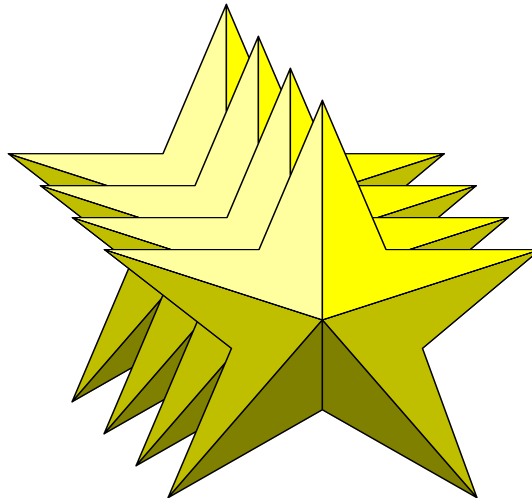
TEXAS DEPARTMENT OF CRIMINAL JUSTICE
COMMUNITY JUSTICE ASSISTANCE DIVISION

LEGISLATION AFFECTING Community Justice Assistance Division (CJAD)

and

Community Supervision and Corrections Departments (CSCDs) *80th Legislative Session*



REVISED August 2007

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PART I – LEGISLATION RELATED TO CJAD AND CSCDs

JESSICA LUNSFORD ACT

HB 8

Author: Riddle /et al.
Sponsor: Deuell

AMENDS

TEX. CODE CRIM. PROC. arts. 12.02, 37.07(4), 37.071(2), 44.251(a)
TEX. GOV'T CODE § 499.054, 508.145, 508.149(a)
HEALTH & SAFETY CODE § 841.082
TEX. PENAL CODE § 1.07(a), 12.42(c), 12.50, 20.04(d), 38.05, 43.25

ADDS

TEX. CODE CRIM. PROC. art. 2.021

SUMMARY

This law enacts tougher penalties on sexual predators who target children. In addition, it adds sexual assault under Penal Code § 22.011(a)(2); aggravated sexual assault under Penal Code § 22.021(a)(1)(B); and indecency with a child under Penal Code § 21.11(a) to those offenses for which there is no statute of limitations. This law also imposes a 25-year minimum sentence for sexually violent offenses against children under 14, eliminates eligibility for parole for certain sex offenders and makes a second conviction of a sexually violent offense against a child under 14 a capital felony (death penalty on the table). It creates a new crime called "continuous sexual abuse of a young child or children," whereby an offender over 17 is guilty of this crime if he commits more than one violent sexual act against a child under 14 during a period of 30 or more days. It also lists two new offenses for which sex offender registration is required: 'online solicitation of a minor' and 'continuous sexual abuse of a young child or children.' The law requires that offenders committed under the sexually violent predator statutes wear global positioning systems (GPS), extends the statute of limitations for sexually violent offenses against children under the age of 14 until 20 years past his/her 18th birthday and clarifies that harboring a sex offender in violation of registration is an offense punishable by up to a third degree felony.

EFFECTIVE DATE

1 September 2007

IMPACT

Eventually, this law will have an impact upon capacity as sex offenders will be incarcerated [some on Death Row; executions may eventually increase] for longer periods and fewer will be eligible for mandatory supervision or parole. In addition, Classification and Records will be required to reprogram the mainframe to identify and include new offenses not eligible for mandatory supervision. Ultimately, because the capacity of the system will be impacted, there will be increased costs. In addition, the Sex Offender Treatment Program will require additional funding, but because the provisions apply prospectively, not for a long while.

BURDEN OF PROOF IN REVOCATION HEARING

HB 312

Author: Turner
Sponsor: Whitmire

AMENDS

TEX. CODE CRIM. PROC. § 42.12(21)(c)

SUMMARY

This law permits consistency with recent court opinions in placing squarely on the shoulders of the state the burden to prove that an offender was able to pay and did not pay fees as ordered by the court. In addition, this law ensures that an offender's inability to pay court costs due to economic constraints does not result in the extraordinary and costly sanction of prison.

EFFECTIVE DATE

1 September 2007

IMPACT

This law may result in fewer revocations.

RELEASE OF STATE JAIL FELONS ON MRIS (Medically Recommended Intensive Supervision)

HB 431

Author: Madden /McClendon
Sponsor: Whitmire

AMENDS

TEX. CODE CRIM. PROC. § 42.12(15)
HEALTH & SAFETY CODE § 614.0032(a)

ADDS

TEX. CODE CRIM. PROC. § 42.12(15)(i-j)
HEALTH & SAFETY CODE § 614.0032(a)

SUMMARY

This law authorizes judges to release certain state jail felony defendants into MRIS and sets forth provisions requiring the TCOOMMI (Texas Correctional Office on Offenders with Medical or Mental Impairments) to periodically identify state jail defendants suitable for early medical release. Prior to HB 431's enactment, district judges lacked clear statutory authority to consider the release of persons confined in state jails and TDCJ was hamstrung to develop a consistent process to ensure that eligible state jail confines were reviewed and considered for early medical release as it had no clear statutory authority.

EFFECTIVE DATE

1 September 2007

IMPACT

The process allowed by this new law maximizes the benefits of medical release and will reduce medical costs.

CONFIDENTIALITY OF PERSONAL INFORMATION

HB 455

Author: Rodriguez
Sponsor: Whitmire

AMENDS

TEX. GOV'T CODE §§ 552.117(a), 552.1175(a),
TEX. TAX CODE § 25.025(a)

SUMMARY

This law amends the above-referenced statutory provisions to include officers and employees of CSCDs as those persons whose personal information (e.g., home address and phone number, Social Security number, family members) is confidential and not subject to disclosure under the Public Information Act, § 552.021, Tex. Gov't Code. The provision is the doppelganger of that in § 552.117, exempting all state employees' information from disclosure.

EFFECTIVE DATE

1 September 2007

IMPACT

There is no foreseen notable fiscal impact.

COLLECTION AND AMOUNT OF RESTITUTION

HB 485

Author: Van Arsdale
Sponsor: Hegar

AMENDS

TEX. PENAL CODE § 32.41(e)

TEX. CODE CRIM. PROC. §45.041(b)

ADDS

TEX. CODE CRIM. PROC. § 45.041(b-1)

SUMMARY

When a certain law enforcement agency's peace officer executes a warrant against an offender arrested for writing a bad check, this law allows that law enforcement agency (in addition to prosecutors' offices) to collect up to $5,000.00 in restitution from the offender. The goal of this new law is to significantly reduce the time that an injured proprietor or business must wait to be reimbursed for the bad paper.

EFFECTIVE DATE

1 September 2007

IMPACT

Optimistically, the cost of this law will be minimal, as staffing is currently in place to handle other fiscal transactions. Training and equipment may present some initial fiscal impact.

OPERATION AND FUNDING OF DRUG COURT PROGRAMS

HB 530

Author: Madden / Rodriguez / Pena / Hodge / Woolley
Sponsor: Seliger

AMENDS

TEX. HEALTH & SAFETY CODE §§ 469.001,

469.002, 469.003, 469.004, 469.006 and 469.007

ADDS

TEX. HEALTH & SAFETY CODE §§ 469.0025, 469.005, 469.008 and 469.009
TEX. CODE CRIM. PROC. art. 102.0178
TEX. GOV'T CODE CHAPTER 54, SUBCHAPTER GG, §§ 54.1801, *et seq.*
TEX. GOV'T CODE § 102.0215

SUMMARY

The impetus behind the passage of this bill is that drug court programs across the country are creating low recidivism rates in their participants at a much lower cost than incarceration of those same offenders. Generally, this new law creates a $50.00 court fee to fund the drug courts in Texas, mandates drug courts in counties with populations over 200,000, outlines the qualifications/duties/powers of the new drug court magistrates and authorizes other types of specialized courts. It ties state and federal funding to the counties' compliance with the new program guidelines. Specifically, the law defines the drug court program and lays out procedures for certain defendants. It dictates that the Criminal Justice Division of the Governor's Office will have oversight authority over the program. The law includes discrete provisions on the new fee structure, certain mandatory programs, regional (optional) programs, the magistrate's power to suspend or dismiss the community service requirement, the magistrate's power to order an occupational license to be issued and the new fee structure. Finally, the Legislature added subchapter GG of Chapter 54 of the Government Code entitled 'Magistrates for Drug Court Programs'. Subchapter GG includes definitions, the procedures in appointing a drug court magistrate, the magistrate's qualifications and compensation and the magistrate's judicial immunity. Subchapter GG addresses what proceedings may be referred (by a criminal court judge) to the new drug courts, the order of referrals and the powers of the magistrates, if not expressly limited by the referring judge.

EFFECTIVE DATE

15 June 2007

IMPACT

Because this new law has written into it a new revenue source that is in addition to the current biennial $1.5 million drug court funding available through the Criminal Justice Division of the Governor's Office, it is unlikely that it will cause negative fiscal impact. In fact, it could potentially result in noteworthy cost savings, as more offenders will be diverted from incarceration because they have participated in the drug court programs. In addition, local governments will experience an increase in revenue as a result of the new $50.00 court fee payable by the offender.

SHARING OF INFORMATION AMONG STATE AGENCIES

HB 921

Author: Delisi
Sponsor: Ellis

AMENDS

TEX. GOV'T CODE § 2054.096(a)

ADDS

HEALTH & SAFETY CODE, §§ 113.001 through 113.014 (Subchapter A)

SUMMARY

Presently, the lack of useful interaction and data sharing among state agencies creates an impediment to cost-effective governance and to the timely and adequate provision of state services to residents. This law establishes an inter-agency information sharing pilot program and creates the Texas Health Care Policy Counsel (THCPC). The law requires the THCPC to expound, in concert with the Department of Information Resources (DIR), criteria for the secure electronic sharing of information between the participating agencies.

EFFECTIVE DATE

1 September 2007

IMPACT

Because this new law creates the THCPC and requires that new procedures be created for the sharing of information between participating agencies, there will be some organizational and staffing costs. Over time, however, the THCPC will become cost-effective in having streamlined the procedures for sharing information and data such that fewer bureaucracies will be required to be involved.

RELEASE OF CERTAIN STATE JAIL FELONS ON COMMUNITY SUPERVISION

HB 1610

Author: Madden
Sponsor: Whitmire

AMENDS

TEX. CODE CRIM. PROC. § 42.12(15)(a)(1)

SUMMARY

Because the current law requires first-time state jail felony drug offenders to receive community supervision (CS) instead of incarceration so that they may receive treatment, it results in long waiting lists for treatment in many counties. The offender often loses the opportunity to receive CS/treatment and becomes incarcerated anyway. HB 1610 is meant to put an end to increased recidivism of a state jail felon while said offender is on CS and awaiting treatment. This law authorizes a judge who sentences a certain state jail felony drug offender (whose sentence has been reduced to a Class A misdemeanor) to suspend the sentence and place the offender on CS, saving resources and potentially 'saving' the offender from his/her drug problem connected with the crime, as well as saving him/her from incarceration.

EFFECTIVE DATE

1 September 2007

IMPACT

This new law may result in fewer offenders being sentenced to state jail, but because the court still has the discretion on sentencing, it is truly speculative to predict the impact on TDCJ-CJAD.

OPERATION OF A SYSTEM OF COMMUNITY SUPERVISION

HB 1678

Author: Madden / Turner / Haggerty / McReynolds / Hochberg
Sponsor: Whitmire

AMENDS

TEX. CODE CRIM. PROC. §§ 42.03(2)(a), 42.12(3)(b), 42.12(4)(d), 42.12(15)(h)(2-3), 42.12(16)(a-b), 42.12(20), 42.12(22)(c), 42.12(23)(b)

ADDS

TEX. LOC. GOV'T CODE § 132.002(f)

SUMMARY

The adult incarceration populations are steadily increasing and will exceed their operating capacity by more than 10,000 on or before 2010. Direct incarceration court sentences and probation term lengths are contributing to the problem. The longer probation terms increase the probability that the offenders will violate their probation in both small and large ways, in spite of their making successful efforts to reintegrate with the community. This law reduces the number of years that certain defendants may be placed on CS and requires judges to review certain offenders' records after a set period in order to consider whether to reduce or to terminate early an offender's period of CS. It also allows the judge to extend an offender's CS upon a showing of good cause. Further, it eliminates the minimum number of hours the judge can order the offender to perform community service. Additionally, HB 1678 requires a judge to give an offender credit for time served in a treatment program or other court-ordered residential program or facility if the offender successfully completes the program, in addition to the *alternative* time credit for pre-sentencing detention.

EFFECTIVE DATE

1 September 2007

IMPACT

This law will likely result in offenders spending less time in prison after revocation, because he/she will get credit for time spent in successfully completing a court-approved treatment program. In addition, the number of offenders actually on CS will ultimately decrease because third degree felons will spend no more than five (5) years on CS and because some offenders' CS will be reduced or terminated early after review by the court.

SEX OFFENDER TREATMENT AND CIVIL COMMITMENT

HB 2034

Author: England
Sponsor: Shapiro

AMENDS

TEX. OCC. CODE §§ 110.001(6-7), 110.158, 110.301(a)
TEX. HEALTH & SAFETY CODE §§ 841.002(1, 5), 841.004, 841.085, 841.147

ADDS

TEX. OCC. CODE §§ 110.001(8), 110.002, 110.301(c)
TEX. HEALTH & SAFETY CODE §§ 841.002(3-a), 841.061(g)
TEX. CODE CRIM. PROC. art. 13.315

REPEALS

TEX. OCC. CODE § 110.001(5)

SUMMARY

This law expands the definition of a sex offender to include a person who has been convicted of, adjudicated to have committed or awarded deferred adjudication for an offense that is based on sexually motivated conduct, as defined in the civil commitment of sexually violent predator statute, Health & Safety Code, sec. 841.002. In addition, this law addresses the issues created in HB 2036, 79th Legislature with respect to sex offender treatment providers, and clarifies the qualifications, licensure and other issues with respect to the providers. The sex offender treatment provider must be licensed by the state, the Council on Sex Offender Treatment and under this chapter in order to treat sex offenders at the behest of the state, except a physician whose treatment is limited to prescribing medication to the sex offender or a provider giving only adjunct therapy. This law also allows that physicians who treat sex offenders for other psychiatric issues, e.g., bipolar disorder, need not be licensed by the Council.

EFFECTIVE DATE

1 September 2007

IMPACT

This new law could assist TDCJ and CSCDs in procuring treatment services in less populated regions of the state, because a licensed professional could assist the sex offender with his/her other psychiatric issues without fear of reprisal from the Council. It also adds types of licenses that can qualify for a sex offender treatment license, increasing the number of persons who may become certified and helping with staffing issues.

EXPULSION AND PLACEMENT IN ALTERNATIVE SETTINGS OF PUBLIC SCHOOL STUDENTS WHO COMMIT FELONIES

HB 2532

Author: Patrick / Smith, Todd
Sponsor: Shapiro

AMENDS

TEX. EDUC. CODE § 37.0081
TEX. CODE CRIM. PROC. §§ 15.27(b-c)

ADDS

TEX. EDUC. CODE § 37.0082
TEX. EDUC. CODE CH. 37, SUBCHAPTER I
TEX. CODE CRIM. PROC. §§ 15.27(a-1) and (j)

REPEALS

TEX. CODE CRIM. PROC. § 15.27(d)

SUMMARY

Currently, non-violent and violent juveniles are interacting daily because school administrators are prohibited from expelling some students unless they commit a crime on the school grounds. This law authorizes a school district's board of trustees to expel a student and place him/her in an alternative setting if the student is accused with engaging in conduct defined as a Title 5 felony offense (Offenses Against the Person). The student may be expelled not only if he/she commits the crime on school grounds, but also if he/she is charged with a

Title 5 felony occurring off school property. This law, in amending Chapter 37 of the Education Code, outlines the procedures required in expelling a student under this chapter and in his/her placement. It also addresses the placement of juvenile sex offenders. It changes the previous ‘prompt’ notification time to ‘within 24 hours’ when a student is placed in a new school or program or returned to his/her school after action under Chapter 37.

EFFECTIVE DATE

1 September 2007

IMPACT

Some of the policies and procedures in the CSCDs may need to be revised. All CSOs and parole officers need to be advised regarding the new notification time and the other new procedures in place following the expulsion of the student.

ISSUANCE BY A COURT OF A CAPIAS OR A CAPIAS PRO FINE

HB 3060

Author: Pena
Sponsor: Watson

AMENDS

TEX. CODE CRIM. PROC. §§ 17.19(b-c), 23.01, 23.031, 23.04, 23.05(a), 43.03(d), 43.04, 43.05, 43.06, 43.07, 43.091, 45.045(a), 45.046(a), 102.011(a)

ADDS

TEX. CODE CRIM. PROC. §§ 15.18(d), 43.015, 43.021, 43.03(e), 43.09(n), 45.049(g), 45.0491

REPEALS

TEX. CODE CRIM. PROC. §§ 43.09(m), 43.12

SUMMARY

Presently, the Code of Criminal Procedure only expressly authorizes municipal and justice courts to issue a capias pro fine (a writ ordering the arrest of a criminal defendant who has failed to pay court-ordered fines, fees, etc.). This law authorizes district and county-level courts with criminal jurisdiction to issue capias pro fine, as well. It also clarifies the differences in the various capias issued in a criminal trial.

EFFECTIVE DATE

1 September 2007

IMPACT

This law will cure the limited capias issuance problem we had previously and allow for all of the courts with criminal jurisdiction to order necessary writs in their cases.

PLACEMENT AND NOTIFICATION REQUIREMENTS FOR PUBLIC SCHOOLS OF STUDENTS TRANSFERRING OR RETURNING TO SCHOOL

SB 6

Author: Zaffirini
Sponsor: Pena

AMENDS

TEX. GOV'T CODE § 414.005
TEX. PENAL CODE §§ 3.03(b), 33.021(f)

ADDS

TEX. CODE CRIM. PROC. §§ 15.27(a-1) and (j), TEX. CODE CRIM. PROC., Title 1, Chapter 24A

TEX. EDUC. CODE, Subchapter I
TEX. GOV'T. CODE § 402.0281

REPEALS

TEX. CODE CRIM. PROC. § 15.27(d)

SUMMARY

Currently a parole or probation office having jurisdiction over a student who is a sex offender is required to notify the superintendent if the student transfers schools or is removed from the school and subsequently returns. This bill adds a CSCD, a juvenile probation department, TDCJ's pardons and paroles division and the Texas Youth Commission to the list of persons required to notify the superintendent within 24 hours of learning of the arrest or referral, or of the conviction or deferred adjudication of an offender accused of a sex offense.

EFFECTIVE DATE

1 September 2007

IMPACT

School officials will be notified of a student's presence more quickly and by a wider range of agencies, which may result in closer supervision at the school and a safer environment. This bill may present some staffing costs.

PROVISION OF INTERVENTION OR COUNSELING SERVICES TO FAMILY VIOLENCE OFFENDERS

SB 44

Author: Nelson / Shapiro
Sponsor: Gonzalez Toureilles

AMENDS

TEX. CODE CRIM. PROC. §§ 42.23(14)(c), 42.141(1)(7), 42.141(3-4)
TEX. FAM. CODE § 85.022(a), 85.024(a)

ADDS

TEX. CODE CRIM. PROC. §§ 42.23(14)(c-1, 2), 42.141(4A)
TEX. FAM. CODE § 85.022(a-1)

SUMMARY

Currently, judges refer defendants to battering intervention and prevention programs that may or may not be accredited by CJAD. This law codifies an accreditation process (mostly already in use) for these programs and requires judges to refer defendants in cases of family violence to a program accredited by CJAD.

EFFECTIVE DATE

1 September 2007

IMPACT

TDCJ and judges can be certain that family violence offenders are attending battering

intervention and prevention programs that meet a set of standards required by CJAD and that have been through an accreditation process. The goal of the bill is that the treatment for the offenders will be more consistent and more successful.

IMPACT

This law will ultimately have the effect of fewer revocations back to prison, better service between the CSOs and their clients and better integration of the offenders into society.

PRISON DIVERSION PROGRESSIVE SANCTIONS PROGRAM

SB 166

Author: West, Royce
Sponsor: Madden

ADDS

TEX. GOV'T CODE § 509.016

SUMMARY

This law reinforces the progressive sanctions model created by SB 938, in the 79th Legislature. While that bill did not pass, CJAD adopted the recommendations made therein and got general funding in the 80th Legislature. This law targets medium- and high-risk offenders for increased supervision by making more resources available to departments with documented higher-than-average revocation rates. Those additional resources could be used to help lower the caseloads of CSOs, who are then able to provide a higher level of supervision to assigned cases. This law builds upon CJAD's progressive sanctions model by working with CSOs and improving the coordination between the CSCDs and the courts.

EFFECTIVE DATE

15 June 2007 (Immediately)

SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

SB 228

Author: Harris
Sponsor: Eiland

AMENDS

TEX. FAM. CODE §§ 102.009(d), 105.006(g), 108.001(a), 108.004, 151.001(b), 153.3161, 154.006(a), 154.127, 154.186(a-b), 155.301(c), 156.105, 156.401(b), 156.409(a), 157.005(a), 157.065(a), 157.102, 157.268, 157.105(a, c), 157.212, 157.216(a-b), 157.263(c), 157.264(b), 157.269, 157.313(a, c, e), 157.317(a-1), 157.318(a), 157.324 157.327(b), 157.330, 158.502, 158.506(c), 158.507, 159.102(23), 160.102(6), 160.704(a), 160.706, 160.707, 231.006(b), 231.012(a-c), 231.103(f), 231.202, 232.001(1-3), 232.002, 232.004(a), 232.006(b-c), 232.014, 234.001(c), 234.006, 234.008(a)
TEX. LAB. CODE §§ 207.093(a, d)
TEX. TRANSP. CODE § 501.002(9)

ADDS

TEX. FAM. CODE §§ 101.0255, 108.001(d), 153.015, 154.131(f), 156.409(a-1 – a-3), 157.313(f), 157.327(f), 158.214, 158.215, 158.506(d), 160.7031, 161.206(d), 231.103(g-1), 232.0022, 232.0135, 233.019(d), 234.012, 234.105

REPEALS

TEX. FAM. CODE §§ 231.006(a-1), 231.011, 231.103, 231.310, 234.008 (c-e)
TEX. FAM. CODE CH. 235

SUMMARY

This law makes technical corrections to and clarifications in certain provisos of the Family Code relating to the establishment and enforcement of child support obligations, as well as to associated provisions in the Government Code, Transportation Code and Labor Code. Further, this law calls for the enhancement of administrative processes available to the Title IV-D agency under the Family Code for the enforcement of child support obligations, specifically by imparting an administrative process for the denial of license renewal under Chapter 232 (Suspension of License) of the Family Code. This bill also presents an administrative civil penalty for the failure of an employer to make reports to the state directory of new hires, as mandated by federal and state law.

EFFECTIVE DATE

1 September 2007

IMPACT

This law is meant to make the enforcement of child support obligations more organizationally feasible and gives enforcement better teeth in the administrative process for the denial of license renewal to those not in compliance with the enforcement. In future, this law should assist in increasing the number of non-custodial parents with professional licenses, as well as others, who pay their child support obligations.

USE OF TECHNOLOGY TO CONDUCT MENTAL HEALTH PROCEEDINGS

SB 778

Author: Harris
Sponsor: Truitt

AMENDS

TEX. HEALTH & SAFETY CODE § 573.012(a)

ADDS

TEX. HEALTH & SAFETY CODE §§ 573.012(h-i), 574.203

SUMMARY

Currently, the law requires county and other personnel to incur significant travel expense and time away from the office to attend re-commitment hearings. [Specifically, Tarrant County personnel to Wichita Falls.] This law allows the use of secure, two-way electronic communication equipment for certain court proceedings, including mental health commitment hearings.

EFFECTIVE DATE

1 September 2007

IMPACT

This law will have a significant positive impact upon the counties' resources with the reduced travel expenses and less time away from local duties.

EXCHANGE OF INFORMATION AMONG AGENCIES RELATED TO THE TEXAS CORRECTIONAL OFFICE ON OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS (TCOOMMI)

SB 839

Author: Duncan
Sponsor: Madden

AMENDS

TEX. HEALTH & SAFETY CODE §§ 614.013(a, c), 614.015, 614.016(a), 614.017
TEX. GOV'T CODE § 411.042

ADDS

TEX. HEALTH & SAFETY CODE § 614.001(3-a)

SUMMARY

Current law provides that law enforcement agencies and mental health communities may share medical information with each other for the continuity of care of physically or mentally ill offenders in the criminal justice system. This law clarifies precisely which agencies can share the information [changing previous to successor agencies and adding HHSC, DIR and DPS to those whom can share such information] and describes the temporal ('real-time') guidelines as well as the confidentiality rules.

EFFECTIVE DATE

1 September 2007

IMPACT

The 'real-time' sharing of information may present a problem in technology and/or personnel and thus initially have a negative fiscal impact.

PROCEDURES REGARDING CRIMINAL DEFENDANTS WHO ARE OR MAY BE PERSONS WITH MENTAL ILLNESS OR MENTAL RETARDATION

SB 867

Author: Duncan
Sponsor: Pena / Naishtat / Davis, John

AMENDS

TEX. CODE CRIM. PROC., arts. 16.22, 46B.009 and 46B.010, 46B.072, 46B.073(c-d), 46B.075, 46B.076, 46B.077, 46B.078 through 46B.083, 46B.084(a) and (b-1), 46B.085 and 46B.086, 46B.102, 46B.103, 46B.104, 46B.106, 46B.107, 46B.108, 46B.109, 46B.113, 46B.117
46B.171
TEX. HEALTH & SAFETY CODE § 574.107

ADDS

TEX. CODE CRIM. PROC. art. 46B.0095

REPEALS

TEX. CODE CRIM. PROC. art. 46B.084

SUMMARY

This law was enacted in large part to correct the issues created by SB 465 in the 75th Legislature, which provided the authority for civil courts with probate jurisdiction to order forensic patients to take medications.

Unfortunately, SB 465 did not expressly authorize these probate courts to charge the county that committed a defendant to a hospital in the county in which the probate court is located for the costs concomitant with the medication hearings. Thus, SB 465 placed an excessive and unwarranted burden upon those counties that have state hospitals. This law is intended, in making several changes to the Code of Criminal Procedure and the Health and Safety Code, to free bed space in the state mental hospitals and to reduce the burden on the probate courts.

EFFECTIVE DATE

1 September 2007

IMPACT

Expectantly, this law will spread the costs of treating, including medication, forensic patients over the several counties. In addition, it should free some bed space in the state mental hospitals for forensic patients/offenders, relieving the burden on both TDCJ and the probate courts.

LIMITATION ON JUDGE-ORDERED COMMUNITY SUPERVISION

SB 877

Author: Seliger
Sponsor: Vaught

AMENDS

TEX. CODE CRIM. PROC. art. 42.12(3g)(a)
TEX. GOV'T CODE § 508.145(d)

SUMMARY

Under the present law, first degree injury to a child[1] is not excepted under the Limitation on Judge Ordered Community Service Supervision statute and, consequently, these offenders often serve derisory amounts of their sentences. This law adds First Degree Injury to a Child to the list of offenses for which a judge may not give the defendant community supervision, in order that these violent offenders will be required to serve more of their sentence.

EFFECTIVE DATE

1 September 2007

IMPACT

It is the intention of this law to make sure to disallow violent child abusers from serving minimum amounts of their sentences; thus, the positive impact to the community is that the court, in its discretion, will keep more violent offenders away from community supervision for an extended period. Conversely, it will result in an increased number of offenders incarcerated for longer periods.

CONTINUATION AND FUNCTIONS OF THE TEXAS BOARD OF CRIMINAL JUSTICE, TDCJ, CORRECTIONAL MANAGED HEALTH CARE COMMITTEE, BOARD OF PARDONS AND PAROLES

SB 909

[1] Penal Code § 22.04 reads that a person who knowingly or intentionally causes serious bodily injury or serious mental deficiency, impairment or injury to a child commits a first degree felony offense. Section 22.04 covers the most serious cases of child abuse.

Author: Whitmire
Sponsor: Madden / Kolkhorst / Flynn / Hochberg / Cook, Byron

AMENDS

TEX. CODE CRIM. PROC. arts. 15.19(a), 15.20, 15.21, 42.09(8)(a), 42.12(5)(b), 42.12(15)(a)(1), 42.12(19)(a-b), 61.06(c)
TEX. GOV'T CODE §§ 76.004(a), 492.012, 494.008(b), 497.006(b-c), 501.132, 501.137, 501.148(a), 501.150, 501.151(a-b), 508.033(a-d), 508.036(b), 508.117(g)(1), 508.144(a-b), 508.155(c)
TEX. HEALTH & SAFETY CODE § 614.0032
TEX. OCC. CODE § 110.302(c)
TEX. TRANSP. CODE § 721.003(a)

ADDS

TEX. CODE CRIM. PROC. arts. 42.12(15)(i) through (k), 42.12(16)(f), 42.12(19)(g)
TEX. GOV'T CODE CH. 328
TEX. GOV'T CODE §§ 76.004(h), 492.0125, 492.015, and 492.016, 493.0151, 493.026, 493.027, 494.008(b-1), 495.025, 495.026, 499.072, 501.011, 501.059, 501.064, 501.1325, 501.153 through 501.155, 507.028, 508.033(f), 508.036(e), 508.053 through 508.055, 508.1131, 508.144(d) through (f), 508.1445, 508.1555, 659.0155
TEX. HUM. RES. CODE § 32.024(dd)
TEX. OCC. CODE § 110.164

SUMMARY

The Sunset Act made TDCJ and the Correctional Managed Health Care Committee (CMHCC) subject to abolishment on 1 September 2007, unless continued by the Legislature. The Board of Pardons and Paroles was not exposed to abolishment, but was still subject to Sunset review at the same time as TDCJ. Upon its review, the Sunset Commission recommended the continuation of TDCJ and CMHCC and suggested several changes in the law to enact its recommendations. The changes made in this legislation endeavor to provide for: 1) better information to policy makers regarding the criminal justice system; 2) improved provisions for better parole decision making; 3) *increased deliberations of early termination of parole and probation*; and, 4) greater regulation/oversight and transparency of correctional health care. The changes in the law include the following: 1) including the Texas Uniform Health Status Update form on the list of documents submitted when a defendant enters TDCJ; *2) authorizing district judges to permit the early release of state jail confines who pose no threat to public safety due to their medical conditions*; *3) requiring judges to consider releasing eligible offenders from probation early and establishing a process to recommend early termination of community supervision;* 4) clarifying requirements for removal of criminal street gang database information; *5) requiring judges to conduct a competitive hiring process for CSCD Directors; 6) establishing a Criminal Justice Legislative Oversight Committee to provide information and analysis regarding the state's criminal justice system;* 7) requiring TDCJ to use a dynamic risk assessment tool for sex offenders; 8) prohibiting certain interagency communications; 9) clarifying when TDCJ may provide assistance to law enforcement entities; 10) requiring TDCJ to provide screening and education regarding fetal alcohol exposure during pregnancy; 11) requiring TDCJ to make information about the offender healthcare system readily available to inmates; 12) expanding TDCJ's authority to monitor the quality of health care provided to offenders; 13) requiring CMHCC to make information about offender healthcare services readily available to the public; 14) expanding conflict of interest and employment

restrictions applicable to the Parole Board to include parole commissioners; 15) requiring the Board of Pardons and Paroles to maintain a separate budget; 16) changing the definition of close relative of a deceased victim to include nearest relative by consanguinity; 17) establishing a process to release eligible, low-risk offenders from parole early; *18) prohibiting exemptions from licensing requirements for TDCJ sex offender treatment providers; 19) allowing a judge discretion to order a defendant to make a donation to a nonprofit food bank or food pantry in lieu of community service hours*; and, 20) requiring TDCJ to study the operation and maintenance of different types of electronic monitoring equipment.

EFFECTIVE DATE

15 June 2007

IMPACT

Administratively, TCOOMMI will have to set up a process for MRIS for state jail confinees. In addition, because a program regarding the testing for fetal alcohol syndrome will need to be developed, additional staffing may be required for TCOOMMI and the Rehabilitation and Reentry Programs Division (RRPD). The CMHCC contract may need to be amended to include the provisions in this law concerning the monitoring of offenders' health care.

ATTENDANCE BY A QUORUM OF A GOVERNMENTAL BODY UNDER THE OPEN MEETINGS LAW

SB 1306

Author: Wentworth
Sponsor: Goolsby

AMENDS

TEX. GOV'T CODE § 551.001(4)

SUMMARY

Previously, the attendance of a quorum of a governmental body at a social function unrelated to the business conducted by the body, or at a regional, state or national convention or workshop was not considered a meeting under the Texas Open Meetings Act, so long as no formal action was taken by the body and any discussion of public business was incidental to the social gathering. This law seeks to clarify the existing law to include ceremonial events and press conferences within the exceptions to meetings not covered by the Texas Open Meetings Act. The law reads that no formal action may be taken at such events, conforming to the dictates of the Act.

EFFECTIVE DATE

22 May 2007

IMPACT

This law is a simple clarification of what types of ceremonial events fall outside of the Texas Open Meetings Act. Therefore, when a quorum is present at the types of ceremonial events listed, the meeting is not subject to the tenets of the Open Meetings Act.

PART II – 80TH LEGISLATURE RELATED CRIMINAL JUSTICE BILLS SIGNED INTO LAW

HB 199 - INFANT CARE PROGRAM FOR MOTHERS CONFINED IN TDCJ FACILITIES

Author: Madden / Noriega, Rick / Leibowitz
Sponsor: Whitmire

AMENDS

TEX. GOV'T CODE CH. 501(A)

ADDS

TEX. GOV'T CODE § 501.022

SUMMARY

Currently, TDCJ does not have authority to institute a program to develop parenting skills and bonding between a child born to an incarcerated mother and his/her mother. Once the child is born, the mother is returned to the facility and they are not reunited until the mother is released. This law requires TDCJ to implement a residential infant care and parenting program for mothers confined within TDCJ, giving the child the best chance at a fruitful life. The program would be modeled after the Federal Bureau of Prisons' (FBOP) Mothers and Infants Together Program in Fort Worth, Texas.

EFFECTIVE DATE

1 September 2007

IMPACT

According to data obtained during the last session, the program would cost $64.34 daily, including staffing, food, medical supplies and building expenses. There are no other costs associated with the program. The societal impact can be nothing but positive.

HB 681 - POSTCONVICTION FORENSIC TESTING

Author: Hochberg
Sponsor: Duncan

AMENDS

TEX. CODE CRIM. PROC. art. 11.07 § 3(d)

ADDS

TEX. CODE CRIM. PROC. art. 11.07 § 3(e)

SUMMARY

Previously, the law was ambiguous as to a judge's authority to order additional (to DNA testing) post-conviction forensic testing. This law explicitly authorizes judges to order post-conviction forensic testing and specifies who will pay for the forensic tests. It also broadens the circumstances under which a non-DPS laboratory may conduct DNA, and other forensic, tests.

EFFECTIVE DATE

1 September 2007

IMPACT

Further DNA and other forensic testing, performed in the course of a post-conviction writ of habeas corpus, could result in an increase of overturned convictions, positively affecting capacity. Concomitant with reduced capacity is, potentially, less expense and increased supervised offenders.

HB 1572 - EXCEPTION OF LAW ENFORCEMENT RECORDS FROM CIVIL DISCOVERY

Author: Woolley
Sponsor: West

AMENDS

TEX. CIV. PRAC. & REM. CODE, CH. 30

ADDS

TEX. CIV. PRAC. & REM. CODE § 30.006

SUMMARY

Presently, records that are part of an ongoing criminal investigation kept by law enforcement agencies are merely protected from disclosure through an open records request or through discovery in a civil court proceeding. These protections are useful in preventing public disclosure of such records in a way that would interfere with or negatively impact the outcome of

a criminal investigation or that may endanger the parties, witnesses, et al., involved. This law will prohibit a court in a *civil* action from ordering discovery of certain information from a *nonparty* law enforcement agency unless there is an articulated, specific need for the discovery determined after an *in camera* review by the court.

EFFECTIVE DATE

1 September 2007

IMPACT

This law will have a more direct impact upon the Office of the Inspector General (OIG) than the Office of the General Counsel (OGC), but it will affect the agency as a whole. The OGC may be hampered in its ability to assist the Office of the Attorney General (AG) in defending offender litigation against TDCJ employees. A good number of those offender cases are referred to the OIG and if the OIG clears our employee, the AG *via* the OGC may be prohibited from using that information to support a dispositive motion to dismiss the case. On the other hand, the hypothetically referenced OIG information may be just the type that can clear the hurdles presented by this new law. This fiscal impact of this new law is difficult to predict.

HB 2061 – ACQUISITION OF DISCLOSURE OF SOCIAL SECURITY NUMBERS

Author: Keffer / Deshotel / Hardcastle / Farabee / Branch
Coauthor: Christian / Cook / Creighton / Flores / Hamilton / Jones / King / Kolkhorst / Lucio / Merritt / Otto / Pena

Sponsor: Williams

AMENDS

TEX. GOV'T CODE §552.147
TEX. PROP. CODE § 11.008

SUMMARY

This bill directs that a social security number of a living person is no longer confidential in response to a request under the Public Information Act (PIA). A county or district clerk may disclose, in the ordinary course of business, the social security number of a living person that is contained in information held by the clerk's office, and such disclosure is not official misconduct and does not subject the clerk to civil or criminal liability of any kind. The Legislature added a requirement into HB 2061 that, unless another law requires a social security number to be maintained in a government document and upon written request from an individual, the clerk shall redact all but the last four digits of the individual's social security number from specific documents identified in the written request. Social security numbers are not required on instruments submitted for recording in the office of the county clerk and a county clerk would have no duty to ensure an instrument presented does not contain a social security number.

EFFECTIVE DATE

28 March 2007 (Immediately)

IMPACT

It is important to note that HB 2061 was introduced and enacted in direct response to Attorney General Opinion GA-0519 (attached hereto as an appendix). It does not directly impact CJAD employees because the Attorney General's Office previously issued a (different from GA-0519) determination that will remain effective and that protects the social security numbers of current and former TDCJ employees. This bill, however, may require the Office of General Counsel to revise the Open Records Manual and educate the agency as a whole, and specifically Human Resources, about the change in the law.

SB 9 - DISCLOSURE OR DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION

Author: Shapiro
Sponsor: Branch / Madden

AMENDS

TEX. EDUC. CODE §§ 22.081 and 22.082, 22.083(a-b), 22.085
TEX. FAM. CODE § 261.406(b)
TEX. GOV'T CODE § 411.042(b) and (g), 411.081(i), 411.083(b-c), 411.097(a-b), 552.116(a), 552.116(b)(1)

ADDS

TEX. EDUC. CODE § 8.057, 12.1059, 21.007, 21.048(c-1), 21.060, 22.083(a-1, 2), 22.0831 through 22.0837, 22.087, 38.022
TEX. FAM. CODE § 261.308(d-e)
TEX. GOV'T CODE § 411.042(h), 411.0845, 411.087(e), 411.090(c), 411.0901
TEX. TRANSP. CODE § 730.007(f)

REPEALS

TEX. EDUC. CODE § 22.083(c-d)

SUMMARY

This law will require a national criminal history background check for all certified public school employees. The current non-certified employees will be required to submit to a statewide criminal review, while non-certified employees hired on or after 1 January 2008 will be required to submit to a national criminal history background check. Individuals who have been convicted

of a Title 5 felony offense or a sex offense (when the victim of the crime was a child, a primary or secondary school student) would be prohibited from employment with a public school district. In addition, this law creates a clearinghouse for this information at the Department of Public Safety to be shared between school districts when an employee transfers to another employer to increase efficiency and reduce the costs associated with background checks.

EFFECTIVE DATE

1 September 2007

IMPACT

Without clarification of the scope of the clearinghouse, this law could create problems for TDCJ, if the clearinghouse is for more than school districts.

PART III – HB 1, APPROPRIATIONS ACT BASIC FUNDING AND CJAD/CSCD APPLICABLE RIDERS

* * * * * *

DEPARTMENT OF CRIMINAL JUSTICE

[Excerpts Relating to Community Supervision and Corrections Departments]

Items of Appropriation:

A. Goal: PROVIDE PRISON DIVERSIONS
Provide Prison Diversions through Probation & Community-based Programs.

A.1.1. Strategy: BASIC SUPERVISION	$ 105,744,392	$ 107,326,403
A.1.2. Strategy: DIVERSION PROGRAMS	$ 113,357,659	$ 124,110,306
A.1.3. Strategy: COMMUNITY CORRECTIONS	$ 38,770,088	$ 38,770,088
A.1.4. Strategy: TRMT ALTERNATIVES TO INCARCERATION Treatment Alternatives to Incarceration program.	$ 11,604,912	$ 11,604,911
Total, Goal A: PROVIDE PRISON DIVERSIONS	$ 269,477,051	$ 281,811,708

1. **Performance Measure Targets.** The following is a listing of the key performance target levels for the Department of Criminal Justice. It is the intent of the Legislature that appropriations made by this Act be utilized in the most efficient and effective manner possible to achieve the intended mission of the Department of Criminal Justice. In order to achieve the objectives and service standards established by this Act, the Department of Criminal Justice shall make every effort to attain the following designated key performance target levels associated with each item of appropriation.

A. Goal: PROVIDE PRISON DIVERSIONS	2008	2009
A.1.1. Strategy: BASIC SUPERVISION		
Output (Volume):		
Average Number of Felony Offenders under Direct Supervision	162,350	165,496
Efficiencies:		
Average Monthly Caseload	76	76
A.1.2. Strategy: DIVERSION PROGRAMS		
Output (Volume):		
Number of Residential Facility Beds Grant-funded	3,409	3,984
A.1.3. Strategy: COMMUNITY CORRECTIONS		
Output (Volume):		
Number of Residential Facility Beds Funded through Community Corrections	604	604

59. **Misdemeanor Funding.** The Texas Department of Criminal Justice shall distribute funds at a rate not to exceed $.70 per day for each misdemeanor defendant directly supervised by a community supervision and corrections department. Funding for each misdemeanor defendant may not exceed the period of time authorized by statute.

60. **Appropriation: Refunds of Unexpended Balances from CSCDs.** The Texas Department of Criminal Justice (TDCJ) shall maintain procedures to ensure that the state is refunded all unexpended and

unencumbered balances of state funds held as of the close of this biennium by local community supervision and corrections departments (CSCDs). All estimated fiscal years 2006-07 refunds received from CSCDs by TDCJ are appropriated above in Strategies A.1.1, Basic Supervision, A.1.2, Diversion Programs, A.1.3, Community Corrections, and A.1.4, Treatment Alternatives to Incarceration. All refunds received by TDCJ in excess of $18,600,000 shall be redistributed by TDCJ for the benefit of the community supervision and corrections system (estimated to be $0).

61. **Transportation** – Substance Abuse. From funds appropriated above, the Texas Department of Criminal Justice shall provide transportation for inmates who are released from Substance Abuse Felony Punishment Facilities (SAFPF) or In-Prison Therapeutic Community (IPTC) facilities and transferred to a residential setting.

62. **Treatment Alternatives to Incarceration Program**. The Texas Department of Criminal Justice is directed to expend at least $3.25 million each fiscal year of the biennium on the Treatment Alternatives to Incarceration Program as specified in Government Code § 76.017.

63. **Harris County Community Corrections Facility**. Out of funds appropriated above in Strategy A.1.2, Diversion Programs, $6,500,00 in fiscal year 2008 and $6,500,000 in fiscal year 2009 in discretionary grants shall be made to the Harris County Community Supervision and Corrections Department for the continued operations of the Harris County Community Corrections Facility.

64. **Continuity of Care**. Out of the funds appropriated above in Strategy B.1.1, Special Needs Projects, the Texas Correctional Office on Offenders with Medical or Mental Impairments shall coordinate with the Texas Department of State Health Services, county and municipal jails, and community mental health and mental retardation centers on establishing methods for the continuity or care for pre- and post-release activities of defendants who are returned to the county of conviction after the defendant's competency has been restored. The Council shall coordinate in the same manner it performs continuity of care activities for offenders with special needs.

65. **Texas State Council for Interstate Adult Supervision Authority**. Out of funds appropriated above, TDCJ shall provide reimbursement of travel expenses incurred by members of the Texas State Council for Interstate Offender Supervision while conducting the business of the council in accordance with Government Code, Chapters 510 and 2110, and provisions of this Act related to the per diem of board or commission members.

69. **Probation Caseload Reduction.** Out of funds appropriated above to the Texas Department of Criminal Justice in Strategy A.1.2, Diversion Programs, at least $14,092,422 in fiscal year 2008 and at least $14,092,422 in fiscal year 2009 shall be used to fund community supervision officers to reduce caseloads consisting of medium and high risk offenders.

70. **Residential Treatment and Sanction Beds Funding.** From funds appropriated above in Strategy A.1.2, Diversion Programs, at least $13,637,500 shall be expended in fiscal year 2008 and at least $13,637,500 shall be expended in fiscal year 2009 on residential treatment and sanction beds. In distribution of these funds, the Community Justice Assistance Division of the Texas Department of Criminal Justice shall give preference to community supervision and corrections departments having access to currently existing, unfunded residential treatment and sanction beds. The Community Justice Assistance Division shall also give preference to community supervision and corrections departments that have higher rates of community supervision technical revocations in order to maximize the positive effect on the criminal justice system.

71. **Medically Recommended Intensive Supervision.** From funds appropriated above, the Department of Criminal Justice (TDCJ) shall develop an automated report to assist in identifying offenders eligible for medically recommended intensive supervision (MRIS). TDCJ should work with the University of Texas Medical Branch and the Texas Tech University Health Sciences Center to develop uniform diagnosis codes to signal offenders eligible for release on MRIS.

TDCJ shall expedite its screening process for MRIS by requesting an offender's board file at the same time it assigns a caseworker to complete an interview of the offender.

74. Monitoring of Community Supervision Diversion Funds. From funds appropriated above, the Texas Department of Criminal Justice (TDCJ) shall maintain a specific accountability system for tracking community supervision funds targeted at making a positive impact on the criminal justice system.

In addition to continuing the recommendations made by the State Auditor's Office in the September 2004 report (Report No. 05-002) to the Texas Department of Criminal Justice to increase the accuracy and completeness of information used to allocate funds for adult supervision and corrections departments (CSCDs), the agency shall implement a monitoring system so that the use of funds appropriated in Strategies A.1.2, A.1.3, and A.1.4. can be specifically identified.

The agency shall produce, on an annual basis, detailed monitoring, tracking, utilization, and effectiveness information on the above-mentioned funds. This information shall include information on the impact of any new initiatives. Examples include, but are not limited to, number of offenders served, number of residential beds funded, number of community supervision officers hired, and caseload sizes, The agency shall provide documentation regarding the methodology used to distribute the funds. In addition to any other requests for information, the agency shall report the above information for the previous fiscal year to the Legislative Budget Board and the Governor's Office by December 1st of each year.

75. Mental Health Services. Out of the funds appropriated above to the Texas Department of Criminal Justice (TDCJ) in Strategy A.1.2, Diversion Programs, and Strategy B.1.1, Special Needs Projects, at least $31,000,000 shall be expended for enhanced mental health services. Funds appropriated in Strategy 1.2.3, Diversion Programs, include $4,000,000 that shall be used in fiscal year 2008 and $4,000,000 that shall be used in fiscal year 2009 for specialized mental health caseloads. Funds appropriated in Strategy B.1.1, Special Needs Projects, include $11,500,000 in fiscal year 2008 and $11,500,000 in fiscal year 2009 that shall be used to provide case management and mental health services for adult and juvenile offenders.

76. Battering Intervention Program. Out of funds appropriated above in Strategy A.1.2, Diversion Programs, the Texas Department of Criminal Justice (TDCJ) shall allocate $1,250,000 in fiscal year 2008 and $1,250,000 in fiscal year 2009 for funding the Battering Intervention and Prevention Program (BIPP) in the manner required by Article 42.141 of the Code of Criminal Procedure. The BIPP shall be administered using a statewide allocation of direct grants from TDCJ to local non-profit organizations in the manner described in Government Code § 509.011. Funds subject to this provision shall be allocated at the local level and designated for use only for these programs. Funds subject to this provision may not be utilized for administrative expenses of local community supervision and corrections departments nor may they be used to supplant local funding.

77. Permian Basin Mental Health Deputy Pilot Program. Out of the funds appropriated above in Strategy B.1.1, Special Needs Projects, up to $280,000 per fiscal year shall be used to provide grants to counties in the Permian Basin to establish the Permian Basin Mental Health Deputy Pilot Program. The Permian Basin Mental Health Deputy Pilot Program shall provide funding for two deputies in both Ector and Midland counties. The deputies shall promote the diversion of mentally ill individuals from incarceration and facilitate assessments for appropriate treatment.

79. Progressive Sanctions Model. From funds appropriated above, the Community Justice Assistance Division of the Texas Department of Criminal Justice shall encourage community supervision and corrections departments to employ the progressive sanctions community supervision model. To the maximum extent possible and from funds appropriated to the Texas Department of Criminal Justice in Strategy1.2.3, Diversion Programs, the Community Justice Assistance Division shall give preference to community supervision and corrections departments using the progressive sanctions community supervision model to make a positive impact on the criminal justice system.

. . .

82. Project RIO Referrals and Educational and Workforce Services. The Texas Department of Criminal Justice shall implement methods to 1) ensure that offenders under parole supervision who are unemployed or underemployed are identified and referred to local workforce centers to participate in post-release Project RIO services, and 2) align Project RIO pre-release educational and workforce services to correspond with the types of employment available and location of such opportunities based on information provided by the Texas Workforce Commission. The Department shall provide a report to the Legislative Budget Board and the Governor's Office no later than December 1st of each year summarizing the progress and implementation of the requirements listed above.

84. Diversion Initiatives. The Texas Department of Criminal Justice shall use funds appropriated above for various diversion initiatives in the strategies and General Revenue amounts specified below:

a. Strategy A.1.2, Diversion Programs. Funding for probation outpatient substance abuse treatment appropriated in the amount of $5,000,000 in fiscal year 2008 and $5,000,000 in fiscal year 2009;

b. Strategy A.1.2, Diversion Programs. Funding for probation intermediate sanction facilities (700 additional beds) appropriated in the amount of $5,024,723 in fiscal year 2008 and $12,026,385 in fiscal year 2009;

c. Strategy A.1.2, Diversion Programs. Funding for probation residential treatment beds (800) appropriated in the amount of $14,253,739 in fiscal year 2008 and $18,004,723 in fiscal year 2009;

d. Strategy B.1.1, Special Needs Projects. Funding for the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) to provide mental health services, medications, and continuity of care to juvenile and adult offenders with mental impairments appropriated in the amount of $5,000,000 in fiscal year 2008 and $5,000,000 in fiscal year 2009;

e. Strategy C.2.5, Substance Abuse Treatment. Funding for Substance Abuse Felony Punishment Facility treatment beds (1,500 additional beds in contracted capacity) appropriated in the amount of $23,128,865 in fiscal year 2008 and $39,981,186 in fiscal year 2009. The funding includes aftercare in transitional treatment centers and outpatient counseling;

f. Strategy C.2.5, Substance Abuse Treatment. Funding for In-Prison Therapeutic Community Program expansion (1,000 additional treatment slots in existing capacity) appropriated in the amount of $9,669,720 in fiscal year 2008 and $12,054,125 in fiscal year 2009. The funding includes aftercare in transitional treatment centers and outpatient counseling;

g. Strategy C.2.5, Substance Abuse Treatment, Funding for Driving While Intoxicated (DWI) treatment beds (500 additional treatment beds in contracted capacity) appropriated in the amount of $4,025,022 in fiscal year 2008 and $6,027,063 in fiscal year 2009. The funding includes aftercare in transitional treatment centers and outpatient counseling;

j. Strategy E.2.4, Intermediate Sanction Facilities. Funding for 700 additional parole beds appropriated in the amount of $3,448,025 in fiscal year 2008 and $8,252,650 in fiscal year 2009.

Payment for the services provided above in Strategy 1.2.3, Diversion Programs, Strategy C.2.5, Substance Abuse Treatment, Strategy E.2.3, Halfway House Facilities, and Strategy E.2.4, Intermediate Sanction Facilities, shall be provided on a per diem or reimbursement basis for services actually provided to offenders or for beds actually occupied by offenders. Any surplus funding from services directly provided by local community supervision and corrections departments (CSCDs), shall be returned to the state at the end of the biennium in accordance with applicable statutes and rules of this state.

From funds appropriated for an additional 1,400 intermediate sanction facility (ISF) beds and prior to distribution of the funding to local community supervision and corrections departments (CSCDs), the Department of Criminal Justice may transfer appropriations between Strategy A.1.2,

Diversion Programs, and Strategy E.2.4, Intermediate Sanction Facilities, to ensure maximum utilization of the funding for ISF beds. These transfers may cause the number of beds funded to vary from the 700 beds for probation and the 700 beds for parole, specified above.

85. **Withholding of Funds.** The Department of Criminal Justice (TDCJ) may withhold the distribution of funds allocated in Goal A, Provide Prison Diversions, to community supervision and corrections departments (CSCDs) that fail to comply with TDCJ data reporting requirements that include, but are not limited to, data required for the Community Supervision Tracking System, Quarterly Financial Reports, Monthly Community Supervision and Correction Reports, Caseload Reports, Program Output reports and other data required by TDCJ for accountability purposes.

86. **Diversion Plan.** The Department shall provide to the Governor, Legislative Budget Board, the Senate Criminal Justice Committee and House Corrections Committee a plan for the expenditures of diversion funding by September 30, 2007. The plan should state how new funds appropriated in Strategy A.1.2, Strategy B.1.1, Strategy C.2.5, Strategy E.2.3, and Strategy E.2.4. are to be expended in a manner that provides for a cohesive set of strategies directed at the effective rehabilitation and diversion of offenders from incarceration and for enhancing public safety. The plan should list goals to be accomplished, implementation strategies to accomplish each goal, expected implementation timelines and expected recidivism and diversion outcomes for each goal listed. The plan should also include strategies to identify the most appropriate offenders to participate and complete programs before parole eligibility.

89. **Medically Targeted Substance Abuse Treatment.** From funds appropriated above in Strategy A.1.2, Diversion Programs, $1,000,000 in fiscal year 2008 and $1,000,000 in fiscal year 2009 may be used to provide physician supervised acute medical treatment for methamphetamine and/or cocaine-addicted offenders within the context of an integrated approach that combines medical psychosocial treatment approaches. The treatment should not be chronic in nature and should not utilize substitute medications that are known to be addictive. Treatment should be administered in an outpatient setting in conjunction with ongoing psychosocial care and medical oversight provided by the contracting entity. The agency shall submit a report to the Legislative Budget Board and the Governor's Office summarizing the effectiveness of the treatment program by December 1, 2008.

    It is the intent of the Legislature that the Department of Criminal Justice shall give preference to those counties with the greatest need in order to maximize the positive effect of reducing recidivism and providing alternatives to incarceration within the criminal justice system.

Sec. 19.08. Contingency for House Bill 530.

Contingent on passage of House Bill 530 by the Eightieth Legislature, Regular Session, or similar legislation relating to the operation and funding of drug court programs:
(a) There is hereby appropriated to the Trusteed Programs Within the Office of the Governor an estimated $929,000 in fiscal year 2008 and an estimated $2,258,000 in fiscal year 2009 in Strategy A.1.3, Criminal Justice, out of the General Revenue-Dedicated Account - Drug Court for the purpose of making grants to drug courts as defined in Chapter 469 of the Health and Safety Code. Any additional revenue generated and deposited to the credit of the General Revenue–Dedicated Account - Drug Court during the biennium beginning September 1, 2007 are hereby appropriated to the Trusteed Programs Within the Office of the Governor; and

(b) The Department of Criminal Justice shall transfer $270,000 in General Revenue Funds per fiscal year out of Strategy C.1.10, Contracted Temporary Capacity, into Strategy A.1.2, Diversion Programs, for the purposes of providing grants to DWI courts or courts operating dual DWI/drug court programs in accordance with the provisions of the legislation. Counties receiving these grants shall be required to report historical and annual information on DWI offenders to the Community Justice Assistance Division of the Department of Criminal Justice. The Community Justice Assistance Division shall create a uniform data collection instrument to record the progress of the offenders in those programs and shall submit a report on the implementation and effectiveness of the programs to the Legislative Budget Board and the Governor by December 1 of each year.

Appendix

Attorney General Opinion GA-0519

February 21, 2007

The Honorable Roy Cordes, Jr.
Fort Bend County Attorney
301 Jackson Street, Suite 728
Richmond, Texas 77469-3 108 Opinion No. GA-0519

Re: Release and redaction of social security numbers under the Public Information Act, section 552.147 of the Government Code (RQ-0418-GA)

Dear Mr. Cordes:

Your predecessor asked a number of questions about a county clerk's duties under section 552.147 of the Public Information Act (the "PIA"). (1) See Tex. Gov't Code Ann. § 552.147 (Vernon Supp. 2006); see generally *Id.* §§ 552.001-.353 (Vernon 2004 & Supp. 2006). In general, the questions focus on how a governmental body must treat social security numbers ("SSNs") contained in documents subject to the PIA. Specifically, we are asked:

Whether Section 552.147 . . . is permissive or mandatory in relation to Section 552.007 of the Government Code that prohibits selective disclosure?
Whether Section 552.147 . . . applies to all county clerk records (i.e.,] real property, birth records, death records and marriage records[])[?]
Whether Section 552.147 . . . authorizes the county clerk to permanently redact a [SSN] from the original, filed document?
If Section 552.147 . . . authorizes a county clerk to redact [SSNs] from either an original, filed document or a copy requested under the [PIA], can the county clerk certify the document as "certified copy[]"[?]
If the county clerk may certify a document that contains a redacted [SSN] as a "certified copy" of the original document, must the certification stamp include a disclaimer that the document has been altered (i.e.[,] that a [SSN] has been redacted)?
If county clerk documents are available to the public via the [I]nternet, does Section 552.147 . . . or any other law[] require the redaction of all [SSNs] prior to their availability on the [I]nternet?
Section 552.147 . . . addresses the [SSNs] of "living persons." How is a governmental body to determine whether a document contains a [SSN] of a living person?

Request Letter, supra note 1, at 1-2. We address each of the questions in turn.

I. Whether Section 552.147 Is "Permissive or Mandatory"

In general, the PIA requires a governmental body to make its information available to a member of the public upon request. See Tex. Gov't Code Ann. §§ 552.021, .221 (Vernon 2004). The PIA also provides a number of exceptions, which are specific to particular types of information, to this general rule of required disclosure. See generally *Id.* §§ 552.101-.147 (Vernon 2004 & Supp. 2006). The Seventy-ninth Legislature added such an exception for the SSN of a living person. See Act of May 20, 2005, 79th Leg., R.S., ch. 397, § 1, 2005 Tex. Gen. Laws 1090, 1091 (Senate Bill 1485). This exception provides:

§ 552.147. Exception: Social Security Number of Living Person.

(a) The [SSN] of a living person is excepted from the requirements of Section 552.021 [i.e., the general disclosure requirement].

(b) A governmental body may redact the [SSN] of a living person from any information the governmental body discloses under Section 552.021 without the necessity of requesting a decision from the attorney general under Subchapter G.

Tex. Gov't Code Ann. § 552.147 (Vernon Supp. 2006).

The first question is whether section 552.147 "is permissive or mandatory in relation to Section 552.007." Request Letter, *supra* note 1, at 1, 2-3. Section 552.007 of the PIA provides that a governmental body may "voluntarily mak[e] part or all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law." Tex. Gov't Code Ann. § 552.007(a) (Vernon 2004) (emphasis added). Thus, a governmental body is prohibited from disclosing information that is confidential by law. See *Id.* §§ 552.007, .101. Moreover, disclosing confidential information under the PIA is a criminal offense. See *Id.* § 552.352. Therefore, to answer this question we will analyze whether 552.147 makes the SSNs of living persons confidential.

Section 552.147(a) provides that SSNs of living persons are excepted from required public disclosure. We will first analyze whether section 552.147(a) makes SSNs confidential under law, such that governmental bodies are prohibited from disclosing SSNs. Then we will discuss the impact of section 552.147(b) on our analysis.

A. Construction of Section 552.147(a)

In construing a statute we may consider, among other things, (1) legislative history, (2) common law or former statutory provisions, including laws on the same or similar subjects, (3) the circumstances surrounding the statute's enactment, (4) the consequences of a particular construction, and (5) the administrative construction of the statute. See *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001) (citing section 311.023, Government Code). To determine whether SSNs are made confidential under section 552.147(a), we will consider each of these in turn.

1. Legislative History

In the Bill Analysis for section 552.147, the "Author's/Sponsor's Statement of Intent" refers to an attorney general ruling which recognizes that SSNs are "confidential" under the PIA in some circumstances, but not all. See Senate Comm. on State Affairs, Bill Analysis, Tex. S.B. 1485, 79th Leg., R.S. (2005) (quoting Tex. Att'y Gen. OR2004-1475, at 2). The Statement of Intent then points out that knowing disclosure of "confidential information" is a criminal offense under the PIA. See Id. Then, rather than explicitly stating whether the bill makes SSNs confidential in all circumstances, the Statement of Intent provides simply that the bill will deal with SSNs by "exempting them from the Public Information Act." *Id.*

Although the Statement of Intent does not give a definitive answer regarding confidentiality, it seems unlikely that the Statement of Intent would focus on information that is confidential under the PIA if section 552.147 was not intended to make SSNs confidential in the first place. Thus, the Bill Analysis lends some weight to the conclusion that section 552.147(a) makes SSNs confidential.

2. Statutes Providing for Confidentiality of SSNs

To construe section 552.147(a), we also examine the statutory framework existing at the time of its enactment. We find that although the confidentiality of SSNs is reflected throughout statutory law, and although both Congress and the Texas Legislature recognize the serious privacy concerns raised by the public disclosure of an individual's SSN, prior to section 552.147's enactment there was no comprehensive prohibition against governmental entities' public disclosure of SSNs.

As early as 1974 with the enactment of the Privacy Act, Congress acknowledged a privacy right in SSNs and sought to "curtail the expanding use of [SSNs] by federal and local agencies" and, consequently, "eliminate the threat to individual privacy and confidentiality of information posed by [the use of SSNs as] common numerical identifiers." *Doyle v. Wilson*, 529 F. Supp. 1343, 1348 (D.C. Del. 1982); see 5 U.S.C.A. § 552a (West 1996 & Supp. 2006). The Senate Report on the adoption of the Privacy Act described the universal use of SSNs as identifiers as "one of the most serious manifestations of privacy concerns in the Nation." S. Rep. No. 93-1183 (1974), reprinted in 1974 U.S.C.C.A.N. 6916, 6943.

The Social Security Act makes confidential a SSN obtained or maintained pursuant to a provision of law enacted on or after October 1, 1990 (this provision of the Social Security Act was enacted in 1990). See Pub. L. No. 101-624, 104 Stat. 3359 (codified as amended at 42 U.S.C.A. § 405(c)(2)(C)(viii)(I) (West Supp. 2006)); Tex. Att'y Gen. ORD-622 (1994) at 3. Thus, when a Texas governmental body obtains or maintains a SSN pursuant to a provision of law and the provision of law was enacted on or after October 1, 1990, (2) the SSN is confidential under the Social Security Act and excepted from public disclosure under section 552.101 of the PIA. See Tex. Att'y Gen. ORD-622 (1994) at 3, 6. And, under the Social Security Act, the disclosure of a SSN in violation of federal law is a felony. See 42 U.S.C.A. § 408(a)(8) (West. Supp. 2006).

The Texas Legislature, recognizing the need for SSNs to be kept confidential, has repeatedly acted to prohibit disclosure of SSNs maintained by entities in both the private and public sector.

For SSNs maintained by private entities, for example, Texas law broadly prohibits a person from intentionally communicating or making available to the public a person's SSN. See Tex. Bus. & Com. Code Ann. § 35.58(a) (Vernon Supp. 2006). In addition, subject to several exceptions, a person may not require an individual to disclose his or her SSN to obtain goods or services or enter a business transaction with the person unless the person adopts a privacy policy and maintains the confidentiality and security of a SSN disclosed to the person. See Id. § 35.581.

For government records, Texas law outside of the PIA explicitly protects SSNs in countless ways. When people have children or pay child support, the law prohibits public disclosure of the SSNs in the relevant records. See Tex. Health & Safety Code Ann. § 192.002(c) (Vernon Supp. 2006); Tex. Fam. Code Ann. § 231.302(e) (Vernon 2002). SSNs are confidential when people provide them as voters, see Tex. Elec. Code Ann. §§ 13.004(b), 18.066(b), 65.060 (Vernon Supp. 2006), as utility customers, see Tex. Util. Code Ann. § 182.052 (Vernon Supp. 2006), and as property taxpayers, see Tex. Tax Code Ann. § 11.48 (Vernon Supp. 2006). When people buy or sell real property, they may remove their SSNs from property instruments before the instruments are filed. See Tex. Prop. Code Ann. § 11.008(b)-(c) (Vernon Supp. 2006). When someone applies for a license to practice an occupation or a license to drive a car, the SSN provided on those applications is protected from public disclosure. See Tex. Occ. Code Ann. § 59.001 (Vernon Supp. 2006); Tex. Transp. Code Ann. § 521.044(a) (Vernon Supp. 2006). The Transportation Code prohibits disclosure of SSNs when individuals apply for a certificate of title for their cars and even when a person subscribes to the Department of Transportation's "Texas Highways" magazine. See Tex. Transp. Code Ann. §§ 204.011(a) (Vernon Supp. 2006), 501.0235(b) (Vernon 1999). When persons serve as jurors and grand jurors, their SSNs are confidential in the hands of both the court and the prosecuting attorney. See Tex. Code Crim. Proc. Ann. arts. 19.42(a) (Vernon 2005), 35.29 (Vernon 2006). The Comptroller must keep confidential the SSNs of owners of abandoned property. See Tex. Prop. Code Ann. § 74.104(b) (Vernon 2007). The Department of Health must protect the confidentiality of SSNs of medical assistance recipients. See Tex. Hum. Res. Code Ann. § 32.042(g) (Vernon Supp. 2006). The Workers Compensation Division of the Department of Insurance is specifically required by statute not to disclose workers compensation claimants' SSNs. See Tex. Ins. Code Ann. art. 5.58(d) (Vernon Supp. 2006). The SSN of a sexual predator victim is privileged from disclosure in court proceedings. See Tex. Health & Safety Code Ann. § 841.1462 (Vernon Supp. 2006). Disclosure of blood donors' SSNs is prohibited under two provisions in Texas law. See *Id.* §§ 81.103(g), 162.007(c) (Vernon 2001). Three laws except the SSNs of sex offenders from public disclosure. See Tex. Code Crim. Proc. Ann. arts. 62.005(b)(1), .053(f)(1), .055(g)(1) (Vernon 2006).

Furthermore, the PIA itself contains several exceptions to required disclosure of SSNs (in addition to section 552.147) in certain government records. These exceptions cover the SSNs of public employees and officials, see Tex. Gov't Code Ann. § 552.117(a)(1) (Vernon 2004); peace officers, see *Id.* §§ 552.117(a)(2) (Vernon 2004), 552.1175 (Vernon Supp. 2006); Texas Department of Criminal Justice employees and other law enforcement personnel, see Id. §§ 552.117(a)(3)-(5) (Vernon 2004), 552.1175 (Vernon Supp. 2006); crime victims who seek compensation from the state, see *Id.* § 552.132(b)(1) (Vernon 2004); employees, volunteers, and clients of a family violence shelter center or sexual assault program, see *Id.* § 552.138; and individuals who apply for a marriage license, see Id. § 552.141 (Vernon Supp. 2006).

As these examples demonstrate, where a Texas governmental body or other entity obtains an individual's SSN, the Legislature has repeatedly acted to prohibit disclosure of the SSN to the public. Because of this pervasive federal and state legislative scheme that safeguards SSNs' confidentiality and use, Texans have a legitimate expectation that their SSNs will be kept confidential.

However, despite the public's legitimate expectation that their SSNs will be kept confidential, at the time of section 552.147's enactment there were still circumstances in which SSNs maintained by a governmental body were not made confidential by statute. See Tex. Att'y Gen. Op. No. GA-0203 (2004) at 2-3. Within those gaps in confidentiality, where no specific federal or state statute prohibited the disclosure of SSNs, a government body would be required to release SSNs under the PIA. See Tex. Att'y Gen. ORD-622 (1994) at 2-4. (3)

In sum, statutes protecting SSNs at the time of section 552.147(a)'s enactment were pervasive, yet not all-encompassing. We therefore conclude that a review of the existing statutory provisions addressing the disclosure of SSNs indicates that the purpose of section 552.147(a) was to make all SSNs confidential under the PIA, closing the gaps in SSN confidentiality under the PIA.

3. Circumstances Surrounding Section 552.147(a)'s Enactment

A survey of the privacy landscape of SSNs in Texas today can also shed light on whether section 552.147(a) makes SSNs confidential. People today need and expect their SSNs to be safeguarded by the government and other entities that maintain this information. See *In re Crawford*, 194 F.3d 954, 957-58 (9th Cir. 1999). An individual's SSN--particularly when combined with other identifying information such as a birth date--is a key that can unlock the door to an entire world of otherwise confidential information. "[A]rmed with one's SSN, an unscrupulous individual could obtain a person's welfare benefits or Social Security benefits, order new checks at a new address on that person's checking account, obtain credit cards, or even obtain the person's paycheck." *Greidinger v. Davis*, 988 F. 2d 1344, 1353 (4th Cir. 1993) (citing Elizabeth Neuffer, Victims Urge Crackdown on Identity Theft, Boston Globe, July 9, 1991, at 13, 20). Indeed, it is universally agreed that SSNs are at the heart of identity theft and fraud, and in today's Internet world where information--including public government information--can be instantly and anonymously obtained by anyone with access to the worldwide web, the danger is even greater. (4)

Identity theft, without question, is becoming one of the fastest growing criminal offenses in the twenty-first century. The Federal Trade Commission estimates that in a five-year period prior to early 2003 in the United States alone, there were 27.3 million reported cases of identity theft. (Thomas Fedorek, Computers + Connectivity = New Opportunities for Criminals and Dilemmas for Investigators, 76-Feb. N.Y. St. B.J. 10, 15 [February, 2004]). The ensuing fraud caused damages in the billions . . . .
Daly v. Metro. Life Ins. Co., 782 N.Y.S.2d 530, 535 (N.Y. Sup. Ct. 2004) (denying defendant's motion for summary judgment in negligence action against insurer who disclosed consumers' names, SSNs, and date of birth information). Several courts have recognized the potential for

identity theft and financial harm from the uncontrolled release of SSNs. See, e.g., *Sherman v. United States Dep't of the Army*, 244 F.3d 357, 364-66 (5th Cir. 2001); *In re Crawford*, 194 F.3d at 958; *Greidinger*, 988 F. 2d at 1353-54; *Arakawa v. Sakata*, 133 F. Supp. 2d 1223, 1228-29 (D. Haw. 2001); *State ex rel. Beacon Journal Publ'g Co. v. City of Akron*, 640 N.E.2d 164, 168-69 (Ohio 1994). "[T]he harm that can be inflicted from the disclosure of a SSN to an unscrupulous individual is alarming and potentially financially ruinous." *Greidinger*, 988 F.2d at 1354. The disclosure of a person's SSN can undoubtedly lead to identity theft. In short, there is a high potential for harm from the uncontrolled release of SSNs to a member of the public.

Furthermore, the degree of need for public access to SSNs under the PIA is not significant. In many cases, a SSN only incidentally appears in requested information and in virtually all cases is of no legitimate interest to a requestor. Although government records are replete with SSNs, they actually reveal little about an individual other than serving as one of various ways to verify an individual's identity. When a requestor needs to distinguish among persons who share the same name, other information such as an address or birth date can fulfill that need without the attendant possibility of serious harm that could result from the disclosure of the SSN. Furthermore, the common and accepted practice for an entity with a legitimate need for an individual's SSN for identification purposes, such as a government agency providing benefits or a financial or credit institution providing services, is to obtain the SSN directly from its holder and not from a government record. In other words, those with a legitimate need for an individual's SSN generally have an alternative source for obtaining it.

It is also noteworthy that, on balance, the PIA's public policy and statutory mandate of open government is not advanced in any significant way when a living person's SSN is released to the public. The PIA's primary purpose is to make available to the public "complete information about the affairs of [Texas] government and the official acts of public officials and employees." Tex. Gov't Code Ann. § 552.001(a) (Vernon 2004). The reason stated in the PIA for the public's right to government information is "so that [the people] may retain control over the instruments they have created" because "[u]nder the fundamental philosophy of the American constitutional form of representative government . . . government is the servant and not the master of the people." Id. Redacting SSNs from responsive records requested under the PIA will not detract from the PIA's purpose of making publicly available information about the affairs of government and the official acts of public officials and employees because the release of SSNs does not serve the purpose of openness in government in any foreseeably significant way. While SSNs reveal nothing about the processes of government and little of significance, if anything, about the individual who holds it, a SSN would allow an unscrupulous requestor to discover an individual's personal and financial information, which is irrelevant to the operations of government, and increase the possibility of financial harm to the individual through the fraudulent use of the SSN. See *Beacon Journal Publ'g Co.*, 640 N.E.2d at 168-69.

Given the presence at the time of section 552.147(a)'s enactment of these privacy considerations--the high potential for harm from the uncontrolled release of a SSN associated with a living person's name, the irrelevance of such a release to the principle of open government, and the limited public interest, if any, in disclosure of an individual's SSN under the PIA--we find that the proper construction of section 552.147(a) is that SSNs are made confidential under the PIA.

4. Consequences of Our Construction of Section 552.147(a)

We also consider the consequences of particular constructions of section 552.147(a). Construing SSNs to be confidential under the PIA affords them significant protection under the PIA. The distribution of confidential information under the PIA constitutes official misconduct and a criminal misdemeanor punishable by a fine of up to $1,000, confinement in the county jail for up to six months, or both. See Tex. Gov't Code Ann. § 552.352 (Vernon 2004). Any alternative construction of section 552.147(a) could allow a governmental body to disclose SSNs without penalty. In addition, construing SSNs to be confidential under the PIA results in equal treatment for all individuals' SSNs maintained by a governmental body. If section 552.147(a) does not make SSNs confidential, then some individuals' SSNs are protected while other individuals' SSNs are not. If the Texas Legislature has seen fit to protect SSNs of convicted sex offenders, see, e.g., Tex. Code Crim. Proc. Ann. art. 62.005(b)(1) (Vernon 2006), surely the Legislature intended for regular law-abiding citizens to be entitled to the same protection.

5. Administrative Construction of Section 552.147(a)

The Office of the Attorney General, through its Open Records Division, is the administrative agency charged with interpreting the PIA. See Tex. Gov't Code Ann. § 552.306 (Vernon 2004). Since section 552.147's effective date of June 17, 2005, the Open Records Division has issued more than 4,000 informal open records rulings that treat SSNs as confidential under section 552.147 of the PIA. See, e.g., Tex. Att'y Gen. OR2006-5291. (5) Thus, the administrative construction of section 552.147(a) supports a finding that section 552.147(a) makes SSNs of living persons confidential.

After considering section 552.147(a)'s legislative history, existing common law and statutory framework, surrounding circumstances, potential consequences, and administrative construction, we find that 552.147(a) makes confidential under the PIA the SSN of a living person. Therefore, the PIA makes mandatory that a governmental body not release the SSN of a living person to a member of the public under the PIA, unless the requestor is the holder of the SSN or the holder's authorized representative. (6)

B. Construction of Section 552.147(b)

Section 552.147(b) does not affect our determination that section 552.147(a) makes SSNs confidential. Subsection (b) deals with the process for redacting SSNs of living persons, stating that the redaction of SSNs under subsection (a) may be performed "without the necessity of requesting a decision from the attorney general." See Tex. Gov't Code Ann. § 552.147(b) (Vernon Supp. 2006).

Generally, under the PIA, a governmental body may not withhold public information on the grounds that it is excepted from disclosure without first seeking a decision from the attorney general. See *Id.* § 552.301(a). When information submitted to the attorney general contains both excepted and non-excepted information, this office generally directs the governmental body to provide copies of the public information to the requestor with the excepted information redacted from the copies. See Tex. Att'y Gen. ORD-606 (1992) at 2-3 (determining that a governmental

body must redact from a photocopy rather than retype the document). But generally a governmental body may not respond to a request for public information under the PIA with redacted copies without first seeking an attorney general decision, unless the requestor assents to the redaction. See Tex. Att'y Gen. ORD-682 (2005) at 5 n.5. A governmental body that seeks an attorney general decision under the PIA must raise and explain the applicability of a claimed exception and submit to this office within the statutory deadline certain information necessary for this office to render a decision. See Tex. Gov't Code Ann. § 552.301(e) (Vernon Supp. 2006).

Subsection (b) provides that governmental bodies are not required to comply with these procedures for requested SSNs. The subsection pertains solely to the administrative procedure for processing requests for records that contain SSNs of living persons. Thus, when the SSN of a living person appears with information to be made public under the PIA, section 552.147(a) requires that the governmental body redact the SSN, and section 552.147(b) permits the governmental body to do so without following the standard administrative procedure of first requesting an attorney general decision. And as a result, governmental bodies can produce public information more promptly.

II. Application of Section 552.147 to All County Clerk Records

We are next asked whether section 552.147's provision for redaction of SSNs applies to all county clerk records. Request Letter, supra note 1, at 1, 3.

The general statutory rule for county clerk records is that "[a]ll records belonging to the office of the county clerk to which access is not otherwise restricted by law or by court order shall be open to the public at all reasonable times." Tex. Loc. Gov't Code Ann. § 191.006 (Vernon 1999) (emphasis added). Section 552.147 restricts access to the SSNs in the clerk's records that are subject to the PIA. See Tex. Gov't Code Ann. § 552.147(a) (Vernon Supp. 2006). Thus, as a general rule, SSNs of living persons in all county clerk records subject to the PIA are confidential and protected from disclosure under section 552.147.

There are also specific county clerk records expressly made public by statute. See, *e.g.*, Tex. Prop. Code Ann. § 13.002 (Vernon 2004) (real property records). Regarding laws that are specific to a record and that make the record public, this office has determined that, "[a]s a general rule, exceptions to required public disclosure provided in the [PIA] are inapplicable to information that statutes other than the [PIA] expressly make public." Tex. Att'y Gen. ORD-623 (1994) at 3. This determination is based on the rule of statutory construction that, where statutes conflict, the specific statutory provision prevails as an exception to the general provision. See Tex. Gov't Code Ann. § 311.026(b) (Vernon 2005). In the case of SSNs within a record expressly made public, the same rule of statutory construction leads to the opposite result. While the statutes making county clerk records public refer to entire documents, section 552.147 refers only to one piece of information within those documents. And thus section 552.147 prevails as the more specific statute. As a result, to comply with both laws, the county clerk must redact SSNs from the copies of records made available to the public. We also note that this conclusion does not conflict with the presumption in construing a statute that public interest is favored over

any private interest. See Id. § 311.021(5). While openness of records is in the public interest, the same public has a legitimate interest in the privacy of their SSNs. (7)

One possible exception to this interpretation is section 11.008 of the Texas Property Code, which not only makes deeds and deeds of trust available to the public but also claims to be the exclusive state law governing the confidentiality of such documents. See Tex. Prop. Code Ann. § 11.008(f)-(g) (Vernon Supp. 2006). We do not need to address the conflict between this statute and section 552.147, however, because we conclude that SSNs in these documents are confidential under the federal Social Security Act. The Social Security Act makes SSNs confidential if they are "obtained or maintained by authorized persons pursuant to any provision of law enacted on or after October 1, 1990." 42 U.S.C.A. § 405(c)(2)(C)(viii)(I). Section 11.008, which was enacted in 2003, authorizes the obtaining of SSNs in a deed or deed of trust. See Act of May 27, 2003, 78th Leg., R.S., ch. 715, § 1, 2003 Tex. Gen. Laws 2141, 2142, and Act of May 28, 2003, 78th Leg., R.S., ch. 960, § 1, 2003 Tex. Gen. Laws 2836, 2836 (codified at Tex. Prop. Code Ann. § 11.008(b) (Vernon Supp. 2006)). Therefore, SSNs obtained or maintained pursuant to section 11.008 are confidential under the Social Security Act. See *Mills v. Warner Lambert Co.*, 157 S.W.3d 424, 426-27 (Tex. 2005) (state law preempted to the extent it actually conflicts with federal law).

We thus conclude that SSNs of living persons in all county clerk records subject to the PIA are confidential and protected from disclosure under section 552.147(a).

III. SSNs in Original Documents in the County Clerk's Office

We are also asked whether section 552.147 authorizes a county clerk to permanently redact a SSN from the original filed document. Request Letter, supra note 1, at 1, 3. It has been suggested that it would be more efficient for the county clerk's office to redact SSNs from original documents as they are filed rather than prior to each public disclosure. Id. at 3. However, section 552.147 authorizes redaction of a SSN only from "information the governmental body discloses under [the PIA]." Tex. Gov't Code Ann. § 552.147(b) (Vernon Supp. 2006). The plain language of the statute does not authorize a county clerk to redact a SSN from an original record. See Id. Furthermore, redacting a SSN from an original record would contradict a person's special right of access to his own SSN under the PIA. See Id. § 552.023(a) (Vernon 2004). Finally, a clerk's alteration of an original document offered for filing would likely violate the clerk's statutory duties outside of the PIA. See, e.g., Tex. Loc. Gov't Code Ann. § 191.001(c) (Vernon 1999) (requiring a county clerk to "record, exactly . . . the contents of each instrument that is filed for recording and that the clerk is authorized to record"); Tex. Prop. Code Ann. § 11.004(a)(1) (Vernon 2004) (stating clerk's duty to "correctly record" deed and deed of trust instruments). Therefore, the county clerk may not permanently redact a SSN from an original, filed document.

IV. Redaction of SSNs in Certified Copies

We answer the next two questions together. It is asked whether a clerk may issue a certified copy of a document when the SSNs have been redacted from the copy and, if so, whether the "certification stamp" must "include a disclaimer that the document has been altered (i.e., that a [SSN] has been redacted)." Request Letter, supra note 1, at 1, 3-4. A county clerk has a general

duty to give an "attested copy of any instrument that is recorded in the clerk's office." Tex. Loc. Gov't Code Ann. § 191.004(a) (Vernon Supp. 2006). Neither "attested copy" nor "certified copy" is defined in the statutes. A certified copy is commonly understood to be "a copy of a document or record, signed and certified as a true copy by the officer to whose custody the original is intrusted [sic]." See *Tex. Attorney Gen. v. Litten*, 999 S.W.2d 74, 78 n.7 (Tex. App.--Houston [14th Dist.] 1999, no pet.) (quoting Black's Law Dictionary 287 (4th ed. 1968)). We find no law that prevents the clerk from providing a copy that accurately certifies the document's content as well as the fact that SSNs have been redacted according to law. *Cf. Irving v. State*, 436 S.W.2d 537, 539 (Tex. Crim. App. 1969) (holding that it was not error to admit into evidence certified copy of judgment containing typewritten entry reflecting that the original had been signed by the presiding judge). Therefore, a county clerk may issue a certified copy of a document when the SSNs have been redacted from the copy. Because a certified copy attests that the copy is an exact reproduction of the original document, we further find that the certification must disclose the fact that SSNs have been redacted.

V. Redaction of SSNs from County Clerk Records on the Internet

We are also asked whether section 552.147 "or any other law" requires the redaction of all SSNs from the county clerk's records prior to making them available on the Internet. Request Letter, supra note 1, at 1, 4. The question essentially asks about the redaction of SSNs from records prior to their voluntary disclosure. As we have noted earlier, Section 552.007(a) of the PIA specifically addresses--and limits--the voluntary disclosure of information to the public. See Tex. Gov't Code Ann. § 552.007(a) (Vernon 2004). It provides that a governmental body may voluntarily make public its information "unless the disclosure is expressly prohibited by law or the information is confidential under law." Id. By its plain language, the statute prohibits a governmental body from voluntarily disclosing confidential information. Therefore, a governmental body must redact SSNs of living persons from records prior to making those records available on the Internet.

VI. Determining Whether a SSN is of a Living Person

Section 552.147 only applies to the SSN of "a living person." *Id* § 552.147 (Vernon Supp. 2006). We are asked how a governmental body may determine whether a SSN belongs to a living person. See Request Letter, supra note 1, at 2. Section 552.147 does not specify how a governmental body is to make that determination. See Tex. Gov't Code Ann. § 552.147 (Vernon Supp. 2006). This office imposes no burden on a governmental body to affirmatively demonstrate that a person whose SSN is requested under the PIA is living. In fact, this office will raise section 552.147 for a governmental body when a record contains a person's SSN. See Tex. Att'y Gen. ORD-481 (1987). This office presumes the person whose SSN is at issue is living unless the facts before us show otherwise. While following our approach to privacy questions in applying section 552.147 does not ensure that a SSN at issue belongs to a living person, we believe it would be unduly burdensome on this office and on governmental bodies to require an affirmative showing of the fact that a person is living when the exception is silent on the subject. Thus for purposes of section 552.147, we find that a governmental body may presume the person whose SSN is at issue is living unless the facts before the governmental body show otherwise.

S U M M A R Y

The social security number ("SSN") of a living person is confidential and subject to mandatory exception from required disclosure under section 552.147(a) of the Public Information Act ("PIA"). Distributing confidential information under the PIA is a criminal offense. Section 552.147(b) of the PIA provides an administrative procedure by which a governmental body may redact confidential SSNs from public information without first obtaining an attorney general decision.

The confidentiality of SSNs of living persons under 552.147 of the PIA applies to all county clerk records subject to the PIA.

Section 552.147 of the PIA does not authorize a county clerk to redact SSNs from original documents maintained in the clerk's records.

When a county clerk redacts a SSN from a copy of a document maintained by the clerk's office, the clerk may label the copy as a "certified copy," but such certification must reflect that SSNs have been redacted.

Prior to posting a record on the Internet, the clerk must redact the SSNs of living persons from any record subject to the PIA.

For purposes of section 552.147 of the PIA, a governmental body may presume that a requested SSN belongs to a living person unless the facts before the governmental body show otherwise.

Very truly yours,

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

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Assistant Attorney General

Footnotes

1. See Letter from Honorable Ben W. "Bud" Childers, Fort Bend County Attorney, to Honorable Greg Abbott, Attorney General of Texas, at 1 (Nov. 18, 2005) (on file with the Opinion Committee, also available at http://www.oag.state.tx.us) [hereinafter Request Letter].

2. See, e.g., Tex. Elec. Code Ann. § 13.004 (Vernon Supp. 2006) (SSNs obtained by voter registrar); Tex. Fam. Code Ann. § 154.185 (Vernon 2002) (SSNs obtained by Title IV-D agency from parent providing health insurance to child); *Id.* § 234.001 (SSNs in state case registry of child support orders); Tex. Gov't Code Ann. § 62.001(c)(2) (Vernon 2005) (SSNs furnished to Secretary of State for jury wheel); Id. § 411.042(b)(6) (SSNs collected by Department of Public Safety); Tex. Health & Safety Code Ann. § 193.001(b) (Vernon 2001) (SSNs on death certificates); Tex. Occ. Code Ann. § 1702.110 (Vernon 2004) (SSNs in application for license to conduct business as investigative company or security service contractor); Tex. Tax Code Ann. § 162.016 (Vernon Supp. 2006) (SSNs obtained by Comptroller in copy of shipping document relating to importation and exportation of motor fuel); Tex. Transp. Code Ann. § 501.0235 (Vernon 1999) (SSNs obtained by Department of Transportation in application for certificate of title).

3. This is because the Texas Supreme Court in 1976 found no common-law right to privacy in SSNs. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 686 (Tex. 1976). It appears that the Texas Supreme Court in Industrial Foundation relied on the factual conclusion that a SSN is among information "which does not itself reveal private facts." Id. at 686. Due to the modern-day heightened risk of identity theft and fraud, which we discuss immediately following, we believe that, given the opportunity to consider confidentiality of SSNs anew, the Texas Supreme Court would now overrule Industrial Foundation to the extent it holds that there is no constitutional or common-law right to privacy in SSNs.

4. See Social Security Administration, Identity Theft and Your Social Security Number (Jan. 2006) (last visited Feb. 13, 2007) (Publication No. 05-10064) (Social Security Administration website discussing identity theft and SSNs, available at http://www.ssa.gov/pubs/10064.html); Federal Trade Commission, Minimizing Your Risk (last visited Feb. 13, 2007) (Federal Trade Commission website concerning minimizing risk of identity theft, available at http://www.consumer.gov/idtheft/con_minimize.htm); United States Department of Justice, Identity Theft and Fraud (last visited Feb. 13, 2007) (United States Department of Justice website concerning identity theft and identity fraud, available at http://www.usdoj.gov/criminal/fraud/idtheft.html).

5. The handful of open records rulings that have permitted disclosure of SSNs did not conclude that SSNs are not confidential under section 552.147 but rather concluded that another statute both made the information public and prevailed over section 552.147. See, e.g., Tex. Att'y Gen. OR2005-9250, at 4. In Section II, *infra*, we reconsider the reasoning of these open records rulings.

6. We note that, under section 552.023 of the PIA, a governmental body cannot deny a person or a person's authorized representative access to the person's own SSN. See Tex. Gov't Code Ann. § 552.023 (Vernon 2004).

7. Previously, this office has determined that the confidentiality of section 552.147(a) does not apply in three situations in which other law specific to the record at issue makes it public: county property records, see, e.g., Tex. Loc. Gov't Code Ann. § 118.024(a) (Vernon 1999); peace officer accident reports, see Tex. Transp. Code Ann. § 550.065(c)(4) (Vernon Supp. 2006); and

arrest warrants and affidavits, see Tex. Code Crim. Proc. Ann. art. 15.26 (Vernon 2005). Future open records opinions will reflect the analysis contained here.

February 28, 2007

The Honorable Roy Cordes, Jr.
Fort Bend County Attorney
301 Jackson Street, Suite 728
Richmond, Texas 77469-3 108 Opinion No. GA-0519

Re: Release and redaction of social security numbers under the Public Information Act, section 552.147 of the Government Code (RQ-0418-GA)

Dear Mr. Cordes:

In Attorney General Opinion GA-0519, we opined that the social security number ("SSN") of a living person is confidential and subject to mandatory exception from required disclosure under section 552.147(a) of the Public Information Act ("PIP"). See generally Tex. Att'y Gen. Op. No. GA-0519 (2007). As we stated in our opinion,". . . Texans have a legitimate expectation that their SSNs will be kept confidential." See *Id.* at 5. The plain text and legislative history of TEX. GOV'T CODE ANN. Section 552.147 (Vernon Supp. 2006), coupled with numerous other state and federal statutes, all clearly protect the confidentiality of SSNs, and thereby prohibit governmental bodies from disclosing SSNs under the PIA.

Immediately after the opinion was issued, legislative leaders contacted this office with serious concerns about logistical implications surrounding the rapid implementation of statutorily-mandated SSN confidentiality. Complex problems were faced by county clerks responsible for decades-old documents that are frequently laden with SSNs. Some clerks were left grappling with transitioning to a law that ensures SSNs are always kept confidential. The real-world consequence was a virtual halt to a tremendous amount of business and commerce in Texas. In response to these problems, a number of legislators have stated their intention to take immediate action to address the issues and conclusions discussed in Opinion No. GA-0519.

In light of these developments, I hereby abate Opinion No. GA-0519 for a period of 60 days in order to allow the Legislature ample time for thorough deliberation and action. During the time of this abeyance, Opinion No. GA-0519 will have no force or effect.

Sincerely,

Greg Abbott
Attorney General of Texas