

86th Legislature Bill Summaries

The TxIDTF Legislative Subcommittee has compiled a summary of bills from the 86th Legislature Session that impact impaired driving and traffic safety.

To read the summaries, click on the bill hyperlink below, and you will be directed to the appropriate summary on the subsequent pages.

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HB 61**Subject: Expands Slow Down-Pull Over****Effective: September 1, 2019**

HB 61 amends Sect. 545.157, Transportation Code, Passing Certain Vehicles to expand the list of vehicles for which a driver must move to the left lane or slow down to include: TxDOT highway maintenance and construction vehicles, utility service vehicles, and solid waste and recycle vehicles (trash trucks). It also changed other section to allow those vehicles to have flashing blue lights.

HB 156**Subject: Supervision of Occupational Licenses****Effective: September 1, 2019**

HB 156 amends the Transportation Code to give a court the option to order the supervision of a person granted an occupational driver's license to be conducted by a personal bond office as an alternative to ordering supervision to be conducted by the local community supervision and corrections department. The bill authorizes a personal bond office so ordered to conduct a person's supervision to collect from the person a reasonable administrative fee of not less than \$25 and not more than \$60 per month.

HB 156 also amends the Government Code to exempt an individual ordered to pay an administrative fee to a personal bond office under the bill's provisions from the collection of an administrative fee by a community supervision and corrections department.

HB 162**Subject: Maximum License Suspensions**

Current law authorizes TxDPS to suspend licenses for one to two years automatically after a person is convicted of driving without a valid license. TxDPS refers to these as "mandatory suspensions."

Using the same authorization, TxDPS also suspends licenses when it infers that a person must have been driving with a suspended license. If a person pleads guilty, for example, to a traffic citation for failure to signal, and during the time of the offense the person did not have a valid license, TxDPS will infer that the person drove during a suspension period and will add another suspension. TxDPS refers to these as "departmental suspensions."

HB 162 limits mandatory and departmental suspensions to 90 days. This provides persons with very old citations the opportunity to escape from a never-ending cycle of license suspensions.

HB 1325

Subject: Hemp/ CBD Oil

Effective: June 10, 2019

HB 1325 is an agricultural bill that will profoundly affect possession and delivery of marijuana investigations and prosecutions. It created a new Agricultural Code Subsection F. It also changed the definition of marijuana in the Health and Safety Code. It will on the other hand have no impact on drugged driving investigations or prosecutions. HB 1325, as stated clearly in a letter from the Governor, Texas Attorney General and others, does not legalize marijuana. What it does is change the definition of marijuana from any part of the plant *cannabis sativa L*, *cannabis sativa L* with a concentration of THC not over .3%. In short this means marijuana cases of all sizes and varieties (including Penalty Group 2 edible, oil, and vape products) will require lab tests. As of this moment, TxDPS does not have such a test. They are working on it, with best estimates for beginning testing six months after a process is decided on.

Officer may no longer arrest for simply recognizing marijuana (*cannabis sativa L*), but also have probable cause the substance is not hemp. New hemp regulations include it can only be transported or grown with proper licensing (that does not yet exist) and cannot be in smokable form. Officers will need to learn the new laws and adapt their investigative technique. Prosecutors will have to obtain a presently unavailable lab test. The bill did not add funding for labs.

The bill created regulations and rulemaking authority for growing, transporting and non-consumable use of *cannabis sativa L* as hemp (under .3%THC). It also created Chapter Health and Safety Code 431 regulating over-the-counter products made from *cannabis sativa L* as hemp (under .3%THC). It also created Chapter 443 Health and Safety Code for CBD products made from *cannabis sativa L* as hemp (under .3%THC). That last section allows CBD products to be “grandfathered” (not subject to regulations created under the act at a later time), so the almost instant proliferation of CBD has already occurred. This bill followed the federal law, and there are about 40 other states that now find themselves in the same position as Texas.

HB 1631

Subject: Red Light Camera Ban

Effective: June 2, 2019

HB 1631 adds the word “prohibited” to the end of the title of Chapter 707 of the Transportation Code, which now reads “Photographic Traffic Signal Enforcement System Prohibited.” The bill then overhauls the entire chapter, which previously authorized the use of red light cameras, to ban them. The bill adds Section 707.021, which provides that “...a local authority may not issue a civil or criminal charge or citation for an offense or violation based on a recorded image produced by a photographic traffic signal enforcement system.”

One notable exception exists: If, prior to May 7, 2019, a local authority enacted an ordinance to operate red light cameras *and* entered into a contract to administer the system, the city may continue to operate the cameras under the old law until the contract’s deadline as long as that deadline was part of the contract prior to May 7, 2019. However, if the contract authorizes its own termination due to adverse legislation, it must be terminated.

While red light camera supporters believe the cameras increase traffic safety, opponents believe they are unconstitutional and violate due process. HB 1631 makes Texas the eighth state to ban red light cameras.

Red light camera traffic enforcement began in New York City in 1992. According to the Insurance Institute for Highway Safety, approximately 400 cities in the U.S. utilized red light cameras in 2018. Texas cities currently utilizing red light cameras will be losing some revenue once their cameras are turned off. Dallas, for example, collected almost \$6 million in red light camera revenue in 2018 at roughly \$75 per violation. The monies collected are not criminal fines but rather civil penalties. According to KXAN, red light cameras have generated more than \$500 million in Texas since 2007. Some of this revenue has gone directly to cities while some has gone to fund trauma centers. When HB 1631 was signed, 57 of the 61 Texas cities utilizing red light cameras immediately ended their red light camera programs. On May 3, 2019, the Texas Supreme Court dismissed a highly anticipated case (on procedural grounds) that would have ruled on the legality of red light cameras (*Garcia v. City of Willis*, No. 17-0713, 2018 Tex. LEXIS 1028).

While most Texas cities never adopted red light camera systems as part of their traffic enforcement regiment, cameras increasingly play a role in our everyday lives. HB 1631 may well be the end of red light cameras in Texas, but it is doubtful to be the end of controversies stemming from the recent emergence of camera technology.

In recent sessions there have been an increasing number of proposals calling for civil penalties to replace certain Class C misdemeanors. While HB 1631 is definitely a defeat for red light camera vendors, but it is less clear whether HB 1631 provides insight into the Legislature's collective take on civil penalties in lieu of Class C misdemeanors.

HB 2048

Subject: Repealing the Driver Responsibility Program (DRP)

Effective: September 1, 2019

After nearly two decades in existence, the Driver Responsibility Program (DRP) will be eliminated on September 1, 2019. The DRP is the program that authorizes the Department of Public Safety (DPS) to collect "surcharges" for traffic offenses occurring on or after September 1, 2003. These surcharges, which are separate from any court-imposed fines and fees, have drawn the ire of many Texans who continue to pay for their traffic offenses years after they occur. "Points" are applied to drivers' licenses which, along with the type of conviction, determine the surcharge amount. Unpaid surcharges frequently result in license suspensions.

HB 2048 repeals Chapter 708 of the Transportation Code completely, which codified the DRP. This repeal is applicable to any surcharge pending on the effective date. Thus, any outstanding surcharges on September 1, 2019 will be waived. Furthermore, DPS will be required to reinstate any license that had been suspended solely due to nonpayment of surcharges (but past DRP-related license suspensions will remain on a driver's record). Significantly, the bill repeals Section 708.105, which required citations to contain conspicuous information about surcharges and the DRP. After September 1, 2019, this language will no longer be required on citations. No refunds will be given for surcharges previously paid.

The bill also makes conforming changes to various other areas of the law to remove phrases such as "points" and "surcharges."

Despite the controversy surrounding DRP, surcharges have been a significant source of revenue for state government. In order to offset lost revenue, the Legislature voted for new revenue-producing mechanisms. The bill amends Section 542.4031(a) of the Transportation Code to increase the state traffic fine from \$30 to \$50. It also amends Section 542.4031(f) to decrease the percentage of state traffic fines that a municipality or county may retain from 5% to 4%. It amends Section 542.4031(g) to change the percentage of state traffic fines that goes to the general revenue fund from 67% to 70% and the percentage that goes to trauma centers from 33% to 30%. Additionally, the bill amends Section 10(b) of the Revised Statutes to increase the fee that automobile insurers must pay the Automobile Burglary and Theft Prevention Authority from \$2 to \$4 per policy. This cost will likely be passed on to individual policyholders. Finally, HB 2048 creates Section 709.001 of the Transportation Code, which states that, in addition to any fines prescribed in the Penal Code, drivers convicted of DWI must also pay: (1) \$3,000 for a first DWI in a three year period; (2) \$4,500 for a second DWI in a three year period; and (3) \$6,000 for any DWI where the driver's blood alcohol content was 0.15 or greater at the time of the offense. If the court, however, finds the defendant to be indigent, these additional DWI fines must be waived.

The DRP was enacted in 2003. As of January 2018, an estimated 1.4 million Texas driver's licenses were actively suspended for the nonpayment of DRP surcharges. This means that almost 10% of Texas driver's license holders currently have suspended licenses. In 2016, the DRP was projected to deliver \$331 million in revenues, but in actuality brought in less than half of that. After 16 years, the 86th Legislature officially ended the DRP era in Texas.

It should be noted that requirements for DPS to designate which offenses are to be classified as moving violations currently reside in Chapter 708. Moving violation designations are still necessary—such as the granting of driving safety courses under Article 45.0511 of the Code of Criminal Procedure—therefore, the new moving violation language is now located in Section 542.304 of the Transportation Code.

Indigence has been a topic of frequent conversation, legislation, and litigation over the last several years. In many instances, judges are not given concrete guidelines for the determination of indigence, but in other situations, there are specific qualifiers and definitions. In the new Section 709.001 of the Transportation Code regarding the waiver of DWI fines, the law specifies that a defendant must provide information establishing indigence by either providing proof through a tax return or statement of wages showing an income does not exceed 125% of the federal poverty guidelines or documentation showing that the person receives state or federal assistance such as food stamps, supplemental nutrition program, or a free or reduced-price lunch program.

Finally, note the change to the State Traffic Fine in HB 2048. The bill increases the State Traffic Fine to \$50 and reduces the percent that cities keep to 4%. Generally, court costs go into effect in January of the year following a legislative change, and despite a bill's effective date, existing Section 51.607 of the Government Code would still push any *court cost or fee* changes to January by law. In this case, however, the State Traffic Fine is clearly labeled as a fine rather than court cost or fee. Additionally, while the Comptroller has even referred to the State Traffic Fine as a court cost over the years, it was left off of the most current list of changes to court costs and fees in the *Texas Register*. What does all this mean to municipal courts? While the bulk of the court costs changes from this session don't go into effect until January 2020, it would appear that the State Traffic Fine change is effective September 1, 2019. Courts will need to carefully review their bill of costs and case management software after September. What does all this mean for future costs changes in light of the wholesale renaming of administrative fees to "fines" in SB 346? Stay tuned.

HB 2174**Subject: Opioid Reform****Effective: September 1, 2019**

HB 2174 has little impact on impaired driving except as a response to curb opioid prescription abuse. It eliminated paper prescription by January 1, 2021 (with exceptions). It limits refills and allows only 10-day supplies. It also makes several regulatory changes.

HB 2502**Subject: FSRA (Hit and Run) Punishment Enhancement****Effective Date: Sept. 1, 2019**

HB 2502 created Art. 42A.515 requiring the court impose 120 days in jail when granting Community Supervision (probation) for FSRA resulting in a death. The defendant may not get good time credit, nor credit for the time if later revoked and sent to prison. The bill does not affect the regular second-degree punishment range.

HB 2775**Subject: Restricting Pedestrians Movement around Trains****Effective: September 1, 2019**

HB 2775 amends the Transportation Code by adding Section 552.011, which states, “a pedestrian may not move in front of, under, between, or through the cars of a moving or stationary train occupying any part of a railroad grade crossing.” The bill does not explicitly create an offense.

This new law was created to increase pedestrian safety as well as safety for railway operators. The bill imposes broad prohibitions on pedestrian conduct near trains: pedestrians may not cannot come into contact with, move in front of, or move through/under any moving or stationary train (interestingly, the bill does not expressly prohibit moving behind a train). However, the bill limits its scope to railroad grade crossings. This bill gives Texas an added enforcement mechanism against impaired pedestrians, albeit a narrow one.

HB 2790**Subject: Repeal of Prima Facie Evidence of Intent to Sell Alcohol in Dry Counties****Effective: September 1, 2019**

Under current law (Section 101.32 of the Alcoholic Beverage Code), possession of more than one quart (32 ounces) of liquor, 24 twelve-ounce bottles of beer, or the equivalent is prima facie evidence of possession with intent to sell in a dry area. Intent to sell alcohol in a dry area is currently a Class B misdemeanor. HB 2790 repeals Section 101.32. Consequently, a person who lives in one of the state’s five “dry” counties may possess any amount of alcohol for his or her personal use without automatically

establishing the intent to sell in a dry area. The five “dry” counties in Texas are Borden, Hemphill, Kent, Roberts, and Throckmorton.

HB 2955

Subject: Oversight of Specialty Courts

Effective Date: September 1, 2019

Transfers oversight of specialty courts from the Criminal Justice Division of the Governor’s Office to the Office of Court Administration (OCA). CA shall provide technical assistance, coordinate with the Specialty Courts Resource Center, monitor compliance with best practices and notify the Criminal Justice Division of the Governor’s Office of non-compliance.

HB 3582

Subject: Deferred for DWI

Effective Date: Offenses after September 1, 2019

HB 3582 finally passed on the third session it was filed. The bill makes many changes, primarily amending Art 42A.102 Code of Criminal Procedure making DWI an offense eligible for deferred adjudication for the first time in almost 40 years. Like a deferred in Family Violence cases, the deferred adjudication can be used to enhance later DWI cases. The bill amends Penal Code section 49.09 to make this clear.

The case must meet certain conditions: 1) First (and most importantly) the defendant cannot hold a CDL (regardless of the vehicle driven) 2) the defendant cannot have a BAC of .15 “at the time of offense” (unlike the Class A which is “at the time analysis was performed”) and 3) the defendant did not have a prior that could be used under Penal Code 39.09 (no provable priors). While the second two conditions might be negotiable, the first is not. To allow a deferred for a CDL holder violates the interstate Compact on Commercial Drivers, puts grant and highway funding in jeopardy, and constitutes “masking” under both State and Federal Law.

HB 3582 also requires the court to impose “Interlock” when granting deferred adjudication by amending Article 42A.408. The court can waive installation charges and reduce monthly payments if the court finds the defendant does not have the ability to pay. The judge may waive the “Interlock” condition only if two conditions are met: 1) a drug and alcohol evaluation has been completed on the defendant, and the court finds the imposition of the condition is not “necessary for the safety of the community”. These findings must be on the record.

Finally, HB 3582 makes several clean up conditions concerning DWI with a Child Passenger. It allows that offense to be enhanced from a State Jail Felony to a Third-Degree Felony just like DWI. This will end prosecutors having to reduce the charge to DWI to enhance with two priors. HB 3582 also amends Art. 17.442, Code of Criminal Procedure, to require the magistrate impose “interlock” condition on any bond for DWI with a Child Passenger. The magistrate may waive the condition only if they find the condition is not “in the best interest of justice”. This waiver finding is not the same as that required for deferred.

HB 3703**Subject: Expansion of Compassionate Use Program (Medical marijuana/CBD)****Effective Date: June 14, 2019**

HB 3703 expands the two year old compassionate use program to include more illnesses and less limitations. It should have minimal effect on drugged driving violations. It removed the need for a second doctor's prescription, allowed growers to supply more than 10 patients, and added 10 new diseases including autism and terminal cancer.

SB 21**Subject: 21+ for Cigarettes/E-Cigarettes/Tobacco Purchases****Effective: September 1, 2019**

The current minimum age to purchase tobacco related products is 18, which means that high school students are able to purchase cigarettes, e-cigarettes, and tobacco products legally. Students that are 18 years of age or older are pressured to purchase these products for younger peers. SB 21 amends Chapter 161 of the Health and Safety Code in an attempt to limit the availability of tobacco to school-aged children by raising the age to purchase, attempt to purchase, or possess tobacco products to 21.

Under current law (Chapter 161 of the Health and Safety Code), a person commits a Class C misdemeanor if they sell or intend to provide cigarettes, e-cigarettes, or tobacco products to a person under the age of 18. SB 21 raises the age requirement by defining a "minor" as a person who is under 21 years of age. Additionally, the bill provides that a person may not sell or give these products without requesting valid proof of identification of persons that appear 30 years of age or younger.

SB 21 extends its definition of a minor to tobacco-related statutes of purchasing, attempting to purchase, and possessing cigarettes, e-cigarettes, or tobacco products. Thus, a fine may be assessed for anyone under the age of 21 that purchases, attempts to purchase, or possesses these products. However, SB 21 amends Section 161.252 of the Health and Safety Code to reduce the maximum fine from \$250 to \$100. The bill includes exceptions to this age requirement if (1) the individual is active military and at least 18 years old, or (2) turned 18 before September 1, 2019. Individuals convicted of an offense under this Section may apply for expunction once they reach 21 years of age.

SB 21 does not amend the requirement of retailers and employers of those who sell cigarettes, e-cigarettes, or tobacco products to give notice to their employees of the age requirements for purchase. It does not amend the requirement for retailers to display signs regarding the minimum age for purchase of these products. It does, however, require that these signs be updated to reflect the change in age requirements.

SB 284**Subject: Discipline of Forensic Toxicologist****Effective Date: September 1, 2019**

SB 284 amends Art. 38.01 Code of Criminal Procedure which creates and controls the Forensic Science Commission and moves the appeal by a Forensic Analyst from the State Office of Administrative Hearings (the general administrative hearings entity) to the Judicial Branch Certification Commission.

SB 306**Subject: Release by a Peace Officer of Certain Individuals Suspected of Public Intoxication****Effective: April 25, 2019**

SB 306 amends current law relating to a police officer's release of certain individuals suspected of the offense of public intoxication (PI). Under current law, peace officers and other emergency responders have limited options for dealing with publicly intoxicated people. Individuals suspected of public intoxication can be arrested, or they can be released into the care of a responsible adult, or to a treatment facility for chemical dependency. However, these options are limited by practical realities. Frequently there is no responsible adult to allow the release of a PI suspect and treatment centers are inaccessible. As a result, most PI suspects end up being arrested and booked into jail or admitted to an emergency room. But, in certain parts of the state, jail space is limited. Furthermore, jail can be expensive and generates administrative duties for jail staff and law enforcement. SB 306 addresses these concerns by amending Article 14.031 of the Code of Criminal Procedure (Public Intoxication).

Article 14.031(a), as amended, authorizes a peace officer to release an adult PI-suspect under certain conditions if the officer believes detention in a penal facility is unnecessary for the protection of the individual or others. To satisfy these conditions, the individual must either: (1) be released to the care of an adult who agrees to assume responsibility for the individual; (2) verbally consent to voluntary treatment for substance use in a treatment facility licensed and approved by the Health and Human Services Commission; or (3) verbally consent to voluntary admission to a facility that provides a place for individuals to become sober under supervision (a.k.a., a sobering center). Article 14.031(c) contains conforming changes.

Similar to HB 3540, SB 306 does not curtail the authority of peace officers to make arrests or charge individuals with public intoxication. Rather, it provides peace officers an additional option in lieu of transporting people suspected of public intoxication to a jail or an emergency room. Sobering centers are still currently considered a novelty. They are known to exist in Houston, Austin, and San Antonio. While proponents tout sobering centers as a better alternative to jail that have already saved Texas tax payers millions of dollars, it remains to be seen whether they are just a metropolitan trend or a concept that will be widely adopted throughout Texas. By providing statutory authority in state law, SB 306 makes it more likely that other cities and counties will explore the possibility of a sobering center. At the same time, sobering centers have the potential to raise new legal questions for all courts with criminal jurisdiction.

SB 340**Subject: Officer Narcan Program****Effective: June 10, 2019**

SB 340 created Sect. 772.0078 Government Code to create the Opioid Antagonist Grant Program with in the Criminal Justice Division of the State to provide peace officers likely to be in contact with opioid overdoses with NARCAN and training for how to use it.

SB 346**Subject: Consolidated State and Local Court Costs****Effective Date: January 1, 2020**

As part of the consolidation of court costs, the \$60 court costs collected on alcohol and drug cases that was used to fund treatment courts is repealed and replaced with an allocation of 1.0377% of the consolidated state fund and 23.8095% of the consolidated local fund to be used only to fund specialty courts.

SB 1125**Subject: Video Teleconference testimony for Forensic Analyst****Effective Date: September 1, 2016 (for trials after that date, not offenses after that date)**

SB 1125, in an effort to help keep Forensic Analysts in the lab and off the road, created Art. 38.076 Code of Criminal Procedure which allows Forensic Analysts to testify by teleconference if: the court and parties agree, scheduled and coordinated in advance, and documents can be sent back and forth during testimony. Prosecutors should be strongly urged to help this new tool make a difference.

SB 1147**Subject: Medication Assisted Treatment****Effective Date: September 1, 2019**

If, based on an alcohol and substance abuse evaluation, the judge determines that the defendant would likely benefit from Medication Assisted Treatment as approved by the FDA for alcohol dependence, the judge may require the defendant to submit to an evaluation by a physician to determine whether the defendant would benefit from that course of treatment. The defendant is entitled to refuse to participate in MAT after the evaluation and the judge cannot require participation.