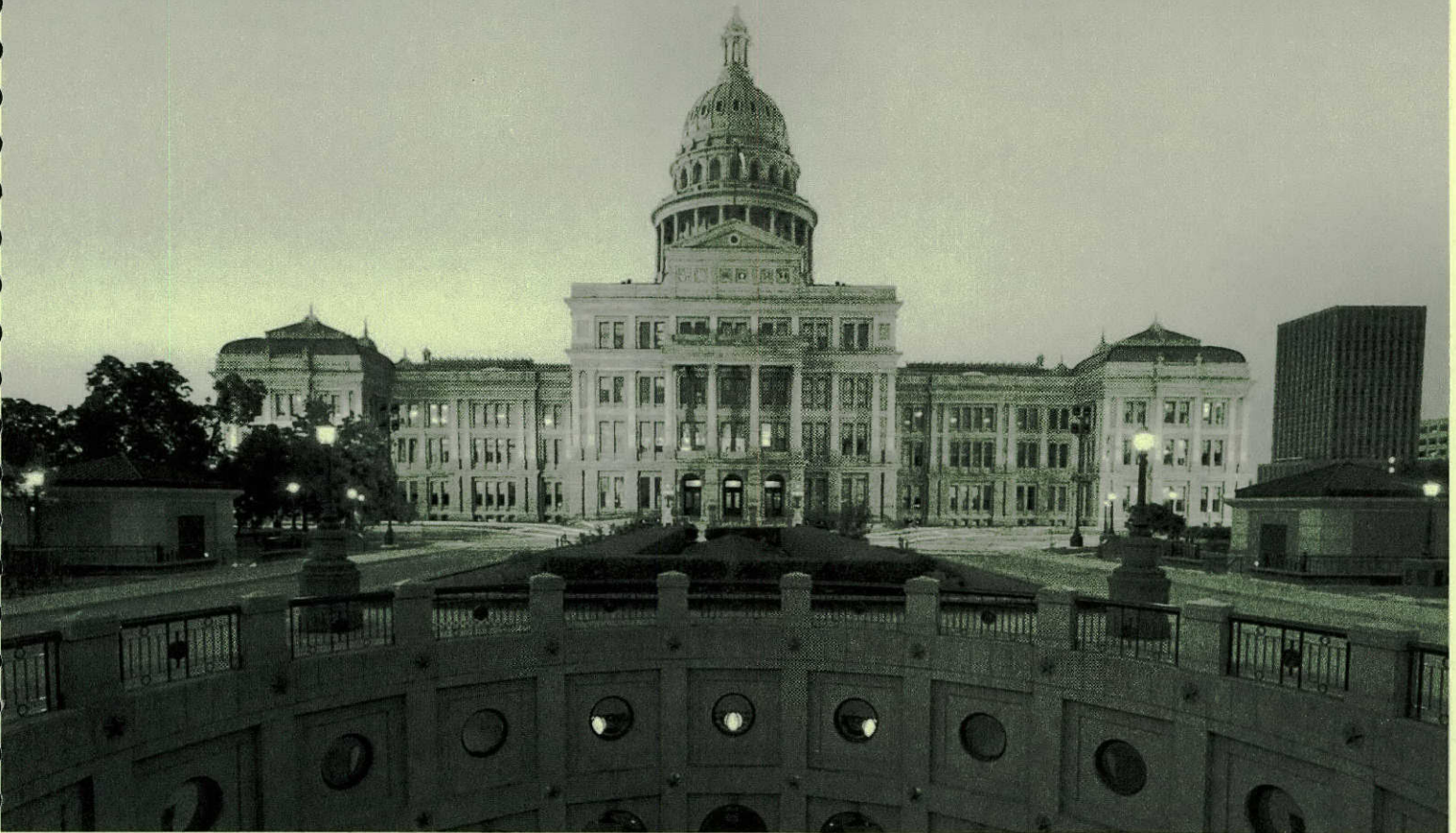


# INTERIM REPORT

*to the 85<sup>th</sup> Texas Legislature*



HOUSE COMMITTEE ON  
JUDICIARY & CIVIL JURISPRUDENCE



JANUARY 2017



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**HOUSE COMMITTEE ON JUDICIARY & CIVIL JURISPRUDENCE  
TEXAS HOUSE OF REPRESENTATIVES  
INTERIM REPORT 2016**

**A REPORT TO THE  
HOUSE OF REPRESENTATIVES  
85TH TEXAS LEGISLATURE**

**JOHN SMITHEE  
CHAIRMAN**

**COMMITTEE CLERK  
BETH KLUNDER**

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Committee On  
Judiciary & Civil Jurisprudence

January 4, 2017

John Smithee  
Chairman

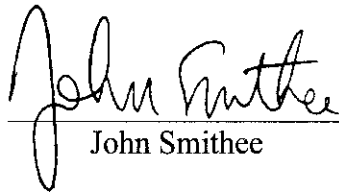
P.O. Box 2910  
Austin, Texas 78768-2910

The Honorable Joe Straus  
Speaker, Texas House of Representatives  
Members of the Texas House of Representatives  
Texas State Capitol, Rm. 2W.13  
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

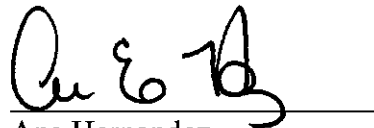
The Committee on Judiciary & Civil Jurisprudence of the Eighty-fourth Legislature hereby submits its interim report including recommendations for consideration by the Eighty-fifth Legislature.

Respectfully submitted,

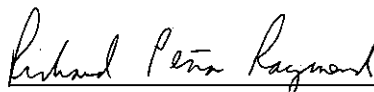
  
John Smithee

  
Jessica Farrar

  
Travis Clardy

  
Ana Hernandez

  
Jodie Laubenberg

  
Richard Peña Raymond

  
Mike Schofield

  
Kenneth Sheets

  
Senfronia Thompson

Jessica Farrar  
Vice Chair

Members: Travis Clardy, Ana Hernandez, Jodie Laubenberg, Richard Peña Raymond, Mike Schofield, Kenneth Sheets, Senfronia Thompson



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## INTRODUCTION

Speaker Joe Straus appointed 9 members to the House Committee on Judiciary and Civil Jurisprudence: John Smithee, Chair; Jessica Farrar, Vice Chair; Travis Clardy, Ana Hernandez, Jodie Laubenberg, Richard Peña Raymond, Mike Schofield, Kenneth Sheets, and Senfronia Thompson.

Pursuant to House Rule 3, Section 23, the committee has jurisdiction over all matters pertaining to:

1. fines and penalties arising under civil laws;
2. civil law, including rights, duties, remedies, and procedures thereunder, and including probate and guardianship matters;
3. civil procedure in the courts of Texas;
4. administrative law and the adjudication of rights by administrative agencies;
5. permission to sue the state;
6. uniform state laws;
7. creating, changing, or otherwise affecting courts of judicial districts of the state;
8. establishing districts for the election of judicial officers;
9. the State Commission on Judicial Conduct;
10. the Office of the Attorney General, including its organization, powers, functions, and responsibilities;
11. courts and court procedures except where jurisdiction is specifically granted to some other standing committee; and
12. the following state agencies: the Supreme Court, the Courts of Appeals, the Court of Criminal Appeals, the State Commission on Judicial Conduct, the Office of Court Administration of the Texas Judicial System, the State Law Library, the Texas Judicial Council, the Judicial Branch Certification Commission, the Office of the Attorney General, the Board of Law Examiners, the State Bar of Texas, and the State Office of Administrative Hearings.



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**HOUSE COMMITTEE ON JUDICIARY & CIVIL JURISPRUDENCE  
INTERIM CHARGES**

- CHARGE 1: Study the recently enacted Justice for Victims of Trafficking Act and determine how Texas's anti-trafficking laws could benefit from the Act. In addition, examine strategies for tracking the demand for commercial sex in Texas and the feasibility of creating a statewide trafficking reporting system.
- CHARGE 2: Examine whether family law statutes and those affecting the parent-child relationship provide sufficient guidance to Texas judges as to the appropriate application of foreign law. Consider whether additional statutory provisions regarding application of foreign law could provide useful guidance while preserving judges' ability to consider the circumstances of each case and not needlessly prolonging litigation.
- CHARGE 3: Evaluate recent efforts to make the court system more accessible for self-represented litigants, and make recommendations on how the courts can more effectively interact with unrepresented parties and increase access to legal information, assistance, and representation. Examine similar efforts in other states.
- CHARGE 4: Examine issues related to jury service in Texas, including participation and response rates, the accuracy of jury wheel data, and possible methods to improve response and participation.
- CHARGE 5: Study the implementation of the expedited action provisions of HB 274 (82R), and examine whether these provisions have been effective in encouraging the prompt and efficient resolution of cases.
- CHARGE 6: Examine the rights, duties, remedies, and procedures available to consumers under Subchapter M, Chapter 2301, Texas Occupations Code (the Texas "Lemon Law"). Monitor the results of complaints filed under this subchapter and how these rights, duties, remedies, and procedures compare to those in other states.
- CHARGE 7: Conduct legislative oversight and monitoring of the agencies and programs under the committee's jurisdiction and the implementation of relevant legislation passed by the 84th Legislature. In conducting this oversight, the committee should:
- a. consider any reforms to state agencies to make them more responsive to Texas taxpayers and citizens;
  - b. identify issues regarding the agency or its governance that may be appropriate to investigate, improve, remedy, or eliminate;
  - c. determine whether an agency is operating in a transparent and efficient manner; and
  - d. identify opportunities to streamline programs and services while maintaining the mission of the agency and its programs.



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## SUMMARY OF COMMITTEE ACTION CHARGE 1

*Study the recently enacted Justice for Victims of Trafficking Act and determine how Texas's anti-trafficking laws could benefit from the Act. In addition, examine strategies for tracking the demand for commercial sex in Texas and the feasibility of creating a statewide trafficking reporting system.*

### Background

The United States Congress recently passed the Justice for Victims of Trafficking Act of 2015 (JVTA), with the aim of reducing human trafficking and providing additional resources to victims.<sup>1</sup> The legislation includes the Domestic Trafficking Victims' Fund to "finance victims' services for human trafficking and child pornography survivors."<sup>2</sup> The enactment increases federal support for victim services and law enforcement efforts.<sup>3</sup> The JVTA also "increases the statute of limitations for victims of lawsuits against traffickers" and helps victims expunge their criminal records of crimes that were a direct result of being trafficked.<sup>4</sup>

The JVTA recognizes child pornography as a form of human trafficking and guarantees victims access to restorative services through Child Advocacy Centers, as well as permitting the Domestic Trafficking Victims' Fund to supplement Internet Crimes Against Children Task Forces to rescue children from sexual exploitation.<sup>5</sup> The JVTA also permits state and local human trafficking task forces to obtain wiretap warrants without federal approval.<sup>6</sup> The bill also clarifies current law to encourage law enforcement, prosecutors, and judges to reduce demand by targeting all parties involved in the buying and selling of human trafficking victims.<sup>7</sup>

The JVTA ensures regular reporting on the number of human trafficking crimes by making human trafficking a Part 1 offense for purposes of the Federal Bureau of Investigation Uniform Crime Reporting Program, as well as notifying the National Center for Missing and Exploited Children (NCMEC) of any child reported to be missing from foster care.<sup>8</sup> Healthcare and homeland security personnel are also trained in recognizing and reporting human trafficking, while the United States Advisory Council on Human Trafficking (consisting of eight to fourteen survivors) makes recommendations to the federal government on how to continue combating the issue.

The JVTA reauthorizes and reformulates an expired section of the Trafficking Victims Protection Act relating to services for domestic child trafficking victims. It authorizes a block grant program to help states and local governments develop and implement victim-centered programs. Authorized programs include training law enforcement to rescue exploited children, create task forces, and investigate and prosecute human traffickers. Other authorized programs relate to the needs of courts to administer and supervise restorative programs in the lives of victims. The section contemplates collaboration between law enforcement, social services, emergency responders, children's advocacy centers, victim service providers, and nonprofits in an effort to provide a comprehensive approach to both fighting trafficking and serving victims. The grants are to be funded through the Domestic Trafficking Victims' Fund.

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Block grants are administered through the United States Attorney General, who may award block grants to an eligible entity<sup>9</sup> to develop, improve, or expand domestic child human trafficking deterrence programs that assist law enforcement officers, prosecutors, judicial officials, and qualified victims' services organizations in collaborating to rescue and restore the lives of victims, while investigating and prosecuting offenses involving child human trafficking.

Texas has been among the states with the greatest reported incidence of human trafficking, ostensibly because of its extensive interstate highway system, international airports, and vast international border.<sup>10</sup> In response, the Legislature has adopted several measures over the past decade to combat the growing problem. In 2009, the Legislature created the Texas Human Trafficking Prevention Task Force (Task Force) to assist state and federal efforts to prevent human trafficking, increase data collection, provide public education and victim services, and provide appropriate training.<sup>11</sup>

The task force reports to each Legislature with specific legislative recommendations. In 2011, thirty-two of the Task Force's thirty-five recommendations were passed into law; in 2013, eleven of thirteen recommendations were enacted.<sup>12</sup> Changes included eliminating the statute of limitations for compelling prostitution of children, adding prostitution-related offenses to the sex offender registry, changing provisions that affect whether trafficking victims can receive payment under the Crime Victims' Compensation Act, and the creation of the Child Sex Trafficking Prevention Unit within the Governor's Criminal Justice Division.<sup>13</sup> Additional Task Force recommendations were adopted into law during the 2015 session.

### Committee Hearing

The House Committee on Judiciary & Civil Jurisprudence met in a scheduled public hearing on Thursday, May 19, 2016, at 10:30 a.m. in room E2.010, Texas State Capitol.

### Summary of Testimony

#### **Jamey Caruthers, Senior Staff Attorney with Children at Risk**

Mr. Caruthers noted that the JVTA includes recommendations for state action and provides federal funding to states based on the state's adoption of the recommendations. Under the JVTA, local law enforcement agencies may apply for Community Oriented Policing Services (COPS) grants to fund training and equipping those entities to combat human trafficking. The JVTA also includes a new funding source through block grant funds that are available to state and local governments to develop and improve domestic human trafficking deterrence programs. Mr. Caruthers recommended that the Legislature consider requiring all law enforcement agencies to report prostitution-related arrests to assist in data collection.

#### **Kirsta Melton, Deputy Criminal Chief of the Human Trafficking and Transnational Organized Crime Section of the Office of the Attorney General**

The Transnational Organized Crime Section of the Office of the Attorney General was created in January 2016, for the purpose of combating human trafficking. The section consists of

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three staff attorneys, four investigators, a victim advocate, and a crime analyst. The effort is part of the Data Collection Task Force. The Task Force will report to the 85th Legislative Session regarding the compilation and efficient use of acquired data.

**John Jones, Assistant Director and Chief of the Intelligence and Counter Terrorism Division at the Texas Department of Public Safety**

Mr. Jones testified on the Texas Department of Public Safety's iWatch program, which relays community tips of criminal activity to law enforcement. Mr. Jones stated that in 2015, there were three thousand suspicious activity reports in Texas, thirty of which were human trafficking reports. Of the thirty, six were reported from the community. One of the community reports resulted in a rescue of a victim of domestic minor sex trafficking.

**Angela Goodwin, Texas Child Protective Services (TxCPS)**

Ms. Goodwin testified concerning the vulnerability of the youth under TxCPS care who often desire a sense of belonging and family, which is a sought after characteristic for traffickers.

In 2013, a public service announcement from the Assistant Commissioner of TxCPS was disseminated to the frontline staff, stating they must inform local law enforcement, as well as the National Center for Missing and Exploited Children (NCMEC) if a child runs away.

In 2014, TxCPS entered into a memorandum of understanding with the NCMEC promising that if a child runs from TxCPS care they will notify NCMEC. Shortly after, House Resolution 4980 was passed by Congress and became federal law, giving states until September to have their child welfare agencies report their missing children to the NCMEC.

**Kelly Cruse, Advancement Officer with New Friends New Life**

Ms. Cruse explained the mission of New Friends New Life, which aims to restore and empower formerly trafficked teen girls and sexually exploited women and their children. The committee was informed that New Friends New Life provides access to education, job training, interim financial assistance, casework management, and spiritual support.

In 2015, New Friends New Life formed a men's advocacy group, which created the No Harm Network, encouraging businesses to adopt policies that protect girls and women from sex trafficking.

**Dennis Mark, Executive Director of Redeemed Ministries**

Mr. Mark noted that the commercial sex trade is a very fluid and organized movement, where traffickers are able to adapt their trade according to laws that are passed or changed. For example, massage parlors and modeling studios that are evicted from strip malls, are moved to residential neighborhoods as it is easier to rent a house than a business. Consequently, the ability to track these establishments becomes increasingly more difficult for law enforcement.



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## Committee Findings and Recommendations

### 1. Potential benefits to Texas under the Justice for Victims of Trafficking Act.

The consensus of opinion seems to be that current Texas law is sufficient to enable Texas to obtain maximum federal benefits available under the JVTA. The Committee was unable to identify any specific change or addition to statutory law that would increase potential benefits to the state.

### 2. How Texas's anti-trafficking laws could benefit from the Act.

The JVTA provides various potential benefits to the states, and it appears that Texas is presently eligible for all of such benefits under its existing law. The primary benefit appears to be eligibility for block grants available to state and local governments to develop and improve domestic human trafficking deterrence programs.

### 3. Strategies for tracking the demand for commercial sex in Texas and the feasibility of creating a statewide trafficking reporting system.

One witness recommended that the Legislature consider requiring all law enforcement agencies to report prostitution-related arrests to assist in data collection. The Committee was unable to obtain sufficient information regarding the cost and efficacy of such a program to enable it to make any specific recommendation. However, it appears that almost any additional necessary data collection or analysis could best be conducted through and under the Texas Human Trafficking Prevention Task Force.

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## SUMMARY OF COMMITTEE ACTION CHARGE 2

*Examine whether family law statutes and those affecting the parent-child relationship provide sufficient guidance to Texas judges as to the appropriate application of foreign law. Consider whether additional statutory provisions regarding application of foreign law could provide useful guidance while preserving judges' ability to consider the circumstances of each case and not needlessly prolonging litigation.*

### Background

Concern has arisen in Texas, as well as in a number of other states, as to the extent to which the state's courts should recognize the laws of foreign jurisdictions, particularly when those laws are inconsistent with this state's notions of due process (and other constitutional rights) or sound public policy. This issue was the focus of the Texas Attorney General's Opinion No. KP-0094 (Opinion Letter), released June 15, 2016 (after the Committee received its interim charge). See *Appendix 2*. The Opinion Letter addressed the issue of application of foreign law by Texas courts in 12 specific contexts:

- a. Whether Texas courts should be compelled to enforce a judgment rendered by a foreign court.

The Attorney General concluded that Texas courts should consider both the procedural and substantive law of the jurisdiction in which the judgment was rendered. As to process, the AG opines that if a judgment was obtained in a foreign jurisdiction in violation of a party's due process rights, a state court judge may refuse to enforce the judgment. Similarly, the AG concludes: Texas courts will consider whether a judgment obtained in a foreign country was based on foreign law contrary to this State's public policy, and, if so, the courts may refuse to enforce the judgment.

- b. Whether a Texas court may refuse to enforce a decision of an agreed-upon arbitrator if the arbitrator's application of foreign law or the application of principles of a particular faith resulted in an arbitration decision violating a party's due process rights or was contrary to the public policy of this State.

The Attorney General determined that, to the extent that an arbitration award is obtained in violation of basic due process rights or is contrary to public policy, a Texas judge is authorized to refuse enforcement of the award.

- c. Whether a Texas judge may refuse to apply foreign law that would otherwise apply under the principles of conflict of laws if applying such law would violate due process or the public policy of this State.

In response, the Attorney General concluded: If the law of the foreign jurisdiction with the most significant contacts is against good morals or natural justice, or is prejudicial to the general interests of our citizens, Texas courts should refuse to enforce said law.

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- d. Whether a judge may refuse to enforce a contract provision that provides for foreign law to govern the dispute if applying the law would violate a party's right to due process or the public policy of this State.

According to the Attorney General, a Texas court may refuse to enforce a contract provision that requires the application of foreign law to a dispute if doing so would violate the public policy of this State.

- e. Whether a judge may refuse to enforce a contractual forum selection provision providing that a dispute will be resolved by a court outside of the United States if doing so would violate the party's right to due process or the public policy of this State.

The Attorney General answered that if the enforcement of a forum selection clause would violate the party's right to due process or the public policy of this State, a court may refuse to enforce it.

- f. Whether a judge, based on the principle of forum non conveniens, may exercise jurisdiction over a case, despite a more convenient alternative forum, if the foreign forum would apply foreign law that would violate a party's right to due process or the public policy of this State.

The Attorney General's conclusion was that, if an alternative forum to Texas would apply law that would violate a party's right to due process or the public policy of this State, such factors could provide grounds for a judge to deny a motion to dismiss for forum non conveniens.

- g. Whether a judge abuses his or her discretion by applying foreign law in the scenarios previously described and doing so violates a party's right to due process or the public policy of this State.

The Attorney General generally concluded that as a matter of law, a court is without discretion to apply foreign law in a circumstance where doing so violates a party's right to due process or the clearly established public policy of this State. However, in cases involving determinations of forum non conveniens questions, abuse of discretion depends on a weighing of all the factors and the relevant facts of the particular case.

- h. Whether a judge may refuse to enforce a contractual provision that is entered into voluntarily that provides for any of the following:

- An arranged marriage;
- Granting custody of a child to a conservator who would remove the child to a foreign jurisdiction that allows child labor in dangerous conditions;
- Granting custody of a child to a conservator who would remove the child to a foreign jurisdiction that lacks laws against child abuse;

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- Granting custody of a female child to a conservator who would remove the child to a foreign jurisdiction that allows the practice of female genital mutilation;
  - Granting custody of a child to a conservator who would remove the child to a foreign jurisdiction that allows a person to be subjected to any form of slavery; or
  - Providing for a consequence or penalty for breach of the contract that violates the public policy of this State, such as the infliction of bodily harm.

The Attorney General pointed out that, through the Family Code, the Legislature has clearly articulated the public policy of this State to:

- Assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child;
- Provide a safe, stable, and nonviolent environment for the child; and
- Encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage.

The AG then concluded that to the extent that any contract term violates the State's public policy (particularly in light of these code provisions), a court may refuse to enforce it.

- i. Whether a judge may refuse to enforce an adoption order entered by a foreign court or tribunal if the order would result in a violation of fundamental rights, Texas law, or the public policy of this State.

The Attorney General concluded that, under the Family Code, a court may refrain from enforcing an adoption order if doing so would violate the fundamental rights or the laws or public policy of this State.

- j. Whether a judge may refuse to enforce a premarital agreement or property partition agreement if the agreement is unconscionable.

The Attorney General concluded that a court could refuse to enforce a premarital agreement or property partition agreement if the agreement is unconscionable.

- k. Whether a judge may refuse to enforce a premarital agreement if the agreement violates the public policy of this State or a statute that imposes a criminal penalty.

The Attorney General pointed out that Section 4.003 of the Family Code authorizes the parties to a premarital agreement to contract with respect to all matters not in violation of public policy or a statute imposing a criminal penalty. The AG further concluded that courts may refuse

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to enforce agreements that violate public policy or a criminal statute.

1. To what extent does Chapter 36 of the Civil Practice and Remedies Code (the "Uniform Foreign Country Money-Judgment Recognition Act,") authorize a judge to refuse to enforce a judgment of a foreign court regarding a family law dispute where the judgment grants or denies payment of a sum of money to one of the parties?

The Attorney General pointed out that a "foreign country judgment" is defined for purposes of Chapter 36 to mean "a judgment of a foreign country granting or denying a sum of money," but that the chapter expressly excludes a judgment for support in a matrimonial or family matter." The AG then observed that, to the extent Chapter 36 applies, a court need not recognize a foreign-country money judgment if, among other grounds, the defendant in the proceedings in the foreign country court did not receive notice of the proceedings in sufficient time to defend or if the cause of action on which the judgment is based is repugnant to the public policy of this state. See Civil Practices and Remedies Code 36.005(b)(1). (3).

The Attorney General's ultimate conclusion was summarized: Under Texas law, a court is not required in family law disputes to enforce a foreign law if enforcement would be contrary to Texas public policy or if it would violate a party's basic right to due process.

This Committee was charged only with examining family law statutes affecting the parent-child relationship, and only in the context of examining whether those laws provide sufficient guidance to Texas judges as to the appropriate application of foreign law. The Committee was also directed to consider whether additional statutory provisions regarding application of foreign law could provide useful guidance while preserving judges' ability to consider the circumstances of each case and not needlessly prolong litigation. While the matters addressed in Opinion Letter No. KP-0094 are much broader than those with which the Committee has been charged, the letter does provide significant guidance to the Legislature regarding the specific issue included in the charge.

#### Committee Hearing

The House Committee on Judiciary & Civil Jurisprudence met in a scheduled public hearing on Wednesday, September 14, 2016, at 1:00 p.m. in room E2.010, Texas State Capitol.

#### Summary of Testimony

##### **Karen Lugo, testifying on behalf of herself**

Ms. Lugo believes that Texas has an imminent challenge in addressing the application of foreign law. She believes that Texas has an opportunity to take a stand in saying that if an individual or family come to the state, they will receive the benefits of Texas' constitutional protections, while also being expected to assume the duties of Texas' legal responsibilities, just as anyone who lives in the state is expected assume. In maintaining such a standard, Ms. Lugo believes that it would provide an important tool for judges to utilize when presented with foreign

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law cases.

**Karl Hays, Texas Family Law Foundation**

Mr. Hays pointed out that family law attorneys have a unique practice as they represent one or several family members in different cases, which requires them to give advice in a balanced manner that presents what is best for Texas families as a whole.

**Christopher Holton, Vice President of Outreach for the Center for Security Policy**

Mr. Holton stated that the purpose of his testimony was to clarify confusion that may exist surrounding various forms of legislation addressing foreign law. Mr. Holton noted that in November 2010, voters in Oklahoma were asked to vote on a proposed constitutional amendment--State Question 755 (SQ 755)--that intended to outlaw Sharia law in the state. The amendment passed overwhelmingly, was successfully challenged in federal court, and deemed to be unconstitutional, thus never taking effect. Mr. Holton stated that individuals use that case to discredit all forms of legislation that seek to protect fundamental constitutional rights against foreign laws and foreign legal doctrines. SQ 755 contained laws that he believes are both legal and practical.

**Chris Byrd, testifying on behalf of himself**

Mr. Byrd testified that for guidance on comity--the process by which courts recognize the actions of foreign jurisdictions--lawyers and judges look to Family Code 152.105, Subsection A, which is also part of the Texas Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Mr. Byrd noted that the only safeguard, although it is not codified, can be found in Subsection C, which states whether or not the case violated fundamental human rights. According to Mr. Byrd, the UCCJEA only applies to foreign child custody judgments for non-contracted parties of the Hague Convention.

**Steve Bresnen, Texas Family Law Foundation**

Mr. Bresnen offered his assessment of Texas Attorney General's Opinion No. KP-0094 on the application of foreign law.

Mr. Bresnen addressed Rule 203 of the Texas Rules of Evidence which lays out how courts recognize and proceed with foreign law questions. For example, according to Mr. Bresnen, two requirements of the rule include that parties are required to provide the court with the law of the involved country and all translations of foreign statutes.

**Joshua Houston, General Counsel at Texas Impact**

Mr. Houston addressed two issues regarding religion and foreign law that Texas Impact believes need clarification. The first of which Mr. Houston mentioned is the issue of parallel courts and whether or not they could form in the United States. It is the position of Texas Impact that the Establishment Clause of the United States Constitution protects the creation of a parallel

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court in regard to religion.

Mr. Houston also addressed arbitration and how religion interacts with the Alternative Dispute Resolution (ADR) process. Mr. Houston stated that while in arbitration, the party is creating a contract that places the handling of the dispute outside of the court system. The question then arises as to whether or not individuals have liberties to make those contracts. Mr. Houston stated that in our law, it is presumed that individuals are competent to make those contracts. If individuals are coerced, the contract is not enforceable and there are provisions in our law that accommodate that.

### Committee Findings and Recommendations

1. Whether current family law statutes and those affecting the parent-child relationship provide sufficient guidance to Texas judges as to the appropriate application of foreign law.

Currently, the Family Code contains several provisions providing guidance to Texas courts regarding the proper application of foreign law. These provisions include:

- Texas Family Code 152.105(c) (implementing the Uniform Child Custody Jurisdiction and Enforcement Act) foreign child custody law need not be applied if the child custody law of the foreign country "violates fundamental principles of human rights."
- Texas Family Code 162.023(a) adoption orders from a foreign country need not be enforced if the "adoption law or process of the foreign country violates the fundamental principles of human rights or the laws or public policy of this state."
- Texas Family Code 159.708(b)(1) a Texas tribunal may refuse enforcement of a foreign child support order if doing so would be "manifestly incompatible with public policy." Similarly, in Family Code 159.706(d), a tribunal can "vacate the registration" of a child support order on its own motion, on the same grounds.

Additionally, the Hague Convention for the Return of Abducted Children provides that a court may refuse to return a child if the respondent proves, by clear and convincing evidence, that doing so "would violate fundamental principles relating to the protection of human rights and fundamental freedoms." *See Delgado v. Osuna*, 2015 U.S. District Court 114338, Aug. 2015, at \*1556-57. In addition, numerous Texas appellate opinions have addressed the issue of limitations on application of foreign law by Texas courts. Some of these cases are summarized in the Attorney General's opinion letter.

The above-cited family law provisions, along with the well-developed body of common law principles, do provide significant guidance to Texas courts as to the appropriate application of foreign law. The Legislature's task will be to determine whether such guidance is sufficient, or if additional guidance or mandate is advised.



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2. Whether additional statutory provisions regarding application of foreign law provide useful guidance while preserving judges' ability to consider the circumstances of each case and not needlessly prolonging litigation.

Some interested parties have suggested that the Legislature codify certain common law holdings from appellate opinions regarding application of foreign law to insure that the principles are consistently applied by all Texas courts. Others have recommended that the Legislature specifically define what constitutes the public policy of this state, as it applies to application of foreign laws. Finally, some observers have suggested that, since current Family Code provisions apply primarily to judicial enforcement of foreign orders, the Code might be amended to broaden application of existing principles to other matters involving application of foreign law.<sup>14</sup> As an example, one bill pre-filed prior to the 85th Legislative Session (House Bill 45) concerns matters such as application of foreign law, enforcement of contractual choice of law provisions, and case transfer under the doctrine of *forum non conveniens*.<sup>15</sup> Any statutory change should be carefully examined by the Legislature prior to enactment so as to insure that the change will not result in unintended or undesired consequences if not properly applied.



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## SUMMARY OF COMMITTEE ACTION CHARGE 3

*Evaluate recent efforts to make the court system more accessible for self-represented litigants, and make recommendations on how the courts can more effectively interact with unrepresented parties and increase access to legal information, assistance, and representation. Examine similar efforts in other states.*

### Background

Despite efforts made by pro bono legal programs in the state of Texas, only ten percent of individuals who qualify for legal aid receive assistance. Although legal aid programs close more than one hundred thousand cases per year, decreases in funding for those programs "from reduced Interest on Lawyer Trust Accounts (IOLTA) revenue and federal funding cuts"<sup>16</sup> will inevitably lead to fewer legal aid lawyers to help those who cannot afford legal representation.<sup>17</sup>

The subject matter of this charge is similar to the charge provided to the *Texas Commission to Expand Civil Legal Services*, appointed by the Texas Supreme Court in 2015. A copy of the Commission's report can be found at the following web address: <http://www.txcourts.gov/media/1436569/cecls-report.pdf>.

### Committee Hearing

The House Committee on Judiciary & Civil Jurisprudence met in a scheduled public hearing on Wednesday, September 14, 2016, at 1:00 p.m. in room E2.010, Texas State Capitol.

### Summary of Testimony

#### **David Slayton, Administrative Director at the Office of Court Administration**

Mr. Slayton stated that the eFileTexas system, which was released publicly in January 2016, aims to help unrepresented litigants by providing a self-help portal to begin navigating the court system.

Legal aid providers have developed forms as a part of the self-help system relating to various legal issues. There are currently seven forms, which include divorce forms and petition for eviction forms, and legal aid providers are working to expand the number of forms available.

#### **Chris Nickelson, Texas Family Law Foundation and himself**

Mr. Nickelson testified that the term "self-represented litigant" is a broad, catch-all phrase that not only includes the truly indigent, but also middle class and upper middle class individuals who have the means to hire a lawyer but choose not to. As a result of that dynamic, it leaves those individuals who need legal aid services without proper resources.

Mr. Nickelson encouraged the committee's protection of the most vulnerable, while

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offering up the Texas Family Law Foundation as a resource.

**Brett Merfish, Staff Attorney at Texas Appleseed**

Ms. Merfish stated that debt claims are quite prevalent in justice courts and that in Fiscal Year 2015, of the almost four hundred thousand civil cases in Texas, twenty eight percent consisted of debt claims, which have a very high default judgment rate.

Ms. Merfish also testified that a great deal of Texans fall into a "justice gap" where they are not able to pay for legal services on their own. Texas Appleseed found that of the resources online, court website information is aimed more towards plaintiffs rather than defendants. Texas Appleseed also found that there are no court websites that provide defendants with an answer form specific to debt claims.

**Trish McAllister, Executive Director of the Texas Access to Justice Commission**

Ms. McAllister addressed the significant trend within the court system of the growing number of pro se litigants in Texas and stated that self-help centers and standardized legal forms are the two most critical components of increasing access to the courts system.

Texas is fortunate because the state has access to a revenue source which helps counties establish self-help legal centers. Section 323.023 of the Local Government Code allows courts to charge a law library fee of up to thirty-five dollars, which some counties have used to help pay their self-help center fees.

Ms. McAllister noted how the court system can increase the pool of pro bono lawyers who are available to represent those who cannot otherwise afford an attorney. The largest pool of attorneys who can handle pro bono cases are individuals who are currently considered inactive with their practice of law but who want to maintain their skills and have displayed interest in helping on a pro bono basis.

**Randall Chapman, Executive Director of Texas Legal Services Center**

Mr. Chapman believes that having access to self-help information that provides an individual the ability to create the needed legal documents for their case offers a foundational method for representation and encouraged the standardization of legal forms in plain, clear language to aid those attempting to navigate the legal process.

Committee Findings and Recommendations

1. Evaluate recent efforts to make the court system more accessible for self-represented litigants.

In 2001, The Supreme Court of Texas created the Texas Access to Justice Commission (Commission) in an effort to increase access to legal assistance in civil legal matters for the poor. The aim of the Commission is to "assess national and statewide trends on access to justice issues

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facing the poor, and to develop initiatives that increase access and reduce barriers to the justice system" <sup>18</sup> Even with the help of the nearly one hundred thousand licensed attorneys in the state, self-represented litigants will continue to lack necessary legal assistance, posing the query of how the court system can be adjusted to better assist those individuals.

2. Examine similar efforts in other states.

A summary of efforts in other states is attached as *Appendix Four*.

Possible legislative solutions to assist self-represented litigants include:

- Legislation to encourage or require that form pleadings and orders be written in “plain language”, and for the development and use of “smart” forms (similar to Turbo Tax software) for use by pro se litigants;
- Specify that the \$35 law library fee may be used to pay the expenses of self-help centers and other legal assistance programs for the public as part of the services it provides on-site and online;
- Legislation to require the development and distribution of an informational pamphlet on basic court procedures to all self-represented litigants;
- Legislation to create a vehicle transfer on death that allows an owner to transfer title to his or her vehicle upon his death to a beneficiary without the need for probate, similar to the transfer on death deed created by the 84th Legislature;
- Legislation to provide more guidance to judges and lawyers on limited scope representation and to clarify that judges should not require lawyers engaged in limited scope representation to remain on the case after their limited scope engagement is complete.
- Amending existing law to allow inactive and out-of-state licensed attorneys to handle pro bono cases in areas of law where such representation is adequate and appropriate.
- Legislation requiring a court to provide information to the public on their website and in the court building as to where individuals can receive assistance such as local legal aid providers, the State Bar’s lawyer referral service, local lawyer referral service, as well as a link to the self-help page on the Office of Court Administration’s website.



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## SUMMARY OF COMMITTEE ACTION CHARGE 4

*Examine issues related to jury service in Texas, including participation and response rates, the accuracy of jury wheel data, and possible methods to improve response and participation.*

### Background

Texas has long experienced a problem with a low response rate to jury summons. In some counties, as many as eighty percent of individuals who are summoned for jury duty do not appear.<sup>19</sup> Low jury summons response can be attributed to several issues, including incorrect addresses, insufficient contact information, names of deceased individuals remaining on the jury wheel, prospective jurors not appearing, and confusion as to whether or not individuals convicted of crimes are permanently exempt from jury service.<sup>20</sup>

In 2006, the Legislature increased juror pay to forty dollars per day after the first day of service.<sup>21</sup> The increase was suspended in 2011 due to state budget cuts, and then reinstated in September 2013. Although increased compensation was intended to encourage jury participation, little change was seen in participation rates.

### Committee Hearing

The House Committee on Judiciary & Civil Jurisprudence met in a scheduled public hearing on Thursday, May 19, 2016, at 10:30 a.m. in room E2.010, Texas State Capitol.

### Summary of Testimony

#### **Patti Henry, District Clerk of Chambers County, County and District Clerks' Association of Texas (CDCA)**

Ms. Henry testified that the response to jury service in Texas has declined to between twenty to thirty percent due to issues such as incorrect addresses, insufficient contact information, no-shows with no consequences, deceased individuals names still showing up on the jury wheel after being reported, and the question as to whether or not convicted individuals are permanently exempt from jury service.

#### **Heather Hawthorne, County Clerk of Chambers County, CDCA**

Ms. Hawthorne called the committee's attention to CDCA's belief that additional task forces or studies are not needed, but rather an implementation of the suggestions from the previous taskforces. For example, a previous task force recommended adding cell phone numbers and increased contact information to the jury wheel.

Chairman Smithee asked Ms. Hawthorne for a recommendation as to how to deal with the individuals who do not show up for their jury service. Ms. Henry responded that she believes if there is more reliable contact information in the jury wheel, reaching out to individuals would allow for more people to confirm they received their jury summons and increase juror



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participation.

**Guy Choate, Texas Chapter of the American Board of Trial Advocates**

Mr. Choate testified that although every county has different issues with jury summons, he agrees that incorrect addresses have been a large contributor to not having a sufficient jury response. He also believes that people are simply not updating their driver license with current addresses, pointing out that college students who are often moving between semesters are a good example.

**Keith Ingram, Director of the Elections Division, Secretary of State's Office**

Mr. Ingram noted that one of the duties in the Elections Division is to constitute the jury wheel for all two hundred fifty-four counties of Texas using two sources of information. The first source being voter registration records and the second being a Texas Department of Public Safety driver license list. Mr. Ingram stated that by using a matching system between the two lists, the division is able to check for overlaps and avoid duplicates between records, with the final product being the jury wheel.

Mr. Ingram informed the committee that a redeveloped Voter Registration Election Management System will be used in this year's jury wheel that has instituted a permanent disqualification for deceased individuals.

**Frances Gomez, Manager at the Texas Department of Public Safety (TxDPS)**

Ms. Gomez testified that by using the TxDPS Driver License System, a preliminary jury wheel data list is created after the appropriate records of those not qualified to be a juror have been filtered out. That preliminary list is then sent to the TxDPS Computerized Criminal History System, which filters out any known felons and is then sent to the Secretary of State's office.

The criteria their records must meet to be eligible for jury service are those that prove the individual is a U.S. citizen, resident of Texas, over the age of eighteen, and in possession of a driver license or identification card.

**Angie Kendall, Deputy Administrator at the Texas Department of Public Safety; oversees the Texas Computerized Criminal History File**

Ms. Kendall informed the committee that after the Driver License Division prepares the initial jury wheel data, the information then gets passed to the Texas Computerized Criminal History System. The jury wheel data is sent through the criminal history file where the individual's information is run on driver license number, ID number, name, sex, race, and date of birth.

Committee Findings and Recommendations

The committee recommends that the Legislature consider the following possible

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solutions.

- Legislation to require the inclusion of phone numbers for the jury wheel;
- Legislation to collect necessary information for potential jurors from vehicle registrations; and
- Amend the statute to make voter registration mailing addresses the default address for the jury wheel.



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## SUMMARY OF COMMITTEE ACTION CHARGE 5

*Study the implementation of the expedited action provisions of HB 274 (82R), and examine whether these provisions have been effective in encouraging the prompt and efficient resolution of cases.*

### Background

In November 2013, in an effort to aid in efficient, effective, and fair resolution of cases, The Supreme Court of Texas adopted Rules for Dismissals and Expedited Actions. The goal of the adopted Rules was to achieve a "reduction in discovery conflicts and time spent in discovery, more deliberative use of mediation, declining time to case disposition, and fewer delays between scheduled trial dates and trials held."<sup>22</sup>

The Rules include the following components:

- The Rules are mandatory and apply to all civil cases exclusively involving monetary damages \$100,000 or below.
- Damages in cases subject to the expedited rules cannot exceed \$100,000 inclusive of penalties, costs, expenses, prejudgment interest, and attorneys' fees.
- Discovery in expedited actions commences immediately upon filing and must conclude within 180 days of the filing date of the first discovery request. Modifications to this timeline must be granted by the court.
- The scope of discovery in expedited actions must be limited to no more than 6 hours of oral deposition for all witnesses, 15 written interrogatories, 15 requests for production, and 15 requests for admission.
- Trial in expedited actions must be scheduled 90 days or less after completion of discovery.
- Court-ordered ADR in expedited actions cannot exceed one half-day, fees cannot be greater than twice the applicable civil filing fee, and all ADR procedures must be completed at least 60 days before the initial trial date.<sup>23</sup>

### Committee Hearing

The House Committee on Judiciary & Civil Jurisprudence met in a scheduled public hearing on Wednesday, September 14, 2016, at 1:00 p.m. in room E2.010, Texas State Capitol.

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Summary of Testimony

**Trevor Taylor, Texas Trial Lawyers Association (TTLA)**

Mr. Taylor testified that TTLA has reviewed survey data related to the expedited trial rule and found that for tort cases in particular, the organization has seen nearly the same rate of settlement, a slightly higher trial rate, and a slightly lower summary judgment rate. Mr. Taylor stated that summary judgment rates for the type of cases that are ordinarily seen in an expedited trial procedure--for example small car wreck cases--were around twenty percent prior to the expedited action rule and have been reduced to about five percent after the rule, which indicates that courts are getting to trial more often.

Mr. Taylor stated that the expedited action rule has served its purpose overall but addresses TTLA's belief that there is varied success between counties.

**David Slayton, Administrative Director of the Office of Court Administration (OCA) and Executive Director of the Texas Judicial Council**

Mr. Slayton testified that House Bill 274, which was passed in the 82nd Texas Legislature, required the Supreme Court of Texas to promulgate rules governing permissive appeals, offers of judgment, dismissals, and expedited actions. Mr. Slayton stated that the goal of the expedited action rule was to aid in the prompt, efficient, and cost effective resolution of cases while maintaining fairness for litigants.

In partnership with the National Center for State Courts, OCA joined in studying the rule for its effectiveness by evaluating a sample of cases from five county courts at law. The study included Dallas, Fort Bend, Harris, Lubbock, and Travis counties. The study found that settlements increased at a quicker rate with a decrease in the number of trials and summary judgments.

**Mike Amis, Texas Attorney-Mediators Coalition (Coalition)**

Mr. Amis informed the committee that the organization, which was formed in December 2012, is comprised of experienced attorneys who also act as court-appointed mediators. The Coalition works closely with the Office of Court Administration as well as the Legislature to educate those on court-ordered mediation.

Committee Findings and Recommendations

Testimony revealed that the expedited action provisions of HB 274 (82R) have produced mixed results. All parties seem to agree that the current system can be improved. However, the consensus appears to be that the change can best be addressed by the Supreme Court's rulemaking authority.

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## SUMMARY OF COMMITTEE ACTION CHARGE 6

*Examine the rights, duties, remedies, and procedures available to consumers under Subchapter M, Chapter 2301, Texas Occupations Code (the Texas "Lemon Law"). Monitor the results of complaints filed under this subchapter and how these rights, duties, remedies, and procedures compare to those in other states.*

### Background

During the 68th Legislative Session, the state passed Senate Bill 1148, the Texas Lemon Law, which provides assistance to consumers who have purchased or leased vehicles with substantial defects "to obtain repair, replacement or repurchase"<sup>24</sup> when deemed necessary. The program, which is run by the Texas Department of Motor Vehicles (TxDMV) Lemon Law Section, has been recognized nationally for its work in providing the consumer a fair resolution to disputes.

### Committee Hearing

The House Committee on Judiciary & Civil Jurisprudence met in a scheduled public hearing on Thursday, May 19, 2016, at 10:30 a.m. in room E2.010, Texas State Capitol.

### Summary of Testimony

#### **Bill Harbeson, Director of the Enforcement Division with the TxDMV**

Mr. Harbeson testified that the Lemon Law was enacted by the Texas Legislature in 1983, and was designed for Texas consumers who purchase or lease a new vehicle that have substantial defects, to get the necessary repairs, or a replacement in compliance with the manufactures warranty. Mr. Harbeson mentioned that the intent of the law was to avoid time consuming and costly litigation, and instead have the cases handled administratively.

Mr. Harbeson reminded the committee that, in 2013, the responsibility of conducting administrative hearings was moved from the State Office of Administrative Hearings to the TxDMV. Mr. Harbeson also noted that signage is printed and distributed in places where consumers purchase or lease new vehicles, advertising TxDMV services and the availability of the program.

#### **Mark Gladney, Manager of the Lemon Law Section at the TxDMV**

Mr. Gladney was available to answer questions outside the scope of the testimony provided by Mr. Harbeson. Mr. Gladney addressed a question asked by Representative Schofield.

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## Committee Findings and Recommendations

1. Examine the rights, duties, remedies, and procedures available to consumers under Subchapter M, Chapter 2301, Texas Occupations Code (the Texas "Lemon Law").

As complaints are filed, they are sent to the TxDMV Lemon Law Section where they are investigated further to see if the vehicle is eligible for repair, replacement, or repurchase. A thirty five dollar filing fee is required in addition to submitting a complaint form, which can be accessed on the TxDMV website. Each case is assigned a case advisor from the department, who works to resolve the complaint through mediation between the consumer and manufacturer. The complaint is sent to the manufacturer, who then has twenty days to respond. If unresolved, the case is taken to a hearing where both parties are able to present their sides, with a final decision made by the hearing examiner within sixty days.<sup>25</sup>

2. Monitor the results of complaints filed under this subchapter.

According to the TxDMV Lemon Law 2015 Annual Report, fourteen vehicles were repurchased or replaced by manufacturers after hearings that concluded the vehicles had substantial defect, with the value totaling over \$450,000.<sup>26</sup> Since 1993, close to 17,000 complaints have been filed and "the Lemon Law has generated almost \$117 million in repurchase or replacement value to Texas consumers."<sup>27</sup>

3. Compare the rights, duties, remedies, and procedures in other states to the Texas Lemon Law.

A summary of similar laws in other states is attached as *Appendix Seven*.



APPENDIX ONE

TED POE  
TEXAS  
2ND DISTRICT



FOREIGN AFFAIRS COMMITTEE  
Terrorism, Nonproliferation and Trade Subcommittee - Chairman  
JUDICIARY COMMITTEE  
Congressional Victims' Rights Caucus - Chairman  
P.O.R.T.S. Caucus - Co-Chairman

Congress of the United States  
House of Representatives  
Washington, DC 20515-4302

May 19, 2016

Testimony of Congressman Ted Poe (TX-02) to the Committee on  
Judiciary and Civil Jurisprudence in Regards to Charge #1

Thank you for holding this important hearing today on the Justice for Victims of Trafficking Act (PL 114-22).

As a former Harris County Judge and prosecutor and the cofounder and chairman of the Congressional Victims' Rights Caucus, protecting the most vulnerable in our society is a top priority for me.

I first learned about human trafficking when I was overseas in the Ukraine and soon discovered that modern day slavery occurs in the United States as well, including all around Texas, which is unfortunately a hub given its proximity to the border and many large highways, ports, and airports.

The United States views itself as a leader in the fight against human trafficking, even going as far as to grade other countries on their efforts to combat trafficking in persons. Yet, before the Justice for Victims of Trafficking Act (JVTA) became law, I heard about common issues from anti-trafficking organizations on the national, state, and local levels as well as law enforcement and local leaders:

- The federal government barely funds efforts to combat trafficking in the United States.
- Trafficking victims are often arrested and treated as criminals, but buyers are often not.
- Many Americans including those that interact with trafficking victims--law enforcement, educators, medical professionals, and others --do not know about human trafficking or understand how to identify victims.

A bipartisan, bicameral group of Members of Congress, lead in the House by myself, a Texas Republican, and Congresswoman Carolyn Maloney, a New York Democrat, and in the Senate by a Texas Republican, Senator John Cornyn, an Oregon Democrat, Senator Ron Wyden, who came together, recognizing these issues, and wrote a bill to address them, relying a lot on what we learned from Texas, a trailblazer in addressing human trafficking.

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A core provision of JVTA is the Domestic Trafficking Victims' Fund. It is clear that more resources need to be put towards human trafficking, but the question is where to get the money. The answer is to supplement current funding, which should be a priority through general appropriations, with financing from the criminals. Let those who harm vulnerable people pay for the damage they have caused. A \$5,000 special assessment is collected from those convicted of human trafficking and other related charges, which goes into the Domestic Trafficking Victims' Fund to finance grant programs that address trafficking including law enforcement operations, training, and victims' services.

A fundamental goal of JVTA is for victims of human trafficking to be treated as victims and not criminals. This is addressed in a number of provisions in the law, including a newly created community-based block grant. The grant promotes the use of a collaborative model (government and non-profits working together) by cities and states to address child trafficking through the enhancement of anti-trafficking law enforcement units, the creation or continuation of problem solving courts like the GIRLS court in Houston, and shelters and services for victims. The bill also changes statutory language that references child prostitution to child trafficking and encourages a safe harbor model in the states.

We also focus on the demand—buyers, those that exploit women and children. While many call these people “johns,” I call them child molesters. John is a name from the Bible, a good guy, not someone who pays money to abuse a fellow person. JVTA clarifies that those who buy sex from trafficking victims are human traffickers, can and should be punished under federal law, and are subject to the same penalties as sellers. Gone are the days of boys being boys. We can no longer turn a blind eye to this crime.

These core provisions of the legislation guide JVTA as a whole as a victim-centered, tough on crime, fiscally responsible measure that makes certain that the United States is truly a leader in ending modern day slavery.

I commend the Texas Legislature for making our state a leader in fighting against the scourge of human trafficking. I appreciate the weight given to this important bill and look forward to continuing to work together to protect our children, the vulnerable in our society, and making sure the bad guys pay.

A society will be judged by how it treats the most vulnerable.

And that's just the way it is.

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## APPENDIX TWO



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 15, 2016

The Honorable Dan Flynn  
Chair, Committee on Pensions  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Opinion No. KP-0094

Re: The extent to which a judge may refuse to apply the law of a jurisdiction outside of the United States in certain family law disputes (RQ-0083-KP)

Dear Representative Flynn:

You ask a number of questions concerning "the extent to which current law authorizes or requires a judge of a state court to refuse to apply foreign law in certain family law disputes."<sup>1</sup> You explain that by "foreign law," you mean "the law of a country other than the United States," and by "family law dispute," you mean "a legal dispute regarding a marital relationship or a parent-child relationship." Request Letter at 1. While you propose nineteen different factual scenarios, they each involve the application of foreign law that violates a party's right to due process or the public policy of this State, *id.* at 1-3. As the Texas Supreme Court has explained, "[t]he basic rule is that a court need not enforce a foreign law if enforcement would be contrary to Texas public policy." *Larchmont Farms, Inc. v. Parra*, 941 S.W.2d 93, 95 (Tex. 1997). Mere differences between Texas law and foreign law do not necessarily render the foreign law unenforceable, but if a foreign law "violates good morals, natural justice, or is prejudicial to the general interests of our own citizens," a court may refuse to enforce it. *Robertson v. Estate of McKnight*, 609 S.W.2d 534, 537 (Tex. 1980). Furthermore, the United States Supreme Court has explained that "due process requires that no other jurisdiction shall give effect . . . to a judgment elsewhere acquired without due process." *Griffin v. Griffin*, 327 U.S. 220, 228 (1946). It is with these principles in mind that we address your specific questions.

You first ask whether a judge may refuse to enforce a judgment of another country that is based on the application of foreign law that violated a party's due process rights or was contrary to the public policy of this State. Request Letter at 1. "A judgment obtained in violation of procedural due process is not entitled to full faith and credit when sued upon in another jurisdiction." *Griffin*, 327 U.S. at 228. Texas courts have long held "the chief requisite for the recognition of a foreign judgment necessarily is that an opportunity for a full and fair trial was afforded." *Banco Minero v. Ross*, 172 S.W. 711, 714-15 (Tex. 1915) (declining to recognize a judgment by a Mexican court after finding that it was entered without a full and fair trial before an

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<sup>1</sup>Letter from Honorable Dan Flynn, Chair, House Comm. on Pensions, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Dec. 17, 2015), <https://www.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> ("Request Letter").

impartial tribunal). Thus, if a judgment was obtained in a foreign jurisdiction in violation of a party's due process rights, a state court judge may refuse to enforce the judgment. Similarly, Texas courts will consider whether a judgment obtained in a foreign country was based on foreign law contrary to this State's public policy, and, if so, the courts may refuse to enforce the judgment. See *Ashfaq v. Ashfaq*, 467 S.W.3d 539, 543-44 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (considering whether Pakistani divorce law violated Texas public policy).

You next ask whether a judge may refuse to enforce a decision of an agreed-upon arbitrator if the arbitrator's application of foreign law or the application of principles of a particular faith resulted in an arbitration decision violating a party's due process rights or was contrary to the public policy of this State. Request Letter at 2. "Parties in an arbitration proceeding have due process rights to notice and a meaningful opportunity to be heard." *Ewing v. Act Catastrophe-Tex. L.C.* 375 S.W.3d 545, 551 (Tex. App.—Houston [14th Dist.] 2012, pet. denied); see TEX. CIV. PRAC. & REM. CODE § 171.044(a) (requiring notice of arbitration). To the extent that an arbitration award is obtained in violation of these due process rights, a judge is authorized to refuse enforcement of the award. Furthermore, a Texas court "may refuse to enforce an arbitration award that is contrary to public policy." *Myer v. Americo Life, Inc.*, 232 S.W.3d 401, 413 (Tex. App.—Dallas 2007, no pet.).

In your third question, you ask whether a judge may refuse to apply foreign law that would otherwise apply under the principles of conflict of laws if applying such law would violate due process or the public policy of this State. Request Letter at 2. Traditional conflict-of-law principles prescribe that issues that are strictly procedural in nature are governed by the laws of the forum state. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 122 (AM. LAW INST. 1971); *Arkoma Basin Expl. Co. v. FMF Assocs. 1990-A, Ltd.*, 249 S.W.3d 380, 387 n.17 (Tex. 2008). Thus, a court of this State would apply Texas procedural law, not the procedures of a foreign law, to determine the substantive rights of the parties. With regard to the public policy concerns you raise, "[i]f the law of the foreign jurisdiction with the most significant contacts is against good morals or natural justice, or is prejudicial to the general interests of our citizens, Texas courts should refuse to enforce said law." *Vanderbill Mortg. & Fin. Inc. v. Posey*, 146 S.W.3d 302, 316 (Tex. App.—Texarkana 2004, no pet.) (internal quotation marks omitted).

In your fourth question, you ask whether a judge may refuse to enforce a contract provision that provides for foreign law to govern the dispute if applying the law would violate a party's right to due process or the public policy of this State. Request Letter at 2. As with the choice-of-law principles discussed above, although a contract may provide for foreign law to govern the rights of parties to a dispute, a court of this State will apply Texas law to matters of procedure. *Man Indus. (India), Ltd. v. Midcontinent Express Pipeline, L.L.C.*, 407 S.W.3d 342, 352 (Tex. App.—Houston [14th Dist.] 2013, pet. denied). With regard to foreign law that violates the public policy of this State, the United States Supreme Court has explained that a state is not required to "lend the aid of its courts to enforce a contract founded upon a foreign law where to do so would be repugnant to good morals, or, in other words, violate the public policy of the state where the enforcement of the foreign contract is sought." *Griffin v. McCoach*, 313 U.S. 498, 506 (1941); see also *United Paperworkers Intern. Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 42 (1987) ("a court may refuse to enforce contracts that violate . . . public policy"). Thus, a court may refuse to enforce

a contract provision that requires the application of foreign law to a dispute if doing so would violate the public policy of this State.

In your fifth question, you ask whether a judge may refuse to enforce a contractual forum-selection provision providing that a dispute will be resolved by a court outside of the United States if doing so would violate the party's right to due process or the public policy of this State. Request Letter at 2. Enforcement of forum-selection clauses is generally mandatory; however, a court has authority to refuse to enforce the clause upon a showing that "enforcement would be unreasonable or unjust" or because "enforcement would contravene a strong public policy of the forum where the suit was brought." *In re AutoNation, Inc.*, 228 S.W.3d 663, 668 n.15 (Tex. 2007); *In re Automated Collection Techs., Inc.*, 156 S.W.3d 557, 559 (Tex. 2004). Thus, if the enforcement of a forum-selection clause would violate the party's right to due process or the public policy of this State, a court may refuse to enforce it.

You next ask, based on the principle of forum non conveniens, whether a judge may exercise jurisdiction over a case, despite a more convenient alternative forum, if the foreign forum would apply foreign law that would violate a party's right to due process or the public policy of this State. Request Letter at 2. A court generally has authority to dismiss a suit on grounds of forum non conveniens because a court outside Texas has jurisdiction over the suit and is a more appropriate forum. *A.P. Keller Dev. Inc. v. One Jackson Place, Ltd.*, 890 S.W.2d 502, 505 (Tex. App.—El Paso 1994, no writ). "[T]rial courts possess broad discretion in deciding whether to dismiss a case on forum-non-conveniens grounds." *In re Pirelli Tire, L.L.C.*, 247 S.W.3d 670, 676 (Tex. 2007). The United States Supreme Court has articulated, and the Texas Supreme Court has adopted, a number of factors that courts should consider in deciding a forum-non-conveniens motion. See *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508–09 (1947); *In re Smith Barney, Inc.*, 975 S.W.2d 593, 596 (Tex. 1998) ("We embraced *Gulf Oil's* analysis long ago."). Among the factors to be considered are whether an adequate alternative forum would have jurisdiction over the case and whether certain private interests of the litigants would weigh in favor of the alternative forum. *In re Pirelli Tire, L.L.C.*, 247 S.W.3d at 677–79. In determining whether an adequate alternative forum exists, courts should consider whether the parties will be "deprived of all remedies or treated unfairly." *Vasquez v. Bridgestone/Firestone, Inc.*, 325 F.3d 665, 671 (5th Cir. 2003). And in determining whether the private interests of the litigants weigh in favor of an alternative forum, a court should consider, among other private-interest factors, any "obstacles to [a] fair trial" in the alternative forum. *Flaiz v. Moore*, 359 S.W.2d 872, 874 (Tex. 1962). Thus, if an alternative forum to Texas would apply law that would violate a party's right to due process or the public policy of this State, such factors could provide grounds for a judge to deny a motion to dismiss for forum non conveniens.

In your seventh question, you ask whether a judge abuses his or her discretion if a judge allows the application of a foreign law in the scenarios previously described and doing so violates a party's right to due process or the public policy of this State. Request Letter at 3. A court's decision regarding whether a contract, arbitration award, foreign judgment, or application of foreign law violates public policy is a question of law that is reviewed de novo by a reviewing court. See *Sanchez v. Palau*, 317 S.W.3d 780, 785 (Tex. App.—Houston [1st Dist.] 2010, pet. denied) (court's ruling on recognition of a foreign country judgment is reviewed de novo); *Xiria, L.L.C. v. Int'l Ins. All. Inc.*, 286 S.W.3d 583, 591 (Tex. App.—Texarkana 2009, pet. denied)

(judgment confirming an arbitration award is reviewed de novo); *Johnson v. Structured Asset Servs., L.L.C.* 148 S.W.3d 711, 726 (Tex. App.—Dallas 2004, no pet.) (whether a contract violates public policy is a question of law, which is reviewed de novo). Thus, as a matter of law, a court is without discretion to apply foreign law in a circumstance where doing so violates a party's right to due process or the clearly established public policy of this State. A trial court's forum-non-conveniens ruling is subject to review for clear abuse of discretion. *In re Pirelli Tire, L.L.C.*, 247 S.W.3d at 676. Whether a court abuses its discretion in ruling on any given forum-non-conveniens motion will depend on a weighing of all the factors and the relevant facts of the particular case. *See id.*, at 679 (considering all the factors articulated in *Gulf Oil* and concluding that the denial of a forum-non-conveniens motion was a clear abuse of discretion).

In your eighth question, you ask whether a judge may refuse to enforce a provision of a contract that is entered into voluntarily that provides for any of the following:

- An arranged marriage
- Granting custody of a child to a conservator who would remove the child to a foreign jurisdiction that allows child labor in dangerous conditions
- Granting custody of a child to a conservator who would remove the child to a foreign jurisdiction that lacks laws against child abuse
- Granting custody of a female child to a conservator who would remove the child to a foreign jurisdiction that allows the practice of female genital mutilation
- Granting custody of a child to a conservator who would remove the child to a foreign jurisdiction that allows a person to be subjected to any form of slavery
- Providing for a consequence or penalty for breach of the contract that violates the public policy of this State, such as the infliction of bodily harm

Request Letter at 3. Parties do not have a right to enter into contracts that violate the strong public policy of this State. *See Fairfield Ins. Co. v. Stephens Martin Paving, L.P.*, 246 S.W.3d 653, 664 (Tex. 2008). A state's public policy is embodied in its constitution, statutes, and the decisions of its courts. *See Texas Commerce Bank, N.A. v. Grizzle*, 96 S.W.3d 240, 250 (Tex. 2002); *Churchill Forge, Inc. v. Brown*, 61 S.W.3d 368, 373 (Tex. 2001). With regard to family law disputes, the Legislature has clearly articulated that it is the public policy of this State to:

- (1) assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child;

- (2) provide a safe, stable, and nonviolent environment for the child;  
and
- (3) encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage.

TEX. FAM. CODE § 153.001(a). To the extent that any contract term, including those specific terms that you raise, violates the public policy of this State, a court may refuse to enforce it. *See City of Willow Park v. E.S. & C.M., Inc.*, 424 S.W.3d 702, 710 (Tex. App.—Fort Worth 2014, pet. denied) (voiding a contract after finding that “it contravenes the legislature’s public policy”); *see also Southwestern Bell Tel. Co. v. Gravitt*, 551 S.W.2d 421, 427 (Tex. App.—San Antonio 1976, writ ref’d n.r.e.) (“[A] general restraint on marriage is unenforceable whether the restraint results from a promise not to marry or from enforcement of a condition providing for forfeiture of rights in case of marriage.”).

In your ninth question, you ask whether a judge may refuse to enforce an adoption order entered by a foreign court or tribunal if the order would result in a violation of fundamental rights, Texas law, or the public policy of this State. Request Letter at 3. Section 162.023 of the Family Code provides:

Except as otherwise provided by law, an adoption order rendered to a resident of this state that is made by a foreign country shall be accorded full faith and credit by the courts of this state and enforced as if the order were rendered by a court in this state *unless the adoption law or process of the foreign country violates the fundamental principles of human rights or the laws or public policy of this state.*

TEX. FAM. CODE § 162.023(a) (emphasis added). Under the plain language of the Legislature’s exception in subsection 162.023(a), a court may refrain from enforcing an adoption order if doing so would violate the fundamental rights or the laws or public policy of this State.

In your tenth question, you ask whether a judge may refuse to enforce a premarital agreement or property partition agreement if the agreement is unconscionable. Request Letter at 3. “Unconscionable contracts . . . are unenforceable under Texas law.” *In re Poly-Am., L.P.*, 262 S.W.3d 337, 348 (Tex. 2008); TEX. BUS. & COM. CODE § 2.302(a). Provisions in the Family Code provide specifically with regard to premarital and partition agreements that such agreements are not enforceable if the party against whom enforcement is requested proves, among other requirements, that the agreement was unconscionable when it was signed. *See* TEX. FAM. CODE §§ 4.006(a)(2), 4.105(a)(2). Whether any specific agreement is unconscionable must be determined by a court after analyzing the relevant facts. *See Ski River Dev., Inc. v. McCalla*, 167 S.W.3d 121, 136 (Tex. App.—San Antonio 2005, pet. denied) (explaining the factors to be examined in determining whether a contract is unconscionable).

You also ask whether a judge may refuse to enforce a premarital agreement if the agreement violates the public policy of this State or a statute that imposes a criminal penalty. Request Letter at 3. Section 4.003 of the Family Code authorizes the parties to a premarital agreement to contract with respect to all matters "not in violation of public policy or a statute imposing a criminal penalty." TEX. FAM. CODE § 4.003(a)(8). "[P]arties have the right to contract as they see fit as long as their agreement does not violate the law or public policy"; however, courts may refuse to enforce a contract, or a provision in a contract, on the ground that it is against public policy. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 129 & n.11 (Tex. 2004); *Security Serv. Fed. Credit Union v. Sanders*, 264 S.W.3d 292, 297 (Tex. App.—San Antonio 2008, no pet.). Furthermore, a contract that cannot be performed without violating the law contravenes public policy and is void. *Lewis v. Davis*, 199 S.W.2d 146, 148–49 (Tex. 1947); *Merry Homes, Inc. v. Chi Hung Luu*, 312 S.W.3d 938, 945 (Tex. App.—Houston [1st Dist.] 2010, no pet.).

In your final question, you ask to what extent chapter 36 of the Civil Practice and Remedies Code authorizes "a judge to refuse to enforce a judgment of a foreign court regarding a family law dispute where the judgment grants or denies payment of a sum of money to one of the parties." Request Letter at 3. Chapter 36 is the "Uniform Foreign Country Money-Judgment Recognition Act," and it authorizes a court to "refuse recognition of the foreign court judgment if the motions, affidavits, briefs, and other evidence before it establish grounds for nonrecognition as specified in Section 36.005, but the court may not, under any circumstances, review the foreign country judgment in relation to any matter not specified in Section 36.005." TEX. CIV. PRAC. & REM. CODE §§ 36.003, .0044(g). Relevant to your request, "foreign country judgment" is defined for purposes of chapter 36 to mean "a judgment of a foreign country granting or denying a sum of money," but it expressly excludes a judgment for "support in a matrimonial or family matter." *Id.* § 36.001(2)(B). Thus, chapter 36 will have limited applicability to family law disputes. To the extent that it applies, however, a court need not recognize a foreign-country money judgment if, among other grounds, "the defendant in the proceedings in the foreign country court did not receive notice of the proceedings in sufficient time to defend" or if "the cause of action on which the judgment is based is repugnant to the public policy of this state." *Id.* § 36.005(b)(1), (3).



S U M M A R Y

Under Texas law, a court is not required in family law disputes to enforce a foreign law if enforcement would be contrary to Texas public policy or if it would violate a party's basic right to due process.

Very truly yours,



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Chair, Opinion Committee



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## APPENDIX THREE



**A Report to the House Judiciary and Civil Jurisprudence Committee  
From the Texas Access to Justice Commission  
On Self-Represented Litigant Access to the Judicial System  
August 22, 2016**

### INTERIM CHARGE

Evaluate recent efforts to make the court system more accessible for self-represented litigants, and make recommendations on how the courts can more effectively interact with unrepresented parties and increase access to legal information, assistance, and representation. Examine similar efforts in other states.

### THE CURRENT SITUATION IN TEXAS

#### A. Introduction

There are over 5.8 million Texans who qualify for legal aid, yet legal aid and pro bono programs are only able to help 10 percent of the qualified individuals with legal needs. Currently, Texas lawyers provide over 1.87 million hours of pro bono annually valued at more than \$486 million and legal aid programs close more than 100,000 cases per year. Significant decreases in funding to legal aid programs from reduced Interest on Lawyer Trust Accounts (IOLTA) revenue and federal funding cuts,<sup>1</sup> combined with one of the highest poverty rates in the nation at 21.8 percent<sup>2</sup>, means that there will be fewer legal aid lawyers to help the growing numbers of poor who need assistance:

The Supreme Court of Texas established the Texas Access to Justice Commission ("Commission") in 2001 to serve as the statewide umbrella organization for all efforts to expand access to justice in civil legal matters for the poor. It is the role of the Commission to assess national and statewide trends on access to justice issues facing the poor, and to develop initiatives that increase access and reduce barriers to the justice system. The Commission is comprised of eleven appointees of the Court, seven appointees of the State Bar of Texas, and three ex-officio public appointees.

#### B. Substantial Number of Self-Represented Litigants

Recent data from the Office of Court Administration indicates that the number of people who are representing themselves is growing. From FY 2011 – FY 2015, OCA statistics show that:

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<sup>1</sup> In 1981, LSC funding was \$351 million with 43 million people living in poverty. Today, 25 years later, LSC funding is at \$381 million with 63 million people living in poverty. Funds generated from IOLTA have decreased over 75% from \$20 million in 2007 to \$4.9 million in 2015 with a total loss of over \$99 million.

<sup>2</sup> 2014 Current Population Survey, Census Bureau, <http://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pov/pov-46.html>. Texans living at or below 125% the federal poverty guidelines.

- Although overall family law filings are down by 14.3%, the number of pro se petitioner<sup>3</sup> family law filings has grown by 27.4%.
- Although overall probate filings grew slightly by 1.7%, the number of pro se probate filings increased by almost 12%.

The percentage of pro se filings is also significant. As reported by the Office of Court Administration, the following chart represents the percentage of family law filings, excluding post-judgment filings, in the most populous counties in Texas:

County	2010 Population	Cases Filed by SRLs	New Cases Filed	% of New Cases Filed
Harris	4,441,370	20,405	39,957	51.1%
Dallas	2,518,638	5,771	26,073	22.1%
Tarrant	1,945,360	4,082	19,489	20.9%
Bexar	1,855,866	3,478	22,288	15.6%
Travis	1,151,145	3,563	9,803	36.3%
Collin	885,241	3,824	7,182	53.2%
El Paso	833,487	1,725	7,740	22.3%
Hidalgo	831,073	1,393	7,332	19.0%
Denton	753,363	1,887	6,701	28.2%
Fort Bend	685,345	1,326	5,184	25.6%
Montgomery	518,947	1,463	4,995	29.3%
Williamson	489,250	1,353	4,072	33.2%
Cameron	420,392	450	4,116	10.9%
Nueces	356,221	877	4,320	20.3%
Brazoria	338,124	1,148	2,941	39.0%
Bell	329,140	1,878	5,359	35.0%
Galveston	314,198	842	3,251	25.9%

### C. Increased Pro Bono Will Not Meet Need

There are almost 100,000 attorneys licensed by the State Bar of Texas who are actively engaged in the practice of law. As previously mentioned, Texas lawyers currently perform a significant amount of pro bono – over 1.87 million hours of free legal services to the poor. It has been suggested that increasing pro bono is the solution to the current situation. While laudable and efforts to increase pro bono should certainly continue, the fact is that even if every lawyer were required to represent at least one pro bono client, we would still only be able to serve less than 20% of the poor who seek help from legal aid. A major additional barrier is that we do not currently have the infrastructure in place to coordinate urban pro bono lawyers with rural clients.

<sup>3</sup> The statistics under-represent the number of pro se litigants in court because they do not include pro se litigants who are respondents, who become pro se after hiring an attorney, or who secure an attorney after filing pro se.

D. Improving Self-Representation for the Poor is Vital to Increase Access to Courts

The stark reality is that there will never be enough legal aid and pro bono lawyers to help those who need it, and pro se litigants are here to stay.

While we must continue to strive towards the goal of providing attorneys to the poor, improving self-representation is one of the few avenues available to increase access to justice for the poor.

How can we realistically do so?

**CONTINUUM OF LEGAL SERVICES**

It is useful to look at how the courts can more effectively interact with unrepresented parties and increase access to legal information, assistance, and representation from a continuum of legal services perspective. The continuum includes methods of helping people that do not involve an attorney at any point in the process to those that involve some level of attorney assistance to those that involve an attorney from the beginning of the legal matter to its conclusion.



A. Making the Court System More Accessible to Self-Represented Litigants

1. **Standardized Forms:** Standardized form pleadings and orders, written in plain language, are basic tools needed for people to access the courts and for increasing judicial efficiency. The gold standard in forms are "smart" forms that guide you through the process of accurately filling out the form, similar to TurboTax forms, which can be automatically filed with the court upon completion.

- Recommendation: Continue to expand promulgation of standardized, smart forms for use by pro se litigants

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2. **Self Help Centers:** Self-help centers contain legal information and forms for public use that help people navigate their way through various legal matters and situations. Self-help centers can be online or have a physical location. Court-based self-help centers manned by paid staff are excellent resources for court patrons who are hoping to resolve their legal matters. Not only do they provide a place for people to get legal information – not advice – from a live person, they provide clerk and court personnel a place to send people who are in need of help. Online self-help centers are very useful for providing access to resources in rural areas, especially if a live chat feature is available.

Texas is fortunate in that a potential revenue stream exists for counties wishing to establish a center. Section 323.023 of the Local Government Code allows courts to charge a law library filing fee of up to \$35. Several Texas counties have used to these funds to help establish a self-help center in their law library at the courthouse. However, the fee has not led to a significant expansion of self-help centers in Texas and has not been highly utilized for this purpose. Why? We need to determine what the barriers are to establishing self-help centers and to using the fee so that we can propose an effective solution.

- **Recommendation:** Evaluate whether the current \$35 law library filing fee could be used or modified to facilitate the development of self-help centers within their law library. Amend the statute to specify that the fee can be used to pay the expenses of self-help center and other legal assistance programs for the public as part of the services it provides on-site and online. Illinois recently did so.

3. **Guidelines for Court Personnel, Clerks and Judges:** One of the most difficult challenges is that self-represented litigants do not know how to navigate the court system. When they arrive at the courthouse, they will receive more or less assistance depending on which county they live in or which judge they obtain. There is much confusion among judges, clerks and court personnel on what assistance, if any, can be provided to self-represented litigants.<sup>4</sup> Establishing formal guidelines and rules for judges, clerks, and court personnel on what can and cannot be done would bring much needed clarity and would help ensure that SRLs receive similar treatment regardless of the county or court in which they are litigating. Several states have established such guidelines. The Illinois Supreme Court<sup>5</sup> recently promulgated a good policy on assistance to court patrons that can inform our efforts in Texas.

- **Recommendation:** Develop uniform standards or best practices for interaction with court patrons.

4. **Provision of Basic Information to All Self-Represented Litigants:** A corollary to the provision of guidance to courts and court personnel is the provision of baseline information on court and case procedure to all self-represented litigants. Litigants would be more informed on how to move a case forward, reducing frustration for all involved and increasing judicial efficiency. Many self-represented litigants do not realize that they must prepare the pleadings, notice-opposing parties, set hearings, and the like. They also do not know how to accomplish these necessities. Preparing

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<sup>4</sup> Confusion continues among clerks and court personnel even though the Office of Court Administration published Legal Information vs Legal Advice, which provided guidelines and instructions for clerks and court personnel working with self-represented litigants, and, together with the Texas Access to Justice Commission, provided training to clerks and court personnel, there continues to be confusion. A more formal policy is needed.

<sup>5</sup> Illinois Supreme Court's policy.

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a basic pamphlet or toolkit that must be provided to all self-represented litigants across the state would help resolve some of these issues and ensure that information is consistent from county to county. Improving courthouse signage would also help court patrons navigate the courthouse more effectively and efficiently.

- Recommendation: Develop an informational pamphlet on basic court procedures and requirements that is provided to all self-represented litigants. Improve courthouse signage to ease public navigation.

5. **Specialty courts and other streamlining methods:** The burgeoning population of self-represented litigants has affected all states across the nation. Other states and other countries have experimented with various methods of streamlining the legal process for self-represented litigants, including the following:

- a) Establishing dockets or courts specifically for pro se litigants. The 8<sup>th</sup> Judicial Circuit of Florida has a pro se family case management program with a case manager that ensures procedural requirements are met in certain family law cases where neither party is represented by an attorney (divorce, paternity, custody, name changes, and modifications).<sup>6</sup>
- b) Creating expedited processes, such as the one-day divorce programs in California assist eligible self-represented litigants who have already filed a dissolution of marriage in finalizing an agreement and preparing all of the necessary forms to obtain the final Judgment.<sup>7</sup> Alaska's Early Resolution Program is a non-adversarial approach to resolving contested divorce and custody cases involving two self-represented litigants.<sup>8</sup> Approximately 80% of the cases are resolved in the program and usually in one hearing.
- c) Implementing alternative or administrative procedures to resolve matters previously handled in court. The 84<sup>th</sup> Legislature created the transfer on death deed that allows an owner of real property to transfer title to a named beneficiary outside of probate. The transfer on death deed is incredibly useful to those who cannot afford a lawyer to prepare a will and whose heirs cannot afford to probate that will upon the decedent's death.
- d) Designing online dispute resolution and online court mechanisms. Online dispute resolution uses alternative dispute resolution processes to resolve a claim or dispute. It has been most successfully used in the United States in the e-commerce world, such as E-Bay, where customers and sellers use a structured online system to resolve their differences. Other nations have implemented online dispute resolution and online courts for legal issues.

- Recommendation: Evaluate the establishment of specialty pro se courts similar to those for veterans or drug cases as well as alternative procedures and processes discussed above.

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<sup>6</sup> See information on the 8<sup>th</sup> Judicial Circuit of Florida's pro se family case management program and case manager.

<sup>7</sup> See information on California's one-day divorce programs.

<sup>8</sup> See information on Alaska's Early Resolution Program.

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## 2. Specific Legislation Regarding Guardianships and Probate

- a) **Pro Se Representation in Certain Guardianship Cases:** Due to relatively recent case law<sup>9</sup>, pro se litigants are not allowed to represent themselves in probate court except in very limited circumstances. A pro se person cannot file a guardianship of the person or the estate unless they have a lawyer.

For low-income people, hiring a lawyer is cost-prohibitive yet they still may have a need to file a guardianship for an incapacitated child who is becoming an adult, for an incapacitated relative, or for someone else. A guardianship of the person is all that is usually needed because the ward does not normally have an estate. When no estate exists, concerns regarding fiduciary duties of fiscal management are minimized.

When any guardianship is filed, an attorney ad litem is required to be appointed for the ward to protect the ward's interests and to ensure that an appropriate guardian is appointed.<sup>10</sup> When a ward who is represented by an attorney ad litem does not have an estate, the risk of harm to the ward by allowing a pro se person to apply for a guardianship of the person is significantly minimized. In addition to an attorney ad litem, the court may also appoint a guardian ad litem to represent the interests of an incapacitated person.<sup>11</sup>

Allowing self-represented litigants to file for a guardianship of the person when there is no estate would be extremely beneficial to both the low-income public who need to obtain a guardianship for a loved one and cannot presently do so, and for the incapacitated individual who is in need of medical care or other assistance.

- a) **Recommendation:** Evaluate allowing self-represented litigants to file a guardianship of the person when the ward does not have an estate.
- b) **Vehicle Transfer on Death:** Currently, there is no mechanism for an owner to transfer his vehicle upon his death without going through probate. For many low-income individuals, a car is the only asset they own, however, the cost of probate is often more than the vehicle is worth. The creation of a process to allow owners to transfer their vehicle to a beneficiary upon their death would enable the asset to transfer outside of probate and save the associated costs of probate.
- b) **Recommendation:** Create a vehicle transfer on death that allows an owner to transfer title to his vehicle upon his death to a beneficiary without the need for probate, similar to the transfer on death deed created by the 84<sup>th</sup> Legislature.

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<sup>9</sup> *Steele v McDonald*, 202 S.W.3d 926 (Tex. App. – Waco, 2006) and *In re Guetersloh*, 326 S.W.3d 737 (Tex. App. – Amarillo, 2010). In *Steele*, an independent executor of the estate was found to be engaging in the unauthorized practice of law by discharging the estate's attorney and proceeding pro se in an appeal on behalf of the estate because of the fiduciary duties the independent executor has towards the other beneficiaries of the estate. In *Guetersloh*, a trustee cannot appear pro se because the role of the trustee is to appear in a representative capacity of the trust's beneficiaries and to do so would be the unauthorized practice of law.

<sup>10</sup> Tex. Est. Code Sec. 1054.001

<sup>11</sup> Tex. Est. Code Sec. 1054.051



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**B. Promoting Limited Scope Representation**

Limited scope representation is when an attorney helps a self-represented litigant with specific aspects of their case but does not handle the entire legal matter for them. For example, in a divorce case, an attorney might agree only to draft documents, or to act only as a consultant, leaving the client responsible for all other aspects of the case. It is authorized under Texas Disciplinary Rule of Professional Conduct 1.02(b)<sup>12</sup> and is practiced by attorneys across the country in a variety of practice areas. It is also a practical way to assist the growing number of pro se litigants who may not be able afford full representation but may be able to afford specific services.

Lawyers stand to gain from an expanded market of people who can afford some legal assistance and allows attorneys to focus their practice on the aspects they enjoy. For example, an attorney builds a limited scope practice drafting legal documents and responding to discovery, but declines court appearances. Judges benefit by having better prepared self-represented litigants and lower pro se appearances. Low and middle-income families are able to get the help they need when representing themselves in a dispute.

Limited scope representation is being used in innovative ways throughout the nation. In San Francisco and New York City, landlord-tenant cases are funneled to settlement agreements before appearing in court. Pro bono attorneys agree to mediate a settlement agreement but are not obligated to represent the party at the hearing if an agreement is not reached. Fortunately, a large majority of the cases settle.

Unfortunately, there are not many Texas attorneys who incorporate limited scope representation in their practice. Lawyers are wary of making court appearances because they fear judges will require them to handle the entire case. Judges are uncertain how to handle limited attorney involvement. The public is unaware that the option exists and has no ability to find limited scope lawyers. Courts and nonprofits who wish to connect the public to lawyers practicing limited scope representation by publicizing a list of limited scope practitioners fear that the public would hold them liable if the representation was found lacking.

- c) Recommendation: Revise Texas Disciplinary Rule of Professional Conduct 1.02(b) to provide more guidance to judges and lawyers on limited scope representation and to clarify that judges should not require lawyers engaged in limited scope representation to remain on the case.
- d) Recommendation: Evaluate the best means of connecting the public to lawyers who are willing to handle matters on a limited scope basis.

**C. Opportunities for Increasing Full Service Representation**

**1. Increase the Pool of Pro Bono Attorneys**

Tapping into new attorney resources to increase the number of attorneys who can do pro bono is another means of providing potential self-represented litigants with a lawyer. In any given

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<sup>12</sup>Texas Disciplinary Rule of Professional Conduct 1.02(b) states, "A lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation."

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year, there are an average of 13,000 lawyers who elect to go on inactive status. Many of them are temporarily out of the workforce for caregiving purposes, yet want to maintain their legal skills by handling pro bono cases. Currently, they are unable to do so.<sup>13</sup> Additionally, attorneys who are not licensed in Texas but are licensed in another state cannot perform pro bono unless they are supervised by a Texas attorney and pay the pro hac vice fee or take the steps to have it waived for individual pro bono cases. Other states have enacted rules and legislation that allow these groups to provide pro bono under certain circumstances.

- e) Recommendation: Research other states that allow inactive and out-of-state licensed attorney to handle pro bono cases and evaluate whether it is appropriate for Texas.

## 2. Appointment of Counsel in Basic Civil Needs Cases

Across the nation, states are increasingly aware of the negative outcomes for self-represented litigants. In response, some states have implemented pilot projects to evaluate the provision of counsel in civil cases when basic human needs are at issue – family and custody matters, housing, and guardianships. While by no means a comprehensive list, pilot projects have been started in the following states:

- a) The largest pilot project to date is California's Sargent Shriver Civil Counsel Act<sup>14</sup> which funded seven pilot projects that provided legal representation in housing, custody, conservatorship, and guardianship cases. In these kinds of disputes, low-income litigants are, for the most part, unrepresented—and are often unaware of the various options open to them. The pilots target cases in which one side is represented by a lawyer and the other is not. Results for each pilot have not yet been computed but the housing pilot showed that the provision of counsel created efficiencies for the court that resulted in cost savings. Systemic impacts show more housing was retained, the risk of homelessness and bankruptcy was reduced, and the ability to maintain children in stable education increased. The two family projects served only the most complex cases involving domestic violence, high conflict, mental or physical disability, combined with a request for sole custody. A total of \$38 million was allocated to the seven pilot projects over a period of 4 years. More than 20,000 people were served.
- b) The Illinois General Assembly enacted the Access to Justice Act<sup>15</sup> to create a pilot project for the provision of counsel in cases involving military personnel and veterans. The pilot will last for 5 years and no results have yet been reported.
- c) Wisconsin started a pilot<sup>16</sup> in 2015 in Winnebago County to measure and evaluate the cost and effectiveness of providing representation to victims of domestic violence in family law cases. The 18-month pilot is funded with \$100,000 from a subgrant of STOP (Services, Training, Officers, Prosecutors), a federally funded grant program under the Violence Against Women Act.

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<sup>13</sup> Chapter 81 of the Texas Government Code states that inactive attorneys cannot practice law.

<sup>14</sup> See Sargent Shriver Civil Counsel Act.

<sup>15</sup> See Access to Justice Act.

<sup>16</sup> See Wisconsin pilot.

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- d) In Massachusetts, a comprehensive eviction pilot<sup>17</sup> was completed in 2012 with positive results, including significant decreases in the incidence of homelessness. A second pilot was funded with money provided by the Massachusetts Attorney General<sup>18</sup>.

Texas has also enacted legislation that mandates the provision of counsel in certain basic human needs situations, such as for wards in guardianship cases, for children in private and state-initiated termination cases, for parents in state-initiated termination cases and for mental health commitments.

- Recommendation: Consider implementing a pilot project for the provision of counsel in areas of basic human needs and continue to implement legislation that mandates the provision of counsel for indigent people in areas of basic human needs.

### 3. Leverage Attorney Time

There is much dialogue in the access to justice community on how to expand access to lawyers and legal professionals for low- and moderate-income people. Recent discussions center on the possibility of adopting rules and procedures for judicially-authorized and regulated legal service professionals. A frequent analogy is the use of physician assistants in the medical field. Several states have implemented innovative program, including the following:

- a) New York City's Housing Court launched the Court Navigator Program where college students, law students, and other persons are trained to assist unrepresented litigants in nonpayment proceedings in housing and consumer debt court.
- b) California's JusticeCorps program recruits, trains, and places over 270 undergraduates and recent graduates in court-based self-help center.
- c) Arizona Certified Legal Document Preparers are certified by the Supreme Court to prepare legal documents and may give legal information but not give legal advice.
- d) California Family Law Facilitators help self-represented people with forms and procedures in custody, divorce, support, and credit card debt collection matters.
- e) The Washington Supreme Court adopted the Limited License Legal Technician (LLLT) Rule in 2012 authorizing non-attorneys who meet certain educational requirements to advise and assist clients in approved practice areas of law.

- Recommendation: Evaluate the use of legal service professionals to address access to justice issues in areas of high legal need.

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<sup>17</sup> See Massachusetts 2012 pilot.

<sup>18</sup> See Massachusetts second pilot. See also, the National Coalition for a Civil Right to Council's comprehensive bibliography has a section about the Massachusetts pilots, which includes links to the various reports coming out of the first round of pilots as well as some law review articles about the pilots.

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## EVALUATION OF RECENT EFFORTS

In recent years, there have been several significant efforts to increase a person's ability to resolve their legal issues on their own both inside and outside the courtroom.

- In November 2012, the Texas Supreme Court developed easy to use, plain language instructions and forms in an area of high need – an uncontested divorce involving no children or real property. In 2015, Divorce Set One was viewed 156,681 times and downloaded 28,105 times on TexasLawHelp.org, the largest legal information and forms website in Texas.
- The 84<sup>th</sup> Legislature passed SB 478 regarding the promulgation of landlord-tenant forms by the Court and SB 512 regarding the promulgation of probate forms by the Court. Work is progressing on the probate forms and will begin shortly on the landlord-tenant forms.
- Texas has recently implemented a tool to assist pro se litigants with smart forms called Guide and File.<sup>19</sup> The Office of Court Administration and legal aid providers across the state are working with Tyler Technologies to develop the smart forms, which are now accessible to pro se litigants in several basic legal proceedings. The number of available smart forms is expected to increase to more than 50 forms within the next two years.
- The 84<sup>th</sup> Legislature enacted the transfer on death deed, which allows property owners to transfer title to real property to a beneficiary upon the owner's death outside of probate. The transfer on death deed is an important statute for all Texans, especially low-income Texans, and our communities. In the short 8 months from November 2015 to July 2016, the transfer on death deed has been viewed 45,239 times and downloaded 16,890 times on TexasLawHelp.org.
- In November 2015, the Texas Supreme Court created the Texas Commission to Expand Civil Legal Services Delivery to gather and evaluate information on initiatives and proposals that increase the availability of civil legal services to low and middle-income Texans and to make recommendations on how to achieve these goals in Texas. The Commission has been looking at a wide variety of steps that could be taken to improve access to courts for those who must represent themselves and to increase opportunities for securing legal counsel.
- The Texas Legal Services Center, a statewide legal aid program, is undergoing an extensive revitalization of the TexasLawHelp.org website. The website is the largest resource for Texas-based legal information and forms for self-represented litigants in Texas. The State Law Library has also increased its outreach to the public to assist those who need legal information and forms. Harris and Travis counties have court-based self-help centers and Dallas is evaluating how best to move forward on the establishment of one.
- The Texas Supreme Court recently rewrote Texas Rule of Civil Procedure 145 which governs statements of inability to afford payment of costs and is literally the gateway to the courts for low-income people. The old rule was regularly inaccurately and inconsistently applied throughout the state. The new rule, effective September 1, makes clear that parties who are unable to pay court costs and fees may not be required to pay costs and fees unless a court finds after an evidentiary hearing that the declarant has the ability to pay.

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<sup>19</sup> Guide and File is available at <http://selfhelp.efiletexas.gov>.

Vehicle Transfer on Death Deed Research - Texas Access to Justice Commission 2016

	Summary	How is VTOD recorded?/Who records it & where is it recorded?	Fees?	How & who do you inform when someone dies?	Notes
Arizona	Owner can fill out 'beneficiary designation' form, available from MVD and attach to original title. (If owner does not have title on hand, can request that MVD assist and supply title). New title with beneficiary will be issued to owner.	Motor Vehicle Department -> Beneficiary Designation form -> Certificate of title; A.R.S. § 28-2055(B) reads: "At the request of the owner and on payment of a fee prescribed by the department by rule, the certificate of title may contain, by attachment, a transfer on death provision where the owner may designate a beneficiary of the title." Once owner has obtained vehicle title, owner can fill out the MVD's "beneficiary designation" form hosted on MVD website - listed as Form 95-0561, and found in the section for forms under "B," for beneficiary. This form allows owner to transfer the title of the vehicle to the person(s) owner designate upon death. Title owner must sign the form in front of the MVD agent and have the MVD agent notarize the signature. (can alternatively sign in front of a regular notary.) Completed form and title must be given to the MVD agent along with the \$4 fee. Form reads: "This form must be stapled to and presented with the current title, and is void if altered or erased." The MVD agent will give owner a new title with the	\$4 (paid for by owner of vehicle title).	Upon the death of the owner, beneficiary should present the following to the AZ MVD: 1) title in deceased's name showing beneficiary's information 2) death certificate 3) \$4 fee	*The Beneficiary Designation is only applicable if vehicle is owned by one person. *put in a call to the Arizona MVD pretending I was listed as a beneficiary on an Arizona title -NOT DECEDENT - representative was unable to answer my question about vehicle transfer on death - instead pointed me in the direction of non-probate affidavit (which is only to be used by decedent). New question: to what extent does the MVD know about the transfer on death option?
Arkansas	Owner can fill out "Request for Title or Watercraft Registration with Beneficiary" form and beneficiary's name will be reflected on the Certificate of Title.	Owner can fill out additional form and the TOD beneficiary is listed on Certificate of title; Office of Motor Vehicles AR Code § 27-14-727(b) reads: "If the owner or joint owners want to transfer a vehicle upon death by operation of law, the owner or joint owners may request that the Office of Motor Vehicle issue a certificate of title with beneficiary that includes a directive to the Office of Motor Vehicles to transfer the certificate of title upon the death of the owner or upon the death of all joint owners to the beneficiary named on the face of the certificate of title with beneficiary". The certificate of title with beneficiary will include after the name of the owner the words "transfer on death to" or the abbreviation "TOD" followed by the name of the beneficiary. Must use "Request for Title or Watercraft Registration with Beneficiary" form to make formal request to	The owner shall include with the application the title application fee of \$4, the title fee of \$2, and the certificate of title with beneficiary processing fee of \$10.	Upon the death of the owner, the Office of Motor Vehicles shall issue a new certificate of title for the vehicle to the surviving owner or, if not surviving owner, to the beneficiary if the beneficiary presents: 1) proof of death of the owner that includes a death certificate issued by the state or a political subdivision of the state; 2) surrender of the outstanding certificate of title with beneficiary; and application and payment of the title application fee and title fee.	*VERY hard to find information about this process online or in layman's terms.
California	Owner can write in beneficiary's name on the back of the title.	The sole registered owner of a vehicle/vessel may designate a transfer on death (TOD) beneficiary to whom ownership of the vehicle/vessel may be transferred upon death of the owner. To add a TOD beneficiary, the registered owner must complete the new registered owner section on the back of the vehicle/vessel title as follows: First line of name - the registered owner's name is entered as usual (only one registered owner name is permitted). Second line of name: the abbreviation "TOD" is entered followed by the beneficiary's name (only one beneficiary name is permitted). Registered owner's address information - completed as usual. The signature of the register owner is required. The registered owner does not have to sign line 1 of the title to add, change, or delete a beneficiary. The beneficiary's signature is not required except when the registered owner deceased.	\$20 title fee + \$10 transfer on death beneficiary designation	Upon the death of the registered owner, ownership may be transferred to the TOD beneficiary. The requirements are: 1) the vehicle title or Application for Duplicate Title - REG 227 (the beneficiary must sign the name of the registered owner and countersign on Line 1 of the title or Section 4 of the REG 227). 2) A Statement of Facts (REG 256) completed by the beneficiary stating the date and place of the owner's death and that he/she is entitled to the vehicle as the designated beneficiary.	*Expensive when compared to other states' fee schedules; *can only be one owner and one beneficiary designated
Connecticut	Owner can designate, in writing in a space provided on the certificate of registration for such motor vehicle, a beneficiary who shall assume ownership of such motor vehicle after the death of the owner.	Certificate of Registration; In CT, there is no TOD form to ask for from the DMV and DMV does not record the TOD and the TOD does not appear on the title. Instead, owner must write in the TOD beneficiary on the car registration. Sec. 14-16 (b) reads: "If a motor vehicle is owned by one owner who is a natural person, such owner may designate, in writing in a space provided on the certificate of registration for such motor vehicle, a beneficiary who shall assume ownership of the motor vehicle after the death of the owner and upon the making of an application pursuant to this subsection. Instructions: Owner must locate the "Certificate of Registration" and on the back there is a section called "Beneficiary Designation"; the owner must complete this section with the name of the beneficiary, his/her driver's license number and address; and sign the form in the presence of someone who can witness owner's signature (NOT the beneficiary). When owner receives a replacement Certificate of Registration (every 1-2 years), owner must go through process	Beneficiary will have to pay \$20 transfer fee + any applicable fees for registration (varies based on type of vehicle being registered), title (\$25) and number plates (\$5).	Not later than sixty days after the death of the owner, the beneficiary may make an application to the commissioner for the issuance of a certificate of title and a certificate of registration for such motor vehicle in the beneficiary's name. Such application shall be accompanied by: 1) the original certificate of registration in which the beneficiary is designated 2) a death certificate for the deceased owner 3) such proof of the beneficiary's identity as the Commissioner may require, and 4) any applicable fees for registration, title and number plates as required.	*Owner must remember to write in the beneficiary EVERY time he/she receives a replacement Certificate of Registration.

APPENDIX FOUR

Delaware	Owner(s) can fill out Transfer on Death Application (Form MV 2025) and submit to Division of Motor Vehicles along with application for title. Certificate of title will then include beneficiary information.	Owner fill out Transfer on Death Application & TOD then listed on Certificate of title: § 2304 Certificate of title; transfer-on-death: (a) A motor vehicle may be titled in transfer-on-death form by including in the certificate of title a designation of a beneficiary or beneficiaries to whom the motor vehicle shall be transferred on death of the owner or the last to die of 2 or more owners with right of survivorship, subject to the rights of all lien holders, whether created before, simultaneously with, or after the creation of the transfer-on-death interest. A trust may be the beneficiary of a transfer-on-death certificate of title. (b) A motor vehicle is titled in transfer-on-death form by designating in the certificate of title, the name of the sole owner, or the names of the owners who own the motor vehicle as tenants in common, tenants by the entirety or joint tenants with right of survivorship, followed in substance by the words "transfer on death to [name of beneficiary or beneficiaries]" instead of the words "transfer on death to" the abbreviation "TOD"	Owner and Beneficiary (when retitling in their name will have to pay Title fee (\$35 w/out lien; \$55 w/lien) for new title.	When the owner dies, the vehicle belongs to the beneficiary listed on the certificate of title. The beneficiary must retitle the vehicle in his or her name - he or she must submit to the Division of Motor Vehicles 1) an application for the new certificate of title 2) the old certificate of title with beneficiary's information listed 3) a death certificate for the deceased owner.	*VERY hard to find information about this option, other than statute - although Form MV 2025 widely available
Illinois	Owner (1) can fill out Beneficiary Affidavit (VSD 773.2) and add a beneficiary to the title.	Owner can fill out Beneficiary Affidavit (VSD 773.2) and TOD will be listed on Certificate of Title; Public Act 95-0784 reads: The Secretary of State shall designate on the prescribed application form a space where the owner of a vehicle may designate a beneficiary, to whom ownership of the vehicle shall pass in the event of the owner's death. Owner can fill out Beneficiary Affidavit (VSD 773.2) to change, add or remove a beneficiary on the title. The beneficiary's name, address and county will be printed on the face of the Illinois title on the right-hand side, below the legend(s) area with the heading BENEFICIARY INFORMATION.	Beneficiary will have to pay \$95 title fee when retitling the car in their name.	Beneficiary must fill out Form VSD774.2 - Beneficiary Claim Form. To this form, Beneficiary must attach: 1) documentation indicating the vehicle was last titled in Illinois, the vehicle owner and TOD beneficiary. Verification can be the title or an Illinois Secretary of State title screen print, 2) a copy of certified death certificate for the owner shown on the Illinois title. Beneficiary must complete and attach an Application for Vehicle Transaction(s) (VSD 190) along with the \$95 title fee and any additional registration fee(s) if license plates are requested. The beneficiary does not have rights to the deceased vehicle owner's registration. Attach appropriate tax form and check payable to	*A beneficiary cannot be added to the title when there is a lienholder. *If the name of the beneficiary on the decedent's title is not identical to the name stated on the beneficiary's paperwork, an Affidavit of Correction (VSD 393), item number 6, must be completed.
Indiana	A TOD Beneficiary may be added to an Indiana Certificate of Title at the time of purchase (title transfer), or, if owner already has title to the vehicle, he/she may apply for new title containing the TOD designation. The application for certificate of title	Owner can list on the Application for Title and TOD is listed on Certificate of Title: Ind. Code § 91739 (a) An individual whose certificate of title for a vehicle indicates that the individual is the sole owner of the vehicle may create an interest in the vehicle that is transferrable on the death of the individual by obtaining a certificate of title conveying the interest in the vehicle to one (1) or more named individuals as transfer on death beneficiaries. When an owner requests to add one or more persons to the vehicle Certificate of Title as a TOD Beneficiary - via the application for certificate of title - the resulting title prints a statement similar to the following; "[Owner] transfers on death to [TOD Beneficiary]" or "[Owner] and [Owner] transfer on death to [TOD Beneficiary]." A TOD Beneficiary designation that is printed on an Indiana Certificate of Title is not valid unless the vehicle owner(s) had signed the TOD statement prior to their death.	\$15 title fee	A TOD Beneficiary who has acquired ownership of a vehicle, as a result of being listed on the vehicle's Indiana Certificate of Title as a TOD beneficiary, must take the Indiana title containing the TOD designation and a copy of the decedent's death certificate to a BMV license branch to apply for a new Indiana title.	*Called the Bureau of Motor Vehicles to obtain answer to "how do I do this?" information presented here is taken from that conversation.
Kansas	The TOD designation for vehicles is listed on the title. Owner may specify the TOD beneficiaries on the application for title and registration.	Owner can list on the Application for Title and TOD is listed on Certificate of title; KS Stat § 59-3508 (2014): A motor vehicle, as defined by subsection (b) of K.S.A. 8-126, and amendments thereto, may be titled in transfer-on-death, TOD, form by including in the certificate of title a designation of a beneficiary or beneficiaries to whom the motor vehicle shall be transferred on death of the owner or the last survivor of the joint tenant with right of survivorship owners, subject to the right of all lien holders. On Title and Registration Manual Application (Form TR-212), owner can list 1st TOD and 2nd TOD and TOD info will appear on certificate of title.	\$10 title fee (both owner and beneficiary would need to pay this fee) *additional info on fees pending*	Complete Transfer on Death Affidavit (TR-82) - (this form is to be used by the beneficiaries upon the death of the vehicle owner(s).) Attach verification that the vehicle was last titled in Kansas, to whom and who is shown as the TOD beneficiary(s). Verification can be: the title, or the last registration receipt, or a verification of ownership issues by either the County Treasurer or the Kansas Division of Vehicles. Attach a copy(s) of the death certificate(s) for the owner(s) shown on the Kansas title. Take complete affidavit and necessary documentation to local	*If there is a lienholder listed on the face of the title, a notarized written lienholder's consent to transfer the title is required. If the name of a beneficiary listed on the deceased title is not the way it is to be listed on the beneficiary(s) new title, a One and the Same Affidavit (TR-12) needs to be completed.

Missouri	Owner may name a TOD beneficiary on the application for title.	Owner can list on the Application for Title and then TOD is listed on Certificate of Title: Section. 301.681. 1.: <i>A sole owner of a motor vehicle or trailer, and multiple owners of a motor vehicle or trailer who hold their interest as joint tenants with right of survivorship or as tenants by the entirety, on application and payment of the fee required for an original certificate of ownership, may request the director of revenue to issue a certificate of ownership for the motor vehicle or trailer in beneficiary form which includes a directive to the director of revenue to transfer the certificate of ownership on death of the sole owner or on death of all multiple owners to one beneficiary or to two or more beneficiaries as joint tenants with right of survivorship or as tenants by the entirety named on the face of the certificate. The directive to the director of revenue also shall permit the beneficiary or beneficiaries to make one reassignment of the original certificate of ownership upon the death of the owner to another owner without transferring the certificate to the beneficiary or beneficiaries' name. 3. A certificate of ownership issued in beneficiary form shall include after the name of the owner, or after the names of multiple owners, the words "transfer on death to" or the abbreviation "TOD" followed by the name of the beneficiary or beneficiaries. To designate beneficiaries, the owner can check the "Transfer on Death (TOD)" box on the Application for Missouri Title and License and list the beneficiaries named in the space provided for TOD beneficiaries on the application.</i>	\$11 title fee	For the beneficiaries to obtain title to a motor vehicle, the beneficiaries must submit a completed and signed application for title, proof of death of all owners, the existing certificate of title designating the TOD beneficiary and the appropriate title and processing/agent fee.	
Nebraska	If applicant wishes to indicate a beneficiary(ies) on the Application for Certificate of Title, the beneficiary(ies) will be listed on the new Certificate of Title with the tag "Transfer on Death" (TOD).	Owner can list on Application for Certificate of Title and then TOD is listed on the Certificate of Title; NE Code § 30-2715.01: (1) <i>A person who owns a motor vehicle may provide for the transfer of such vehicle upon his or her death or the death of the last survivor of a joint tenancy with right of survivorship by including in the certificate of title a designation of beneficiary or beneficiaries to whom the vehicle will be transferred on the death of the owner or the last survivor, subject to the rights of all lienholders, whether created before, simultaneously with, or after the creation of the transfer-on-death interest. A trust may be the beneficiary of a transfer-on-death certificate of title. The certificate of title shall include the name of the owner, the name of any tenant-in-common owner or the name of any joint-tenant-with-right-of-survivorship owner, followed in substance by the words transfer on death to (name of beneficiary or beneficiaries or name of trustee if a trust is to be the beneficiary). The abbreviation TOD may be used instead of the</i>	\$10 title fee (TOD designation is on the Title Application)	Once ownership has vested with the TOD beneficiary(ies), the beneficiary(ies) may make application for issuance of a title in the beneficiary(ies) name upon presentation of a death certificate(s) and an application for certificate of title OR ownership may be transferred to a third party by attaching the death certificate(s) and signing the certificate of title as TOD.	
Nevada	The owner must submit the Certificate of Title, a Transfer on Death Application (VP 239) and a \$21 Title Fee to the DMV.	Listed on Certificate of Title; NRS 482.247 reads: 1. <i>The owner or joint owners of a motor vehicle, trailer or semitrailer may request the Department to issue a certificate of title in beneficiary form for the motor vehicle, trailer or semitrailer, as applicable, which includes a directive to the Department to transfer the certificate of title upon the death of the owner or upon the death of all joint owners to a beneficiary named on the face of the certificate of title. 2. A request made pursuant to subsection 1 must be submitted on an application made available by the Department and accompanied by the fee for the issuance of a certificate of title. 3. A certificate of title in beneficiary form may not be issued to a person who holds an interest in a motor vehicle, trailer or semitrailer as a tenant in common with another person. 4. A certificate of title in beneficiary form must include after the name of the owner or after the names of joint owners the words "transfer on death to" or the abbreviation "TOD" followed by the name of the beneficiary.</i>	\$21 title fee	A beneficiary wishing to claim ownership of the vehicle must have a certified copy of the death Certificate(s) of the owners(s). The beneficiary must surrender the license plates. The deceased person's Driver License must also be surrendered to the DMV for cancellation. The beneficiary must submit the Death Certificate(s) to the DMV along with the Certificate of Title and a \$21 Title fee. If the title is not available, a Transfer on Death-Beneficiary Affidavit for Title (VP241) form may be submitted in its place. An Application for Duplicate Title is not necessary. The new title will be mailed.	*Only one name can be listed on the certificate of title as the beneficiary. A beneficiary cannot be added to the title when there is a lienholder or ownership is designated as "Tenants in Common". If a lienholder or lessor is added to the title at a later time, the beneficiary will be removed from the title.

Ohio	Owner must complete and submit a signed and notarized Affidavit to Designate a Beneficiary and new title with TOD info will be produced.	Listed on Certificate of Title: Ohio Revised Code - 2131.13 reads: (B) <i>An individual whose certificate of title of a motor vehicle, watercraft, or outboard motor shows sole ownership by that individual may make an application for a certificate of title under section 1548.07 or 4505.06 of the Revised Code to designate that motor vehicle, watercraft, or outboard motor in beneficiary form pursuant to this section. (C) (1) A motor vehicle, watercraft, or outboard motor is designated in beneficiary form if the certificate of title of the motor vehicle, watercraft, or outboard motor includes the name or names of the transfer-on-death beneficiary or beneficiaries. (2) The designation of a motor vehicle, watercraft, or outboard motor in beneficiary form is not required to be supported by consideration, and the certificate of title in which the designation is made is not required to be delivered to the transfer-on-death beneficiary or beneficiaries in order for the designation in beneficiary form to be effective. (D) The designation of a motor vehicle, watercraft, or outboard motor in beneficiary form may be shown in the certificate of title by the words "transfer-on-death" or the abbreviation "TOD" after the name of the owner of a motor vehicle, watercraft, or outboard motor and before the name or names of the transfer-on-death beneficiary or beneficiaries. An individual, as the sole owner of a motor vehicle may elect to designate a beneficiary or beneficiaries to an Ohio title with a signed and notarized</i>	Title fee (\$15) + Sworn Affidavit fee (\$1)	Beneficiary must bring the following to the Title Office: 1) original Ohio title 2) certified copy of the death certificate 3) Application for Certificate of Title (form BMV 3774) 4) a government-issued driver license or ID 5) payment for title fees	
Vermont	Owner can complete a VT DMV form (TA-VT-007; Notification of Transfer on Death), attach to existing vehicle title and present to DMV with \$33.	Listed on Certificate of Title: Vermont Title 23: S.2023 (f): <i>Where the title identifies a person who will become the owner upon the death of the principal owner (transfer on death), the principal owner shall have all rights of ownership and rights of transfer until his or her death. The designated transferee shall have no rights of ownership until such time as the principal owner has died as established by a valid death certificate. At that time, the transferee shall become the owner of the vehicle subject to any existing security interests. To add a transfer on death beneficiary, owner needs to complete a Vermont Department of Motor Vehicles form (TA-VT-007; Notification of Transfer on Death), located on the Forms page of the DMV's website. In addition to the form, owner needs to submit their existing vehicle title and a check for \$33, to cover the processing fee. A new title will be issued that includes the transfer on death beneficiary on the face of the vehicle title.</i>	\$33 (in 2015).	At the least, a copy of the Death Certificate & original title with "Release of Liens" section completed by the lienholder, if applicable. May also require letter from office of the court. Requirements vary. See: <a href="http://dmv.vermont.gov/registrations/drivers/deceased">http://dmv.vermont.gov/registrations/drivers/deceased</a>	*Transfer on death only applies to vehicles registered/titled to one owner. *The designated transferee shall not be listed on the registration of the vehicle. *not sure if this is a real transfer on death set-up, see: <a href="http://dmv.vermont.gov/registrations/drivers/deceased">http://dmv.vermont.gov/registrations/drivers/deceased</a> *
Virginia	Owner may fill out Beneficiary Transaction Request form (VSA 18 (07/01/2013)) to add, change, or remove a beneficiary on a certificate of title and should return it to any DMV customer service center.	Owner can complete Form VSA 18 and TOD beneficiary will be listed on Certificate of title; Department of Motor Vehicles VA Code § 46.2-633.2 (2013): <i>A. A motor vehicle, trailer, or semitrailer may include in the certificate of title a designation of a beneficiary to whom the motor vehicle, trailer, or semitrailer shall be transferred after the death of the owner. B. A motor vehicle, trailer, or semitrailer may be titled with a designated beneficiary by applying to the Department for a certificate of title on which is stated the name of the sole owner followed by "transfer on death" or "TOD" and the name of the beneficiary. Individual is considered a beneficiary if the words "Transfer on Death" or "TOD" are followed by individual's name on the vehicle title.</i>	\$10 titling fee	Beneficiary may re-title the deceased's vehicle in his/her name by submitting the following to DMV w/in 120 days of death of the owner: 1) death certificate or death verification document; 2) Vehicle title or Affidavit in Lieu of Title Application (VSA12); and 3) payment of appropriate fees	* Before an owner can designate a beneficiary on a vehicle title in Virginia, following conditions must be met: a) vehicle must have one owner who is a natural person b) vehicle cannot be subject to a lien c) the vehicle cannot have co-owners d) the owner can only designate one beneficiary *If the beneficiary does not apply for a certificate of title within 120 days of the owner's death, the beneficiary of his estate shall have no right to obtain to title to the motor vehicle, trailer,



# eFileTexas Self Help Progress

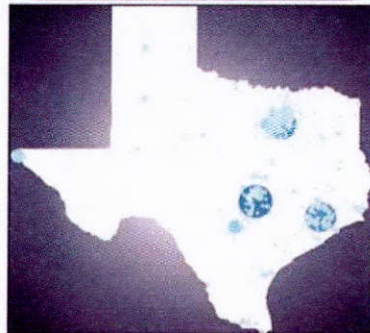


## Summary

- 7 interviews available today, including the Divorce without Children kit
- 13 counties currently live with eFileTexas integration
- 3.14 release includes development to rapidly allow the integration of ~220 non-integrated offices

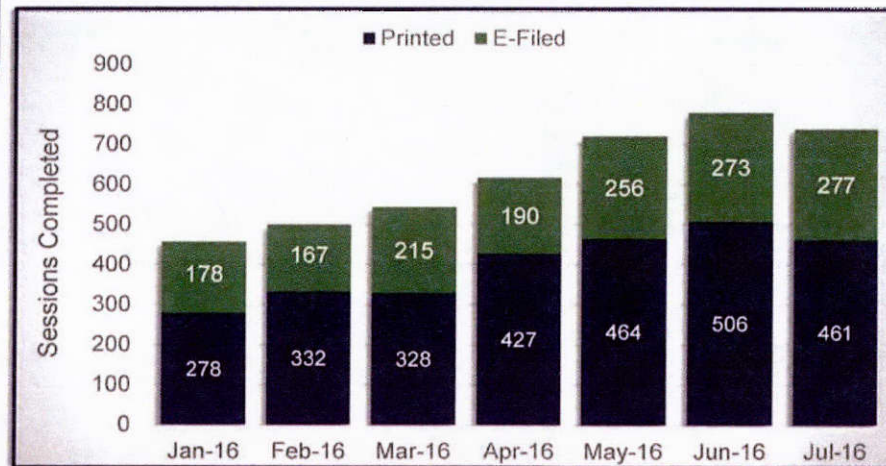
## July Statistics:

- Over 5,209 sessions started
- Over 4,293 unique users
- 738 interviews completed



## Top 10 Cities in Usage YTD

City	Sessions	City	Sessions
Austin	6,019	El Paso	1,144
Houston	4,803	Fort Worth	1,118
Dallas	5,078	McKinney	737
Plano	1,652	Arlington	460
San Antonio	1,078	Irving	539





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## APPENDIX SIX

### Chart A

This chart shows an overview of the program results for FY '15 along with the previous two years' results for comparison.

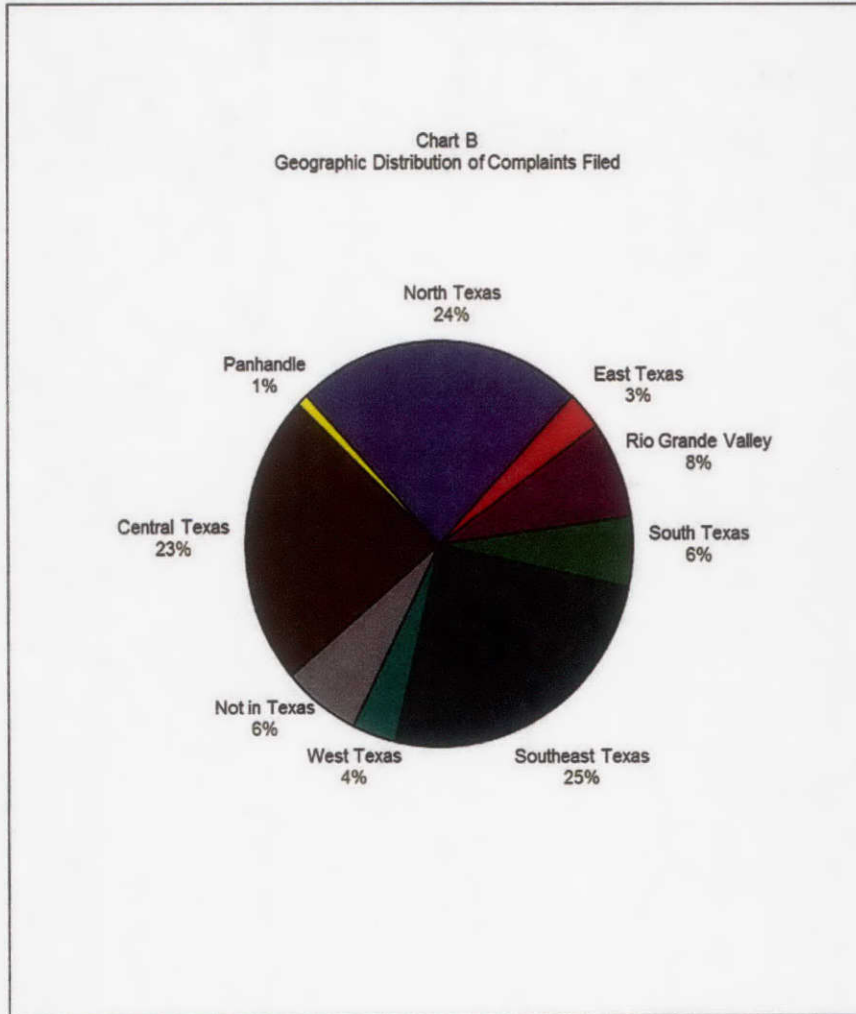
Chart A Summary of Program Results			
	FY '13	FY '14	FY '15
Complaints Filed	370	391	431
Complaints Closed	353	416	363
Settlements	179	228	213
Repurchase/Replacement Orders	70	72	110

Most complaints involve passenger cars and light trucks; however, complaints were also received on all-terrain vehicles, medium trucks, heavy trucks, motorcycles, motor homes and towable recreational vehicles. Purchase prices of the vehicles subject to complaint ranged from a few thousand dollars to just under two hundred thousand dollars for a motor home.

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### Chart B

The Lemon Law Section has divided the state into nine areas, which coincide with TxDMV regional centers. The largest percentage of complaints were filed from the Southeast Texas area, which includes Houston. The next two largest areas in which complaints were filed are Central Texas, which includes Austin and San Antonio, and North Texas, which includes Dallas and Fort Worth.

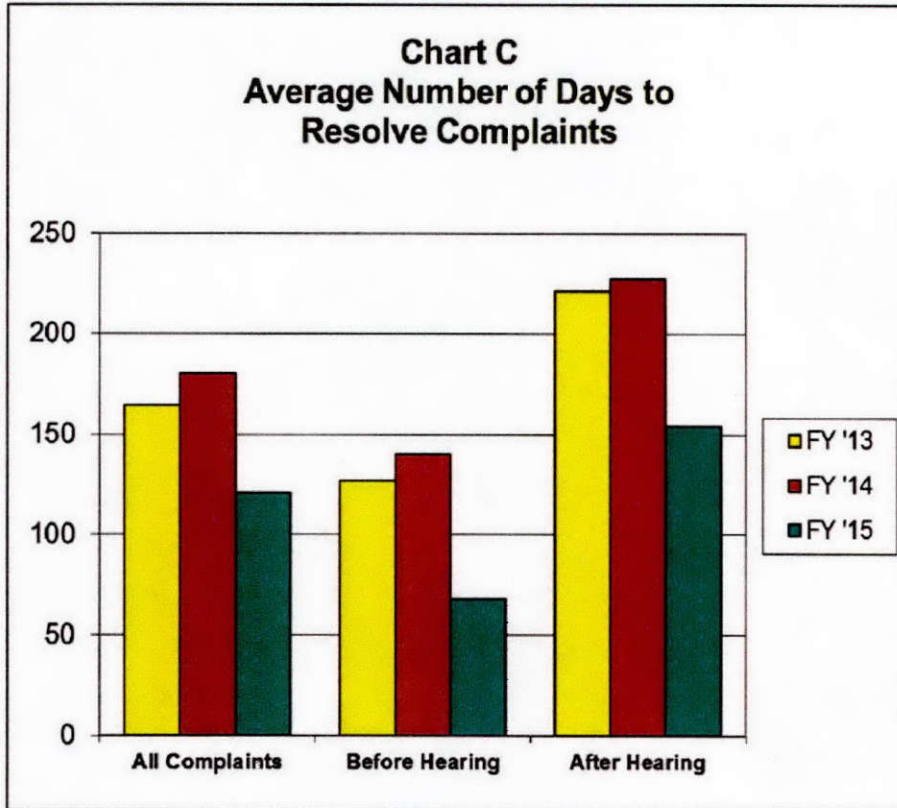




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### Chart C

Chart C shows the average processing times for the complaints closed for FY '13 through FY '15. The trend expressed shows a 36% decrease in processing time to resolve complaints over the last three years.





**APPENDIX SEVEN**

May 19, 2016

**Appendix D: State Comparison Chart**

Comparison of State Lemon Law Programs								
State	Arbitration	Complaints rec'd/Arbs held	Decisions	FOTC Limit	MV Limits	Title Branding	Filing Fee	Other Requirements
Texas	No, administrative hearing model	370 - FY 13; 391 - FY 14; 431 - FY 15 (Complaints rec'd)		Not statutory. Generally, 30 days.	None	Yes, if order issued.	Yes, \$35	
Vermont	Yes, uses arbitration model (State Arb Board)	Arb Hearings Held: FY 2014 - 22; FY 2013 - 31; FY 2012 - 25; FY 2011 - 25	Finding for CP: 2014 - 10; 2013 - 15; 2012 - 10; 2011 - 14	Not less than five days b/f hearing or waived	<12K pounds	Yes, in all situations	None	Arb hearing w/in 45 days after Request for arb accepted. 10% award is M fails to comply with award by deadline.
Hawaii	Yes, uses arbitration model. State certifies arbitrators.	Arb Hearings Held: FY 2014 - 24; FY 2013 - 20; FY 2012 - 16	Finding for CP: 2014 - 9; 2013 - 8; 2012 - 4	If presumptions met, no FOTC.	<10K pounds; no mopeds or scooters	Yes, in all situations	Yes, \$50	3X test within Lemon Law Period (LLP) (2 yrs/24K miles) or 1X for safety hazard; Limitations period up to 1 year after period.
Florida	Yes, uses arbitration model (State Arb Board) or consumer can use manufacturer sponsored arb program if approved by state	(Complaints rec'd) 2015 - 597; 2014 - 477; 2013 - 461; 2012 - 380; 2011 - 318	NA - Not available	M must schedule FOTC attempt not later than 10 days after receipt of written notice	<10K pounds; no mopeds or scooters, off-road vehicles, or living quarters of motor homes	Yes, in all situations	Yes, \$25	3X test within the Lemon Law Period (24 mos); Manuf has 10 days after scheduling FOTC to fix defect
Conn	Yes, uses arbitration model. State provides panel with technical expert and arbitrator.	Arb Hearings Held: FY 2015 - 52; FY 2014 - 53; FY 2013 - 42	NA - Not available	Not required by statute unless M had noticed the owner li owners manual or warranty	Same as Texas	Yes, in all situations	Yes, \$50, if using state program	Lemon Law Period (2 yrs/24K miles); 4X test or 2X for safety hazard or out of service for 30 days; arbitration generally binding; if M is part of a arbitration program certified by state, then required to use that
Wash	Yes, uses arbitration model. State conducts arbitration.	Complaints rec'd 2015 - 141; 2014 - 91; 2013 - 73	NA - Not available	NA - Not available	<19K pounds, no motorcycles under 750cc, fleets over 10 MVs; does not cover living quarters of motor home	Yes, in all situations	Yes, \$3	Lemon Law Period (2 yrs/24K miles); 4X test or 2X for safety hazard or out of service for 30 days (rebuttable presumption); Request for Arbitration can be up to 30 mos after purchase; after award, M has 40 days to comply with repurchase or replacement (up to \$1,000/day for non-compliance); Attorneys fees are incidental expense like Texas

May 19, 2016

Ohio	Yes, uses arbitration model. Consumer can use manufacturer sponsored arb program if approved by state.	(Complaints rec'd) 2015 - 206; 2014 - 167; 2013 - 107; 2012 - 110	NA - Not available	NA - Not available	Same as Texas except does not cover residential parts of TRV or motor home.	Yes, in all situations	NA - not available	Lemon Law Period (3 yr/18K miles) 3X test/30 days out of service for same defect. 1X for safety hazard defect, or 8 x for any defect
New Jersey	State uses Texas hearing model	(Complaints rec'd) NJ averaged 88 cases per year over last five years	Approximately 50% of filed cases settle	One FOTC: within 10 days after receiving written notice	Same as Texas except does not cover residential parts of TRV or motor home		Yes, 550	Hearing is held within 20 days after application accepted for hearing; ALJ issues proposed order within 20 days after hearing; State issues final order within 15 days after proposed order; 2X test/20 days out of service or 1X for safety hazard
North Carolina	N/A	N/A		One FOTC: within 15 days after receiving written notice	10K pound vehicles limit & no house-trailers		None	4X test or 20 business days out of service during 12 month period of the warranty (Lemon Law Period 2 yr/24K miles)
Georgia	Yes, uses arbitration model. State uses an arbitration panel.	NA	NA - Not available	28 days to cure defect after written notice	12K pound MV limit, does not cover motorcycles; golf carts or living quarters of motor homes/TRVs.	Yes, in all situations	None	M has 40 days to comply with decision; Lemon Law Period (2yrs/24K miles); 3X times, 30 days out of service, 1X safety hazard test; Limitatio not to exceed filing one year after lemon law period
Calif	Yes, uses arbitration model. State certifies arbitrators. State certifies arbitration programs which are audited by third party.	2015 - 2309; 2014 - 2195; 2013 - 2396 (No of Arbitrations by Year: 2015 - 561; 2014 - 576; 2013 - 517)	NA - Not available			Yes, in all situations	None	40 day deadline to conclude arbitrations with decision; 4X test/30 days out of service and 2X test for safety hazard during Lemon Law Period (18 months/18K miles); If manufacturer belongs to its own arbitration program, CP must use that program first.
Illinois	State uses 3rd Party Resolution Program established by manufacturer	NA	NA - Not available	Written notice required with FOTC; no time limit listed	8K pound MV limit; motorcycles not covered		None	4X test or 30 days out of service; Lemon Law Period (12 mos/12K miles) if party dissatisfied with findings of resolution program, party may file a formal suit.



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Alabama	State allows for civil court action unless manufacturer has dispute resolution procedure in compliance with federal law. Must use that first.	NA	NA - Not available	FOTC noted but no time period listed	No MV over 10K pounds or motor homes	Yes, in all situations	None	Lemon Law Period (2 yrs/24K miles) 3X test (+ FOTC) or 30 days out of service during Lemon Law Period
Ark	Requires structured informal mediation sessions certified by AG prior to litigation	NA	NA - Not available	After written notice, M has 10 days to schedule FOTC and 10 more days to fix defect	10K pound limit, no motorcycles, mopeds or living quarters of motor home		None	3X test or 40 days out of service, 1X test for safety hazard cases (w/FOTC). Lemon Law Period (2yrs/24K miles)
Nevada	Allows for civil court litigation or arbitration programs	NA	NA - Not available		No motor homes or off-road vehicles	Yes, in all situations. Specifically prohibits private settlements.	None	Lemon Law Period (1 yr/ or expiration of warranty, whichever first), 4X test or 30 days out of service within lemon law period
Alaska	Allows for civil court litigation or arbitric programs	NA	NA - Not available	ENF	Like Texas, but also includes boats	Yes, but statute does not mention settlements. However, statute does require full disclosure to first retail sale.	None	Lemon Law Period (3X within warranty period or one year, or out of service for 30 days; Must file not more than 60 days after warranty period terminates or one year)
Montana	Allows for civil court litigation or approved arbitration programs. Must use arb program first before court remedy.	NA	NA - Not available	FOTC after one written notice by certified mail	No MVs over 10K pounds, or residential portions of motor homes, off-road vehicles or business vehicles	Yes, in all situations.	None	Lemon Law Period (2 yrs or 18K miles); 3X test + FOTC, or 30 days out of service
Neb	Allows for civil court litigation or arbitration programs	NA	NA - Not available	After 3rd repair attempt, written notice to be sent providing notice of defect to M	Covers new & leased MVs; except TRVs and motor homes.		None	Lemon Law Period (4X test or 40 days out of service) Cases commonly take more than 40 days after arbitration request approved.
NC	Allows for civil court litigation or arbitration programs	NA	NA - Not available	FOTC to arrive after written notice. M has no more than 15 days to fix defect.	Covers new motor vehicles, pick-up trucks and motorcycles but not MV over 10K pounds		None	Lemon Law Period (2yrs/24K miles) 4X test within LLP or out of service for at least 20 business days within a 12 month period of the warranty

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Wisc	Allows for civil court litigation or arbitration programs	NA	NA - Not available	State Notice and Nonconformity Report acts as written notice to M and complaint.	Covers new cars, trucks, motorcycles and motor homes, but not MVs over 10K pounds		None	Lemon Law Period (3 years from date of purchase); 4X test or 30 days out of service; If MV under 10K miles, the consumer is required to file a request for refund or replace with necessary documentation under law. M has 45 days to provide refund or replacement vehicle. If the vehicle is over 10K pounds, the time limit to provide a replacement or refund is 120 days. If the M refuses to do either, the consumer is required to first file with the M's dispute resolution program, if any. If none, exists, the consumer may file suit.
Mass	Allows for civil court litigation or arbitration programs. If you choose court litigation, CP must send 30-day demand letter.	NA	NA - Not available	FOTC given by certified mail and the M has 7 business days to fix the defect.	Covers new cars, trucks vans, and motorcycles, but not motor homes, TRVs, off-road vehicles			Lemon Law Period (1 yr/15K miles); 3X test or 15 business days out of service during LLP
Okla	Allows for civil court litigation or arbitration programs	NA	NA - Not available		Covers MVs less than 10K pounds; excludes living quarters of motor homes. 4X test during LLP or 30 days out of service	Yes, in all situations		Lemon Law Period (1 yr or the manufacturer warranty period, whichever first)
Penn	Allows for civil court litigation	NA	NA - Not available		Covers MVs, except motorcycles, motor homes, off-road vehicles or commercial vehicles.	Yes, in all situations. Vehicles with breaking or steering issues that resulted in Lt. relief, may not be resold in state.		Lemon Law Period (1 yr/12K miles; 3X test or 30 days out of service during LLP

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## ENDNOTES

<sup>1</sup> *Memorandum on the Justice for Victims of Trafficking Act*. Children at Risk, 2016.

<sup>2</sup> *Justice for Victims of Trafficking Act*. S. 178, 2015.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> An eligible entity is generally defined to mean a State or unit of local government that meets requirements specified in the legislation.

<sup>10</sup> *Assessing the Threat of Human Trafficking in Texas*. Texas Department of Public Safety, April 2014.

<sup>11</sup> "Bill Analysis HB 10" *House Research Organization Bill Analysis*. Texas House Research Organization, 16 March 2015.

<sup>12</sup> *The Texas Human Trafficking Prevention Task Force Report 2014*. Austin: Office of the Attorney General, Human Trafficking Prevention Task Force, December 2014.

<sup>13</sup> "Bill Analysis HB 10" *House Research Organization Bill Analysis*. Texas House Research Organization, 16 March 2015.

<sup>14</sup> As an example, the Attorney General's Opinion No. KP-0094 addresses application of foreign law in 12 distinct contexts.

<sup>15</sup> HB 45 appears to apply to all civil matters rather than exclusively to cases controlled by the Family Code.

<sup>16</sup> *A Report to the House Judiciary and Civil Jurisprudence Committee from the Texas Access to Justice Commission on Self-Represented Litigant Access to the Judicial System*. Texas Access to Justice Commission, August 2016.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Jury Service Study Core Messages*. Citizens Against Lawsuit Abuse, 2016.

<sup>20</sup> *Issues Related to Jury Service*. The County and District Clerks' Association, 2016.

<sup>21</sup> *Jury Service Study Core Messages*. Citizens Against Lawsuit Abuse, 2016.

<sup>22</sup> *Texas: Impact of the Expedited Actions Rules on the Texas County Courts at Law Final Report: September 1, 2016*. National Center for State Courts, Texas Office of Court Administration, September 2016.

<sup>23</sup> *Id.*

<sup>24</sup> *FY2015 Lemon Law Annual Report*. Austin: Texas Department of Public Safety Enforcement Division, Lemon Law Section, December 2015.

<sup>25</sup> "Texas Lemon Law" *TXDMV.GOV* Texas Department of Motor Vehicles.

<sup>26</sup> *FY2015 Lemon Law Annual Report*. Austin: Texas Department of Public Safety Enforcement Division, Lemon Law Section, December 2015.

<sup>27</sup> *Id.*





