended
20 by amending Subsection (b) and adding Subsections (c), (d), and (e)
21 to read as follows:

22 (b) A ~~[certified]~~ shorthand reporter may administer oaths
23 to witnesses:

24 (1) anywhere in this state;

25 (2) in a jurisdiction outside this state if:

26 (A) the reporter is at the same location as the
27 witness; and

1 (B) the witness is or may be a witness in a case
2 filed in this state; and

3 (3) at any location authorized in a reciprocity
4 agreement between this state and another jurisdiction under Section
5 152.202(b).

6 (c) Notwithstanding Subsection (b), a shorthand reporter
7 may administer an oath as provided under this subsection to a person
8 who is or may be a witness in a case filed in this state without
9 being at the same location as the witness:

10 (1) if the reporter is physically located in this
11 state at the time the oath is administered; or

12 (2) as authorized in a reciprocity agreement between
13 this state and another jurisdiction under Section 152.202(b) if:

14 (A) the witness is at a location in the other
15 jurisdiction; and

16 (B) the reporter is at a location in the same
17 jurisdiction as the witness.

18 (d) The identity of a witness who is not in the physical
19 presence of a shorthand reporter may be proven by:

20 (1) a statement under oath on the record by a party to
21 the case stating that the party has actual knowledge of the
22 witness's identity;

23 (2) a statement on the record by an attorney for a
24 party to the case, or an attorney for the witness, verifying the
25 witness's identity;

26 (3) a statement on the record by a notary who is in the
27 presence of the witness verifying the witness's identity; or

1 (4) the witness's presentation for inspection by the
2 court reporter of an official document issued by this state,
3 another state, a federal agency, or another jurisdiction that
4 verifies the witness's identity.

5 (e) A shorthand reporter to which this section applies shall
6 state on the record and certify in each transcript of the deposition
7 the physical location of:

8 (1) the witness; and

9 (2) the reporter.

10 SECTION 17.08. Section 154.112, Government Code, is amended
11 to read as follows:

12 Sec. 154.112. EMPLOYMENT OF NONCERTIFIED PERSON FOR
13 SHORTHAND REPORTING [REPORTERS]. (a) A person who is not certified
14 as a court [noncertified shorthand] reporter may be employed to
15 engage in shorthand reporting until a certified shorthand reporter
16 is available.

17 (b) A person who is not certified as a court [noncertified
18 shorthand] reporter may engage in shorthand reporting to report an
19 oral deposition only if:

20 (1) the person [noncertified shorthand reporter]
21 delivers an affidavit to the parties or to their counsel present at
22 the deposition stating that a certified shorthand reporter is not
23 available; or

24 (2) the parties or their counsel stipulate on the
25 record at the beginning of the deposition that a certified
26 shorthand reporter is not available.

27 (c) This section does not apply to a deposition taken

1 outside this state for use in this state.

2 SECTION 17.09. The changes in law made by this article apply
3 only to a deposition taken on or after the effective date of this
4 Act. A deposition taken before that date is governed by the law in
5 effect on the date the deposition was taken, and the former law is
6 continued in effect for that purpose.

7 ARTICLE 18. TRANSITION

8 SECTION 18.01. A state agency subject to this Act is
9 required to implement a provision of this Act only if the
10 legislature appropriates money specifically for that purpose. If
11 the legislature does not appropriate money specifically for that
12 purpose, the state agency may, but is not required to, implement a
13 provision of this Act using other appropriations available for that
14 purpose.

15 ARTICLE 19. EFFECTIVE DATE

16 SECTION 19.01. Except as otherwise provided by this Act,
17 this Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I certify that H.B. No. 3774 was passed by the House on May 7, 2021, by the following vote: Yeas 141, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3774 on May 28, 2021, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 3774 on May 30, 2021, by the following vote: Yeas 134, Nays 3, 2 present, not voting; and that the House adopted H.C.R. No. 118 authorizing certain corrections in H.B. No. 3774 on May 31, 2021, by the following vote: Yeas 134, Nays 0, 1 present, not voting.

Chief Clerk of the House

H.B. No. 3774

I certify that H.B. No. 3774 was passed by the Senate, with amendments, on May 26, 2021, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 3774 on May 30, 2021, by the following vote: Yeas 31, Nays 0; and that the Senate adopted H.C.R. No. 118 authorizing certain corrections in H.B. No. 3774 on May 31, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

Justices
KEN WISE
KEVIN D. JEWELL
FRANCES BOURLIOT
JERRY ZIMMERER
CHARLES A. SPAIN
MEAGAN HASSAN
MARGARET "MEG" POISSANT
RANDY WILSON



Fourteenth Court of Appeals

301 Fannin Room 245
Houston, Texas 77002

Chief Justice
TRACY CHRISTOPHER

Clerk
CHRISTOPHER A. PRINE
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www.txcourts.gov/14thcoa

May 4, 2021

Chief Justice Nathan Hecht
Justice Jane Bland
Justice Brett Busby
Supreme Court of Texas
P.O. Box 12248
Austin, TX 78711

Sent via email and not mail

Dear Chief Justice Hecht and Justices Bland and Busby,

The Task Force on Remote Proceedings provides the Court with this status report. The Task Force split into four subcommittees to review the constitution and laws of the State to see if any legislation was needed to remove barriers to continuing remote proceedings after the pandemic. We previously provided the court with four subcommittee interim reports for your review, along with our suggestions for potential language for legislation.

Our four subcommittees and chairs were: Juvenile/Child Welfare Subcommittee—Judge Hofmann chair; Civil/Family/Probate Committee—Judge Miskel chair; Criminal Subcommittee—Judge Westfall chair; Courtroom Access/Government Code Subcommittee—Judge Ferguson chair. These four trial judges used remote proceedings successfully during the pandemic and provide a wealth of experience to draw on.

In addition to judges on the Task Force, we had lawyers from various practice areas, clerks and court reporters. Our Task Force reached out to bar groups for their comments and concerns.

We also understand that there may be legislation from this session about remote proceedings. The Task Force has not been asked to support this legislation although some members of our committee have been resources for the legislation.

In reviewing the statutes, we noted first that each statute uses slightly different

terminology for appearing in court. Second, some statutes require consent before allowing a virtual hearing or impose other limits such as maintaining a copy of the video conference. Third, current statutes define remote proceedings differently. Fourth, for some statutes, we may want “in person” to mean in person. And fifth, we may need to address jurisdictional complications from appearing by virtual means.

We have also noted in our interim report some existing caselaw that may impact remote proceedings. Since the date of that report, we have had at least one criminal case that limited remote proceedings without the consent of the parties, even during the pandemic. *See Lira v. State*, No. 11-20-00148-CR, ___ S.W.3d ___, 2021 WL 1134801 (Tex. App.—Eastland Mar. 25, 2021, pet. filed)

Even without new legislation, the Supreme Court can amend the Rules of Civil Procedure to allow for more remote proceedings. Some older caselaw is instructive. In 1998, the Texas Supreme Court held: “unless required by the express language or the context of the particular rule, the term “hearing” does not necessarily contemplate either a personal appearance before the court or an oral presentation to the court.” *Martin v. Martin, Martin & Richards, Inc.*, 989 S.W.2d 357, 359 (Tex. 1998) (per curiam) (motion for summary judgment hearing). *Contra Gulf Coast Inv. Corp. Nasa I Business Center*, 754 S.W.2d 152 (Tex. 1988) (per curiam) (language of rule 165a requires an oral hearing rather than submission).

As noted in the Civil Subcommittee Report, Rule 7 of the Rules of Judicial Administration encourage district court judges to use telephone and mail in lieu of personal appearance by attorneys for motion hearings, pretrial conferences, scheduling and the setting of trial dates. This rule can be easily updated to include remote proceedings.

All members of the Task Force believe that remote proceedings should be encouraged in the future. Based on our research, most members of the bar want to see remote hearings continue. Remote proceedings save attorney time, making the judicial system more affordable. They also allow litigants to attend a short hearing more easily, without having to take an entire day off work. Many judges have found that defaults decrease with remote proceedings. Judges who have cases in multiple districts can also save travel time and expense. When a defendant is incarcerated, a remote proceeding saves the expense of transporting the defendant to the courthouse and can allow a defendant to see more hearings in his case. In juvenile cases, the judge can more easily interact with the child remotely, saving the foster families time and expense.

Our Task Force stands ready to assist the court in the future on whatever the court needs us to do. Thank you for allowing us to be of assistance to the court.

Sincerely,
Tracy Christopher

STATE BAR OF TEXAS COURT RULES COMMITTEE

PROPOSED AMENDMENT TO

TEXAS RULE OF CIVIL PROCEDURE 199.2(b)(1)

I. Exact Language of Existing Rule

199.2 Procedure for Noticing Oral Deposition

(a) Time to notice deposition. A notice of intent to take an oral deposition must be served on the witness and all parties a reasonable time before the deposition is taken. An oral deposition may be taken outside the discovery period only by agreement of the parties or with leave of court.

(b) Content of notice.

(1) Identity of witness; organizations. The notice must state the name of the witness, which may be either an individual or a public or private corporation, partnership, association, governmental agency, or other organization. If an organization is named as the witness, the notice must describe with reasonable particularity the matters on which examination is requested. In response, the organization named in the notice must - a reasonable time before the deposition - designate one or more individuals to testify on its behalf and set forth, for each individual designated, the matters on which the individual will testify. Each individual designated must testify as to matters that are known or reasonably available to the organization. This subdivision does not preclude taking a deposition by any other procedure authorized by these rules.

(2) Time and place. The notice must state a reasonable time and place for the oral deposition. The place may be in:

(A) the county of the witness's residence;

(B) the county where the witness is employed or regularly transacts business in person;

(C) the county of suit, if the witness is a party or a person designated by a party under Rule 199.2(b)(1);

(D) the county where the witness was served with the subpoena, or within 150 miles of the place of service, if the witness is not a resident of Texas or is a transient person; or

(E) subject to the foregoing, at any other convenient place directed by the court in which the cause is pending.

(3) Alternative means of conducting and recording. The notice must state whether the deposition is to be taken by telephone or other remote electronic means and identify the means. If the deposition is to be recorded by nonstenographic means, the notice may include the notice required by Rule 199.1(c).

(4) Additional attendees. The notice may include the notice concerning additional attendees required by Rule 199.5(a)(3).

(5) Request for production of documents. A notice may include a request that the witness produce at the deposition documents or tangible things within the scope of discovery and within the witness's possession, custody, or control. If the witness is a nonparty, the request must comply with Rule 205 and the designation of materials required to be identified in the subpoena must be attached to, or included in, the notice. The nonparty's response to the request is governed by Rules 176 and 205. When the witness is a party or subject to the control of a party, document requests under this subdivision are governed by Rules 193 and 196.

II. Proposed Amendment to Existing Rule

199.2 Procedure for Noticing Oral Deposition

(a) Time to notice deposition. A notice of intent to take an oral deposition must be served on the witness and all parties a reasonable time before the deposition is taken. An oral deposition may be taken outside the discovery period only by agreement of the parties or with leave of court.

(b) Content of notice.

(1) Identity of witness; organizations. The notice must state the name of the witness, which may be either an individual or a public or private corporation, partnership, association, governmental agency, or other organization. If an organization is named as the witness, the notice must describe with reasonable particularity the matters on which examination is requested. In response, the organization named in the notice must - a reasonable time before the deposition - designate one or more individuals to testify on its behalf and set forth, for each individual designated, the matters on which the individual will testify. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination and documents requested to be produced, if any. Each individual designated must testify as to matters that are known or reasonably available to the organization. This subdivision does not preclude taking a deposition by any other procedure authorized by these rules.

(2) Time and place. The notice must state a reasonable time and place for the oral deposition. The place may be in:

- (A) the county of the witness's residence;
- (B) the county where the witness is employed or regularly transacts business in person;
- (C) the county of suit, if the witness is a party or a person designated by a party under Rule 199.2(b)(1);
- (D) the county where the witness was served with the subpoena, or within 150 miles of the place of service, if the witness is not a resident of Texas or is a transient person; or
- (E) subject to the foregoing, at any other convenient place directed by the court in which the cause is pending.

(3) Alternative means of conducting and recording. The notice must state whether the deposition is to be taken by telephone or other remote electronic means and identify the means. If the deposition is to be recorded by nonstenographic means, the notice may include the notice required by Rule 199.1(c).

(4) Additional attendees. The notice may include the notice concerning additional attendees required by Rule 199.5(a)(3).

(5) Request for production of documents. A notice may include a request that the witness produce at the deposition documents or tangible things within the scope of discovery and within the witness's possession, custody, or control. If the witness is a nonparty, the request must comply with Rule 205 and the designation of materials required to be identified in the subpoena must be attached to, or included in, the notice. The nonparty's response to the request is governed by Rules 176 and 205. When the witness is a party or subject to the control of a party, document requests under this subdivision are governed by Rules 193 and 196.

III. Brief Statement of Reasons for Requested Amendments and Advantages Served by Them

The purpose of the proposed change is for parties to discuss issues regarding the scope of the examination of the corporate representative and documents being requested in advance of the deposition and thereby reduce discovery disputes and avoid the need to file motions requiring court intervention. Requiring this conference to occur before the deposition will also help define the scope of the examination so that the organization can identify the proper witness(es) to be designated. Requiring this conference to occur before the deposition will help the parties identify issues which cannot be resolved and while those issues may require motions and court intervention, it can be done prior to the deposition and thereby avoid the necessity of re-deposing a corporate witness. Lastly, the revision would follow FRCP 30(b)(6) requiring the parties to confer with the addition that the parties also confer regarding documents requested, if any.

STATE BAR OF TEXAS COURT RULES COMMITTEE
PROPOSED AMENDMENT TO
TEXAS RULE OF CIVIL PROCEDURE 226a, §§2 AND 3

I. Exact Language of Existing Rule

Tex. R. Civ. P. 226a, §§ 2 and 3

II.

That the following oral and written instructions, with such modifications as the circumstances of the particular case may require, shall be given by the court to the jury immediately after the jurors are selected for the case:

Members of the Jury [or Ladies and Gentlemen]:

You have been chosen to serve on this jury. Because of the oath you have taken and your selection for the jury, you become officials of this court and active participants in our justice system.

[Hand out the written instructions.]

You have each received a set of written instructions. I am going to read them with you now. Some of them you have heard before and some are new.

1. Turn off all phones and other electronic devices. While you are in the courtroom and while you are deliberating, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace.] [I will give you a number where others may contact you in case of an emergency.] Do not post information about the case on the Internet before these court proceedings end and you are released from jury duty. Do not record or photograph any part of these court proceedings, because it is prohibited by law.

2. To avoid looking like you are friendly with one side of the case, do not mingle or talk with the lawyers, witnesses, parties, or anyone else involved in the case. You may exchange casual greetings like “hello” and “good morning.” Other than that, do not talk with them at all. They have to follow these instructions too, so you should not be offended when they follow the instructions.

3. Do not accept any favors from the lawyers, witnesses, parties, or anyone else involved in the case, and do not do any favors for them. This includes favors such as giving rides and food.

4. Do not discuss this case with anyone, even your spouse or a friend, either in person or by any other means [including by phone, text message, email message, chat room, blog, or social

networking websites such as Facebook, Twitter, or Myspace]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted in court.

5. Do not discuss this case with anyone during the trial, not even with the other jurors, until the end of the trial. You should not discuss the case with your fellow jurors until the end of the trial so that you do not form opinions about the case before you have heard everything.

After you have heard all the evidence, received all of my instructions, and heard all of the lawyers' arguments, you will then go to the jury room to discuss the case with the other jurors and reach a verdict.

6. Do not investigate this case on your own. For example, do not:

- a. try to get information about the case, lawyers, witnesses, or issues from outside this courtroom;
- b. go to places mentioned in the case to inspect the places;
- c. inspect items mentioned in this case unless they are presented as evidence in court;
- d. look anything up in a law book, dictionary, or public record to try to learn more about the case;
- e. look anything up on the Internet to try to learn more about the case; or
- f. let anyone else do any of these things for you.

This rule is very important because we want a trial based only on evidence admitted in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom because the law does not permit you to base your conclusions on information that has not been presented to you in open court. All the information must be presented in open court so the parties and their lawyers can test it and object to it. Information from other sources, like the Internet, will not go through this important process in the courtroom. In addition, information from other sources could be completely unreliable. As a result, if you investigate this case on your own, you could compromise the fairness to all parties in this case and jeopardize the results of this trial.

7. Do not tell other jurors about your own experiences or other people's experiences. For example, you may have special knowledge of something in the case, such as business, technical, or professional information. You may even have expert knowledge or opinions, or you may know what happened in this case or another similar case. Do not tell the other jurors about it. Telling other jurors about it is wrong because it means the jury will be considering things that were not admitted in court.

8. Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.

9. Do not consider or guess whether any party is covered by insurance unless I tell you to.

10. During the trial, if taking notes will help focus your attention on the evidence, you may take notes using the materials the court has provided. Do not use any personal electronic devices to take notes. If taking notes will distract your attention from the evidence, you should not take notes. Your notes are for your own personal use. They are not evidence. Do not show or read your notes to anyone, including other jurors.

You must leave your notes in the jury room or with the bailiff. The bailiff is instructed not to read your notes and to give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone.

[You may take your notes back into the jury room and consult them during deliberations. But keep in mind that your notes are not evidence. When you deliberate, each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes. After you complete your deliberations, the bailiff will collect your notes.]

When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

11. I will decide matters of law in this case. It is your duty to listen to and consider the evidence and to determine fact issues that I may submit to you at the end of the trial. After you have heard all the evidence, I will give you instructions to follow as you make your decision. The instructions also will have questions for you to answer. You will not be asked and you should not consider which side will win. Instead, you will need to answer the specific questions I give you.

Every juror must obey my instructions. If you do not follow these instructions, you will be guilty of juror misconduct, and I may have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial.

Do you understand these instructions? If you do not, please tell me now.

Please keep these instructions and review them as we go through this case. If anyone does not follow these instructions, tell me.

III.

COURT'S CHARGE

Before closing arguments begin, the court must give to each member of the jury a copy of the charge, which must include the following written instructions, with such modifications as the circumstances of the particular case may require:

Members of the Jury [or Ladies & Gentlemen of the Jury]:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. [I will give you a number where others may contact you in case of an emergency.]

[Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.]

[You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.]

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer “yes” or “no” to all questions unless you are told otherwise. A “yes” answer must be based on a preponderance of the evidence [unless you are told otherwise]. Whenever a question

requires an answer other than “yes” or “no,” your answer must be based on a preponderance of the evidence [unless you are told otherwise].

The term “preponderance of the evidence” means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a “yes” answer, then answer “no.” A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, “I will answer this question your way if you answer another question my way.”

11. [Unless otherwise instructed] The answers to the questions must be based on the decision of at least 10 of the 12 [5 of the 6] jurors. The same 10 [5] jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 [5] jurors, even if it would be a majority. As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

[Definitions, questions, and special instructions given to the jury will be transcribed here. If exemplary damages are sought against a defendant, the jury must unanimously find, with respect to that defendant, (i) liability on at least one claim for actual damages that will support an award of exemplary damages, (ii) any additional conduct, such as malice or gross negligence, required for an award of exemplary damages, and (iii) the amount of exemplary damages to be awarded. The jury's answers to questions regarding (ii) and (iii) must be conditioned on a unanimous finding regarding (i), except in an extraordinary circumstance when the conditioning instruction would be erroneous. The jury need not be unanimous in finding the amount of actual damages. Thus, if questions regarding (ii) and (iii) are submitted to the jury for defendants D1 and D2, instructions in substantially the following form must immediately precede such questions:

Preceding question (ii):

Answer Question (ii) for D1 only if you unanimously answered “Yes” to Question[s] (i) regarding D1. Otherwise, do not answer Question (ii) for D1. [Repeat for D2.]

You are instructed that in order to answer “Yes” to [any part of] Question (ii), your answer must be unanimous. You may answer “No” to [any part of] Question (ii) only upon a vote of 10 [5] or more jurors. Otherwise, you must not answer [that part of] Question (ii).

Preceding question (iii):

Answer Question (iii) for D1 only if you answered “Yes” to Question (ii) for D1. Otherwise, do not answer Question (iii) for D1. [Repeat for D2.]

You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

These examples are given by way of illustration.]

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
 - a. have the complete charge read aloud if it will be helpful to your deliberations;
 - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. give written questions or comments to the bailiff who will give them to the judge;
 - d. write down the answers you agree on;
 - e. get the signatures for the verdict certificate; and
 - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. [Unless otherwise instructed] You may answer the questions on a vote of 10 [5] jurors. The same 10 [5] jurors must agree on every answer in the charge. This means you may not have one group of 10 [5] jurors agree on one answer and a different group of 10 [5] jurors agree on another answer.
2. If 10 [5] jurors agree on every answer, those 10 [5] jurors sign the verdict.

If 11 jurors agree on every answer, those 11 jurors sign the verdict.

If all 12 [6] of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all 12 [6] of you agreeing on some answers, while only 10 [5] or 11 of you agree on other answers. But when you sign the verdict, only those 10 [5] who agree on every answer will sign the verdict.

4. [Added if the charge requires some unanimity] There are some special instructions before Questions ___ explaining how to answer those questions. Please follow the instructions. If all 12 [6] of you answer those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.

Judge Presiding

Verdict Certificate

Check one:

___ Our verdict is unanimous. All 12 [6] of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 [6] of us.

Signature of Presiding Juror

Printed Name of Presiding Juror

___ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

___ Our verdict is not unanimous. Ten [Five] of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE

NAME PRINTED

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

11. _____

If you have answered Question No. ____ [the exemplary damages amount], then you must sign this certificate also.

Additional Certificate

[Used when some questions require unanimous answers]

I certify that the jury was unanimous in answering the following questions. All 12 [6] of us agreed to each of the answers. The presiding juror has signed the certificate for all 12 [6] of us.

[Judge to list questions that require a unanimous answer, including the predicate liability question.]

Signature of Presiding Juror

Printed Name of Presiding Juror

II. Proposed Amendment to Existing Rule

Tex. R. Civ. P. 226a, §§ 2 and 3

II.

That the following oral and written instructions, with such modifications as the circumstances of the particular case may require, shall be given by the court to the jury immediately after the jurors are selected for the case:

Members of the Jury [or Ladies and Gentlemen]:

You have been chosen to serve on this jury. Because of the oath you have taken and your selection for the jury, you become officials of this court and active participants in our justice system.

[Hand out the written instructions.]

You have each received a set of written instructions. I am going to read them with you now. Some of them you have heard before and some are new.

1. Turn off all phones and other electronic devices. While you are in the courtroom and while you are deliberating, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace.] [I will give you a number where others may contact you in case of an emergency.] Do not post information about the case on the

Internet before these court proceedings end and you are released from jury duty. Do not record or photograph any part of these court proceedings, because it is prohibited by law.

2. To avoid looking like you are friendly with one side of the case, do not mingle or talk with the lawyers, witnesses, parties, or anyone else involved in the case. You may exchange casual greetings like “hello” and “good morning.” Other than that, do not talk with them at all. They have to follow these instructions too, so you should not be offended when they follow the instructions.

3. Do not accept any favors from the lawyers, witnesses, parties, or anyone else involved in the case, and do not do any favors for them. This includes favors such as giving rides and food.

4. Do not discuss this case with anyone, even your spouse or a friend, either in person or by any other means [including by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted in court.

5. Do not discuss this case with anyone during the trial, not even with the other jurors, until the end of the trial. You should not discuss the case with your fellow jurors until the end of the trial so that you do not form opinions about the case before you have heard everything. After you have heard all the evidence, received all of my instructions, and heard all of the lawyers' arguments, you will then go to the jury room to discuss the case with the other jurors and reach a verdict.

6. Do not investigate this case on your own. For example, do not:

- a. try to get information about the case, lawyers, witnesses, or issues from outside this courtroom;
- b. go to places mentioned in the case to inspect the places;
- c. inspect items mentioned in this case unless they are presented as evidence in court;
- d. look anything up in a law book, dictionary, or public record to try to learn more about the case;
- e. look anything up on the Internet to try to learn more about the case; or
- f. let anyone else do any of these things for you.

This rule is very important because we want a trial based only on evidence admitted in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom because the law does not permit you to base your conclusions on information that has not been presented to you in open court. All the information must be presented in open court so

the parties and their lawyers can test it and object to it. Information from other sources, like the Internet, will not go through this important process in the courtroom. In addition, information from other sources could be completely unreliable. As a result, if you investigate this case on your own, you could compromise the fairness to all parties in this case and jeopardize the results of this trial.

7. Do not let bias, prejudice, or sympathy play any part in your evaluation of the evidence admitted or testimony heard in this case. [As we discussed in jury selection,] [E]veryone, including me, has feelings, assumptions, perceptions, fears, and stereotypes that we may not be aware of but that can affect what we see and hear, how we remember what we see and hear, and how we make decisions. Because you are making important decisions as the jurors in this case, you must evaluate the evidence carefully, and you must not jump to conclusions based on personal likes or dislikes, generalizations, prejudices, sympathies, stereotypes, or biases. Our system of justice is counting on you to render a just verdict based on the evidence, not on biases.

8. 7. Do not tell other jurors about your own experiences or other people's experiences. For example, you may have special knowledge of something in the case, such as business, technical, or professional information. You may even have expert knowledge or opinions, or you may know what happened in this case or another similar case. Do not tell the other jurors about it. Telling other jurors about it is wrong because it means the jury will be considering things that were not admitted in court.

9. 8. Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.

10. 9. Do not consider or guess whether any party is covered by insurance unless I tell you to.

11. 10. During the trial, if taking notes will help focus your attention on the evidence, you may take notes using the materials the court has provided. Do not use any personal electronic devices to take notes. If taking notes will distract your attention from the evidence, you should not take notes. Your notes are for your own personal use. They are not evidence. Do not show or read your notes to anyone, including other jurors.

You must leave your notes in the jury room or with the bailiff. The bailiff is instructed not to read your notes and to give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone.

[You may take your notes back into the jury room and consult them during deliberations. But keep in mind that your notes are not evidence. When you deliberate, each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes. After you complete your deliberations, the bailiff will collect your notes.]

When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

~~12. 11.~~ I will decide matters of law in this case. It is your duty to listen to and consider the evidence and to determine fact issues that I may submit to you at the end of the trial. After you have heard all the evidence, I will give you instructions to follow as you make your decision. The instructions also will have questions for you to answer. You will not be asked and you should not consider which side will win. Instead, you will need to answer the specific questions I give you.

Every juror must obey my instructions. If you do not follow these instructions, you will be guilty of juror misconduct, and I may have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial.

Do you understand these instructions? If you do not, please tell me now.

Please keep these instructions and review them as we go through this case. If anyone does not follow these instructions, tell me.

III.

COURT'S CHARGE

Before closing arguments begin, the court must give to each member of the jury a copy of the charge, which must include the following written instructions, with such modifications as the circumstances of the particular case may require:

Members of the Jury [or Ladies & Gentlemen of the Jury]:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. [I will give you a number where others may contact you in case of an emergency.]

[Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.]

[You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in

a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.]

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision. As we discussed at the beginning of your jury service, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes that we may not be aware of but that can affect what we see and hear, how we remember what we see and hear, and how we make decisions. Because you are making important decisions as the jurors in this case, you must evaluate the evidence carefully, and you must not jump to conclusions based on personal likes or dislikes, generalizations, prejudices, sympathies, stereotypes, or biases. Our system of justice is counting on you to render a just verdict based on the evidence, not on biases.

2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer “yes” or “no” to all questions unless you are told otherwise. A “yes” answer must be based on a preponderance of the evidence [unless you are told otherwise]. Whenever a question requires an answer other than “yes” or “no,” your answer must be based on a preponderance of the evidence [unless you are told otherwise].

The term “preponderance of the evidence” means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a “yes” answer, then answer “no.” A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. [Unless otherwise instructed] The answers to the questions must be based on the decision of at least 10 of the 12 [5 of the 6] jurors. The same 10 [5] jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 [5] jurors, even if it would be a majority. As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

[Definitions, questions, and special instructions given to the jury will be transcribed here. If exemplary damages are sought against a defendant, the jury must unanimously find, with respect to that defendant, (i) liability on at least one claim for actual damages that will support an award of exemplary damages, (ii) any additional conduct, such as malice or gross negligence, required for an award of exemplary damages, and (iii) the amount of exemplary damages to be awarded. The jury's answers to questions regarding (ii) and (iii) must be conditioned on a unanimous finding regarding (i), except in an extraordinary circumstance when the conditioning instruction would be erroneous. The jury need not be unanimous in finding the amount of actual damages. Thus, if questions regarding (ii) and (iii) are submitted to the jury for defendants D1 and D2, instructions in substantially the following form must immediately precede such questions:

Preceding question (ii):

Answer Question (ii) for D1 only if you unanimously answered "Yes" to Question[s] (i) regarding D1. Otherwise, do not answer Question (ii) for D1. [Repeat for D2.]

You are instructed that in order to answer "Yes" to [any part of] Question (ii), your answer must be unanimous. You may answer "No" to [any part of] Question (ii) only upon a vote of 10 [5] or more jurors. Otherwise, you must not answer [that part of] Question (ii).

Preceding question (iii):

Answer Question (iii) for D1 only if you answered "Yes" to Question (ii) for D1. Otherwise, do not answer Question (iii) for D1. [Repeat for D2.]

You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

These examples are given by way of illustration.]

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:

- a. have the complete charge read aloud if it will be helpful to your deliberations;
- b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
- c. give written questions or comments to the bailiff who will give them to the judge;
- d. write down the answers you agree on;
- e. get the signatures for the verdict certificate; and
- f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. [Unless otherwise instructed] You may answer the questions on a vote of 10 [5] jurors. The same 10 [5] jurors must agree on every answer in the charge. This means you may not have one group of 10 [5] jurors agree on one answer and a different group of 10 [5] jurors agree on another answer.

2. If 10 [5] jurors agree on every answer, those 10 [5] jurors sign the verdict.

If 11 jurors agree on every answer, those 11 jurors sign the verdict.

If all 12 [6] of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all 12 [6] of you agreeing on some answers, while only 10 [5] or 11 of you agree on other answers. But when you sign the verdict, only those 10 [5] who agree on every answer will sign the verdict.

4. [Added if the charge requires some unanimity] There are some special instructions before Questions ___ explaining how to answer those questions. Please follow the instructions. If all 12 [6] of you answer those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.

Judge Presiding

Verdict Certificate

Check one:

___ Our verdict is unanimous. All 12 [6] of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 [6] of us.

Signature of Presiding Juror

Printed Name of Presiding Juror

___ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

___ Our verdict is not unanimous. Ten [Five] of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE

NAME PRINTED

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____
- 7. _____
- 8. _____
- 9. _____
- 10. _____
- 11. _____

If you have answered Question No. ___ [the exemplary damages amount], then you must sign this certificate also.

Additional Certificate

[Used when some questions require unanimous answers]

I certify that the jury was unanimous in answering the following questions. All 12 [6] of us agreed to each of the answers. The presiding juror has signed the certificate for all 12 [6] of us.

[Judge to list questions that require a unanimous answer, including the predicate liability question.]

Signature of Presiding Juror

Printed Name of Presiding Juror

III. Brief Statement of Reasons for Requested Amendments to Tex. R. Civ. P. 226a §§ 2 and 3 and Advantages Served by Them

Implicit bias is an important issue that needs to be, but is not, addressed in Tex. R. Civ. P. 226a. This proposed instruction is intended to address implicit bias through instructions given to jurors. The proposed instruction is designed to instruct jurors on the appropriate basis to weigh the evidence presented to them and the importance of making an unbiased and just decision through their verdict. The proposed addition is designed to help jurors better understand bias and provide trial judges and advocates a basis to better discuss biases and prejudices in voir dire should they desire or think it appropriate. The Committee chose not to use “implicit” in the proposed instruction to avoid alienation of potential jurors or imply any current public or political interpretation of the term. The Committee also sought to avoid language that may lead to a politically or emotionally charged interpretation of the overall instruction.

The Committee spent considerable time over the past year reviewing other examples of “implicit bias” instructions from other jurisdictions including federal, state, and various Texas counties. The Committee also actively solicited, received, and considered suggestions from various stakeholders with an interest in the proposed instruction. These stakeholders included local bar associations and judges, as well as State Bar of Texas committees, sections, and members. Critical focus was paid to removing surplus or duplicative words that impacted the clarity and length of the instruction. The Committee limited the use of words or terms that might imply to a juror that they could not use their personal judgment or common sense.

Further, the proposed addition is based on efforts by the Travis County Bar Association and members of the Dallas Bar Association to implement such instructions in civil cases. The Dallas Civil District Courts engaged in a pilot program where a similar instruction was given in smaller civil matters by agreement of the parties. Ninety-four percent of the jurors surveyed following the trials in which this instruction was used indicated that they considered the instruction in their deliberations. Fifty-four percent of the jurors surveyed following the trials in which this instruction was used reported that the instruction influenced the way in which they processed evidence and deliberated. Strong evidence, through this Dallas pilot program, shows that an instruction on implicit bias, as the one the committee now proposes, increases juror self-awareness during trial about how they processed the evidence and motivated them to be fair in their deliberations.

The proposed instruction is consistent with the September 2020 charge from the Public Trust & Confidence Committee of the Texas Judicial Council (chaired by Chief Justice Hecht) that “implicit bias” be addressed in the Texas legal system, including through annual training for judges on that topic.

This proposed instruction is consistent with many such instructions given across the United States, including those provided in the United States District Court for the Northern District of the State of Iowa,¹ the United States District Court for the Northern

¹ Judge Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The*

District of the State of California² the State of Missouri, the State of Washington, and the United States Court of Appeals for the Ninth Circuit.

The proposed instruction is consistent with the 2019 ABA resolution calling on all states to implement an “implicit bias” instruction in their jury instructions.

The proposed instruction is calculated to be impartial and applicable to all cases without comment on the evidence.

Problems of Judge-Dominated Voir Dire, The Failed Promise of Batson, and Proposed Solutions, 4 Harv. L. & Pol’y Rev. 149 (2010). See also, www.perception.org (Emphasis added) (Last visited 03/18/2018) (defining implicit bias as “an *attitude* toward, preference for, aversion against or the phenomena of associating *stereotypes* with people *without conscious knowledge*.”)
² <https://www.cand.uscourts.gov/attorneys/unconscious-bias-video-for-potential-jurors/>

Tab B

2021-06-13 - Report of Judicial Subcommittee

The Judicial Administration Subcommittee met by conference call on Friday June 11 and makes the following recommendations in response to the urgent June 2 referrals assigned to this subcommittee.

JUDICIAL ADMINISTRATION SUBCOMMITTEE RECOMMENDATIONS

The urgent referrals made to this subcommittee involve the same basic inquiry: Should applicable rules (either Judicial Administration or TRCP) be amended to reflect or refer to specific changes/restrictions added in newly passed legislation?

1. HB 2950 amends Government Code section 74.1625(a) to prohibit the MDL panel from transferring a Texas Medicaid Fraud Prevention Act action brought by the Texas AG's consumer protection provision. ***Should Rule of Judicial Administration 13.1 be amended to reflect this statutory change?***
 - a. SUBCOMMITTEE RECOMMENDATION: **No.** The prior version of the statute has had exclusions that were not referenced in Rule 13.1, so it seems unnecessary to treat this revised exception differently. The Attorney General's office will be able to assert this statutory limit if this circumstance arises.
2. For a case involving a family violence protective order under Family Code section 85.006, HB 39 shortens the time period for a default judgment that otherwise would be governed by TRCP 107(h). ***Should TRCP 107(h) be amended to reflect this exception; alternatively, should this statutory exception be noted in a comment to the rule?***
 - a. SUBCOMMITTEE RECOMMENDATION: ***The text of Texas Rule of Civil Procedure 107(h) should be amended to reflect this statutory change to the timeframe for obtaining a default judgment in this specific circumstance.*** As a threshold matter, the subcommittee questioned whether this topic is more within the realm of the Rule 15-165a subcommittee; at a minimum, that subcommittee should be consulted. The consensus of the Judicial Administration subcommittee is that (1) Rule 107(h)'s text should be amended to alert litigants of this significant timing change, and state that proceedings seeking a family violence protective order under Family Code section 85.006 are an exception; and (2) a change to the rule's text is preferable to adding a comment to provide maximum notice and clarity. If the full SCAC concludes that a comment is preferable, then a comment similar to the one following TRCP 18a would be appropriate.
3. HB 567 adds new Family Code section 263.4011 setting a 90-day deadline for rendering a final order in a child protection case after the date on which trial commences. ***Should Rule of Judicial Administration 6 be amended, or a comment added, to reflect this new time limit?***
 - a. SUBCOMMITTEE RECOMMENDATION: ***There was no clear consensus on an answer to this question, so the subcommittee recommends consideration of multiple options by the full SCAC.*** This topic prompted considerable discussion about the current form of Rule of Judicial Administration 6. The following points were discussed.

- i. Rules 6.1 and 6.2 are framed as non-mandatory guidelines with reasonable flexibility for timelines within which specified matters should be brought to final disposition “so far as reasonably possible.” In contrast, the deadline set in section 263.4011 is mandatory, with a specific procedure for extending the mandatory deadline only upon a showing of “good cause.” There is a possibility of confusion if references to mandatory statutory deadlines are mixed together in Rule 6 with language discussing more flexible/aspirational timelines set out in Rules 6.1 and 6.2.
 - ii. There is concern that other statutorily mandated deadlines may exist in the Family Code and elsewhere, and that confusion could be created if some statutory deadlines are specifically referenced in Rule 6 while others are omitted.
 - iii. For these reasons, the SCAC may want to consider adding a phrase to Rule 6.1’s preamble – or as a stand-alone preamble to the entirety of Rule 6 – clarifying that any statutorily mandated deadlines for specific types of matters control over the flexible/aspirational guidelines set out in in Rule 6.
- b. Options for consideration by the full SCAC.
 - i. Leave Rule 6 unchanged in light of the potential for confusion as discussed above.
 - ii. Add a preamble or a separate subsection to Rule 6 to emphasize that nothing in Rule 6 displaces mandatory deadlines that may be set by statute.

Tab C

Memorandum



To: Supreme Court Advisory Committee

From: Appellate Rules Subcommittee

Date: June 15, 2021

Re: June 2 Referral Relating to Winter Storm Uri Direct Appeals

I. Matter referred to subcommittee

The Court's June 2, 2021 referral letter and Chairman Babcock's June 7, 2021 email referred the following matter to our subcommittee:

Uri-Related Direct Appeals. Several bills add provisions to the Utilities Code to provide that certain district court judgments related to a Winter Storm Uri "may be reviewed only by direct appeal to the Supreme Court of Texas": HB 1520, HB 4492, and SB 1580. The Committee should consider whether Rule of Appellate Procedure 57, governing direct appeals, should be changed or a comment added to reference or restate the statutes.

II. Relevant statutes

All three bills provide for the issuance of bonds by various entities to reduce the financial impact of Winter Storm Uri on electric customers, utilities, and market participants:

- HB 1520 provides that the Railroad Commission can authorize the recovery and securitization of certain extraordinary costs incurred by certain gas utilities because of Winter Storm Uri and similar extraordinary events.
- HB 4492 creates the Texas Electric Securitization Corporation and provides for the securitization of certain costs incurred by ERCOT market participants that would otherwise be uplifted to the wholesale market.
- SB 1580 provides electric cooperatives the option to utilize the financial tool of securitized financing to fund the unprecedented impact of Uri.

All three bills provide for a direct appeal of a district court's judgment on financing orders to the Texas Supreme Court. While the language varies to reflect the particular type of financing order, they are all essentially the same:

- HB 1520. “The judgment of the district court may be reviewed only by direct appeal to the Supreme Court of Texas. The appeal must be filed not later than the 15th day after the date of entry of judgment. (g) All appeals shall be heard and determined by the district court and the Supreme Court of Texas as expeditiously as possible with lawful precedence over other matters. Review on appeal shall be based solely on the record before the railroad commission and briefs to the court and limited to whether the financing order: (1) complies with the constitution and laws of this state and the United States; and (2) is within the authority of the railroad commission to issue under this subchapter.”
- SB 4492. “The judgment of the district court may be reviewed only by a direct appeal to the Supreme Court of Texas that is filed not later than the 15th day after the date of the entry of judgment. All appeals shall be heard and determined by the district court and the Supreme Court of Texas as expeditiously as possible with lawful precedence over other matters. Review on appeal shall be based solely on the record before the commission and briefs to the court and shall be limited to whether the order conforms to the constitution and laws of this state and the United States and is within the authority of the commission under this chapter.”
- SB 1580. “The judgment of the district court may be reviewed only by direct appeal to the Supreme Court of Texas filed not later than the 15th day after the date of the entry of judgment. All appeals shall be heard and determined by the district court and the Supreme Court of Texas as expeditiously as possible with lawful precedence over other matters. Review on appeal shall be based solely on the financing order adopted by the board, other information considered by the board in adopting the resolutions, and briefs to the court and shall be limited to whether the financing order conforms to the constitution and laws of this state and the United States and is within the authority of the board under this subchapter.”

III. Recommendation

TRAP 57 (attached as App. A) governs direct appeals to the Texas Supreme Court. The subcommittee unanimously recommends that no amendment be made or comment added to Rule 57 to reflect passage of the Winter Storm Uri securitization bills. It has been the usual practice not to cross-reference particular statutes in the appellate rules or comments. Several other statutes authorize direct appeals and they are not referenced in Rule 57.

III. Discussion

In 1940, the Texas Constitution was amended to authorize the Legislature to “provide by law, for an appeal direct to the Supreme Court of this State from an order of any trial court granting or denying an interlocutory or permanent injunction on the grounds of the constitutionality or unconstitutionality of any statute of this State, or on the validity or invalidity of any administrative order issued by any state agency under any statute of this State.” Tex. Const. art. V § 3-b.

Since 1940, the Legislature has adopted several statutes authorizing a direct appeal:

- Tex. Govt Code § 22.001(c) is the primary direct appeal statute and allows direct appeal of certain injunctions: “An appeal may be taken directly to the supreme court from an order of a trial court granting or denying an interlocutory or permanent injunction on the ground of the constitutionality of a statute of this state. It is the duty of the supreme court to prescribe the necessary rules of procedure to be followed in perfecting the appeal.”
- Tex. Util. Code § 39.303(f) allows direct appeal of PUC securitization orders: “A financing order is not subject to rehearing by the commission. A financing order may be reviewed by appeal only to a Travis County district court by a party to the proceeding filed within 15 days after the financing order is signed by the commission. The judgment of the district court may be reviewed only by direct appeal to the Supreme Court of Texas filed within 15 days after entry of judgment. All appeals shall be heard and determined by the district court and the Supreme Court of Texas as expeditiously as possible with lawful precedence over other matters. Review on appeal shall be based solely on the record before the commission and briefs to the court and shall be limited to whether the financing order conforms to the constitution and laws of this state and the United States and is within the authority of the commission under this chapter.”
- Tex. Util. Code § 36.405(g) similarly allows for review of securitization orders relating to electric utility system recovery costs: “The judgment of the district court may be reviewed only by direct appeal to the Supreme Court of Texas filed within 15 days after entry of judgment. All appeals shall be heard and determined by the district court and the Supreme Court of Texas as expeditiously as possible with lawful precedence over other matters. Review on appeal shall be based solely on the record before the commission and briefs to the court and shall be limited to whether the order conforms to the constitution and laws of this state and the United States and is within the authority of the commission under this chapter.”
- Tex. Gov’t Code § 1205.068 provides that, in declaratory judgment actions brought by issuers of public securities, “A party may take a direct appeal to the supreme court as provided by Section 22.001(c).”
- House Bill 4 § 23.01(e) (2003) provided for a direct appeal for certain challenges: “There is a direct appeal to the supreme court from an order, however characterized, of a trial court granting or denying a temporary or otherwise interlocutory injunction of a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Article 10 of this Act [the damages cap provision].”

The three recently enacted bills contain direct appeal language that parallels the language in existing provisions of the Utilities Code quoted above relating to PUC securitization orders. The Texas Supreme Court has decided several securitization direct appeals under TRAP 57. See *TXU Elec. Co. v. Public Util. Comm'n*, 51 S.W.3d 275 (Tex. 2001); *City of Corpus Christi v. Public Util. Comm'n*, 51 S.W.3d 231 (Tex. 2000).

Since September 1, 2010, 26 direct appeals have been filed in the Texas Supreme Court. The great majority of these were not authorized by any of the direct appeal statutes and were dismissed. The Court noted probable jurisdiction in only two: *Morath v. Tex. Taxpayers & Student Fairness Coalition*, No. 14-0776), and *Episcopal Diocese of Ft. Worth v. Episcopal Church*, No. 11-0265.

These direct appeals have been prosecuted at the Supreme Court without specific mention of the authorizing statute in the rule or its comments. It has been the usual practice not to cite to specific statutes in the appellate rules or comments because the list of authorizing statutes can easily become outdated or the code location of a particular provision might change. There are multiple statutes authorizing direct appeals and they have not been incorporated into the rule either directly or in a comment. The same can be said of the rule governing interlocutory appeals. In recent legislative sessions, including the one just ended, numerous new interlocutory appeals have been created. Referencing them in the rule would likely require amendment on a regular basis.

The subcommittee conferred with Blake Hawthorne, Clerk of the Supreme Court of Texas, that the direct appeal rule in its current form is working. He did not see a need for any changes to the rule at this time.

The subcommittee recommends no change to TRAP 57.

Appendix A Direct Appeal Rule

Rule 57. Direct Appeals to the Supreme Court

57.1. Application

This rule governs direct appeals to the Supreme Court that are authorized by the Constitution and by statute. Except when inconsistent with a statute or this rule, the rules governing appeals to courts of appeals also apply to direct appeals to the Supreme Court.

57.2. Jurisdiction

The Supreme Court may not take jurisdiction over a direct appeal from the decision of any court other than a district court or county court, or over any question of fact. The Supreme Court may decline to exercise jurisdiction over a direct appeal of an interlocutory order if the record is not adequately developed, or if its decision would be advisory, or if the case is not of such importance to the jurisprudence of the state that a direct appeal should be allowed.

57.3. Statement of Jurisdiction

Appellant must file with the record a statement fully but plainly setting out the basis asserted for exercise of the Supreme Court's jurisdiction. Appellee may file a response to appellant's statement of jurisdiction within ten days after the statement is filed.

57.4. Preliminary Ruling on Jurisdiction

If the Supreme Court notes probable jurisdiction over a direct appeal, the parties must file briefs under Rule 38 as in any other case. If the Supreme Court does not note probable jurisdiction over a direct appeal, the appeal will be dismissed.

57.5. Direct Appeal Exclusive While Pending.

If a direct appeal to the Supreme Court is filed, the parties to the appeal must not, while that appeal is pending, pursue an appeal to the court of appeals. But if the direct appeal is dismissed, any party may pursue any other appeal available at the time when the direct appeal was filed. The other appeal must be perfected within ten days after dismissal of the direct appeal.

Notes and Comments

Comment to 1997 change: This is former Rule 140. The rule is amended without substantive change except subdivision 57.5 is amended to make clear that no party to the direct appeal may pursue the appeal in the court of appeals while the direct appeal is pending, but allowing 10 days to perfect a subsequent appeal.

Tab D

DRAFT MEMORANDUM

To: Texas Supreme Court Advisory Committee

From: Subcommittee on Legislative Mandates

Date: June 16, 2021

Re: Recommendations on Potential Rulemaking/Response to HB 1540 and HB 2669

The following is a draft memo from the Subcommittee on Legislative Mandates in response to the June 2, 2021 referral from the Supreme Court. This memo is in draft form and has not been fully reviewed by the Subcommittee. The memo is subject to correction and revision. It reflects preliminary evaluation of the issues noted below.

The following is the referral addressed by the Legislative Mandates Subcommittee:

Protection of Sensitive Data. [HB 1540](#) and HB 2669 add several statutes to protect sensitive data. HB 1540, § 4 adds Civil Practice and Remedies Code § 98.007 to permit a claimant in a trafficking suit to use a confidential identity and require a court use a confidential identity and maintain records in a confidential manner. § 98.007 also prohibits the Court from amending or adopting rules in conflict with § 98.007. HB 2669 amends Code of Criminal Procedure Art.

44.2811 and reenacts and amends Art. 45.0217 to make confidential a child's criminal records related to certain misdemeanor offenses. The Committee should consider whether the sensitive data rules should be changed or a comment added to reference or restate the statutes.

I HB 1540

Background: [House Bill 1540](#) by Representative Senfronia Thompson was crafted as an omnibus bill designed to address recommendations from the Texas Human Trafficking Prevention Task Force (See [Texas Human Trafficking Prevention Task Force 2019 Report](#)). Included in the provisions of HB 1540 is language amending Texas Civil Practice and Remedies Code Chapter 98. This Chapter (enacted in 2009, creates a civil remedy for those who are victims of the "trafficking of persons or [those] who intentionally or knowingly benefits from participating in a venture that traffics another person".

Section 4¹ of HB 1540 amends Chapter 98 to permit parties bringing claims under the Chapter to pursue their claims using a confidential identity in the court proceedings. The statute further obligates the

¹ The text of the bill reads as follows:

Sec. 98.007. CONFIDENTIAL IDENTITY IN CERTAIN ACTIONS. (a)

In this section, "confidential identity" means:

(1) the use of a pseudonym; and

(2) the absence of any other identifying information, including address, telephone number, and social security number.

(b) Except as otherwise provided by this section, in an action under this chapter, the court shall:

(1) make it known to the claimant as early as possible

court to advise the claimant of this right 'as early as possible', permitting the use of a pseudonym in the petition and all other filings as well as to avoid any other information that might identify the claimant. The court is required to maintain the records related to the action in a manner that protects the confidentiality of the claimant. Notably the bill prohibits the Texas Supreme Court from adopting any rules that conflict with this section.

Potential Rulemaking to Enable the Provisions of HB 1540

The provisions of HB 1540 impact numerous Texas Rules of Civil Procedure. As noted below, to address each of the impacted rules would be challenging. We recommend adoption of a new rule that incorporates the requirement to enable claimants to bring Chapter 98 actions without disclosure of their identity. The rule would address the myriad of submissions that could result in the disclosure of the claimant's identify in civil actions, including by opposing parties and in discovery. Alternatively, each impacted current rule that potentially involves disclosure could be amended to address this issues.

Proposed new Rule:

Rule _____ . Notwithstanding any rules to the contrary in these rules, in any proceeding brought under Chapter 98 of the Texas Civil Practice and Remedy Code, a claimant may submit his petition using a pseudonym and further is not required to disclose his address or other identifying information in pleadings, motions, discovery responses or other submissions. Any information including identifying information that is included in any pleading or submission to the court must be filed under seal. Affidavits and verifications required under these rules may be submitted using a pseudonym. The Court

in the proceedings of the action that the claimant may use a confidential identity in relation to the action;

(2) allow a claimant to use a confidential identity in all petitions, filings, and other documents presented to the court;

(3) use the confidential identity in all of the court's proceedings and records relating to the action, including any appellate proceedings; and

(4) maintain the records relating to the action in a manner that protects the confidentiality of the claimant.

(c) In an action under this chapter, only the following persons are entitled to know the true identifying information about the claimant:

(1) the judge;

(2) a party to the action;

(3) the attorney representing a party to the action;

and

(4) a person authorized by a written order of a court specific to that person.

(d) The court shall order that a person entitled to know the true identifying information under Subsection (c) may not divulge that information to anyone without a written order of the court. A court shall hold a person who violates the order in contempt.

(e) Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this section.

(f) A claimant is not required to use a confidential identity as provided by this section.

and clerk shall not submit any information that discloses the name of the claimant, including bills of costs. All parties to such a suit must not disclose identifying information of a Chapter 98 claimant, including in party listings, disclosures, pretrial reports, discovery or other proceedings. Experts and other witnesses may not be informed of the identity of a Chapter 98 claimant absent the express written approval of the court which approval must also include an admonishment that disclosure of the identity of the claimant is punishable by contempt.

The Following are specific Rules of Civil Procedure that are potentially impacted by the provisions of HB 1540.

Tex. R. Civ. P. 14 permits a party that is required to make an affidavit to have an agent make the affidavit. Absent a general rule, the Court should consider a rule permitting claimants in Chapter 98 cases to submit affidavits using their pseudonym as well as permitting them to avoid disclosure of facts that would include identifying information. Alternatively, the Rule can permit the submission of affidavits and other pleadings under seal. This would also apply to pleadings required to be verified. This should also apply to interrogatory responses.

Rule 18c permits trial courts to permit broadcasting of proceedings. The public broadcasting of proceedings involving claims under Chapter 98 would undermine the confidentiality of claimants and the Subcommittee recommends that the Supreme Court include in its Rules for Recording Broadcasting and Photographing Court Proceedings (for example: [Rules for Recording Broadcasting and Photographing Court Proceedings in the Supreme Court of Texas](#)) should including a provision that requires the protection of the identify of claimants in Chapter 98 cases. Note that this step should be considered notwithstanding the adoption of a general rule.

Tex. R. Civ. P. 21(f)(2) requires unrepresented parties to include their email address when electronic filing is mandated. For claimants filing under a pseudonym, a similar anonymous email address should be considered.

Tex. R. Civ. P. 21(f)(4) lists the types of filings excepted from the requirement to file electronically. The exceptions include materials to be filed under seal. The Court should consider adding to this exception pleadings filing in proceedings brought under Chapter 98.

Electronic filing services should be asked to include reference to the confidentiality rights of claimants in Chapter 98 actions and prompt claimants that they may use a pseudonym and limit disclosure of other identifying information. This should include completing the electronic filing information when submitting their petition.

Rule 21c provides privacy protection related to the filing of court records that include sensitive data. The Subcommittee recommends amending this rule to include reference to proceedings filed under Chapter 98.

The following is a proposed amendment to Rule 21c:

RULE 21c. PRIVACY PROTECTION FOR FILED DOCUMENTS

(a) Sensitive Data Defined. Sensitive data consists of:

(1) a driver's license number, passport number, social security number, tax

identification number, or similar government-issued personal identification number;

(2) a bank account number, credit card number, or other financial account number; andPage 20

(3) a birth date, a home address, and the name of any person who was a minor when the underlying suit was filed.

(4) the identity of a claimant in a suit brought under Chapter 98 of the Texas Civil Practice and Remedies Code if the claimant requests confidentiality, including the name, address, telephone number and social security number of the claimant.

(b) Filing of Documents Containing Sensitive Data Prohibited. Unless the inclusion of sensitive data is specifically required by a statute, court rule, or administrative regulation, an electronic or paper document, except for wills and documents filed under seal, containing sensitive data may not be filed with a court unless the sensitive data is redacted or a pseudonym is used in the case of a proceeding under Chapter 98 of the Texas Civil Practices and Remedies Code.

(c) Redaction of Sensitive Data; Retention Requirement. Sensitive data must be redacted by using the letter "X" in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted. The filing party must retain an unredacted version of the filed document during the pendency of the case and any related appellate proceedings filed within six months of the date the judgment is signed.

(d) Notice to Clerk. If a document must contain sensitive data, the filing party must notify the clerk by:

(1) designating the document as containing sensitive data when the document is electronically filed; or

(2) if the document is not electronically filed, by including, on the upper left- hand side of the first page, the phrase: "NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA."

(e) Non-Conforming Documents. The clerk may not refuse to file a document that contains sensitive data in violation of this rule. But the clerk may identify the error to be corrected and state a deadline for the party to resubmit a redacted, substitute document.

(f) Restriction on Remote Access. Documents that contain sensitive data in violation of this

rule must not be posted on the Internet

Rules 38 and 39 provide for third party practice and joinder. A question is triggered whether the rules should include language that prohibits a party from naming as a third party to a suit an individual who is a claimant under Chapter 98 without the use of a pseudonym or other method to protect the identity of the individual. Additionally the Court should consider whether to amend Rule 43 on Interpleader to include language requiring that interpleader petitions in Chapter 98 cases be pleaded to avoid naming potential claimants.

Rule 42 on Class Actions includes a provision that permits a court to permit plaintiffs to opt out of the claim (Rule 42(c)(2)(A)). The Court should consider whether to include language in this Rule that ensures that a requirement for parties to opt of a class include language permitting a claimant under Chapter 98 to submit an opt-out notice using a pseudonym. Similar consideration should be given for notice requirements for class members.

Rule 57 (Signing of Pleadings) should be amended to permit *pro se* claimants in Chapter 98 actions to sign pleadings using a pseudonym and are not required to list an address other than a non-identifying email address.

Rule 63 on Amendments and Responsive Pleadings. Consideration should be given to adding language in Rule 63 that parties submitting responsive pleadings or other submissions in Chapter 98 actions should not submit any pleading that names or otherwise identifies a claimant if the claimant has elected confidentiality unless such pleadings are filed under seal. For example, Motions to Transfer Venue under Rule 86 could include allegations and fact pleadings that could identify the claimant. Similarly, Counterclaims under Rule 97 should be governed by the same provision.

Rule 75a – Filing Exhibits: Court Reporter to File With Clerk. This rule should be amended to include a provision that any exhibits in a Chapter 98 proceeding that identify a claimant who seeks confidentiality shall be filed under seal.

Rule 76a. Sealing Court Records. Rule 76a(2)(a)(2) exempts from the definition of a court record “documents in court files to which access is otherwise restricted by law.” Tex. Civ. Practice and Remedies Code Section 98.007 will restrict access to documents that identify claimants in Chapter 98 actions if they elect confidentiality. Note however, that Rule 76a(1) states that “No court order or opinion issued in the adjudication of a case may be sealed.” Therefore, any court orders disposing of issues in the case should omit the name or identifying information of the claimant.

Rule 79. The Petition. The rule currently requires the plaintiff to state the names of the parties and their residences. This rule should be amended to permit a plaintiff filing Chapter 98 actions to use a pseudonym and are not required to include their address information.

Rule 99. Issuance and Form of Citation. Rule 99(b) states that the citation shall include the names of the parties. Citations in Chapter 98 cases should permit pseudonyms and also note that the address of the claimant should not be listed if the case is filed *pro se*.

Rule 129. How Costs Collected. The provisions of HB1540 arguably prohibit the clerk to submit a bill of costs to the Sheriff or constable for collection (as permitted under Rule 129) absent an explicit order from the Court.

Rule 145 – Payment of Costs Not Required. The submission of a statement of an inability to afford costs should include a provision that permits a Chapter 98 claimant to submit a statement without requiring the disclosure of information that would identify the claimant.

Rule 149. Execution for Costs. Similar to Rule 129, an itemized bill of costs adjudicating costs to the claimant should not disclose the name of the claimant.

Rule 167.2 – Settlement Offers. Rule 167.2(b)(3) requires the disclosure of the parties making the offer and the parties to whom the offer is made.

Rule 173 Guardian Ad Litem. Orders appointing a Guardian Ad Litem should not list the identity of the claimant in a Chapter 98 action.

Rule 181. Party as Witness. A defendant has the right under this rule to compel the claimant to appear. Either this rule or Rule 176 (Subpoenas) should be amended to clarify that a subpoena to a Claimant under a Chapter 98 case should not disclose the true name and address of the claimant.

Rule 191. Discovery. Rule 191.3 requires the signing of disclosures and responses. This rule requires a *pro se* party to sign disclosures and discovery requests, notices, responses and objections, including addresses. Similar to comments above, any such submissions should exempt the listing of identifying information for claimants or a process permitting for the use of pseudonyms. Similarly, parties responding to discovery requests should be advised not to include information that would identify the claimant.

Rule 192 Discovery. The rules related to discovery generally and specific discovery tools should reflect the importance of not requiring the disclosure of identifying information absent appropriate protections to ensure that the provisions of HB1540 are observed (i.e. limiting access to the information identifying the claimant). For example, the disclosure of statements of persons with knowledge of facts under 192.3(h) should ensure that identifying information regarding claimant(s) are protected from disclosure to other witnesses or to non-parties.

Rule 193.3 Asserting a Privilege. A party should not be required to list or disclose identifying information regarding the claimant in supporting its withholding of privileged material or information.

Rule 194. Initial Disclosures. This rule requires parties to disclose the correct names of the parties to the lawsuit and any potential parties. The rule (or a general rule) should reflect that these disclosures should not include information protected by Chapter 98.

Rule 194.2(d) includes proceedings exempt from initial disclosure. Potentially a Chapter 98 action could be included in this list but that might impact the adjudication of the claims in those proceedings. Alternatively, courts could be directed to manage discovery in those proceedings through specially crafted discovery plans that are designed to ensure that the identity protections in HB1540 are addressed.

Rule 194.4 Pretrial Disclosures. This rule requires parties to disclose information regarding witnesses who will testify at trial (including their address and telephone number). Similar to other rules noted above, this rule should include an exception to the listing of witnesses protected by Chapter 98 unless otherwise covered by a broad rule.

Rule 195. Discovery Regarding Experts. Under the provisions of HB1540, experts are not permitted to become aware of the identity of a claimant in a Chapter 98 proceeding absent written approval by the court with an admonishment provided to the expert (or other witness) that disclosure of the identity is punishable by contempt.

Rule 197. Interrogatories. As noted above, the process of responding to interrogatories could result in the disclosure of identifying information. Verifications to interrogatories under Rule 197.2(d) should specifically permit the use of a pseudonym.

Rule 199. Depositions. Due to the involvement of individuals not permitted to be aware of the identity of a Chapter 198 claimant, depositions involving claimants should be approved by the Court in writing and participants in the deposition (court reporters, videographers, etc.) should receive explicit notification that they may not disclose the claimant's identity under risk of contempt. Notices of depositions should not include the name of a Chapter 198 claimant. Transcripts should be maintained under seal unless the pseudonym is used throughout the deposition and no other identifying information is included in the transcript or exhibits.

Rules 200, 201 and 202. Depositions on written questions, depositions in foreign jurisdictions and depositions before suit. The same strictures regarding oral depositions in Rule 199 should apply to depositions on written questions and depositions in foreign jurisdictions and depositions before suit. In the case of a deposition before suit, if a potential defendant to a Chapter 98 action seeks pre suit discovery, consideration should be given by the court to ensure that the identity of a potential claimant is protected.

Rule 203. Signing and Certification of Depositions. This rule similarly should permit a claimant to sign the deposition transcript using a pseudonym. The court reporter should be explicitly permitted to certify the deposition transcript accuracy even though a pseudonym was used.

Rule 204. Physical and Mental Examination. Similarly to the other discovery rules, a motion and order for a physical or mental examination of a claimant should ensure that the identity of the claimant is protected. Motions and orders should either be filed under seal or a pseudonym should be used. The order should also authorize disclosure to a physician or psychologist with the required admonishment to the medical professional regarding protection of the claimant's identity. The Rule 204.2 Report should be prepared to avoid disclosure or sealed.

Rules – Section 10 – the Jury In Court. The trial court should ensure that steps are taken to enable the claimant to use the pseudonym in all proceedings, including before the jury. This might require procedures / screens to limit visual access to the claimant. It will also impact numerous proceedings, including Voir Dire (ie. Potential jurors will not be informed of the name of the claimant in determining potential grounds for disqualification). Rule 226a (approved venire instructions) potentially should be modified to include instructions for claims under Chapter 98 that advise the jury of the use of the pseudonym and special procedures in place (such as screens blocking the claimant from view). Rule 230

(certain questions not to be asked) should potentially be amended to include questions regarding the claimant's identify in a Chapter 98 proceeding.

Hearings and Trial Proceedings

Consideration should be given as to how a trial and appellate court can protect the identity of the claimant in a court proceeding, including whether the proceedings are held *in camera* or subject to rules restricting the disclosure of identifying information. This will apply to hearings on evidentiary issues, summary judgment motions and trial proceedings. It also will apply to motion practice where exhibits are included in the submissions.

How to Ensure that Courts Notify Claimants of the Right to File Under a Pseudonym

It is unclear how a court can enable notification to a claimant regarding the right to file the petition using a pseudonym. Options could include adding language to this effect on electronic filing forms and through outreach measures. Clerks should also be instructed to alert plaintiffs in Chapter 98 cases of their right to proceed anonymously and provision should be made for the substitution of pleadings (and changes to electronic records that list the name and address of plaintiffs if they later elect to proceed under a pseudonym).

Rules of Appellate Procedure

A similar approach is necessary in the Rules of Appellate procedure, including provision to enable a Claimant to proceed under a pseudonym as an appellate or appellee. This would need to include provision for *pro se* parties. Impacted rules would include Rule 6 and Rule 9.

TRAP Rule 9.2(c)(3) addresses documents filed under seal which are not electronically filed. This rule should apply to Chapter 98 proceedings. Rule 9.9 that provides for Privacy Protection for Documents Filed in Civil Cases. TRAP Rule 9.9(a) defines sensitive data (driver's license number, social security number, etc). The Court should consider whether to add to the list of sensitive data the identity of a claimant in a Chapter 98 proceeding. TRAP Rule 9.10 (Privacy Protection for Documents Filed in Criminal Cases) includes a provision on sealed materials that would be appropriate to be included in Rule 9.9:

(g) Sealed materials. Materials that are required by statute to be sealed, redacted, or kept confidential, such as the identity of claimants who seek confidentiality in Texas Civil Practice and Remedies Code Chapter 98 proceedings,[] must be treated in accordance with the pertinent statutes and shall not be publicly available on the internet. A court may also order that a document be filed under seal in paper form or electronic form, without redaction. The court may later unseal the document or order the filer to provide a redacted version of the document for the public record. If a court orders material sealed, whether it be sensitive data or other materials, the court's sealing order must be affixed to the outside of the sealed container if the sealed material is filed in paper form, or be the first document that appears if filed in electronic form. Sealed portions of the clerk's and reporter's records should be clearly marked and separated from unsealed portions and tendered as separate records, whether in paper form or electronic form. Sealed material shall not be available either on the internet or in other form without court order.

II. HB 2669

[HB 2669](#) by Red. Ryan Guillen requires that records from fine-only misdemeanors (other than traffic offenses) committed by children may not be disclosed to the public. According to the [Bill Analysis](#), the purpose of this bill is to avoid confusion with duplicative language in the Code of Criminal Procedure on the subject set out in Code of Criminal Procedure Article 44.2811 and Article 45.0217. This legislation does not appear to make a significant change in the protection of these records and only clarifies the circumstances when the confidentiality principles apply. Therefore we do not anticipate new rulemaking is required to implement this legislation.

Tab E



The Supreme Court of Texas

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March 29, 2021

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker L.L.P.
cbabcock@jw.com

Re: Referral of Rules Issues

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters.

Ethical Guidelines for Mediators. In the attached letter, the State Bar of Texas's Alternative Dispute Resolution Section asks the Court to add a comment to Guideline 14 of the Court's Ethical Guidelines for Mediators. The Committee should review and make recommendations.

Jury Rules. The rules in Part II, Section 10 of the Texas Rules of Civil Procedure are outdated and do not reflect current practice. The Court asks the Committee to draft amendments for the Court's consideration. The Committee should consult with the Remote Proceedings Task Force on removing any barriers to remote jury proceedings.

As always, the Court is grateful for the Committee's counsel and your leadership.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan L. Hecht".

Nathan L. Hecht
Chief Justice

Attachments

October 22, 2020

Via email: jaclyn.daumerie@txcourts.gov

Hon. Nathan L. Hecht

Hon. Eva Guzman

Hon. Debra Lehrmann

Hon. Jeffrey S. Boyd

Hon. John Phillip Devine

Hon. Jimmy Blacklock

Hon. Brett Busby

Hon. Jane Bland

Hon. Rebeca Huddle

Re: Request for Approval of Amendment to the Ethical Guidelines for Mediators by the Alternative Dispute Resolution Section of the State Bar of Texas

To the Honorable Justices of the Supreme Court of Texas:

I am writing to you in my capacity as Chair of the Alternative Dispute Resolution Section of the State Bar of Texas (the Section). The purpose of this letter is to ask the Supreme Court of Texas (the Court) to approve an amendment to Guideline 14 of the Ethical Guidelines for Mediators (the Guidelines). Guideline 14 provides as follows:

14. Agreements in Writing. A mediator should encourage the parties to reduce all settlement agreements to writing.

The following comment is the amendment to Guideline 14:

Comment. A mediator may prepare a written settlement agreement that memorializes the terms agreed to by the parties, and may suggest additional terms in a draft that are consistent with terms agreed to by the parties.

The basis of this Comment is Ethics Opinion 675 of the Professional Ethics Committee of the State Bar of Texas (the PEC), issued in August 2018. Ethics Opinion 675 answered some issues that have concerned Texas mediators for years. The Comment incorporates the key language from the PEC's opinion. This letter contains contextual information and the Section's reasons for proposing the Comment.

The Confusion Created by PEC Ethics Opinion 583 in 2008

In September 2008, the PEC issued [Ethics Opinion 583](#) in answer to the following question it received from a Texas attorney: "May a lawyer enter into an arrangement to mediate a divorce settlement between parties who are not represented by legal counsel and prepare the divorce decree and other necessary documents to effectuate an agreed divorce if the mediation results in

an agreement?” For the reasons stated in its opinion, the PEC concluded, “[A] lawyer may not agree to serve both as a mediator between parties in a divorce and as a lawyer to prepare the divorce decree and other necessary documents to effectuate an agreement resulting from the mediation. Because a divorce is a litigation proceeding, a lawyer is not permitted to represent both parties in preparing documents to effectuate the terms of an agreed divorce.”

Some attorneys acting as mediators interpreted the language of Ethics Opinion 583 expansively. They interpreted the opinion’s conclusion, which prohibited not only the mediator’s preparation of a divorce decree but also the “other necessary documents to effectuate an agreement resulting from the mediation” as a declaration that mediators should not draft a Mediated Settlement Agreement (MSA) at the conclusion of any mediation in which the parties reach an agreement.

Other attorneys acting as mediators interpreted Ethics Opinion 583 less expansively. They observed that MSAs were not within the scope of the question Ethics Opinion 583 answered. They also reasoned that assisting parties in drafting an MSA is a logical—and often expected or necessary—component of the service mediators provide to parties. They believed an expansive interpretation of Ethics Opinion 583 would impede mediators from providing a service many parties consider imperative.

In March 2016, after almost eight years of uncertainty regarding the interpretation of Ethics Opinion 583, an attorney and mediator asked the PEC to clarify the meaning of the contested language. In response, the PEC issued [Ethics Opinion 675](#) in August 2018.

PEC Ethics Opinion 675 Addressed the Controversy in 2018

Ethics Opinion 675 considered the following questions: “May a Texas lawyer, acting as a mediator, prepare and provide to the parties in the mediation a proposed written agreement that memorializes the terms of the parties’ agreement reached during the mediation? If so, may the lawyer-mediator propose terms for inclusion in the written agreement in addition to the specific terms agreed to by the parties in the mediation?”

For the reasons stated in its opinion, the PEC concluded: “A Texas lawyer, acting as a mediator, does not violate the Texas Disciplinary Rules of Professional Conduct by preparing and providing to the parties a draft of a written agreement that memorializes the terms of the parties’ settlement reached during the course of the mediation, or by suggesting additional terms for inclusion in the draft agreement.”

Reasons for Seeking Supreme Court of Texas Approval of this Comment

The Court first approved the Guidelines in 2005. In 2011, the Section submitted amendments to the Guidelines for the Court’s approval, and the Court approved the amendments. Because the issue regarding mediators’ authority to draft MSAs has concerned Texas mediators for over a

decade, the Section wishes to clarify the issue by including the relevant language of Ethics Opinion 675 in the Guidelines. Accordingly, the Section respectfully requests the Court's approval of the Comment to Guideline 14.

The Council of the Alternative Dispute Resolution Section of the State Bar of Texas, as authorized representatives of the Alternative Dispute Resolution Section, voted unanimously in favor of this Comment. The Comment has been endorsed by every statewide organization representing mediators in Texas. Those organizations are the Texas Mediator Credentialing Association, the Texas Association of Mediators, the Dispute Resolution Centers Directors' Council, the Texas Chapter of the Association of Attorney-Mediators, the Texas Mediation Trainers Roundtable, and the Center for Public Policy Dispute Resolution.

Please feel free to contact me if you have any questions regarding this request.

Respectfully submitted,



Gene Roberts, Jr., Chair
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