

# Final Legislative Report

## 2011 Legislative Session

### SB480 / HB140 Criminal Law: Ignition interlock and restricted license requirements.

**Description** Generally, under present law, if a person's motor vehicle operator's license has been revoked due to being convicted of a DUI, the person may apply to the trial judge for a restricted driver license. Generally, if the person was convicted of a first offense of DUI, but such person's sentence was not enhanced due to an aggravating circumstance, such as a BAC in excess of .15 percent, being accompanied by a minor, being involved in an accident that results in injury, death or significant property damage, or a violation of the implied consent law by a person having a prior conviction for certain alcohol offenses, the trial judge may order the issuance of a license allowing the person so convicted to operate a motor vehicle for the limited purposes of going to and from:

- (1) The person's regular place of employment and any work-related driving;
- (2) The office of the person's probation officer or other similar location for the sole purpose of attending a regularly scheduled meeting or other function with the probation officer by a route to be designated by the probation officer;
- (3) A court-ordered alcohol safety program;
- (4) A college or university if the person is enrolled full time in the college or university;
- (5) A scheduled interlock monitoring appointment;
- (6) A court-ordered outpatient alcohol or drug treatment program;
- (7) A scheduled litter pickup work shift; and
- (8) The person's regular place of worship for regularly scheduled religious services conducted by a bona fide religious institution.

Present law authorizes a person convicted of DUI whose sentence was not suspended due to an aggravating circumstance to petition the court to operate only a motor vehicle that is equipped with an ignition interlock device and not be subject to the limitations of (1) through (8).

If the person was convicted of a first offense of DUI and such person was ordered to operate only a motor vehicle that is equipped with a functioning ignition interlock device because the person's sentence was enhanced due to an aggravating circumstance, then the trial judge may order the issuance of a license allowing the person so convicted to operate a motor vehicle without the above geographic restrictions described in (1) through (8).

Present law also authorizes courts to permit a repeat DUI offender whose license is suspended for two years to operate a motor vehicle that is equipped with an ignition interlock device using a restricted license that is subject to the requirements of (1) through (8), but only after the offender's license has been suspended for one year.

#### THE BILL

This bill removes the above provision authorizing a court to order the issuance of a restricted license without the above geographic restrictions and clarifies that the geographic restrictions described above in (1) - (8), "must," instead of "may," apply if the person is:

- (1) Not required to operate only a motor vehicle with a functioning ignition interlock device; or
- (2) Required to operate only a motor vehicle with a functioning interlock device if, as

authorized by present law, the trial judge orders the issuance of a restricted license to a person whose motor vehicle operator's license has been revoked for committing a DUI for two years and who has a prior conviction for DUI or adult driving while impaired in this state, or a similar offense in any other jurisdiction, after the expiration of one year of the revocation period. Under such present law, if the judge issues such a restricted license, then the person may only operate a vehicle with a functioning interlock device.

This bill specifies that the above geographic restrictions would no longer apply once the person's driver license is no longer suspended or revoked if the person is required to operate only a motor vehicle with a functioning ignition interlock device as detailed in the bill. However, the geographic restrictions would continue to apply once the person's license is no longer suspended or revoked if the court orders, in the court's discretion, that the person continue to operate only a motor vehicle with a functioning ignition interlock device once the person's license is no longer suspended or revoked.

Present law requires that every person who informs a court that the person is financially unable to pay for a functioning ignition interlock device must complete a uniform affidavit of indigency. This bill requires the administrative office of the courts to design the affidavit of indigency.

Enacted as Public Chapter 0298 effective 05/27/2011.

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**SB559 / HB401 Criminal Law: Exclusionary Rule Reform Act.**

**Description** Specifies that any evidence that is seized pursuant to a search warrant that is otherwise admissible in criminal court and that is not in violation of the state or federal constitutions would not be suppressed due to any violation of present law, including the Tennessee rules of criminal procedure, if the court determines that the violation was a result of a good faith mistake or technical violation made by a law enforcement officer, court official, or the issuing magistrate. In addition, unless otherwise provided by federal law or the Tennessee Constitution, the person or governmental entity that made the good faith mistake or technical violation would not be civilly liable for such mistake or violation. Under this bill, "good faith mistake or technical violation" means:

- (1) An unintentional clerical error or omission made by a law enforcement officer, court official or issuing magistrate in the form, preparation, issuance, filing and handling of copies, or return and inventory of a search warrant;
- (2) Situations when the officer to whom the warrant is delivered for execution is not present during the execution but an officer with law enforcement authority over the premises does otherwise execute the search warrant;
- (3) A reasonable reliance on a statute that is subsequently ruled unconstitutional or a controlling court precedent that is overruled after the issuance of a search warrant, unless the court overruling the precedent orders the new precedent to be applied retroactively.

Enacted as Public Chapter 0252 effective 07/01/2011.

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**SB604 / HB171 Criminal Law: Property forfeiture in human trafficking offenses.**

**Description** Provides that real and personal property used in commission of human trafficking offenses is subject to judicial forfeiture seizure and provides for disposition of funds as follows: Twenty percent shall go to the law enforcement agency which conducted the investigation which lead to the forfeiture, twenty percent shall go to the district attorneys general conference, five percent to the clerk of the court's office in which jurisdiction the forfeiture took place, and the remaining fifty-five percent to the state's general fund.

Enacted as Public Chapter 0354 effective 07/01/2011.

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**SB802 / HB962 Criminal Law: Duplicate copy of capias allowed.**

**Description** Requires that in the event obtaining a certified copy of the undertaking or capias from the clerk's office at the time of the arrest or surrender is not possible, then a duplicate copy must suffice until a certified copy can be obtained.

Enacted as Public Chapter 0367 effective 05/30/2011.

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**SB861 / HB703 Criminal Law: Revoking of defendant's bond during and before trial.**

**Description** Specifies that a defendant released before trial will continue on release during trial or release pending trial under same terms and conditions as were previously imposed, unless the court determines that other terms and conditions or termination of release are necessary; authorizes court to order a defendant held without release during existing trial, if, after the defendant is released upon personal recognizance, an unsecured personal appearance bond, or any other bond approved by the court, the defendant violates a condition of release, is charged with an offense committed during the defendant's release, or engages in conduct which results in the obstruction of the orderly and expeditious progress of the trial or other proceedings. - Amends TCA Title 39 and Title 40.

Enacted as Public Chapter 0057 effective 01/01/2012.

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**SB910 / HB1729 Criminal Law: Sale of electronic cigarettes to minors.**

**Description** Prohibits the sale or distribution of electronic cigarettes to, or purchases of electronic cigarettes on behalf of, a person under the age of 18. Defines "electronic cigarette" as an electronic device that converts nicotine into a vapor that is inhaled by the user.

06/06/2011 - Sent to governor.

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**SB1086 / HB1365 Criminal Law: Appealing the ruling of post-conviction relief motions.**

**Description** Increases the period of time that a petitioner in a post-conviction relief action has to appeal the ruling of the trial court to the court of criminal appeals on a motion to reopen the petition from 10 to 30 days.

Enacted as Public Chapter 0290 effective 05/27/2011.

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**SB1234 / HB694 Criminal Law: Pretrial diversion and Judicial diversion.**

**Description** Under present law, a qualified defendant is eligible for pretrial diversion and may agree that the prosecution will be suspended for a specified period of up to two years from the filing of a memorandum of understanding. A defendant is a "qualified defendant" if:

- (1) The defendant has not previously been granted pretrial or judicial diversion;
- (2) The defendant does not have a prior misdemeanor conviction for which a sentence of confinement is served or a prior felony conviction within a five-year period after completing the sentence or probationary program for the prior conviction; and
- (3) The offense for which the prosecution is being suspended is not a Class A or Class B felony, a sexual offense, DUI, vehicular assault, or a Class C felony as defined. Present law defines "Class C felony," for purposes of pretrial diversion, to mean conduct which constitutes the following offenses: adulteration of foods, liquids or pharmaceuticals; aggravated assault resulting in serious bodily injury; aggravated burglary; bribery of a public servant; bribing a juror; bribing a witness; buying and selling in regard to public offices; introduction of weapons, explosives,

intoxicants or drugs into a state, county, or municipal institution where prisoners are quartered; robbery; voluntary manslaughter; or vehicular homicide.

This bill rewrites the definition of "qualified defendant", with regard to pretrial diversion, to instead specify that a defendant is a "qualified defendant" if:

- (1) The defendant has not previously been granted pretrial or judicial diversion;
- (2) The defendant does not have a prior conviction for a Class A or B misdemeanor or for any class of felony; and
- (3) The charged offense for which the prosecution is being suspended is not a felony or any of the following offenses:
  - (A) DUI;
  - (B) Any misdemeanor sexual offense;
  - (C) Conspiracy or criminal attempt to commit any Class E felony sexual offense; or
  - (D) Solicitation to commit any Class E or D felony sexual offense.

#### JUDICIAL DIVERSION

Under present law, a court may grant a qualified defendant judicial diversion by deferring further proceedings against such defendant and placing such defendant on probation upon such reasonable conditions as it may require without entering a judgment of guilty and with the consent of the qualified defendant. A "qualified defendant" is a defendant who:

- (1) Is found guilty of or pleads guilty or nolo contendere to the offense for which deferral of further proceedings is sought;
- (2) Is not seeking deferral of further proceedings for a sexual offense, a violation of willful abuse, neglect or exploitation of an adult who because of mental or physical dysfunction or advanced age is eligible for protective service under present law; a violation of physically abusing or grossly neglecting an impaired adult if the abuse or neglect results in serious mental or physical harm; or a Class A or Class B felony; and
- (3) Has not previously been convicted of a felony or a Class A misdemeanor.

This bill revises the definition of a "qualified defendant", regarding judicial diversion, to require that such defendant not previously be convicted of a felony or a Class A misdemeanor "for which a sentence of confinement is served" and to require that such defendant not have previously been granted judicial or pretrial diversion.

The bill, as amended, takes effect on July 1, 2011, and governs the eligibility of a person for pretrial or judicial diversion for any person charged with an offense that was committed on or after that date.

06/06/2011 - Sent to governor.

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#### **SB1775 / HB2039 Criminal Law: Judge permitted to carry firearm into courtroom.**

**Description** Permits Judges in the actual discharge of official duties to carry a handgun during judicial proceedings if they successfully complete 16 hours of POST court security training in addition to an annual eight hours of POST firearm training.

05/31/2011 - Sent to governor.

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#### **SB413 / HB787 Education: Educational neglect.**

**Description** Establishes that a parent, guardian or other person who has control of a truant student commits "educational neglect."

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Enacted as Public Chapter 0220 effective 05/20/2011.

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**SB721 / HB1106 Family Law : Military parents and child custody.**

**Description** Makes various changes regarding child custody determination for a mobilized member of the armed forces. Provides for an expedited hearing when the exigencies of the mobilized parent's out-of-state assignment require immediate attention. Allows testimony to be given to the court by electronic means while the military parent is absent from the state. Specifies that nothing shall limit the power of a court to permanently modify a decree of child custody or visitation in the event that a parent volunteers for successive or frequent duties that remove the parent from the state and that make the parent unavailable to effectively supervise and care for a child.

Enacted as Public Chapter 0086 effective 04/14/2011.

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**SB349 / HB535 Judiciary: Cost bond signed by attorney in lieu of fees.**

**Description** Requires clerk to accept cost bond signed by attorney in lieu of party paying fees or clerk must forfeit all costs.

Enacted as Public Chapter 0234 effective 05/23/2011.

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**SB503 / HB491 Judiciary: Notice of exemption change.**

**Description** Specifies that the notice of exemption given by a judgment debtor must state "Tennessee law provides a \$10,000 exemption" instead of "Tennessee law provides a \$4,000 exemption."

Enacted as Public Chapter 0060 effective 04/11/2011.

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**SB520 / HB789 Judiciary: Wrongful death on behalf of spouse requirements.**

**Description** Generally, under present law, a cause of action for the wrongful death of a person passes to the person's surviving spouse, or if none, then to the person's children or next of kin or to the person's personal representative.

This bill provides that:

- (1) The right to institute and the right to collect any proceeds from a wrongful death action to a surviving spouse will be waived, if the children or next of kin establish the surviving spouse has abandoned the deceased spouse or otherwise willfully withdrawn for a period of two years;
- (2) If the period of two years has passed since the time of abandonment or willful withdrawal, then there is created a rebuttable presumption that the surviving spouse abandoned the deceased spouse; and
- (3) In such a wrongful death action, the child or next of kin must serve the surviving spouse with process as provided in the rules of civil procedure or by constructive service as may otherwise be provided by law.

This bill further provides that in no event will any action for wrongful death abate, or the statute of limitations bar, an action solely as a result of a finding the surviving spouse's rights are waived. Instead the court must substitute the proper party.

Present law provides that the surviving spouse may effect a bona fide compromise in such a suit or right of action and may execute a valid release that will be binding upon all the children of the deceased or next of kin of the deceased. This bill adds that a release entered into pursuant to this provision by the surviving spouse will be binding, unless a copy of an order finding waiver of rights was served or delivered to the released parties prior to the execution of the release or distribution of funds, whichever occurs first. However, a court of competent jurisdiction, upon motion of the

children or next of kin, may grant injunctive relief after notice to the released parties and to the surviving spouse. The party or parties seeking the release shall not be required to answer or otherwise defend any such action.

Enacted as Public Chapter 0366 effective 05/30/2011

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**SB574 / HB1370 Judiciary: Chancery courts to handle certain claims against government.**

**Description** Extends jurisdiction to chancery courts for certain claims against governmental entities.

**Senate Status** 05/11/2011 - Failed in Senate Judiciary.

**House Status** 04/18/2011 - Held on House clerk's desk.

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**SB1112 / HB713 Judiciary: Transfer of juveniles to adult court.**

**Description** Requires custody of juveniles to terminate when the transfer hearing occurs, except under certain circumstances. Reorganizes provisions on home placement supervision of juveniles. Allows home placement agencies to transfer the juvenile at its discretion. Authorizes communication between the adult court and the juvenile court.

Sent to governor.

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**SB1186 / HB1858 Judiciary: Judicial sales of real property - fees.**

**Description** Revises provisions for auctioneer's fee at judicial sales of real property. Raises the fee from not more than 6% of the sale price to not more than 8%.

Enacted as Public Chapter 0320 effective 07/01/2011.

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**SB343 / HB391 Transportation Vehicles: DUI - revocation of driver license on third offense.**

**Description** Increases the minimum time that a driver license may be revoked for third and fourth and subsequent DUI convictions from three and five years to six and eight years.

Enacted as Public Chapter 0379 effective 07/01/2011.

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**SB451 / HB475 Transportation Vehicles: Adjusted standards for DUI.**

**Description** Broadens certain standards of impairment regarding driving under the influence from depriving the driver of clearness of mind and control of the driver's body to impairment to the slightest degree. Establishes that a DUI occurs when any amount of Schedule I chemical is found in the driver's bodily fluids. Establishes that a DUI occurs when any amount of a Schedule II, III, or IV chemical is found in the driver's bodily fluids, unless the driver has a valid prescription for such chemical.

**Senate Status** 04/05/2011 - Senate Judiciary deferred to 04/12/2011.

**House Status** 04/20/2011 - House General Subcommittee of Judiciary deferred to summer study.

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**SB1269 / HB718 Transportation Vehicles: Conditions on bond for prior DUI convictions.**

**Description** Under present law, if a defendant has one or more prior convictions for DUI, vehicular homicide due to the driver's intoxication, or vehicular assault, the defendant may not be released unless the court first determines the defendant is not a danger to the community. If a defendant has been admitted to and released on bail for a violation of DUI, vehicular homicide due to the driver's intoxication or vehicular assault and commits any of those crimes after release, the defendant is considered a danger to the community. The defendant may not be released with another bail unless the court first determines the defendant is no longer a danger to the community. The court may consider the use of monitoring devices to eliminate the danger posed. In either of the above cases, the court may consider the use of monitoring devices to eliminate danger

to the community including:

- (1) Ignition interlock devices;
- (2) Transdermal monitoring devices or other alternative alcohol monitoring devices;
- (3) Electronic monitoring with random alcohol or drug testing; or
- (4) Pretrial residency in an in-patient alcohol or drug rehabilitation center.

This bill rewrites the above provisions to instead require the court, or any other person authorized to take bail, to consider the use of special conditions for the defendant, including the conditions described above in (1) - (4), at the time the court is determining the amount and conditions of bail to be imposed upon the defendant, if the defendant:

- (1) Is charged with a violation of DUI, vehicular homicide due to the driver's intoxication, or vehicular assault and has one or more prior convictions for such a violation; or
- (2) Has been admitted to and released on bail for a violation of DUI, vehicular homicide due to the driver's intoxication or vehicular assault and commits any of those crimes after release.

06/06/2011 - Sent to governor.

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**SB1270 / HB715 Transportation Vehicles: DUI - testing for blood alcohol content without consent.**

**Description** Permits a law enforcement officer to test the blood alcohol content of a driver who is suspected of committing DUI and who has been previously convicted of DUI regardless of whether the driver gives his consent to be tested.

Enacted as Public Chapter 0307 effective 01/01/2012.

**SB509 / HB570 Family Law : Petitioner charged costs for certain orders of protection.**

**Description** Allows the court to charge a petitioner all costs and fees related to the petitioner seeking an order of protection if the court finds by clear and convincing evidence that the petitioner is not a domestic abuse, stalking, or sexual assault victim and that such determination is not based on the petitioner's failure to attend the hearing, request dismissal of the petition or having filled the petition out incorrectly, and that the petitioner knew the allegations in the petition were false when the petition was filed. Also authorizes a court to direct a respondent to an order of protection to pay the petitioner all costs, expenses and fees pertaining to petitioner's breach of a rental agreement if the petitioner must vacate the leased premises because staying would jeopardize the petitioner's or petitioner's children's life, health or safety.;

06/08/2011 - Enacted as Public Chapter 0402 effective 06/06/2011.

**SB 0803/HB 0571\* Family Law: Court ordered child custody arrangements.**

Requires a court to order a child custody arrangement that allows both parents to enjoy the maximum amount of participation possible in the child's life while taking into account the child's best interest, the locations of both the parent's residences, and the child's need for stability among other factors.

Enacted as Public Chapter 0433 (effective 06/06/2011).

**SB940 / HB1641 Labor Law: Employment discrimination and retaliatory discharge claims.**

**Description** Establishes a framework for the consideration of evidence offered during all stages of the proceedings in employment discrimination and retaliation cases. Mandates the application of the *McDonnell Douglas* burden shifting analysis previously abrogated by the Tennessee Supreme Court in *Gossett v. Tractor Supply Co. Inc.*

05/31/2011 - Sent to governor.

**SB1114 / HB1358 Judiciary: Motions for summary judgment.**

**Description** Requires the moving party to prevail in its motion for summary judgment if it submits evidence to negate an essential element of the nonmoving party's claim or proves that the nonmoving party's evidence fails to establish an essential element of the nonmoving party's claim. Expressly "overrules" the summary judgment standard set forth in *Hannan v. Alltel Publishing Co.*, "its progeny, and the cases relied on in *Hannan*".

06/06/2011 - Sent to governor.

**SB1172 / HB714 Family Law : Support payments and rights of non-custodial parents.**

**Description** Clarifies the definition of "dissipation" in regards to equitable division of marital property as wasteful expenditures that reduce the marital property available for equitable distributions and that are made for a purpose contrary to the marriage either before or after a complaint for divorce or legal separation has been filed. Specifies that where the lump sum amount of retirement or pension benefits or of balances in a 401(k), 403(b), or 457 individual retirement account or any other tax qualified account has been considered by the trial court, and determined to be marital property to be divided, the distributions of such lump sum amounts necessary to complete the division of property, whether distributed in a single payment or by periodic payments, would not be considered income for the purpose of determining a spouse or ex-spouse's right to receive alimony or child support. However, the income generated by the investment of such lump sum awards would be considered income for such purpose.

Enacted as Public Chapter 0119 effective 04/25/2011.

**SB1532 / HB1996 Criminal Law: Mental health evaluations in certain not guilty verdicts.**

**Description** Authorizes a court to order defendants who are in custody and are found not guilty by reason of insanity of a felony offense against the person, such as felony sex offenses, assaults, kidnappings, and robberies, to remain in custody after the verdict to receive an outpatient mental health evaluation. Any such evaluation should be completed within 30 days of the order.

Enacted as Public Chapter 0142 effective 05/02/2011.

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