

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0025                      **Caption:** relating to the carrying of certain weapons in a watercraft

**Effective Date:** 9-1-2011

**Application:** Applies only to an offense committed on or after 9-1-2011

**Statutes Affected:** PW 46.02

**Subject:** Unlawful carrying weapons

**Summary:** Amends PE 46.02 to provide that a person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun, illegal knife, or club if the person is not on the person's own premises or premises under the person's control, or inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control;  
Provides that a person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft that is owned by the person or under the person's control at any time in which:  
(1) the handgun is in plain view; or  
(2) the person is:  
(A) engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic or boating;  
(B) prohibited by law from possessing a firearm; or  
(C) a member of a criminal street gang, as defined by Section 71.01.

Amends PE 46.15 to provide that unlawful carrying weapons does not apply to a person who:  
is engaging in lawful hunting, fishing, or other sporting activity on the immediate premises where the activity is conducted, or is en route between the premises and the actor's residence, motor vehicle, or watercraft, if the weapon is a type commonly used in the activity;

"Watercraft" means any boat, motorboat, vessel, or personal watercraft, other than a seaplane on water, used or capable of being used for transportation on water;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Current statute does not clearly address the authority of a person to carry a weapon in the person's watercraft, whereas the carrying of a weapon in a person's home, to and from the person's vehicle, and in the vehicle is authorized under certain circumstances.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0027      **Caption:** relating to the payment of fines and costs by defendants who are unable to pay the fines and costs in misdemeanor cases

**Effective Date:** 9-1-2011

**Application:** Applies only to an offense committed on or after 9-1-2011

**Statutes Affected:** CP 45.041

**Subject:** Judgment

**Summary:** Amends CP 45.041 to require that a judge who determines that a convicted defendant is unable immediately to pay the fine and costs, allow the defendant to pay the fine and costs in specified portions at designated intervals

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Currently, payment options in a misdemeanor case for a person unable to pay court fines and costs can be limited. Payment of court costs and fines can easily become a heavy burden for an indigent individual or a low-income family. For an impoverished citizen, providing options such as making payments in selected installments should increase the likelihood of the citizen paying off the full amount of the fine in a more efficient and timely manner. In addition, performing community service provides another option for a person unable to pay certain fines or costs.

As amended:

CP 45.041. [917] [1012] [977] Judgment

(a) The judgment and sentence, in case of conviction in a criminal action before a justice of the peace or municipal court judge, shall be that the defendant pay the amount of the fine and costs to the state.

(b) Subject to Subsection (b-2), the justice or judge may direct the defendant:

(1) to pay:

(A) the entire fine and costs when sentence is pronounced;

(B) the entire fine and costs at some later date; or

(C) a specified portion of the fine and costs at designated intervals;

(2) if applicable, to make restitution to any victim of the offense; and

(3) to satisfy any other sanction authorized by law.

(b-1) Restitution made under Subsection (b)(2) may not exceed \$5,000 for an offense under Section 32.41, Penal Code.

(b-2) When imposing a fine and costs, if the justice or judge determines that the defendant is unable to immediately pay the fine and costs, the justice or judge shall allow the defendant to pay the fine and costs in specified portions at designated intervals.

(c) The justice or judge shall credit the defendant for time served in jail as provided by Article 42.03. The credit shall be applied to the amount of the fine and costs at the rate provided by Article 45.048.

(d) All judgments, sentences, and final orders of the justice or judge shall be rendered in open court.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0042                      **Caption:** relating to the duty imposed on the operator of a motor vehicle that strikes a structure adjacent to a highway

**Effective Date:** 9-1-2011

**Application:** Applies only in connection with a motor vehicle accident that occurs on or after 9-1-2011

**Statutes Affected:** TN 550.025

**Subject:** Duty on striking structure, fixture, or highway landscaping

**Summary:** Amends TN 550.025 to require an operator of a motor vehicle who strikes a structure, as well as a fixture or highway landscaping resulting only in damage to notify the owner, show a driver's license, and report the accident;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Currently, a motor vehicle operator who damages a permanent or semi-permanent structure such as a building, house, or fence, and who leaves the scene of the accident, is not criminally liable. Furthermore, an operator who damages such property is not required to give or leave the operator's contact information. HB 0042 makes it a criminal offense to damage a permanent or semi-permanent structure and leave the scene of the accident without locating or attempting to locate the owner of the damaged property and giving or leaving contact information. A failure to comply with the bill's provisions is a Class C misdemeanor if the damage is less than \$200 and a Class B misdemeanor if the damage is \$200 or more.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0074

**Caption:** relating to persons authorized to control the disposition of the remains of certain members of the United States Armed Forces

**Effective Date:** 5-20-2011

**Application:**

**Statutes Affected:** HS 711.002

**Subject:**

Disposition of remains; duty to inter

**Summary:** Amends HS 711.002 to add (a-1) as follows:

If a United States Department of Defense Record of Emergency Data, DD Form 93, or a successor form, was in effect at the time of death for a decedent who died in a manner described by 10 U.S.C. Sections 1481(a)(1) through (8), the DD Form 93 controls over any other written instrument described by Subsection (a)(1) or (g) with respect to designating a person to control the disposition of the decedent's remains. Notwithstanding Subsections (b) and (c), the form is legally sufficient if it is properly completed, signed by the decedent, and witnessed in the manner required by the form.

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

Current law relating to the disposition of human remains does not provide for the accommodation of the express, written wishes of members of the United States armed forces through execution of the federally prescribed DD Form 93, or Record of Emergency Data. HB 0074 includes this form among the written instruments that can be used to control the disposition of the remains of a service member who dies while on active duty or otherwise meets the criteria described in federal law.

10 USC 1481(a) (1)-(8) reads:

(a) The Secretary concerned may provide for the recovery, care, and disposition of the remains of the following persons:

(1) Any Regular of an armed force under his jurisdiction who dies while on active duty.

(2) A member of a reserve component of an armed force who dies while -

(A) on active duty;

(B) performing inactive-duty training;

(C) performing authorized travel directly to or from active duty or inactive-duty training;

(D) remaining overnight immediately before the commencement of inactive-duty training, or remaining overnight, between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training;

(E) hospitalized or undergoing treatment for an injury, illness, or disease incurred or aggravated while on active duty or performing inactive-duty training; or

(F) either -

(i) serving on funeral honors duty under section 12503 of this title or section 115 of title 32;

(ii) traveling directly to or from the place at which the member is to so serve; or

(iii) remaining overnight at or in the vicinity of that place before so serving, if the place is outside reasonable commuting distance from the member's residence.

[(3) Repealed. Pub. L. 99-661, div. A, title VI, Sec. 604(e)(3)(B), Nov. 14, 1986, 100 Stat. 3877.]

(4) Any member of, or applicant for membership in, a reserve officers' training corps who dies while (A) attending a training camp, (B) on an authorized practice cruise, (C) performing authorized travel to or from such a camp or cruise, or (D) hospitalized or undergoing treatment at the expense of the United

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States for injury incurred, or disease contracted, while attending such a camp, while on such a cruise, or while performing that travel.

(5) Any accepted applicant for enlistment in an armed force under his jurisdiction.

(6) Any person who has been discharged from an enlistment in an armed force under his jurisdiction while a patient in a United States hospital, and who continues to be such a patient until the date of his death.

(7) A person who -

(A) dies as a retired member of an armed force under the Secretary's jurisdiction during a continuous hospitalization of the member as a patient in a United States hospital that began while the member was on active duty for a period of more than 30 days; or

(B) is not covered by subparagraph (A) and, while in a retired status by reason of eligibility to retire under chapter 61 of this title, dies during a continuous hospitalization of the person that began while the person was on active duty as a Regular of an armed force under the Secretary's jurisdiction.

(8) Any military prisoner who dies while in his custody.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0079 (1st) Page 1 **Caption:** relating to fiscal and other matters necessary for implementation of the judiciary budget as enacted by H.B. No. 1, Acts of the 82nd Legislature, Regular Session, 2011, and to the operation and administration of, and practice and procedures in courts in, the judicial branch of state government

**Effective Date:** 1-1-2012

**Application:** Various

**Statutes Affected:** PP 24.007  
GV 25.0003  
GV 25.1033  
GV 54A.101 et seq  
FA 201.301 et seq  
GV 27.005  
GV 27.060  
GV 27.061  
GV 28.001 et seq  
CV 15.0821  
CP 4.12

**Subject:** Statutory County Courts; jurisdiction

**Summary:** Amends GV 25.0003 to increase the jurisdiction of statutory county courts in civil cases to those in which the matter in controversy exceeds \$500 but does not exceed \$200,000;

**Subject:** Harris County Criminal Courts at Law; jurisdiction

**Summary:** Amends GV 25.1033 to give the Harris County Criminal Courts at law concurrent jurisdiction with civil statutory county courts to hear appeals of the suspension of a driver's license and original proceedings regarding occupational driver's licenses;

**Subject:** Associate judges

**Summary:** Adds GV Subchapter B, Sec. 54A.101 et seq, Civil Associate Judges, to allow a judge of a district court or a statutory county court that is assigned civil cases to appoint a full-time or part-time associate judge if commissioners court authorizes the creation of the position;

Adds FA Subchapter D, Sec. 201.301 et seq, Associate Judge for Juvenile Matters, to allow a judge of a court designated as a juvenile court to appoint a full-time or part-time associate judge to perform authorized duties if the commissioners court authorizes the position; a judge of a juvenile court may refer any aspect of a juvenile matter relating to the parent-child relationship and suits affecting the parent-child relationship or the Juvenile Justice Code, or in connection with violations of child support or possession orders; an associate judge for juvenile matters is not the same as a Juvenile Court Master

**Comments:**

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Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0079 (1st) Page 2 **Caption:** relating to fiscal and other matters necessary for implementation of the judiciary budget as enacted by H.B. No. 1, Acts of the 82nd Legislature, Regular Session, 2011, and to the operation and administration of, and practice and procedures in courts in, the judicial branch of state government

**Effective Date:** 1-1-2012

**Application:**

**Statutes Affected:** PP 24.007  
GV 25.0003  
GV 25.1033  
GV 54A.101 et seq  
FA 201.301 et seq  
GV 27.005  
GV 27.060  
GV 27.061  
GV 28.001 et seq  
CV 15.0821  
CP 4.12

**Subject:** Small claims case

**Summary:** Adds GV §27.060, Small Claims, effective 5-1-2013 to provide:

- (a) A justice court shall conduct proceedings in a small claims case, as that term is defined by the supreme court, in accordance with rules of civil procedure promulgated by the supreme court to ensure the fair, expeditious, and inexpensive resolution of small claims cases.
- (b) Except as provided by Subsection (c), rules of the supreme court must provide that:
  - (1) if both parties appear, the judge shall proceed to hear the case;
  - (2) formal pleadings other than the statement are not required;
  - (3) the judge shall hear the testimony of the parties and the witnesses that the parties produce and shall consider the other evidence offered;
  - (4) the hearing is informal, with the sole objective being to dispense speedy justice between the parties;
  - (5) discovery is limited to that considered appropriate and permitted by the judge; and
  - (6) the judge shall develop the facts of the case, and for that purpose may question a witness or party and may summon any party to appear as a witness as the judge considers necessary to a correct judgment and speedy disposition of the case.
- (c) The rules of the supreme court must provide specific procedures for an action by:
  - (1) an assignee of a claim or other person seeking to bring an action on an assigned claim;
  - (2) a person primarily engaged in the business of lending money at interest; or
  - (3) a collection agency or collection agent.
- (d) The rules adopted by the supreme court may not:
  - (1) require that a party in a case be represented by an attorney;
  - (2) be so complex that a reasonable person without legal training would have difficulty understanding or applying the rules; or
  - (3) require that discovery rules adopted under the Texas Rules of Civil Procedure or the Texas Rules of Evidence be applied except to the extent the justice of the peace hearing the case determines that the rules must be followed to ensure that the proceeding is fair to all parties.

**Subject:** Small claims court

**Summary:** GV CHAPTER 28 IS ABOLISHED on May 1, 2013.  
Not later than May 1, 2013, the Texas Supreme Court shall promulgate:

- (1) rules to define cases that constitute small claims cases;
- (2) rules of civil procedure applicable to small claims cases as required by Section 27.060, Government Code, as added by this article; and
- (3) rules for eviction proceedings.

Immediately before may 1, 2013, the date the small claims court in a county is abolished in accordance with this article, the justice of the peace sitting as judge of that court shall transfer all cases pending in the court to a justice court in the county.

When a case is transferred, all processes, writs, bonds, recognizances, or other obligations issued from the transferring court are returnable to the court to which the case is transferred as if originally issued by that court. The obligees on all bonds and recognizances taken in and for the transferring court and all witnesses summoned to appear in the transferring court are required to appear before the court to which the case is transferred as if

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originally required to appear before that court.

**Subject:** Rules of administration

**Summary:** Adds GV § 27.061, to require the justices of the peace in each county, by majority vote, to adopt local rules of administration;

**Comments:**



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Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0079 (1st) Page 3 **Caption:** relating to fiscal and other matters necessary for implementation of the judiciary budget as enacted by H.B. No. 1, Acts of the 82nd Legislature, Regular Session, 2011, and to the operation and administration of, and practice and procedures in courts in, the judicial branch of state government  
**Effective Date:** 1-1-2012

**Application:**

**Statutes** PP 24.007  
**Affected:** GV 25.0003  
GV 25.1033  
GV 54A.101 et seq  
FA 201.301 et seq  
GV 27.005  
GV 27.060  
GV 27.061  
GV 28.001 et seq  
CV 15.0821  
CP 4.12

**Subject:** Administrative rules for transfer

**Summary:** Adds CV § 15.0821 to require the justices of the peace in each county, by majority vote, to adopt local rules of administration regarding the transfer of a pending case from one precinct to a different precinct;

**Subject:** Misdemeanor cases; precinct in which defendant to be tried in justice court

**Summary:** Amends CP Art. 4.12 to require the justices of the peace in each county, by majority vote, to adopt local rules of administration regarding the transfer of a pending misdemeanor case from one precinct to a different precinct;

**Subject:** Educational requirements

**Summary:** Amends GV § 27.005 to require a justice of the peace to take a 20-hour course in the performance of the justice's duties, including not less than 10 hours of instruction regarding substantive, procedural, and evidentiary law in civil matters, in each year of office following the completion of the initial 80 hour course;

Applies to a justice of the peace serving on or after 1-1-2012

**Comments:**

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**Janet Marton, Senior Assistant County Attorney  
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**Bill Number:** HB 0090

**Caption:** relating to the issuance and suspension of a hardship driver's license

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 521.223

**Affected:**

**Subject:** Hardship license

**Summary:** Amends TN 521.223 to require the Department of Public Safety to suspend a hardship license if the holder is convicted of 2 or more moving violations committed within a 12-month period;

Deletes provisions relating to waiving the driving training course and issuing a temporary permit good for 60 days and renewable, for an applicant who must assist with a family illness, disability, death-related emergency, or economic emergency,

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0109

**Caption:** relating to the temporary lowering of prima facie speed limits at a vehicular accident reconstruction site

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 545.3561

**Affected:**

**Subject:** Authority of municipality or county to temporarily lower speed limit at vehicular accident reconstruction site

**Summary:** Adds TN 545.3561 to allow a county temporarily to lower prima facie speed limits for a county road or highway outside the boundaries of a municipality, but not on a road or highway in the state highway system, at the site of an investigation using vehicular accident reconstruction;  
Allows a designated official temporarily to lower speed limits without TxDOT permission, but with 48 hour notice that includes the date and time of accident reconstruction, location, entities involved, size of area affected, and an estimate of how long the site will be used for the reconstruction;  
Requires temporary signs to be posted and the usual speed limit signs concealed; the speed limit is effective when the temporary sign is posted and remains effective until the reconstruction is complete and the signs are removed;

Provides that the temporary speed limit is prima facie proof of the reasonable and prudent speed;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** HB 0109 allows municipalities and counties to temporarily lower speed limits at accident reconstruction sites without Texas Department of Transportation (TxDOT) approval. TxDOT is required to develop safety guidelines with which municipalities and counties must comply and notice must be given to TxDOT. The bill requires that a short-term speed limit sign be posted, a permanent sign be concealed, and all signs returned to normal once the investigation is complete.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0167

**Caption:** relating to the transportation of certain mental health patients

**Effective Date:** 9-1-2011

**Application:**

**Statutes** HS 574.045

**Affected:** HS 574.0455

**Subject:** Transportation of patient

**Summary:** Amends HS 574.045 to allow the court to authorize transportation of a patient detained or released under emergency detention order to be transported to the designated mental health facility by:

- (1) a special officer for mental health assignment certified under Section 1701.404, Occupations Code (Certification of officers for mental health assignment);
- (2) the facility administrator of the designated mental health facility, unless the administrator notifies the court that facility personnel are not available to transport the patient;
- (3) a relative or other responsible person who has a proper interest in the patient's welfare and who receives no remuneration, except for actual and necessary expenses;
- (4) a representative of the local mental health authority, who shall be reimbursed by the county, unless the representative notifies the court that local mental health authority personnel are not qualified to ensure the safety of the patient during transport;
- (5) a qualified transportation service provider selected from the list established and maintained as required by HS 574.0455 (List of qualified transportation service providers) by the commissioners court of the county in which the court authorizing the transportation is located; or
- (6) the sheriff or constable;

A special officer for mental health assignment, the facility administrator, or sheriff or constable who is authorized by the court to transport a person to a mental health facility may contract with a qualified transportation service provider that is included on the list by the commissioners court of the county, to provide the transportation authorized by the court;

**Subject:** List of qualified transportation service providers

**Summary:** Adds HS 574.0455 to allow commissioners court to:

- (1) establish and maintain a list of qualified transportation service providers that a court may authorize or with whom a person may contract to transport a person to a mental health facility;
- (2) establish an application procedure for a person to be included on the list, including an appropriate application fee to be deposited in the county general fund;
- (3) contract with qualified transportation service providers on terms acceptable to the county;
- (4) allow officers and employees of the county to utilize persons on the list on a rotating basis if the officer or employee is authorized to provide transportation and chooses to utilize a qualified transportation service provider in accordance with the terms of the contract approved by the commissioners court; and
- (5) ensure that the list is made available to any person authorized to provide transportation under HS 574.045;

Requires the Department of State Health Services to adopt uniform standards for qualification as a transportation service provider and how to provide transportation;

**Subject:**

**Summary:**

**Comments:** As the population of Texas grows, more persons are being incarcerated who need to be transferred to mental health facilities. Some patients require transportation to facilities across the state. Under current law, it is the duty of law enforcement to transport persons with mental illness. The growing need for transportation of these patients is putting an increasing strain on the sheriffs' departments. Not only is a sheriff's department not equipped for medical transport, but it diverts resources from its primary function: protecting the citizens of Texas. There are other parties that can adequately provide the same service that are not being utilized.

HB 0167 prioritizes the parties authorized to transport patients committed to mental health facilities. In order of priority, a court may authorize transportation through a special officer for mental health assignment, the facility administrator of the designated mental health facility, a representative of the local mental health authority, a qualified transportation provider, or the sheriff. These parties are already authorized to transport patients; this bill merely creates a priority system that will help spread the burden in a fair, efficient manner.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0215      **Caption:** relating to photograph and live lineup identification procedures in criminal cases

**Effective Date:** 9-1-2011

**Application:** Applies only to a lineup identification procedure conducted on or after 9-1-2012 regardless of whether the offense to which the procedure is related occurred before, on, or after 9-1-2012,  
Not later than 12-31-2011, Bill Blackwood Law Enforcement Management Institute of Texas must develop, adopt, and disseminate a model policy  
Not later than 9-1-2012, each law enforcement agency must adopt a policy

**Statutes** CP 38.20

**Affected:**

**Subject:** Photograph and live lineup identification procedures

**Summary:** Adds CP 38.20 to require a law enforcement agency that employs peace officers who conduct lineups in the routine performance of their duties to adopt either the model policy or the agency's own policy regarding the administration of photograph and live lineup identification;  
Policies must be based on credible research on eyewitness memory, best practices to reduce erroneous eyewitness identifications and enhance reliability;  
Policies must include the manner of selection of photographs or participants; instructions given to the witness before viewing the lineup; documentation and preservation of results; if possible, the assignment of an administrator who is unaware of which member of the live lineup is the suspect, or who can present a photograph array in a blind manner to prevent influence of the witness;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Mistaken eyewitness identification is the leading cause of wrongful convictions in Texas and the United States. H.B. 215 improves the accuracy and reliability of eyewitness identification procedures by requiring all Texas law enforcement agencies in the state to adopt written eyewitness identification policies based on best practices proven effective by scientific research on eyewitness memory.

H.B. 215 requires all Texas law enforcement agencies in the state to adopt written eyewitness identification policies based on best practices proven effective by scientific research on eyewitness memory and law enforcement agencies in other parts of the country. This bill requires the Bill Blackwood Law Enforcement Management Institute of Texas to develop and disseminate a model policy and associated training materials to local law enforcement agencies regarding eyewitness identification procedures.

Eyewitness identification procedures would have to address the following topics: the selection of photograph and live lineup filler photographs or participants; instructions that will be given to a witness before conducting a photograph or live lineup identification procedure; documentation and preservation of lineup procedures; procedures for administering lineups to illiterate persons or persons with limited English proficiency; procedures for assigning a lineup administrator who is unaware of the suspect in a lineup or photo array; and any other procedures or best practices supported by credible research or commonly accepted as a means to reduce erroneous identifications and enhance the objectivity and reliability of eyewitness identifications.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0253

**Caption:** relating to the protection of children by ensuring reports of abuse or neglect, protecting children from abuse and neglect, ensuring that births are reported, and prosecuting the offense of bigamy; providing criminal penalties

**Effective Date:** 9-1-2011

**Application:**

**Statutes** HS 195.004

**Affected:**

**Subject:** Failure to perform duty

**Summary:** Amends HS 192.003 to change failure to report a birth or file a birth certificate from a Class C misdemeanor to a Class A misdemeanor;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

OC § 192.003. Birth Certificate Filed or Birth Reported

(a) The physician, midwife, or person acting as a midwife in attendance at a birth shall file the birth certificate with the local registrar of the registration district in which the birth occurs.

(b) If a birth occurs in a hospital or birthing center, the hospital administrator, the birthing center administrator, or a designee of the appropriate administrator may file the birth certificate in lieu of a person listed by Subsection (a).

(c) If there is no physician, midwife, or person acting as a midwife in attendance at a birth and if the birth does not occur in a hospital or birthing center, the following in the order listed shall report the birth to the local registrar:

(1) the father or mother of the child; or

(2) the owner or householder of the premises where the birth occurs.

(d) Except as provided by Subsection (e), a person required to file a birth certificate or report a birth shall file the certificate or make the report not later than the fifth day after the date of the birth.

As amended:

§ 195.004. Failure to Perform Duty

(a) A person commits an offense if the person refuses or fails to furnish correctly any information in the person's possession affecting a certificate or record required under this title.

(b) A person commits an offense if the person fails, neglects, or refuses to fill out a birth or death certificate and to file the certificate with the local registrar or deliver it on request to the person with the duty to file it, as required by this title.

(c) A local registrar, deputy registrar, or sub registrar commits an offense if that person fails, neglects, or refuses to perform a duty under this title or under instructions and directions of the state registrar given under this title.

(d) An offense under this section is a Class C misdemeanor.

(d-1) An offense under this section for failure to perform a duty required by Section 192.003 is a Class A misdemeanor.

(e) In this section, "person" means an individual, corporation, or association.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0257                      **Caption:** relating to certain unclaimed property that is presumed abandoned

**Effective Date:** 9-1-2011

**Application:** PP 74.101 and PP 74.301 take effect 1-1-2013.

**Statutes**                      PP 72.102  
**Affected:**                      PP 74.101  
   PP 74.301

**Subject:**                      Travelers check and money order

**Summary:**                      Amends PP 72.102 to change from 7 years to the latest of:  
   (1) the 3rd anniversary of the date on which the money order was issued;  
   (2) the 3rd anniversary of the date on which the issuer of the money order last received from the owner of the  
   money order communication concerning the money order; or  
   (3) the 3rd anniversary of the date of the last writing, on file with the issuer, that indicates the owner's interest in  
   the money order;

**Subject:**                      Property report  
   Delivery of property to comptroller

**Summary:**                      Amends PP 74.101 to require each holder who on March 1 (rather than June 30) holds property that is presumed  
   abandoned to file a report of that property on or before the following July 1st, (rather than November 1st);

   Amends PP 74.301 to require each holder who on March 1 holds property that is presumed abandoned to deliver  
   the property to the Comptroller by July 1st (rather than November 1st);

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0266

**Caption:** relating to the use of address-matching software by certain state agencies

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 521.063

**Affected:**

**Subject:** Mailing address verification system

**Summary:** Adds TN 521.063 to require the Department of Public Safety to establish a system to ensure that addresses of driver's license holders are verified and matched to United States Postal Service delivery addresses by use of address-matching software meeting the certification standards under the Coding Accuracy Support System adopted by the United States Postal Service or a subsequent standard adopted by the United States Postal Service to replace Coding Accuracy Support System standards for preparation of bulk mailings; a provider for bulk mailing services must use address-matching software that meets or exceeds certification standards under the Coding Accuracy Support System or subsequent standards adopted by the United States Postal Service;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** HB 0266 seeks to take advantage of United States Postal Service discounts that may be available and increase the accuracy of mailing addresses in state agency databases by requiring state agencies, if practicable, to use address-matching software that meets certification standards under the Coding Accuracy Support System (CASS) adopted by the United States Postal Service and requiring the Department of Public Safety of the State of Texas to ensure that driver's license address records are CASS compliant.



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0274                      **Caption:** relating to the reform of certain remedies and procedures in civil actions and family law matters

**Effective Date:** 9-1-2011

**Application:** Applies only to a civil action commenced on or after 9-1-2011

**Statutes**                      GV 22.004  
**Affected:**                      CV 30.021  
   CV 33.04

**Subject:**                      Rules of civil procedure  
   Award of attorney's fees in relation to certain motions to dismiss

**Summary:**                      Amends GV 22.004 to require the supreme court to adopt rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence; the motion to dismiss must be granted or denied within 45 days of the filing of the motion;

   Adds CV 30.021 to provide that on the granting or denial, in whole or in part, of a motion to dismiss, the court shall award costs and reasonable and necessary attorney's fees to the prevailing party; this section does not apply to actions by or against the state, other governmental entities, or public officials acting in their official capacity or under color of law;

**Subject:**                      Settlement; applicability and effect

**Summary:**                      Amends CV 42.002 to provide that the settlement procedures do not apply to an action filed in a justice of the peace court or a small claims court;

**Subject:**                      Proportionate responsibility; designation of responsible third parties;

**Summary:**                      Amends CV 33.004 as applicable to (1) any cause of action based on tort in which a defendant, settling person, or responsible third party is found responsible for a percentage of the harm for which relief is sought; or (2) any action brought under the Deceptive Trade Practices-Consumer Protection Act in which a defendant, settling person, or responsible third party is found responsible for a percentage of the harm for which relief is sought; Prohibits a defendant from designating a person as a responsible third party after the applicable limitations period on the cause of action has expired with respect to the responsible third party if the defendant has failed to comply with its obligations, if any, timely to disclose that the person may be designated as a responsible third party under the Texas Rules of Civil Procedure;

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0308

**Caption:** relating to life preserving devices on recreational vessels

**Effective Date:** 6-17-2011

**Application:**

**Statutes** PW 31.066

**Affected:** PW 31.073

**Subject:** Life preserving devices

**Summary:** Amends PW 31.066 to require a motorboat, including a motorboat carrying passengers for hire, to carry at least one wearable personal flotation device for each person aboard;  
Requires the operator of a motorboat less than 26 feet in length to require every passenger under 13 years of age to wear a wearable personal flotation device;  
Prohibits a person from operating a recreational vessel 16 feet or more in length unless the vessel is equipped with a personal flotation device for each person aboard, and at least one immediately accessible Type IV throwable flotation device;  
Requires a person under 13 years of age on board to wear a wearable personal flotation device;  
Prohibits an adult operator from allowing a person under 13 years of age to be on board while the vessel is under way if the child is not wearing a wearable personal flotation device;

**Subject:** Canoes, punts, rowboats, sailboats, rubber rafts, racing shells, rowing sculls, kayaks, and other paddle craft; equipment exemptions

**Summary:** Amends PW 31.073 to exempt a canoe, kayak, punt, rowboat, sailboat, rubber raft, and other paddle craft, from all safety equipment requirements except one wearable personal flotation device for each person aboard, and required lights, when the vessel is paddled, poled, oared, or windblown;  
If the vessel is 16 feet or more in length, it must be equipped with at least one Type IV personal flotation device;

**Subject:**

**Summary:**

**Comments:** Federal regulations currently require a recreational vessel that is more than 16 feet in length, with certain exceptions, to have a personal flotation device for each person on board, as well as at least one Type IV personal flotation device.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0350      **Caption:** relating to discharging fines and costs assessed against certain juvenile defendants through community service and tutoring

**Effective Date:** 9-1-2011

**Application:** Applies only to an offense committed or conduct that occurs on or after 9-1-2011

**Statutes Affected:** CP 45.0492  
CP 45.051

**Subject:** Community service or tutoring in satisfaction of fine or costs for certain juvenile defendants

**Summary:** Adds CP 45.0492 to allow a judge to require a defendant 17 years old or younger who is assessed a fine and costs for a Class C misdemeanor committed in a building or on the grounds of the primary or secondary school at which the defendant was enrolled at the time of the offense, to discharge all or part of the fine or costs by performing community service or attending a tutoring program;  
Judge must specify number of hours of participation;  
Requires a tutoring program to agree to supervise the defendant for attendance, and report on defendant's work to the judge;  
Limits participation to no more than 16 hours per week unless a determination is made that requiring additional hours will not cause a hardship;  
A defendant is considered to have discharged not less than \$50 of fines or costs for each 8 hours;  
Allows a local juvenile probation department or a court-related services office to provide administrative and other services necessary for supervision of a defendant;

**Subject:** Suspension of sentence and deferral of final disposition

**Summary:** Amends CP 45.051 to allow the court to require the defendant to participate in a tutoring program as well as community service, to discharge costs under deferred disposition;

**Subject:**

**Summary:**

**Comments:** As amended:  
CP 45.0492. COMMUNITY SERVICE OR TUTORING IN SATISFACTION OF FINE OR COSTS FOR CERTAIN JUVENILE DEFENDANTS. (a) This article applies only to a defendant younger than 17 years of age who is assessed a fine or costs for a Class C misdemeanor occurring in a building or on the grounds of the primary or secondary school at which the defendant was enrolled at the time of the offense.  
(b) A justice or judge may require a defendant described by Subsection (a) to discharge all or part of the fine or costs by performing community service or attending a tutoring program that is satisfactory to the court. A defendant may discharge an obligation to perform community service or attend a tutoring program under this article by paying at any time the fine and costs assessed.  
(c) In the justice's or judge's order requiring a defendant to participate in community service work or a tutoring program under this article, the justice or judge must specify the number of hours the defendant is required to work or attend tutoring.  
(d) The justice or judge may order the defendant to perform community service work under this article only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community. A governmental entity or nonprofit organization that accepts a defendant under this article to perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the justice or judge who ordered the community service.  
(e) A tutoring program that accepts a defendant under this article must agree to supervise the defendant in the attendance of the tutoring program and report on the defendant's work to the justice or judge who ordered the tutoring.  
(f) A justice or judge may not order a defendant to perform more than 16 hours of community service per week or attend more than 16 hours of tutoring per week under this article unless the justice or judge determines that requiring additional hours of work or tutoring does not cause a hardship on the defendant or the defendant's family. For purposes of this subsection, "family" has the meaning assigned by Section 71.003, Family Code.  
(g) A defendant is considered to have discharged not less than \$50 of fines or costs for each eight hours of community service performed or tutoring program attended under this article.  
(h) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, justice of the peace, municipal court judge, officer or employee of a political subdivision other than a county, nonprofit organization, or tutoring program is not liable for damages arising from an act or failure to act in connection with an activity performed by a defendant under this article if the act or failure to act:  
(1) was performed pursuant to court order; and  
(2) was not intentional, grossly negligent, or performed with conscious indifference or reckless disregard for the

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

safety of others.

(i) A local juvenile probation department or a court-related services office may provide the administrative and other services necessary for supervision of a defendant required to perform community service under this article.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0359      **Caption:** relating to discipline in public schools, including the use of certain disciplinary methods and the prosecution of certain children for school-related offenses

**Effective Date:** 9-1-2011

**Application:** Applies beginning with the 2011-2012 school year  
Disruption of class, disruption of transportation, and disorderly conduct apply to an offense committed on or after 9-1-2011

**Statutes Affected:** ED 37.124  
ED 37.126  
PE 42.01

**Subject:** Disruption of class

**Summary:** Amends ED 37.124 to create an exception to the offense that at the time the person engaged in the disruption of class, the person was a student in the 6th grade or a lower grade level;

**Subject:** Disruption of transportation

**Summary:** Amends ED 37.126 to create an exception to the offense that at the time the person engaged in the disruption of transportation, the person was a student in the 6th grade or a lower grade level;

**Subject:** Disorderly conduct

**Summary:** Amends PE 42.01 to create an exception to the offense that at the time the person engaged in the following conduct, the person was a student in the 6th grade or a lower grade level:  
(1) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;  
(2) makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace;  
(3) creates, by chemical means, a noxious and unreasonable odor in a public place;  
(5) makes unreasonable noise in a public place other than a sport shooting range, as defined by Section 250.001, Local Government Code, or in or near a private residence that he has no right to occupy;  
(6) fights with another in a public place;

**Comments:** As amended:  
PE Sec. 42.01. DISORDERLY CONDUCT. (a) A person commits an offense if he intentionally or knowingly:  
(1) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;  
(2) makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace;  
(3) creates, by chemical means, a noxious and unreasonable odor in a public place;  
(4) abuses or threatens a person in a public place in an obviously offensive manner;  
(5) makes unreasonable noise in a public place other than a sport shooting range, as defined by Section 250.001, Local Government Code, or in or near a private residence that he has no right to occupy;  
(6) fights with another in a public place;  
(7) discharges a firearm in a public place other than a public road or a sport shooting range, as defined by Section 250.001, Local Government Code;  
(8) displays a firearm or other deadly weapon in a public place in a manner calculated to alarm;  
(9) discharges a firearm on or across a public road;  
(10) exposes his anus or genitals in a public place and is reckless about whether another may be present who will be offended or alarmed by his act; or  
(11) for a lewd or unlawful purpose:  
(A) enters on the property of another and looks into a dwelling on the property through any window or other opening in the dwelling;  
(B) while on the premises of a hotel or comparable establishment, looks into a guest room not the person's own through a window or other opening in the room; or  
(C) while on the premises of a public place, looks into an area such as a restroom or shower stall or changing or dressing room that is designed to provide privacy to a person using the area.  
(b) It is a defense to prosecution under Subsection (a)(4) that the actor had significant provocation for his abusive or threatening conduct.  
(c) For purposes of this section:  
(1) an act is deemed to occur in a public place or near a private residence if it produces its offensive or proscribed consequences in the public place or near a private residence; and  
(2) a noise is presumed to be unreasonable if the noise exceeds a decibel level of 85 after the person making the noise receives notice from a magistrate or peace officer that the noise is a public nuisance.

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

- (d) An offense under this section is a Class C misdemeanor unless committed under Subsection (a)(7) or (a)(8), in which event it is a Class B misdemeanor.
- (e) It is a defense to prosecution for an offense under Subsection (a)(7) or (9) that the person who discharged the firearm had a reasonable fear of bodily injury to the person or to another by a dangerous wild animal as defined by Section 822.101, Health and Safety Code.
- (f) Subsections (a)(1), (2), (3), (5), and (6) do not apply to a person who, at the time the person engaged in conduct prohibited under the applicable subdivision, was a student in the sixth grade or a lower grade level, and the prohibited conduct occurred at a public school campus during regular school hours.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0378

**Caption:** relating to stationary tow trucks on a highway; providing a penalty

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 545.157

**Affected:** TN 545.301

**Subject:** Passing authorized emergency vehicle

**Summary:** Amends TN 545.157 to include a tow truck using a mounted light bar among the vehicles for which an operator must vacate the lane closest, or slow to a speed not to exceed 20 miles per hour less than the posted limit, or 5 miles per hour when the posted speed limit is less than 25 mph;

"Tow truck" means a vehicle that:

- (1) has been issued a permit under Subchapter C, Chapter 2308, Occupations Code; and
- (2) is operated by a person licensed under Subchapter D, Chapter 2308, Occupations Code;

**Subject:** Stopping, standing, or parking outside a business or residence district

**Summary:** Amends TN 545.301 to provide that the provisions prohibiting stopping, parking, or leaving a vehicle on the main traveled part of a highway outside a business or residence district do not apply to a tow truck performing towing duties;

**Subject:**

**Summary:**

**Comments:** Tow truck operators are often the first ones at an accident scene and are often the only responders at an incident scene such as a break-down or flat-tire. Towing professionals know too well the dangers of being on the side of the road as traffic drives by. Tragically, an average of one tow operator is killed each week in the United States while providing service to a motorist. Current law addresses passing an authorized emergency vehicle, but does not address the passing of a stationary tow truck.

TN § 542.301. General Offense

(a) A person commits an offense if the person performs an act prohibited or fails to perform an act required by this subtitle.

(b) Except as otherwise provided, an offense under this subtitle is a misdemeanor.

TN § 542.401. General Penalty

A person convicted of an offense that is a misdemeanor under this subtitle for which another penalty is not provided shall be punished by a fine of not less than \$1 or more than \$200.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0559

**Caption:** relating to Bronze Star Medal and Bronze Star Medal with Valor specialty license plates

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 504.315

**Affected:** TN 681.008

**Subject:** Military specialty license plates for extraordinary service

**Summary:** Amends TN 504.315 to allow the TxDMV to issue specialty license plates for recipients of the Bronze Star Medal and Bronze Star Medal with Valor, which must include the Bronze Star Medal emblem and must include the words "Bronze Star Medal" at the bottom of each plate; plates issued to recipients of the Bronze Star Medal with Valor that are not personalized must also include the letter "V" as a prefix or suffix to the numerals on each plate;

**Subject:** Parking privileges; certain veterans and military award recipients

**Summary:** Amends TN 681.008 to include Bronze Medal recipients as exempt from the payment of a parking fee collected through a parking meter charged by a governmental authority other than the federal government;

**Subject:**

**Summary:**

**Comments:**



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0588                      **Caption:** relating to surcharges under the Driver Responsibility Program

**Effective Date:** 9-1-2011

**Application:** Applies to any total surcharge amounts owed by a person for a 36-month period regardless of whether the initial annual surcharge was assessed before, on, or after 9-2-2011

**Statutes Affected:** TN 708.157  
TN 708.159

**Subject:** Amnesty and incentives

**Summary:** Amends TN 708.157 to require the Department of Public Safety to offer a holder of a driver's license on which a surcharge has been assessed an incentive for compliance with the law and efforts at rehabilitation, including a reduction of a surcharge or a decrease in the length of an installment plan;

**Subject:** Advance payment of surcharge

**Summary:** Adds TN 708.159 to require DPS to offer an option for a payment in advance of the total amount that will be owed for a 36-month period to a person who is assessed an annual surcharge;  
Requires the notice of the surcharge to include the initial amount, and the total amount that will be owed for 36 months, and the availability of the advance payment option;

**Subject:**

**Summary:**

**Comments:**

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

**Bill Number:** HB 0596                      **Caption:** relating to offenses involving operating a motorboat in a circular course

**Effective Date:** 6-17-2011

**Application:** Applies only to an offense committed on or after 6-17-2011

**Statutes Affected:** PW 31.099

**Subject:** Prohibition on circular course around individuals engaged in water activities

**Summary:** Amends PW 31.099 to provide that no person may operate a motorboat in a circular course around any other boat or personal watercraft any occupant of which is engaged in fishing, waterskiing, or similar activity, or any person swimming, but may do so to retrieve a downed or fallen water-skier or other person engaged in a similar activity;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0716

**Caption:** relating to the taking of certain feral hogs and coyotes using a helicopter

**Effective Date:** 9-1-2011

**Application:**

**Statutes** PW 43.1075

**Affected:**

**Subject:** Using helicopters to take certain animals

**Summary:** Adds PW 43.1075 to authorize a qualified landowner or landowner's agent, as determined by the Texas Parks and Wildlife Commission rule, to contract to participate as a hunter or observer in using a helicopter to take depredated feral hogs or coyotes under the authority of a permit;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** According to several sources, feral hogs in Texas are responsible for approximately \$400 million in direct damages to Texas every year. There are an estimated two million feral hogs in Texas and feral hogs are found in nearly every county of the state. It is also estimated that for every dollar spent on feral hog control, more than \$7.50 in agricultural products is saved. In addition, it is estimated that predation by coyotes causes millions of dollars in economic losses to agricultural producers in the state. Helicopters are used in certain areas to hunt feral hogs in order to reduce hog populations and such hunting is a cost-effective method for controlling the animals in areas in which hogs have become conditioned to traditional trapping efforts or in any area in which over 30 hogs an hour are removed

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0734      **Caption:** relating to the jurisdiction of constitutional county courts over truancy cases and the appointment of magistrates to hear truancy cases in certain counties

**Effective Date:** 9-1-2011

**Application:** Applies only to an offense committed on or after 9-1-2011

**Statutes Affected:** ED 25.093  
ED 25.094  
GV 26.045

**Subject:** Parent contributing to nonattendance

**Summary:** Amends ED 25.093 to allow a complaint to be filed in a constitutional county court of a county that has a population of 1.75 million, rather than 2 million;

**Subject:** Failure to attend school

**Summary:** Amends ED 25.094 to allow a complaint to be filed in a constitutional county court of a county that has a population of 1.75 million or more, rather than 2 million or more;

**Subject:** Original criminal jurisdiction (constitutional county court)  
Magistrates in certain county courts

**Summary:** Amends GV 26.045, relating to constitutional county courts in a county with a population of 1.75 million or more, rather than 2 million or more, original jurisdiction over the offenses of failure to attend school and parent contributing to truancy;

Amends GV 54.1171 to allow the county judge in a county with a population of 1.75 million or more, rather than 2 million or more, to appoint one or more part-time or full-time magistrates to hear a matter alleging a violation of ED 25.093 or ED 25.094

**Comments:** Currently, a magistrate in a county with a population of two million or more is permitted to hear truancy cases. HB 0734 allows the county judge of a county with a population of 1.75 million or more, with the consent of the commissioners court, to appoint a magistrate to hear truancy cases. The county judge retains final authority over the decision rendered by the magistrate. In addition, this bill allows a newly created truancy court in a county with a population of 1.75 million or more to have original jurisdiction over truancy cases

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0787      **Caption:** relating to abandoned, wrecked, dismantled, discarded, and inoperable aircraft and vessels

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 683.001 et seq

**Affected:** TN 683.071 et seq

**Subject:** Abandoned motor vehicles, including aircraft

**Summary:** Amends TN 683.001 et seq to define "aircraft" to mean a device that is invented, used, or designated for air navigation or flight, other than a parachute or other device used primarily as safety equipment.  
Amends TN 683.011 to allow law enforcement to take into custody an abandoned aircraft, as well as motor vehicle, watercraft, or outboard motor found on public or private property;  
Amends TN 683.012 to require law enforcement to send notice of abandonment to the last known registered owner of the aircraft and to the Federal Aviation Administration or the secretary of state for the aircraft; requires law enforcement to contact the FAA to attempt to identify the owner before sending the notice;

**Subject:** Junked vehicles; public nuisance; abatement

**Summary:** Amends TN 683.071 et seq to redefine "junked vehicle" to mean a vehicle that (1) is self-propelled; and (2) is (A) wrecked, dismantled or partially dismantled, or discarded; or (B) inoperable and has remained inoperable for more than (i) 72 consecutive hours, if the vehicle is on public property; or (ii) 30 consecutive days, if the vehicle is on private property;

Junked vehicle includes a motor vehicle, aircraft, or watercraft;

Provides that the junked vehicle chapter only applies to:

(1) a motor vehicle that does not have lawfully attached to it:

(A) an unexpired license plate; and

(B) a valid motor vehicle inspection certificate;

(2) an aircraft that does not have lawfully printed on the aircraft an unexpired federal aircraft identification number registered under Federal Aviation Administration; or

(3) a watercraft that:

(A) does not have lawfully on board an unexpired certificate of number; and

(B) is not a vessel with a valid marine document issued by the United States Coast Guard's National Vessel Documentation Center or a federal agency that is a successor to the National Vessel Documentation Center;

Amends TN 683.074 to require the Department of Motor Vehicles immediately to cancel the certificate of title on receipt of notice of removal of a motor vehicle; and the Parks and Wildlife Department shall immediately cancel the certificate of title on receipt of notice of the removal of a watercraft;

Amends TN 683.076 to require information to be included in an order requiring removal of the nuisance:

(1) for a motor vehicle, the vehicle's:

(A) description;

(B) vehicle identification number; and

(C) license plate number;

(2) for an aircraft, the aircraft's:

(A) description; and

(B) federal aircraft identification number as described by Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47; and

(3) for a watercraft, the watercraft's:

(A) description; and

(B) identification number as set forth in the watercraft's certificate of number.

**Subject:**

**Summary:**

**Comments:** Currently, a law enforcement agency has the authority to take an abandoned motor vehicle, watercraft, or outboard motor into custody and provide for the public sale of the property if the current owner fails to claim the property. An abandoned aircraft, however, is not included among the motor vehicles a law enforcement agency is authorized to take into custody. Like abandoned motor vehicles and watercraft, abandoned planes and other aircraft are a nuisance and the sites on which the craft is located can become a junkyard if the vessel is not disposed of in a timely manner. These sites are often located near a residential community, consequently devaluing residential property.

HB 0787 seeks to remedy this situation by adding "aircraft" to the current abandoned motor vehicle statute,

HB 0787

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

authorizing law enforcement to take abandoned aircraft into custody, and amending the "junked vehicle" definition to include aircraft and watercraft.

This bill also amends the Texas Parks and Wildlife Code to authorize the Texas Parks and Wildlife Department to handle abandoned watercraft and vessels through the bonded title process. Currently, the only entity that can deal with abandoned boats is local law enforcement. The handling and disposing of abandoned boats can be time and resource intensive for local agencies, often times resulting in the failure to dispose of such vessels in a timely manner, if at all.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0885      **Caption:** relating to the operation and movement of a vehicle when certain traffic control signals do not display an indication

**Effective Date:** 6-17-2011

**Application:**

**Statutes Affected:** TN 544.007

**Subject:** Traffic control signals in general

**Summary:** Amends TN 544.007 to exclude a freeway entrance ramp control signal or a pedestrian hybrid beacon from the requirement to stop when the signal is dark;  
"Pedestrian hybrid beacon" is a pedestrian controlled traffic control signal that displays different colored lights successively only when activated by a pedestrian;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** This bill would allow for the uniform installation of pedestrian crossing lights and freeway entrance control signals by changing current law that requires motorists to stop at any dark traffic signal display (as if it were a stop sign). A pedestrian hybrid beacon is similar to a traffic light and flashes yellow, turns red so pedestrians can safely cross, and then dims allowing traffic to continue as normal. The beacons are especially helpful on busy streets where it can be tough for pedestrians to cross, and they also increase a motorist's awareness of when a pedestrian is crossing.  
Motorists would still be required to stop at other dark traffic signals but the law would provide an exception for pedestrian hybrid beacons and also similar signals at freeway entrance points. Pedestrian beacons and freeway entrance control signals are currently being utilized in 21 states, and there are pilot projects in Austin and various other Texas cities.  
The device has been vetted by organizations such as the Federal Highway Administration, the Transportation Research Board, and many others, but the Texas Department of Transportation is unable to include the beacons in its Manual on Uniform Traffic Control Devices due to conflict with the current statute.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0890

**Caption:** relating to certain custom vehicles and street rods

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 548.052

**Affected:**

**Subject:** Compulsory inspection of vehicles  
Vehicles not subject to inspection

**Summary:** Amends TN 548.052 to provide that a vehicle bearing a custom vehicle license or a street rod license is not subject to compulsory inspection;

"Custom vehicle" means a vehicle:

(A) that is:

- (i) at least 25 years old and of a model year after 1948; or
- (ii) manufactured to resemble a vehicle that is at least 25 years old and of a model year after 1948; and

(B) that:

- (i) has been altered from the manufacturer's original design; or
- (ii) has a body constructed from materials not original to the vehicle.

"Street rod" means a vehicle:

(A) that was manufactured:

- (i) before 1949; or
- (ii) after 1948 to resemble a vehicle manufactured before 1949; and

(B) that:

- (i) has been altered from the manufacturer's original design; or
- (ii) has a body constructed from materials not original to the vehicle.

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0930                      **Caption:** relating to the requirements for an application for a tax warrant authorizing the seizure of personal property for the payment of ad valorem taxes

**Effective Date:** 6-17-2011

**Application:** Applies only to an application for a tax warrant filed on or after 6-17-2011

**Statutes Affected:** TX 33.22

**Subject:** Institution of seizure

**Summary:** Amends TX 33.22 to authorize the court to issue a tax warrant if the applicant, by affidavit, shows:  
(1) the person is delinquent in the payment of taxes, penalties, and interest; or  
(2) the applicant knows of no other personal property the person owns in the county from which the tax may be satisfied, and the applicant has reason to believe that:  
(A) the property owner is about to remove the property from the county; or  
(B) the property is about to be sold at a liquidation sale in connection with the cessation of a business;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** The Texas Legislature recently amended state tax law to authorize a tax collector to summarily seize a person's personal property under court order for the purpose of securing payment of taxes on that property before the taxes become delinquent if the tax collector has reason to believe that the property is about to be either removed from the county or sold in a liquidation sale in connection with the cessation of business. Facts in support of a seizure must be supported by the tax collector's affidavit before a court may issue the necessary tax warrant for seizure. However, the legislation authorizing such seizure of property did not make the necessary conforming changes to provisions regarding such affidavit to account for a case where property is about to be sold in a liquidation sale.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0942                      **Caption:** relating to an exemption for school districts from security for court costs and appeal bond

**Effective Date:** 9-1-2011

**Application:** Applies only to a suit or appeal filed on or after 9-1-2011

**Statutes Affected:** CV 6.004

**Subject:** School districts exempt from security for court costs and appeal bond

**Summary:** Adds CV 6.004 to allow a school district to institute and prosecute suits without giving security for cost and to appeal from judgment without giving supersedes or cost bond;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Currently, a Texas school district may be required to post a cost or appeal bond in a civil suit. A cost bond may be assessed at the beginning of a court proceeding and is intended to secure payment of court fees if a party is later unable to pay such fees. Similarly, an appeal bond may be ordered to secure payment in the event of filing to appeal from judgment. Many political subdivisions, including state and federal agencies, municipalities, and water districts, are exempt from this requirement. A governmental entity does not pose the same danger of payment delinquency as a private entity or a person in another civil proceeding.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0961      **Caption:** relating to the sealing of and restricting access to juvenile records of adjudications of delinquent conduct or conduct indicating a need for supervision and to the confidentiality of records of certain misdemeanor convictions of a child

**Effective Date:** 6-17-2011

**Application:** Applies to convictions before, on, or after 6-17-2011

**Statutes Affected:** CP 44.2811  
CP 45.0217  
CP 58.00711  
GV 411.081(f-1)

**Subject:** Records relating to children convicted of fine-only misdemeanors

**Summary:** Adds CP 44.2811 to provide that all records, files, and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for a fine-only misdemeanor offense other than a traffic offense, are confidential and may not be disclosed to the public except as provided in CP 45.0217;  
All records of a conviction that is affirmed are confidential upon satisfaction of the judgment and may not be disclosed to the public except as provided under Art. 45.0271;

**Subject:** Confidential records related to the conviction of a child

**Summary:** Adds CP 45.0217 to provide that all records and files, including those held by law enforcement, and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for a fine-only misdemeanor offense other than a traffic offense, are confidential and may not be disclosed to the public;  
Information may be inspected only by:  
(1) judges or court staff;  
(2) a criminal justice agency for a criminal justice purpose;  
(3) Department of Public Safety;  
(4) an attorney for a party to the proceeding;  
(5) the child defendant; or  
(6) the defendant's parent, guardian, or managing conservator;

**Subject:** Criminal history record information (nondisclosure of records of juvenile)

**Summary:** Repeals 411.081(f-1) requiring that on conviction of a child for a misdemeanor offense punishable by fine only that does not constitute conduct indicating a need for supervision under Section 51.03, Family Code, the convicting court shall immediately issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense;

**Comments:** A person's juvenile case is subject to automatic restriction when the individual turns 21 years of age and the case did not include violent or habitual felony conduct or result in the minor being certified for trial in criminal court. HB 0961 lowers the age requirement to 17 years of age and removes the provision that excludes individuals who were granted deferred adjudication for or convicted of a felony or a misdemeanor punishable by confinement in jail for an offense committed after the person became 17 years of age.  
Texas law allows a court to order the sealing of records for someone who is at least 21 years of age and has not been convicted of a felony after reaching age 17, among other requirements.

As added:  
CP 44.2811. RECORDS RELATING TO CHILDREN CONVICTED OF FINE-ONLY MISDEMEANORS. All records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for a fine-only misdemeanor offense other than a traffic offense are confidential and may not be disclosed to the public except as provided under Article 45.0217(b).

CP 45.0217. CONFIDENTIAL RECORDS RELATED TO THE CONVICTION OF A CHILD. (a) Except as provided by Article 15.27 and Subsection (b), all records and files, including those held by law enforcement, and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for a fine-only misdemeanor offense other than a traffic offense are confidential and may not be disclosed to the public.  
(b) Information subject to Subsection (a) may be open to inspection only by:  
(1) judges or court staff;  
(2) a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082,

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

Government Code;

(3) the Department of Public Safety;

(4) an attorney for a party to the proceeding;

(5) the child defendant; or

(6) the defendant's parent, guardian, or managing conservator.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0962                      **Caption:** relating to rules regarding return of service

**Effective Date:** 1-1-2012

**Application:** Applies to all process served on or after 1-1-2012 without regard to whether the process was issued before, on, or after that date

**Statutes Affected:** CV 17.030

**Subject:** Return of service

**Summary:** Adds CV 17.030 to require the Supreme Court to adopt rules requiring a person who serves process to complete a return of service and specifies information that must be provided in the return;  
Provides that a certified process server signs a return under penalty of perjury;  
Provides that a person who knowingly or intentionally falsifies a return may be prosecuted for tampering with a governmental record;

**Subject:** Failed substitute service (on chairman of Texas Transportation Commission for service on nonresident motor vehicle operator)

**Summary:** Amends CV 17.065 to delete the requirement that the return of service evidencing substituted service on the chairman of the Texas Transportation Commission for service on a nonresident motor vehicle operator be notarized, and to provide that the return is signed under penalty of perjury;

**Subject:**

**Summary:**

**Comments:** Currently, process servers are required to have returns of service signed before a notary public, which adds additional time and cost to litigants. Most states have changed their laws to allow for only the signature of the server signed under penalty of perjury, rather than require the service to be verified. The purpose of H.B. 962 is to streamline the return of service process by providing rules regarding return of service and requiring a process server to sign the return of service under penalty of perjury rather than requiring verification.

As added:

CV 17.030. RETURN OF SERVICE. (a) The Supreme Court shall adopt rules of civil procedure requiring a person who serves process to complete a return of service.

(b) The rules:

(1) must provide that the return of service:

(A) is not required to be endorsed or attached to the original process issued; and

(B) may be electronically filed; and

(2) may require that the following information be included in the return of service:

(A) the cause number and case name;

(B) the court in which the case has been filed;

(C) the date and time process was received for service;

(D) the person or entity served;

(E) the address served;

(F) the date of service;

(G) the manner of delivery of service;

(H) a description of process served;

(I) the name of the person serving process; and

(J) if the process server is certified as a process server by the supreme court, the process server's identification number.

(c) A person certified by the supreme court as a process server or a person authorized outside of Texas to serve process shall sign the return of service under penalty of perjury. The return of service is not required to be verified.

(d) A person who knowingly or intentionally falsifies a return of service may be prosecuted for tampering with a governmental record as provided by Chapter 37, Penal Code.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

- Bill Number:** HB 0963      **Caption:** relating to the costs associated with proceedings regarding cruelly treated animals
- Effective Date:** 9-1-2011
- Application:** Applies only to a proceeding commenced on or after 9-1-2011
- Statutes Affected:** HS 821.021 et seq
- Subject:** Hearing; order of disposition or return of animal
- Summary:** Amends HS 821.023 to provide that on a finding that the owner has cruelly treated the animal, the court must divest the owner of ownership and (1) order a public sale by auction, (2) order the animal given to a municipal or county animal shelter or a nonprofit animal welfare organization, or (3) order the animal destroyed; the court must also order the owner to pay all court costs, including:  
(1) the administrative costs of:  
(A) investigation;  
(B) expert witnesses; and  
(C) conducting any public sale ordered by the court; and  
(2) the costs incurred by a municipal or county animal shelter or a nonprofit animal welfare organization in:  
(A) housing and caring for the animal during its impoundment; and  
(B) humanely destroying the animal if destruction is ordered by the court.  
The court must also determine the estimated costs likely to be incurred by a shelter or welfare organization to house and care for the impounded animal during the appeal process and set the amount of bond for appeal equal to the sum of:  
(1) the amount of the court costs; and  
(2) the amount of the estimated costs to house and care for the animal during appeal;  
A bond for appeal cannot be greater than or in addition to the amount of court costs and costs to house and care for the animal;  
The amount of court costs ordered and the amount of the bond are excluded in determining the court's jurisdiction;
- Subject:** Sale or disposition of cruelly treated animal
- Summary:** Amends HS 821.024 to allow an officer who is unable to sell a cruelly treated animal at auction to cause the animal to be humanely destroyed or given to a municipal or county animal shelter or a nonprofit animal welfare organization;
- Subject:** Appeal  
Conflict of laws
- Summary:** Amends HS 821.025 to require a notice of appeal and a cash or surety bond not later than the 10th calendar day after the date the order is issued, in order to appeal;  
Requires the clerk to deliver the record to the clerk of the county court at law not later than the 5th calendar day after the date the notice of appeal and bond is filed;  
Requires the county court to hear the matter de novo not later than the 10th calendar day after the date the county court at law receives the record; the county court's decision is final;
- Adds HS 821.026 to provide that in the event of a conflict between the statutes governing the disposition of cruelly treated animals and any other law relating to an appeal, including a bond, the laws governing the disposition of cruelly treated animals in HS Chapter 821, Subchapter B (disposition of cruelly treated animals) controls;
- Comments:** Currently, a case involving the seizure of cruelly treated animals can be appealed. An owner who has been divested of ownership of an animals for cruel treatment is able to appeal from a justice court, a municipal court, or a municipal court of record to a county court or county court at law. Questions have arisen in legal practice regarding the required steps in the appeal process and the amount and type of appeal bond needed to assure that the costs of caring for the animal incurred by the government agency or designated nonprofit animal welfare organization are adequately covered. HB 0963 standardizes the requirements and procedures for appeals; expedites the appeal so that the animals are not held in limbo for an extended period of time; and provides adequate recovery of impound and care costs incurred during the litigation process.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0976

**Caption:** relating to the issuance of a warrant or summons by a magistrate

**Effective Date:** 6-17-2011

**Application:**

**Statutes** CP 15.03

**Affected:**

**Subject:** Magistrate may issue warrant or summons

**Summary:** Amends CP 15.03 to allow a person seeking a warrant to appear before the magistrate through an electronic broadcast; requires the recording to be preserved until the defendant is acquitted or all appeals are exhausted, if the defendant is charged; allows counsel for the defendant to obtain a copy of the recording on payment of a reasonable cost;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Current law allows a warrant of arrest or a complaint to be forwarded by any method that ensures the transmission of a duplicate of the original warrant, including secure facsimile or secure other electronic device. HB 0976 seeks to further promote the use of technology to more quickly obtain an arrest warrant or summons by enabling a person to appear before and communicate with a magistrate through an electronic broadcast system. The bill requires that recording of the appearance be preserved until the defendant is acquitted of the offense or all appeals relating to the offense have been exhausted. The bill updates and expedites the issuance of search warrants in metropolitan areas, it also enables law enforcement officers serving areas located many miles away from the nearest judge to obtain a warrant in a more timely manner.

As amended:

CP Art. 15.03. [220] [267] [255] Magistrate may issue warrant or summons

(a) A magistrate may issue a warrant of arrest or a summons:

1. In any case in which he is by law authorized to order verbally the arrest of an offender;
2. When any person shall make oath before the magistrate that another has committed some offense against the laws of the State; and

3. In any case named in this Code where he is specially authorized to issue warrants of arrest.

(b) A summons may be issued in any case where a warrant may be issued, and shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last known address. If a defendant fails to appear in response to the summons a warrant shall be issued.

(c) For purposes of Subdivision 2, Subsection (a), a person may appear before the magistrate in person or the person's image may be presented to the magistrate through an electronic broadcast system.

(d) A recording of the communication between the person and the magistrate must be made if the person's image is presented through an electronic broadcast system under Subsection (c). If the defendant is charged with the offense, the recording must be preserved until:

- (1) the defendant is acquitted of the offense; or
- (2) all appeals relating to the offense have been exhausted.

(e) The counsel for the defendant may obtain a copy of the recording on payment of an amount reasonably necessary to cover the costs of reproducing the recording.

(f) In this article, "electronic broadcast system" means a two-way electronic communication of image and sound between a person and magistrate and includes secure Internet videoconferencing.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0984      **Caption:** relating to agreements between neighboring municipalities regarding jurisdiction of cases in municipal courts

**Effective Date:** 5-19-2011

**Application:** Applies only to an offense committed or conduct that occurs on or after 5-19-2011

**Statutes** GV 29.003  
**Affected:** CP 4.14

**Subject:** Jurisdiction (municipal courts)

**Summary:** Amends GV 29.003, to authorize a municipality to enter into an agreement with a contiguous municipality or a municipality with boundaries that are within one-half mile of the municipality to establish concurrent jurisdiction of the municipal courts in the municipalities and provide original jurisdiction to a municipal court in which a case is brought as if the municipal court were located in the municipality in which the case arose, for all cases requiring a municipal court to have exclusive jurisdiction within the municipality's territorial limits and cases that arise under HS 821.022 (seizure of cruelly treated animal), or ED 25.094 (failure to attend school);

**Subject:** Jurisdiction of municipal court

**Summary:** Amends CP 4.14, to authorize a municipality to enter into an agreement with a contiguous municipality or a municipality with boundaries that are within one-half mile of the municipality to establish concurrent jurisdiction of the municipal courts in the municipalities and provide original jurisdiction to a municipal court in which a case is brought as if the municipal court were located in the municipality in which the case arose, for all cases requiring a municipal court to have exclusive jurisdiction within the municipality's territorial limits and cases that arise under HS 821.022 (seizure of cruelly treated animal), or ED 25.094 (failure to attend school);

**Subject:**

**Summary:**

**Comments:**



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 0989      **Caption:** relating to the listing of a business location of certain businesses in print advertisements or on Internet websites

**Effective Date:** 9-1-2011

**Application:** Applies only to a print advertisement disseminated or an Internet website posting available for viewing on or after 9-1-2011

**Statutes Affected:** BC 17.462

**Subject:** Listing of business location of certain businesses

**Summary:** Amends BC 17.462 to prohibit a person from misrepresenting the geographical location of a business that derives 50 percent or more of its gross income from the sale or arranging for the sale of flowers or floral arrangements in the listing of the business:  
(1) in a telephone directory or other directory assistance database;  
(2) on an Internet website; or  
(3) in a print advertisement;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** The Internet has provided not only new retail business opportunities but also opportunities to misrepresent the physical location of a business. Local florists across Texas have noted an alarming number of telemarketing businesses advertising themselves as local florists when in fact they are physically located thousands of miles away.  
A local consumer is misled when an order is routed to a nonlocal business location because fees and commissions usually are taken out of the order price.

As amended:  
BC 17.462 Listing of Business Location of Certain Businesses  
(a) A person may not misrepresent the geographical location of a business that derives 50 percent or more of its gross income from the sale or arranging for the sale of flowers or floral arrangements in the listing of the business:  
(1) in a telephone directory or other directory assistance database;  
(2) on an Internet website; or  
(3) in a print advertisement.  
(b) A person is considered to misrepresent the geographical location of a business for purposes of Subsection (a) if the name of the business indicates that the business is located in a geographical area and:  
(1) the business is not located within the geographical area indicated;  
(2) the listing fails to identify the municipality and state of the business's geographical location; and  
(3) a telephone call to the local telephone number:  
(A) listed in the directory or database routinely is forwarded or transferred to a location that is outside the calling area covered by the directory or database in which the number is listed; or  
(B) provided on the Internet website or in a print advertisement routinely is forwarded or transferred to a location that is outside the calling area of the geographical area as indicated by the name of the business.  
(c) A person may place a directory listing for a business described by Subsection (a) the name of which indicates that it is located in a geographical area that is different from the geographical area in which the business is located if a conspicuous notice in the listing states the municipality and state in which the business is located.  
(d) This section does not apply to:  
(1) a publisher of a telephone directory or other publication or a provider of a directory assistance service publishing or providing information about another business;  
(2) an Internet website that aggregates and provides information about other businesses;  
(3) an owner or publisher of a print medium providing information about other businesses;  
(4) an Internet service provider; or  
(5) an Internet service that displays or distributes advertisements for other businesses.  
(e) This section creates no duty and imposes no obligation upon anyone other than the business that is the subject of the advertisement or listing.  
(f) A violation of this section is a false, misleading, or deceptive act or practice under this subchapter, and any public or private right or remedy prescribed by this subchapter may be used to enforce this section.

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

**Bill Number:** HB 0993

**Caption:** relating to the closure of a road or highway by certain firefighters

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 546.007

**Affected:**

**Subject:** Closure of road or highway by firefighter

**Summary:** Adds TN 546.007 to allow a firefighter employed by a general law municipality, when performing official duties, to close one or more lanes of a road or highway to protect the safety of persons or property;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1043

**Caption:** relating to creating an offense for engaging in certain conduct relating to cockfighting

**Effective Date:** 9-1-2011

**Application:**

**Statutes** PE 42.105

**Affected:**

**Subject:** Cockfighting

**Summary:** Adds PE 42.105 to create an offense if a person older than 15 years of age, among other things, knowingly attends as a spectator an exhibition of cockfighting;  
It is an affirmative defense that the actor's conduct:  
(1) occurred solely for the purpose of or in support of breeding cocks for poultry shows in which a cock is judged by the cock's physical appearance; or  
(2) was incidental to collecting bridles, gaffs, or slashers;  
It is a defense to prosecution for an offense under this section that:  
(1) the actor was engaged in bona fide experimentation for scientific research; or  
(2) the conduct engaged in by the actor is a generally accepted and otherwise lawful animal husbandry or agriculture practice involving livestock animals;  
It is an exception to attending a cockfight as a spectator that the actor is 15 years of age or younger at the time of the offense;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Although cockfighting is banned across the country and has been a crime in Texas for more than 100 years, this illegal activity is still rampant throughout the state and is often accompanied by gambling, alcohol, drugs, and firearms. Reports indicate that it is common for individuals to transport across international boundaries cocks that, because they are often used in cockfighting, have not received proper veterinary care such as vaccinations. As such animals are transported back into the United States, some return with transmittable poultry diseases, placing Texas' poultry stock at a high risk for contracting these diseases.  
The current standards for prosecuting a cockfighting offense in Texas involve witnessing two people engaging cocks in a fight. When cockfighting raids are conducted, law enforcement generally are able to prosecute only one or two persons for the cockfighting offense because, typically, only one fighting event occurs at a time. Unlike many other states, it is not a crime in Texas to own or operate a facility for cockfighting, own cockfighting equipment, train a cock to fight, or attend a cockfight. HB 1043 addresses these issues by creating an offense for engaging in certain conduct relating to cockfighting and setting out criminal and civil consequences of committing that offense.

As amended:

PE Sec. 42.105. COCKFIGHTING.

(a) In this section:

(1) "Bridle" means a leather device designed to fit over the head and beak of a cock to prevent the cock from injuring another cock.

(2) "Cock" means the male of any type of domestic fowl.

(3) "Cockfighting" means any situation in which one cock attacks or fights with another cock.

(4) "Gaff" means an artificial steel spur designed to attach to the leg of a cock to replace or supplement the cock's natural spur.

(5) "Slasher" means a steel weapon resembling a curved knife blade designed to attach to the foot of a cock.

(b) A person commits an offense if the person knowingly:

(1) causes a cock to fight with another cock;

(2) participates in the earnings of a cockfight;

(3) uses or permits another to use any real estate, building, room, tent, arena, or other property for cockfighting;

(4) owns or trains a cock with the intent that the cock be used in an exhibition of cockfighting;

(5) manufactures, buys, sells, barter, exchanges, possesses, advertises, or otherwise offers a gaff, slasher, or other sharp implement designed for attachment to a cock with the intent that the implement be used in cockfighting; or

(6) attends as a spectator an exhibition of cockfighting.

(c) It is an affirmative defense to prosecution under this section that the actor's conduct:

HB 1043

## SUMMARIES -- 82nd LEGISLATURE -- 2011

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

- (1) occurred solely for the purpose of or in support of breeding cocks for poultry shows in which a cock is judged by the cock's physical appearance; or
- (2) was incidental to collecting bridles, gaffs, or slashers.
- (d) An affirmative defense to prosecution is not available under Subsection (c) if evidence shows that the actor is also engaging in use of the cocks for cockfighting.
- (e) It is a defense to prosecution for an offense under this section that:
  - (1) the actor was engaged in bona fide experimentation for scientific research; or
  - (2) the conduct engaged in by the actor is a generally accepted and otherwise lawful animal husbandry or agriculture practice involving livestock animals.
- (f) It is an exception to the application of Subsection (b)(6) that the actor is 15 years of age or younger at the time of the offense.
- (g) An offense under Subsection (b)(1) or (2) is a state jail felony. An offense under Subsection (b)(3), (4), or (5) is a Class A misdemeanor. An offense under Subsection (b)(6) is a Class C misdemeanor, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that the person has been previously convicted of an offense under that subdivision.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1070

**Caption:** relating to the taking of a defendant's bail bond by county jailers

**Effective Date:** 6-17-2011

**Application:**

**Statutes** CP 17.025

**Affected:** CP 17.05

CP 17.20

**Subject:** Officers taking bail bond

**Summary:** Adds CP 17.025 to provide that a licensed jailer is considered to be an officer for the purposes of taking a bail bond and discharging any other related powers and duties under CP Chapter 17 (relating to bail);

**Subject:** When a bail bond is given

**Summary:** Amends CP 17.05 to provide that a bail bond is taken from the defendant by a peace officer or jailer;

**Subject:** Bail in misdemeanor

**Summary:** Amends CP 17.20 to provide that in cases of misdemeanor, the sheriff, or other peace officer, or a jailer licensed under OC Chapter 1701 may, whether during the term of the court or in vacation, where the officer has a defendant in custody, take of the defendant a bail bond;

**Comments:** Observers note that a sheriff or peace officer takes a bail bond of a defendant held in a county jail in Texas but that licensed peace officers do not typically work in a county jail. Interested parties note that legislation is required to allow a licensed jailer to take a bail bond of a defendant, which they assert would increase efficiencies and reduce overcrowding.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1111      **Caption:** relating to a tenant's failure to pay rent during an appeal of an eviction for nonpayment of rent after filing a pauper's affidavit

**Effective Date:** 1-1-2012

**Application:** Applies only to an eviction suit filed on or after 1-1-2012

**Statutes Affected:** PP 24.004  
PP 24.0053  
PP 24.0054

**Subject:** Jurisdiction

**Summary:** Amends PP 24.004 to authorize a justice court to issue a writ of possession: during an appeal for nonpayment of rent if:  
(1) a tenant fails to pay the initial rent deposit into the justice court registry within 5 days of the filing of the pauper's affidavit; the justice court has given the tenant notice at the time of filing the pauper's affidavit of the amount the tenant must pay into the registry of the court; and the justice court has not yet forwarded the transcript and original papers to the county court;  
(2) if the tenant has not timely paid the initial deposit, notwithstanding the fact that the tenant has perfected an appeal by filing a pauper's affidavit that has been approved by the court; the transcript is forwarded to the county court even if the writ issues; and  
(3) if the tenant has not timely deposited the tenant's portion of the rent;

**Subject:** Payment of rent during appeal of eviction

**Summary:** Amends PP 24.0053 to require the justice court to give a tenant written notice at the time a pauper's affidavit is filed for an appeal; the notice must contain the following information in bold or conspicuous type:  
(1) the amount of the initial deposit of rent stated in the judgment that the tenant must pay into the justice court registry;  
(2) whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;  
(3) the calendar date by which the initial deposit must be paid into the justice court registry;  
(4) for a court that closes before 5 p.m. on the date specified by Subdivision (3), the time the court closes; and  
(5) a statement that failure to pay the required amount into the justice court registry by the date specified may result in the court issuing a writ of possession without hearing;  
The date by which the initial deposit must be paid must be within 5 days of the date the tenant files the pauper's affidavit as required by Rule 749b(1);

**Subject:** Tenant's failure to pay rent during appeal

**Summary:** Amends PP 24.0054 to provide that during an appeal of an eviction for nonpayment of rent, the justice court on request must immediately issue a writ of possession, without hearing, if:  
(1) a tenant fails to pay the initial rent deposit into the justice court registry within five days of the date the tenant filed a pauper's affidavit as required by Rule 749b(1), Texas Rules of Civil Procedure, and PP 24.0053;  
(2) the justice court has provided the written notice required by PP 24.0053; and  
(3) the justice court has not yet forwarded the transcript and original papers to the county court;  
Requires the sheriff or constable to execute a writ of possession in accordance with PP 24.0061; requires landlord to bear the costs of issuing and executing the writ of possession;  
Requires the justice court to send the transcript to the county court, but not before the 6th day after the date the tenant files a pauper's affidavit unless the court confirms that the initial deposit of rent has been paid;  
If the initial rent deposit has not been paid, requires the justice court to issue a writ of possession even though the pauper's affidavit has been approved;  
The court must forward the transcript even though a writ of possession has issued;  
Allows the parties to represent themselves or be represented by their authorized agents, who need not be attorneys, in county court for the purposes of a motion or hearing following the tenants failure timely to pay rent into the registry of the county court registry or a motion to dismiss an appeal of an eviction case;

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1116

**Caption:** relating to prohibiting the sale and use of certain radar interference devices; creating an offense

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 547.616

**Affected:**

**Subject:** Radar interference devices; offense

**Summary:** Adds TN 547.616 to create an offense if a person, other than a law enforcement officer in discharge of official duties, uses, attempts to use, installs, operates, or attempts to operate a radar interference device in a motor vehicle operated by the person;  
Prohibits a person from purchasing, selling, or offering for sale a radar interference device to be used in a prohibited manner;  
Class C misdemeanor;

"Radar interference device" means a device, a mechanism, an instrument, or equipment that is designed, manufactured, used, or intended to be used to interfere with, scramble, disrupt, or otherwise cause to malfunction a radar or laser device used to measure the speed of a motor vehicle by a law enforcement agency of this state or a political subdivision of this state, including a "radar jamming device," "jammer," "scrambler," or "diffuser." The term does not include a ham radio, band radio, or similar electronic device;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Current law does not restrict the use of Lidar/radar jamming devices. Different than a traditional radar detector, Lidar/radar jamming devices emit a radio frequency signal that interferes with the operation of police Lidar/radar by saturating its receiver with noise or false information. This interference may damage police equipment and hinders the ability of police officers to measure the speed of not only the vehicle equipped with the device, but also other speeding vehicles in the vicinity. These devices are active and not passive like traditional detectors. More than 25 states already have laws that prohibit radar jamming devices.



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1118                      **Caption:** relating to the resale of property purchased by a taxing unit at a tax sale

**Effective Date:** 6-17-2011

**Application:** Applies to real property sold to a taxing unit that is a party to a judgment to foreclose a tax lien regardless of whether the judgment was entered before, on, or after 6-17-2011

**Statutes Affected:** TX 34.05

**Subject:** Resale by taxing unit

**Summary:** Amends TX 34.05 to allow the taxing unit that purchased the property to sell at a private sale for an amount equal to or greater than its market value, as shown by the most recent certified appraisal roll, if:  
(1) the sum of the amount of the judgment plus post-judgment taxes, penalties, and interest owing against the property exceeds the market value; and  
(2) each taxing unit entitled to receive proceeds of the sale consents to the sale for that amount.  
The sale discharges and extinguishes all liens foreclosed by the judgment and the liens for post-judgment taxes that accrued from the date of judgment until the date the taxing unit purchased the property; requires the presiding officer of a taxing unit to execute a deed to the property, and makes the conveyance subject to any remaining right of redemption and to the purchaser's obligation to pay the prorated taxes for the current year; A taxing unit that does not consent to a sale is liable to the taxing unit that purchased the property for a pro rata share of the costs incurred in maintaining the property;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** In foreclosing property for delinquent taxes, the taxing units must on occasion bid the property at a tax sale when there are no bids received from the public at the auction. The taxing units are then charged with reselling the property in an effort to recover the taxes awarded to them by the underlying judgment. Once the property is actually bid in by the taxing units, the property is exempt from taxation until the taxing units resell the property.

"Post-judgment taxes" are those taxes that accrue between the signing of the judgment and the actual tax sale enforcing that judgment. In many cases, these properties are distressed from the outset, and the post-judgment taxes that accrue prior to the tax sale only add the burden, such that the judgment amount plus the post-judgment taxes, when taken together, exceed the actual value of the property.  
While a resale by the taxing units to a purchaser will discharge and extinguish the liens for taxes in the judgment, the post-judgment taxes remain as a lien against the property, thereby serving as an impediment in reselling the property.  
HB 1118 enables taxing units to clear their inventories of tax foreclosed properties being held for resale, but which they cannot market due to the post-judgment liens. In getting these distressed properties into the hands of willing buyers, the property becomes subject to taxation once again and produces revenue each year for the taxing units. The bill provides that these properties may be resold for their current appraised value, or for a greater amount, and the sale will be free and clear of any post-judgment taxes so long as each taxing unit entitled to receive proceeds approves the sale. The bill does not relieve a former owner of the property of personal liability for the post-judgment taxes.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1127                      **Caption:** relating to notice of relief available to certain members of the military required to be provided in certain real property documentation

**Effective Date:** 1-1-2012

**Application:** PP 24.0051 applies only to a suit filed on or after 1-1-2012  
PP 51.002 applies only to a sale on or after 1-1-2012  
PP 209.006 applies only to an enforcement action that commences on or after 1-1-2012

**Statutes Affected:** PP 24.0051  
PP 51.002  
PP 209.006

**Subject:** Procedures applicable in suit to evict and recover unpaid rent

**Summary:** Amends PP § 24.0051 to require the citation required by Rule 739 in an eviction suit to include the following notice:  
THIS SUIT TO EVICT INVOLVES IMMEDIATE DEADLINES. A TENANT WHO IS SERVING ON ACTIVE MILITARY DUTY MAY HAVE SPECIAL RIGHTS OR RELIEF RELATED TO THIS SUIT UNDER FEDERAL LAW, INCLUDING THE SERVICE MEMBERS CIVIL RELIEF ACT (50 U.S.C. APP. SECTION 501 ET SEQ.), OR STATE LAW, INCLUDING SECTION 92.017, TEXAS PROPERTY CODE. CALL THE STATE BAR OF TEXAS TOLL-FREE AT 1-877-9TEXBAR IF YOU NEED HELP LOCATING AN ATTORNEY. IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY, YOU MAY BE ELIGIBLE FOR FREE OR LOW-COST LEGAL ASSISTANCE;

**Subject:** Sale of real property under contract lien

**Summary:** Amends PP 51.002 to require notice served on a debtor to contain the following:  
"Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately;"

**Subject:** Notice required (by property owners' association) before enforcement action

**Summary:** Amends PP 209.006 to require a property owners' association intending to suspend an owner's right to use a common area, file a suit against an owner other than a suit to collect a regular or special assessment or foreclose under an association's lien, charge an owner for property damage, or levy a fine for a violation of the restrictions or bylaws or rules of the association, to include in the required notice that the owner may have special rights or relief related to the enforcement action under federal law, including the Service members Civil Relief Act (50 U.S.C. app. Section 501 et seq), if the owner is serving on active military duty;

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1135                      **Caption:** relating to an application to run for political office

**Effective Date:** 9-1-2011

**Application:** Applies only to a candidate's application for a place on the ballot that is filed on or after 9-1-2011

**Statutes** EL 141.032  
**Affected:** EL 141.062

**Subject:** Review of application; notice to candidate

**Summary:** Amends EL 141.032 to provide that a candidate may not amend an application for a place on the ballot after the filing deadline, and an application may not be accepted for filing after the filing deadline;

**Subject:** Validity of petition

**Summary:** Amends EL 141.062 to provide a candidate may not amend a petition filed in connection with an application for a place on the ballot after the filing deadline, and a petition may not be accepted for filing after the filing deadline;

**Subject:**

**Summary:**

**Comments:** Interested parties are concerned that there is a lack of specificity regarding whether a candidate for public office is authorized to amend a filed application for a place on a ballot or a petition in lieu of a filing fee submitted with the application. The parties note that such amendments, which may be necessary to correct an error or an improper filing procedure, are difficult logistically for the party chairman to make. The parties further note that the candidate may correct such an error by submitting a new application or petition before the filing deadline, and they assert that clarification is needed to specify that an application or petition may not be amended by the candidate, and the authority with whom the application is filed may not accept such an amendment, after the filing deadline for the application.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1146                      **Caption:** relating to the registration and regulation of appraisal management companies; providing penalties

**Effective Date:** 3-1-2012

**Application:**

**Statutes**                      OC 1104.001 et seq

**Affected:**

**Subject:**                      Appraisal management companies

**Summary:**                      Adds OC Chapter 1104 to establish regulations for the registration and operation of appraisal management companies; requires the Texas Appraiser Licensing and Certification Board (TALCB) to establish an advisory committee to advise TALCB and make recommendations on matters related to the regulation of appraisal management companies under Chapter 1104;

"Appraisal management company" means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated in a securitization, an external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets that directly or indirectly performs appraisal management services;

"Appraisal management service" means to directly or indirectly perform any of the following acts:

- (A) administer an appraisal panel;
- (B) recruit, retain, or select an appraiser;
- (C) contract with an appraiser to perform an appraisal assignment;
- (D) provide a completed appraisal performed by an appraiser to one or more clients; or
- (E) manage the process of having an appraisal performed, including:
  - (i) receiving and assigning appraisal orders and reports;
  - (ii) tracking and determining the status of orders for appraisals;
  - (iii) conducting quality control of a completed appraisal before delivery of the appraisal to the person who ordered the appraisal;
  - (iv) collecting fees from creditors and underwriters for services provided; or
  - (v) reimbursing appraisers for services performed;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

**Bill Number:** HB 1148

**Caption:** relating to an exemption for certain disabled veterans from the payment of a fee for the issuance of a personal identification certificate

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 521.426

**Affected:**

**Subject:** Disabled veteran exemption

**Summary:** Amends TN 521.426 to exempt disabled veterans from payment of fees for the issuance of a driver's license or personal identification certificate;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1168

**Caption:** relating to smoke alarms and fire extinguishers in residential rental units

**Effective Date:** 9-1-2011

**Application:**

**Statutes Affected:** PP 92.251 et seq

**Subject:** Smoke alarms and fire extinguishers

**Summary:** Amends PP 92.251 et seq to substitute "smoke alarm" for smoke detector and include fire extinguishers; Requires that if smoke alarms were installed in dwelling units built before 9-1-1987, a local ordinance may not require that a smoke alarm powered by alternating current be installed in the unit unless the interior of the unit is repaired, remodeled, or rebuilt at a projected cost of more than \$5,000, requires a permit, and either results in the removal of interior walls, or the interior of the unit provides access for building writing through an attic or basement without removal of walls;

Changes requirements for a smoke alarm, which must be destined to detect both visible and invisible products of combustion, designed with an alarm audible in the bedrooms it serves, and tested and listed for use as a smoke alarm by ULI or US Testing Company; allows smoke alarms to be powered by battery, alternating current, or other power source as required by local ordinance;

Changes installation and location requirements; a landlord must install at least one smoke alarm in each separate bedroom in a dwelling unit; if multiple bedrooms are served by the same corridor, at least one smoke alarm must be installed in the corridor;

A smoke alarm may be powered by battery if a dwelling unit was occupied as a residence before 9-1-2011, and the smoke alarm is not required to be interconnected with other smoke alarms;

**Subject:** Inspection of residential fire extinguisher

**Summary:** Adds PP 92.263 to provide that if a landlord has installed a 1A10BC residential fire extinguisher or other non-rechargeable fire extinguisher, the landlord must inspect the extinguisher (1) at the beginning of the tenant's possession, and (2) within a reasonable time after receiving a written request by a tenant;

**Subject:** Duty to repair or replace

**Summary:** Adds PP 92.264 to require the landlord to repair or replace a fire extinguisher at the landlord's expense if:  
(1) on inspection, the fire extinguisher is found:  
(A) not to be functioning; or  
(B) not to have the correct pressure indicated on the gauge or pressure indicator as recommended by the manufacturer of the fire extinguisher; or  
(2) a tenant has notified the landlord that the tenant has used the fire extinguisher for a legitimate purpose;  
If the tenant or guest removes, misuses, damages, or otherwise disables a fire extinguisher, the landlord is not required to repair or replace at the landlord's expense, and the landlord is required to repair or replace if the tenant pays the costs in advance;

**Comments:** The standard at the time Texas first required smoke alarms to be installed in residential rental properties was to place the alarms in the vicinity, but outside, of a bedroom. Since that time, standards in the international model codes used by cities have changed to require smoke alarms to be placed in bedrooms. Additionally, inspection requirements for single-use-non-refillable residential fire extinguishers, or 1A10BC fire extinguishers, are unclear. While annual inspections are required for certain larger pressure-tested refillable fire extinguishers, some cities also require 1A10BC extinguishers to be inspected. Since such residential fire extinguishers can easily be visually inspected, it is unnecessary to require a 1A10BC fire extinguisher to be inspected by a third party.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1173                      **Caption:** relating to the release on bond of certain persons arrested for a misdemeanor without a warrant in certain counties

**Effective Date:** 9-1-2011

**Application:** Applies only to a person arrested for an offense committed on or after 9-1-2011 and expires on 9-1-2013

**Statutes Affected:** CP 17.033

**Subject:** Release on bond of certain persons arrested without a warrant

**Summary:** Amends CP 17.033 allows a person who is arrested without a warrant and who is detained in jail in a county with a population of 3 million or more, to be released on bond, not to exceed \$5,000, not later than the 36th hour (rather than the 24th hour) after arrest if the person was arrested for a misdemeanor and a magistrate has not determined whether probable cause exists to believe that the person committed the offense; Allows a magistrate to postpone release for not more than 72 hours on application of the prosecuting attorney; This section expires on 9-1-2013;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** HB 1173 amends Article 17.033(a), Code of Criminal Procedure, to allow counties with a population of three million or more to hold a person arrested without a warrant for 36 hours, rather than the current 24 hours, before having to be released on bond.  
Current statutory time constraints are having a limiting effect on investigations and officials are often unable to conduct initial hearings within the current time allotment, resulting in the need to seek extensions on a high number of cases.  
HB 1173 will assist with the administrative process and allow thorough and improved initial determinations to be made rather than rushing with an initial investigation that must be conducted within 24 hours.

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

**Bill Number:** HB 1178

**Caption:** relating to employment protection for members of the state military forces and specialty license plates for female members of the armed forces

**Effective Date:** 6-17-2011

**Application:**

**Statutes** TN 504.317

**Affected:**

**Subject:** Women veterans

**Summary:** Adds TN 504.317 to authorize the Department of Motor Vehicles to issue specialty license plates for female active or former members of the armed forces, Texas National Guard, or Texas State Guard, which include the words "Woman Veteran;"

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1201                      **Caption:** relating to repeal of authority for the establishment and operation of the Trans-Texas Corridor

**Effective Date:** 6-17-2011

**Application:**

**Statutes**                      TN 224.1541  
**Affected:**                      TN 545.353

**Subject:**                      Exclusive lanes

**Summary:**                      Amends TN 224.1541 to allow the Texas Transportation Commission to authorize the operation of a vehicle that exceeds the weight and size limitations specified in TN Chapter 621 (Weight Limitations) (Size Limitations), on a lane designated as an exclusive lane (lane of a highway or segment of a highway the use of which is restricted to one or more designated classifications of motor vehicle) if supported by an engineering and traffic study; The operation of a vehicle that exceeds a maximum axle weight authorized by TN Chapter 621 (General Provisions Relating to Vehicle Size and Weight), TN Chapter 622 (Special Provisions and Exceptions for Oversize or Overweight Vehicles), or TN Chapter 623 (Permits for Oversize or Overweight Vehicles); Provides that this subsection does not apply to a roadway that is a part of the national system of interstate and defense highways.

**Subject:**                      Prima facie speed limits

**Summary:**                      Amends TN 545.353 to authorize TxTC, notwithstanding TN 545.352(b) establishing the rate of lawful speeds, to establish a speed limit not to exceed 85 miles per hour on a part of the state highway system if:  
(1) that part of the highway system is designed to accommodate travel at that established speed or a higher speed;  
(2) TxTC determines, after an engineering and traffic investigation, that the established speed limit is reasonable and safe for that part of the highway system;

**Subject:**

**Summary:**

**Comments:**                      HB 1201 removes all remaining references in state law to the Trans-Texas Corridor. With the Texas Department of Transportation (TxDOT) having already announced the cessation of all efforts to construct the Trans-Texas Corridor and given the significant public opposition to the plan, it is important to reconcile state law with state policy.  
Two provisions struck in deleting the Trans-Texas Corridor are replaced: TxDOT's authority to implement higher speed limits on new roads specifically engineered with those higher speeds in mind if a safety study supports the higher speed limit and TxDOT's authority to authorize higher weight limits on exclusive lanes if engineering and safety studies support that higher weight limit.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1322

**Caption:** relating to the possession of fish in the tidal water of this state

**Effective Date:** 5-21-2011

**Application:**

**Statutes** PW 46.001

**Affected:**

**Subject:** Prohibited acts

**Summary:** Amends PW 46.001 to require a person possessing fish in a vessel on tidal waters to hold a fishing license.

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Currently, Section 46.001, Parks and Wildlife Code, requires a person to have a fishing license when actively sport fishing or landing fish in Texas. To effectively enforce this statute in the tidal waters of this state, a peace officer, including, but not limited to a game warden, is required to follow a vessel to shore where fish are landed before requiring a person who is in possession of the fish, but who was not observed sport fishing, to produce a fishing license. With the boundary of Texas waters extending to nine nautical miles offshore into the Gulf of Mexico and the Texas coast line extending 367 miles from the Louisiana state line to the Mexico border, it is problematic for game wardens to follow a vessel for miles until fish are landed.

"Tidal water" means all the salt water of this state, including that portion of the state's territorial water in the Gulf of Mexico within three marine leagues from shore.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1330

**Caption:** relating to the use of safety guards or flaps on certain vehicles or vehicle combinations

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 547.606

**Affected:**

**Subject:** Safety guards or flaps required

**Summary:** Amends TN 547.606 to require a road tractor, truck, trailer, truck-tractor in combination with a semitrailer, or semitrailer in combination with a towing vehicle that has at least four tires or at least two super single tires on the rearmost axle of the vehicle or the rearmost vehicle in the combination shall be equipped with safety guards or flaps that:

- (1) are of a type prescribed by the department; and
- (2) are located and suspended behind the rearmost wheels of the vehicle or the rearmost vehicle in the combination within eight inches of the surface of the highway;

"Super single tire" means a wide-base, single tire that may be used in place of two standard tires on the same axle;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Currently, safety flaps are required on all road tractors, trucks, trailers, and truck-tractors used in combination with a semitrailer or semitrailer in combination with a towing vehicle that has at least four tires on the rearmost axle of the vehicle or the rearmost vehicle in the combination. However, a loophole allows tractors, trailers, and truck-tractors with two super singles, or wide-base single tires on the rearmost axle, to bypass the safety flap requirement. Semi-trucks with wide-base single tires pose the same safety concerns as the more common rear axle configuration, yet there is no requirement for these trucks to use safety flaps.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1353      **Caption:** relating to speed limits

**Effective Date:** 9-1-2011

**Application:**

**Statutes**      TN 545.352 et seq

**Affected:**

**Subject:**      Prima facie speed limits

**Summary:**      Amends TN 545.352 to provide:

(a) A speed in excess of the limits established by Subsection (b) or under another provision of this subchapter is prima facie evidence that the speed is not reasonable and prudent and that the speed is unlawful.

(b) Unless a special hazard exists that requires a slower speed for compliance with Section 545.351(b), the following speeds are lawful:

(1) 30 miles per hour in an urban district on a street other than an alley and 15 miles per hour in an alley;

(2) except as provided by Subdivision (4), 70 miles per hour on a highway numbered by this state or the United States outside an urban district, including a farm-to-market or ranch-to-market road;

(3) except as provided by Subdivision (4), 60 miles per hour on a highway that is outside an urban district and not a highway numbered by this state or the United States;

(4) outside an urban district:

(A) 60 miles per hour if the vehicle is a school bus that has passed a commercial motor vehicle inspection under Section 548.201 and is on a highway numbered by the United States or this state, including a farm-to-market road; or

(B) 50 miles per hour if the vehicle is a school bus that:

(i) has not passed a commercial motor vehicle inspection under Section 548.201; or

(ii) is traveling on a highway not numbered by the United States or this state;

(5) on a beach, 15 miles per hour; or

(6) on a county road adjacent to a public beach, 15 miles per hour, if declared by the commissioners court of the county.

Provides that an entity that establishes or alters a speed limit under this subchapter must establish the same speed limit for daytime and nighttime;

**Subject:**      Authority of Texas Transportation Commission to alter speed limits

**Summary:**      Amends TN 545.353 to prohibit the Commission from establishing a speed limit of more than 75 miles per hour, with some exception;

Prohibits the Commission from increasing the speed limit for a commercial vehicle;

Allows the Commission to establish a speed limit of 80 miles per hour on a part of Interstate Highway 10 or Interstate Highway 20 in certain counties other than Harris;

Makes speed limits applicable to trucks, tractors, trailers, and semi-trailers;

Amends 545.362 to allow the Commission to establish temporary speed limits of not more than 75 mph applicable to all highways, including a turnpike under the authority of the Texas Turnpike Authority or a highway under the control of a municipality or county in the event of a shortage of motor fuel as a result of a national emergency or in face of loss of federal funds;

**Subject:**      Authority of county commissioners court to alter speed limits

**Summary:**      Amends TN 545.355 to allow commissioner's court of a county with a population of more than 2.8 million to establish a speed limit of not more than 75 miles per hour on any part of a limited access or controlled access highway;

**Comments:**      According to the National Conference of State Legislatures, Texas is the only state with different day and night speed limits on rural and urban interstates. Currently, lawful speed limits are 60 or 70 miles per hour in daytime or 55 or 65 miles per hour in nighttime. Texas is also one of a few states that has mandated a different, lesser speed limit for trucks along rural and urban interstates. Currently, heavy trucks and trailers are required to reduce speeds to 60 miles per hour in daytime and 55 miles per hour in nighttime outside an urban district. Speed limits should be set to the safest maximum speed under normal road conditions. Difference in vehicle speeds can contribute to accidents. H.B. 1353 seeks to minimize the number of accidents that can occur when cars and trucks change lanes or pass or tailgate slower-moving vehicles.

HB 1353 amends Chapter 545 (Operation and Movement of Vehicles), Transportation Code, by establishing the same speed limit for daytime and nighttime and raising the speed limit to 75 miles per hour on state highways or United States highways outside an urban district. It also removes the different, lesser speed limit for heavy

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

trucks.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1376

**Caption:** relating to the definition of a junked vehicle for purposes of abatement of a public nuisance

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 683.071

**Affected:**

**Subject:** Definition (junked vehicles; abatement; public nuisance)

**Summary:** Amends TN 683.071 to amend the definition of a junked vehicle to mean a vehicle that is self-propelled and:  
(1) displays an expired license plate or invalid motor vehicle inspection certificate or does not display a license plate or motor vehicle inspection certificate; and  
(2) is:  
(A) wrecked, dismantled or partially dismantled, or discarded; or  
(B) inoperable and has remained inoperable for more than:  
(i) 72 consecutive hours, if the vehicle is on public property; or  
(ii) 30 consecutive days, if the vehicle is on private property.

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** HB 1376 offers clarification to reflect what many municipalities believe the intent of the law is by amending the language concerning the display or lack of a license plate or inspection certificate.  
HB 1376 amends current law relating to the definition of a junked vehicle for purposes of abatement of a public nuisance.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1381                      **Caption:** relating to the service of civil process on an inmate of the Texas Department of Criminal Justice

**Effective Date:** 9-1-2011

**Application:** Not later than 12-1-2011, the warden of each facility operated by or under contract with the Texas Department of Criminal Justice must designate an employee at the facility to serve as an agent for service of civil process

**Statutes Affected:** CV 17.029

**Subject:** Service on inmate of Texas Department of Criminal Justice

**Summary:** Adds CV 17.029 to require the warden of each prison to designate an employee at the facility to serve as an agent for service of civil process on inmates confined in the facility; in a civil action against an inmate, service on the inmate may be made by serving the agent; the agent is required promptly to deliver process to the inmate;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** As amended:  
CV 17.029. SERVICE ON INMATE OF TEXAS DEPARTMENT OF CRIMINAL JUSTICE. (a) In this section, "inmate" means a person confined in a facility operated by or under contract with the Texas Department of Criminal Justice.  
(b) In a civil action against an inmate, citation or other civil process may be served on the inmate by serving a person designated under Subsection (c) as an agent for service of civil process.  
(c) The warden of each facility operated by or under contract with the Texas Department of Criminal Justice shall designate an employee at the facility to serve as an agent for service of civil process on inmates confined in the facility.  
(d) An employee designated under Subsection (c) as an agent for service of civil process shall promptly deliver any civil process served on the employee to the appropriate inmate.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1395      **Caption:** relating to the requirements to operate personal watercraft and certain boats

**Effective Date:** 6-17-2011

**Application:** Applies only to an offense committed on or after 6-17-2011

**Statutes Affected:** PW 31.106 et seq

**Subject:** Personal watercraft  
Operation of motorboat

**Summary:** Amends PW 31.106 to prohibit a person under 13 years old from operating a personal watercraft unless the person is supervised by another person who (A) is at least 18 years of age, (B) can lawfully operate the watercraft, and (C) is on board the watercraft when under way;

Amends PW 31.107 to prohibit a person under 13 years old from operating a motorboat powered by a motor with a manufacturer's rating of more than 15 horsepower unless the person is supervised by another person who (A) is at least 18 years of age, (B) can lawfully operate the watercraft, and (C) is on board the watercraft when under way;

**Subject:** Boater education course required for certain persons

**Summary:** Amends PW 31.109 to require a person born or after 9-1-1993 operating a vessel powered by a motor with a manufacturer's rating of more than 15 horsepower or a windblown vessel over 14 feet in length to have in the person's possession a photographic identification card and either (1) a boater identification card issued by the Parks and Wildlife Department, or (2) proof of completion of the requirements to obtain a vessel operator's license issued by the United States Coast Guard;

A person is exempt from the requirement of a boater's education card, if the person (1) holds a master's mate's, or operator's license issued by the Coast Guard, (2) is supervised by a person who is at least 18 years of age who is otherwise exempt from the requirements, or possesses a boater identification card, (3) is not a Texas resident and has proof of completion of a boater education course in another state, (4) is exempt by rule of the Parks and Wildlife Commission as a customer of a business engaged in renting, showing, demonstrating, or testing boats, or (5) is exempt by rule of the Parks and Wildlife Commission;

Requires the court to dismiss an offense for failing to possess a required document if, on or before trial, the person produces for the court or prosecuting attorney a TPWD boater identification card or proof of completion of the requirements to obtain a Coast Guard vessel operator's license;

Allows a person charged with a Class C Parks and Wildlife misdemeanor for failing to possess a TPWD boater identification card or proof of completion of the requirements to obtain a Coast Guard vessel operator's license, to request permission to take a boater education course; request must be made no later than the 10th day after the date of the offense in an oral or written motion; requires court to defer proceedings and allow the person 90 days to present written proof that the person has successfully completed the course; if the person successfully completes the course and the court accepts the presented evidence, the court must dismiss the charge;

**Subject:**

**Summary:**

**Comments:** An advisory panel on recreational boating safety was recently created to study the current state of recreation safety on public waters in Texas and to make recommendations for improving safety. The panel has recommended to the legislature the adoption of a phase-in approach to the requirement that all operators of recreational boats complete a boater education course. The bill provides conditions for an exception to the minimum age required for a person to operate a personal watercraft or to operate a motorboat powered by a motor with a manufacturer's rating of more than 15 horsepower on the public waters of Texas. One condition is that the operator must be supervised by another person who can lawfully operate the watercraft or motorboat and who is on board the watercraft or motorboat when under way.

As amended:  
PW § 31.109. Boater Education Course Required for Certain Persons  
(a) This section applies only to a person who is:  
(1) born on or after September 1, 1993; and  
(2) operating on the public water of this state:  
(A) a vessel powered by a motor with a manufacturer's rating of more than 15 horsepower; or  
(B) a windblown vessel over 14 feet in length.



## SUMMARIES -- 82nd LEGISLATURE -- 2011

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

- (b) A person subject to this section must have in the person's possession a photographic identification card and either:
  - (1) a boater identification card issued by the department; or
  - (2) proof of completion of the requirements to obtain a vessel operator's license issued by the United States Coast Guard.
- (c) The department shall issue a boater identification card to a person who has successfully completed:
  - (1) a boater education course approved by the department; or
  - (2) a course equivalency examination approved by the department.
- (d) A boater identification card issued to a person who has successfully completed a boater education course or course equivalency examination does not expire.
- (e) If, on or before the trial of a person charged with an offense for failing to possess a document required under Subsection (b), the person produces for the court or the prosecuting attorney a document required by Subsection (b) that was issued to the person and was valid at the time of the offense, the court shall dismiss the charge.
- (f) A person charged with a Class C Parks and Wildlife Code misdemeanor for failing to possess a document required under Subsection (b) may make to the court not later than the 10th day after the date of the alleged offense an oral or written motion requesting permission to take a boater education course approved by the department or a vessel operator's licensing course provided by the United States Coast Guard. The court shall defer the proceedings brought against a person who makes a motion described by this subsection and allow the person 90 days to present written evidence that the person has successfully completed the course approved by the department or provided by the United States Coast Guard. If the person successfully completes the course and the court accepts the presented evidence, the court shall dismiss the charge.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1422                      **Caption:** relating to the issuance of titles for certain motor vehicles that are the subject of insurance claims

**Effective Date:** 9-1-2011

**Application:** Applies only to an offense committed under TN 501.102 (relating to nonrepairable and salvage motor vehicles) on or after 9-1-2011

**Statutes Affected:** TN 501.102

**Subject:** Offenses

**Summary:** Amends TN 501.102 to make the offense of failing or refusing to surrender a regular certificate of title after notice from an insurance company that the vehicle is nonrepairable or is a salvage motor vehicle, or after the person knows the vehicle has become nonrepairable or a salvage vehicle, inapplicable (i) to an insurance applying for a title after paying a claim and acquiring ownership of a nonrepairable or salvage vehicle, or (ii) to a salvage pool operator applying for a title for a nonrepairable or salvage vehicle;

Adds TN 501.0925 Insurance company not required to surrender certificates of title in certain situations;  
Adds TN 501.0935 Issuance of title to salvage pool operator;

Adds TN 501.092 Insurance company not required to surrender certificates of title in certain situations

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Limited methods are available to an insurance company or salvage pool operator for disposing of a motor vehicle that is declared a total loss or has been abandoned at a salvage pool when a properly assigned title cannot be obtained from the owner or lienholder of the vehicle. An insurance company or salvage pool operator cannot dispose of such a vehicle until a title is obtained from the Texas Department of Motor Vehicles (TxDMV). The available methods for obtaining that title may not be applicable in certain situations, resulting in unnecessary delay and expense for TxDMV, insurers, and salvage pool operators. HB 1422 addresses this situation by providing statutory changes to improve procedures for the issuance of titles for certain motor vehicles that are the subject of insurance claims. The bill would authorize TxDMV to adopt rules to implement certain provisions of the bill and outlines procedures for the sale of certain motor vehicles by a salvage pool operator. If a motor vehicle were sold to satisfy the allowable costs incurred by a salvage pool operator, and the previous owner of a motor vehicle and the lienholder could not be identified or located, then any excess proceeds from the sale of the motor vehicle would go to the state.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1426

**Caption:** relating to the collection of court costs, fees, fines, and other money by the commissioners courts of certain counties

**Effective Date:** 6-17-2011

**Application:**

**Statutes Affected:** CP 103.003

**Subject:**

Collection

**Summary:** Amends CP 103.003 to allow commissioners court to collect money under a collections improvement program;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Legislation enacted several years ago required certain counties to implement a collections improvement program in accordance with the model program developed by the Office of Court Administration of the Texas Judicial System. Certain counties implemented a program under a department that answers directly to the commissioners court.  
Under current law, however, a commissioners court is not listed as an entity authorized to collect certain court costs, fees, and fines associated with the program.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1456

**Caption:** relating to the waiver and release of a mechanic's, contractor's, or materialman's lien or payment bond claim and to the creation of a mechanic's, contractor's, or materialman's lien for certain landscaping

**Effective Date:** 1-1-2012

**Application:**

**Statutes Affected:** PP 53.281 et seq

**Subject:**

Waiver and release of lien or payment bond claim

**Summary:**

Adds PP 53.281 to provide that any waiver and release of a mechanic's, contractor's, or materialman's lien or payment bond claim is unenforceable unless:

- (1) the waiver and release substantially complies with one of the forms under PP 53.284;
- (2) the waiver and release is signed by the claimant or agent and notarized; and
- (3) in the case of a conditional release, evidence of payment to the claimant exists;

Forms specified include:

- Conditional waiver and release on progress payment
- Unconditional waiver and release on progress payment
- Conditional waiver and release on final payment
- Unconditional waiver and release on final payment

**Subject:**

Conditions for waiver, release, or impairment of lien or payment bond claim

**Summary:**

Adds PP 53.282 to provide that a statement purporting to waive, release, or adversely affect a lien or payment bond claim is not enforceable unless:

- (1) the statement is in writing and substantially complies with a specified form;
- (2) the claimant has actually received payment in full for the lien or payment bond claim; or
- (3) the statement is: (A) in a written original contract or subcontract a dwelling; and (B) made before labor or materials are provided under the original contract or subcontract;

The filing of a lien after a waiver relating to a dwelling is not a fraudulent court record unless the lien claimant does not release the lien affidavit on or before the 14th day after the date the owner or original contractor sends a written explanation of the basis for nonpayment, evidence of the waiver, and a request for release;

a person may not require a claimant to execute an unconditional waiver and release for a progress payment or final payment unless the claimant received payment in that amount in good and sufficient funds;

**Subject:**

Public policy

**Summary:**

Adds PP 53.286 to provide that any contract, agreement, or understanding purporting to waive the right to file or enforce any mechanic's, contractor's, or materialman's lien or claim is void as against public policy;

**Comments:**

Mechanic's, contractor's, and materialman's liens help contractors, subcontractors, and suppliers collect money due to them for labor or materials they provide for construction projects. Some interested parties are concerned that the guidance as to the information to be included in a lien waiver and release is inadequate, which may result in disagreement among the parties regarding the terms of the lien waiver or release and subsequent delays in payments, the filing of additional liens, and even litigation. HB 1456 seeks to address this situation by creating standardized lien waiver and release forms.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1473

**Caption:** relating to creating the offense of altering a disabled parking placard

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 681.0111

**Affected:**

**Subject:** Manufacture, sale, possession, or use of counterfeit or altered placard

**Summary:** Amends TN 681.0111 to create an offense if a person, without authorization:

(1) manufactures, sells, or possesses a placard that is deceptively similar to a disabled parking placard; or  
(2) alters a genuine disabled parking placard.

(b) A person commits an offense if the person knowingly parks a vehicle displaying a counterfeit or altered placard in a parking space or area designated specifically for persons with disabilities.

(c) An offense under Subsection (a) is a Class A misdemeanor. An offense under Subsection (b) is a Class C misdemeanor.

(d) For purposes of this section, a placard is deceptively similar to a disabled parking placard if the placard is not a genuine disabled parking placard but a reasonable person would presume that it is a genuine disabled parking placard.

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

The 78th Legislature enacted the provisions of Section 681.0111 (Manufacture, Sale, Possession, or Use of Counterfeit Placard), Transportation Code, relating to the manufacture, sale, possession, or use of counterfeit disabled parking placards.

Under current law, only placards that are "similar" to genuine parking placards are considered counterfeit. This subsection has a slight loophole on the issue of legally issued placards that have been altered upon expiration to give the appearance of being legal.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1481      **Caption:** relating to the use of person first respectful language in reference to individuals with disabilities

**Effective Date:** 9-1-2011

**Application:**

**Statutes Affected:** GV 392.002  
HS 591.003

**Subject:** Person first respectful language initiative

**Summary:** Adds GV Chapter 392 (Person first respectful language initiative). The legislature finds that language used in reference to persons with disabilities shapes and reflects society's attitudes toward persons with disabilities. Certain terms and phrases are demeaning and create an invisible barrier to inclusion as equal community members.

Adds GV 392.002 (Use of person first respectful language required) to direct the legislature and the Texas Legislative Council to avoid using the following terms and phrases in any new statute or resolution and to change those terms and phrases used in any existing statute or resolution as sections including those terms and phrases are otherwise amended by law:

- (1) disabled;
- (2) developmentally disabled;
- (3) mentally disabled;
- (4) mentally ill;
- (5) mentally retarded;
- (6) handicapped;
- (7) cripple; and
- (8) crippled;

In enacting or revising statutes or resolutions, the legislature and the Texas Legislative Council are directed to replace these terms and phrases with the following preferred phrases or appropriate variations of those phrases:

- (1) "persons with disabilities";
- (2) "persons with developmental disabilities";
- (3) "persons with mental illness"; and
- (4) "persons with intellectual disabilities."

**Subject:** Persons with mental retardation act  
Definitions

**Summary:** Amends HS 591.003 to re-define the following terms:

- (7-a) "Intellectual disability" means significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period;
- (13) "Mental retardation" means intellectual disability;
- (15-a) "Person with intellectual disability" means a person determined by a physician or psychologist licensed in this state or certified by the department to have subaverage general intellectual functioning with deficits in adaptive behavior.
- (16) "Person with mental retardation" means a person with intellectual disability;

**Subject:**

**Summary:**

**Comments:** Many Texas believe the term "retarded" is hurtful and offensive to persons with intellectual disabilities. Though the term is used as a medical diagnosis, it should not be used to describe a person or a person's character. National efforts are under way to change "mental retardation" to "intellectual disability" in the Diagnostic and Statistical manual of Mental Disorders-Fourth Edition (Text Revision) anticipated to occur in May 2013. Thirty-two states and the District of Columbia have current or pending laws, policies, or positions in support of using person first and/or respectful language by using the terms "intellectual disability" instead of mental retardation for legislative, operational and/or business matters. There is uniformity within all 33 jurisdictions in switching from using the term "mental retardation" to "intellectual disabilities." Six states are in the process of writing a respectful language bill to be filed or have attempted to pass a respectful language bill. Current law does not recognize the term "intellectual disability" and does not require any utilization of the term.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1504

**Caption:** relating to statutory references to the common electronic infrastructure project formerly known as TexasOnline

**Effective Date:** 6-17-2011

**Application:**

**Statutes** CP 45.0511

**Affected:**

**Subject:** Driving safety course or motorcycle operator course dismissal procedures

**Summary:** Amends CP 45.0511 to change references to Texas Online to state electronic internet portal:  
(c-1) In this subsection, "state electronic Internet portal" ["TexasOnline"] has the meaning assigned by Section 2054.003, Government Code. As an alternative to receiving the defendant's driving record under Subsection (c)(2), the judge, at the time the defendant requests a driving safety course or motorcycle operator training course dismissal under this article, may require the defendant to pay a fee in an amount equal to the sum of the amount of the fee established by Section 521.048, Transportation Code, and the state electronic Internet portal fee and, using the state electronic Internet portal, may request the Texas Department of Public Safety to provide the judge with a copy of the defendant's driving record that shows the information described by Section 521.047(b), Transportation Code. As soon as practicable and using the state electronic Internet portal, the Texas Department of Public Safety shall provide the judge with the requested copy of the defendant's driving record. The fee authorized by this subsection is in addition to any other fee required under this article. If the copy of the defendant's driving record provided to the judge under this subsection shows that the defendant has not completed an approved driving safety course or motorcycle operator training course, as appropriate, within the 12 months preceding the date of the offense, the judge shall allow the defendant to complete the appropriate course as provided by this article. The custodian of a municipal or county treasury who receives fees collected under this subsection shall keep a record of the fees and, without deduction or proration, forward the fees to the comptroller, with and in the manner required for other fees and costs received in connection with criminal cases. The comptroller shall credit fees received under this subsection to the Texas Department of Public Safety.

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1510      **Caption:** relating to the regulation of manufactured housing

**Effective Date:** 9-1-2011

**Application:**

**Statutes Affected:** OC 1201.217

**Subject:** Manufactured home abandoned

**Summary:** Amends OC 1201.217(a) to authorize the owner of real property on which a manufactured home owned by another is located to declare the home abandoned if:  
(1) the home has been continuously unoccupied for at least four months; and  
(2) any indebtedness secured by the home or related to a lease agreement between the owner of the real property and the owner of the home is considered delinquent;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Texas laws regulating manufactured housing date back more than 30 years. During the intervening years, the manufactured housing industry has experienced significant change and there is a need to clarify the statute to provide more consumer protections and to increase the efficiency and productivity of the manufactured housing division of the Texas Department of Housing and Community Affairs (TDHCA).

As amended:

OC § 1201.217. Manufactured Home Abandoned

(a) The owner of real property on which a manufactured home owned by another is located may declare the home abandoned as provided by this section if:

(1) the home has been continuously unoccupied for at least four months; and

(2) any indebtedness secured by the home or related to a lease agreement between the owner of the real property and the owner of the home is considered delinquent.

(b) Before declaring a manufactured home abandoned, the owner of real property on which the home is located must send a notice of intent to declare the home abandoned to the record owner of the home, all lienholders at the addresses listed on the home's statement of ownership and location on file with the department, the tax collector for each taxing unit that imposes ad valorem taxes on the real property where the home is located, and any intervening owners of liens or equitable interests. The notice must include the address where the home is currently located. If the person giving such notice knows that a person to whom the notice is being given no longer resides and is no longer receiving mail at a known address, a reasonable effort shall be made to locate the person and give the person notice at an address where the person is receiving mail. Mailing of the notice by certified mail, return receipt requested, postage prepaid, to the persons required to be notified by this subsection constitutes conclusive proof of compliance with this subsection.

(c) On receipt of a notice of intent to declare a manufactured home abandoned, the record owner of the home, a lienholder, a tax assessor-collector for a taxing unit that imposes ad valorem taxes on the real property on which the home is located, or an intervening owner of a lien or equitable interest may enter the real property on which the home is located to remove the home. The real property owner must disclose to the record owner, lienholder, tax assessor-collector, or intervening owner seeking to remove the home the location of the home and grant the person reasonable access to the home. A person removing a home is responsible to the real property owner for any damage to the real property resulting from the removal of the home.

(d) If the manufactured home remains on the real property for at least 45 days after the date the notice is postmarked:

(1) all liens on the home are extinguished; and

(2) the real property owner may declare the home abandoned and may apply to the department for a statement of ownership and location listing the real property owner as the owner of the manufactured home.

(e) A new statement of ownership and location issued by the department under this section transfers, free of any liens, if there is evidence of United States Postal Service return receipt from all lienholders, title to the manufactured home to the real property owner.

(f) This section does not apply if the person who owns the real property on which the manufactured home is located and who is declaring that the home is abandoned, or any person who is related to or affiliated with that person, has now, or has ever owned, an interest in the manufactured home.



**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1514

**Caption:** relating to the issuance to veterans of specially marked driver's licenses

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 521.1235

**Affected:**

**Subject:** Designator on license issued to veteran

**Summary:** Adds TN 521.1235 to allow the Department of Public Safety to include the designation "VETERAN" on a driver's license issued to a veteran; requires the veteran to provide required proof to determine eligibility to receive the designation;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Many businesses, organizations, and events provide certain benefits to veterans, but the veteran often must present his/her discharge paperwork as proof of military service. Some veterans have pointed out that it is cumbersome to constantly carry this paperwork with them. Adding a veteran designation to their driver's license would allow them to more easily provide proof of service.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1523                      **Caption:** relating to the offense of transporting household goods without registration; providing a penalty

**Effective Date:** 9-1-2011

**Application:** Applies only to an offense committed on or after 9-1-2011

**Statutes Affected:** TN 643.253

**Subject:** Motor carrier registration; offenses and penalties

**Summary:** Amends TN 643.253 to change the penalty for engaging in or soliciting the transportation of household goods for compensation without being registered with the Department of Motor Vehicles to a Class C misdemeanor (rather than a fine of not less than \$200 or more than \$1,000 per violation; and provides that the offense is punished as a Class B misdemeanor if the person has previously been convicted one time, and a Class A misdemeanor if the person has previously been convicted two or more times;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Despite oversight by the Texas Department of Motor Vehicles (TxDMV), there are reports that the moving industry has many unregulated operators who advertise one rate for services and then charge another, far more exorbitant rate before unloading a customer's goods. These unregulated operators threaten the integrity of the moving industry as a whole. HB 1523 seeks to remedy this situation by providing enhanced penalties for a mover's failure to register with TxDMV if the mover has previously committed the registration violation. It has been suggested that a higher penalty will provide protection to consumers by deterring unregulated operators who may view the current fine as a small cost of doing business in Texas.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1559

**Caption:** relating to the retention, storage, and destruction of certain court documents

**Effective Date:** 5-30-2011

**Application:**

**Statutes** GV 441.025 et seq

**Affected:**

**Subject:** Retention, storage, and destruction of certain court documents

**Summary:** Adds GV 441.026 to prohibit a court in this state from destroying any instrument, document, paper, or other record filed with, otherwise presented to, or produced by a court in this state before January 1, 1951; Requires the Texas State Library and Archives Commission to adopt rules for the retention, storage, and destruction of these court documents;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** The existence of historic Texas court records is threatened because of the simple need to create space for more recent documents in Texas' courthouses. In 2009, the Texas Supreme Court, under the direction of Chief Justice Jefferson, established the Texas Court Records Preservation Task Force, tasked with the preservation and appropriate distribution of these irreplaceable documents. Currently, there is a state moratorium on shredding documents originating prior to 1860; however, documents dating from 1860-1950 are unprotected. HB 1559 gives court documents filed, presented, or produced from 1860 to January 1, 1951, temporary protection from destruction until the Texas State Library and Archives Commission (TSLAC) adopts rules for the retention, storage, and destruction of records created within those dates.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1573

**Caption:** relating to certain pretrial and post-trial procedures and testing in a criminal case

**Effective Date:** 9-1-2011

**Application:**

**Statutes** CP 17.085

**Affected:**

**Subject:** Notice of appearance date

**Summary:** Amends CP 17.085 to provide that the clerk of a court that does not provide online access to the court's criminal case records must post notice of a prospective criminal court docket setting as soon as the court notifies the clerk of the setting; notice must be posted in a designated public place in the courthouse;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1593

**Caption:** relating to the inclusion of a candidate's e-mail address on an official application for a place on the ballot

**Effective Date:** 9-1-2011

**Application:**

**Statutes** EL 141.039

**Affected:**

**Subject:** Official application form

**Summary:** Amends EL 141.039 to require a space for the candidate's home and office telephone numbers and e-mail address; furnishing telephone numbers or e-mail address is optional;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Although the Internet has become an important communication tool, there is currently no space on an application for a place on a ballot for a candidate to provide an e-mail address. Inclusion of this information on an application would be beneficial for candidates, county clerks, and election administrators so that those persons can communicate regarding election details.

HB 1593 adds a space to an application for a place on a ballot for a candidate to voluntarily provide their e-mail address. This would apply to ballot application forms promulgated by the secretary of state, which would be available for use by other political subdivision conducting elections.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1658                      **Caption:** relating to the refund of a cash bond to a defendant in a criminal case

**Effective Date:** 9-1-2011

**Application:** Applies only to a cash bond that is executed on or after 9-1-2011

**Statutes** CP 17.02

**Affected:**

**Subject:** Definition of bail bond

**Summary:** Amends CP 17.02 to require that any cash funds deposited in lieu of sureties be receipted for by the officer receiving the funds and, on order of the court, be refunded, after the defendant complies with the conditions of the defendant's bond, to:

- (1) any person in the name of whom a receipt was issued, in the amount reflected on the face of the receipt, including the defendant if a receipt was issued to the defendant; or
- (2) the defendant, if no other person is able to produce a receipt for the funds.

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** As amended:

CP 17.02. DEFINITION OF "BAIL BOND".

A "bail bond" is a written undertaking entered into by the defendant and the defendant's sureties for the appearance of the principal therein before a court or magistrate to answer a criminal accusation; provided, however, that the defendant on execution of the bail bond may deposit with the custodian of funds of the court in which the prosecution is pending current money of the United States in the amount of the bond in lieu of having sureties signing the same. Any cash funds deposited under this article shall be receipted for by the officer receiving the funds and, on order of the court, be refunded, after the defendant complies with the conditions of the defendant's bond, to:

- (1) any person in the name of whom a receipt was issued, in the amount reflected on the face of the receipt, including the defendant if a receipt was issued to the defendant; or
- (2) the defendant, if no other person is able to produce a receipt for the funds

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1711                      **Caption:** relating to disaster remediation contracts

**Effective Date:** 9-1-2011

**Application:** Applies only to a contract for performance of disaster remediation services that is entered into on or after 9-1-2011

**Statutes Affected:** BC 57.001 et seq

**Subject:** Disaster remediation contracts  
Disaster remediation contract requirements

**Summary:** Adds BC 57.003 to prohibit a disaster remediation contractor from (1) requiring a person to make a full or partial payment before beginning work, (2) requiring that the amount of any partial payment exceed an amount reasonably proportionate to the work performed, including materials delivered; the contractor is required to include in any contract the following statement in at least 10 point size:  
"This contract is subject to Chapter 57, Business & Commerce Code. A contractor may not require a full or partial payment before the contractor begins work and may not require partial payments in an amount that exceeds an amount reasonably proportionate to the work performed, including any materials delivered."  
Waiver of provisions is void;

Violation by a contractor is a deceptive trade practice;

The provisions relating to disaster remediation contracts do not apply if a contractor maintained for at least 1 year preceding the date of the contract a physical business address in the county or a county adjacent to the county in which the property is located;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** During the time period following natural disasters consumers are especially vulnerable to deceptive trade practices. To protect consumers from bad players in the industry, contractors involved in the disaster remediation process should not be allowed to require an upfront payment. HB 1711 improves access to reliable and responsible disaster remediation contractors in the State of Texas.

"Disaster remediation" means the removal, cleaning, sanitizing, demolition, reconstruction, or other treatment of improvements to real property performed because of damage or destruction to that property caused by a natural disaster.

"Disaster remediation contractor" means a person who engages in disaster remediation for compensation, other than a person who has a permit, license, registration, or other authorization from the Texas Commission on Environmental Quality for the collection, transportation, treatment, storage, processing, or disposal of solid waste.



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1788                      **Caption:** relating to capturing reptiles and amphibians by nonlethal means

**Effective Date:** 6-17-2011

**Application:** The Parks and Wildlife Commission shall adopt rules no later than 3-1-2012

**Statutes** PW 43.901  
**Affected:** PW 62.0031

**Subject:** Reptile and Amphibian Stamp

**Summary:** Adds PW 43.901 to allow the capture by nonlethal means an indigenous reptile or amphibian on the shoulder of a road or unpaved area of a public right-of-way only if the person possesses a stamp issued by the Parks and Wildlife Department; a person also must have a hunting license;

Adds PW 43.906 to provide that violation of PW 43.901 is a Class C Parks and Wildlife misdemeanor;

**Subject:** Hunting from public road or right-of-way prohibited

**Summary:** Amends PW 62.0031 to allow a person to capture by nonlethal means reptiles and amphibians on the shoulder of a road or the unpaved area of a public right-of-way if the person possesses a reptile and amphibian stamp and does not use a trap;  
Requires the person to wear reflective clothing with at least 144 square inches of reflective material on both the front and back;  
Prohibits the person from using an artificial light from a motor vehicle in locating, capturing, or attempting to capture a reptile or amphibian;

**Subject:**

**Summary:**

**Comments:** Interested parties note that snake collecting along public roadways has been adversely affected by recently passed legislation. These parties contend that snake hunting was permitted and lawfully practiced in many regions of Texas until recently and all of these regions experienced significant economic benefit derived from the tourism associated with individuals, known as herpers, searching for or collecting reptiles and amphibians. Legislation is needed to authorize the nonlethal capture of reptiles and amphibians in public rights-of-way if the person capturing the animals possesses, along with a hunting license, a reptile and amphibian stamp issued by the Texas Parks and Wildlife Department. By reinstating the right to collect reptiles and amphibians in a safe and regulated manner, enthusiasts will be able to practice this activity and, in doing so, bring dollars back to Texas's rural communities.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1823                      **Caption:** relating to the authority of certain persons to execute bail bonds and act as sureties

**Effective Date:** 9-1-2011

**Application:** Applies only to a person convicted of an offense committed on or after 9-1-2011

**Statutes** CP 17.07  
**Affected:** CP 17.10

**Subject:** Corporation to file with county clerk power of attorney designating agent

**Summary:** Amends CP 17.07 to allow a corporation acting as surety to limit the authority of an agent by specifying the limitation in the power of attorney filed with the county clerk;

**Subject:** Disqualified sureties

**Summary:** Amends CP 17.10 to disqualify a person from acting as a surety for compensation on a bail bond if the person has finally been convicted of (1) a misdemeanor involving moral turpitude; or (2) a felony;

**Subject:**

**Summary:**

**Comments:** Texas counties fall under one of two distinct schemes for the regulation of the bail bond business, based primarily on the population size of the county. In some counties, the bail bond business is regulated under the Occupations Code, and in others, under the Code of Criminal Procedure. Interested parties argue that certain authority granted to and restrictions imposed on bail bond businesses under the Occupations Code should also be applicable to such businesses under the Code of Criminal Procedure. HB 1823 changes the authority of certain persons to execute bail bonds and act as sureties under Chapter 17 (Bail), Code of Criminal Procedure, to harmonize provisions of that law with related provisions under the Occupations Code.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1829

**Caption:** relating to an application for emergency detention and to the transfer to a mental hospital of a person admitted for emergency detention

**Effective Date:** 9-1-2011

**Application:**

**Statutes** HS 573.012

**Affected:** HS 573.022

**Subject:** Issuance of warrant

**Summary:** Amends HS 573.012 to authorize a judge or magistrate, to allow a physician to present an application, among other ways, by e-mail with document attached as secure document in portable document format (PDF), and allows the judge or magistrate to transmit a warrant to the applicant electronically, if a digital signature is transmitted with the document; or by e-mail with the warrant attached as a secure document in a portable document format (PDF), if the identifiable legal signature of the judge or magistrate is transmitted with the document;

**Subject:** Emergency admission and detention

**Summary:** Amends HS 573.022 to authorize a facility that has admitted a person for emergency detention or to which a person has been transported, to transfer the person to an appropriate mental hospital with the written consent of the hospital administrator;

**Subject:**

**Summary:**

**Comments:**

As amended:

HS § 573.012. Issuance of Warrant

(a) Except as provided by Subsection (h), an applicant for emergency detention must present the application personally to a judge or magistrate. The judge or magistrate shall examine the application and may interview the applicant. Except as provided by Subsection (g), the judge of a court with probate jurisdiction by administrative order may provide that the application must be:

(1) presented personally to the court; or

(2) retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge of the court is not available at the time the application is presented.

(b) The magistrate shall deny the application unless the magistrate finds that there is reasonable cause to believe that:

(1) the person evidences mental illness;

(2) the person evidences a substantial risk of serious harm to himself or others;

(3) the risk of harm is imminent unless the person is immediately restrained; and

(4) the necessary restraint cannot be accomplished without emergency detention.

(c) A substantial risk of serious harm to the person or others under Subsection (b)(2) may be demonstrated by:

(1) the person's behavior; or

(2) evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

(d) The magistrate shall issue to an on-duty peace officer a warrant for the person's immediate apprehension if the magistrate finds that each criterion under Subsection (b) is satisfied.

(e) A person apprehended under this section shall be transported for a preliminary examination in accordance with Section 573.021 to:

(1) the nearest appropriate inpatient mental health facility; or

(2) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.

(f) The warrant serves as an application for detention in the facility. The warrant and a copy of the application for the warrant shall be immediately transmitted to the facility.

(g) If there is more than one court with probate jurisdiction in a county, an administrative order regarding presentation of an application must be jointly issued by all of the judges of those courts.

(h) A judge or magistrate may permit an applicant who is a physician to present an application by:

(1) e-mail with the application attached as a secure document in a portable document format (PDF); or

(2) secure electronic means, including:

(A) satellite transmission;

(B) closed-circuit television transmission; or

(C) any other method of two-way electronic communication that:

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

- (i) is secure;
  - (ii) is available to the judge or magistrate; and
  - (iii) provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between the judge or magistrate and the applicant.
- (h-1) After the presentation of an application under Subsection (h), the judge or magistrate may transmit a warrant to the applicant:
- (1) electronically, if a digital signature, as defined by Article 2.26, Code of Criminal Procedure, is transmitted with the document; or
  - (2) by e-mail with the warrant attached as a secure document in a portable document format (PDF), if the identifiable legal signature of the judge or magistrate is transmitted with the document.
- (i) The judge or magistrate shall provide for a recording of the presentation of an application under Subsection (h) to be made and preserved until the patient or proposed patient has been released or discharged. The patient or proposed patient may obtain a copy of the recording on payment of a reasonable amount to cover the costs of reproduction or, if the patient or proposed patient is indigent, the court shall provide a copy on the request of the patient or proposed patient without charging a cost for the copy.

### HS § 573.022. Emergency Admission and Detention

(a) A person may be admitted to a facility for emergency detention only if the physician who conducted the preliminary examination of the person makes a written statement that:

- (1) is acceptable to the facility;
  - (2) states that after a preliminary examination it is the physician's opinion that:
    - (A) the person is mentally ill;
    - (B) the person evidences a substantial risk of serious harm to himself or others;
    - (C) the described risk of harm is imminent unless the person is immediately restrained; and
    - (D) emergency detention is the least restrictive means by which the necessary restraint may be accomplished;and
  - (3) includes:
    - (A) a description of the nature of the person's mental illness;
    - (B) a specific description of the risk of harm the person evidences that may be demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty; and
    - (C) the specific detailed information from which the physician formed the opinion in Subdivision (2).
- (b) A mental health facility that has admitted a person for emergency detention under this section may transport the person to a mental health facility deemed suitable by the local mental health authority for the area. On the request of the local mental health authority, the judge may order that the proposed patient be detained in a department mental health facility.
- (c) A facility that has admitted a person for emergency detention under Subsection (a) or to which a person has been transported under Subsection (b) may transfer the person to an appropriate mental hospital with the written consent of the hospital administrator.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1862      **Caption:** relating to a tenant's remedies regarding a local government's revocation of a certificate of occupancy due to a landlord's failure to maintain the premises

**Effective Date:** 9-1-2011

**Application:** Applies only to a lease entered into on or after 9-1-2011

**Statutes Affected:** PP 92.023

**Subject:** Tenant's remedies regarding revocation of certificate of occupancy

**Summary:** Adds PP 92.023 to provide that if a municipality or a county revokes a certificate of occupancy for a leased premises because of the landlord's failure to maintain the premises, the landlord is liable to a tenant who is not in default under the lease for:

- (1) the full amount of the tenant's security deposit;
- (2) the pro rata portion of any rental payment the tenant has paid in advance;
- (3) the tenant's actual damages, including any moving costs, utility connection fees, storage fees, and lost wages; and
- (4) court costs and attorney's fees arising from any related cause of action by the tenant against the landlord.

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Under current law, if a municipality or county revokes a certificate of occupancy due to a determination of substandard housing, a tenant has few options to recoup losses incurred through no fault of the tenant as a result of the revocation.

As amended:  
Sec. 92.023. Tenants Remedies Regarding Revocation of Certificate of Occupancy.  
If a municipality or a county revokes a certificate of occupancy for a leased premises because of the landlord's failure to maintain the premises, the landlord is liable to a tenant who is not in default under the lease for:

- (1) the full amount of the tenant's security deposit;
- (2) the pro rata portion of any rental payment the tenant has paid in advance;
- (3) the tenant's actual damages, including any moving costs, utility connection fees, storage fees, and lost wages; and
- (4) court costs and attorney's fees arising from any related cause of action by the tenant against the landlord.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1891                      **Caption:** relating to the execution of a search warrant for data or information contained in or on certain devices

**Effective Date:** 9-1-2011

**Application:** Applies only to a warrant issued on or after 9-1-2011

**Statutes Affected:** CP 18.07

**Subject:** Days allowed for warrant to run

**Summary:** Amends CP 18.07 to provide that if a warrant is issued to search for and seize data or information contained in or on a computer, disk drive, flash drive, cellular telephone, or other electronic, communication, or data storage device, the warrant is considered to have been timely executed if the device was seized before the expiration of the time allowed; Notwithstanding any other law, any data or information contained in or on a device seized may be recovered and analyzed after the expiration of the time allowed:  
(1) 15 whole days if warrant is issued solely to search for and seize specimens for DNA analysis; or (2) 3 whole days if warrant is issued for another purpose;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Generally, a law enforcement officer has three days to execute a certain type of search warrant signed by a judge. In cases that rely on digital evidence, such as child pornography, officers usually seize computers when executing a search warrant. In such cases, it can take weeks or even months to fully analyze a computer or electronic storage device that has been seized to collect the contraband evidence. HB 1981 provides law enforcement sufficient time to search for digital evidence that is stored on a computer or other electronic storage device that has been lawfully seized as a result of a search warrant.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1899

**Caption:** relating to the posting of signs in school crossing zones regarding the prohibited use of a wireless communication device while operating a motor vehicle

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 545.425

**Affected:**

**Subject:** Use of wireless communication device; offense

**Summary:** Amends TN 545.425 to remove the requirement that signs banning the use of wireless communication devices in a school crossing zone be posted at each school crossing zone if the municipality, county, or other political subdivision prohibits the use of a wireless communication device while operating a motor vehicle throughout the jurisdiction and posts signs at each point at which a state highway, U.S. highway, or interstate highway enters the political subdivision that state that an operator is prohibited from using a wireless communication device while operating a motor vehicle in the political subdivision and that the operator is subject to a fine if the operator uses a wireless communication device while operating a motor vehicle in the political subdivision;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Section 545.425, Transportation Code, currently requires political subdivisions that want to enforce the prohibition against the use of wireless communication devices while operating a vehicle within school zones to post signs at the entrance of each school crossing zone. Failure to post such signs means the political subdivision cannot enforce the ordinance. The requirement that such signs be installed was an unfunded mandate from the state. HB 1899 cures the problem by removing the requirement for signs in communities that have adopted the ban within their jurisdiction. It is redundant and unnecessary for signs to be posted at school crossing zones when there is a city-wide ban and removing the requirement will save the taxpayers hundreds of thousands of dollars.

As amended:

§ 545.425. Use of Wireless Communication Device; Offense

(a) In this section:

(1) "Hands-free device" means speakerphone capability or a telephone attachment or other piece of equipment, regardless of whether permanently installed in the motor vehicle, that allows use of the wireless communication device without use of either of the operator's hands.

(2) "Wireless communication device" means a device that uses a commercial mobile service, as defined by 47 U.S.C. Section 332.

(b) Except as provided by Subsection (c), an operator may not use a wireless communication device while operating a motor vehicle within a school crossing zone, as defined by Section 541.302, Transportation Code, unless:

(1) the vehicle is stopped; or

(2) the wireless communication device is used with a hands-free device.

(b-1) Except as provided by Subsection (b-2), a municipality, county, or other political subdivision that enforces this section shall post a sign that complies with the standards described by this subsection at the entrance to each school crossing zone in the municipality, county, or other political subdivision. The department shall adopt standards that:

(1) allow for a sign required to be posted under this subsection to be attached to an existing sign at a minimal cost; and

(2) require that a sign required to be posted under this subsection inform an operator that:

(A) the use of a wireless communication device is prohibited in the school crossing zone; and

(B) the operator is subject to a fine if the operator uses a wireless communication device in the school crossing zone.

(b-2) A municipality, county, or other political subdivision that by ordinance or rule prohibits the use of a wireless communication device while operating a motor vehicle throughout the jurisdiction of the political subdivision is not required to post a sign as required by Subsection (b-1) if the political subdivision:

(1) posts signs that are located at each point at which a state highway, U.S. highway, or interstate highway enters the political subdivision and that state:

(A) that an operator is prohibited from using a wireless communication device while operating a motor vehicle in

## SUMMARIES -- 82nd LEGISLATURE -- 2011

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

the political subdivision; and

(B) that the operator is subject to a fine if the operator uses a wireless communication device while operating a motor vehicle in the political subdivision; and

(2) subject to all applicable United States Department of Transportation Federal Highway Administration rules, posts a message that complies with Subdivision (1) on any dynamic message sign operated by the political subdivision located on a state highway, U.S. highway, or interstate highway in the political subdivision.

(b-3) A sign posted under Subsection (b-2)(1) must be readable to an operator traveling at the applicable speed limit.

(b-4) The political subdivision shall pay the costs associated with the posting of signs under Subsection (b-2).

(c) An operator may not use a wireless communication device while operating a passenger bus with a minor passenger on the bus unless the passenger bus is stopped.

(d) It is an affirmative defense to prosecution of an offense under this section that:

(1) the wireless communication device was used to make an emergency call to:

(A) an emergency response service, including a rescue, emergency medical, or hazardous material response service;

(B) a hospital;

(C) a fire department;

(D) a health clinic;

(E) a medical doctor's office;

(F) an individual to administer first aid treatment; or

(G) a police department; or

(2) a sign required by Subsection (b-1) was not posted at the entrance to the school crossing zone at the time of an offense committed in the school crossing zone.

(d-1) The affirmative defense available in Subsection (d)(2) is not available for an offense under Subsection (b) committed in a school crossing zone located in a municipality, county, or other political subdivision that is in compliance with Subsection (b-2).

(e) This section does not apply to:

(1) an operator of an authorized emergency vehicle using a wireless communication device while acting in an official capacity; or

(2) an operator who is licensed by the Federal Communications Commission while operating a radio frequency device other than a wireless communication device.

(f) Except as provided by Subsection (b-2), this section preempts all local ordinances, rules, or regulations that are inconsistent with specific provisions of this section adopted by a political subdivision of this state relating to the use of a wireless communication device by the operator of a motor vehicle.



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1906                      **Caption:** relating to the idling of motor vehicles; providing a criminal penalty

**Effective Date:** 9-1-2011

**Application:** Applies to an offense committed on or after 9-1-2011

**Statutes Affected:** WA 7.1831

**Subject:** Violation of locally enforced motor vehicle idling limitations

**Summary:** Adds WA 7.1831 to specify that a person commits an offense if the person violates a rule adopted by the Texas Commission on Environmental Quality concerning locally enforced motor vehicle idling limitations; Class C misdemeanor (notwithstanding any other law);

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Interested parties observe that state regulatory law provides for local enforcement of heavy-duty idling limitations in any city or county that enters into a memorandum of agreement for that purpose with the Texas Commission on Environmental Quality. Critics of this arrangement observe that the state's heavy-duty idling regulations does not provided an adequate enforcement mechanism for county governments.  
HB 1906 establishes a reasonable penalty for locally enforce heavy-duty vehicle idling violations in unincorporated areas to foster more efficient enforcement, thereby reducing ozone-forming emission, improving air quality, and benefiting the citizens of Texas  
[Note: Statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), but the amendments affect the Texas Commission on Environmental Quality, as the successor commission to TNRCC.]

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1936

**Caption:** relating to importation and shipment of alcoholic beverages for personal consumption

**Effective Date:** 9-1-2011

**Application:**

**Statutes Affected:** AB 107.07

**Subject:** Importation for personal use; Importation by railroad companies

**Summary:** Amends AB 107.07 to authorize a person to import not more than 24 12-ounce bottles or an equivalent quantity of malt beverages, 3 gallons of wine, and 1 gallon of distilled spirits for the person's own personal use without being required to hold a permit. Requires a person importing alcoholic beverages into the state under this section to pay the state tax on alcoholic beverages and an administrative fee of \$3 and to affix the required tax stamps. Prohibits a minor and an intoxicated person from importing alcoholic beverages into the state. Requires a person importing alcoholic beverages under this subsection to personally accompany the alcoholic beverages as the alcoholic beverages enter the state. Prohibits a person from using the exemptions set forth in this subsection more than once every thirty days.

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** The Texas Alcoholic Beverage Commission (TABC) staffs tax collection operations at ports of entry along the Texas-Mexico border. TABC collects the tax on alcohol and tobacco coming into Texas from Mexico. Population growth, increased operational costs, and the need to establish operations on new international bridges has led to TABC port operations becoming fiscally non-self sufficient. Current law authorizes TABC to exact a 50 cents administrative fee on alcoholic beverages. Current law also allows a Texas resident to import a quart of liquor but allows a non-resident to import a gallon. HB 1936 increases the administrative fee leveraged on the importation of alcoholic beverages for personal consumption from 50 cents to \$3. The proceeds collected from the increased administrative fee will be used by TABC for the purpose of paying for collection operations. HB 1936 creates a uniform allowance for Texas residents and non residents of 24 twelve-ounce bottles or an equivalent quantity of malt beverages, three gallons of wine, and one gallon of distilled spirits.

As amended:

AB § 107.07. Importation for Personal Use; Importation by Railroad Companies

(a) A person may import not more than 24 12-ounce bottles or an equivalent quantity of malt beverages, 3 gallons of wine, and 1 gallon of distilled spirits own personal use without being required to hold a permit. A person importing alcoholic beverages into the state under this subsection must pay the state tax on alcoholic beverages and an administrative fee of \$3 and must affix the required tax stamps. No minor and no intoxicated person may import any alcoholic beverages into the state. A person importing alcoholic beverages under this subsection must personally accompany the alcoholic beverages as the alcoholic beverages enter the state. A person may not use the exemptions set forth in this subsection more than once every thirty days.

(d) A railroad company operating in this state may import beer owned by the company in quantities necessary to meet the needs of its passengers, but it may not sell or serve beer in a dry area.

(e) The administrative fees collected under this section shall be used by the commission for the administrative costs of enforcing the requirements of Subsection (a).

(f) Except as provided by Chapter 54, any person in the business of selling alcoholic beverages in another state or country that ships or causes to be shipped any alcoholic beverage directly to any Texas resident under this section is in violation of this code.

(g) In computing the total amount of taxes and administrative fees to be collected on alcoholic beverages imported by a person into the state for personal use, the commission may round the amount up to the nearest quarter of a dollar.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

- Bill Number:** HB 1942      **Caption:** relating to bullying in public schools
- Effective Date:** 6-17-2011
- Application:** Applies beginning with the 2012-2013 school year
- Statutes Affected:** ED 37.0832
- Subject:** Bullying prevention policies and procedures
- Summary:** Adds ED 37.0832 to require the board of trustees of each school district to adopt a policy including procedures, concerning bullying that:
- (1) prohibits the bullying of a student;
  - (2) prohibits retaliation against any person, including a victim, a witness, or another person, who in good faith provides information concerning an incident of bullying;
  - (3) establishes a procedure for providing notice of an incident of bullying to a parent or guardian of the victim and a parent or guardian of the bully within a reasonable amount of time after the incident;
  - (4) establishes the actions a student should take to obtain assistance and intervention in response to bullying;
  - (5) sets out the available counseling options for a student who is a victim of or a witness to bullying or who engages in bullying;
  - (6) establishes procedures for reporting an incident of bullying, investigating a reported incident of bullying, and determining whether the reported incident of bullying occurred;
  - (7) prohibits the imposition of a disciplinary measure on a student who, after an investigation, is found to be a victim of bullying, on the basis of that student's use of reasonable self-defense in response to the bullying; and
  - (8) requires that discipline for bullying of a student with disabilities comply with applicable requirements under federal law, including the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).
- Procedures for reporting bullying must be posted on the district's internet website;
- Subject:** Required curriculum
- Summary:** Amends ED 28.002 to require the State Board of Education to include in the health curriculum essential knowledge and skills that include evidence-based practices that will effectively address awareness, prevention, identification, self-defense in response to, and resolution of and intervention in bullying and harassment;
- "Bullying" means, subject to Subsection (b), engaging in written or verbal expression, expression through electronic means, or physical conduct that occurs on school property, at a school-sponsored or school-related activity, or in a vehicle operated by the district and that:
- (1) has the effect or will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property; or
  - (2) is sufficiently severe, persistent, and pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student.
- (b) Conduct described by Subsection (a) is considered bullying if that conduct:
- (1) exploits an imbalance of power between the student perpetrator and the student victim through written or verbal expression or physical conduct; and
  - (2) interferes with a student's education or substantially disrupts the operation of a school;
- Subject:**
- Summary:**
- Comments:** According to some reports, a considerable percentage of students nationwide have fallen victim to bullying and recent developments in technology have contributed to the rise of bullying by electronic means, or cyberbullying. Interested parties contend that, with more than four million students in the state public education system, Texas should improve expectations for its schools in addressing this problem. HB 1942 takes a preventative approach to reducing bullying in Texas public schools and provide a minimal framework for schools to use in adopting and implementing a bullying policy, while being cognizant of the local control independent school districts should have in developing policy reflective of their respective communities.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 1964      **Caption:** relating to certain court orders against, and to discharging through community service fines and costs assessed against, certain juvenile defendants

**Effective Date:** 9-1-2011

**Application:** Applies only to an offense committed or conduct that occurs on or after 9-1-2011

**Statutes** CP 45.0492  
**Affected:** CP 45.051  
CP 45.057

**Subject:** Community service in satisfaction of fine or costs for certain juvenile defendants

**Summary:** Adds CP 45.0492 to allow a judge to require a defendant younger than 17 years of age to discharge all or part of the fine or costs by performing community service; judge must specify the number of hours of service the defendant is required to perform and may not order more than 200 hours of service, and no more than 16 hours per week unless the judge determines that more hours does not cause a hardship;  
Allows a local juvenile probation department or a court-related services office to provide the administrative and other services necessary for supervision of a defendant;

**Subject:** Suspension of sentence and deferral of final disposition

**Summary:** Amends CP 45.051 to include as a condition of deferred disposition that the judge may require an eligible defendant to discharge all or part of court costs by performing community service under CP 45.049 or CP 45.0492;

**Subject:** Offenses committed by juveniles

**Summary:** Amends CP 45.057 to allow the court to require that the child attend a special program, and if the program involves the expenditure of municipal or county funds, that is approved by the governing body of the municipality or county commissioners court, as applicable,

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2014

**Caption:** relating to certain criminal and civil consequences of trafficking of persons, compelling prostitution, and certain other related criminal offenses and to the prevention, prosecution, and punishment of those offenses

**Effective Date:** 9-1-2011

**Application:** Applies only to an offense committed on or after 9-1-2011  
To the extent of any conflict, HB 2014 prevails over another Act relating to nonsubstantive additions to and corrections in enacted codes

**Statutes Affected:** CP 17.153

**Subject:** Denial of bail for violation of condition of bond where child alleged victim

**Summary:** Amends CP 17.153 to include the denial of bail to a defendant charged with trafficking of a child with intent that child would engage in sexual conduct, who violated a condition of bail;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** SB 2014 is the other half of the legislative recommendations in the 2011 Human Trafficking Prevention Task Force Report to combat human trafficking.  
SB 0024 contain the first half of the legislative recommendations.

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

**Bill Number:** HB 2015                      **Caption:** relating to certain conduct indicating a need for supervision and the sealing of records relating to that conduct

**Effective Date:** 9-1-2011

**Application:** Applies only to conduct that occurs on or after 9-1-2011

**Statutes Affected:** FA 51.03

**Subject:** Delinquent conduct; conduct indicating a need for supervision

**Summary:** Amends FA 51.03 to include prostitution (offer to, agree to, or engage in sexual conduct for a fee, or solicit another in a public place to engage with him in sexual conduct for hire) within the definition of conduct indicating a need for supervision;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2017                      **Caption:** relating to the organization, governance, duties, and functions of the Texas Department of Motor Vehicles

**Effective Date:** 9-1-2011

**Application:** See also HB 2357

**Statutes**                      TN 501.171 et seq  
**Affected:**                      504.403, et seq

**Subject:**                      Electronic titling system

**Summary:**                      Adds Subchapter I to Chapter 501, TN 501.171 et seq to create an electronic titling system and to provide that a record maintained electronically by the TxDMV in the titling system is the official record of vehicle ownership unless the owner requests that a printed title be issued, and the electronic record satisfies any requirement that the document be an original, be on paper, or in writing; signature requirement is satisfied by an electronic signature;

**Subject:**                      Specialty license plates

**Summary:**                      Repeals TN 504.403, TN 504.404, and TN 504.406 relating to specialty plates for judges and constables

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2047                      **Caption:** relating to service of process at the registered office of certain registered agents

**Effective Date:** 9-1-2011

**Application:** Applies to all process served on or after 9-1-2011

**Statutes** BO 5.201

**Affected:**

**Subject:** Designation and maintenance of registered office and registered agent

**Summary:** Amends BO 5.021 to require a registered agent that is an organization to have an employee available at the registered office during normal business hours to receive service of process, notice, or demand; any employee of the organization may receive service at the registered office;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Under current law, civil papers served to a corporation must be personally served to a president, vice-president, or registered agent of the corporation. Many corporations and other entities elect to appoint a separate corporation as their registered agent to receive civil process on behalf of the corporation. However, if that service of process is challenged, some courts have held that the corporation was not properly served, since current law provides that process must be personally delivered to a person and not to a company. This situation creates confusion, lost time, additional costs in civil litigation, and backlogs in the court. The primary purpose of HB 2047 is to allow for process to be served on a corporation by serving that corporation's registered agent.



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2080

**Caption:** relating to certification of a person as eligible for disabled parking privileges

**Effective Date:** 6-17-2011

**Application:**

**Statutes** TN 681.003

**Affected:**

**Subject:** Parking placard application

**Summary:** Amends TN 681.003 to extend the authority to prescribe handicapped parking placards to PAs and APNs acting as the agent of a licensed physician in Texas regardless of population;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Last session, the Legislature amended the Transportation Code to allow physicians assistants and advance practice nurses operating under the delegated prescriptive authority of a licensed physician to write handicapped parking placards in rural counties with a population of 125,000 or less. In urban counties, however, Texas law still bars PAs and APNs from writing these sorts of prescriptions. According to the United States Department of Health and Human Services, Bexar, Harris, Dallas, Tarrant, and El Paso counties are all prime examples of urban counties with medically underserved areas. HB 2080 extends the authority to prescribe handicapped parking placards to PAs and APNs acting as the agent of a licensed physician in Texas regardless of population.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2131

**Caption:** relating to the issuance of a pass for expedited access to the State Capitol

**Effective Date:** 5-30-2011

**Application:**

**Statutes** GV 411.0625

**Affected:**

**Subject:** Pass for expedited access to Capitol

**Summary:** Adds GV 411.0625 to require the Department of Public Safety of the State of Texas (DPS) to allow a person to enter the Capitol and the Capitol Extension, including any public space in the Capitol or Capitol Extension, in the same manner as DPS allows entry to a person who presents a concealed handgun license under Subchapter H (License to Carry a Concealed Handgun) if the person: (1) obtains from DPS a Capitol access pass; and (2) presents the pass to the appropriate law enforcement official when entering the building or a space within the building;

To be eligible, a person must meet the eligibility requirements applicable to a license to carry a concealed handgun under Subchapter H, other than requirements regarding evidence of handgun proficiency; Establish application and renewal fees in amounts sufficient to cover the cost of administering this section, not to exceed the amounts of similar fees required for a concealed handgun license;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Currently, Texans with concealed handgun licenses (CHL) can bypass certain security devices at the entrances of the Capitol building. To obtain a CHL, an applicant must meet certain requirements, including showing proof of identity and residency, paying a license fee, and having a criminal background check.

HB 2131 establishes a pass for expedited access that allows a person to enter the Capitol building and extension more conveniently and sets out requirements for obtaining the pass that are similar to those applicable for obtaining a CHL.

Sec. 411.0625. Pass for Expedited Access to Capitol.

(a) The department shall allow a person to enter the Capitol and the Capitol Extension, including any public space in the Capitol or Capitol Extension, in the same manner as the department allows entry to a person who presents a concealed handgun license under Subchapter H if the person:

(1) obtains from the department a Capitol access pass; and

(2) presents the pass to the appropriate law enforcement official when entering the building or a space within the building.

(b) To be eligible for a Capitol access pass, a person must meet the eligibility requirements applicable to a license to carry a concealed handgun under Subchapter H, other than requirements regarding evidence of handgun proficiency.

(c) The department shall adopt rules to establish a procedure by which a resident of the state may apply for and be issued a Capitol access pass. Rules adopted under this section must include provisions for eligibility, application, approval, issuance, and renewal that:

(1) require the department to conduct the same background check on an applicant for a Capitol access pass that is conducted on an applicant for a concealed handgun license under Subchapter H;

(2) enable the department to conduct the background check described by Subdivision (1); and

(3) establish application and renewal fees in amounts sufficient to cover the cost of administering this section, not to exceed the amounts of similar fees required for a concealed handgun license under Section 411.174.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2138

**Caption:** relating to the search and rescue of victims of water-oriented accidents

**Effective Date:** 6-17-2011

**Application:**

**Statutes** PW 31.121

**Affected:**

**Subject:** Enforcement officers

**Summary:** Amends PW 31.121 to require all peace officers and game wardens to be certified as marine safety enforcement officers in order to enforce water safety regulations;  
Allows state military forces to assist game wardens in search and rescue of victims of water-oriented accidents;

"Game warden" means a person who is commissioned as a game warden by the Texas Parks and Wildlife Commission.

"State military forces" means the Texas National Guard, the Texas State Guard, and any other active militia or military force organized under state law;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2141

**Caption:** relating to enforcement of laws related to water safety

**Effective Date:** 6-17-2011

**Application:**

**Statutes** PW 31.121

**Affected:**

**Subject:** Enforcement officers

**Summary:** Amends PW 31.121 to provide that game wardens commissioned by the commission are the primary enforcement officers responsible for enforcing the provisions related to water safety;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Game wardens commissioned by the Texas Parks and Wildlife Commission work to create a pleasant, recreational atmosphere for Texas residents and visitors to the state by keeping Texas waterways safe. HB 2141 establishes that game wardens commissioned by the Texas Parks and Wildlife Commission are the primary enforcement officers responsible for enforcing provisions of law relating to water safety.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2189

**Caption:** relating to the regulation of handfishing

**Effective Date:** 6-17-2011

**Application:**

**Statutes** PW 66.115

**Affected:**

**Subject:** Handfishing

**Summary:** Adds PW 66115 to allow a person holding the required fishing license and freshwater fishing stamp issued by the Parks and Wildlife Department to engage in handfishing in the public fresh water of this state; "Handfishing" means fishing for catfish by the use of hands only and without any other fishing device such as a gaff, pole hook, trap, or spear;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Handfishing, also known as noodling, is the practice and sport of fishing for catfish using one's bare hands. The method involves locating an underwater catfish hole and using an angler's fingers and hand as bait. After catching a catfish, an angler may then safely release the fish into the water. Interested parties have expressed a desire to legalize the practice in Texas.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2256      **Caption:** relating to abating or deferring the suspension or revocation of a license issued by the Department of Public Safety for victims of identity theft

**Effective Date:** 6-17-2011

**Application:**

**Statutes Affected:** GV 411.0206

**Subject:** Abatement or deferral for victims of identity theft

**Summary:** Adds GV 411.0206 to allow the Department of Public Safety to abate or defer a mandatory suspension or revocation of a license if the license holder presents evidence that:  
(1) the license holder is the victim of identity theft; and  
(2) the person against whom a criminal complaint alleging the commission of an offense under Section 32.51, Penal Code, has been filed, and not the license holder, engaged in the act or omission that mandates the suspension or revocation;

"License" means a license, certificate, permit, or other authorization issued by the department;  
"Victim of identity theft" means an individual who has filed a criminal complaint alleging the commission of an offense under PE 32.51 (fraudulent use or possession of identifying information) other than a person who is convicted of an offense under PE 37.08 (false report to peace officer or law enforcement employee) with respect to that complaint;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** There are several offenses for which a conviction results in an automatic suspension of the offender's driver's license. Interested parties note that legislation is required to keep a victim of identity theft from having a license suspended for crimes committed by others in the victim's name.  
HB 2256 amends current law relating to abating or deferring the suspension or revocation of a license issued by the Department of Public Safety for victims of identity theft.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2337                      **Caption:** relating to the admissibility of certain statements made by a child in a juvenile justice or criminal proceeding

**Effective Date:** 9-1-2011

**Application:** Applies only to a statement relating to conduct violating a penal law that occurred on or after 9-1-2011

**Statutes Affected:** FA 51.095

**Subject:** Admissibility of a statement of a child

**Summary:** Amends FA 51.095 to provide that a statement of a child may be admissible if, without regard to whether the statement stems from interrogation of the child (1) while the child is in a detention facility or other place of confinement, (2) while the child is in the custody of an officer, or (3) during or after the interrogation of the child by an officer if the child is in the possession of the Department of Protective and Regulatory Services, the statement is:

- (A) voluntary and has a bearing on the credibility of the child as a witness; or
- (B) recorded by an electronic recording device, including a device that records images, and is obtained:
  - (i) in another state in compliance with the laws of that state or this state; or
  - (ii) by a federal law enforcement officer in this state or another state in compliance with the laws of the United States;

Requires an electronic recording to be preserved until all juvenile or criminal matters relating to the statement are final, including appeals, or are barred from prosecution;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Interested parties report that organized crime groups have begun to use minors for the purpose of engaging in illegal activities. Observers note that the problem is pronounced along the U.S.-Mexico border, where minors illegally cross into the United States while carrying drugs, weapons, or other illicit material. These criminal groups may be difficult to prosecute because of the way Texas laws governing the admissibility of child statements in certain courts are structured. Interested parties note that legislation is required to allow a court, under certain circumstances, to admit as evidence a statement made by a child that would otherwise be excluded before the court. HB 2337 addresses this concern relating to the admissibility in a court proceeding of certain statements.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2357 (Page 1 of 3) **Caption:** relating to motor vehicles; providing penalties

**Effective Date:** 1-1-2012

**Application:** Applies to an offense committed on or after 1-1-2012  
To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, relating to nonsubstantive additions to and corrections in enacted codes;  
See also HB 2017

**Statutes Affected:** TN 501.171 et seq  
TN 502.471 et seq  
TN 504.941 et seq  
TN 520.015  
TN 551.401  
TN 681.012

**Subject:** Motor number required for registration; penalty  
Application for motor number record; penalty

**Summary:** Adds TN 501.162 to create an office if a person violates TN 501.0331 (formerly TN 520.011), prohibiting a person from applying to the county assessor-collector for the registration of a motor vehicle from which the original motor number has been removed, erased, or destroyed until the motor vehicle bears the motor number assigned by the department;  
Misdemeanor punishable by fine of not less than \$50 and not more than \$100;

Adds TN 501.163 to create an office if a person fails to comply with TN 501.0332 (formerly TN 520.012), requiring an application for a motor number assigned by the TxDMV if the motor vehicle had the original motor number removed, erased, or destroyed;  
Misdemeanor punishable by fine of not less than \$50 and not more than \$100;

**Subject:** Electronic titling system

**Summary:** Adds Subchapter I to Chapter 501, TN 501.171 et seq to create an electronic titling system and to provide that a record maintained electronically by the TxDMV in the titling system is the official record of vehicle ownership unless the owner requests that a printed title be issued, and the electronic record satisfies any requirement that the document be an original, be on paper, or in writing; signature requirement is satisfied by an electronic signature;

**Subject:** Offenses and penalties relating to registration of vehicles

**Summary:** Adds TN Chapter 502, Subchapter K Offenses and penalties:

Renumbers as TN 502.471 General penalty (formerly TN 502.401), and provides that unless otherwise specified, an offense violating TN Chapter 502 (Registration of vehicles) is punishable by a fine not to exceed \$200, unless otherwise specified;

Renumbers as TN 502.471 Operation of vehicle under improper registration (formerly TN 502.402), to redefine the offense if a person operates a motor vehicle that has not been registered or registered for a class other than that to which the vehicle belongs as required by law;

Renumbers as TN 502.473 Operation of vehicle without registration insignia (formerly TN 502.404) to redefine the offense (a) if a person operates on a public highway during a registration period a motor vehicle that does not properly display the registration insignia issued by the department that establishes that the license plates have been validated for the period;  
(b) if a person operates on a public highway during a registration period a road tractor, motorcycle, trailer, or semitrailer that does not display a registration insignia issued by the department that establishes that the vehicle is registered for the period;  
Allows the court to dismiss a charge brought under Subsection (a) if the defendant (1) shows that the motor vehicle was issued a registration insignia by the department that was attached to the motor vehicle, establishing that the vehicle was registered for the period during which the offense was committed; and (2) pays an administrative fee not to exceed \$10;  
Provides that this section does not apply to a dealer operating a vehicle as provided by law;

Adds TN 502.474 Operation of one-trip permit vehicle, to create an offense if a person operates a vehicle for which a one-trip permit is required without the registration receipt and properly displayed temporary tag;



## SUMMARIES -- 82nd LEGISLATURE -- 2011

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

Renumbers TN 502.475 Wrong, fictitious, altered or obscured insignia (formerly TN 502.409), and redefines the offense (a) if a person attaches to or displays on a motor vehicle a registration insignia that:

- (1) is assigned to a different motor vehicle;
- (2) is assigned to the vehicle under any other motor vehicle law other than by the department;
- (3) is assigned for a registration period other than the registration period in effect; or
- (4) is fictitious;

Attaching or displaying a registration under (1), (2), or (3) is a misdemeanor punishable by a fine of not more than \$200, unless the owner knowingly altered or made illegible the markings, in which case the offense is a Class B misdemeanor;

Attached or displaying a registration under (4) is a Class B misdemeanor;

Allows a court to dismiss a charge under (3) if the defendant (1) remedies the defect before the defendant's first court appearance, and (2) pays an administrative fee not to exceed \$10;

Adds TN 502.476 Annual permits; offense, to create an offense for violating TN 502.093 (annual permits required by foreign commercial vehicles);

Adds TN 502.477 Nonresident-owned vehicles used to transport agricultural product; offense;

Adds TN 502.478 Commercial motor vehicle used primarily for agricultural purposes; offense;

Renumbers TN 502.480 Violation by county assessor-collector; penalty (formerly TN 502.014);

### Comments:

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2357 (Page 2 of 3) **Caption:** relating to motor vehicles; providing penalties

**Effective Date:** 1-1-2012

**Application:**

**Statutes** TN 501.171 et seq  
**Affected:** TN 502.471 et seq  
TN 504.941 et seq  
TN 520.015  
TN 551.401  
TN 681.012

**Subject:** Specialty license plates  
Offenses and penalties

**Summary:** Adds TN Chapter 504 (Specialty license plates) Subchapter L Offenses and penalties;  
Adds TN 504.941 Antique vehicles; offense  
Adds TN 504.942 Log loader vehicles; penalties;

Adds TN 504.943 Operation of vehicle without license plate

(a) Except as provided by Subsection (b), a person commits an offense if the person operates on a public highway, during a registration period, a motor vehicle that does not display two license plates that:

- (1) have been assigned by the department for the period; and
- (2) comply with department rules regarding the placement of license plates.

(b) A person commits an offense if the person operates on a public highway during a registration period a road tractor, motorcycle, trailer, or semitrailer that does not display a license plate that:

- (1) has been assigned by the department for the period; and
- (2) complies with department rules regarding the placement of license plates.

(c) This section does not apply to a dealer operating a vehicle as provided by law.

(d) A court may dismiss a charge brought under Subsection (a)(1) if the defendant:

- (1) remedies the defect before the defendant's first court appearance; and
- (2) pays an administrative fee not to exceed \$10;

Renumbers TN 504.944 Operation of vehicle with wrong license plate (formerly TN 502.048);

Adds TN 504.945 Wrong, fictitious, altered, or obscured license plate

(a) A person commits an offense if the person attaches to or displays on a motor vehicle a license plate that:

- (1) is issued for a different motor vehicle;
- (2) is issued for the vehicle under any other motor vehicle law other than by the department;
- (3) is assigned for a registration period other than the registration period in effect;
- (4) is fictitious;
- (5) has blurring or reflective matter that significantly impairs the readability of the name of the state in which the vehicle is registered or the letters or numbers of the license plate number at any time;
- (6) has an attached illuminated device or sticker, decal, emblem, or other insignia that is not authorized by law and that interferes with the readability of the letters or numbers of the license plate number or the name of the state in which the vehicle is registered; or
- (7) has a coating, covering, protective substance, or other material that:
  - (A) distorts angular visibility or detectability;
  - (B) alters or obscures one-half or more of the name of the state in which the vehicle is registered; or
  - (C) alters or obscures the letters or numbers of the license plate number or the color of the plate.

(b) Except as provided by Subsection (e), an offense under Subsection (a) is a misdemeanor punishable by a fine of not more than \$200, unless it is shown at the trial of the offense that the owner knowingly altered or made illegible the letters, numbers, and other identification marks, in which case the offense is a Class B misdemeanor.

(c) Subsection (a)(7) may not be construed to apply to:

- (1) a trailer hitch installed on a vehicle in a normal or customary manner;

**Subject:** Transfer of title and registration of used vehicle

**Summary:** Renumbers TN 520.015 General penalty (formerly TN 520.036) creating an offense if a person violates provisions relating to TN Subchapter D, Transfer of title and registration of used vehicle, and makes this offense inapplicable to a violation of:

TN 520.006 Compensation of assessor-collector (formerly TN 502.109);

TN 520.008 Full-service deputies (formerly TN 502.114);

TN 520.009 Limited-service deputies (formerly TN 502.113);

## SUMMARIES -- 82nd LEGISLATURE -- 2011

**Janet Marton, Senior Assistant County Attorney**  
**Office of Vince Ryan, Harris County Attorney**

TN 520.0091 Deputy assessor-collector (formerly TN 502.112);  
TN 520.0092 Acts by deputy county assessor-collector (Formerly 502.136);

**Subject:** Golf carts and utility vehicles

**Summary:** Amends TN 551.401 in addition to golf carts, to include utility vehicles

"Utility vehicles" means a motor vehicle that is not a golf cart or lawn mower and is:

(A) equipped with side-by-side seating for the use of the operator and a passenger;

(B) designed to propel itself with at least four tires in contact with the ground;

(C) designed by the manufacturer for off-highway use only; and

(D) designed by the manufacturer primarily for utility work and not for recreational purposes

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2357 (Page 3 of 3) **Caption:** relating to motor vehicles; providing penalties

**Effective Date:** 1-1-2012

**Application:**

**Statutes** TN 501.171 et seq  
**Affected:** TN 502.471 et seq  
TN 504.941 et seq  
TN 520.015  
TN 551.401  
TN 681.012

**Subject:** Seizure and revocation of placard

**Summary:** Amends TN 681.012 to allow a peace officer to seize a disabled parking placard if the peace officer determines by inspecting the person's driver's license or personal identification certificate that the disabled parking placard does not contain the first four digits of the driver's license number or personal identification certificate number and the initials of:

- (1) the person operating the vehicle;
- (2) the applicant on behalf of a person being transported by the vehicle; or
- (3) a person being transported by the vehicle;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Repeals (1) Sections 501.026 and 501.075;  
(2) Sections 501.094 and 501.133;  
(3) Sections 501.134(e), (f), and (i);  
(4) Sections 502.0074, 502.0075, 502.008, 502.104, 502.105, 502.1535, 502.154, 502.175, 502.177, 502.206, 502.271, 502.2862, and 502.2971;  
(5) Sections 502.403 and 502.405;  
(6) Section 502.407(c);  
(7) Section 502.412(c);  
(8) Sections 502.452, 502.453, 502.455, and 502.456;  
(9) Section 504.201(h);  
(10) Section 504.316(b);  
(11) Section 504.401(b);  
(12) Section 504.402(b);  
(13) Section 504.403(b);  
(14) Section 504.404(b);  
(15) Section 504.405(b);  
(16) Section 504.502(j);  
(17) Section 504.506(f);  
(18) Section 504.507(c);  
(19) Section 504.508(d);  
(20) Sections 504.624, 504.629, 504.634, 504.643, 504.649, 504.650, 504.653, 504.655, and 504.701;  
(21) Section 504.702(c);  
(22) Section 504.851(k);  
(23) Section 504.854(c);  
(24) Sections 520.013 and 520.034; and

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2359                      **Caption:** relating to direct campaign expenditures

**Effective Date:** 6-17-2011

**Application:**

**Statutes**                      EL 253.094  
**Affected:**                      EL 254.261 et seq

**Subject:**                      Contributions prohibited

**Summary:**                      Amends EL 253.094 to prohibit a corporation or labor organization from making a political contribution, rather than a political contribution or political expenditure, that is not authorized by law;

**Subject:**                      Reporting by certain persons making direct campaign expenditures  
Direct campaign expenditure exceeding \$100

**Summary:**                      Adds EL 254.261 to provide that a person not acting in concert with another person who makes one or more direct campaign expenditures in an election from the person's own property must comply with this chapter as if the person were the campaign treasurer of a general-purpose committee;  
A person is not required to file a report under this section if the person is required to disclose the expenditure in another report required under Title 15 regulating political funds and campaigns, within the time applicable for reporting the expenditure;  
A person is not required to file a campaign treasurer appointment for making expenditures for which reporting is required under this section, unless the person is otherwise required to file a campaign treasurer appointment under Title 15 regulating political funds and campaigns;

**Subject:**                      Travel expense

**Summary:**                      Adds 254.262 to provide that a direct campaign expenditure consisting of personal travel expenses incurred by a person may be made without complying with the reporting requirements for direct campaign expenditures exceeding \$100, EL 254.261;

**Comments:**                      Interested parties have argued that the Texas prohibition of corporate direct campaign expenditures is unconstitutional in light of the Supreme Court's decision in Citizens United v. Federal Election Commission. A corporate direct campaign expenditure includes a campaign expenditure made by for-profit or nonprofit corporations that do not constitute a campaign contribution by the person making the expenditure. Based on interpretations of a court order by the United States District Court for the Western District of Texas, the Texas Ethics Commission's Ethics Advisory Opinion No. 489, and the Texas Ethics Commission's recommendations for statutory changes to the 82nd Legislature, interested parties also argue that the state's prohibition of direct campaign expenditures is unenforceable and could lead to costly litigation. HB 2359 addresses the prohibition on direct campaign expenditures by removing certain references to political expenditures in the Texas Election Code and by adding and clarifying reporting requirements for certain direct campaign expenditures.

Repealed:  
EL § 253.002. Unlawful Direct Campaign Expenditure  
(a) A person may not knowingly make or authorize a direct campaign expenditure.  
(b) This section does not apply to:  
(1) an individual making an expenditure authorized by Subchapter C; [FN1]  
(2) a corporation or labor organization making an expenditure authorized by Subchapter D;  
(3) a candidate making or authorizing an expenditure for the candidate's own election;  
(4) a political committee; or  
(5) a campaign treasurer or assistant campaign treasurer acting in an official capacity.  
(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

EL § 253.097. Direct Expenditure on Measure  
A corporation or labor organization not acting in concert with another person may make one or more direct campaign expenditures from its own property in connection with an election on a measure if the corporation or labor organization makes the expenditures in accordance with Section 253.061 or 253.062 as if the corporation or labor organization were an individual.

EL Subchapter C Individuals  
EL § 253.061. Direct Expenditure of \$100 or Less  
EL § 253.062. Direct Expenditure Exceeding \$100

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

EL § 253.063. Travel Expense

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2425      **Caption:** relating to notice to the attorney general of challenges to the constitutionality of Texas statutes

**Effective Date:** 6-17-2011

**Application:** Applies only to a petition, motion, or other pleading filed in litigation on or after 6-17-2011

**Statutes Affected:** GV 402.010

**Subject:** Legal challenges to constitutionality of state statutes

**Summary:** Adds GV 402.010 to require the court to notify the attorney general when a party to litigation files a petition, motion, or other pleading challenging the constitutionality of a Texas statute, if the attorney general is not a party to or counsel involved in the action; notice must be served with a copy of the petition, motion, or other pleading by certified or registered mail or to an e-mail address designated by the attorney general for that purpose; the notice must identify the statute in question, the basis for the challenge, and specify the petition, motion, or other pleading that raises the challenge;  
Prohibits the court from entering a final judgment holding a statute unconstitutional before the 45th day after the date notice is served on the attorney general;  
Failure of the court to file or serve notice does not deprive the court of jurisdiction or forfeit an otherwise timely filed claim or defense based on the challenge to the constitutionality of the statute;  
There is no waiver of sovereign immunity;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Under current law, a party challenging the constitutionality of a state statute is not required to notify the Office of the Attorney General (OAG) of the suit. Consequently, OAG is often unaware of a constitutional challenge to state statute until the litigation has substantially progressed or concluded. This delay greatly reduces the ability of the attorney general to intervene and defend the state.  
HB 2425 requires the court to give written notice of the challenge to the attorney general when a party is asserting a challenge to the constitutionality of a state statute or a rule adopted by a state agency. This notice would allow the attorney general to be able to have the best opportunity to defend the state, while also saving the state money by avoiding an unnecessary appeals process.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2466                      **Caption:** relating to the licensing and operation of motor vehicles by minors

**Effective Date:** 9-1-2011

**Application:** Applies only to a license issued under TN 521.204 on or after 9-1-2011

**Statutes** TN 521.204  
**Affected:** TN 545.424  
TN 521.271

**Subject:** Restrictions on minor

**Summary:** Amends TN 521.204 to require a person under 18 years of age applying for a Class C license, among other things, to submit written parental or guardian permission (A) to access the applicant's school enrollment records maintained by the Texas Education Agency, and (B) for a school administrator or law enforcement officer to notify DPS in the event that the person has been absent from school for at least 20 consecutive instructional days;

**Subject:** Operation of vehicles by persons under 18 years of age

**Summary:** Amends TN 545.424 to prohibit a person under 18 years of age from operating a motor vehicle while using a wireless communications device, except in case of emergency;  
Also prohibits a person under 17 years of age from operating a motorcycle or moped while using a wireless communications device, except in case of emergency;

**Subject:**

**Summary:** Repeals section (a)(1) of TN 521.271 (License expiration):  
(a) Each original driver's license and provisional license expires as follows:  
(1) except as provided by Section 521.2711, a driver's license expires on the first birthday of the license holder occurring after the sixth anniversary of the date of the application;

**Comments:**



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2468

**Caption:** relating to providing a patron of a pay-to-park or valet parking service with certain information; providing a civil penalty

**Effective Date:** 9-1-2011

**Application:**

**Statutes** BC 106.001 et seq

**Affected:**

**Subject:** Pay-to-park and valet parking services

**Summary:** Adds BC Chapter 106, Pay-to-park and valet parking services;  
Adds BC 106.001 et seq to require that a pay-to-park or valet parking service must include on the receipt or claim ticket the name, address, and telephone number of the owner of the service; if this information is not on the receipt or claim ticket, then it must be prominently displayed on a sign on or immediately adjacent to the payment receptacle or other device for making payment for the service;

Provides that this Chapter is not applicable to a service operated by the owner of a restaurant, cafeteria, or other food seller, or an inn, hotel, or motel;

A service that violates BC Chapter 106 is subject to a civil penalty not to exceed \$200 for each violation, and the attorney general, or a county or district attorney may bring an action to recover the penalty;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Currently, some pay-to-park services and valet services do not provide the name and contact information of the owner of the service, which can make it difficult for a patron to contact the party responsible for the service. HB 2468 seeks to remedy this situation by amending the Business & Commerce Code to require the receipt or claim ticket that an operator of a pay-to-park or valet parking service provides to a patron to state the service owner's name, address, and telephone number. If the service does not provide a patron with a receipt or claim ticket, the bill requires the operator to prominently display the owner's name, address, and telephone number on a sign on or immediately adjacent to the payment receptacle or other device for making payment for the service.

The bill establishes that, for purposes of those requirements, the term "owner" does not include the owner of the property on which the pay-to-park or valet parking service is provided unless the service is also owned by the owner of the property. The bill makes its provisions inapplicable to a pay-to-park or valet parking service that is operated by the owner of a restaurant, cafeteria, or other facility principally engaged in selling food for consumption on the premises or by the owner of an inn, hotel, or motel and provided exclusively to patrons of such a public accommodation. The bill makes a pay-to-park or valet parking service that violates the bill's provision subject to a civil penalty not to exceed \$200 for each violation and authorized the attorney general or a county or district attorney to bring an action to recover the civil penalty. The bill defines "pay-to-park service," "public accommodation," and "valet parking service."

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2471      **Caption:** relating to limiting the civil liability of certain persons who obtain or provide medical care and treatment for certain animals

**Effective Date:** 9-1-2011

**Application:** Applies to a cause of action that accrues on or after 9-1-2011

**Statutes Affected:** CV 92.001 et seq

**Subject:** Limitation of liability for person assisting certain animals  
Limitation of liability

**Summary:** Adds CV 92.002 to provide that a person who in good faith and without compensation renders or obtains medical care or treatment for a nonlivestock animal that is injured or in distress because of an emergency, abandoned, running at large, or stray is not liable for civil damages for an injury to the animal resulting from an act or omission in rendering or obtaining the medical care or treatment, unless the person commits gross negligence, if:  
(1) the person first takes reasonable steps to locate the animal's owner by:  
(A) attempting to contact the animal's owner using the contact information located on the animal's identification tag, collar, or chip, if any, or taking other reasonable action to contact the owner; or  
(B) notifying an animal control agency that the animal is in the person's custody and providing the animal control agency with the person's contact information; or  
(2) a veterinarian determines that the animal:  
(A) needs immediate medical treatment to alleviate pain or save the animal's life; or  
(B) exhibits visible signs of recent abuse;

**Subject:** Limitation of liability for animal control agencies and certain employees

**Summary:** Adds CV 92.003 to provide that an animal control agency or an employee of an animal control agency acting within the scope of the person's employment, who in good faith takes into custody and cares for a nonlivestock animal that is abandoned, running at large, or stray is not liable for civil damages for an injury to the animal arising from an act or omission in caring for the animal, except in a case of gross negligence, if the animal control agency obtains custody of the animal from a person not affiliated with the animal control agency and that person certifies in writing that the person has taken reasonable steps to locate the owner;

**Subject:**

**Summary:**

**Comments:** Interested parties are concerned that state law does not adequately protect a person, an animal control agency, or an animal control agency employee who renders aid to an injured or distressed animal from civil action brought as a result of seeking or providing such care. HB 2471 limits the civil liability of certain persons who obtain or provide medical care and treatment for certain animals.

Definitions:  
"Animal control agency" means a municipal or county animal control office, or a state, county, or municipal law enforcement agency, that collects, impounds, or keeps stray, homeless, abandoned, or unwanted animals.  
"Livestock animal" means an equine animal or an animal raised primarily for use as food for human consumption or to produce fiber for human use and includes horses, cattle, sheep, swine, goats, and poultry.  
"Nonlivestock animal" means a service animal or an animal maintained as a pet in the home or on the property of the animal's owner and includes captured wildlife or an exotic animal maintained as a pet. The term does not include a livestock animal.  
"Running at large" means not under the control of the owner or handler while:  
(A) on the premises of another without the consent of the owner of the premises or any other person authorized to give consent; or  
(B) on a highway, a public road or street, or any other place open to the public generally.  
"Service animal" has the meaning assigned by the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2472                      **Caption:** relating to the reporting of certain warrant or capias information to the national crime information center

**Effective Date:** 9-1-2011

**Application:** Applies only to a warrant or capias issued after 9-1-2011

**Statutes Affected:** CP 2.195

**Subject:** Report of warrant or capias information

**Summary:** Amends CP 2.195 to require the sheriff, not later than the 30th day after the date the warrant or capias is issued to: (1) report each felony warrant or capias issued for a defendant charged with a felony who fails to appear in court when summoned;  
Allows the sheriff discretion to report a misdemeanor warrant or capias issued for a defendant who fails to appear, other than for a class c misdemeanor;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2507

**Caption:** relating to the offense of installing an irrigation system without a license

**Effective Date:** 9-1-2011

**Application:**

**Statutes** OC 1903.256

**Affected:**

**Subject:** Installation of irrigation system without license; offense

**Summary:** Adds OC 1903.256 to create an offense if a person installs an irrigation system without holding a license issued by the Texas Commission on Environmental Quality; offense is a Class C misdemeanor;

"Commission" means the Texas Commission on Environmental Quality.

"Irrigation system" means an assembly of component parts permanently installed for the controlled distribution and conservation of water to irrigate landscape vegetation, reduce dust, or control erosion. The term does not include a system used on or by an agricultural operation;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

There is concern that lawn irrigation systems are being installed by people without a license because they can offer the service more cheaply than a licensed installer. The fear is that an unlicensed installer will contaminate the public water supply because they are not trained to prevent nonpotable water in lawn irrigation pipes from flowing into public water supply pipes that must be opened to install a lawn irrigation system. Concerned parties report that many municipal and county judges will not prosecute unlicensed irrigation installers because there is no clear punishment for the offense.

OC § 1903.251. License Required

(a) A person must hold a license issued by the commission under Chapter 37, Water Code, if the person:

(1) sells, designs, installs, maintains, alters, repairs, or services an irrigation system;

(2) provides consulting services relating to an irrigation system;

(3) connects an irrigation system to a private or public, raw or potable water supply system or any water supply;

or

(4) inspects an irrigation system for a municipality or water district.

(b) A person is ineligible for a license under Subsection (a)(4) if the person engages in or has a financial or advisory interest in an entity that engages in an activity under Subsection (a)(1), (2), or (3).

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2594

**Caption:** relating to the licensing and regulation of certain credit services organizations and the regulation of certain extensions of consumer credit obtained by those organizations or with regard to which the organizations provide assistance; providing an administrative penalty

**Effective Date:** 1-1-2012

**Application:**

**Statutes Affected:** FI 393.601 et seq

**Subject:** Licensing and regulation of certain credit services organizations

**Summary:** Adds FI 393.601 et seq to require a credit services organization that obtains an extension of consumer credit in the form of (1) a deferred presentment transaction, or (2) a motor vehicle title loan, must: obtain a license, post a bond, display the license at a place of business or on an internet website, give written notice of a change of address, comply with rules of the Texas Finance Commission, may not advertise if not licensed, and may not advertise on the premises of a nursing facility, assisted living facility, group home, intermediate care facility, or similar facility regulated by the Department of Aging and Disability Services; must also provide quarterly reports to the Consumer Credit Commissioner;  
Violation of provisions is a Class B misdemeanor;

"Credit services organization" means a person who provides, or represents that the person can or will provide, for the payment of valuable consideration any of the following services with respect to the extension of consumer credit by others:

(A) improving a consumer's credit history or rating;

(B) obtaining an extension of consumer credit for a consumer; or

(C) providing advice or assistance to a consumer with regard improving credit history or rating or obtaining an extension of consumer credit;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2717

**Caption:** relating to the duties and responsibilities of certain county officials and the functions of county government

**Effective Date:** 6-17-2011

**Application:**

**Statutes** GV 62.106

**Affected:** LG 132.002

**Subject:** Exemption from jury service

**Summary:** Amends GV 62.106 to change the exemption from jury service if the person has legal custody of a child younger than 12 (rather than 15) years of age and the person's service on the jury requires leaving the child without adequate supervision;

**Subject:** Payment of fees or costs by credit card or electronic means

**Summary:** Amends LG 132.002 to allow the commissioners court to authorize a county or precinct officer who collects fees, fines, court costs, or other charges on behalf of the county or state to accept payment by credit card or electronic means; commissioners court may also authorize the precinct officer to collect and retain a fee for processing the payment by credit card or electronic means;

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2761      **Caption:** relating to meetings, elections, and records of certain property owners' associations

**Effective Date:** 1-1-2012

**Application:** Applies only with respect to books and records generated on or after 1-1-2012  
Applies to all property owners' associations and controls over other law not specifically applicable to a property owners' association, except as provided by GV 552.0036;

**Statutes Affected:** PP 209.005

**Subject:** Association records (Texas residential property owners protection act)

**Summary:** Amends PP 209.005 to require a property owners' association to adopt and publish a records production policy which must be recorded as a dedicatory instrument;  
Provides that notwithstanding a provision in a dedicatory instrument, a property owners' association must make the books and records, including financial records, open to and reasonably available for examination by an owner, or a person designated in a writing signed by the owner as the owner's agent, attorney, or certified public accountant, in accordance with this section, including copying;  
Requires a written request by certified mail, with sufficient detail describing the property books and records requested, to the mailing address of the association or authorized representative as reflected on the management certificate;  
If an inspection is requested, the association, on or before the 10th business day after the date of receipt of the request, must send written notice of dates during normal business hours that the owner may inspect the requested books and records, or produce the requested books and records for the requesting party on or before the 10th business day after the date of receipt of the request;  
If the association is unable to produce the books or records on or before the 10th business day after the date of receipt of the request, the association must provide to the requestor written notice that:  
(1) informs the requestor that the association is unable to produce the information on or before the 10th business day after the date the association received the request; and  
(2) states a date by which the information will be sent or made available for inspection to the requesting party that is not later than the 15th business day after the date notice under this subsection is given;  
To the extent the information is provided in the meeting minutes, the property owners' association is not required to release or allow inspection of any books or records that identify the dedicatory instrument violation history of an individual owner of an association, an owner's personal financial information, including records of payment or nonpayment of amounts due the association, an owner's contact information, other than the owner's address, or information related to an employee of the association, including personnel files. Information may be released in an aggregate or summary manner that would not identify an individual property owner;  
A property owners' association composed of more than 14 lots must adopt and comply with a document retention policy that includes, at a minimum, the following requirements:  
(1) certificates of formation, bylaws, restrictive covenants, and all amendments to the certificates of formation, bylaws, and covenants shall be retained permanently;  
(2) financial books and records shall be retained for seven years;  
(3) account records of current owners shall be retained for five years;  
(4) contracts with a term of one year or more shall be retained for four years after the expiration of the contract term;  
(5) minutes of meetings of the owners and the board shall be retained for seven years; and  
(6) tax returns and audit records shall be retained for seven years.

**Subject:** Denial of access to records; justice of the peace

**Summary:** A member of a property owners' association who is denied access to or copies of association books or records to which the member is entitled under this section may file a petition with the justice of the peace of a justice precinct in which all or part of the property that is governed by the association is located requesting relief;  
If the justice of the peace finds that the member is entitled to access to or copies of the records, the justice of the peace may grant one or more of the following remedies:  
(1) a judgment ordering the property owners' association to release or allow access to the books or records;  
(2) a judgment against the property owners' association for court costs and attorney's fees incurred in connection with seeking a remedy under this section; or  
(3) a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded as court costs and attorney's fees from any future regular or special assessments payable to the property owners' association;  
If the property owners' association prevails in an action, the association is entitled to a judgment for court costs and attorney's fees incurred by the association in connection with the action.  
On or before the 10th business day before the date a person brings an action against a property owners' association under this section, the person must send written notice to the association of the person's intent to

## **SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

bring the action. The notice must:

- (1) be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service to the mailing address of the association or authorized representative as reflected on the most current management certificate; and
- (2) describe with sufficient detail the books and records being requested.

"Business day" means a day other than Saturday, Sunday, or a state or federal holiday.

**Subject:**

**Summary:**

**Comments:**



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2793      **Caption:** relating to the processing fee charged for a dishonored payment device

**Effective Date:** 9-1-2011

**Application:**

**Statutes** BC 3.506

**Affected:**

**Subject:** Processing fee by holder of payment device

**Summary:** Amends BC 3.506 to specify that the maximum processing fee is \$30 on return of a payment device;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Despite the fact that most hard-working Texans are fiscally responsible and live within their means, every now and then retailers, merchants, and their banking partners are forced to deal with dishonored payment devices, more commonly known as bounced checks. Current statute allows someone who holds a dishonored payment (such as a retailer, grocery store, merchant, bank, or check processing company) to charge the "drawer or endorser" a "reasonable processing fee of not more than \$30." The processing fee serves as both a deterrent to writing bad checks and allows entities an opportunity to recover costs associated with processing bad checks. Unfortunately, the language in current statute has created some confusion in the business community regarding what constitutes a "reasonable" processing fee. The purpose of HB 2793 is to clarify current law and avoid any possible confusion regarding the reasonableness of the \$30 processing fee by changing "a reasonable processing fee of not more than \$30" to "a maximum processing fee of \$30." This bill makes clear that the maximum processing fee will be no more than \$30, and eliminates any sort of confusion or misinterpretation of the word "reasonable."

As amended:

BC § 3.506. Processing Fee by Holder of Payment Device

(a) For purposes of this section, "payment device" means any check, item, paper or electronic payment, or other payment device used as a medium for payment.

(b) On return of a payment device to the holder following dishonor of the payment device by a payor, the holder, the holder's assignee, agent, or representative, or any other person retained by the holder to seek collection of the face value of the dishonored payment device may charge the drawer or indorser a maximum processing fee of \$30.

(c) A person may not charge a processing fee to a drawer or indorser under this section if the fee has been collected under Article 102.007(e) or 102.0071, Code of Criminal Procedure. If a processing fee has been collected under this section and the holder subsequently receives a fee collected under Article 102.007(e) or 102.0071, Code of Criminal Procedure, the holder shall immediately refund the fee previously collected from the drawer or indorser.

(d) Notwithstanding Subtitle B, Title 4, Finance Code, or any other law, a contract made under Subtitle B, Title 4, Finance Code, may provide that on return of a dishonored payment device given in payment under the contract, the holder may charge the obligor under the contract the processing fee authorized by this section, and the fee may be added to the unpaid balance owed under the contract. Interest may not be charged on the fee during the term of the contract.

(e) This section does not affect any right or remedy to which the holder of a payment device may be entitled under any rule, written contract, judicial decision, or other statute.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2847                      **Caption:** relating to the use of video conferencing systems in certain criminal proceedings

**Effective Date:** 9-1-2011

**Application:** See also SB 1233  
Applies to a plea of guilty or nolo contendere entered on or after 9-1-2011

**Statutes Affected:** CP 27.18  
CP 20.011  
CP 20.02  
CP 20.151  
CP 102.017  
CP 1.13  
CP 38.073

**Subject:** Waiver of trial by jury  
Plea or waiver of rights by closed circuit video conferencing

**Summary:** Amends CP 1.13 to except a defendant who is an inmate from the requirements of the waiver of jury trial (in person in writing in open court with consent of court and prosecuting attorney); allows the inmate to proceed under CP 27.19;

Amends CP 27.18 to require the court reporter to make a record of the communication and preserve the record until all appellate proceedings have been disposed;  
Provides that the loss or destruction of or failure to make a video recording of a plea is not alone sufficient grounds for a defendant to withdraw a plea or to request the court to set aside a conviction, sentence, or plea;

**Subject:** Who may be present in grand jury room  
Proceeding secret  
Certain testimony by video conferencing  
Court costs; courthouse security fund; justice court building security fund

**Summary:** Amends CP 20.011 to allow a person operating a video conferencing system for the testimony of a peace officer to be present in a grand jury room while the grand jury is conducting proceedings;

Amends CP 20.02 to provide that the person operating a video conferencing system who is present in a grand jury room and who discloses anything transpiring before the grand jury to be fined for contempt not exceeding \$500, and 30 days in jail or both;

Adds CP 20.151 to allow a peace officer to testify by use of a closed circuit video conferencing system, if the foreman consents; the peace officer must take the oath and affirm that no person other than a person in the grand jury room is capable of hearing the peace officer's testimony, and the peace officer's testimony is not being recorded or otherwise preserved by any person at the location from which the officer is testifying;

Amends CP 102.017 to allow the use of the courthouse security fund to purchase video conferencing systems;

**Subject:** Testimony of inmate witness

**Summary:** Amends CP 38.073 to allow an inmate who is testifying as a witness, to give any deposition or testimony by a video conferencing system in the same manner as described by CP 27.18;

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2851

**Caption:** relating to deferral of certain surcharge payments for military personnel deployed outside of the continental United States

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 708.106

**Affected:**

**Subject:** Deferral of surcharges for deployed military personnel

**Summary:** Adds TN 708.106 to require the Department of Public Safety to establish a deferral program for surcharges against a person who is a member of the military on active duty outside the continental United States; The program must (1) toll the 36-month period while the person is deployed, and (2) defer assessment of surcharges until the date the person is no longer deployed for an offense committed before the person was deployed, or while the person is deployed;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Under the state's driver responsibility program, drivers are assessed a surcharge based on conviction of certain traffic offenses, including driving without a driver's license, driving with an invalid driver's license, or driving with no insurance. The surcharge must be paid within a certain timeframe to prevent the suspension of driving privileges. Driving privileges remain suspended until the person establishes an installment agreement or pays in full all surcharges and related costs.  
HB 2851 provides for the deferral of surcharge payments for active duty military personnel until the personnel return home.

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

**Bill Number:** HB 2928

**Caption:** relating to privileged parking for recipients of the Silver Star Medal

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 681.008

**Affected:**

**Subject:** Parking privileges: certain veterans and military award recipients

**Summary:** Amends TN 681.008 to exempt vehicles on which license plates exhibiting "Silver Star Medal" from payment of a parking fee charged by a governmental authority and collected through a parking meter, when being operated by or for the transportation of the veteran with a disability;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2931      **Caption:** relating to certain debt cancellation agreements made in connection with retail installment contracts

**Effective Date:** 9-1-2011

**Application:** Applies only to debt cancellation agreements that include insurance coverage as part of the retail buyer's responsibility to the holder entered into on or after 9-1-2011

**Statutes Affected:** FI 348.601 et seq

**Subject:** Certain debt cancellation agreements  
Limitation on certain debt cancellation agreements

**Summary:** Adds FI 348.601 as applicable only to a debt cancellation agreement that includes insurance coverage as part of the retail buyer's responsibility to the holder, and requires disclosure in the agreement of all provision permitting the exclusion of loss or damage including:

- (1) an act occurring after the original maturity date or date of the holder's acceleration of the retail installment contract;
- (2) any dishonest, fraudulent, illegal, or intentional act of any authorized driver that directly results in the total loss of the motor vehicle;
- (3) any act of gross negligence by an authorized driver that directly results in the total loss of the motor vehicle;
- (4) conversion, embezzlement, or concealment by any person in lawful possession of the motor vehicle;
- (5) lawful confiscation by an authorized public official;
- (6) the operation, use, or maintenance of the motor vehicle in any race or speed contest;
- (7) war, whether or not declared, invasion, insurrection, rebellion, revolution, or an act of terrorism;
- (8) normal wear and tear, freezing, or mechanical or electrical breakdown or failure;
- (9) use of the motor vehicle for primarily commercial purposes;
- (10) damage that occurs after the motor vehicle has been repossessed;
- (11) damage to the motor vehicle before the purchase of the debt cancellation agreement;
- (12) unpaid insurance premiums and salvage, towing, and storage charges relating to the motor vehicle;
- (13) damage related to any personal property attached to or within the motor vehicle;
- (14) damages associated with falsification of documents by any person not associated with the retail seller or other person canceling the retail buyer's obligation;
- (15) any unpaid debt resulting from exclusions in the retail buyer's primary physical damage coverage not included in the debt cancellation agreement;
- (16) abandonment of the motor vehicle by the retail buyer only if the retail buyer voluntarily discards, leaves behind, or otherwise relinquishes possession of the motor vehicle to the extent that the relinquishment shows intent to forsake and desert the motor vehicle so that the motor vehicle may be appropriated by any other person;
- (17) any amounts deducted from the primary insurance carrier's settlement due to prior damages; and
- (18) any loss occurring outside the United States or outside the United States and Canada;

Requires that the agreement state:

- (1) the contact information of the retail seller, the holder, and any administrator of the agreement;
- (2) the name and address of the retail buyer;
- (3) the cost and term of the debt cancellation agreement;
- (4) the procedure the retail buyer must follow to obtain benefits under the terms of the debt cancellation agreement, including a telephone number and address where the retail buyer may provide notice under the debt cancellation agreement;
- (5) the period during which the retail buyer is required to notify the retail seller, the holder, or any administrator of the agreement, of any potential loss under the debt cancellation agreement for total loss or theft of the motor vehicle;
- (6) that in order to make a claim, the retail buyer must provide or complete some or all of the following documents and provide those documents to the retail seller, the holder, or any administrator of the agreement:
  - (A) a debt cancellation request form;
  - (B) proof of loss and settlement payment from the retail buyer's primary comprehensive, collision, or uninsured or underinsured motorist policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle;
  - (C) verification of the retail buyer's primary insurance deductible;
  - (D) a copy of any police report filed in connection with the total loss or theft of the motor vehicle; and
  - (E) a copy of the damage estimate;
- (7) that documentation not described by Subdivision (6) or required by the retail seller, the holder, or any administrator of the agreement is not required to substantiate the loss or determine the amount of debt to be canceled;
- (8) that notwithstanding the collection of the documents under Subdivision (6), on reasonable advance notice the

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

retail seller, the holder, or any administrator of the agreement may inspect the retail buyer's motor vehicle;

(9) that the retail seller or holder will cancel all or part of the retail buyer's obligation as provided in the debt cancellation agreement on the occurrence of total loss or theft of the motor vehicle;

(10) the method to be used to calculate refunds;

(11) the method for calculating the amount to be canceled under the debt cancellation agreement on the occurrence of total loss or theft of a motor vehicle;

(12) that purchase of a debt cancellation agreement is not required for the retail buyer to obtain an extension of credit and will not be a factor in the credit approval process;

(13) that in order to cancel the debt cancellation agreement and receive a refund, the retail buyer must provide a written request to cancel to the retail seller, the holder, or any administrator of the agreement;

(14) that if total loss or theft of the motor vehicle has not occurred, the retail buyer has 30 days from the date of the retail installment contract or the issuance of the debt cancellation agreement, whichever is later, or a longer period as provided under the debt cancellation agreement, to cancel the debt cancellation agreement and receive a full refund;

(15) that the retail buyer may file a complaint with the commissioner, and include the address, phone number, and Internet website of the Office of Consumer Credit Commissioner; and

(16) that the holder will cancel certain amounts under the debt cancellation agreement for total loss or theft of a motor vehicle, in the following or substantially similar language: "YOU WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS CONTRACT IN THE CASE OF A TOTAL LOSS OR THEFT OF THE VEHICLE AS STATED IN THE DEBT CANCELLATION AGREEMENT;"

Requires agreement forms to be submitted to the Consumer Credit Commissioner for approval and the form becomes public information;

Requires delivery of a debt cancellation agreement to a retail buyer who purchased the agreement within 10 days of the date of the retail installment contract;

"Debt cancellation agreement" means a retail installment contract term or a contractual arrangement modifying a retail installment contract term under which a retail seller or holder agrees to cancel all or part of an obligation of the retail buyer to repay an extension of credit from the retail seller or holder on the occurrence of the total loss or theft of the motor vehicle that is the subject of the retail installment contract but does not include an offer to pay a specified amount on the total loss or theft of the motor vehicle.

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2949                      **Caption:** relating to the administration of the collection improvement program

**Effective Date:** 9-1-2011

**Application:** Applies only to a court cost, fee, or fine imposed in a criminal case on or after 9-1-2011  
\*HB 1 and SB 1 (1st called session) may reverse these amendments)

**Statutes Affected:** CP 103.0033  
LG 133.058  
TN 706.005

**Subject:** Collection improvement program

**Summary:** Amends CP 103.0033 to define "eligible case" to mean a criminal case in which the judgment has been entered by a trial court. The term does not include a criminal case in which a defendant has been placed on deferred disposition or has elected to take a driving safety course;  
Makes the collection improvement program applicable to each county in the state and to each municipality with a population of 100,000 or greater;  
Provides that unless granted a waiver, each municipality must develop a program;  
Allows a county to develop and implement a program;  
Gives authority solely to the Office of Court Administration to develop a methodology for determining collection rates, and allows OCA to determine if it is not actually cost-effective for a municipality to implement a program and grant a waiver to the municipality;  
Requires annual reports from the political subdivisions implementing programs;  
Requires OCA periodically to audit and verify reported information and confirm that the municipality is conforming with requirements relating to the program;

**Subject:** Portion of fee retained

**Summary:** Amends LG 133.058 to allow counties to retain service fees regardless of participation in the collection improvement program; gives OCA the authority to determine compliance with the program by municipalities; if a municipality is not in compliance with the collection improvement program and cannot re-establish compliance on or before the 180th day after notice of noncompliance from OCA, the municipality may not retain a service fee;

**Subject:** Denial of renewal of license for failure to appear  
Clearance notice to department

**Summary:** Amends TN 706.005 to require a political subdivision immediately to notify the Department of Public Safety Failure to Appear Program that there is no cause to continue to deny renewal of a person's driver's license based on the person's previous failure to appear or failure to pay or satisfy a judgment;

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 2973                      **Caption:** relating to encouraging public participation by citizens by protecting a person's right to petition, right of free speech, and right of association from meritless lawsuits arising from actions taken in furtherance of those rights

**Effective Date:** 9-1-2011

**Application:** Applies only to a legal action filed on or after 9-1-2011

**Statutes Affected:** CV 27.001 et seq

**Subject:** Actions involving the exercise of certain constitutional rights, known as the "The Texas Citizen Participation Act"

**Summary:** Adds CV 27.001 et seq, to allow defendants who are sued as a result of exercising their right to free speech or their right to petition the government, to file a motion to dismiss the suit, at which point the plaintiff would be required to show by clear and specific evidence that he had a genuine case for each essential element of the claim. In addition, if the motion to dismiss is granted, the plaintiff who has wrongly brought the lawsuit may be required to pay attorney's fees of the defendant; allows for the court to rule on a motion not later than the 30th day following the date of the hearing; for failure to rule within that time, the motion is considered denied by operation of law; appeal is expedited and must be filed within 60 days of the court's ruling;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Citizen participation is the heart of our democracy. Yet frivolous lawsuits aimed at silencing those involved in these activities are becoming more common. The Internet age has created a more permanent and searchable record of public participation as citizen participation in democracy grows through self-publishing, citizen journalism, and other forms of speech. Unfortunately, abuses of the legal system, aimed at silencing these citizens, have also grown. These lawsuits are called Strategic Lawsuits Against Public Participation or "SLAAP" suits.

Twenty-seven states and the District of Columbia have passed "Anti-SLAPP" laws or "Citizen Participation Acts" that allow defendants in such cases to dismiss cases earlier than would otherwise be possible, thus limiting the costs and fees.



**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

**Bill Number:** HB 2981      **Caption:** relating to the operation on a highway or street of a motor vehicle that is drawing a boat or personal watercraft in or on which a child is riding; providing a penalty  
**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 545.4145

**Affected:**

**Subject:** Riding in or on boat or personal watercraft

**Summary:** Adds TN 545.4145 to create an offense if a person operates a motor vehicle on a highway or street when a child younger than 18 years of age is occupying a boat or personal watercraft being drawn by the motor vehicle. It is a defense to prosecution under this section that the person was:  
(1) operating the motor vehicle in a parade or in an emergency; or  
(2) operating the motor vehicle on a beach.

"Boat" means a vessel not more than 65 feet in length, measured from end to end over the deck, excluding sheer.  
"Personal watercraft" means a type of motorboat that is specifically designed to be operated by a person or persons sitting, standing, or kneeling on the vessel rather than in the conventional manner of sitting or standing inside the vessel.

TN § 542.401. General Penalty

A person convicted of an offense that is a misdemeanor under this subtitle for which another penalty is not provided shall be punished by a fine of not less than \$1 or more than \$200

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Under current law it is permissible for motor vehicle operators to allow persons of any age to travel as passengers in or on a towed watercraft. This is dangerous and inconsistent with the restrictions imposed on motor vehicle operators with respect to passengers in the bed of a truck or towed trailer.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 3000      **Caption:** relating to creating the offense of continuous trafficking of persons; providing a penalty and other civil consequences

**Effective Date:** 9-1-2011

**Application:** Applies only to an offense committed on or after 9-1-2011

**Statutes Affected:** PE 20A.03  
CP 17.032  
CP 17.091  
GV 23.101

**Subject:** Continuous trafficking of persons

**Summary:** Adds PE 20A.03 to provide that a person commits an offense if, during a period that is 30 or more days in duration, the person engages two or more times in conduct that constitutes trafficking of persons;

**Subject:** Personal bond  
Release on personal bond of certain mentally ill defendants

**Summary:** Amends CP 17.03 to allow only the court before whom the case is pending (and not a magistrate) to release on personal bond a defendant who is charged with continuous trafficking of persons;

Amends CP 17.032 to include continuous trafficking of persons among those offenses considered violent offenses for which a magistrate is prohibited from releasing a mentally ill defendant on personal bond;

**Subject:** Primary priorities

**Summary:** Amends GV 23.101(a) to require trial courts to give preference to hearings and trials of certain matters, including criminal actions, with certain actions given preference over other criminal actions, including the offense of continuous trafficking;

**Comments:** Texas first passed legislation that criminalized human trafficking in 2003, making it one of the first states to do so at the state level. Texas acknowledges the severity of human trafficking and the fact that human trafficking is frequently cited as the second largest criminal industry in the world.  
HB 3000 creates the offense of continuous trafficking of persons, which will apply to offenders who commit the offense of human trafficking two or more times during a period that is 30 days or more in duration. The punishment for continuous trafficking of persons is a felony of the first degree.  
This bill amends current law relating to the release of a defendant on personal bond by the court before whom the case is pending and requiring a notice of bail reductions. This bill gives preference to hearings and trials of the continuous trafficking of persons offense in a court with juvenile jurisdiction. This bill also requires a person indicted to provide one or more specimens for the purpose of a DNA record.  
HB 3000 requires a two-thirds vote of members of the Board of Pardons and Paroles for the release on parole of an inmate convicted of continuous trafficking of persons.  
This bill also adds continuous trafficking of persons to the list of crimes eligible for automatic life without parole sentencing for subsequent convictions and makes an inmate charged with human trafficking ineligible for mandatory community supervision, early release on parole, or intensive supervision programs.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 3093      **Caption:** relating to the amendment of certain reports of political contributions and expenditures

**Effective Date:** 9-1-2011

**Application:** Applies only to an offense committed on or after 9-1-2011

**Statutes Affected:** EL 254.0405

**Subject:** Political reporting  
Amendment of filed report

**Summary:** Adds EL 254.0405 to allow a person who files a semiannual report under EL Chapter 254, political reporting generally, to amend the report;  
A report amended on or after the 8th day after the original report was filed is considered to have been filed on the date on which the original report was filed if (1) the amendment is made before any complaint is filed with regard to the subject of the amendment; and (2) the original report was made in good faith and without an intent to mislead or to misrepresent the information contained in the report;

**Subject:** Criminal penalty for untimely or incomplete report

**Summary:** Amends 254.041 creates an exception to failing to include information that is required in a report if (1) the information was required to be included in a semiannual report, and (2) the person amended the report before the 8th day after the date the original report was filed or amended the report on or after the 8th day and before any complaint is filed if the report was made in good faith;

**Subject:**

**Summary:**

**Comments:** Currently, a candidate who files a late or incomplete campaign finance report may be subject to certain criminal misdemeanor charges or, in certain cases, a civil penalty. Although the Texas Ethics Commission is granted some leeway in handling violations on a case-by-case basis, a candidate who makes a mistake in filing a report and who later goes back to amend and correct that report is not adequately protected. While the penalties are appropriate for time-sensitive reports due in the final weeks and days of an election, interested parties feel that the penalties are excessive and inappropriate for the routine semiannual reports due each year. HB 3093 provides certain protections, including an exemption from certain criminal penalties, to candidates who correct a filed semiannual report within a specified time or under certain conditions.

As amended:  
EL § 254.041. Criminal Penalty for Untimely or Incomplete Report

(a) A person who is required by this chapter to file a report commits an offense if the person knowingly fails:

(1) to file the report on time;

(2) to file a report by computer diskette, modem, or other means of electronic transfer, if the person is required to file reports that comply with Section 254.036(b); or

(3) to include in the report information that is required by this title to be included.

(b) Except as provided by Subsection (c), an offense under this section is a Class C misdemeanor.

(c) A violation of Subsection (a)(3) by a candidate or officeholder is a Class A misdemeanor if the report fails to include information required by Section 254.061(3) or Section 254.091(2), as applicable.

(d) It is an exception to the application of Subsection (a)(3) that:

(1) the information was required to be included in a semiannual report; and

(2) the person amended the report within the time prescribed by Section 254.0405(b) or under the circumstances described by Section 254.0405(c).

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 3174      **Caption:** relating to the stay of recognition or enforcement of a foreign country judgment to allow for de novo review of a contract or agreement for a sale, offer for sale, or sell under The Securities Act

**Effective Date:** 6-17-2011

**Application:** Applies to a foreign country judgment involving a contract or agreement for a sale, offer for sale, or sell as defined by the Securities Act, or investment, that imposes an obligation of indemnification or liquidated damages upon a Texas resident

**Statutes Affected:** VN Art. 581-1 et seq

**Subject:** Stay of recognition or enforcement of foreign country judgment

**Summary:** Adds VN 581-1 Sec. 33-2 to entitle a party against whom enforcement of a foreign country judgment is sought to a de novo review by a Texas court to determine whether a party, its successors, assigns, agents, or representatives seeking enforcement of the foreign country judgment has violated the Securities Act or the Texas Deceptive Trade Practices Act;  
Requires the party seeking review to file a verified pleading asserting the violation not later than the 30th day after the date of service of the notice of filing the foreign country judgment; the pleading acts as a stay of the commencement or continuation of the proceeding to recognize or enforce a foreign country judgment; the stay continues until the court completes its de novo review and renders a final judgment; a finding of a violation of the Securities Act or Deceptive Trade Practices Act is a sufficient ground for nonrecognition of the foreign country judgment;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** It has been reported that Texas residents have suffered substantial investment losses arising from offshore investment scams that purportedly invest in offshore assets or investments. Observers charge that perpetrators of these scams hide behind Caribbean-based jurisdictions to attempt to legitimize their scams and that both sophisticated and unsophisticated investors in Texas seeking guaranteed returns on their hard-earned investment dollars have fallen prey to bait-and-switch contracts resulting in foreign country judgments against innocent Texas residents. Interested parties note that legislation is required to protect Texas residents from judgments issued by foreign tribunals that lack the guarantees and protections of adequate legal due process that is traditionally afforded to litigants in Texas. HB 3174 addresses matters relating to the stay of recognition or enforcement of a foreign country judgment to allow for de novo review of a contract or agreement for a sale, offer for sale, or sell under certain statutes.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 3287                      **Caption:** relating to license renewals by the Texas Department of Licensing and Regulation

**Effective Date:** 9-1-2011

**Application:** Applies to an application for the renewal of a license that is filed with the Texas Department of Licensing and Regulation on or after 9-1-2011

**Statutes Affected:** OC 51.401

**Subject:** License expiration and renewal

**Summary:** Amends OC 51.401 to prohibit, with certain exceptions, a person whose license has been expired for 18 months or more from renewing the license; that person is required to apply for a new license;

Creates an exception for a person whose license has been expired for more than 90 days but less than 18 months to renew the license by paying TDLR a renewal fee equal to 2 times the normally required renewal fee;

Allows the executive director to approve a renewal for a person whose license has been expired for at least 18 months but less than 3 years on paying a renewal fee equal to 2 times the normally required fee;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** The Texas Department of Licensing and Regulation (TDLR) administers 29 statutes, with 142 license types, and over 620,000 licenses. Their license types include cosmetology, towing, combative sports, and electrician programs. TDLR handles license renewals. Under current law, a licensee who does not renew the licensee's license within one year of expiration must retake the licensing examination. This unnecessarily burdens licensees who may have for one reason or another missed a license renewal, for taking time off to start a family, for example.

HB 3287 provides a more common sense path for those who may renew their licenses late. In order to renew a license, any continuing education requirements and late fees would still apply, but a licensee would not have to re-take the examination to renew a license, if the license has lapsed 18 months or less. The bill allows a person whose license has expired for at least 18 months, but less than three years, to obtain approval from the executive director to renew the license without re-taking the examination.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 3474      **Caption:** relating to criminal offenses regarding the possession or consumption of alcoholic beverages by a minor and providing alcoholic beverages to a minor

**Effective Date:** 9-1-2011

**Application:** Applies only to an offense committed on or after 9-1-2011

**Statutes** AB 106.04  
**Affected:** AB 106.05

**Subject:** Consumption of alcohol by minor

**Summary:** Amends AB 106.04 to make the offense of consuming an alcoholic beverage inapplicable to a minor who:  
(1) requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;  
(2) was the first person to make a request for medical assistance under Subdivision (1); and  
(3) if the minor requested emergency medical assistance for the possible alcohol overdose of another person:  
(A) remained on the scene until the medical assistance arrived; and  
(B) cooperated with medical assistance and law enforcement personnel;

**Subject:** Possession of alcohol by minor

**Summary:** Amends AB 106.05 to make the offense of possession of alcohol inapplicable to minor who:  
(1) requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;  
(2) was the first person to make a request for medical assistance under Subdivision (1); and  
(3) if the minor requested emergency medical assistance for the possible alcohol overdose of another person:  
(A) remained on the scene until the medical assistance arrived; and  
(B) cooperated with medical assistance and law enforcement personnel.

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 3475

**Caption:** relating to the recusal and disqualification of municipal judges

**Effective Date:** 9-1-2011

**Application:** Applies only to a hearing or trial initially filed in a municipal court on or after 9-1-2011  
See also SB 0480

**Statutes  
Affected:** GV 29.051 et seq

**Subject:** Recusal or disqualification of municipal judges  
Motion for recusal or disqualification

**Summary:** Adds GV 29.051 to specify procedures for recusal of a municipal court judge, to include the filing of a verified motion stating with particularity the alleged grounds, and filed at least 10 days before the trial or hearing; the party filing is required to serve notice on all other parties that the movant expects the motion to be presented to the judge 3 days after the filing; other parties may file a statement with the clerk opposing or concurring at any time before the motion is heard; if the motion is not granted, the judge must request the regional presiding judge to assign a judge to hear the motion; the regional presiding judge may assign an active judge, or a judge eligible to serve on assignment, to hear the case; allows the hearing to be held by telephone if no objection; a judge eligible to serve on assignment is entitled to compensation of \$450 per day prorated for any day for which the judge provides less than a full day of service, and travel expenses;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** HB 3510                      **Caption:** relating to the regulation of the towing, booting, and storage of vehicles

**Effective Date:** 9-1-2011

**Application:** To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session relating to nonsubstantive additions to and corrections in enacted codes

**Statutes Affected:** OC 2308.002 et seq

**Subject:** Hearing

**Summary:** Amends 2308.458 to provide that notice to the law enforcement agency that authorized the removal of a vehicle is sufficient as notice to the political subdivision in which the law enforcement agency is located;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**



**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

**Bill Number:** HB 3580

**Caption:** relating to the issuance of specialty license plates for surviving spouses of disabled veterans of the United States armed forces

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 504.317

**Affected:**

**Subject:** Surviving spouses of disabled veterans specialty license plates

**Summary:** Adds TN 504.317 to require the Texas Department of Motor Vehicles to issue specialty license plates for surviving spouses of disabled veterans of the United States armed forces;  
"Surviving spouse" means the individual married to a disabled veteran at the time of the veteran's death;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**



**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0001 (1st)      **Caption:** relating to certain state fiscal matters; providing penalties

**Effective Date:** 9-28-2011

**Application:** Applies only to an offense committed on or after 9-28-2011

**Statutes**      TN 545.412

**Affected:**

**Subject:** Child passenger safety seat systems; offense

**Summary:** Repeals 545.412 Subsection (b-1) 15 cents as a court cost on conviction;

The change in law made by this article applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0014

**Caption:** relating to requirements to vote, including presenting proof of identification; providing criminal penalties

**Effective Date:** 1-1-2012

**Application:**

**Statutes** TN 521A.001

**Affected:** EL 63.0101

**Subject:** Election identification certificate

**Summary:** Adds TN 521A.001 to provide that the Department of Public Safety must issue an election identification certificate to a person who states that the person is obtaining the certificate for the purpose of satisfying the requirement to present to an election officer at the polling place one form of specified identification, and does not have such identification; the person must be a registered voter and present a valid voter registration certificate, or must be eligible for registration and submits an application;  
Prohibits DPS from collecting a fee for an election identification certificate or duplicate;  
Prohibits the use of an election identification certificate as personal identification;

**Subject:** Documentation of Proof of Identification

**Summary:** Amends EL 63.0101 to list the following as acceptable forms of photo identification:  
(1) a driver's license, election identification certificate, or personal identification card issued to the person by DPS that has not expired or that expired no earlier than 60 days before the date of presentation;  
(2) a current US military identification card that contains a photograph;  
(3) a US citizenship certificate that contains a photograph;  
(4) a current US passport;  
(5) a current license to carry a concealed handgun;

**Subject:**

**Summary:**

**Comments:** SB 0014 also provides that voter identification requirements are inapplicable to a voter who presents the voter's voter registration certificate on offering to vote and was 70 years of age or older on January 1, 2012.  
A voter who is accepted for provisional voting because the voter does not meet the identification requirements, must present, not later than the sixth day after the date of the election, the required form of identification.  
The voter registrar of each county must provide notice of the identification requirements for voting and a detailed description of those requirements with each original or renewal voter registration certificate issued.  
The presiding judge is required to post in a prominent place on the outside of each polling location a list of the acceptable forms of identification.

A temporary provision, effective September 1, 2011, is added, to expire September 1, 2017, requiring an election officer to distribute written notice of the identification that will be required for voting beginning with elections held after January 1, 2012, and information on obtaining a personal identification certificate from DPS without a fee, to each voter who, when offering to vote, presents a form of identification that will not be sufficient for acceptance as a voter beginning with those elections.

The bill increases the penalty for an illegal voting offense from a third degree felony to a second degree felony and increases the penalty for an attempted illegal voting offense from a Class A misdemeanor to a state jail felony.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0061      **Caption:** relating to juvenile case managers

**Effective Date:** 6-17-2011

**Application:** County that employs a juvenile case manager must adopt rules under CP 45.056 no later than 12-1-2011

**Statutes** CP 45.056  
**Affected:** CP 102.0174

**Subject:** Authority to employ juvenile case managers; reimbursement

**Summary:** Amends CP 45.056 to clarify that the governing body, in addition to the salary and benefits of a juvenile case manager, may pay the costs of training, travel, office supplies, and other necessary expenses relating to the position from the juvenile case manager fund;  
Requires the governing body to adopt rules for case managers that provide a code of ethics, educational requirements and in-service training standards, and training in various aspects of the job including detecting and preventing abuse and neglect;  
Requires commissioners court periodically to review juvenile case managers for compliance with the rules;

**Subject:** Court costs; juvenile case manager fund

**Summary:** Amends CP 102.0174 to allow the juvenile case manager fund to be used for training, travel expenses, office supplies, and other necessary expenses relating to the position, in addition to salary and benefits; prohibits the use of the fund to supplement the income of an employee whose primary role is not that of a juvenile case manager;

**Subject:**

**Summary:**

**Comments:** As amended:  
Art. 45.056. Authority to Employ Juvenile Case Managers; Reimbursement  
(a) On approval of the commissioners court, city council, school district board of trustees, juvenile board, or other appropriate authority, a county court, justice court, municipal court, school district, juvenile probation department, or other appropriate governmental entity may:  
(1) employ a case manager to provide services in cases involving juvenile offenders before a court consistent with the court's statutory powers; or  
(2) agree in accordance with Chapter 791, Government Code, to jointly employ a case manager.  
(b) A local entity may apply or more than one local entity may jointly apply to the criminal justice division of the governor's office for reimbursement of all or part of the costs of employing one or more juvenile case managers from funds appropriated to the governor's office or otherwise available for that purpose. To be eligible for reimbursement, the entity applying must present to the governor's office a comprehensive plan to reduce juvenile crimes in the entity's jurisdiction that addresses the role of the case manager in that effort.  
(c) A county or justice court on approval of the commissioners court or a municipal court on approval of the city council may employ one or more full-time juvenile case managers to assist the court in administering the court's juvenile docket and in supervising its court orders in juvenile cases.  
(d) Pursuant to Article 102.0174, the court or governing body may pay the salary and benefits of a juvenile case manager and the costs of training, travel, office supplies, and other necessary expenses relating to the position of the juvenile case manager from the juvenile case manager fund.  
(e) A juvenile case manager employed under Subsection (c) shall work primarily on cases brought under Sections 25.093 and 25.094, Education Code.  
(f) The governing body of the employing governmental entity under Subsection (a) shall adopt reasonable rules for juvenile case managers that provide:  
(1) a code of ethics, and for the enforcement of the code of ethics;  
(2) appropriate educational preservice and in-service training standards for juvenile case managers; and  
(3) training in:  
(A) the role of the juvenile case manager;  
(B) case planning and management;  
(C) applicable procedural and substantive law;  
(D) courtroom proceedings and presentation;  
(E) services to at-risk youth under Subchapter D, Chapter 264, Family Code;  
(F) local programs and services for juveniles and methods by which juveniles may access those programs and services; and  
(G) detecting and preventing abuse, exploitation, and neglect of juveniles.  
(g) The employing court or governmental entity under this article shall implement the rules adopted under Subsection (f).

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

(h) The commissioners court or governing body of the municipality that administers a juvenile case manager fund under Article 102.0174 shall require periodic review of juvenile case managers to ensure the implementation of the rules adopted under Subsection (f).

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0085                      **Caption:** relating to the duties of the county tax assessor-collector and voter registrar regarding exemptions from jury service

**Effective Date:** 9-1-2011

**Application:** Applies to a person claiming an exemption from jury service or rescinding an exemption from jury service on or after 9-1-2011

**Statutes Affected:** GV 62.107  
GV 62.108  
GV 62.109

**Subject:** Procedures for establishing exemptions from jury service; Permanent exemption for elderly; Exemption for physical or mental impairment or inability to comprehend English

**Summary:** Amends GV 62.107, GV 62.108, and GV 62.109 to require notice of claimed exemptions from jury service to be made to the voter registrar rather than the tax assessor-collector;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0101

**Caption:** relating to the regulation of nonjudicial foreclosure on residences owned by certain members of the military, including foreclosure by a property owners' association

**Effective Date:** 9-1-2011

**Application:** Applies only to the levy of an assessment or assessments the effective date of which is on or after 9-1-2011

**Statutes** PP 51.002

**Affected:** PP 51.015

**Subject:** Sale of property under a contract lien

**Summary:** Amends PP 51.002 to require the notice of sale under a power of sale in a deed of trust, or the notice of default and right to cure under a mortgage, to state the name and address of the sender and contain a statement that is conspicuous, printed in boldface or underlined type:

"Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately."

**Subject:** Sale of certain property owned by members of the military

**Summary:** Amends PP 51.015 to define "assessments" as (1) the regular and special assessments, dues, fees, charges, interest, late fees, fines, collection costs, attorney's fees, and any other amount due to the association by the unit owner or levied against the unit by the condominium owners' association; and (2) a regular assessment, special assessment, or other amount a property owner is required to pay a property owners' association under the dedicatory instrument or by law;

With respect to restrictions on the sale, foreclosure, or seizure of real or personal property that is a dwelling owned by a member of the military to enforce an obligation secured by a mortgage, deed of trust, or other contract lien, such obligation includes a lien securing payment of a property owners' association assessment or assessments, as applicable, on that real or personal property;

**Subject:**

**Summary:**

**Comments:** The federal Servicemembers' Civil Relief Act (SCRA) was enacted to protect certain military servicemembers on active duty from foreclosures of mortgages, deeds of trust, and similar security devices under certain conditions. There have been reports that homes have been nonjudicially foreclosed on while an owner is on active military duty or deployed to a foreign country when debt servicers have not been informed of the debtor's active duty military status. While SCRA is well-designed to prevent such occurrences, interested parties believe there is a need to eliminate any breakdown in communication between a property owners' association and a property owner that may result in a home being nonjudicially foreclosed on.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0115      **Caption:** relating to limiting the liability of space flight entities

**Effective Date:** 4-21-2011

**Application:** Applies only to a cause of action that accrues on or after 4-21-2011

**Statutes Affected:** CV 100A.001 et seq

**Subject:** Limited Liability for space flight activities

**Summary:** Adds CV Chapter 100A.001, Limited liability for space flight activities;  
Adds CCV 100A.001 et seq to provide that a space flight entity is not liable to any person for a space flight participant injury or damages arising out of the space flight participant injury if the space flight participant has signed the agreement and warning, except for injuries proximately caused by the space flight entity's gross negligence evidencing willful or wanton disregard for the safety of the space flight participant or intentionally caused by the space flight entity;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Current law is silent with respect to the liability of private space flight entities. This legislation promotes the development of a commercial space launch industry in Texas by clarifying that participants on a space vehicle launched from Texas must assume the risk of injury if they are made aware of the risks and sign a written waiver of liability beforehand.  
Private companies, or "space flight entities," are developing commercial space launches to allow private citizens to fly into low earth orbit. Customers and consumers routinely sign liability waivers for a variety of activities and endeavors, yet case law precedent allows plaintiffs to sue those the liability waivers supposedly protect. This situation is especially troublesome with respect to commercial space flight because it fails to recognize this as an inherently dangerous activity for which there can be no absolute guarantee of safety.  
SB 0115 uses the terminology found in federal regulations to avoid confusion and to be consistent with warnings given by launch service providers and requires that launch service providers inform private citizens of the risks of space flight and prohibits them from being allowed to fly unless they choose to assume those risks. SB 0115 clarifies that a person, after being informed of the risk and signing a waiver, assumes the risk of space flight absent gross negligence or willful behavior by the launch company.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0132      **Caption:** relating to registration with the Selective Service System of certain applicants for a driver's license or personal identification certificate

**Effective Date:** 9-1-2011

**Application:** Applies only to an application for the issuance of a driver's license or personal identification certificate submitted on or after 9-1-2011

**Statutes Affected:** TN 521.147

**Subject:** Registration with Selective Service System

**Summary:** Amends TN 521.147 to require the Department of Public Safety, after an application for an original, renewal, or duplicate driver's license or personal identification certificate is submitted by a male applicant who on the date of the application is at least 18 years of age but younger than 26 years of age, to send in electronic format to the United States Selective Service System the information from the application necessary to register the applicant under the federal Military Selective Service Act. Also gives notice to the applicant that information regarding alternative service options for those who object to conventional military service for religious or other conscientious reasons is available from the department on request.

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Currently, Texas provides an applicant for a driver's license or personal identification certificate the opportunity at the time of application to consent or decline to register with the Selective Service System. SB 0132 requires the Department of Public Safety, at the time of an application for a driver's license or personal identification certificate submitted by certain applicants, to send to the United States Selective Service System the information from the application necessary to register the applicant with the Selective Service System.

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

**Bill Number:** SB 0141

**Caption:** relating to debt management services and the regulation of debt management services providers

**Effective Date:** 9-1-2011

**Application:**

**Statutes** FI 394.2095

**Affected:** FI 394.210

**Subject:** Cancellation of agreement by either provider or consumer (consumer debt management services)

**Summary:** Adds FI 394.2095 to require a person that acts as an intermediary between a consumer and one or more creditors and that provides or offers to provide a debt management service, immediately to return to the consumer any of the consumer's money held in trust by the provider for the consumer's benefit and 65 percent of any portion of the account set-up fee that has not been credited against settlement fees, if the provider or a consumer cancels a debt management service agreement;

Amends FI 394.210 to further regulate and specify allowable fees for consumer debt management services;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0179      **Caption:** relating to inclusion of pets and other companion animals in protective orders; providing a penalty

**Effective Date:** 9-1-2011

**Application:**

**Statutes** FA 85.021 et seq

**Affected:**

**Subject:** Requirements of order applying to any party

**Summary:** Amends FA 85.021 to allow a court issuing a protective order to prohibit a party from removing a pet, companion animal, or assistance animal from the possession of a person named in the order;

Allows a court issuing a protective order to prohibit a person found to have committed family violence from harming, threatening, or interfering with the care, custody, or control of a pet, companion animal, or assistance animal that is possessed by a person protected by an order or by a member of the family or household of a person protected by an order;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Victims of domestic violence often refuse to leave an unsafe environment out of concern for a pet they would have to leave behind. In cases where victims do leave, they often leave in such a hurry that they are unable to take their pets with them. Often, perpetrators of domestic violence threaten or harm pets as a means to intimidate and gain leverage over their victims. Because pets are deemed property under current law, judges cannot order a person to abstain from killing, injuring, or threatening family pets. The most a judge can do is award possession of family pets to the abused party. This is, however, frustrated by the fact that many victims fleeing an abusive situation have nowhere to go besides a shelter or other environment where animals are not allowed. SB 0279 allows a judge to prohibit a person from removing a pet, companion animal, or assistance animal from the possession of a party protected by a protective order. Moreover, the judge can prohibit a person from harming, threatening, or interfering with the care, custody, or control of a pet or assistance animal belonging to a person protected by a protective order.

"Court" means the district court, court of domestic relations, juvenile court having the jurisdiction of a district court, statutory county court, constitutional county court, or other court expressly given jurisdiction under this FA Title 4 Protective Orders and Family Violence.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0197

**Caption:** relating to the compulsory inspection of motor vehicles; providing penalties

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 548.6035 et seq

**Affected:**

**Subject:** Fraudulent emissions inspection of motor vehicle

**Summary:** Adds TN 548.6035 to create an offense if a person, in connection with a required emissions test, knowingly:

(1) places or causes to be placed on a motor vehicle an inspection certificate, if:

(A) the vehicle does not meet the emissions requirements established by the department; or

(B) the person has not inspected the vehicle;

(2) manipulates an emissions test result;

(3) uses or causes to be used emissions data from another motor vehicle as a substitute for the motor vehicle being inspected; or

(4) bypasses or circumvents a fuel cap test;

Bypassing or circumventing a fuel cap test is a Class C misdemeanor;

**Subject:** Actions of employee

**Summary:** Adds TN 548.6036 to provide that an inspection station is not subject to an administrative or civil penalty or criminal prosecution for an act of an employee of the inspection station if the station requires the employee to sign a written agreement to abide by the laws governing compulsory inspection of vehicles and any rules adopted relating to inspections; a station is liable for the acts of an employee if the station has received written notification from the Department of Public Safety that the employee has committed an offense, and the station continues to allow the employee to perform inspections;

**Subject:**

**Summary:**

**Comments:** Automotive emissions enforcement efforts in north central Texas have uncovered evidence of pervasive fraud among inspection stations in the region.

SB 0197 strengthens accountability and oversight of vehicle inspection stations and vehicle inspectors, and requires a vehicle inspection station to post bond as a condition of certification.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0198

**Caption:** relating to exempting persons who are convicted of certain sexual offenses from registering as a sex offender in this state

**Effective Date:** 9-1-2011

**Application:** Applies to any person who, on or after 9-1-2011, is required to register as a sex offender, regardless of whether the offense or conduct occurs before, on, or after 9-1-2011

**Statutes** CP 42.017

**Affected:** CP 62.301 et seq

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Under Texas law, consensual sex does not exist when one of the subjects involved is a minor. State law allows a defense to prosecution if no more than a three-year age difference exists between the victim and the defendant in determining whether statutory rape has been committed. Texas law mandates lifetime sex offender registration, with few exceptions, for any adult (18 or older) convicted of an offense under CP Chapter 62 (Sex Offender Registration Program). Texas law makes no distinction between a non-violent, consent-based offense and the registration requirements of a pedophile. A young defendant who is convicted of this type of offense must register, and as such, faces diminished future prospects. By removing non-dangerous offenders from the registry, law enforcement resources could be better directed at serious and dangerous criminals. SB 0198 provides options that may allow a young adult who has been convicted or placed under supervision for certain offenses involving an underage victim to be able to petition the courts to be released from registration requirements.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0209                      **Caption:** relating to juvenile case managers

**Effective Date:** 9-1-2011

**Application:** Applies to a juvenile case manager employed on or after 9-1-2011

**Statutes** CP 45.056

**Affected:**

**Subject:** Authority to employ juvenile case managers; reimbursement

**Summary:** Amends CP 45.056 to require the juvenile case manager timely to report to the judge any information or recommendations relevant to assisting the judge in making decisions;  
Requires the judge to consult with the juvenile case manager who is supervising the case regarding:  
(1) the child's home environment;  
(2) the child's developmental, psychological, and educational status;  
(3) the child's previous interaction with the justice system; and  
(4) any sanctions available to the court that would be in the best interest of the child;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Current law allows certain courts to hire juvenile case managers to provide services in juvenile cases. While the use of juvenile case managers has grown since this authorization was granted, some believe the legislative intent behind the creation of these case managers has largely been unrealized. In some courtrooms, juvenile case managers report to clerks rather than the judge of the court and fill an administrative role instead of a problem-solving role. Requiring juvenile case managers to timely report to the appropriate judge may create a more effective management structure that will foster more interaction between the judge and juvenile case manager. SB 0209 seeks to require a juvenile case manager to timely report to the appropriate judge information or recommendations relevant to assist the judge in making certain decisions in the case and requires certain consultation between judges and juvenile case managers.

As amended:

Art. 45.056. Authority to Employ Juvenile Case Managers; Reimbursement

(a) On approval of the commissioners court, city council, school district board of trustees, juvenile board, or other appropriate authority, a county court, justice court, municipal court, school district, juvenile probation department, or other appropriate governmental entity may:

(1) employ a case manager to provide services in cases involving juvenile offenders before a court consistent with the court's statutory powers; or

(2) agree in accordance with Chapter 791, Government Code, to jointly employ a case manager.

(b) A local entity may apply or more than one local entity may jointly apply to the criminal justice division of the governor's office for reimbursement of all or part of the costs of employing one or more juvenile case managers from funds appropriated to the governor's office or otherwise available for that purpose. To be eligible for reimbursement, the entity applying must present to the governor's office a comprehensive plan to reduce juvenile crimes in the entity's jurisdiction that addresses the role of the case manager in that effort.

(c) A county or justice court on approval of the commissioners court or a municipality or municipal court on approval of the city council may employ one or more juvenile case managers to assist the court in administering the court's juvenile docket and in supervising its court orders in juvenile cases.

(d) Pursuant to Article 102.0174, the court may pay the salary and benefits of a juvenile case manager from the juvenile case manager fund.

(e) A juvenile case manager employed under Subsection (c) shall give priority to cases brought under Sections 25.093 and 25.094, Education Code.

(f) The juvenile case manager shall timely report to the judge who signed the order or judgment and, on request, to the judge assigned to the case or the presiding judge any information or recommendations relevant to assisting the judge in making decisions that are in the best interest of the child.

(g) The judge who is assigned to the case shall consult with the juvenile case manager who is supervising the case regarding:

(1) the child's home environment;

(2) the child's developmental, psychological, and educational status;

(3) the child's previous interaction with the justice system; and

(4) any sanctions available to the court that would be in the best interest of the child.



**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

- (h) Subsections (f) and (g) do not apply to:
  - (1) a part-time judge; or
  - (2) a county judge of a county court that has one or more appointed full-time magistrates under Section 54.1172, Government Code.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0250                      **Caption:** relating to protective orders for stalking victims

**Effective Date:** 9-1-2011

**Application:** Applies only to an application for a protective order that is filed on or after 9-1-2011

**Statutes** CP 7A.01 et seq

**Affected:**

**Subject:** Application for protective order

**Summary:** Amends CP 7A.01 et seq to allow a person who is the victim of stalking (PE 42.072, which includes persons in a dating relationship), as well as sexual abuse of a young child (PE 21.02), indecency with a child (PE 21.11), sexual assault (PE 22.011), or aggravated sexual assault (PE 22.021) to file an application for protective order in a district court, juvenile court having the jurisdiction of a district court, statutory county court, or constitutional county court in: (1) the county in which the applicant resides; or (2) the county in which the alleged offender resides, without the necessity of the offender's arrest;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** This bill would extend to persons who are victims of stalking the right to a protective order against their stalker without requiring that the alleged stalker first be arrested for the crime. Texas law prevents persons who are victims of stalking from qualifying for temporary and regular protective orders unless the stalking falls under the category of family violence. Only in cases where the petitioner is related to the stalker by blood or marriage, or if they have ever lived together, or have a child in common with the stalker can the petitioner qualify for a protective order without proof of an arrest. This provision can be problematic for victims of persons who may be making threats against them but are not related to them. This legislation will allow all persons who are victims of stalking to access a temporary or regular protective order under the same guidelines provided for stalking victims who have a relation to the alleged stalker. This will allow all victims to circumvent the requirement that the alleged person be arrested first and immediately qualify to apply for such protections. As proposed, S.B. 250 amends current law relating to protective orders for stalking victims

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0256                      **Caption:** relating to requiring a private autopsy facility to post a notice for filing a complaint against a physician; providing a penalty

**Effective Date:** 1-1-2012

**Application:** Texas Medical Board must publish the notice required no later than 1-1-2012

**Statutes Affected:** HS 671A.001 et seq

**Subject:** Notice for complaints required

**Summary:** Adds HS 671A.002 to require a private autopsy facility to post a notice in English and Spanish advising that a person may file with the Texas Medical Board a complaint against a physician who performs autopsy services; the notice must include the mailing address and telephone number of the Texas Medical Board for filing complaints against physicians;

"Private autopsy facility" means a facility that is owned or operated by a physician who performs autopsy services for a fee or that employs a physician to perform autopsy services for a fee, including autopsy services performed on the order of a justice of the peace. The term does not include a medical examiner's office.

**Subject:** Criminal penalty for failure to post notice

**Summary:** Adds HS 671A.003 to create an offense if a private autopsy facility fails to post the required notice; Class C misdemeanor;

**Subject:**

**Summary:**

**Comments:** Interested parties contend that families using the services of a private autopsy facility are inadequately informed about their rights as consumers. SB 0256 seeks to address this concern by requiring a private autopsy facility to post a certain notice for filing a complaint against a physician and providing a criminal penalty for failure to post the notice.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0258

**Caption:** relating to the pledge of allegiance to the state flag during a state flag retirement ceremony

**Effective Date:** 6-17-2011

**Application:**

**Statutes** GV 3100.152

**Affected:**

**Subject:** Conduct of retirement ceremony

**Summary:** Amends GV 3100.152 to add the words "one state under God" in the pledge to the Texas flag recited at a state flag retirement ceremony:  
"Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible;"

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** During the 80th Legislature, Regular Session, 2007, the phrase "one state under God" was added to the Texas pledge, and the provisions for the official retirement ceremony for the state flag were not updated to include the phrase.  
SB 0258 adds "one state under God" to the pledge of allegiance to the Texas state flag that is recited to conclude the state flag retirement ceremony.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0266      **Caption:** relating to notice required in connection with possessory liens on motor vehicles

**Effective Date:** 9-1-2011

**Application:** Applies only to charges that accrue on or after 9-1-2011;  
Applies only to notice received by a county tax assessor-collector on or after 9-1-2011;

**Statutes** PP 70.006

**Affected:**

**Subject:** Sale of motor vehicle, motorboat, vessel, or outboard motor

**Summary:** Amends PP 70.006 to delete the time limit within which required notice to the owner and lienholder must to be given by a person who retains possession of a motor vehicle, motorboat, vessel, or outboard motor;  
Provides that a copy of the notice given to the owner and lienholder must be filed with the county tax assessor-collector's office not later than the 30th day after the date on which the charges accrue;  
Provides that not later than the 15th business day after notice is received, the tax assessor-collector must provide a copy of the notice to the owner and lien holder, but is not required to use certified mail;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0267                      **Caption:** relating to a joint statement regarding the transfer of a motor vehicle as the result of a gift

**Effective Date:** 6-17-2011

**Application:** Applies only to a joint statement relating to the transfer of a motor vehicle as the result of a gift filed with a tax assessor-collector on or after 6-17-2011

**Statutes Affected:** TX 152.062

**Subject:** Required statements (on transfer of a motor vehicle as the result of a gift)

**Summary:** Amends TX 152.062 to require the joint statement required when the ownership of a motor vehicle is transferred as the result of a gift, to be filed in person by the recipient of the gift, or the person from whom the gift is received, or a person authorized to act on behalf of an estate if the gift is from an estate; Requires the person filing the statement to present an unexpired identification document that bears a photograph and is:

- (1) a driver's license or personal identification card issued by this state or another state of the United States;
- (2) an original United States passport or an original passport issued by a foreign country;
- (3) an identification card or similar form of identification issued by the Texas Department of Criminal Justice;
- (4) a United States military identification card; or
- (5) an identification card or document issued by the United States Department of Homeland Security or United States Citizenship and Immigration Services;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** In an effort to eliminate tax fraud relating to the purported gifting of a motor vehicle from one party to another, SB 0267 seeks to clarify certain provisions with regard to the documentation required for the transfer of a motor vehicle as the result of a gift.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0321      **Caption:** relating to an employee's transportation and storage of certain firearms or ammunition while on certain property owned or controlled by the employee's employer

**Effective Date:** 9-1-2011

**Application:** Applies to a cause of action that accrues on or after 9-1-2011

**Statutes Affected:** LA 52.061 et seq

**Subject:** Restrictions on prohibiting employee transportation or storage of certain firearms or ammunition  
Restriction on prohibiting employee access to or storage of firearm or ammunition

**Summary:** Adds LA 52.061 et seq to prohibit a public or private employer from prohibiting an employee who holds a license to carry a concealed handgun from transporting or storing a firearm or ammunition the employee is authorized by law to possess in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the employer provides for employees;  
An employee is still prohibited from carrying a handgun where the possession of a firearm or ammunition is prohibited by state or federal law;  
This section does not apply to (1) a vehicle owned or leased by a public or private employer and used by an employee in the course and scope of employment unless the employee is required to transport or store a firearm in the discharge of the employee's duties; (2) a school district, charter school, or private school; (3) property subject to an oil, gas, or mineral lease containing a clause prohibiting the possession of firearms; or (4) property owned or leased by a chemical manufacturer or oil and gas refiner unless the parking lot is outside the restricted or secured area, is not open to the public, and is monitored by security personnel;

**Subject:** Immunity from civil liability

**Summary:** Adds 52.063 to except a public or private employer from liability in a civil action for personal injury, death, property or other damages involving a firearm or ammunition that the employer was required to allow on the employer's property; an individual remains liable for causing harm or injury by using a firearm, and failing to comply with the requirements to lock the firearm or ammunition in a vehicle;

**Subject:**

**Summary:**

**Comments:** Currently, a person who is lawfully authorized to possess firearms or ammunition may transport them in the person's motor vehicle. Some people do so to protect themselves in a lawful and responsible manner. Others routinely transport firearms or ammunition in their vehicles in anticipation of future hunting trips or visits to the local shooting range or gun club. Many companies in Texas have adopted a no-firearms policy that extends beyond the actual workplace to employee parking lots, areas that often are not secured. Such a policy sometimes emanates from a company headquartered outside of Texas or even outside the United States and does not take into account Texas law relating to the transport and storage of firearms or the state's strong sporting culture. To comply with such a policy, an employee must choose between protecting him or herself when commuting to and from work and being subject to termination by his or her employer.  
SB 0321 seeks to prohibit an employer from prohibiting an employee who lawfully possesses a firearm or ammunition from transporting or storing the firearm or ammunition in a locked, privately owned motor vehicle in a parking area the employer provides for employees, with certain exceptions.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0323

**Caption:** relating to the applicability of certain laws governing corporations to limited liability companies

**Effective Date:** 9-1-2011

**Application:**

**Statutes** BO 101.002

**Affected:**

**Subject:** Applicability of other laws (to limited liability companies)

**Summary:** Adds BO 101.002 to make the following limitation of liability sections applicable to a limited liability company and the company's members, owners, assignees, affiliates, and subscribers, unless a company agreement provides otherwise:

BO 21.223 Limitation of liability for obligations

BO 21.224 Preemption of liability

BO 21.225 Exceptions to limitations

Except as and to the extent the company agreement specifically provides otherwise, a member or manager is not liable for a debt, obligation, or liability of a limited liability company, including a debt, obligation, or liability under a judgment, decree, or order of a court.

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** SB 0323 amends the Business Organizations Code to make applicable to a limited liability company and the company's members, owners, assignees, affiliates, and subscribers provisions limiting the liability of certain shareholders of a for-profit corporation to the corporation or its obligees for specified obligations of the corporation, establishing that such a limitation on liability for an obligation is exclusive and preempts any other liability for that obligation, providing exceptions to such liability limitations, and exempting certain pledges from personal liability as a shareholder of a for-profit corporation and certain trust administrators from personal liability as a holder of or subscriber to shares of such a corporation. The bill specifies that this applicability is subject to state laws establishing the liability of a member or manager of a limited liability company for a debt, obligation, or liability of the company.



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0328                      **Caption:** relating to notice of a hospital lien

**Effective Date:** 9-1-2011

**Application:** Applies only to a lien for services provided to an injured individual on or after 9-1-2011

**Statutes Affected:** PP 55.005

**Subject:** Securing (hospital and emergency medical services) lien

**Summary:** Amends PP 55.005 to require, in addition to other requirements, notice to the injured individual in order to secure a hospital and emergency medical services lien;  
Notice must be provided not later than the 5th business day after the date a hospital or emergency medical services provider receives notice from the county clerk that a notice of lien has been recorded in the county records; the notice must inform that:  
(1) the lien will attach to any cause of action or claim the individual may have against another person for the individual's injuries; and  
(2) the lien does not attach to real property owned by the individual;  
Notice is not required if it is given on a service authorization form and signed by the injured individual; failure to receive notice does not affect the validity of the lien;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Current provisions of the Property Code provide for a lien against an individual for an amount owed as a result of services provided by a hospital or by certain emergency services providers in connection with an injury resulting from an accident that is attributable to the negligence of another person. The law provides that the lien may be secured against a cause of action or claim by the injured individual relating to the accident. Some parties assert that, because the statute authorizing such a lien is in the Property Code, the lien may be perceived as encumbering real property owned by the injured individual.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0373

**Caption:** relating to the office of county treasurer

**Effective Date:** 9-1-2011

**Application:**

**Statutes** LG 113.022

**Affected:** CP 103.004

**Subject:** Time for making deposits

**Summary:** Amends LG 113.022 to require a county officer or other person who receives money to deposit the money with the county treasurer on or before the next regular business day after the date on which the money was is received; if the deadline cannot be met, the officer or person must deposit the money, without exception, on or before the 5th business day after the day on which the money is received;

**Subject:** Disposition of collected money

**Summary:** Amends CP 103.004 to repeal subsection (b) which allowed commissioners Court to authorize an officer required to deposit money to make that deposit not later than the 7th regular business day after the money is collected;

**Subject:**

**Summary:**

**Comments:** As amended:

Art. 103.004. [949] [1050] [1015] Disposition of Collected Money

(a) Except as provided by Subsection (c), an officer who collects recognizances, bail bonds, fines, forfeitures, judgments, jury fees, and other obligations recovered in the name of the state under any provision of this title shall deposit the money in the county treasury not later than the next regular business day after the date that the money is collected. If it is not possible for the officer to deposit the money in the county treasury by that date, the officer shall deposit the money in the county treasury as soon as possible, but not later than the third regular business day after the date that the money is collected.

(c) The commissioners court of a county with a population of less than 50,000 may authorize an officer who is required to deposit money under Subsection (a) to deposit the money in the county treasury not later than the 30th day after the date that the money is collected.

(d) The custodian of the county treasury shall deposit money received from fees imposed under Article 102.012 in the special fund of the county treasury for the community supervision and corrections department serving the county.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0407 (Page 1 of 3) **Caption:** relating to the creation of the offense of electronic transmission of certain visual material depicting a minor and to certain educational programs concerning the prevention and awareness of that offense

**Effective Date:** 9-1-2011

**Application:**

**Statutes** PE 43.261  
**Affected:** FA 51.03  
FA 51.08  
CP 38.45  
CP 39.15  
CP 45.0215  
CP 45.0216  
CP 45.061

**Subject:** Electronic transmission of certain visual material depicting minor

**Summary:** Adds PE 43.261 to create an offense if a minor intentionally or knowingly:  
(1) by electronic means promotes to another minor visual material depicting a minor, including the actor, engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material;  
Class C misdemeanor unless the actor promoted the visual material with intent to harass, annoy, alarm, abuse, torment, embarrass, or offend another, or has previously been convicted one time (Class B misdemeanor)

To create an offense if a minor intentionally or knowingly:  
(2) possess in an electronic format visual material depicting another minor engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material;  
Class C misdemeanor unless the actor has previously been convicted one time (Class B misdemeanor);

Provides an affirmative defense that the visual material (1) depicted only the actor or another minor who is in a dating relationship with the actor and not more than 2 years older or younger than the actor, or who was the spouse of the actor, and (2) was promoted or received only to or from the actor and the other minor;

Provides a defense to the possession of the visual material ((b)(2)), that the actor: (1) did not produce or solicit the material, (2) possessed the visual material only after receiving the material from another minor; and (3) destroyed the visual material within a reasonable amount of time after receiving the material from another minor;

(1) "Dating relationship" means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature.

(2) "Minor" means a person younger than 18 years of age.

(3) "Produce" with respect to visual material includes any conduct that directly contributes to the creation or manufacture of the material.

(4) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above.

(5) "Sexual conduct" means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.

(6) "Visual material" means:

(A) any film, photograph, videotape, negative, or slide or any photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(B) any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method;

**Subject:** Delinquent conduct; conduct in need of supervision

**Summary:** Amends FA 51.03 to include within the definition of CINS conduct the electronic transmission of certain visual material depicting minor under PE 43.261;

**Subject:** Evidence depicting or describing abuse of or sexual conduct by child or minor  
Discovery of evidence depicting or describing abuse of or sexual conduct by child or minor

**Summary:** Amends CP 38.45 to prohibit the court from making available or allowing to be made available for copying or dissemination to the public material the promotion or possession of which is prohibited under PE 43.261, or a

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

recording of an oral statement of the child made before the complaint has been filed;

Amends CP 39.15 to require the court to allow discovery of property or material the promotion or possession of which prohibited under PE 43.251;  
Property or material described by Subsection (a) must remain in the care, custody, or control of the court or the state as provided by Article 38.45 (the court shall deny any request by a defendant to copy, photograph, duplicate, or otherwise reproduce any property or material provided that the state makes the property or material reasonably available to the defendant);

**Comments:** Under current law, the act of sending a sexually explicit text message, commonly known as sexting, may be prosecuted under adult pornography laws, which can lead to felony convictions and possible lifelong registration under the sex offender registration program. As a result, some prosecutors reportedly believe that they can either charge the juveniles with crimes that carry overly harsh penalties or enter no charges at all. SB 0407 creates a new offense involving the electronic transmission of certain visual material depicting a minor, to establish a tiered approach to prosecuting the offense so the punishment truly matches the crime, and to prevent occurrences of the offense by educating students about the criminal, emotional, psychological, and other consequences associated with the crime.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0407 (Page 2 of 3) **Caption:** relating to the creation of the offense of electronic transmission of certain visual material depicting a minor and to certain educational programs concerning the prevention and awareness of that offense

**Effective Date:** 9-1-2011

**Application:**

**Statutes** PE 43.261  
**Affected:** FA 51.03  
CP 38.45  
CP 39.15  
CP 45.0215  
CP 45.0216  
CP 45.061  
FA 51.08

**Subject:** Plea by minor and appearance of parent

**Summary:** Amends PE 45.0215 to require that a defendant who has not had the disabilities of minority removed and is charged with an offense under PE 43.261, if the defendant is younger than 18 years of age, is required to appear in open court, with a parent, guardian, or managing conservator for giving a plea and all other proceedings;

**Subject:** Expunction of certain conviction records

**Summary:** Amends CP 45.0216 to allow a person, on or after the person's 17th birthday, to apply to the court in which the person was convicted to have the conviction expunged if the person was convicted only once of an offense under PE 43.261;

**Subject:** Proceedings concerning electronic transmission of certain visual material depicting minor

**Summary:** Adds CP 45.061 to provide that if a justice or municipal court finds that a defendant committed an offense under PE 43.261, the court may enter an order requiring the defendant to attend and successfully complete an educational program on the dangers of students sharing visual material depicting minors engaged in sexual conduct, or another equivalent educational program;  
A court ordering such a program must require the defendant or the defendant's parent to pay the cost of attending the program if the court determines that the defendant or defendant's parent is financially able to make payment;

**Comments:** As amended:  
Art. 45.061. PROCEEDINGS CONCERNING ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR. (a) In this article, "parent" means a natural or adoptive parent, managing or possessory conservator, or legal guardian. The term does not include a parent whose parental rights have been terminated.  
(b) If a justice or municipal court finds that a defendant has committed an offense under Section 43.261, Penal Code, the court may enter an order requiring the defendant to attend and successfully complete an educational program described by Section 37.218, Education Code, or another equivalent educational program.  
(c) A court that enters an order under Subsection (b) shall require the defendant or the defendant's parent to pay the cost of attending an educational program under Subsection (b) if the court determines that the defendant or the defendant's parent is financially able to make payment.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0407 (Page 3 of 3) **Caption:** relating to the creation of the offense of electronic transmission of certain visual material depicting a minor and to certain educational programs concerning the prevention and awareness of that offense

**Effective Date:** 9-1-2011

**Application:**

**Statutes** PE 43.261  
**Affected:** FA 51.03  
CP 38.45  
CP 39.15  
CP 45.0215  
CP 45.0216  
CP 45.061  
FA 51.08

**Subject:** Transfer from criminal court

**Summary:** Amends FA 51.08 to require a justice court to waive its original jurisdiction and refer the child to juvenile court if the complaint pending against the child alleges a violation of a misdemeanor offense under PE 43.261, that is punishable by fine only, unless the court has implemented a juvenile case manager program;

**Subject:** Programs on dangers of students sharing visual material depicting minor engaged in sexual conduct

**Summary:** Adds ED 37.128 to require the Texas School Safety Center to develop programs for use by school districts that address:

- (1) the possible legal consequences, including criminal penalties, of sharing visual material depicting a minor engaged in sexual conduct;
- (2) other possible consequences of sharing visual material depicting a minor engaged in sexual conduct, including:
  - (A) negative effects on relationships;
  - (B) loss of educational and employment opportunities; and
  - (C) possible removal, if applicable, from certain school programs or extracurricular activities;
- (3) the unique characteristics of the Internet and other communications networks that could affect visual material depicting a minor engaged in sexual conduct, including:
  - (A) search and replication capabilities; and
  - (B) a potentially worldwide audience;
- (4) the prevention of, identification of, responses to, and reporting of incidents of bullying; and
- (5) the connection between bullying, cyberbullying, harassment, and a minor sharing visual material depicting a minor engaged in sexual conduct;

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0428                      **Caption:** relating to notice to a judgment debtor of the filing of a foreign judgment

**Effective Date:** 5-17-2011

**Application:** applies only to filing of a foreign judgment on or after 5-17-2011

**Statutes Affected:** CV 35.004

**Subject:** Affidavit; notice of filing

**Summary:** Amends CV 35.004 to require the judgment creditor or the judgment creditor's attorney to provide required notice of the filing of a foreign judgment to the judgment debtor, rather than the clerk;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** As amended  
CV § 35.004. Affidavit; Notice of Filing  
(a) At the time a foreign judgment is filed, the judgment creditor or the judgment creditor's attorney shall file with the clerk of the court an affidavit showing the name and last known post office address of the judgment debtor and the judgment creditor.  
(b) The judgment creditor or the judgment creditor's attorney shall:  
(1) promptly mail notice of the filing of the foreign judgment to the judgment debtor at the address provided for the judgment debtor under Subsection (a); and  
(2) file proof of mailing of the notice with the clerk of the court.  
(c) The notice must include the name and post office address of the judgment creditor and if the judgment creditor has an attorney in this state, the attorney's name and address.  
(d) On receipt of proof of mailing under Subsection (b), the clerk of the court shall note the mailing in the docket.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0431      **Caption:** relating to the use of fraudulent or fictitious military records; creating an offense

**Effective Date:** 9-1-2011

**Application:**

**Statutes** PE 32.54

**Affected:**

**Subject:** Fraudulent or fictitious military record

**Summary:** Adds PE 32.54 to create an offense if a person:  
(1) uses or claims to hold a military record that the person knows:  
(A) is fraudulent;  
(B) is fictitious or has otherwise not been granted or assigned to the person; or  
(C) has been revoked; and  
(2) uses or claims to hold that military record:  
(A) in a written or oral advertisement or other promotion of a business; or  
(B) with the intent to: (i) obtain priority in receiving services or resources under Subchapter G, Chapter 302, Labor Code (workforce development programs); (ii) qualify for a veteran's employment preference under Chapter 657, Government Code (veterans employment preferences); (iii) obtain a license or certificate to practice a trade, profession, or occupation;  
(iv) obtain a promotion, compensation, or other benefit, or an increase in compensation or other benefit, in employment or in the practice of a trade, profession, or occupation; (v) obtain a benefit, service, or donation from another person; (vi) obtain admission to an educational program in this state; or (vii) gain a position in state government with authority over another person, regardless of whether the actor receives compensation for the position;  
Class C misdemeanor;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** "Military record" means an enlistment record, occupation specialty, medal, award, decoration, or certification obtained by a person through the person's service in the armed forces of the United States or the state military forces.  
"State military forces" means the Texas National Guard, the Texas State Guard, and any other active militia or military force organized under state law (GV 431.001).



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0460

**Caption:** relating to regulation of the import, export, and management of mule deer; providing penalties

**Effective Date:** 6-17-2011

**Application:**

**Statutes** PW 43.621 et seq

**Affected:**

**Subject:** Penalty

**Summary:** Adds PW 43.627 to create an offense if a person:

- (1) violates the provisions relating to mule deer management, including permitting, inspections, and maintaining records;
  - (2) violates a condition of a permit relating to (i) the number of deer that may be killed on the property by a single person, (ii) the number and type of deer that may be killed or taken under the permit, (iii) the number and type of deer that may be temporarily detained in an enclosure, and (iv) the length of time that deer may be temporarily detained in an enclosure;
  - (3) fails to maintain records showing (i) the number of mule deer taken during the general open seasons and during any special seasons, (ii) the number of mule deer temporarily detained and released during the permit period, and (iii) any other information required by the department relating to activities covered by the permit;
  - (4) kills or allows to be killed a deer temporarily detained for propagation;
- Violations under a(1), a(2), and a(3) are Class C Parks and Wildlife Code misdemeanors;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** A deer management permit is considered by many as a landowner tool for white-tailed deer management, propagation, and hunting. The permit allows the permit holder, in accordance with certain prescribed standards, to temporarily detain white-tailed deer in enclosures on the property covered by the permit for the purpose of natural breeding. The deer and their offspring are then released to enhance the overall genetics of the herd. Interested parties contend that similar landowner management tools have been proven to work just as well for mule deer, and, for this reason, legislation is needed that will allow landowners and mule deer managers the opportunity to utilize the same tools as those used for white-tailed deer. A stronger mule deer herd, these parties contend, will attract hunters and wildlife enthusiasts and result in increased income from tourism. SB 0460 extends the deer management permit program currently available for white-tailed deer managers by regulating the import, export, and management of mule deer.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0480                      **Caption:** relating to certain appeals from judgments of municipal courts of record and to the recusal or disqualification of municipal judges

**Effective Date:** 6-17-2011

**Application:** Applies to a hearing or trial initially filed in a municipal court on or after 6-17-2011  
See also HB 3475

**Statutes Affected:** GV 29.051 et seq

**Subject:** Recusal or disqualification of municipal judges

**Summary:** Adds GV 29.051 to specify procedures for recusal of a municipal court judge, to include the filing of a verified motion stating with particularity the alleged grounds, and filed at least 10 days before the trial or hearing; the party filing is required to serve notice on all other parties that the movant expects the motion to be presented to the judge 3 days after the filing; other parties may file a statement with the clerk opposing or concurring at any time before the motion is heard; if the motion is not granted, the judge must request the regional presiding judge to assign a judge to hear the motion; the regional presiding judge may assign an active judge, or a judge eligible to serve on assignment, to hear the case; allows the hearing to be held by telephone if no objection; a judge eligible to serve on assignment is entitled to compensation of \$450 per day prorated for any day for which the judge provides less than a full day of service, and travel expenses;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

- Bill Number:** SB 0488      **Caption:** relating to criminal background checks on users of online dating services and to disclosures of online dating safety measures; providing a civil penalty
- Effective Date:** 9-1-2011
- Application:** Not later than 9-1-2011, an online dating service provider must comply with BC Chapter 106 with respect to each person who is using the provider's service on that date
- Statutes Affected:** BC 106.001 et seq
- Subject:** Disclosure by provider that does not conduct criminal background check
- Summary:** Adds BC 106.004 to require an online dating service provider that does not conduct a criminal background check on each member to disclose to all Texas members that the provider does not conduct background checks; disclosure must be in bold, capital letters, in at least 12-point type on the website;
- Subject:** Disclosures by provider that conducts criminal background checks
- Summary:** Adds BC 106.005 to require an online dating service provider that conducts a criminal background check before permitting communication through the provider, must disclose to all Texas members that the provider conducts a criminal background check, and must include on the website:
- (1) a statement of whether the provider excludes from its online dating service all persons identified as having been convicted of:
    - (A) a felony offense;
    - (B) an offense the conviction or adjudication of which requires registration as a sex offender under Chapter 62, Code of Criminal Procedure; or
    - (C) an offense for which an affirmative finding of family violence was made under Article 42.013, Code of Criminal Procedure;
  - (2) a statement of the number of years of a member's criminal history that is included in a criminal background check; and
  - (3) a statement that:
    - (A) criminal background checks are not foolproof;
    - (B) criminal background checks may give members a false sense of security;
    - (C) criminal background checks are not a perfect safety solution;
    - (D) criminals may circumvent even the most sophisticated search technology;
    - (E) not all criminal records are public in all states and not all databases are up to date;
    - (F) only publicly available convictions are included in the criminal background check; and
    - (G) the criminal background check does not cover other types of convictions than convictions for offenses described by Section 106.003(a) or any convictions from foreign countries.
- Subject:** Safety awareness disclosure by all providers
- Summary:** Adds BC 106.006 to require an online dating service provider to provide a safety awareness notification on the website that includes a list of safety measures designed to increase awareness of safer online dating practices, including:
- (1) "Anyone who is able to commit identity theft can also falsify a dating profile.";
  - (2) "There is no substitute for acting with caution when communicating with any stranger who wants to meet you.";
  - (3) "Never include your last name, e-mail address, home address, phone number, place of work, or any other identifying information in your Internet profile or initial e-mail messages. Stop communicating with anyone who pressures you for personal or financial information or attempts in any way to trick you into revealing it."; and
  - (4) "If you choose to have a face-to-face meeting with another member, always tell someone in your family or a friend where you are going and when you will return. Never agree to be picked up at your home. Always provide your own transportation to and from your date and meet in a public place with many people around."
- Adds BC 106.007 to include a civil penalty in an amount not to exceed \$250 for each Texas member for violation of BC Chapter 106; allows the attorney general to seek an injunction or recover the civil penalty; precludes a private right of action;
- Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0493                      **Caption:** relating to the idling of motor vehicles

**Effective Date:** 6-17-2011

**Application:**

**Statutes**                      TN 622.955

**Affected:**

**Subject:**                      Increase of maximum weight for vehicles with idle reduction systems

**Summary:**                      Adds TN 622.955 to increase the maximum gross vehicle weight limit and axle weight limit for any vehicle or combination of vehicles equipped with an idle reduction system, by an amount necessary to compensate for the additional weight of the idle reduction system, notwithstanding any provision to the contrary.  
Prohibits the weight increase from being greater than 400 pounds.

Requires the vehicle operator, on request by an appropriate law enforcement officer or an official of an appropriate regulatory agency, to provide proof that: (1) the idle reduction technology is fully functional at all times; and (2) the weight increase is not used for any purpose other than the use of an idle reduction system;

"Idle reduction system" means a system that provides heating, cooling, or electrical service to a commercial vehicle's sleeper berth for the purpose of reducing the idling of a motor vehicle;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**                      Federal law requires commercial truck drivers to take periodic rest breaks. In Texas, during many months of the year, it is impossible for a driver to get the rest he or she needs without air conditioning or heat. Trucks not equipped with auxiliary power units (APU) must idle in order to run these environmental systems.  
The United States Environmental Protection Agency is certifying some engines as "clean idle" engines when they emit no more than 30 grams of nitrogen oxide emissions per hour when idling.  
The federal government allows a motor vehicle with an APU to carry an additional 400 pounds total in gross, axle, tandem, or bridge formula weight limits provided the APU is operational.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0498

**Caption:** relating to the trapping and transport of surplus white-tailed deer

**Effective Date:** 9-1-2011

**Application:**

**Statutes** PW 43.0612

**Affected:**

**Subject:** Trapping and transporting surplus white tailed deer; permit required

**Summary:** Amends PW 43.0612 to allow the Texas Parks and Wildlife Department to issue a permit to an individual who has a wildlife management plan approved by the TPWD, as well as to a political subdivision and a property owners' association, to trap and transport surplus white tailed deer;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Currently, a permit to trap and transport surplus white-tailed deer may be issued by the Parks and Wildlife Department (TPWD) only to a political subdivision or a property owners' association. An individual landowner, which may include an owner of a ranch or an industrial facility, may use such a permit only if the political subdivision that encompasses the landowner's property applies for the permit on the landowner's behalf. The permit originally was created to assist political subdivisions and property owners' associations with deer overpopulation, and the statute was crafted specifically to address that need. Since then, the permit has proven to be of considerable benefit, and individual landowners would like to have access to such permits to reduce deer population without having to secure permission from an authority other than TPWD.  
SB 0498 includes a qualified individual among the parties to whom TPWD may issue a permit authorizing the trapping and transporting of surplus white-tailed deer found on the property owned by the individual.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0519                      **Caption:** relating to the period during which a motion for new trial in a criminal proceeding in a justice or municipal court must be made

**Effective Date:** 9-1-2011

**Application:** Applies only to a judgment in a criminal proceeding entered on or after 9-1-2011

**Statutes Affected:** CP 45.037

**Subject:** Motion for new trial

**Summary:** Amends CP 45.037 to require a motion for new trial to be made within 5 days (rather than 1 day) after the rendition of judgment, and not afterward;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** As amended:  
CP 45.037. [912] [1005] [970] Motion for New Trial  
A motion for a new trial must be made within five days after the rendition of judgment and sentence, and not afterward.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0539                      **Caption:** relating to the award of costs and attorney's fees in certain proceedings concerning mechanic's, contractor's, or materialman's liens

**Effective Date:** 9-1-2011

**Application:** Applies only to a proceeding commenced on or after 9-1-2011

**Statutes Affected:** PP 53.156

**Subject:** Costs and attorney's fees

**Summary:** Amends PP 53.156 to require the court to award costs and reasonable attorney's fees in proceedings to foreclose liens or enforce bonds; but the court is not required to order the property owner to pay costs and attorney's fees related to residential construction;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** As amended:

PP § 53.156. Costs and Attorney's Fees  
In any proceeding to foreclose a lien or to enforce a claim against a bond issued under Subchapter H, I, or J or in any proceeding to declare that any lien or claim is invalid or unenforceable in whole or in part, the court shall award costs and reasonable attorney's fees as are equitable and just. With respect to a lien or claim arising out of a residential construction contract, the court is not required to order the property owner to pay costs and attorney's fees under this section.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0578

**Caption:** relating to the testimony of children in criminal cases

**Effective Date:** 9-1-2011

**Application:** Applies to a criminal proceeding that commences on or after 9-1-2011

**Statutes** CP 38.074

**Affected:**

**Subject:** Testimony of child in prosecution of offense

**Summary:** Adds CP 38.074 to specify a child's (person younger than 17 years of age, who is not the defendant) rights during testimony in criminal cases, requiring that the court:

- (1) administer an oath to a child in a manner that allows the child to fully understand the child's duty to tell the truth;
- (2) ensure that questions asked of the child are stated in language appropriate to the child's age;
- (3) explain to the child that the child has the right to have the court notified if the child is unable to understand any question and to have a question restated in a form that the child does understand;
- (4) ensure that a child testifies only at a time of day when the child is best able to understand the questions and to undergo the proceedings without being traumatized by limiting duration of testimony and limiting testimony to school hours, or ordering a recess if necessary for the comfort or attention of the child; and
- (5) prevent intimidation or harassment of the child by any party and, for that purpose, rephrase as appropriate any question asked of the child;

Allows the child to have a blanket, toy, or similar comfort item while testifying, or a support person in close proximity;  
Does not apply to a child who is a defendant;  
"Child" means a person younger than 17 years of age;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0582                      **Caption:** relating to service of process on certain domestic and foreign entities for collection of delinquent property taxes

**Effective Date:** 9-1-2011

**Application:** Applies only to service of process issued on or after 9-1-2011

**Statutes** BO 5.257  
**Affected:** CV 17.091

**Subject:** Service of process by political subdivision

**Summary:** Amends BO 5.257 to allow process required to be served by a political subdivision in connection with the collection of delinquent ad valorem tax to be served on a domestic or foreign corporation whose corporate privileges are forfeited, a domestic or foreign limited liability company whose right to transact business is forfeited, or a corporation or limited liability company that is involuntarily terminated or whose registration is revoked, by delivery to any officer or director or manager or member of the limited liability company as listed in the most recent records of the secretary of state; if unknown, service may be made in the same manner as on unknown shareholders;

**Subject:** Substituted service in delinquent tax cases

**Summary:** Amends CV 17.091 to include a definition of nonresident as (1) an individual who is not a resident of Texas, and (2) a foreign corporation, unincorporated association, general partnership, limited partnership, limited liability company, professional association, business trust, cooperative, or real estate investment trust, that is not required to appoint a registered agent;

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0604

**Caption:** relating to the execution of lawful process by county jailers

**Effective Date:** 9-1-2011

**Application:**

**Statutes** CP 2.31

**Affected:**

**Subject:** County jailers

**Summary:** Adds CP 2.31 to allow a licensed jailer who has been specially trained, to execute all lawful process issued to the officer by any magistrate or court (CP 2.13), including:  
(1) a warrant under Chapter 15 (arrest under warrant), 17 (bail), or 18 (search warrants);  
(2) a capias under Chapter 17 or 23 (capias);  
(3) a subpoena under Chapter 20 (duties and powers of grand jury) or 24 (subpoena and attachment); or  
(4) an attachment under Chapter 20 or 24;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Currently, the only individuals authorized to serve or execute subpoenas, attachments, and warrants are peace officers. On occasion, it is necessary to serve or execute various types of process, writs, subpoenas, and attachments on individuals confined to a detention facility. For example, an inmate may be detained in jail when additional charges are brought against him or her. In such situations, the common practice is for a new warrant to be issued, which must be served on the inmate with its own bond set for the new, alleged offense. Presently, only deputies may execute these warrants. When service is required, it is necessary to call a deputy in from the field (or his or her area of patrol or primary duty) to perform the ministerial duty of serving or delivering the warrant on the inmate.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0653

**Effective Date:** 9-1-2011

**Caption:** relating to abolishing the Texas Youth Commission and the Texas Juvenile Probation Commission and transferring the powers and duties of those agencies to the newly created Texas Juvenile Justice Department and to the functions of the independent ombudsman that serves the department

**Application:**

**Statutes**

**Affected:**

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Originally established in 1949 as the Texas Youth Development Council, the Texas Youth Commission (TYC) is the State's juvenile corrections agency, supervising youth committed to state confinement by local courts and youth on parole. The Texas Juvenile Probation Commission (TJPC), established in 1981, ensures access to juvenile probation services statewide by supporting and overseeing the 165 juvenile probation departments that serve all 254 counties in Texas. The Office of Independent Ombudsman (OIO), created as part of juvenile justice reforms in 2007, is responsible for investigating, evaluating, and securing the rights of children committed to TYC.

The Sunset Commission considered these three agencies and concluded that the time had come to consolidate the juvenile justice agencies into a single, fiscally responsible agency to serve youthful offenders. Creating a single agency will further reforms underway at TYC, and continue the success of initiatives to divert youth from TYC and serve them in their communities. This legislation contains provisions to merge of the functions of TYC and TJPC into the new Texas Juvenile Justice Department.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

- Bill Number:** SB 0690      **Caption:** relating to the enforcement of a self-service storage facility lien; providing a penalty
- Effective Date:** 1-1-2012
- Application:** Applies only to a self-service storage facility rental agreement entered into, extended, or renewed on or after 1-1-2012
- Statutes Affected:** PP 59.001 et seq
- Subject:** Procedure for seizure and sale
- Summary:** Amends PP 59.042 to specify that the period for a tenant of a self-service storage facility to satisfy a claim for the payment of charges due and unpaid before the lessor publishes or posts notice of a sale to enforce a lien is on or before the 14th day after the date notice of the claim is delivered by the lessor to the tenant, rather than before the 15th day after the day the notice is delivered;
- Subject:** Contents and delivery of notice of claim; information regarding tenant's military service
- Summary:** Amends PP 59.043 to requires the lessor's notice of claim to include a statement requesting a tenant who is in military service to notify the lessor of the status of the tenant's current military service immediately; Allows notice to be given in person or by e-mail or verified mail to the tenant's last known e-mail or postal address; notice by verified mail is considered delivered when the notice, properly addressed with postage prepaid, is deposited with the US Postal Service or a common carrier; notice by e-mail is considered delivered when sent to the last known e-mail address of the tenant; Notice by e-mail requires a written rental agreement that contains conspicuous warning that notice may be given by e-mail if the tenant elects to provide an e-mail address;
- Subject:** Notice to owner and lienholder (for enforcement of a lien on a motor vehicle or motorboat, vessel, or outboard motor) for which there is a certificate of title or registration)
- Summary:** Adds PP 59.0445 to require a lessor, not later than the 30th day after the date the lessor takes possession of a motor vehicle or motorboat or vessel, for which a certificate of title is required, for purposes of enforcing a self-service storage facility lien, to give written notice of sale to the last known owner and lienholder by verified mail considered mailed when the notice, properly addressed with the postage prepaid, is deposited with the United States Postal Service or a common carrier; Notice must include the amount of charges, a request for payment, and a statement that if the charges are not paid in full before the 31st day after the date the notice is mailed or published, as applicable, the property may be sold at public auction; Authorizes notice to be given by publishing the notice once in a print or electronic version of a newspaper of general circulation in the county under certain circumstances in which the lessor cannot determine the identity or address of the owner or lienholder; Owner or lienholder, after notice may take possession of the motor vehicle, motorboat, vessel, or outboard motor by paying all charges due to the lessor before the 31st day after the date the notice is mailed or published; Lessor may sell the vehicle, motorboat, vessel, or outboard motor at a public sale and apply the proceeds to the charges if the charges are not paid before the 31st day after the date the notice is mailed or published, as applicable; Class B misdemeanor offense if a person knowingly provides false or misleading information in a notice;
- Comments:** Currently, self-service storage facilities hold a lien, similar to a lien in a landlord-tenant relationship, against the contents of a rented unit to secure payment of the rent. However, statutory provisions governing self-service storage liens are outdated. Among other issues, the law does not allow an operator or consumer to take advantage of modern notice methods. The law currently specifies certified mail as the method for sending lien notices. However, many people do not accept certified mail, making this requirement ineffective in many cases. Interested parties assert that amending the law to allow the use of verified mail or e-mail to ensure that more tenants are notified about the potential lien auction sale of their goods and given the opportunity to cure the debt has the potential to benefit all consumers. The parties note that this would also likely benefit deployed active duty military personnel in particular as they would be highly unlikely to receive certified mail.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0694                      **Caption:** relating to the regulation of metal recycling entities; providing penalties

**Effective Date:** 9-1-2011

**Application:** Applies only to an offense committed on or after 9-1-2011

**Statutes** PE 31.03

**Affected:**

**Subject:** Theft

**Summary:** Amends PE 31.03 to include brass among the metals stolen that will enhance the punishment for the theft to a state jail felony if the value of the property is less than \$20,000 and the property stolen is aluminum, bronze, copper, or brass;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Recent legislation was passed with bipartisan support in response to an epidemic rise in theft of metals such as copper, bronze, brass, and aluminum. Currently, there is a statewide electronic database wherein the sales of regulated metals and other regulated materials can be monitored by law enforcement to detect possible purchases of items obtained by unlawful means. While the number of metal recycling locations registering and reporting is increasing, the Department of Public Safety of the State of Texas estimates that there may be over 2,000 unspecified recycling entities operating in Texas.  
SB 0694 amends current law relating to the regulation of metal recycling entities and provides penalties.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0748

**Caption:** relating to business entities and associations

**Effective Date:** 9-1-2011

**Application:**

**Statutes** BO

**Affected:**

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** The Business Organizations Code codified provisions of prior law found in numerous acts, which were repealed several years after the code took effect to provide a transition period for the various business entities regulated under those acts. That transition to exclusive use of the Business Organizations Code has been largely achieved. However, additional issues persist, including the effect of references to prior law in governing documents that were filed or adopted before the code took effect.

In addition to transition issues, other technical amendments are needed to correct errors, clarify certain provisions, fill gaps in coverage, eliminate antiquated provisions, and conform the language of the code to the language of the source statutes in certain instances where the code's language unintentionally deviated.

A number of substantive changes also have been identified by State Bar of Texas drafting groups and the secretary of state as necessary to keep the code current and competitive with the business organizations laws of other states.

SB 0748 seeks to address these issues through clarifying, substantive amendments to the Business Organizations Code.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0766                      **Caption:** relating to the liability of a sport shooting range and the regulation of firearms, ammunition, firearm supplies, and sport shooting ranges

**Effective Date:** 9-1-2011

**Application:** applies only to a cause of action that accrues on or after 9-1-2011

**Statutes Affected:** CV 128.051 et seq

**Subject:** Limitation on civil action and recovery of damages

**Summary:** Adds CV Subchapter B (civil actions - sport shooting range); CV 128.051 et seq to prohibit a civil action against a sport shooting range, the owner or operator of a sport shooting range, or the owner or the real property on which a sport shooting range is operated for recovery of damages resulting from, or injunctive relief or abatement of a nuisance related to, the discharge of a firearm; Civil actions are allowed for (1) breach of contract for use of the real property, (2) damage or harm to private property caused by the discharge of firearms on a sport shooting range, (3) personal injury or death caused by the discharge of a firearm on a sport shooting range, or (4) injunctive relief to enforce a valid ordinance, statute, or regulation;

Requires an expert report to be served not later than the 90th day after the date the original petition was filed, with one extension of not more than 30 days if report is deficient; if not, the court, on motion, may enter an order awarding attorney's fees and costs, and dismiss the claim with prejudice;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0767      **Caption:** relating to the regulation of certain residential mortgage foreclosure consulting services; providing a criminal penalty

**Effective Date:** 9-1-2011

**Application:** Applies only to a contract entered into on or after 9-1-2011

**Statutes Affected:** BC 21.001 et seq

**Subject:** Regulation of certain residential foreclosure consulting services

**Summary:** Adds BC 21.001 et seq to regulate persons who make a solicitation, representation, or offer to a homeowner to perform for compensation, or who perform for compensation, a service that the person represents will do any of the following:

- (A) prevent or postpone a foreclosure sale;
- (B) obtain a forbearance from:
  - (i) a mortgagee;
  - (ii) a beneficiary of a deed of trust; or
  - (iii) another person who holds a lien secured by the residence in foreclosure;
- (C) assist the homeowner:
  - (i) to cure the default giving rise to the foreclosure action; or
  - (ii) to exercise the right of reinstatement of the homeowner's obligation secured by the residence in foreclosure;
- (D) obtain an extension of the period within which the homeowner may reinstate the homeowner's obligation secured by the residence in foreclosure;
- (E) obtain a waiver of an acceleration clause contained in a promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained in the deed of trust or mortgage;
- (F) assist the homeowner to obtain a loan or advance of funds to prevent foreclosure;
- (G) avoid or ameliorate the impairment of the homeowner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale;
- (H) save the homeowner's residence from foreclosure; or
- (I) assist the homeowner in obtaining excess proceeds from a foreclosure sale of the homeowner's residence;

Provides an exception for the following persons:

- (1) an attorney who performs those services in relation to the attorney's attorney-client relationship with a homeowner or the beneficiary of the lien being foreclosed;
- (2) a person that holds or is owed an obligation secured by a lien on a residence in foreclosure if the person performs those services in connection with the obligation or lien;
- (3) a mortgage servicer of an obligation secured by a lien on a residence in foreclosure if the servicer performs those services in connection with the obligation or lien;
- (4) a person that regulates banks, trust companies, savings and loan associations, credit unions, or insurance companies if the person performs those services as part of the person's normal business activities, or an affiliate;
- (5) a judgment creditor of the homeowner of the residence in foreclosure;
- (7) a licensed title insurer, title insurance agent, or escrow officer if the person is performing those services in conjunction with title insurance or settlement services;
- (8) a licensed real estate broker or real estate salesperson;
- (9) a person licensed or registered as a mortgage broker;
- (10) a person licensed or registered as a mortgage banker;
- (11) a nonprofit organization that provides solely counseling or advice to homeowners who have a residence in foreclosure ;
- (12) a depository institution subject to regulation or supervision by a state or federal regulatory agency or an affiliate;

**Subject:** Contract for Services

**Summary:** Adds BC 21.051 et seq to specify that a contract for purchase of services of a foreclosure consultant be in writing, dated, and signed by each homeowner;  
Specifies that a foreclosure consultant must provide the homeowner with certain notices prior to entering into a contract;  
Specifies that a foreclosure consultant may not:

- (1) charge or receive compensation until the foreclosure consultant has fully performed unless the foreclosure consultant has obtained a surety bond or established and maintained a surety account for each location at which the foreclosure consultant conducts business;
- (2) receive any consideration from a third party in connection with foreclosure consulting services provided to the homeowner unless the consideration is fully disclosed in writing to the homeowner;



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

Prohibits a foreclosure consultant from:

- (1) taking any power of attorney from a homeowner for any purpose other than to inspect documents;
- (2) for purposes of securing payment of compensation, acquiring an interest, directly or indirectly, in the real or personal property of the homeowner; or
- (3) taking an assignment of wages to secure payment of compensation;

Requires the foreclosure consultant to keep records and retain the records for 3 years;

**Subject:** Enforcement

**Summary:** Adds BC 21.151 to create an offense if a person violates the regulations relating to certain residential foreclosure consulting services;  
Class C misdemeanor;

**Comments:** S.B. 767 seeks to provide safeguards for consumers seeking foreclosure consulting services. Currently, there is no formal training required for foreclosure consultants. These safeguards such as defining appropriate contract language, disclosures, operating procedures, and violation penalties would protect consumers. Due to the continuation of a higher number of foreclosures, this bill would benefit those consumers seeking assistance.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0782                      **Caption:** relating to uniform law on secured transactions

**Effective Date:** 7-1-2013

**Application:**

**Statutes** BC 9.102 et seq

**Affected:** BC 501.001 et seq

**Subject:** Secured transactions

**Summary:** Amends various sections of BC Chapter 9 relating to secured transactions

**Subject:** Identifying information

**Summary:** Repeals BC Chapter 11 relating to identifying information, confidentiality of social security numbers, driver's license numbers, and certain financial information.

**Subject:**

**Summary:**

**Comments:** Article 9 (Secured Transaction), in the Texas Business and Commerce Code, is the body of law that controls secured transactions. Secured transactions include security agreements for real and personal property and related agreements between creditors and debtors.  
A revised version of Article 9 of the Texas Uniform Commercial Code (UCC) took effect in 2001. Since the time of its original drafting, a number of provisions within UCC have proven cumbersome or problematic. This bill revises the UCC to address many of these outdated provisions.  
The revisions to Article 9, UCC, included in this bill have been approved and recommended for enactment by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Oklahoma, Minnesota, Missouri, and Nevada have either introduced legislation or evidenced intent to adopt these changes.  
The majority of the changes made by SB 0782 are for clarification or updates necessary due to advances in technology or business practices.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0877      **Caption:** relating to a verification of the incarceration of an accused person in a criminal case for the purpose of discharging a surety's liability on a bail bond

**Effective Date:** 5-19-2011

**Application:** Applies only to a bail bond that is executed on or after 5-19-2011

**Statutes Affected:** CP 17.16

**Subject:** Discharge of liability; surrender or incarceration of principal before forfeiture; verification of incarceration

**Summary:** Amends CP 17.16 to provide that a surety, before forfeiture, may relieve the undertaking by (1) surrendering the accused into the custody of the sheriff, or (2) delivering to the sheriff and to the prosecuting attorney an affidavit stating that the accused is incarcerated in federal, state, or Texas county custody; Requires the sheriff to verify the incarceration, and if true, immediately notify the magistrate before whom the prosecution is pending; the sheriff must place a detainer against the accused with the jurisdiction in which the accused is incarcerated; the magistrate must direct the clerk to issue a capias, unless a warrant has been issued for the accused's arrest and remains outstanding, or the issuance of the capias would be unnecessary; Surety's liability is discharged on verification of the incarceration; The affidavit and verification must be (1) filed in the court in which the case is pending, and (2) delivered to the prosecuting attorney; Surety remains liable for reasonable expenses in returning the accused into custody of sheriff where prosecution is pending;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** As amended:  
CP 17.16. Discharge of liability; surrender or incarceration of principal before forfeiture; verification of incarceration

(a) A surety may before forfeiture relieve the surety of the surety's undertaking by:

(1) surrendering the accused into the custody of the sheriff of the county where the prosecution is pending; or

(2) delivering to the sheriff of the county in which the prosecution is pending and to the office of the prosecuting attorney an affidavit stating that the accused is incarcerated in federal custody, in the custody of any state, or in any county of this state.

(b) On receipt of an affidavit described by Subsection (a)(2), the sheriff of the county in which the prosecution is pending shall verify whether the accused is incarcerated as stated in the affidavit. If the sheriff verifies the statement in the affidavit, the sheriff shall notify the magistrate before which the prosecution is pending of the verification.

(c) On a verification described by this article, the sheriff shall place a detainer against the accused with the appropriate officials in the jurisdiction in which the accused is incarcerated. On receipt of notice of a verification described by this article, the magistrate before which the prosecution is pending shall direct the clerk of the court to issue a capias for the arrest of the accused, except as provided by Subsection (d).

(d) A capias for the arrest of the accused is not required if:

(1) a warrant has been issued for the accused's arrest and remains outstanding; or

(2) the issuance of a capias would otherwise be unnecessary for the purpose of taking the accused into custody.

(e) For the purposes of Subsection (a)(2) of this article, the bond is discharged and the surety is absolved of liability on the bond on the verification of the incarceration of the accused.

(f) An affidavit described by Subsection (a)(2) and the documentation of any verification obtained under Subsection (b) must be:

(1) filed in the court record of the underlying criminal case in the court in which the prosecution is pending or, if the court record does not exist, in a general file maintained by the clerk of the court; and

(2) delivered to the office of the prosecuting attorney.

(g) A surety is liable for all reasonable and necessary expenses incurred in returning the accused into the custody of the sheriff of the county in which the prosecution is pending.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0880      **Caption:** relating to the operation of pretrial intervention and certain other programs by a community supervision and corrections department

**Effective Date:** 9-1-2011

**Application:** Applies to a person who participates in a program operated by, or receives services from, a community supervision and corrections department in any month the first day of which occurs on or after 9-1-2011

**Statutes Affected:** GV 76.011 et seq

**Subject:** Operation of certain services and programs

**Summary:** Amends GV 76.011 to authorize a community supervision and corrections department (CSCD) to operate programs for:  
(1) the supervision and rehabilitation of persons in pretrial intervention programs;  
(2) the supervision of persons released on bail under CP Chapter 11 (Habeas corpus), CP Chapter 17 (Bail), CP 44.04 (Bond pending appeal), or any other law;  
(3) the supervision of a person subject to, or the verification of compliance with, a court order issued under:  
(A) CP 17.441 (Conditions for requiring motor vehicle ignition interlock), requiring a person to install a deep-lung breath analysis mechanism on each vehicle owned or operated by the person;  
(B) HS Chapter 469 (Drug Court Programs), issuing an occupational driver's license;  
(C) PE 49.09 (relating to court ordered installation of deep-lung breath analysis mechanisms), requiring a person to install a deep-lung breath analysis mechanism on each vehicle owned or operated by the person; or  
(D) TN Chapter 521 (Occupational license), granting a person an occupational driver's license; and  
(4) the supervision of a person if a court orders the person to submit to the supervision of, or to receive services from, the CSCD;

**Subject:** Administrative fee

**Summary:** Amends GV 76.015 to allow a CSCD to assess a reasonable administrative fee of not less than \$25 and not more than \$60 (rather than \$40) per month on an individual who participates in a program operated by the CSCD or who receives services from a CSCD;

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0882                      **Caption:** relating to the filing of a copy of certain records related to the release of accused persons on personal bond

**Effective Date:** 6-17-2011

**Application:** Applies only to a record made on or after 6-17-2011

**Statutes Affected:** CP 17.42

**Subject:** Personal bond office

**Summary:** Amends CP 17.42 to require a personal bond pretrial release office to file (rather than post) a copy of the record of accused persons released by a court on personal bond with the county clerk on a monthly basis;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** CP Chapter 17 (Bail) authorizes counties to create personal bond pretrial release offices to give judges another tool to utilize for the purpose of releasing individuals from jail. To provide oversight for these officers, CP 17.42 (Personal Bond Office) requires certain monthly reports to be posted in the county clerk's office. The purpose of this bill is to provide more clear direction to the counties that the monthly reports should be filed with the county clerk's office. This change is meant to ensure that the reports are maintained over time to provide for review and greater oversight by the county commissioner's court.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0886

**Caption:** relating to the execution docket and other records of certain court clerks

**Effective Date:** 9-1-2011

**Application:**

**Statutes** CV 30.018

**Affected:**

**Subject:** Court clerk's execution docket

**Summary:** Adds CV 30.018 to allow a clerk of a court who is required to enter information into an execution docket under the Texas Rules of Civil Procedure or other law to enter and maintain the information in an electronic format that allows the information to be retrieved on the same basis as information would be retrieved manually using an index or cross-index to the docket that is otherwise required by law;  
Prohibits the supreme court from amending or adopting rules in conflict with this provision;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0889      **Caption:** relating to assignment of rents to holders of certain security interests in real property

**Effective Date:** 6-17-2011

**Application:** PP Chapter 64 applies to an assignment of rents, the perfection and priority of security interest in rents, and the attachment and perfection of a security interest in proceeds regardless of whether the document creating the assignment of rents was signed and delivered before 6-17-2011

**Statutes Affected:** PP 64.001 et seq

**Subject:** Assignment of rents to lienholder  
Manner of providing notice

**Summary:** Adds PP 64.002 to require notice to a tenant of an assignment of rent to be sent to (1) an address provided in a signed document entered into by the tenant and the person providing the notice, unless a more recent address has been given, (2) the address provided in a written agreement between the tenant and the assignor, or (3) the tenant's address at the real property covered by the security agreement; notice is considered received on the earliest of: (1) the date the notice is received; (2) the 5th day after the date the notice is mailed, or (3) the date on which the notice is considered provided in accordance with an agreement;

**Subject:** Security instrument creates assignment of rents; assignment of rents creates security interest

**Summary:** Adds 64.051 to provide an enforceable security instrument creates an assignment of rents, unless the security agreement provides otherwise, or the security instrument is governed by the Texas Constitution art. XVI, Sec. 50(a)(6) homestead equity, (7) a reverse mortgage, or (8) the conversion and refinance of a personal property lien secured by a manufactured home to a lien on real property;  
An assignment of rents creates a presently effective security interest in all accrued and unaccrued rents arising from the real property described in the document creating the assignment, regardless of whether the document is in the form of an absolute assignment, an absolute assignment conditioned on default or another event, an assignment as additional security, or any other form.  
An assignment of rents does not reduce the secured obligation except to the extent the assignee collects rents and applies, or is obligated to apply, the collected rents to payment of the secured obligation;  
The assignment may be recorded and recording perfects the security interest in rents;

**Subject:** Enforcement by notice to tenant

**Summary:** Adds PP 64.055 to provide that after default, or as otherwise agreed, the assignee may give a tenant notice demanding that tenant pay assignee all unpaid accrued rents and all unaccrued rents as they accrue;  
After notice, the tenant is obligated to pay the assignee all rents;  
Unless the tenant occupies the premises as the tenant's primary residence, the tenant is not discharged from the obligation to pay rent to the assignee if the tenant pays rent to the assignor;  
Tenant's obligation to pay rent to the assignee continues until tenant receives (1) a court order, (2) a signed notice that a perfected security instrument that has priority has been foreclosed, (3) or a signed document from assignee canceling the assignee's notice;  
Form of notice is specified;

**Comments:** In a commercial lease transaction, a lender will obtain a security interest in both the property being purchased and the rents and other proceeds that the property may generate. Such an interest, known as a collateral assignment of rents, provides a lender only a security interest in those proceeds.  
A Texas Supreme Court case in the early 1980s complicated this process by holding that a lender does not have a perfected security interest in a property's proceeds until the lender takes some proactive action to collect those proceeds directly from the property tenant following a default by the borrower. As a result of this holding, a lender's security interest may become subordinate to another party's security interest if that other party is able to perfect its lien before the lender perfects its security interest.  
To resolve this issue, lenders have for decades required parties to a commercial real estate loan to execute an absolute assignment of rents, which states that a lender owns all proceeds from the subject property and will allow the property owner to use those rents until a default occurs. However, the use of absolute assignment of rents agreements has caused a separate problem for lenders. In some bankruptcy cases, it has been argued that rents collected and kept by the property owner should be credited against the owner's debt to the lender, even if the lender did not actually receive those funds, an argument based on the fact that the lender owns all proceeds paid on the property, regardless of whether any of those funds are actually applied against the debt. While Texas law does not adequately address the perfection of a lien on rents, the Uniform Assignment of Rents Act developed by the National Conference of Commissioners on Uniform State Laws serves as a basis for enacting corresponding law in Texas. S.B. 889 seeks to adopt a version of the national model legislation that conforms to Texas law, clarify the process for perfecting a lien on rent proceeds from property subject to a lien,

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

and exempt residential estates so as not to put an unnecessary burden on homeowners and residential tenants.



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0893                      **Caption:** relating to motor fuel quality and testing

**Effective Date:** 9-1-2011

**Application:** Applies only to an offense or other violation under AG Chapter 17 committed on or after 9-1-2011

**Statutes** AG 17.052  
**Affected:** AG 17.053  
AG 17.054  
AG 17.055

**Subject:** Sale and delivery of motor fuel

**Summary:** Amends the following sections which affect the elements of the offenses identified in AG §17.154:  
AG § 17.052. Documentation of motor fuel mixture sales  
AG § 17.053. Record of delivery documents; inspection authorized  
AG §17.054. Relating to posting or certification of automotive fuel ratings

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** SB 893 amends the Agriculture Code to remove, in the prohibition against a distributor, supplier, wholesaler, or jobber of motor fuel delivering a motor fuel mixture that contains ethanol or methanol to an outlet in Texas unless the person also delivers certain other items to the outlet receiving the delivery, the condition that the person also deliver signs stating that the motor fuel mixture contains ethanol or methanol in a number sufficient for the dealer receiving the mixture to comply with certain notification requirements. The bill requires each motor fuel dealer to keep a copy of each manifest, bill of sale, bill of lading, or other document evidencing delivery of a fuel mixture until the fourth anniversary, rather than the first anniversary, of the delivery date. The bill removes the requirement that a motor fuel dealer, during the first 60 days following delivery of a motor fuel mixture, keep a copy at the station or retail outlet to which the mixture was delivered of any document evidencing delivery of the mixture. The bill removes the specification that the copies of documents each distributor, supplier, wholesaler, and jobber of motor fuel is required to keep be kept at the person's principal place of business and requires those documents to be kept until the fourth anniversary, rather than the first anniversary, of the delivery date. The bill also requires a dealer, distributor, supplier, wholesaler, or jobber of motor fuel, on written notice presented by the commissioner of agriculture or an authorized representative of the commissioner to any employee at a dealer's station or retail outlet or mailed to the principal place of business of a dealer, distributor, supplier, wholesaler, or jobber, to provide the commissioner or authorized representative with the documents evidencing the delivery of a mixture within the period specified in the notice. The bill authorizes the commissioner by rule to require each dealer, distributor, supplier, wholesaler, and jobber to maintain and make available to the Department of Agriculture (TDA) certain documents and records relating to the purchase, sale, delivery, or distribution of motor fuel by those parties. The bill expands the provision authorizing the commissioner by rule to prescribe the manner of filing certain documents to make that provision applicable to documents and records that are required to be kept by department rule. The bill requires a dealer, on written notice presented by the commissioner or an authorized representative of the commissioner to any employee at the dealer's station or retail outlet or mailed to the dealer's principal place of business, to provide the commissioner or authorized representative with documents relating to the posting or certification of automotive fuel ratings within the period specified in the notice. The bill authorizes the commissioner by rule to require each dealer to maintain and make available to the TDA certain documents and records relating to the purchase, sale, delivery, or distribution of motor fuel by the dealer. The bill authorizes the commissioner by rule to prescribe the manner of filing documents or records required to be kept under provisions of law or by department rule and the time, place, and manner of inspection of those documents or records.

**Offenses:**  
Sale and Regulation of Certain Fuel Mixtures  
AG § 17.154. Criminal Offenses  
(a) A person commits an offense if the person knowingly violates Section 17.051, 17.052, 17.053, 17.054, or 17.055 or a rule adopted by the commissioner to enforce or implement those sections.  
...  
(c) An offense under Subsection (a) is a Class C misdemeanor.  
(e) The commissioner or the authorized representative of the commissioner may request the appropriate prosecuting attorney to prosecute a violation of this chapter.

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

**Bill Number:** SB 0896

**Caption:** relating to the issuance of specialty license plates to certain family members of a person who dies while serving in the United States armed forces

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 504.408

**Affected:**

**Subject:** Gold star mother, father, spouse, or family member

**Summary:** Amends TN 504.408 to allow the issuance of a specialty license plate for the mother, father, or surviving spouse or an immediate family member of a person who died while serving in the armed forces; the license plates will include the words "Gold Star Mother," "Gold Star Father," "Gold Star Spouse," or "Gold Star Family Member."

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 0934      **Caption:** relating to the enforcement of tax laws; providing a criminal penalty

**Effective Date:** 9-1-2011

**Application:** Applies only to an offense committed on or after 9-1-2011

**Statutes Affected:** TX 111.00452

**Subject:** Employment of investigators

**Summary:** Adds TX 111.00452 to allow investigators employed by the Comptroller to investigate any criminal offense under the Tax Code, or any criminal offense under other law that relates to a tax, fee, penalty, or charge administered, collected or enforced by the Comptroller;  
An investigator commissioned by the Comptroller as a peace officer has powers of a peace officer coextensive with the boundaries of the State;

**Subject:** Failure to pay taxes collected; criminal penalty and aggregation of amounts involved

**Summary:** Amends TX 151.7032 to change the punishment for intentionally or knowingly failing to pay sales, excise, or use taxes collected;  
  
Class C misdemeanor if the amount of the tax collected and not paid is less than \$50 rather than \$10,000;  
When tax is collected and not paid pursuant to a scheme or continuous course of conduct, the conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense;

**Subject:** Failure to produce certain records after using resale certificate; criminal penalty

**Summary:** Adds TX 151.7075 to define an offense if a person intentionally fails to produce to the Comptroller records documenting a taxpayer's taxable sale of items that the taxpayer obtained using a resale certificate; an offense is a Class C misdemeanor if the tax avoided by the use of the resale certificate is less than \$20;

**Comments:** The comptroller of public accounts is authorized to employ investigators to assist in the enforcement and administration of the Tax Code, primarily by detecting and investigating crimes defined in that code. SB 0934 seeks to maximize the efficiency of the comptroller's criminal investigation efforts and increase deterrence of tax fraud.  
The bill also reduces from less than \$10,000 to less than \$50 the maximum amount of the tax collected and not paid that makes an offense of failure to pay a collected tax a Class C misdemeanor and reduces from \$10,000 to \$1,500 the minimum amount of the tax collected and not paid that makes such an offense a state jail felony. The bill makes it a Class B misdemeanor if the amount of the tax collected and not paid is \$50 or more but less than \$500; a Class A misdemeanor if the amount of the tax collected and not paid is \$500 or more but less than \$1,500; and a first degree felony if the amount of the tax collected and not paid is \$200,000 or more.  
The bill makes it an offense to intentionally fail to produce to the comptroller records required to be kept and requested by the comptroller in an investigation or audit in certain periods that document a taxpayer's taxable sale of beer, wine, malt liquor, cigarettes, cigars, and tobacco products that the taxpayer obtained using a resale certificate. The bill establishes specified penalties for the offense ranging from a Class C misdemeanor to a second degree felony depending on the amount of the tax avoided by the use of the resale certificate. The bill establishes as an affirmative defense to prosecution that the items listed for purchase on the resale certificate had not been resold at the time of the comptroller's request for records in an investigation or audit. The bill authorizes conduct under which comptroller records are not produced related to one scheme or continuous course of conduct to be considered as one offense and the amounts of tax avoided by the use of a resale certificate to be aggregated in determining the grade of the offense.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1024      **Caption:** relating to the prosecution of the offense of theft of service

**Effective Date:** 9-1-2011

**Application:** Applies only to an offense committed on or after 9-1-2011

**Statutes Affected:** PE 31.04

**Subject:** Theft of service

**Summary:** Amends PE 31.04 as to the actor securing the performance of a service by agreeing to provide compensation, and then failing to make full payment after receiving notice demanding payment; Provides that the partial payment of wages alone is not sufficient evidence to negate the actor's intent to avoid payment for a service;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Theft of wages occurs when employers fail to pay workers their promised wages. This is a frequent occurrence in Texas. In certain industries, such as construction, 1 in every 5 workers experiences wage theft. In addition, 50 percent of day laborers have experienced wage theft.

SB 1024 addresses instances when workers receive periodic or partial payment of wages. The bill also amends current law to maintain that a person commits theft of service if, with intent to avoid payment, that person fails to make full payment after receiving notice demanding payment if the compensation was to be paid periodically. The intent to avoid payment for a service may be formed at any time during or before a pay period, and the partial payment of wages alone is not sufficient evidence to negate the actor's intent to avoid payment for a service.

As amended:

PE § 31.04. Theft of Service

(a) A person commits theft of service if, with intent to avoid payment for service that the actor knows is provided only for compensation:

- (1) the actor intentionally or knowingly secures performance of the service by deception, threat, or false token;
- (2) having control over the disposition of services of another to which the actor is not entitled, the actor intentionally or knowingly diverts the other's services to the actor's own benefit or to the benefit of another not entitled to them;
- (3) having control of personal property under a written rental agreement, the actor holds the property beyond the expiration of the rental period without the effective consent of the owner of the property, thereby depriving the owner of the property of its use in further rentals; or
- (4) the actor intentionally or knowingly secures the performance of the service by agreeing to provide compensation and, after the service is rendered, fails to make full payment after receiving notice demanding payment.

(b) For purposes of this section, intent to avoid payment is presumed if:

- (1) the actor absconded without paying for the service or expressly refused to pay for the service in circumstances where payment is ordinarily made immediately upon rendering of the service, as in hotels, campgrounds, recreational vehicle parks, restaurants, and comparable establishments;
  - (2) the actor failed to make payment under a service agreement within 10 days after receiving notice demanding payment;
  - (3) the actor returns property held under a rental agreement after the expiration of the rental agreement and fails to pay the applicable rental charge for the property within 10 days after the date on which the actor received notice demanding payment; or
  - (4) the actor failed to return the property held under a rental agreement:
    - (A) within five days after receiving notice demanding return, if the property is valued at less than \$1,500; or
    - (B) within three days after receiving notice demanding return, if the property is valued at \$1,500 or more.
- (c) For purposes of Subsections (a)(4), (b)(2), and (b)(4), notice shall be notice in writing, sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested, and addressed to the actor at his address shown on the rental agreement or service agreement.
- (d) If written notice is given in accordance with Subsection (c), it is presumed that the notice was received no later than five days after it was sent.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

(d-1) For purposes of Subsection (a)(4):

(1) if the compensation is or was to be paid on a periodic basis, the intent to avoid payment for a service may be formed at any time during or before a pay period; and

(2) the partial payment of wages alone is not sufficient evidence to negate the actor's intent to avoid payment for a service.

(e) An offense under this section is:

(1) a Class C misdemeanor if the value of the service stolen is less than \$20;

(2) a Class B misdemeanor if the value of the service stolen is \$20 or more but less than \$500;

(3) a Class A misdemeanor if the value of the service stolen is \$500 or more but less than \$1,500;

(4) a state jail felony if the value of the service stolen is \$1,500 or more but less than \$20,000;

(5) a felony of the third degree if the value of the service stolen is \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the value of the service stolen is \$100,000 or more but less than \$200,000;

or

(7) a felony of the first degree if the value of the service stolen is \$200,000 or more.

(f) Notwithstanding any other provision of this code, any police or other report of stolen vehicles by a political subdivision of this state shall include on the report any rental vehicles whose renters have been shown to such reporting agency to be in violation of Subsection (b)(2) and shall indicate that the renting agency has complied with the notice requirements demanding return as provided in this section.

(g) It is a defense to prosecution under this section that:

(1) the defendant secured the performance of the service by giving a post-dated check or similar sight order to the person performing the service; and

(2) the person performing the service or any other person presented the check or sight order for payment before the date on the check or sight order.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1057                      **Caption:** relating to the transfer of certain vehicle registrations at the time of sale of the vehicle

**Effective Date:** 9-1-2011

**Application:**

**Statutes Affected:** TN 502.451

**Subject:** Transfer of vehicle registration and removal of license plates

**Summary:** Amends TN 502.451 to provide that on transfer of a vehicle to a dealer who holds a general distinguishing number, the dealer must remove each license plate and the registration insignia issued for the vehicle, with the registration period remaining at the time of sale or transfer to expire at that time;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** SB 1057 simplifies the process for registering used vehicles. The bill terminates the registration period remaining on the motor vehicle at the time of sale or transfer to the dealer and requires the dealer to register the vehicle for an entire registration year when the vehicle is subsequently resold. As a result, the dealer is not required to calculate a registration period and the new owner obtains a full year on the vehicle registration. SB 1057 does not change current law as it applies to private-party transactions in which neither party holds a general distinguishing number issued under TN Chapter 503 (Dealer's and manufacturers vehicle license plates).

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1094                      **Caption:** relating to the availability of online testing for high school equivalency examinations

**Effective Date:** 6-17-2011

**Application:** Applies beginning with the 2011-2012 school year

**Statutes Affected:** ED 7.111

**Subject:** High school equivalency examination

**Summary:** Amends ED 7.111 to require the State Board of Education to provide for the administration of high school equivalency examinations online, to include a procedure for the verification of the identity of the person taking the examination; and prohibiting a person under 18 years of age from taking the examination online;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Interested parties assert that requiring a high school equivalency examination to be taken at an official testing center places a burden on working Texans who may find it difficult to find time to travel to and take the test at a testing center. SB 1094 requires the State Board of Education to develop rules and procedures relating to the availability of online testing for high school equivalency examinations.



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1106      **Caption:** relating to the exchange of confidential information concerning certain juveniles

**Effective Date:** 6-17-2011

**Application:**

**Statutes** ED 37.084  
**Affected:** FA 58.0051 et seq  
FA 58.106

**Subject:** Interagency sharing of records

**Summary:** Amends ED 37.084 to require, rather than authorize, a school district superintendent or the superintendent's designee to disclose information contained in a student's educational records to a juvenile service provider rather than to a justice agency, if the disclosure is under an interagency agreement authorized by FA 58.0051;

Amends FA 58.106 to give a county, justice, or municipal court access to information contained in the juvenile justice information system;

**Subject:** Interagency sharing of educational records

**Summary:** Amends 58.001 to require an ISD or charter school, at the request of a juvenile service provider, to disclose confidential information contained in the student's educational records if the student has been (1) taken into custody under FA 52.01, or (2) referred to a juvenile court for allegedly delinquent conduct or CINS; disclosed records cannot be destroyed by the ISD or charter school until the 7th anniversary of the date the information is disclosed;

Juvenile service provider obtaining confidential information must certify in writing that the provider has agreed not to disclose the information to a third party, other than another juvenile service provider, and must use the information only to verify the identity of a student and provide delinquency prevention or treatment services to the student;

A juvenile service provider must pay the same fee as charged for providing public information;

**Subject:** Interagency sharing of noneducational records

**Summary:** Amends 58.0052 to require a juvenile service provider disclose to another juvenile service provider a multi-system youth's personal health information or a history of governmental services provided including (1) identity, (2) medical records, (3) assessment results, (4) special needs, (5) program placements, and (6) psychological diagnoses, but only for the purpose of identifying a multi-system youth, coordinating and monitoring care, and improving the quality of juvenile services provided to the youth;

A juvenile service provider must pay the same fee as charged for providing public information;

Provides that this section controls over conflicting laws;

**Comments:** Definitions:

"Educational records" means records in the possession of a primary or secondary educational institution that contain information relating to a student, including information relating to the student's:

- (A) identity;
- (B) special needs;
- (C) educational accommodations;
- (D) assessment or diagnostic test results;
- (E) attendance records;
- (F) disciplinary records;
- (G) medical records; and
- (H) psychological diagnoses.

"Juvenile service provider" means a governmental entity that provides juvenile justice or prevention, medical, educational, or other support services to a juvenile. The term includes:

- (A) a state or local juvenile justice agency as defined by Section 58.101 ("Juvenile justice agency" means an agency that has custody or control over juvenile offenders);
- (B) health and human services agencies, as defined by Section 531.001, Government Code, and the Health and Human Services Commission ("Health and human services agencies" includes the: (A) Department of Aging and Disability Services; (B) Department of State Health Services; (C) Department of Assistive and Rehabilitative Services; and (D) Department of Family and Protective Services);
- (C) the Department of Public Safety;
- (D) the Texas Education Agency;
- (E) an independent school district;

## SUMMARIES -- 82nd LEGISLATURE -- 2011

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

- (F) a juvenile justice alternative education program;
- (G) a charter school;
- (H) a local mental health or mental retardation authority;
- (I) a court with jurisdiction over juveniles;
- (J) a district attorney's office;
- (K) a county attorney's office; and
- (L) a children's advocacy center established under Section 264.402.

"Student" means a person who:

- (A) is registered or in attendance at a primary or secondary educational institution; and
- (B) is younger than 18 years of age.

"Multi-system youth" means a person who:

- (A) is younger than 19 years of age; and
- (B) has received services from two or more juvenile service providers.

"Personal health information" means personally identifiable information regarding a multi-system youth's physical or mental health or the provision of or payment for health care services, including case management services, to a multi-system youth. The term does not include clinical psychological notes or substance abuse treatment information.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1160      **Caption:** relating to the liability of landowners for damage or injury, including liability for harm to a trespasser

**Effective Date:** 5-20-2011

**Application:** Applies only to a cause of action that accrues on or after 5-20-2011

**Statutes Affected:** CV 75.007

**Subject:** Trespassers

**Summary:** Adds CV 75.007 to provide that an owner, lessee, or occupant of land does not owe a duty of care to a trespasser on the land and is not liable for any injury to a trespasser on the land, except that an owner, lessee, or occupant owes a duty to refrain from injuring a trespasser willfully, wantonly, or through gross negligence; An owner may be liable for injury to a child caused by a highly dangerous artificial condition on the land if:

- (1) the place where the artificial condition exists is one upon which the owner, lessee, or occupant knew or reasonably should have known that children were likely to trespass;
- (2) the artificial condition is one that the owner, lessee, or occupant knew or reasonably should have known existed, and that the owner, lessee, or occupant realized or should have realized involved an unreasonable risk of death or serious bodily harm to such children;
- (3) the injured child, because of the child's youth, did not discover the condition or realize the risk involved in intermeddling with the condition or coming within the area made dangerous by the condition;
- (4) the utility to the owner, lessee, or occupant of maintaining the artificial condition and the burden of eliminating the danger were slight as compared with the risk to the child involved; and
- (5) the owner, lessee, or occupant failed to exercise reasonable care to eliminate the danger or otherwise protect the child;

An owner, lessee, or occupant of land whose actions are justified under the provisions relating to protection of persons or property in Chapter 9 of the Penal Code, is not liable to a trespasser for damages arising from those actions;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Texas has long maintained clear and sound rules regarding the liability of land possessors to those who trespass on their property. In Texas and most other states, land possessors generally owe no duty of care to trespassers and are not liable for their injuries. These rules have existed for decades, usually as part of the common (court-made) law, but also sometimes in the statutory law. The rules are based on the principle that land possessors are entitled to the free enjoyment of their land. The American Law Institute's (ALI) latest Restatement Third of Torts recommends that courts impose a broad new duty on land possessors to exercise reasonable care for all entrants on their land, including unwanted trespassers. The only exception to the proposed new duty rule would be for harms to so-called "flagrant trespassers," a term that is not defined in the Restatement and does not exist in any state's tort law. Instead of following the historical common law approach found in Texas, and providing that land possessors generally owe no duty to trespassers (subject to narrow exceptions), the new Restatement imposes liability on land possessors for harm to any entrant except the flagrant trespasser. The new Restatement does not have the force of law by itself, but courts often look to ALI Restatements when developing legal rules. The ALI is highly influential with courts because the ALI is perceived to be objective and is composed of the nation's top-echelon judges, law professors, and practitioners. There are numerous examples where the Supreme Court of Texas has adopted or relied upon provisions of ALI Restatements for authority in reaching its decisions. SB 1160 would freeze current common law in Texas, with the current exceptions, and preempt courts from adopting the new Restatement and subjecting land possessors to broad new liability.

CV § 75.002. Liability Limited

...

(c) If an owner, lessee, or occupant of real property other than agricultural land gives permission to another to enter the premises for recreation, the owner, lessee, or occupant, by giving the permission, does not:

- (1) assure that the premises are safe for that purpose;

SB 1160

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

- (2) owe to the person to whom permission is granted a greater degree of care than is owed to a trespasser on the premises; or
- (3) assume responsibility or incur liability for any injury to any individual or property caused by any act of the person to whom permission is granted.
- (d) Subsections (a), (b), and (c) shall not limit the liability of an owner, lessee, or occupant of real property who has been grossly negligent or has acted with malicious intent or in bad faith.
- (e) In this section, "recreation" means, in addition to its meaning under Section 75.001, the following activities only if the activities take place on premises owned, operated, or maintained by a governmental unit for the purposes of those activities:
- (1) hockey and in-line hockey;
  - (2) skating, in-line skating, roller-skating, skateboarding, and roller-blading;
  - (3) soap box derby use; and
  - (4) paintball use.
- (f) Notwithstanding Subsections (b) and (c), if a person enters premises owned, operated, or maintained by a governmental unit and engages in recreation on those premises, the governmental unit does not owe to the person a greater degree of care than is owed to a trespasser on the premises.
- (g) Any premises a governmental unit owns, operates, or maintains and on which the recreational activities described in Subsections (e)(1)-(4) are conducted shall post and maintain a clearly readable sign in a clearly visible location on or near the premises. The sign shall contain the following warning language:  
TEXAS LAW (CHAPTER 75, CIVIL PRACTICE AND REMEDIES CODE) LIMITS THE LIABILITY OF A  
GOVERNMENTAL UNIT FOR DAMAGES ARISING DIRECTLY FROM HOCKEY, IN-LINE HOCKEY, SKATING,  
IN-LINE SKATING, ROLLER-SKATING, SKATEBOARDING, ROLLER-BLADING, PAINTBALL USE, OR SOAP  
BOX DERBY USE ON PREMISES THAT THE GOVERNMENTAL UNIT OWNS, OPERATES, OR MAINTAINS  
FOR THAT PURPOSE.  
WARNING
- (h) An owner, lessee, or occupant of real property in this state is liable for trespass as a result of migration or transport of any air contaminant, as defined in Section 382.003(2), Health and Safety Code, other than odor, only upon a showing of actual and substantial damages by a plaintiff in a civil action.
- (i) Subsections (b) and (c) do not affect any liability of an owner, lessee, or occupant of real property for an injury occurring outside the boundaries of the real property caused by an activity described by Section 75.001(3)(P) that originates within the boundaries of the real property.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1169

**Caption:** relating to the regulation of providers, administrators, and sellers of service contracts and identity recovery service contracts; providing penalties

**Effective Date:** 9-1-2011

**Application:**

**Statutes** OC 1306.1081

**Affected:** OC 1306.155

**Subject:** Cancellation by identity recovery service contract holder; refund

**Summary:** Adds OC 1306.1081 to require that an identity recovery service contract allow the contract holder to cancel the contract at any time;  
If the contract is cancelled before the 31st day after the date of purchase, the provider must refund the full purchase price decreased by any claims paid under the contract, and may not impose a cancellation fee;  
If the contract is cancelled after the 31st day after the date of purchase, the provider must refund the prorated purchase price, decreased by any claims paid under the contract, and may impose a reasonable cancellation fee not to exceed \$50;  
Other cancellation terms may be included if same are not in conflict;  
A provider who does not pay the refund before the 46th day after the date notice of cancellation is received is liable to the contract holder for a penalty for each month an amount remains outstanding equal to 10% of the amount outstanding; penalty is in addition to the full or prorated purchase price;

**Subject:** Remedy for identity recovery service contract holders

**Summary:** Adds OC 1306.155 to require a person operating as a identity recovery services provider or administrator without holding the appropriate registration to offer to a contract holder the right to cancel the contract and obtain a full refund or retain the contract;  
If a seller fails to process an application or payment from a consumer, the Texas Commission of Licensing and Regulation or director of the department may require the seller to refund the full purchase price;

**Subject:**

**Summary:**

**Comments:** Service contract providers enter into agreements with consumers for the repair, replacement, or maintenance of a product or for payment to repair, replace, or maintain the product for a specified period. Identity recovery service contract providers offer services to return the identity of an identity theft victim to the person's status before the identity theft occurred. Concerned parties contend that current laws governing such providers need revision to provide additional consumer protections, including the ability of a contract holder to cancel a contract and receive a refund.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1187                      **Caption:** relating to the effect of indexing notices of lis pendens

**Effective Date:** 9-1-2011

**Application:** Applies only to a notice of lis pendens filed for record on or after 9-1-2011

**Statutes Affected:** PP 13.004

**Subject:** Effect of recording list pendens

**Summary:** Amends PP 13.004 to provide that a notice of lis pendens is effective at the time it is filed for record and indexed; The county clerk must record the notice in a lis pendens record and must index the record in a direct and reverse index under the name of each party to the proceeding;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Interested parties observe that a lis pendens, which is a legal notice filed on record to signify that a piece of property is the subject of a lawsuit, can currently be filed and become effective without giving the public the opportunity to actually see the notice or know that the notice exists.  
SB 1187 protects a purchaser who may not have any other means of knowing about a lis pendens by making a lis pendens effective once the notice is indexed in the public record and available for public access.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1200                      **Caption:** relating to the venue for prosecution of misdemeanor cases in justice of the peace courts located in certain counties

**Effective Date:** 9-1-2011

**Application:** Applies only to an offense committed on or after 9-1-2011

**Statutes Affected:** CP 4.12

**Subject:** Misdemeanor cases; precinct in which defendant to be tried in justice court

**Summary:** Amends CP 4.12 to allow a misdemeanor case to be tried in justice court to be tried in Harris County, in any precinct in the county that is adjacent to the precinct in which the offense was committed;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Currently, many justice courts have unequal workloads. The busiest of these courts have such a backlog of their dockets that it can take many weeks for a case to come to trial. This bill helps equalize justice courts' dockets by allowing some of their cases to be tried in an adjacent county. This will help to relieve the workload of the overburdened courts, while providing citizens with a speedier resolution of their cases. Harris County presents a good example of this problem. The eight justice of the peace court precincts in Harris County have very different workloads. Precinct Five handles over 150,000 cases. Precinct Six, on the other hand, handles fewer than 15,000. This means that the busiest precinct handles 10 times more cases than the least busy. The busiest two precincts handle more cases than all of the other six precincts combined. The only way to ensure that every citizen is receiving their day in court within a reasonable time frame is to allow these disparate workloads to be reallocated to adjacent precincts when necessary.

As amended:

Art. 4.12. Misdemeanor Cases; Precinct in Which Defendant to be Tried in Justice Court

(a) Except as otherwise provided by this article, a misdemeanor case to be tried in justice court shall be tried:

- (1) in the precinct in which the offense was committed;
- (2) in the precinct in which the defendant or any of the defendants reside; or
- (3) with the written consent of the state and each defendant or the defendant's attorney, in any other precinct within the county; or
- (4) if the offense was committed in a county with a population of 3.3 million or more, in any precinct in the county that is adjacent to the precinct in which the offense was committed.

(b) In any misdemeanor case in which the offense was committed in a precinct where there is no qualified justice court, then trial shall be held:

- (1) in the next adjacent precinct in the same county which has a duly qualified justice court; or
- (2) in the precinct in which the defendant may reside.

(c) In any misdemeanor case in which each justice of the peace in the precinct where the offense was committed is disqualified for any reason, such case may be tried in the next adjoining precinct in the same county having a duly qualified justice of the peace.

(d) A defendant who is taken before a magistrate in accordance with Article 15.18 may waive trial by jury and enter a written plea of guilty or nolo contendere.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1233                      **Caption:** relating to the promotion of efficiencies in and the administration of certain district court and county services and functions

**Effective Date:** 6-17-2011

**Application:** See also HB 2847  
Applies to a plea of guilty or nolo contendere entered on or after 6-17-2011

**Statutes Affected:** CP 2.31  
CP 27.18  
CP 38.073

**Subject:** County jailers

**Summary:** Adds CP 2.31 to allow a licensed jailer to execute lawful process issued to the jailer by any magistrate or court on a person confined in the jail, including a warrant, capias, subpoena, or attachment;

**Subject:** Plea or waiver of rights by closed circuit video conferencing  
Testimony of inmate witness

**Summary:** Amends CP 27.18 to provide that a court reporter is not required to transcribe or make a separate recording of a plea unless an appeal is taken in the case and a party requests a transcript;  
Provides that the loss or destruction of or failure to make a video recording of a plea is not alone sufficient grounds for a defendant to withdraw a plea or to request the court to set aside a conviction, sentence, or plea;

Amends CP 38.073 to allow an inmate who is testifying as a witness, to give any deposition or testimony by a video conferencing system in the same manner as described by CP 27.18;

**Subject:** Who may be present in grand jury room  
Proceedings secret  
Certain testimony by video conferencing

**Summary:** Amends CP 20.011 to allow a person operating a video conferencing system for the testimony of a peace officer to be present in a grand jury room while the grand jury is conducting proceedings;

Amends CP 20.02 to provide that the person operating a video conferencing system who is present in a grand jury room and who discloses anything transpiring before the grand jury to be fined for contempt not exceeding \$500, and 30 days in jail or both;

Adds CP 20.151 to allow a peace officer to testify by use of a closed circuit video conferencing system, if the foreman consents; the peace officer must take the oath and affirm that no person other than a person in the grand jury room is capable of hearing the peace officer's testimony, and the peace officer's testimony is not being recorded or otherwise preserved by any person at the location from which the officer is testifying;

**Comments:**



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1241      **Caption:** relating to authorizing certain courts to access information in the juvenile justice information system

**Effective Date:** 9-1-2011

**Application:**

**Statutes Affected:** FA 58.106

**Subject:** Confidentiality

**Summary:** Amends FA 58.106 to allow magistrates hearing truancy cases in counties over 2 million to access information in the juvenile justice information system;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Counties over two million in population are authorized to appoint magistrates to hear truancy cases. These truancy court magistrates are not currently authorized to access the state Juvenile Justice Information System to check on the history of the children they are working with.  
SB 1241 will allow these magistrates, along with justice and municipal courts that exercise jurisdiction over a juvenile under Section 54.021 (County, Justice, or Municipal Court: Truancy), Family Code, to have access to the state Juvenile Justice Information System. Having more data about a truant's background will allow a magistrate, justice of the peace, or municipal judge to make a more informed decision on the disposition of a truant's case.

As amended:  
FA § 58.106. Confidentiality

(a) Except as otherwise provided by this section, information contained in the juvenile justice information system is confidential information for the use of the department and may not be disseminated by the department except:

- (1) with the permission of the juvenile offender, to military personnel of this state or the United States;
- (2) to a person or entity to which the department may grant access to adult criminal history records as provided by Section 411.083, Government Code;
- (3) to a juvenile justice agency;
- (4) to the Texas Youth Commission and the Texas Juvenile Probation Commission for analytical purposes; and
- (5) to the office of independent ombudsman of the Texas Youth Commission; and
- (6) to a county, justice, or municipal court exercising jurisdiction over a juvenile under 54.021.

(b) Subsection (a) does not apply to a document maintained by a juvenile justice agency that is the source of information collected by the department.

(c) The department may, if necessary to protect the welfare of the community, disseminate to the public the following information relating to a juvenile who has escaped from the custody of the Texas Youth Commission or from another secure detention or correctional facility:

- (1) the juvenile's name, including other names by which the juvenile is known;
- (2) the juvenile's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;
- (3) a photograph of the juvenile; and
- (4) a description of the conduct for which the juvenile was committed to the Texas Youth Commission or detained in the secure detention or correctional facility, including the level and degree of the alleged offense.

(d) The department may, if necessary to protect the welfare of the community, disseminate to the public the information listed under Subsection (c) relating to a juvenile offender when notified by a law enforcement agency of this state that the law enforcement agency has been issued a directive to apprehend the offender or an arrest warrant for the offender or that the law enforcement agency is otherwise authorized to arrest the offender and that the offender is suspected of having:

- (1) committed a felony offense under the following provisions of the Penal Code:
  - (A) Title 5; [FN1]
  - (B) Section 29.02; or
  - (C) Section 29.03; and
- (2) fled from arrest or apprehension for commission of the offense.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1269      **Caption:** relating to transportation, lodging, and meals offered to and accepted by public servants

**Effective Date:** 9-1-2011

**Application:**

**Statutes** PE 36.07

**Affected:** PE 36.08

**Subject:** Acceptance of honorarium

**Summary:** Amends PE 36.07 to exclude transportation, lodging, and meals from political contributions

**Subject:** Non-applicable

**Summary:** Amends PE 36.10 to provide that transportation, lodging, and meals, among other items, do not apply to the offenses of "gift to public servant" and "offering gift to public servant;"

**Subject:**

**Summary:**

**Comments:** Recently, the Texas Ethics Commission adopted Ethics Advisory Opinion No. 484. This opinion stated that expenditures accepted under certain provisions which allow an officeholder to accept transportation, lodging, and meals if the officeholder provides services that are more than merely perfunctory, could be considered a political contribution under certain circumstances. The Ethics Advisory Opinion was recently withdrawn by the Ethics Commission, leaving the current state of the law unclear. SB 1269 clarifies the law such that transportation, lodging, and meals accepted under the statute are not political contributions. It also codifies a longstanding Ethics Commission interpretation that the prohibitions on receiving or providing benefits described in law, do not apply to such benefits.

As amended

PE § 36.07. Acceptance of Honorarium

(a) A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties.

(b) This section does not prohibit a public servant from accepting transportation and lodging expenses in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory, or from accepting meals in connection with such an event.

(b-1) Transportation, lodging, and meals described by Subsection (b) are not political contributions as defined by Title 15, Election Code (Regulating Political Funds and Campaigns).

(c) An offense under this section is a Class A misdemeanor.

PE § 36.10. Non-Applicable

(a) Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) do not apply to:

(1) a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant;

(2) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient; or

(3) a benefit to a public servant required to file a statement under Chapter 572, Government Code, or a report under Title 15, Election Code, [FN1] that is derived from a function in honor or appreciation of the recipient if:

(A) the benefit and the source of any benefit in excess of \$50 is reported in the statement; and

(B) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

(4) a political contribution as defined by Title 15, Election Code;

(5) a gift, award, or memento to a member of the legislative or executive branch that is required to be reported under Chapter 305, Government Code;

(6) an item with a value of less than \$50, excluding cash or a negotiable instrument as described by Section 3.104, Business & Commerce Code; or

(7) an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity; or

(8) transportation, lodging, and meals described by Section 36.07(b).

(b) Section 36.08 (Gift to Public Servant) does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in

## SUMMARIES -- 82nd LEGISLATURE -- 2011

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

accordance with that law.

(c) Section 36.09 (Offering Gift to Public Servant) does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donor is required by law to report those items, reported by the donor in accordance with that law.

(d) Section 36.08 (Gift to Public Servant) does not apply to a gratuity accepted and reported in accordance with Section 11.0262, Parks and Wildlife Code. Section 36.09 (Offering Gift to Public Servant) does not apply to a gratuity that is offered in accordance with Section 11.0262, Parks and Wildlife Code.

EL § 251.001. Definitions

"Contribution" means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by this subdivision, and a guarantee of a loan or extension of credit, including a loan described by this subdivision. The term does not include:

- (A) a loan made in the due course of business by a corporation that is legally engaged in the business of lending money and that has conducted the business continuously for more than one year before the loan is made; or
- (B) an expenditure required to be reported under Section 305.006(b), Government Code.

"Campaign contribution" means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution.

"Officeholder contribution" means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that:

- (A) are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office; and
  - (B) are not reimbursable with public money.
- (5) "Political contribution" means a campaign contribution or an officeholder contribution.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1271                      **Caption:** relating to alternative dispute resolution systems established by counties

**Effective Date:** 6-17-2011

**Application:** Applies only to a case referred to a county alternative dispute resolution system on or after 6-17-2011

**Statutes Affected:** CV 152.001

**Subject:** Alternative dispute resolution systems established by counties

**Summary:** Amends CP 152.001 to include individuals, entities, and units of government among those intended to resolve disputes using the system;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Interested parties note that there is a discrepancy between the statutory scope of county alternative dispute resolution systems and what the systems currently do. The parties note that state law provides that the systems are designed to resolve citizen disputes, which are disputes among individuals, but that many systems handle cases involving companies and units of government. SB 1271 addresses matters relating to alternative dispute resolution systems established by counties

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1292

**Caption:** relating to the issuance of a driver's license to a peace officer that includes an alternative to the officer's residence address

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 521.1211

**Affected:**

**Subject:** Driver's license for peace officer

**Summary:** Adds TN 521.1211 to allow a peace officer to omit his or her actual residence address, and include an address that is in the city or county of the peace officer's residence and is acceptable to DPS; requires the peace officer to notify the department within 30 days if the peace officer moves to a new residence, or the officer's name is changed by marriage or otherwise; if the person ceases to be a peace officer, the person must apply for a duplicate license with the actual residence address within 30 days;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Under current law, a law enforcement officer must provide the Department of Public Safety with his or her home address when applying for a driver's license. This requirement can be problematic if someone wishing to do harm to the officer, the officer's home, or the officer's family, requests to see an officer's license.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1320      **Caption:** relating to the execution of written instruments relating to residential real estate transactions and deeds conveying residential real estate in connection with certain transactions involving residential real estate; providing a civil penalty

**Effective Date:** 9-1-2011

**Application:**

**Statutes Affected:** BC 21.001 et seq  
PP 24.004

**Subject:** Execution of deeds in certain transactions involving residential real estate  
Prohibition of execution of deeds conveying residential real estate in certain transactions

**Summary:** Adds CP 21.002 et seq to prohibit a seller of residential real estate or a person making an extension of credit and taking a security interest or mortgage, before or at the time of the conveyance of the real estate to the purchaser or the extension of credit to the borrower, from requesting or requiring the purchaser or borrower to execute and deliver to the seller or lender a deed conveying the residential real estate to the seller or lender; A deed executed under these circumstances is voidable unless a subsequent purchaser, for value, obtains an interest in the property after the deed was recorded without notice of the violation, including notice provided by actual possession by the grantor of the deed; A purchaser or borrower must sue to void the deed within 4 years of the date the deed was recorded;

**Subject:** Jurisdiction; dismissal

**Summary:** Amends PP 24.004 to provide that a justice court does not have jurisdiction in a forcible entry and detainer or forcible detainer suit and shall dismiss the suit if the defendant files a sworn statement alleging the suit is based on a deed executed before or at the time of the conveyance of the real estate to the purchaser or the extension of credit to the borrower;

**Subject:** Proof of identity of acknowledging person

**Summary:** Amends CV 121.005 to prohibit an officer from taking the acknowledgment of a written instrument unless the officer knows or has evidence that the person is the person who executed the instrument; satisfactory evidence includes (1) the oath of a credible witness personally known to the officer, (2) a current ID card or other document issued by the federal or state government that contains a photograph and signature of the acknowledging person, or (3) with respect to a deed or other instrument relating to a residential real estate transaction, a current passport issued by a foreign country;

**Comments:** Over the years, the Texas Legislature has sought to remedy the existence of substandard housing and prevent additional substandard housing from being created by addressing the main financial mechanism used to create the colonias and targeting a practice in which developers and land sellers took advantage of low-income people who could not qualify for traditional financing mechanisms by using contracts for deeds in their land or home transactions. The consumer protections that the state enacted in contract for deed land or home sales have prompted some developers who have used contracts-for-deed to develop a new practice that takes advantage of home and land buyers. These sellers provide title to the property at closing and use a traditional mortgage to finance the sale but also require buyers to execute a deed-in-lieu of foreclosure at the closing table. This document, one of the many closing documents to be signed and therefore at risk of not being adequately explained to the buyer, gives title back from the homeowner to the seller or lender the same day the property is purchased. The seller-financer can then hold the deeds-in-lieu until the seller-financer decides that the buyer has defaulted. In the event of a dispute, the seller-financer has the upper hand, empowered simply to record the deed and file an eviction case without following the foreclosure procedure provided by Texas law. SB 1320 seeks to end this practice by prohibiting the execution of deeds conveying residential real estate in connection with certain transactions involving residential real estate and making a violation of such prohibition subject to a civil action for damages

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1330      **Caption:** relating to driving safety courses for individuals younger than 25 years of age receiving deferred disposition for certain traffic offenses

**Effective Date:** 9-1-2011\*

**Application:** Applies only to an offense committed on or after 1-1-2012

**Statutes** CP 45.051  
**Affected:** ED 1001.111

**Subject:** Suspension of sentence and deferral of final disposition

**Summary:** Amends CP 45.051 to allow the judge to require the defendant to complete an additional driving safety course designed for drivers younger than 25 years of age;

**Subject:**

**Summary:** Requires the commissioner of education (commissioner) by rule to provide minimum standards of curriculum for and designate the educational materials to be used in a driving safety course designed for drivers younger than 25 years of age.

(b) Requires that a driving safety course designed for drivers younger than 25 years of age:

(1) be a four-hour live, interactive course focusing on issues specific to drivers younger than 25 years of age;

(2) include instruction in:

(A) alcohol and drug awareness;

(B) the traffic laws of this state;

(C) the high rate of motor vehicle accidents and fatalities for drivers younger than 25 years of age;

(D) the issues commonly associated with motor vehicle accidents involving drivers younger than 25 years of age, including poor decision-making, risk taking, impaired driving, distraction, speed, failure to use a safety belt, driving at night, failure to yield the right-of-way, and using a wireless communication device while operating a vehicle, and the role of peer pressure in those issues;

(E) the effect of poor driver decision-making on the family, friends, school, and community of a driver younger than 25 years of age; and

(F) the importance of taking control of potentially dangerous driving situations both as a driver and as a passenger; and

(3) require a written commitment by the student to family and friends that the student will not engage in dangerous driving habits.

(c) Requires that a course approved for use under this section before January 1, 2012, comply with the requirements of Subsection (b) and be approved for that purpose by the commissioner not later than January 1, 2012.

**Subject:**

**Summary:**

**Comments:** Recent studies suggest that teenage driving accidents account for a significant amount of all teenage deaths. The statistic becomes more alarming considering how many new teenage drivers take to the roads each year. In addition to lack of experience with driving, teenagers face distractions such as talking and texting on cell phones and dealing with young, inexperienced passengers who sometimes behave inappropriately. The influence of drugs and alcohol is another factor in teenage driving accidents. In this environment, learning the skills of safe, defensive driving becomes that much more important. Several programs have been developed to address the youthful driver and the issues specific to that demographic, for example, "Alive@25," which was developed by the National Safety Council. Such programs target younger drivers aged 15-24 and focus on improving safety awareness and eliminating distracting behaviors common to this group. Such programs have been very successful; in fact, a number of states include a youth driver safety program in their graduated drivers license or points reduction (defensive driving) curricula. In Texas, neither the defensive driving curriculum nor the driving safety curriculum (commonly known as "ticket

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

dismissal classes") include instruction on the unique challenges faced by young drivers. SB 1330 amends current law relating to driving safety courses for individuals younger than 25 years of age receiving deferred disposition for certain traffic offenses.

As amended:

CP Art. 45.051. Suspension of Sentence and Deferral of Final Disposition

(a) On a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by fine only and payment of all court costs, the judge may defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days. In issuing the order of deferral, the judge may impose a special expense fee on the defendant in an amount not to exceed the amount of the fine that could be imposed on the defendant as punishment for the offense. The special expense fee may be collected at any time before the date on which the period of probation ends. The judge may elect not to impose the special expense fee for good cause shown by the defendant. If the judge orders the collection of a special expense fee, the judge shall require that the amount of the special expense fee be credited toward the payment of the amount of the fine imposed by the judge. An order of deferral under this subsection terminates any liability under a bail bond or an appearance bond given for the charge.

(a-1) Notwithstanding any other provision of law, as an alternative to requiring a defendant charged with one or more offenses to make payment of all court costs as required by Subsection (a), the judge may:

(1) allow the defendant to enter into an agreement for payment of those costs in installments during the defendant's period of probation;

(2) require an eligible defendant to discharge all or part of those costs by performing community service under Article 45.049; or

(3) take any combination of actions authorized by Subdivision (1) or (2).

(b) During the deferral period, the judge may require the defendant to:

(1) post a bond in the amount of the fine assessed to secure payment of the fine;

(2) pay restitution to the victim of the offense in an amount not to exceed the fine assessed;

(3) submit to professional counseling;

(4) submit to diagnostic testing for alcohol or a controlled substance or drug;

(5) submit to a psychosocial assessment;

(6) participate in an alcohol or drug abuse treatment or education program;

(7) pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs;

(8) complete a driving safety course approved under Chapter 1001, Education Code, or another course as directed by the judge;

(9) present to the court satisfactory evidence that the defendant has complied with each requirement imposed by the judge under this article; and

(10) comply with any other reasonable condition.

(b-1) If the defendant is younger than 25 years of age and the offense committed by the defendant is a traffic offense classified as a moving violation:

(1) Subsection (b)(8) does not apply;

(2) during the deferral period, the judge:

(A) shall require the defendant to complete a driving safety course approved under Chapter 1001, Education Code; and

(B) may require the defendant to complete an additional driving safety course designed for drivers younger than 25 years of age and approved under Section 1001.111, Education Code; and

(3) if the defendant holds a provisional license, during the deferral period the judge shall require that the defendant be examined by the Department of Public Safety as required by Section 521.161(b)(2), Transportation Code; a defendant is not exempt from the examination regardless of whether the defendant was examined previously.

(b-2) A person examined as required by Subsection (b-1)(3) must pay a \$10 examination fee.

(b-3) The fee collected under Subsection (b-2) must be deposited to the credit of a special account in the general revenue fund and may be used only by the Department of Public Safety for the administration of Chapter 521, Transportation Code.

(c) On determining that the defendant has complied with the requirements imposed by the judge under this article, the judge shall dismiss the complaint, and it shall be clearly noted in the docket that the complaint is dismissed and that there is not a final conviction.

(c-1) If the defendant fails to present within the deferral period satisfactory evidence of compliance with the requirements imposed by the judge under this article, the court shall:

(1) notify the defendant in writing, mailed to the address on file with the court or appearing on the notice to appear, of that failure; and

(2) require the defendant to appear at the time and place stated in the notice to show cause why the order of deferral should not be revoked.



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

(c-2) On the defendant's showing of good cause for failure to present satisfactory evidence of compliance with the requirements imposed by the judge under this article, the court may allow an additional period during which the defendant may present evidence of the defendant's compliance with the requirements.

(d) If on the date of a show cause hearing under Subsection (c-1) or, if applicable, by the conclusion of an additional period provided under Subsection (c-2) the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the judge may impose the fine assessed or impose a lesser fine. The imposition of the fine or lesser fine constitutes a final conviction of the defendant. This subsection does not apply to a defendant required under Subsection (b-1) to complete a driving safety course approved under Chapter 1001, Education Code, or an examination under Section 521.161(b)(2), Transportation Code.

(d-1) If the defendant was required to complete a driving safety course or an examination under Subsection (b-1) and on the date of a show cause hearing under Subsection (c-1) or, if applicable, by the conclusion of an additional period provided under Subsection (c-2) the defendant does not present satisfactory evidence that the defendant completed that course or examination, the judge shall impose the fine assessed. The imposition of the fine constitutes a final conviction of the defendant.

(e) Records relating to a complaint dismissed as provided by this article may be expunged under Article 55.01. If a complaint is dismissed under this article, there is not a final conviction and the complaint may not be used against the person for any purpose.

(f) This article does not apply to:

(1) an offense to which Section 542.404, Transportation Code, applies; or

(2) a violation of a state law or local ordinance relating to motor vehicle control, other than a parking violation, committed by a person who:

(A) holds a commercial driver's license; or

(B) held a commercial driver's license when the offense was committed.

As added:

ED 1001.111. DRIVING SAFETY COURSE FOR DRIVER YOUNGER THAN 25 YEARS OF AGE. (a) The commissioner by rule shall provide minimum standards of curriculum for and designate the educational materials to be used in a driving safety course designed for drivers younger than 25 years of age.

(b) A driving safety course designed for drivers younger than 25 years of age must:

(1) be a four-hour live, interactive course focusing on issues specific to drivers younger than 25 years of age;

(2) include instruction in:

(A) alcohol and drug awareness;

(B) the traffic laws of this state;

(C) the high rate of motor vehicle accidents and fatalities for drivers younger than 25 years of age;

(D) the issues commonly associated with motor vehicle accidents involving drivers younger than 25 years of age, including poor decision-making, risk taking, impaired driving, distraction, speed, failure to use a safety belt, driving at night, failure to yield the right-of-way, and using a wireless communication device while operating a vehicle, and the role of peer pressure in those issues;

(E) the effect of poor driver decision-making on the family, friends, school, and community of a driver younger than 25 years of age; and

(F) the importance of taking control of potentially dangerous driving situations both as a driver and as a passenger; and

(3) require a written commitment by the student to family and friends that the student will not engage in dangerous driving habits.

(c) A course approved for use under this section before January 1, 2012, must comply with the requirements of Subsection (b) and be approved for that purpose by the commissioner not later than January 1, 2012. This subsection expires September 1, 2012.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1331      **Caption:** relating to criminal offenses regarding the possession or consumption of alcoholic beverages by a minor and providing alcoholic beverages to a minor

**Effective Date:** 9-1-2011

**Application:** Applies only to an offense committed on or after 9-1-2011  
See also HB 3474

**Statutes Affected:** AB 106.04  
AB 106.05

**Subject:** Consumption of alcohol by minor

**Summary:** Amends AB 106.04 to make the offense of consuming an alcoholic beverage inapplicable to a minor who:  
(1) requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;  
(2) was the first person to make a request for medical assistance under Subdivision (1); and  
(3) if the minor requested emergency medical assistance for the possible alcohol overdose of another person:  
(A) remained on the scene until the medical assistance arrived; and  
(B) cooperated with medical assistance and law enforcement personnel;

**Subject:** Possession of alcohol by minor

**Summary:** Amends AB 106.05 to make the offense of possession of alcohol inapplicable to minor who:  
(1) requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;  
(2) was the first person to make a request for medical assistance under Subdivision (1); and  
(3) if the minor requested emergency medical assistance for the possible alcohol overdose of another person:  
(A) remained on the scene until the medical assistance arrived; and  
(B) cooperated with medical assistance and law enforcement personnel.

**Subject:**

**Summary:**

**Comments:** Observers express concern that young adults are increasingly engaging in hazing that involves the abuse of alcohol resulting in alcohol poisoning. The observers suggest that providing limited immunity for a minor from prosecution of certain alcohol-related offenses could prevent such situations from occurring. SB 1331 provides that limited immunity and to address additional community supervision requirements for a person who commits an offense relating to providing an alcoholic beverage to a minor at a gathering where participants were involved in certain alcohol abuse, including binge drinking or forcing or coercing individuals to consume alcohol.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1353                      **Caption:** relating to certain claims against persons licensed as real estate brokers and salespersons

**Effective Date:** 5-28-2011

**Application:** Applies only to a claim arising from an act or omission that occurs on or after 5-28-2011

**Statutes Affected:** BC 17.49

**Subject:** Exemptions

**Summary:** Amends BC 17.49 to exempt claims against licensed real estate brokers or salespersons from the Deceptive Trade Practices-Consumer Protection Act;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Despite certain exemptions, some claimants have improperly argued that information provided by a real estate broker or salesperson about real property is subject to deceptive trade practices and consumer protection law. S.B. 1353 seeks to reduce frivolous lawsuits by making provisions governing deceptive trade practices and consumer protection inapplicable to a claim arising from an act or omission by a broker or salesperson, with certain exceptions.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1357                      **Caption:** Relating to the redemption and impoundment of estrays

**Effective Date:** 9-1-2011

**Application:** Applies only to a sale of an estray occurring on or after 9-1-2011

**Statutes Affected:** AG 142.004 et seq

**Subject:** Redemption

**Summary:** Amends AG 142.004 to allow the owner of an estray to redeem the estray from the property owner if (1) the owner of the estray and the owner or occupant of the property agree to a redemption payment amount and the owner or occupant of the property receives the redemption payment from the owner of the estray; or (2) a justice court having jurisdiction determines the redemption payment amount and gives the owner of the estray written authority to redeem the estray under Section 142.006;  
Provides that if the owner does not redeem the estray by the 5th day after date of notification, sheriff shall impound unless the sheriff determines that the owner is making a good faith effort to redeem;  
If owner of estray and property owner cannot agree on a redemption payment, either party may file a petition in the justice court, and the court shall determine the redemption payment amount and give the owner of the estray written authority to redeem on payment of that amount to the property owner;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** If stray livestock, stray exotic livestock, or stray exotic fowl wander onto another owner's property, those estrays are subject to Chapter 142 (Estrays), Agriculture Code, which includes, but is not limited to, provisions for redemption, impoundment, and recovery.  
SB 1357 clarifies the redemption process in Section 142.004, Agriculture Code, so that the owner of the estray and the owner of the public or private property both have a fair opportunity to recover the strayed livestock or expenses for holding the estray and also establishes a time frame, five days after notification by the sheriff or the sheriff's designee, by which owners of an estray must redeem the estray or the sheriff or the sheriff's designee will impound the estray. This addresses a current problem where the owners of an estray are known, but do not redeem the estray.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1368

**Caption:** relating to the authority of a co-owner of residential property to encumber the property

**Effective Date:** 6-17-2011

**Application:**

**Statutes** PP 64.001 et seq

**Affected:**

**Subject:** Conditions for authority to act as agent for co-owner

**Summary:** Adds PP 64.002 to allow a co-owner of residential property to act in the name of and on behalf of another co-owner to enter into a contract giving rise to a mechanic's and materialman's lien and to execute a deed of trust for the purpose of preserving residential property;  
The residential property must be designed for not more than 4 families, is not more than 10 acres of land, is owned by more than 1 person, and at least 1 co-owner has received a residence homestead exemption;  
In order to act as agent for another co-owner, the co-owner (1) must have occupied the property for more than 5 years, (2) must have a residence homestead exemption, (3) must have paid all taxes without delinquency and without contribution from the other co-owner, and (4) must file with the county clerk (i) an affidavit affirming qualifications to act, (ii) affidavits of two persons corroborating occupancy during the preceding 5 years, and (iii) a certificate from the tax assessor affirming that all taxes have been paid by the co-owner without delinquency;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Concerned parties contend that, in the aftermath of a hurricane or other disaster, so-called informal homeowners, meaning homeowners whose ownership of real property is achieved outside of formal transactions and particularly those with co-tenant interests, may face difficulties in securing disaster assistance to repair their homes because such a homeowner can only sell or secure a loan on the homeowner's fractionalized co-tenant interest, a type of transaction typically not allowed in the open market.  
SB 1368 allows a co-owner of certain residential property who has been residing in and maintaining the property for a specified period of time to act as a statutory agent or as an attorney-in-fact, with the limited authority to enter into a contract giving rise to a mechanic's or materialman's lien and to execute a deed of trust for the purpose of preserving or improving the residential property. The occupying co-owner is the sole obligor of the debt incurred under the contract and secured by the deed of trust. These provisions are intended to give such homeowners the ability to secure resources, including federal and state disaster assistance, from lenders and governmental entities.

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

**Bill Number:** SB 1378

**Caption:** relating to the authority of the Alabama-Coushatta Indian Tribe to commission peace officers

**Effective Date:** 9-1-2011

**Application:**

**Statutes** CP 2.126

**Affected:**

**Subject:** Peace officers commissioned by the Alabama-Coushatta Indian Tribe

**Summary:** Adds CP 2.126 to allow the tribal council of the Alabama-Coushatta Indian Tribe to employ and commission peace officers to enforce state law within the boundaries of the tribe's reservation; Peace officers may arrest without a warrant, and may enforce all traffic laws on streets and highways within the reservation; outside the reservation, a peace officer may arrest any person who violates any law if the peace officer is summoned by another law enforcement agency to provide assistance, or is assisting another law enforcement agency;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1386      **Caption:** relating to the refusal to register motor vehicles by a county assessor-collector or the Texas Department of Motor Vehicles

**Effective Date:** 9-1-2011

**Application:** Applies to a failure to appear or a fine, fee, or tax in connection with a complaint, citation, information, or indictment issued on or after 9-1-2011

**Statutes Affected:** TN 502.185  
TN 702.003

**Subject:** Refusal to register vehicles in certain counties

**Summary:** Amends TN 502.185 to allow a county assessor-collector or the Department of Motor Vehicles to refuse to register a motor vehicle if information is received that the owner of the vehicle:  
(1) owes the county money for a fine, fee, or tax that is past due; or  
(2) failed to appear in connection with a complaint, citation, information, or indictment in a court in the county in which a criminal proceeding is pending against the owner;  
Allows a county with a contract with the Department of Motor Vehicles to impose an additional fee of \$20 to:  
(1) a person who fails to pay a fine, fee, or tax to the county by the date on which the fine, fee, or tax is due; or  
(2) a person who fails to appear in connection with a complaint, citation, information, or indictment in a court in which a criminal proceeding is pending against the owner;  
Prohibits the use of the fee except to reimburse the DMV or assessor-collector for expenses, or another county department for expenses related to services under the contract;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Under current statute a county assessor-collector may refuse to register a motor vehicle if the owner owes the county money for a fine, fee, or tax that is past due.  
SB 1386 amends the Transportation Code to include failure to appear in connection with traffic citations as a reason for which an assessor-collector may refuse to register a motor vehicle. A fee of \$20 may be imposed to reimburse TxDMV or the county assessor-collector for expenses related to this act.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1480                      **Caption:** relating to the regulation of exotic aquatic species by the Parks and Wildlife Department; providing penalties

**Effective Date:** 6-17-2011

**Application:** On 6-17-2011, the list of harmful plants that was in effect immediately before the publication of the list of approved plants is the list of exotic aquatic plants required by PW 67.0072

**Statutes Affected:** PW 66.007  
PW 66.0072

**Subject:** Exotic harmful or potentially harmful fish and shellfish

**Summary:** Amends PW 66.007 to delete references to aquatic plants within the section;

**Subject:** Exotic harmful or potentially harmful aquatic plants

**Summary:** Adds PW 66.0072 to prohibit a person from importing, possessing, selling, or placing into the public water an exotic harmful or potentially harmful aquatic plant, except as allowed by Parks and Wildlife Commission rule or a Parks and Wildlife Department permit;  
Requires the Parks and Wildlife Commission to adopt a list of prohibited plants;  
"Exotic aquatic plant" means a non-indigenous aquatic plant that is not normally found in the public water of this state;  
Violation is a Class C misdemeanor;

**Subject:**

**Summary:**

**Comments:**



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1489 (Page 1 of 3) **Caption:** relating to educational, juvenile justice, and criminal justice responses to truancy

**Effective Date:** 9-1-2011

**Application:** Applies only to conduct that occurs on or after 9-1-2011  
To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, relating to nonsubstantive additions to and corrections in enacted codes

**Statutes Affected:** ED 25.094  
FA 51.03  
CP 45.054  
CP 45.055  
ED 25.091  
ED 25.0915  
CP 102.0174

**Subject:** Failure to attend school

**Summary:** Amends ED 25.094 to redefine the age at which a student commits the offense of failure to attend school; An individual commits an offense if the individual:  
(1) is 12 years of age or older and younger than 18 years of age;  
(2) is required to attend school under ED 25.085 (compulsory attendance); and  
(3) fails to attend school on 10 or more days or parts of days within a 6-month period in the same school year or on 3 or more days or parts of day within a 4 week period;

**Subject:** Delinquent conduct; conduct indicating a need for supervision  
County, justice, or municipal court; truancy

**Summary:** Amends FA 51.03 to clarify that for purposes of the absence from school of a child on 10 or more days or parts of days within a 6 month period in the same school year or on 3 or more days or parts of days within a 4 week period, and defining this conduct as CINS, child means a person who is 10 years of age or older, alleged or found to have engaged in the conduct as a result of acts committed before becoming 18 years of age, and required to attend school under ED 15.085 (compulsory attendance);  
  
Amends FA 54.021 to allow the juvenile court to waive its jurisdiction and transfer a child to the constitutional county court (counties with a population of 2 million or more), or to justice or municipal court, if the child is 12 years of age or older and was absent from school on 10 or more days or parts of days within a 6 month period in the same school year or on 3 or more days or parts of days within a 4 week period;

**Subject:** County, justice, or municipal court; truancy

**Summary:** Amends FA 54.021 to allow the juvenile court to waive its jurisdiction and transfer a child to the constitutional county court (counties with a population of 2 million or more), or to justice or municipal court, if the child is 12 years of age or older and was absent from school on 10 or more days or parts of days within a 6 month period in the same school year or on 3 or more days or parts of days within a 4 week period;

**Comments:** Current law requires children from the ages of six to 17, with certain exceptions, to attend school. If a child has a certain number of unexcused absences within certain periods of time, the child is considered to be in violation of laws relating to a failure to attend school. Violators may be referred to certain courts. Interested parties state that exposure to criminal courts for this behavior has not proved to deter truancy and only leaves Texas youth with records that will negatively affect their future.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1489 (Page 2 of 3) **Caption:** relating to educational, juvenile justice, and criminal justice responses to truancy

**Effective Date:** 9-1-2011

**Application:** Applies only to conduct that occurs on or after 9-1-2011  
To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, relating to nonsubstantive additions to and corrections in enacted codes

**Statutes Affected:** ED 25.094  
FA 51.03  
CP 45.054  
CP 45.055  
ED 25.091  
ED 25.0915  
CP 102.0174

**Subject:** Failure to attend school proceedings

**Summary:** Amends CP 45.054 to require the court to dismiss the complaint for failure to attend school if:  
(1) the court finds that the individual has successfully complied with the conditions imposed on the individual by the court under this article; or  
(2) the individual presents to the court proof that the individual has obtained a high school diploma or a high school equivalency certificate.;  
Allows the court to waive or reduce a fee or court cost imposed under CP 45.054 if the court finds that payment of the fee or court cost would cause financial hardship;

**Subject:** Expunction of conviction and records in failure to attend school cases

**Summary:** Amends CP 45.055 to require the court to expunge a defendant's conviction for failure to attend school, regardless of a previous conviction for failure to attend school, if:  
(1) the court finds that the individual has successfully complied with the conditions imposed on the individual by the court under Article 45.054; or  
(2) before the individual's 21st birthday, the individual presents to the court proof that the individual has obtained a high school diploma or a high school equivalency certificate;

**Subject:** Court costs; juvenile case manager fund

**Summary:** Amends CP 102.0174 to prohibit the collection of the juvenile case manager fee if the court does not employ a juvenile case manager;

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1489 (Page 3 of 3) **Caption:** relating to educational, juvenile justice, and criminal justice responses to truancy

**Effective Date:** 9-1-2011

**Application:** Applies only to conduct that occurs on or after 9-1-2011  
To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, relating to nonsubstantive additions to and corrections in enacted codes

**Statutes Affected:** ED 25.094  
FA 51.03  
CP 45.054  
CP 45.055  
ED 25.091  
ED 25.0915  
CP 102.0174

**Subject:** Powers and duties of peace officers and other attendance officers

**Summary:** Amends ED 25.091 to require a peace officer serving as an attendance officer and an attendance officer who is not a peace officer, before enforcing the compulsory school attendance laws, to (A) apply truancy prevention measures adopted by the school district, and (B) if the truancy prevention measures fail meaningfully to address the student's conduct, to:  
(i) refer the student to a juvenile court or file a complaint against the student in a county, justice, or municipal court if the student has unexcused absences for the amount of time specified under ED 25.094 or under FA 51.03(b)(2); or  
(ii) file a complaint in a county, justice, or municipal court against a parent who violates ED 25.093 (parent contributing to nonattendance);

**Subject:** Truancy prevention measures; referral and filing requirement

**Summary:** Adds ED 25.0915 to require a school district to adopt truancy prevention measures that:  
(1) address student conduct related to truancy in the school setting;  
(2) minimize the need for referrals to juvenile court for conduct described by FA 51.03(b)(2); and  
(3) minimize the filing of complaints in county, justice, and municipal courts alleging a violation of ED 25.094;

Each complaint filed in a county, justice, or municipal court alleging failure to attend school must:  
(1) be accompanied by a statement from the student's school certifying that:  
(A) the school applied the truancy prevention measures to the student; and  
(B) the truancy prevention measures failed to meaningfully address the student's school attendance; and  
(2) specify whether the student is eligible for or receives special education services;

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1496      **Caption:** relating to the scope and validity of correction instruments in the conveyance of real property

**Effective Date:** 9-1-2011

**Application:**

**Statutes** PP 5.027 et seq

**Affected:**

**Subject:** Correction instruments: generally  
Correction instruments: nonmaterial corrections  
Correction instruments: material corrections

**Summary:** Adds PP 5.027 to allow the correction of an ambiguity or error in a recorded original instrument of conveyance, including an ambiguity or error that relates to the description of or extent of the interest conveyed; prohibits the correction of an ambiguity or error in a recorded original instrument of conveyance to transfer real property or an interest in real property not originally conveyed in the instrument of conveyance for purposes of a sale of real property under a power of sale under PP Chapter 51, relating to liens, unless the conveyance otherwise complies with all requirements of PP Chapter 51;

Adds PP 5.028 to allow a person with personal knowledge of facts to execute a correction instrument to make a nonmaterial change that results from clerical error, including

(1) a correction of an inaccurate or incorrect element in a legal description; or  
(2) an addition, correction, or clarification of:

(A) a party's name or a description of an entity as a corporation, company, or other type of organization;  
(B) a party's marital status;  
(C) the date on which the conveyance was executed;  
(D) the recording data for an instrument referenced in the correction instrument; or  
(E) a fact relating to the acknowledgment or authentication;

Allows a correction instrument to be executed to provide an acknowledgment or authentication that is required and was not included in the recorded original instrument of conveyance; requires disclosure of personal knowledge of relevant facts;

A correction instrument must be sent to each party to the original instrument or their heirs, if not signed by the original parties;

Adds PP 5.029 to allow parties to the original transaction or their heirs, to execute a correction instrument to make a material correction including:

(1) to add:

(A) a buyer's disclaimer of an interest in the real property that is the subject of the original instrument of conveyance;

(B) a mortgagee's consent or subordination to a recorded document executed by the mortgagee or an heir, successor, or assign of the mortgagee; or

(C) land to a conveyance that correctly conveys other land;

(2) to remove land from a conveyance that correctly conveys other land; or

(3) to accurately identify a lot or unit number or letter of property owned by the grantor;

An instrument making a material correction must be executed by each party to the original instrument or their heirs;

**Subject:** Correction instrument: effect

**Summary:** Adds PP 5.030 to provide that a properly executed correction instrument is effective as of the effective date of the recorded original instrument; is prima facie evidence of the facts stated; is presumed to be true but is subject to rebuttal; and is notice to a subsequent buyer; allows a bona fide purchaser to rely on the correction instrument;

Adds PP 5.031 to give effect to corrected instruments recorded before 9-1-2011 if those instruments substantially comply with these sections, unless a court decides that the instrument does not comply;

**Subject:**

**Summary:**

**Comments:** A long-standing practice in Texas is for a correction instrument to be filed in order to correct nonsubstantive errors in deeds of record. A Texas court recently considered a case involving foreclosure and the misuse of a correction deed and, in its opinion, seemed to suggest that certain correction instruments may be void, particularly a correction instrument pertaining to additional property. That court decision has created an uncertainty within the real estate industry as to what can be corrected and as to the validity of certain correction

SB 1496

**SUMMARIES -- 82nd LEGISLATURE -- 2011**

**Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney**

documents. SB 1496 seeks to address this uncertainty by amending statutory provisions relating to the scope and validity of correction instruments in the conveyance of real property.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1518                      **Caption:** relating to the powers and duties of the Texas Historical Commission; imposing a penalty

**Effective Date:** 6-17-2011

**Application:**

**Statutes** GV 442.201 et seq

**Affected:**

**Subject:** Rules governing historic sites

**Summary:** Adds GV 442.201, et seq (Subchapter E) to authorize the Texas Historical Commission to adopt rules governing the health, safety, and protection of persons and property in historic sites under the control of the Commission, including public water within historic sites;  
Requires rules to be posted at the site and made available to visitors on request;  
Provides for the removal for 48 hours of any person responsible for disruptive, destructive, or violent conduct that endangers property or the health, safety, or lives of persons or animals;  
Requires notice and an opportunity to correct the conduct justifying removal;  
Provides that any peace officer may enforce rules adopted by the Commission and give a notice to appear for the violation of a rule on a form prescribed by the Commission;  
Violation of a rule is an offense that is a Class C misdemeanor;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Currently, there are no historic sites under the control of the Texas Historical Commission within Harris County.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1521

**Caption:** relating to the distribution of money appropriated from a municipal court building security fund

**Effective Date:** 6-17-2011

**Application:**

**Statutes Affected:** CP 102.017

**Subject:** Court costs: courthouse security fund; municipal court building security fund; justice court building security fund

**Summary:** Amends CP 102.017 to include warrant officers and related equipment within the definition of "security personnel, services, and items" for which the municipal court building security fund may be used;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** A warrant officer is considered an officer of the municipal court and, simultaneously, commissioned by the police department. The warrant officer's core duties include searching for and arresting individuals with outstanding warrants issued by the municipal court. Consequently, as an officer of the court, the warrant officer should be allowed to use the municipal court building security fund for expenditures related to his or her personal security when completing primary job duties in the field. In essence, the "field" becomes an extension of the municipal court building for the warrant officer and justifies equal protection. SB 1521 includes warrant officers and related equipment in the definition of security personnel, services, and items related to the buildings that house the municipal court.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1522                      **Caption:** relating to the entering of a plea in a criminal case by a defendant confined in a penal institution

**Effective Date:** 9-1-2011

**Application:** Applies to a plea of guilty or nolo contendere entered on or after 9-1-2011

**Statutes Affected:** CP 27.19

**Subject:** Plea by certain defendants

**Summary:** Amends CP 27.19 to require the court to accept a plea of guilty or no contest from a defendant confined in a penal institution if the plea is made in accordance with the procedures defined in CP 27.18 (closed circuit video teleconferencing) or in writing, including a writing delivered by US mail or secure electronic or facsimile transmission;  
Before accepting a plea in writing or by e-mail or fax, the court must verify that the person submitting the plea is the defendant named in the information or indictment, or a person with legal authority to act for the defendant named in the information or indictment;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Currently, CP 27.19 (Plea by certain defendants) a court is required to accept a plea of guilty or nolo contendere from a defendant who is confined in a penal institution if the plea is made in accordance with the procedures established by Article 27.18 (Plea or waiver of rights by closed circuit video teleconferencing), or in writing. SB 1522 includes accepting a plea if it is delivered by United States mail or secure electronic or facsimile transmission. Before a court can accept a plea submitted in this manner, the court must verify that the person submitting the plea is the defendant named in the information or indictment, or a person with legal authority to act for the defendant named in the information or indictment.



## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1608      **Caption:** relating to operating a motor vehicle without a driver's license or financial responsibility

**Effective Date:** 9-1-2011

**Application:** Applies only to an offense committed on or after 9-1-2011

**Statutes Affected:** TN 521.025

**Subject:** License to be carried and exhibited on demand; criminal penalty

**Summary:** Amends TN 521.025 to provide that if, at the time of this offense, the person was operating the motor vehicle without insurance or any other evidence of financial responsibility, and caused or was at fault in a motor vehicle accident that resulted in serious bodily injury to or death of another person, the offense is a Class A misdemeanor;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** More than two years ago three pedestrians were struck by a car and seriously injured after participating in a half marathon near Dallas. It was discovered after the accident that the driver, who had lost control of the car, was driving with neither a valid insurance card nor a valid driver's license. SB 1608 addresses the issue of an individual who operates a motor vehicle without a driver's license or in violation of the motor vehicle liability insurance requirement and causes or is at fault in a motor vehicle accident resulting in serious bodily injury to or the death of another person.

As amended:

TN § 521.025. License to be Carried and Exhibited on Demand; Criminal Penalty

(a) A person required to hold a license under Section 521.021 shall:

(1) have in the person's possession while operating a motor vehicle the class of driver's license appropriate for the type of vehicle operated; and

(2) display the license on the demand of a magistrate, court officer, or peace officer.

(b) A peace officer may stop and detain a person operating a motor vehicle to determine if the person has a driver's license as required by this section.

(c) A person who violates this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed \$200, except that:

(1) for a second conviction within one year after the date of the first conviction, the offense is a misdemeanor punishable by a fine of not less than \$25 or more than \$200; and

(2) for a third or subsequent conviction within one year after the date of the second conviction the offense is a misdemeanor punishable by:

(A) a fine of not less than \$25 or more than \$500;

(B) confinement in the county jail for not less than 72 hours or more than six months; or

(C) both the fine and confinement; and

(3) if it is shown on the trial on the trial of the offense that at the time of the offense the person was operating the motor vehicle in violation of Section 601.191 and caused or was at fault in a motor vehicle accident that resulted in serious bodily injury to or the death of another person, an offense under this section is a Class A misdemeanor.

(d) It is a defense to prosecution under this section if the person charged produces in court a driver's license:

(1) issued to that person;

(2) appropriate for the type of vehicle operated; and

(3) valid at the time of the arrest for the offense.

(e) The judge of each court shall report promptly to the department each conviction obtained in the court under this section.

(f) The court may assess a defendant an administrative fee not to exceed \$10 if a charge under this section is dismissed because of the defense listed under Subsection (d).

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1610

**Caption:** relating to seat belt requirements for certain vehicles

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 547.701

**Affected:**

**Subject:** Additional equipment requirements for school buses and other buses used to transport schoolchildren

**Summary:** Amends TN 547.701 to clarify that a school bus and a school activity bus operated by or contracted for use by a school district for the transportation of schoolchildren shall be equipped with a three-point seat belt for each passenger, including the operator, only if the legislature has appropriated money for the purpose of reimbursing school districts for expenses.

Each bus purchased by a school district on or after September 1, 2010, for the transportation of schoolchildren; and each school-chartered bus contracted for use by a school district on or after September 1, 2011, for the transportation of schoolchildren would be required to be equipped with seat belts;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:**

In 2007, the legislature required the installation of three-point, lap shoulder seat belts on all new school buses purchased on or after September 1, 2010, effective only if the legislature appropriated state funds to reimburse school districts for expenses incurred in complying with the law. In 2009, the legislature created the Texas School Seat Belt Program, appropriating \$10 million to reimburse school districts for the expense of installing the seat belts. An additional \$400,000 was allocated for the Texas Transportation Institute to develop a priority implementation plan maximizing student safety and cost by determining the most dangerous bus routes in Texas. The Texas Education Agency (TEA) was tasked with administering the reimbursement plan. TN 547.701(f) (relating to additional equipment requirements for school buses and other buses used to transport schoolchildren) was added in 2009 to reassert that this is a state-funded reimbursement program. SB 1610 simplifies this reimbursement provision by stating that school districts are required to comply with the seat belt provisions only to the extent that the legislature has appropriated money for the purpose of reimbursing school districts for expenses incurred in complying with the Act.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1638

**Caption:** relating to the exception of certain personal information from required disclosure under the public information law

**Effective Date:** 6-17-2011

**Application:**

**Statutes** GV 552.024  
**Affected:** GV 552.117  
GV 552.1175  
GV 552.139

**Subject:** Electing to disclose address and telephone number

**Summary:** Amends GV 552.024, GV 552.117, and GV 552.1175 to except emergency contact information of government employees, peace officers, TDCJ employees, security officers, CSCD employees, county jailers, and employees of a prosecutor's office from disclosure under the public information act;

**Subject:** Exception: Government information related to security or infrastructure issues for computers

**Summary:** Amends GV 552.139 to except a photocopy or other copy of an identification badge issued to an official or employee of a governmental body from disclosure under the public information act;

**Subject:**

**Summary:**

**Comments:** Currently, a government employee's emergency contact information, out-of-state driver's license number, and employee badge may be released under the Texas Public Information Act. Government officials or employees have the authority to choose to protect family member information from public disclosure, but the protection is applicable only to individuals within the legal definition of family by consanguinity or affinity, not the broader colloquial definitions of persons trusted or protected or members of the same household. An individual with no legally recognized family in this state may choose to list a close friend as an emergency contact in case of a medical emergency, but a friend's name, address, and telephone number is not excepted from public disclosure. This situation encourages officials or employees to avoid listing emergency contact information for fear of public disclosure or harassment. Texas-issued driver's license information is also protected from public disclosure. A person applying for employment with local or state government may be required to provide a driver's license to be hired, especially if an acceptable driver's record is an essential function of the position. Since out-of-state driver's license numbers may be released, this practice has a negative effect on the decision of a number of qualified out-of-state candidates to apply for local and state positions. Another security risk can arise when a copy of an employee's badge is released. A copy of an employee's badge containing the employee's photograph, identification number, and job title could be used to make a replacement of the badge to gain access to secured areas of local and state government facilities and emergency scenes which would allow the individual to potentially harm other government employees and the public.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1716      **Caption:** relating to voidability of contracts procured through and liability arising from conduct constituting barratry; providing a civil penalty

**Effective Date:** 9-1-2011

**Application:** Applies only to a contract entered into on or after 9-1-2011;

**Statutes** GV 82.065  
**Affected:** GV 82.0651

**Subject:** Contract for legal services

**Summary:** Amends GV 82.065 to provide that any contract for legal services is voidable by the client if it is procured as a result of conduct violating the law or the Texas Disciplinary Rules of Professional Conduct regarding barratry by attorneys or other persons;  
An attorney who was paid under a contract that is voided may recover fees and expenses based on quantum meruit if the client does not prove that the attorney committed barratry or had actual knowledge, before undertaking the representation, that the contract was procured as a result of barratry by another person; in order to recover, the attorney must report the misconduct to the State Bar unless someone else has reported the misconduct or reporting would be detrimental to the client;

**Subject:** Civil liability for prohibited barratry

**Summary:** Adds GV 82.0651 to allow a client to bring an action to void a contract for legal service procured by conduct violating the law or the Texas Disciplinary Rules of Professional Conduct regarding barratry by attorneys or other persons;  
A client who prevails may recover fees and expenses paid, actual damages, and attorney's fees;  
A person who was solicited, but who did not enter a contract, may file a civil action against any person who committed barratry, and if the person prevails, recover a penalty in the amount of \$10,000, actual damages, and attorney's fees;

**Subject:**

**Summary:**

**Comments:** Barratry is commonly known as vexatious incitement to litigation, typically by soliciting potential legal clients. Many refer to the practice as "case running." Under Section 38.12, Penal Code, "barratry" is generally defined as the illegal solicitation of professional employment. The Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas prohibit these solicitations as well. Adding a civil enforcement option would help curtail this practice.  
SB 1716 adds a cause of action for a client who has been unlawfully solicited to void the contract and recover any actual damages and any fees and expenses paid. The bill allows a potential client to recover a civil penalty of \$10,000 from any person who committed barratry but did not succeed in getting the potential client to sign a contract. Actual damages and attorney's fees are also recoverable by a potential client. In addition, the bill allows equitable, quantum meruit recovery of reasonable fees and expenses by any other lawyer who did not commit barratry and did not know of it (the innocent lawyer safe harbor).

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1755

**Caption:** relating to the issuance of certain specialty license plates

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 504.202

**Affected:** TN 504.315

**Subject:** Veterans with disabilities

**Summary:** Amends TN 504.202 to require the Texas Department of Motor Vehicles to issue specialty license plates for recipients of the Distinguished Service Medal. The license plates must include the Distinguished Service Medal emblem and the words "Distinguished Service Medal" at the bottom of each plate and exempts such license plates from restrictions applicable only to specialty license plates authorized after January 1, 1999;

**Subject:** Military specialty license plates for extraordinary service

**Summary:** Amends TN 504.315 to authorize specialty license plates for veterans with disabilities issued to a person who is also entitled to a specialty license plate for a recipient of the Distinguished Flying Cross medal, a military specialty plate for extraordinary service, or a specialty license plate for a recipient of the Legion of Merit medal, and to include one emblem from the other license plates to which the person is entitled, except for license plates issued under provisions of law relating to a person entitled to receive license plates issued to veterans with disabilities who elect to receive license plates issued under provisions relating to vehicle registration.

**Subject:**

**Summary:**

**Comments:**

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1787

**Caption:** relating to the information provided by a peace officer before requesting a specimen to determine intoxication

**Effective Date:** 9-1-2011

**Application:**

**Statutes** TN 724.015

**Affected:**

**Subject:** Information provided by officer before requesting specimen

**Summary:** Amends TN 724.015 to include among the information provided by the officer to persons arrested for DWI or driving under the influence by minor that if the person refuses to submit to the taking of a specimen, the officer may apply for a warrant authorizing a specimen to be taken from the person;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** Many driving while intoxicated incidents result in the arresting officer applying for a warrant authorizing the taking of a blood or breath specimen from the person suspected of committing the offense. Currently, there is concern that informing a person that a refusal to submit to the taking of a specimen may result in the officer applying for a warrant authorizing the taking of that specimen constitutes coercion on the part of the informing officer. SB 1787 remedies this issue by adding to the information that an officer under those circumstances is required to provide before requesting that the person submit to the taking of a specimen.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1810                      **Caption:** relating to the exemption of certain retirement accounts from access by creditors

**Effective Date:** 6-17-2011

**Application:** Applies to an inherited individual retirement plan, annuity, account, or contract without regard to whether the plan, annuity, account, or contract was created before, on, or after 6-17-2011

**Statutes Affected:** PP 42.0021

**Subject:** Additional exemption for certain savings plans

**Summary:** Amends PP 42.0021 to clarify that a person's right to the assets or payments under a stock bonus plan, pension, annuity, deferred compensation, profit-sharing, or similar plan, including a retirement plan for self-employed individuals, or a simplified employee pension plan, an individual retirement account or individual retirement annuity, including an inherited individual retirement account or individual retirement annuity, or a health savings account, and under any annuity or similar contract purchased with assets distributed from that type of plan or account, described by Section 223 of the Internal Revenue Code of 1986,] is exempt from attachment, execution, and seizure for the satisfaction of debts to the extent [unless] the plan, contract, annuity, or account is exempt from federal income tax, or to the extent federal income tax on the person's interest is deferred until actual payment of benefits to the person under Section 223, 401(a), 403(a), 403(b), 408(a), 408A, 457(b), or 501(a), Internal Revenue Code of 1986, including a government plan or church plan described by Section 414(d) or (e), Internal Revenue Code of 1986;  
For purposes of this subsection, the interest of a person in a plan, annuity, account, or contract acquired by reason of the death of another person, whether as an owner, participant, beneficiary, survivor, coannuitant, heir, or legatee, is exempt to the same extent that the interest of the person from whom the plan, annuity, account, or contract was acquired was exempt on the date of the person's death;  
Amounts distributed are not subject to seizure for a creditor's claim for 60 days after the date of distribution if the amounts qualify as a nontaxable rollover contribution;  
A participant or beneficiary of a plan, annuity, account, or contract, other than an individual retirement account or individual retirement annuity, is not prohibited from granting a valid and enforceable security interest in the participant's or beneficiary's right to the assets held in or to receive payments under the exempt plan, annuity, account, or contract to secure a loan to the participant or beneficiary from the exempt plan, annuity, account, or contract, and the right to the assets held in or to receive payments from the plan, annuity, account, or contract is subject to attachment, execution, and seizure for the satisfaction of the security interest or lien granted by the participant or beneficiary to secure the loan;

**Subject:**

**Summary:**

**Subject:**

**Summary:**

**Comments:** A bankruptcy court in Texas recently held that the Texas statute exempting individual retirement accounts (IRAs) from creditors did not apply to inherited IRAs. SB 1810 clarifies an inherited IRA's exemption status with regard to creditors' claims by amending provisions protecting certain savings plans from a creditor's claims.

## SUMMARIES -- 82nd LEGISLATURE -- 2011

Janet Marton, Senior Assistant County Attorney  
Office of Vince Ryan, Harris County Attorney

**Bill Number:** SB 1907                      **Caption:** relating to access to certain archaic information

**Effective Date:** 9-1-2011

**Application:**

**Statutes**            GV 552.0215

**Affected:**            LG 201.009

OC 159.002

**Subject:**            Right of access to certain information after 75 years

**Summary:**            Adds GV 552.0215 to allow the public to access information that is not confidential but is excepted from required disclosure under the public information law on or after the 75th anniversary of the date the information was originally created or received by the governmental body;

**Subject:**            Access to records

**Summary:**            Amends LG 201.009 to make any local government record to which public access is denied under the public information act, including birth records maintained by a local registrar, open to public inspection 75 years after it was originally created or received;

**Subject:**

**Summary:**

**Comments:**