



# INTERIM REPORT

## TO THE 88<sup>TH</sup> TEXAS LEGISLATURE

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HOUSE COMMITTEE ON  
JUDICIARY & CIVIL JURISPRUDENCE  
DECEMBER 2022

**HOUSE COMMITTEE ON JUDICIARY & CIVIL JURISPRUDENCE  
TEXAS HOUSE OF REPRESENTATIVES  
INTERIM REPORT 2022**

**A REPORT TO THE  
HOUSE OF REPRESENTATIVES  
88<sup>TH</sup> TEXAS LEGISLATURE**

**JEFF LEACH  
CHAIRMAN**

**COMMITTEE CLERK  
CASSIDY ZGABAY**



Committee On  
Judiciary & Civil Jurisprudence

December 26, 2022

Jeff Leach  
Chairman

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

The Honorable Dade Phelan  
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-seventh Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eighty-eighth Legislature.

It has been my honor to serve as Chairman over this distinguished Committee of exceptionally smart and gifted legislators, all of whom are devoted in word and deed to advancing sound and smart public policies that strengthen our state's judicial system. We have not agreed on every issue — something disagreeing vigorously on the issues in front of us. To be clear, the members of our Committee do not agree on every recommendation in this report. But every step of the way, both during session and during the interim, we have debated and deliberated in good faith, collaborating and working diligently on behalf of the people we are elected to serve. We have locked arms and worked hard — together — and I am grateful for what we have accomplished and believe our state is stronger as a result. I am proud to serve with my fellow Committee members. I am grateful for their work.

Together, we are honored to present this Committee Report to the entire membership of the Texas House of Representatives for review and consideration as we prepare for and approach the next legislative session.

Handwritten signature of Jeff Leach in black ink.

Jeff Leach, Chairman

Yvonne Davis, Vice Chair

Handwritten signature of Joe Moody in black ink.

Joe Moody

Handwritten signature of Mike Schofield in black ink.

Mike Schofield

Handwritten signature of Julie Johnson in black ink.

Julie Johnson

Handwritten signature of Harold Dutton in black ink.

Harold Dutton

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Matt Krause

Handwritten signature of Reggie Smith in black ink.

Reggie Smith

Handwritten signature of Mayes Middleton in black ink.

Mayes Middleton

Yvonne Davis  
Vice Chair

Members: Harold Dutton, Joe Moody, Matt Krause, Mike Schofield, Reggie Smith, Julie Johnson, Mayes Middleton

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Yvonne Davis  
Vice Chair

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## **Chairman's Acknowledgements**

I wish to thank Speaker Dade Phelan, and his staff, for their extraordinary leadership of the Texas House of Representatives and their faithful stewardship of the trust of the people of Texas. Speaker Phelan recognizes the importance of a strong, open, fair and reliable Judicial System, and he has given our Committee broad discretion, authority and responsibility to ensure we meet those important goals. I am proud to serve under his leadership and believe the State of Texas — including our state's system of justice — is stronger as a result.

Further, I want to expressly thank the members of our Committee: Vice Chair Yvonne Davis, Representative Matt Krause, Representative Harold Dutton, Representative Joe Moody, Representative Reggie Smith, Representative Mike Schofield, Representative Mayes Middleton, and Representative Julie Johnson. We have agreed on many issues and disagreed on many as well — but we have done so in a positive, productive and respectful way. As a result, we have achieved great public policy victories for the people of Texas — and each of us equally, together, share in those results. I believe they represent the very best of the Texas House — and I am grateful to have served and worked with them.

I especially want to thank my colleague and friend, Representative Matt Krause. Representative Krause and I were elected together and were sworn in together in 2013. Since that time, we have become the best of friends, including two terms on this distinguished Committee. We have worked hand in hand and arm in arm on many legislative efforts, securing remarkable and landmark legislative victories over the years together. As he concludes his current term of service in the Texas House, I wish to congratulate him, to affirm him, and to thank him for his service to the people of Texas — and for his friendship to me. Any State Representative would be proud to state at the end of his public service that he has left Texas better than he found it. This is certainly the case with Representative Krause.

Finally, I want to thank my Chief of Staff, Lauren Young, and our Committee Clerk, Cassidy Zgabay. These amazing women have been key parts of my team for several years — and they have worked tirelessly to serve and support each of the members of this Committee — and the State's Judicial System as a whole. Our accomplishments simply would not have been possible without each of them — and we owe them a debt of gratitude for working hard to make all of us, and our State, stronger and better.

## Introduction

On February 4, 2021, Speaker Dade Phelan appointed nine members to the House Committee on Judiciary & Civil Jurisprudence. The Committee members included the following: Jeff Leach, Chair; Yvonne Davis, Vice Chair; Harold Dutton, Joe Moody, Matt Krause, Mike Schofield, Reggie Smith, Julie Johnson, and Mayes Middleton.

Pursuant to House Rule 3, Section 20, the Committee was given jurisdiction over all matters pertaining to the following:

- (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) courts and court procedures except where jurisdiction is specifically granted to some other standing committee; and
- (10) 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.

During the 87<sup>th</sup> Legislative Session, 230 bills were referred to the Committee. 171 bills were considered in a public hearing; of these, 143 bills were voted out of the Committee. In total, 44 bills were signed into law. During the First Called, Second Called, and Third Called Special Sessions, no bills were referred to the Committee.

Following the Legislative Session, Speaker Phelan assigned six interim charges to the Committee. The Committee held four hearings on May 4, August 23, October 3, and October 12, 2022 to hear invited testimony on each of the assigned interim charges.



## Interim Study Charges

- CHARGE 1:** Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 87<sup>th</sup> Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure the intended legislative outcome of all legislation.
- CHARGE 2:** Examine current caseloads and capacity issues for courts handling matters related to the Texas-Mexico border. Evaluate the preparedness of the court system to handle increases in caseloads that may result from the border crisis response and make recommendations to ensure the continued fair and efficient administration of justice in the state in addressing any increased caseloads. *(Joint Charge with the Committee on Juvenile Justice & Family Issues.)*
- CHARGE 3:** Study potential solutions to improve the judicial efficiency of the state courts of appeals by analyzing caseloads and making appropriate recommendations.
- CHARGE 4:** Evaluate the use and types of guardianships in Texas and the effect of guardianship on individual rights. Study the financial costs to families related to attaining and maintaining guardianship and compare costs to those associated with guardianship alternatives, such as supported decision-making.
- CHARGE 5:** Study the operations of specialty courts. Determine whether additional specialty courts should be considered to address needs within specific populations. Review specialty court methods and best practices that have been implemented for specialty courts in other states, including their impact on judicial efficiency.
- CHARGE 6:** Study state laws and procedures relating to jury service eligibility, including a review of existing jury exemptions, and make recommendations to ensure the privilege, right, and duty of jury service is protected and promoted.

## **Charge 1: State Agencies and Legislation**

*Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 87<sup>th</sup> Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure the intended legislative outcome of all legislation.*

### **Background**

#### ***State Agencies***

Under the House Rules, the Committee is given jurisdiction over 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.

#### ***The COVID-19 Pandemic and Remote Proceedings***

The Texas Judiciary faced new and unique challenges both during and following the COVID-19 pandemic. In March of 2020, the Texas Supreme Court suspended in-person jury trials and issued emergency orders, resulting in a dramatic increase in the number of backlog cases. Despite these challenges, the Judiciary demonstrated adaptivity in the adoption of remote proceedings. Texas led the charge during the pandemic, being one of the first states to adapt for remote proceedings and indeed became a model for the rest of the country. Through the end of August 2022, 2,438 Texas judges have held 2,573,608 remote hearings<sup>1</sup>. In total, since March of 2020, 9,719,672 participants have been involved in a remote hearing<sup>2</sup>.

#### ***Relevant Legislation***

##### House Bill 3774 - 87(R)

Over the past several legislative sessions, the Legislature has aimed to pass an omnibus courts bill that statutorily authorizes the creation of new courts across the state. During the 87<sup>th</sup> Session, HB 3774 was filed and passed. In addition to the creation of 17 new courts across 13 counties, the bill also included a number of provisions relating to judicial administration. These provisions included:

- clarifying public access to the state court document database;
- allowing jurors to donate their pay to a veteran county services office;
- revising procedures for the transfer of cases between courts;
- providing for the protective order registry to include order for victims of sexual assault abuse, stalking or trafficking; and
- directing the Texas Supreme Court to write seizure exemption rules

##### House Bill 2730 - 86(R)

During the 86<sup>th</sup> Session, the Committee passed monumental free speech legislation under HB 2730, providing much-needed reforms to the Texas Citizen Participation Act (TCPA). Overly broad applications of the TCPA led to calls for narrowing the scope of the statute. Following the passage of HB 2730, both stakeholders and legislators were interested in determining if indeed the statutory changes had their intended effect.

## Summary of Committee Action

On May 4, 2022, the Committee met in a public hearing at the Capitol to consider Charge 1. The following witnesses were invited testimony:

Nathan Hecht, Chief Justice, Supreme Court of Texas  
Megan LaVoie, Administrative Director, Office of Court Administration  
Murtaza Sutarwalla, Deputy Attorney General for Legal Counsel, Office of the Attorney General  
Jim Perdue, Immediate Past President, Texas Trial Lawyers Association  
Lee Parsley, General Counsel, Texans for Lawsuit Reform  
Steve Bresnen, Self

In order to ensure that the Committee received the full benefit of the witnesses' expertise, the Committee heard invited testimony only.

## Summary of Testimony

### Chief Justice Nathan Hecht, Supreme Court of Texas

Chief Justice Hecht provided an update on the courts' response to the COVID-19 pandemic. Compared to other states, Texas demonstrated success in its emergency orders.

With regard to remote proceedings, the general consensus has been that the executive order has worked very well. That being said, the Rules Committee still needs to establish rules for remote proceedings, which they are continuing to work on. While opinions continue to differ, it's clear that for a lot of family law proceedings and custody proceedings, party participation is up in these cases as a result of remote proceedings. The Supreme Court is also continuing to examine jury trials and hybrid remote proceedings. Ultimately, hybrid proceedings will require some reshaping of the justice system; current staffing is not yet up to this.

Texas had the most successful eviction diversion program in the country. The emergency order set rules and established a change in process. The basic process that was changed was when court papers were sent out, they were required to include in the instruction sheet the availability of diversion funds. Overall, \$204 million was spent on the program, with the state assisting 21,524 households so far. Overall, Texas spent over \$2 billion on rental assistance.

Under HB 3774, the Supreme Court was tasked to write seizure exemption rules. Following extensive meetings with stakeholders, rules were issued and should improve the handling of debt cases.

Under SB 6, the rollout of the public safety report was on-time and in use. Going through this process has highlighted how little data the judiciary has had on its operations, but as Texas rolls out the statewide case management system and implements the bail program, we should see improvements.

Some courts continue to face the backlog challenge. The courts of appeals are fully caught up across the state and have done an extraordinary job. For the trial courts, some are very behind while others have completely caught up. Juvenile courts, family courts, civil cases in district courts, and civil cases in county courts are all caught up. The Supreme Court itself expects to clear

its docket, as they have done the last seven years. Lastly, for the twenty counties who are most behind, the Supreme Court has requested plans from these counties in addressing their backlogs, and there is reasonable hope we will see progress on this.

Judges' compensation has taken a hit from inflation. Consequently, the Supreme Court is requesting the Legislature consider adjustments in judicial compensation next session.

Texas' Access to Justice Commission is doing well. However, they continue to struggle to meet demand and could use more funding. Texas' congressional delegation recognizes its importance to good government and has signaled their support in Washington, D.C.

Texas' Judicial Commission on Mental Health continues to be active and has seen significant interest among Texans, especially during the pandemic.

Following the Chief Justice's prepared remarks, the Chair followed-up with questions on court security in light of the *Dobbs* draft opinion leak at the U.S. Supreme Court, specifically, if any procedures and policies are set up for any similar leaks. The Chief Justice reiterated their commitment to the integrity of the Court's work and referred to Penal Code 39.06, Misuse of Official Information, which makes it a crime for a public servant to misuse any government information, as well as making it a crime to receive it.

### **Megan LaVoie, Office of Court Administration**

Ms. LaVoie provided an overview of the Office of Court Administration (OCA), the state agency charged with providing resources and information for the efficient administration of the Judicial Branch.

OCA recently released their Annual Statistical Report<sup>3</sup>. Among the highlights:

- Overall, 6.9 million cases were filed in Texas courts in FY 2021, which is down 6% from FY 2020 and 21% from FY 2019.
- New civil case filings continued to decline in 2021 at every trial court level except for district.
- Debt cases declined by 11% in the district courts and by 15% in the county courts, while rising by 12% in the justice courts to an all-time high.
- After reaching an all-time high in 2019, new landlord/tenant cases filed in justice courts fell 28% in 2020 and another 31% in 2021.
- Jury trials reached a high of 911 in September 2019 and a low of 89 in May 2020.

The court system is facing significant backlogs. When defining the backlog, OCA uses the total number of active pending cases of March 2020 versus active pending cases of March 1, 2021. At the district court level, the backlog is roughly 157,000 cases statewide; at the county court level, the backlog is over 30,000 cases. 70% of the backlog at the district level is in the top 20 counties: Harris, Bexar, Dallas, Hidalgo, Tarrant, Bell, Nueces, Williamson, Lubbock, Cameron, Galveston, Fort Bend, Denton, Tom Green, Hays, McLennan, Navarro, Grayson, Comal, and Jefferson Counties. The Texas Judiciary received \$7 million in federal funding under the American Rescue Plan Act (ARPA) in order to help with the court backlog. As a result, OCA is focusing on the top 20 counties that have the biggest volume at the district level, and have requested each county to submit a plan to address their backlogs. Funds can be used for visiting judges and support staff.

Under SB 6, OCA was in charge of procuring the Public Safety Report System. It contains a summary of the defendant's criminal history and gives notice to the judge if the defendant is eligible for bond. SB 6 also required all magistrates in the state to receive eight hours of training on bail, in addition to DPS training. Some of the challenges have been integration with counties' case management systems, both at the jails and at the courts; OCA is continuing to actively work on getting the right requirements. The other issue is a collaboration issue; jurisdictions have to work with all their members and decide who is going to run the system.

OCA has also been involved in Operation Lone Star (OLS), the joint mission between the Texas Department of Public Safety (DPS) and the Texas Military Department (TMD) launched by Governor Abbott in March of 2021 to address a rise in illegal crossings along Texas' southern border. In the summer of 2021, Chief Justice Hecht appointed 30 visiting judges to help with magistrates at the border. OCA has 7 court staff assisting the visiting judges and a court consultant on the ground in helping the counties involved in OLS with best practices and docket management.

In addition, HB 4293, which passed in the 87<sup>th</sup> Session, requires a text reminder system for scheduled court dates. OCA did not receive funding for the bill, but has a project team working on its implementation.

Lastly, ahead of the 88<sup>th</sup> Session, OCA is continuing to work on its weighted caseload study that is used to determine when additional courts are needed.

### **Murtaza Sutarwalla, Office of the Texas Attorney General**

As provided by the Texas Constitution and by state statutes, the Office of the Attorney General (OAG) has four major operational functions. First, the OAG provides legal services on behalf of the state, which include providing legal representation to the state, its officials, and agencies, defending laws passed by the Legislature, rendering legal opinions, reviewing bonds and public security, and ensuring compliance with the Public Information Act. Currently, the OAG is litigating almost 30,000 civil cases. In providing these legal services, the OAG has provided sources of revenue for the state, as well as providing cost savings for Texas taxpayers.

The second major function is enforcement of the state's child support laws and collection of child support on behalf of Texas families. The Child Support Division serves around 1 in 4 children in the state of Texas, with a caseload of 1.5 million today. In FY 2021, the OAG brought in \$4.7 billion for Texas children.

The third core function is securing justice for Texans. This is done by investigating criminal activity, including crimes of human trafficking, internet crimes against children, election fraud, and Medicaid fraud. The OAG also assists local law enforcement, district attorneys, and prosecution in appeals in criminal matters. This has included working with the Governor's Office and other state agencies in Operation Lone Star.

The final core function is working to protect Texans through actions involving waste, fraud, and abuse through consumer protection laws, price gouging, educating consumers on fraudulent scams, and mismanagement of charitable trusts. This means working on large-scale litigation in protecting Texans consumers.

Challenges that are currently facing the agency include recruitment and retention of staff; macro causes include the economy, the job market, and the rising cost of living in Austin. The other

structural challenge the OAG referenced regards venue provisions for many of their cases. Most of the issues the OAG litigates have a statewide impact, and the agency suggested that having a statewide court system to answer them would be beneficial.

### **Lee Parsley, Texans for Lawsuit Reform**

Over the decades, Texans for Lawsuit Reform (TLR) has worked on a number of substantive, procedural, and structural issues facing the civil justice system. Ultimately, the state needs to continue working on resolving civil litigation more quickly and at less expense while remaining fundamentally fair to the parties.

In facing these challenges, the Legislature has passed a number of reforms. In the 86<sup>th</sup> Session, Texas raised the maximum jurisdiction of the JP courts from \$10,000 to \$20,000, which allowed more people to access the JP courts and continue to resolve cases expeditiously. The Legislature has also passed a frivolous lawsuit statute, a motion to dismiss statute, and the anti-SLAPP statute; all have been somewhat successful in resolving cases more quickly. The sanctions statute passed in 1995 might deserve a revisit; trial judges are still reluctant to issue sanctions. The anti-SLAPP statute is successful in what it does, but the procedure it uses might be more broadly applicable if we look at how it's structured.

TLR is also currently looking at specialized business courts and suggested Texas has fallen behind the curve, as many states are already creating their own. TLR frames it as an economic development issue; if businesses can resolve their disputes quickly and fairly with a skilled judge in Texas, it would invite corporations to incorporate and headquarter in Texas.

Additionally, TLR has offered suggestions on the appellate courts in Texas. In the 87<sup>th</sup> Session, SB 1529 by Senator Huffman would have created a court for the state's business, which would be modeled on the federal system.

Lastly, TLR continues to be interested in the judicial selection system and believes the selection of judges should focus on qualifications and merits while still maintaining citizens' rights to participate in the selection of their judiciary.

### **Jim Perdue Jr., Texas Trial Lawyers Association**

During the COVID-19 pandemic, there was debate on how to address remote proceedings on a go-forward basis. There is an ongoing process to address this at the Supreme Court, and fortunately stakeholders have been involved. From these stakeholders, the uniform feedback is that forcing remote jury trials, regardless of the objection of a party, is a bad idea. Indeed, the process needs to acknowledge some right to object to a remote proceeding. TTLA believes it is worth monitoring this rulemaking process to ensure that it will be consistent with the conceptualization that the Legislature was working on in HB 3774 but ultimately did not become part of the legislation.

With regard to the court backlog issue, TTLA contends the backlog seems to be more grounded in the criminal system rather than the civil system. This is a function of the constitutional right to confrontation. As the Committee drills into the issues of the delivery of justice to resolve the backlog and the rights of access in conducting trials constituent with the Constitution, TTLA directs the Committee's attention to a report from the National Center of State Courts that recognized remote proceedings can add time and take 34% longer than a hearing conducted in-person<sup>4</sup>. As the Legislature continues working on this issue, TTLA remains committed to being a

resource to help make this system work the best it can.

For judicial selection, there was a constitutional amendment, SJR 47 by Senator Huffman, to move qualifications from 4 years to 8 years of practice to run for district court. TTLA supported that and looks forward to seeing judges now reach that mandate.

### **Steve Bresnen, Self**

In the 86<sup>th</sup> Session, the Legislature passed HB 2730, the anti-SLAPP statute. Having spoken with practitioners, Mr. Bresnen believes the goals the Legislature sought to achieve were in fact achieved; the anti-SLAPP application was indeed narrowed and effectively done.

Mr. Bresnen conducted an informal poll with appellate judges by asking if this has affected their dockets; the plethora of anti-SLAPP legislation under the old law has diminished down to cases that seem like they ought to be there. Additional searches at the appellate level show cases that involve the old law; those cases continue through the system under the old law, but you can see them start to filter away.

It's clear that the application of the anti-SLAPP statute was indeed narrowed, and the ways in which this was done are documented in a recent law review article<sup>5</sup>. There are two examples worth mentioning. In *Chesser v. Aucoin*, a First Court of Appeals case, they cited the *Snyder v. Phelps* decision that took the definition of "public concern" and scraped the non-exclusive list of the old law and used the phraseology from *Snyder v. Phelps*. The First Court of Appeals cites that part of the bill, saying, "the listed subject matters are based in part on and track language from *Snyder v. Phelps*"<sup>6</sup>. In another case, *ML Dev, LP v. Ross Dress for Less, Inc.*, the First District Court of Appeals cited the deletion of two words that greatly narrowed the scope of the statute. In this case, you eliminate "related to" and make the connection between the communication and the litigation much tighter. Specifically, they refer to "lower threshold of 'relates to' is no longer an adequate connection between the legal action and the communications made to invoke the TCPA"<sup>7</sup>.

From speaking with practitioners and appellate judges, and from his own searches, Mr. Bresnen concluded that the Legislature achieved what it set out to do with HB 2730. Texans have viable First Amendment anti-SLAPP motions they are able to bring, and the issue that was affecting the enforcement of non-disparagement agreements, family law, etc. seems to have been cleaned up.

## **Recommendations**

### **Increased Court Security**

Following the events of a 2022 United States Supreme Court draft opinion leak, the Chair asked the Chief Justice in a public hearing if there were any protections or practices in place to ensure the integrity of their own draft opinion and work products. While the Chief Justice confirmed that this has historically not been an issue or problem in Texas, it was clear to the Committee that the Legislature should consider creating a criminal offense to hold responsible Court personnel — or any other Texan — who knowingly distributes, shares or discloses to unauthorized third parties legally protected and confidential draft judicial opinions and work products.

### **Case Level Data Collection**

Currently, the Texas Judicial Council requires clerks to report standardized aggregate data monthly to the Office of Court Administration. At the district and county level, this means data is reported

by county and not by court. Case level data would require clerks to report data elements that would be a turning point in judicial system transparency. Elements collected could be isolated to individual courts and types of proceedings to gauge the Texas Judiciary's resources, efficiency, and effectiveness much more accurately. Consequently, collecting case level data would benefit both the civil and criminal justice systems.

Without full and accurate data, it is challenging for the Legislature to ascertain what areas are in need of investment and improvement, and which areas are not. Consequently, the Legislature should grant the Office of Court Administration's request for funding for a data system that would ultimately aid with productive policy-making at the state level.

### **Remote Proceedings**

Remote proceedings have allowed for greater access to justice, higher court participant rates, and fewer default judgements. Texans should have swift and easy access to court without the addition of unnecessary burdens, and remote proceedings have shown to help eliminate those barriers. The Legislature should continue to work to improve judicial efficiency and access to justice by removing statutory barriers to remote proceedings where appropriate and consider codifying a framework and structure to provide for standard practices across the state. This recommendation also aligns with recommendations from the Texas Judicial Council.

### **Judicial Compensation**

The Committee recommends the Legislature continue to make judicial compensation a priority. Texas continues to lag in the amount of compensation provided to our judges, justices, and their staff. One of the keys to an effective judiciary is exceptional judges and excellent support staff. The Judiciary is a cornerstone of our government and cannot afford to continue to lose talent due to of a lack of appropriate compensation. Specifically, the Legislature should consider increasing the base pay of starting judges — whether or not the base pay is linked to the legislative retirement amount. Additionally, the Legislature should further ensure that our state's judges are afforded regular cost of living adjustments that will keep Texas' judicial compensation levels not just fair, but competitive with other states.



## **Charge 2: Caseloads on the Texas-Mexico Border**

*Examine current caseloads and capacity issues for courts handling matters related to the Texas-Mexico border. Evaluate the preparedness of the court system to handle increases in caseloads that may result from the border crisis response and make recommendations to ensure the continued fair and efficient administration of justice in the state in addressing any increased caseloads.*

### **Background**

#### ***The Texas-Mexico Border Crisis***

2021 and 2022 saw an unprecedented rise of illegal crossings, human trafficking, drug smuggling, cartel activity, and violence at the United States-Mexico border. Indeed, U.S. Customs and Border Patrol (CBP) reported a record-breaking 2.76 million border encounters in FY 2022<sup>8</sup>. In Texas, in addition to humanitarian and public safety concerns, the proliferation of corresponding criminal cases has placed a significant burden on state offices, straining local resources and inundating local jurisdictions. In order to uphold the rule of law and ensure the administration of justice, it is incumbent to find solutions in addressing this crisis and successfully assist Texas' overwhelmed court system at the border.

#### ***Operation Lone Star***

In March of 2021, Governor Greg Abbott launched Operation Lone Star (OLS) to combat the serious challenges facing the state as a result of the border crisis<sup>9</sup>. In order to address the corresponding increase in state felonies and misdemeanors, a number of state offices and agencies were asked to participate in OLS, including the Office of Court Administration (OCA), the Texas Indigent Defense Commission (TIDC), and the Border Prosecution Unit (BPU).

### **Summary of Committee Action**

On October 3, 2022, the Committee met jointly with the Committee on Juvenile Justice & Family Issues in a public hearing at the Capitol to consider Charge 2. The following witnesses were invited testimony:

Megan LaVoie, Administrative Director, Office of Court Administration  
Tonya Spaeth Ahlschwede, Chair, Border Prosecution Unit  
William Nelson Barnes, Project Director, Border Prosecution Unit  
Amrutha Jindal, Chief Defender, Lubbock Private Defender's Office - Operation Lone Star  
Geoff Burkhard, Executive Director, Texas Indigent Defense Commission  
Linda Gonzalez, Operation Lone Star Policy Analyst, Texas Indigent Defense Commission  
Kassandra Gonzalez, Staff Attorney, Texas Civil Rights Project  
Esther Reyes, Director of Immigration Policy & Advocacy, Children's Defense Fund

In order to ensure that the Committee received the full benefit of the witnesses' expertise, the Committee heard invited testimony only.

## Summary of Testimony

### **Megan LaVoie, Office of Court Administration**

Starting in July of 2021, the Office of Court Administration (OCA) has been involved in Operation Lone Star (OLS) by supporting local jurisdictions through administrative support, training, and consultation services. OCA's main role however is helping to facilitate centralized magistration, which was initiated to assist with a large volume of arrests that jurisdictions did not have the resources to handle. Magistrations occur at two temporary processing facilities in Val Verde and Jim Hogg Counties, twice daily, seven days a week. 18 visiting judges appointed by the Supreme Court conduct the proceedings, all of which occur remotely. For these magistrations, OCA provides 7 administrative assistants, 7 court interpreters, a court services manager, and a court consultant.

To date, visiting judges have magistrated 6,396 individuals. 82% of the hearings have required interpreters for various languages. 92% have been appointed counsel. 77% of the cases have been misdemeanors, 21% felonies. The average bail for criminal trespass — the most common misdemeanor — is just under \$3,000. The average bail for a felony is \$27,680.

In addition to centralized magistration, OCA also supports local jurisdictions with the adjudication of OLS cases, where the case moves from magistration to a pre-trial and trial phase. Many of these courts have experienced significant volume and case filings, which has created challenges. To put it into perspective, there were 192 misdemeanor cases filed in Kinney County during the last five years, and only 35 in FY 2020. Under OLS, more than 4,100 individuals have been arrested in Kinney County alone. Felony arrests have significantly increased, which will challenge the district courts, as OCA projects an increase to their dockets of up to 150%.

Some recent process improvements include distribution of magistration dockets to all stakeholders within hours of magistration, establishing an arraignment date at magistration, coordinating county courts' schedules, and working with TDCJ to document active and inactive defendant cases.

### **Tonya Spaeth Ahlschwede and William Nelson Barnes, Border Prosecution Unit**

The Border Prosecution Unit (BPU) is a group of 17 elected District Attorneys who are on the Texas-Mexico border and prosecute border crimes. Typically, these cases have been felony cases; however for Operation Lone Star, BPU was asked to assist with both felony and misdemeanor cases and provide support to overwhelmed offices.

According to DPS, as of September 29 of this year, there have been 20,560 criminal arrests in the State of Texas that are OLS- related; 5,189 criminal trespass cases and 18,183 felony arrests, many of these human smuggling cases.

In her capacity as District Attorney for the 452<sup>nd</sup> Judicial District, Ms. Ahlschwede provided additional numbers from her jurisdiction. In Edwards County, there were 67 arrests in FY 2020; in FY 2021, 199 arrests; in FY 2022, to date there have been 602 arrests. In Val Verde County, arrests increased from 4 in FY 2020 to 598 in FY 2022. Kinney County saw 64 charges in 2020 to 3,045 in FY 2022. These have had huge impacts on these jurisdictions; there are only a certain number of prosecutors available to review these cases. Further, once they have reviewed the cases and decide to file, clerks' offices are then overwhelmed.

Oftentimes smugglers are arrested in one county, are released on bond, and are charged with smuggling in a different county before the report is written on the initial arrest. OCA's magistration system has been catching these repeat offenders and notifying the prosecutors. However, delays in these reports, upwards of 30 days, may prevent other counties from having this information following the second arrest. Delays can be attributed to lack of resources and personnel.

Another issue is that the vast majority of smugglers are U.S. citizens and will make commercial bond. They will then get arrested in another county, which may not be on another county's radar if they did not go through central magistration. To add to this, the only time you can hold someone without bond is if they are already under indictment for that offense.

Typically, once a smuggler is arrested, the individuals who were being smuggled have not been through any process or port of entry at this point. Per federal requirements, they are turned over to Border Patrol, who identifies and processes them.

For individuals charged with trespassing, five of the six counties still prosecute even if the defendant has been deported. Landowners in these counties have significant demands on their elected county attorneys to prosecute these cases to the fullest extent. These are not cases where there is no damage or no harm; often there are reports of trash, cut fences, and damaged gates. In addition, it has become a safety issue, whereby droves of individuals, up to 40 a day, go into and across landowners' property.

With regard to funding, BPU's funding goes through the Governor's Office, specifically the Public Safety Office; their request for FY 2022-2023 was \$15,126,000. Through OLS, BPU was also able to get supplemental funding of \$3.75 million. Their 2024-2025 Legislative Appropriation Request is \$28,648,451.37.

Lastly, there have been challenges with finding and hiring prosecutors to fill these positions. As a result, there have been creative ways to address this. However, liability issues remain a problem when working for multiple jurisdictions.

### **Amrutha Jindal, Lubbock Private Defender's Office - Operation Lone Star**

The Lubbock Private Defender's Office (LPDO) was designated by the Texas Indigent Defense Commission to serve as the indigent defense hub for OLS in July of 2021, serving as the main counsel program for the OLS defense system. LPDO is ultimately responsible for recruiting defense attorneys, assigning cases to specific attorneys, monitoring their performance, providing resources and training, and approving vouchers.

Most of the individuals being prosecuted under OLS have never been in jail before and do not speak English. While we have seen an increase in felony smuggling cases, over 75% of the individuals LPDO represents are charged with misdemeanor trespass. They appoint counsel for individuals who go through central magistration. From these prosecutions, about 6,000 individuals have come to LPDO.

The steps in an OLS case are different than a typical criminal prosecution. First, an individual is arrested in one of the seven participating counties. They are then transported to one of the central

magistration centers and are magistrated via Zoom. Then, they are transported to a TDCJ facility, first the Briscoe Unit and later the Segovia Unit. LPDO then receives the paperwork from the magistration center and appoints counsel, typically within 24-72 hours of receiving the paperwork. They then appoint two groups of attorneys; the first are two public defender offices they have contracted with — Texas Rio Grande Legal Aid and Neighborhood Defender Services of Texas. Both offices have full-time employees that work on OLS full-time. The second group is a panel of private attorneys, currently 41 total, that also take these cases. Representation of these clients most often occur by Zoom since the individuals are being housed in prisons that are not located in the counties where the prosecutions are occurring, and the attorneys beings recruited are from all over the state. The first court hearing is the arraignment date; when this occurs can vary from county to county. Following the arraignment, the case continues with motion states, trials, dispositions, etc.

Some of the challenges the defense function have faced include recruitment. These cases are time-consuming, which is why there has been a shift to recruit attorneys who have the time to dedicate to these cases. As a result, there has been an improvement in clients being visited, attorneys attending court in a timely fashion, and cases moving quicker. Another challenge is the language barrier with clients, and so resources are needed to effectively communicate with these clients. In addition, many of these clients are unfamiliar with the U.S. criminal justice system, so explaining these concepts to the clients can take a long time. Immigration consequences are another time-consuming aspect.

Another challenge attorneys face is scheduling visitations; visits are available over Zoom, but due to the jails' staffing restrictions, visits are only available from around 9am-5pm. Consequently, attorneys have very limited time to be able to schedule that visit, along with an interpreter.

Another challenge is the lack of centralization. While magistration and the defense are centralized, the prosecution and the adjudication systems are not.

Cases are taking a long time to resolve. With felonies, there are delays in indictments being filed, delays in discoveries being produced, and delays with law enforcement's reports. Further, a lot of felony judges are also requiring in-person hearings, slowing things down. Lastly, in addition to a backlog of older cases, new high volumes of cases have resulted in not having enough court dates.

Another challenge relating to court hearings relates to bond. For most of the trespass cases, commercial bondsmen are not posting the bonds, and so individuals are having to post the bond in full cash. However, these amounts are often too high for individuals who are indigent, and it's been difficult to get prompt hearings to address bond with judges.

Another factor causing cases to take a long time is that most of the individuals being charged with trespassing are being deported if they post bond. What this means is that the individuals are no longer in the country, but prosecutions continue in five of the six counties. Consequently, the defense is spending a lot of resources trying to find, contact, and communicate with their clients. Lastly, clients who have been deported are being ordered by judges to appear for court hearings in-person, causing a lot of confusion.

From language barriers to support systems challenges, these representations take a lot of time and resources. LPDO is actively working with stakeholders, court systems, and court coordinators to figure out the best way to streamline these cases.

## **Geoff Burkhard and Linda Gonzalez, Texas Indigent Defense Commission**

In the summer of 2021, the Texas Indigent Defense Commission (TIDC) was asked to help set up the defense function for Operation Lone Star (OLS). Defendants in these cases have a constitutional right, both under the U.S. and Texas Constitutions, to counsel; however, these are largely rural counties that don't have many defense attorneys. Consequently, there a need to make sure there are enough defense attorneys to address these cases.

TIDC did four things to help address this need. First, they secured funding for the defense function for OLS. Initially, they were using TIDC funds to make sure individuals had counsel. Shortly after securing funds under HB 9 during the Second Called Session, the Legislature appropriated \$30 million for the defense function. This was intended for 1 year of representation; however TIDC believes they can stretch that funding to 2 years. Second, TIDC set up the Lubbock Private Defender's Office (LPDO) as the indigent defense hub. Third, TIDC worked with LPDO to engage both private attorneys and public defenders to provide representation. Lastly, TIDC set up regular communications with the Office of Court Administration (OCA), the Texas Department of Emergency Management (TDEM), the Texas Department of Criminal Justice (TDCJ), the Texas Department of Public Safety (DPS), the Texas Commission on Jail Standards (TCJS), and others.

The defense arm has encountered three main challenges. The first is the recruitment of defense attorneys. Texas and indeed the entire country have seen difficult economic times, and indigent defense is no exception. For indigent defense at large, we've seen a shortage of attorneys, and it's been even harder for OLS.

A second challenge comes from conflicting schedules and dockets. Counties have joined in the centralized magistration process, but often see courts being held at the same time. In addition to attorneys finding the time to be present in court hearings, they also have to administer their time to review discovery, do legal research, draft motions, and visit with their clients. Increasingly, TIDC has seen difficulty with attorneys being able to meet all of these duties.

The third challenge has been an increase in felony arrests, which has impacted the defense arm in a couple of ways. These felony cases tend to be heard in-person, so defense attorneys across the state now have to travel to one of these counties. In addition, felony cases tend to be more complex in nature, and so appointed attorneys are expected to have a higher degree of qualifications and expertise, and they've been difficult to find.

As OLS continues, TIDC is committed to continuing to find solutions and to meet these challenges as they come.

## **Kassandra Gonzalez, Texas Civil Rights Project**

The Texas Civil Rights Project supports the ending of Operation Lone Star, citing reports of worsening jail conditions, negative interactions with correctional officers, prolonged detention, and prolonged access to counsel. The Texas Civil Rights Project encourages the Legislature to conduct its own investigation of OLS.

## **Esther Reyes, Children's Defense Fund Texas**

While some of the unaccompanied children may go through Texas' juvenile justice system, a majority are apprehended and processed through federal immigration courts. Federal agencies

handling these unaccompanied children include the U.S. Department of Homeland Security, the U.S. Department of Health and Human Services, and the U.S. Department of Justice. As a non-profit advocating for the rights of children, the Children's Defense Fund maintains that these unaccompanied children face a complex and adversarial system and deserve protection.

## **Recommendations**

### **Data Collection**

OCA does not collect case-level data on OLS cases. Clerks are required to report aggregate-level data to OCA, and unfortunately that data is not separated out into OLS data. The data that OCA is able to get is primarily from arrest data through central magistration. Ultimately, the Legislature should require clerks to report this data that will ultimately aid in policy decisions and the allocation of resources.

### **Additional Funding and Resources**

Recognizing the crucial role of the Judicial System to ensure the public safety of all Texans, the Legislature should continue to consider ways to ensure an efficient and effective Operation Lone Star. The Legislature must continue to support — in word and deed, with actions and resources — the local jurisdictions charged with operating Operation Lone Star, starting with administrative support, training and consultation services. To be clear, if the goals of Operation Lone Star are to be achieved — and the majority of members of this Committee believe they can and should — then the Legislature must make them a priority, including, importantly, substantially increasing the appropriations necessary to hire more personnel, including new judges and clerks, to invest in technology, and to incentivize local jurisdictions to continue to ensure that justice is neither delayed nor denied for those who find themselves in Texas Courts as part of this Operation.

## Charge 3: State Courts of Appeals

*Study potential solutions to improve the judicial efficiency of the state courts of appeals by analyzing caseloads and making appropriate recommendations.*

### Background

#### ***Texas' Courts of Appeals System***

Texas courts of appeals exercise intermediate appellate jurisdiction in both civil and criminal cases from district and county courts. The system is divided into fourteen districts, with an appellate court in each district<sup>10</sup>. Each court is presided over by a chief justice, with the number of justices ranging from three to thirteen<sup>11</sup>; there are currently eighty justices total serving on the appellate courts<sup>12</sup>. Additionally, while each district has jurisdiction over a specific geographical region, some districts overlap, notably Districts 5 and 6, and Districts 6 and 12. (*See Appendix A.*)

### Summary of Committee Action

On August 23, 2022, the Committee met in a public hearing at the Capitol to consider Charge 3. The following witnesses were invited testimony:

Brett Busby, Justice, Supreme Court of Texas  
Dori Contreras, Chief Justice, 13<sup>th</sup> Court of Appeals  
Megan LaVoie, Administrative Director, Office of Court Administration  
Lee Parsley, General Counsel, Texans for Lawsuit Reform  
Laura Tamez, President-Elect, Texas Trial Lawyers Association  
Jennifer Doan, President, Texas Chapters of American Board of Trial Advocates

In order to ensure that the Committee received the full benefit of the witnesses' expertise, the Committee heard invited testimony only.

### Summary of Testimony

#### **Justice Brett Busby, Supreme Court of Texas**

While serving as a justice on the Texas Supreme Court, Justice Busby is also the Court's liaison to the Council of Chief Justices of the Courts of Appeals.

When looking at the Courts of Appeals data provided by the Office of Court Administration (*See Appendix B*), you'll notice variation in the number of cases filed in the last five fiscal years, which can be attributed to the COVID-19 pandemic. In 2020 and 2021, the number of cases filed was down from the high of over 10,000 and has come back up so far this fiscal year in 2021.

To be sure that they're managing their work efficiently, the Courts of Appeals uses what's called the clearance rate as their metric, that is, courts disposing of as many cases as are coming in in a given year. The goal is to hit at least a 100% clearance rate, and you can see from the data that the courts have been consistent in doing that over the last several fiscal years. It is worth highlighting in FY 2021, the clearance rate was 114%, which is worth commending. They used the opportunity when they had fewer cases filed during the pandemic to get rid of some of the older cases and catch up on their dockets. When looking at the raw numbers for each court of appeals, there is

quite a bit of variability, with some courts having more justices than others and some having more cases than others based on the districts they are in. It is easier then to look at the clearance rates, which allows the courts themselves to identify more difficult years and manage towards a 100% clearance rate.

The transfer system gives the courts the flexibility to balance out the dockets and ensure that cases are being decided in a prompt fashion. The Legislature gave the Supreme Court the authority to transfer cases among the courts of appeals to equalize the dockets. Transfers are done within about 5% of the baseline average of cases per justice around the state, and is an ongoing process done about every three months. There has been quite a bit of variability on which courts need *transfer in* cases and which courts need *transfer out* cases to equalize those dockets. It is not the case that some districts always have too many cases and some that never do; some years they are transfer in and other years they are transfer out. Total number of transfers per year varies between 300-500 cases.

In addition to the number of cases filed, staffing levels and budgets also affect the clearance rates. In the metro areas especially, it has been a challenge to attract and retain qualified staff and attorneys who can assist justices fairly and decide these cases in a correct and expeditious manner.

### **Chief Justice Dori Contreras, 13<sup>th</sup> Court of Appeals**

As Chief Justice of the 13<sup>th</sup> Court of Appeals, Chief Justice Contreras also serves as Chair of the Council of Chief Justices, representing the 14 chiefs, as well as the 66 justices serving the state.

The fourteen courts of appeals have withstood some serious challenges over the past two years. While the entire Judiciary suffered during pandemic, the courts of appeals was especially hit hard from a systemwide ransomware attack. The case management system was completely disabled for almost two months; much of what was done was lost and had to be recreated. But despite the severity of this attack, the courts were extremely resourceful to keep the wheels of justice moving, and they did so successfully. They continued to dispose of appeals in a timely fashion, resumed oral arguments very soon after the initial shutdown, and have remained committed to dispensing justice efficiently. Due to the courts' case management system's limited data, as well as missing data resulting from the pandemic, some statistics might not available to perform a proper study. That being said, the current system comprised of the fourteen courts of appeals functions effectively and efficiently.

It is also worth noting that out of the fourteen appellate courts, seven are 3 to 4 member courts. The preservation of these small courts is vital to the administration of justice because these small courts were purposely established for the convenience of litigants in the remote parts of Texas. Notwithstanding the size of the court however, a review a caseloads shows there is no backlog at any of the courts.

Looking back at the statistics provided earlier, to the extent that there are variances that may be perceived as inefficiencies, they are really the product of local conditions such policies and personnel, and should be addressed at the local level rather than system-wide.

Recent proposals to change the current system have noted the transfer of cases as an area of concern. However, Justice Contreras indicated the transfer system achieves its legislative purpose, which is to equalize the caseloads among the fourteen courts of appeals. As early as 1895, the



Legislature recognized this need. It has been going on a long time, and as long as the Legislature wants to equalize, transfers will always be necessary. In addition, the 300-500 cases transferred per year average to less than 5% of the statewide average of cases, meaning 95% of the cases are staying in the courts where they were filed. Additionally, transferee courts are obligated to follow and apply the precedent of the district from which the cases are transferred, so there is not conflict or inconsistency in the jurisprudence of those districts. Transferring cases also imposes no increased costs because the transferee courts travel to the district from which the case originated. And now, with Zoom, these cases can be heard remotely. Lastly, equalization fosters the legislatively-approved and efficient budget model for the courts known as similar funding for same-sized courts.

Finally, to the extent that a new statewide appellate is contemplated for certain types of cases, Justice Contreras suggested one would not be necessary because all cases are being processed fairly and efficiently. Further, the segregating of certain types of cases may result in an insufficient number to justify their own court. Without specific data, it's impossible to determine the true number of cases that would be directed to such a court of appeals.

### **Megan LaVoie, Office of Court Administration**

Ms. LaVoie echoed Justice Busby's and Chief Justice Contreras' coverage of the appellate court data that was provided by OCA.

In addition, OCA anticipates jury trials to reach or even exceed pre-pandemic levels by the end of 2022, which will affect the number of caseloads in the courts of appeals going forward.

### **Lee Parsley, Texans for Lawsuit Reform**

The State of Texas' administrative appeals have historically gone through the 3<sup>rd</sup> Court of Appeals in Austin, with the initial idea that a court would develop the expertise and could handle the state's business, as it was of statewide importance. However, the 3<sup>rd</sup> Court of Appeals also handles a lot of other cases, just like the other courts of appeals.

Texans for Lawsuit Reform (TLR) supports the creation of a court of appeals that handles the state's business, much like the United States has done in its appellate system. There are 11 courts of appeals in the federal appellate system; Texas has 14. The federal system then adds on the D.C. circuit, which handles the business of the United States — constitutional questions, agency appeals, etc. Instead of the voters of Travis County governing the outcome of the state's business, as it happens today, you potentially hand the state's business to people who answer to the state generally. TLR feels this may indeed be a better answer and it is certainly one that the United States uses in its appellate system. TLR continues to look at this issue and will likely come to the Legislature with a specific proposal for matching the federal system for handling important business of the State of Texas.

### **Laura Tamez, Texas Trial Lawyers Association**

The proposition to redraw the boundaries of the courts of appeals is a cause for concern. The Texas Trial Lawyers Association (TTLA) seeks to ensure that the judicial system produces results that are fair to all parties, not just plaintiffs, and argues it is important when we look to judicial efficiency to recognize the practical effect of merging several courts of appeals. Doing so will compromise not only regional identity, but it will also impact common law precedent and create

inconsistencies, uncertainties, and unpredictability of outcomes. If the idea is to increase judicial efficiency by reducing the number of appellate courts, this must be studied very carefully, and TTLA looks forward to working with the Committee on this issue.

Last session, TTLA did not have a position on a court for the state's business. However, if there is a proposed piece of legislation, TTLA will respond to it, study it, and looks forward to working with the Committee in the 88<sup>th</sup> Session on this issue, as well.

### **Jennifer Doan, Texas Chapters of American Board of Trial Advocates**

The Texas Chapters of American Board of Trial Advocates (TEX-ABOTA) is an organization of experienced trial lawyers across the state, representing over 1,350, as well as representing both plaintiffs and defendants.

TEX-ABOTA applauds a study of the courts of appeals and cautions the Committee to go slow in changes with respect to the courts of appeals. Statistics provided by OCA show pre-pandemic but also post-pandemic numbers, which can be heavily skewed.

During the 87<sup>th</sup> Session, TEX-ABOTA testified against SB 11 by Senator Huffman for a number of reasons. This would have redistricted the courts of appeals down from 14 to 7 appellate courts. On numbers alone, this would not be efficient, nor would it increase access to justice. Moreover, with respect to funding, data has not proven it would save money for Texans.

Discussions with respect to a court of appeals for state business should include what would be the state's business and not expanding it as broadly as some proposals have done.

## **Recommendations**

### **Legislative Study**

The Legislature should continue to monitor caseloads of the existing Courts of Appeal to ensure efficiency, access, and balance. Further, the Legislature should consider appointing an official study to look into workloads over a period of time, particularly during the post-pandemic period when caseloads have resumed to normal levels. The study should also include identifying which courts see the highest numbers of cases transferred in and out, the methodology for transferring cases, and the impact on the scope of any caselaw arising from transferred cases. Lastly, the study should help determine if the Courts of Appeals are adequately staffed and funded, including the improvement of the case management system.

## **Charge 4: Guardianships**

*Evaluate the use and types of guardianships in Texas and the effect of guardianship on individual rights. Study the financial costs to families related to attaining and maintaining guardianship and compare costs to those associated with guardianship alternatives, such as supported decision-making.*

### **Background**

#### ***Alternatives to Guardianship***

Over the last few legislative sessions, the Legislative has taken steps to emphasize the self-determination of individuals under guardianship and the rights they hold as Texans and as Americans.

### **Summary of Committee Action**

On October 12, 2022, the Committee met in a public hearing at the Capitol to consider Charge 4. The following witnesses were invited testimony:

Craig Hopper, Self

Victoria Seybold, Self

Jeff Rinard, Certification Division Director, Office of Court Administration

Lauren Gerken, Policy Analyst, Texas Council for Developmental Disabilities

Terry Hammond, Executive Director, Texas Guardianship Association

Leonard James, Self

Rebecca Japko, President, Parents and Allies for Remarkable Texans

In order to ensure that the Committee received the full benefit of the witnesses' expertise, the Committee heard invited testimony only.

### **Summary of Testimony**

#### **Craig Hopper, Self**

Mr. Hopper testified that the purpose of guardianships is to protect our most vulnerable citizens when there are no other ways to do so without court intervention. Consequently, whenever attorneys look at guardianship as a possibility, the first goal is to see what can be done to avoid that. Over the years, the Legislature enacted a number of new protections and improve upon the system to make sure that there is always the least restrictive guardianship possible being created for a ward. Statutory probate courts, which have the most of guardianships, have staff and a system in place which help make this happen as a routine basis. We have also had improvements over the years in part done by the Judicial Branch Certification Commission (JBCC). Overall, there have been numerous implementations to ensure that a proposed ward is being looked out for in several different avenues to ensure rights are not taken away unnecessarily.

Over the last ten years, there has been a focus on increasing the self-determination of the proposed ward so that we are creating the least restricting guardianships possible. About three sessions ago, the Ward's Bill of Rights was enacted. While relatively new, it is a list of 25-30 statements that

clarify what a ward's rights are. An attorney ad litem is given a copy to provide to the proposed ward and discuss it with him or her to the best extent possible.

### **Victoria Seybold, Self**

As former Court Investigator for the Travis County Probate Court, Ms. Seybold was able to provide insight into this unique role. As a court investigator, Ms. Seybold investigated potential need for guardianship when a referral was made to the court, assisted in reviewing and advising on applications for guardianship, investigated potential removals of guardians, and along with other court staff, assisted in making sure that guardianship matters were in compliance with statutory requirements. Ultimately, the role of court investigator is a safeguard that is utilized on behalf of the ward.

Larger counties have worked with DFPS on this issue, with the court investigator having access to Child Protective Services and Adult Protective Services records to look at whether any allegations of abuse or neglect, or exploitation have been made on the proposed guardian involving the proposed ward prior to the hearing. This is proven to be valuable, as they have been able to substantiate claims against a proposed guardian who had not disclosed that information ahead of time to the court.

### **Jeff Rinard, Office of Court Administration**

The Office of Court Administration (OCA) has had ongoing initiatives relating to guardian compliance and monitoring. Within OCA is the Judicial Branch Certification Commission (JBCC), which certifies guardians and guardianship programs, as well as register all the guardianships in Texas, which includes a criminal background check and online training that includes access to an overview of the alternatives to guardianship.

There are 360 certified guardians and 95 provisional guardians statewide. In Texas, to be a guardian, you have to have experience and education, pass an examination, follow a code of conduct and minimum standards, adhere to continuing education requirements, and renew every 2 years, which includes an additional criminal background check.

Another program within OCA is the Guardianship Abuse, Fraud, and Exploitation Deterrence Program, which was created in the 86<sup>th</sup> Session under Senate Bill 31 by Senator Zaffirini. In this program, there are 18 auditors statewide that provide additional compliance and monitoring for the courts. They review guardianship files throughout the state, doing an initial compliance baseline audit and an annual counting before filing a report for the judge with findings and recommendations.

Among the active cases analyzed between 2019-2022:

- 10,634 Guardian of the Person
- 419 Guardian of Estate
- 4,439 Guardian of Both
- Age at Appointment:
  - 0-17: 1,410
  - 18-44: 10,573
  - 45-64: 1,675
  - 65-84: 1,384

- 10,772 Intellectually Disabled
- 12,921 Family Member Guardians
- 8,499 Live with Guardian

Additionally, active guardianships granted saw a 26% decrease, from 4,539 granted in 2014 to 3,376 granted in 2021. This can be attributed to the Legislature's reforms on alternatives to guardianships that were passed in 2015.

### **Lauren Gerken, Texas Council for Developmental Disabilities**

The Texas Council for Developmental Disabilities (TCDD) is an organization that promotes self-determination for individuals with disabilities.

For guardianships, it is crucial to recognize that the heart of the issue, people with disabilities are people, born in the United States and with the same rights as every American. Consequently, if rights are being taken away on behalf of the ward, the state needs to make sure it is being done as thoughtfully as possible.

With regard to improvements to the guardianship process, recent discussions have been made on how to mitigate the costs of guardianship for families and loved ones.

Among the alternatives to guardianship are supported decision-making agreements (SDMAs), which should be more broadly discussed. This is an agreement between the individual and a supporter in which the individual with a developmental disability is allowed to keep his or her rights and make important life decisions on their own, including voting, employment, and marriage. SDMAs are recognized as an official alternative to guardianship and has many benefits, including cost benefits for families.

As the 88<sup>th</sup> Session approaches, TCDD encourages the Legislature to continue exploring person-centered approaches that ultimately protect the rights of people with disabilities.

### **Terry Hammond, Texas Guardianship Association**

The Texas Guardianship Association (TGA) has over 300 members who are family guardians, professional guardians, court staff, attorneys, social workers, and physicians. TGA educates the guardianship community and the public on important guardianship issues.

TGA suggests that, in practice, courts do not have the resources at the county level to manage difficult guardianship cases. Indeed, the 2021 Guardianship Abuse, Fraud, and Exploitation Deterrence Program Report showed that 39% of the cases audited in county courts and county courts at law were out compliance, whereas for statutory probate courts with available resources, only 13% were out of compliance<sup>13</sup>.

In the 87<sup>th</sup> Session, the Legislature passed HB 79 by Representative Murr, which created the concept of specialty courts for guardianship and adult protection and was a recommendation by the 2018 TGA Judicial Workgroup. This issue however is no state funding; it falls instead on the counties to fund these specialty courts. Consequently, TGA's main recommendation is to fund more expertise in the courts and bring life to these statewide reforms that were put in place. Otherwise, Texas is going to continue seeing variance among the courts.

## **Leonard James, Self**

As a family guardian for nearly 50 years, Mr. James was able to provide insight into the roles of a guardian. In his experience, current legislative protections — annual court filings, court investigator visits, periodic visits by both state and county surveyors, and the appointment of an ad litem attorney during guardianship applications — are in the best interest of all individuals to ensure that their safety, health, and well-being are met.

While there is increased emphasis on alternatives to guardianship, for some families, guardianship remains the best option in the individual's best interest. Current legislative protections must remain in place, and the Legislature should prioritize funding specialized adult protective guardianship courts and ensure that the Office of Court Administration provide adequate staffing and training of courts for guardianship responsibilities.

## **Rebecca Japko, Parents and Allies for Remarkable Texans**

Parents and Allies for Remarkable Texans (PART) is a non-profit organization advocating for the appropriate care of all individuals with intellectual and developmental disabilities.

PART encourages the Legislature to protect current guardianship law, especially as it relates to supported decision-making agreements (SDMA). SDMAs are for individuals who are not considered incapacitated persons; it is not appropriate for someone who is totally incapacitated. Supported decision-makers are not required to perform the same protective duties of a guardian, so the only legal alternative for incapacitated persons to have their best interest protected is by a guardian who holds the fiduciary duty to act in the protected or incapacitated person's best interest.

## **Recommendations**

### **Person-Centered Approaches**

Since 2015, the Legislature has pursued many reforms to guardianship in Texas. These reforms are working and have made vast improvements in the guardianship process in Texas for those under guardianship, their families, and advocates alike. As the Legislature continues to work on these issues, they should prioritize ensuring that guardianships are treated as individually as possible, as there is not and should not be a one-size-fits-all solution. The Legislature has an obligation not only to ensure rights are protected, but are actively enforced.

### **Mitigating the Cost of Guardianship**

The Legislature should continue to seek ways to lower the costs associated with guardianship where we are able, and continue to allow for alternatives to guardianship when efficient, practical, and are be in the best interests of Texans.

## **Charge 5: Specialty Courts**

*Study the operations of specialty courts. Determine whether additional specialty courts should be considered to address needs within specific populations. Review specialty court methods and best practices that have been implemented for specialty courts in other states, including their impact on judicial efficiency.*

### **Background**

#### **Specialty Courts in Texas**

In statute, specialty courts are defined as a drug, family, veterans treatment, mental health, commercially sexually exploited persons, public safety employees treatment, juvenile family drug, and sexual assault victim courts<sup>14</sup>. Funding is provided through local, state, and federal resources.

#### **Business Courts**

Recent calls have been made for Texas to establish its own specialized business courts and follow other states that have done so.

### **Summary of Committee Action**

On August 23, 2022, the Committee met in a public hearing at the Capitol to consider Charge 5. The following witnesses were invited testimony:

Larry Phillips, Vice President, Texas Specialty Courts Association

Dennise Garcia, Justice, 5<sup>th</sup> Court of Appeals

Megan LaVoie, Administrative Director, Office of Court Administration

Lee Parsley, General Counsel, Texans for Lawsuit Reform

Laura Tamez, President-Elect, Texas Trial Lawyers Association

Mike Tankersley, Former Chairman, Texas Business Law Foundation

Jennifer Doan, President, Texas Chapters of American Board of Trial Advocates

In order to ensure that the Committee received the full benefit of the witnesses' expertise, the Committee heard invited testimony only.

### **Summary of Testimony**

#### **Judge Larry Phillips, Texas Specialty Courts Association**

The Texas Specialty Courts Association (TSCA) is a 500+ member association comprised of prosecutors, probation officers, mental health workers, law enforcement, judiciary staff, and many others to build and strengthen Texas' specialty courts.

In his capacity as judge for the 59<sup>th</sup> District Court, Judge Phillips provided specific insight into drug court programs, or treatment courts.

Treatment courts are for those struggling with substance abuse. 20.2 million American adults, about 1 out of 10, have a substance abuse disorder; of these, nearly 8 million also suffer from a co-occurring mental health disorder<sup>15</sup>. Tragically, instead of receiving treatment, these individuals are often incarcerated. Treatment courts, however, are an alternative intervention and have proven to

be successful. They combine rigorous monitoring, testing for substance abuse, and practice standards adopted nationwide. With a thirty-year history of specialty courts in Texas, judges are able to operate under evidence-based practices. This means, for example, seeing the participants at least twice a month, spending at least three minutes per participant, weekly counseling, etc.

Specialty courts have a number of funding sources. A new source worth highlighting is the mixed beverage sales tax, which is allocated by the Office of the Governor's Public Safety Office, Criminal Justice Division. Additionally, the Legislature created the Specialty Courts Advisory Council (SCAC), which evaluates applications for grant funding and make recommendations for the Governor's Office. This new area of funding has provided more stable opportunities for more specialty courts. Another source of funding is through the Texas Department of Criminal Justice's Community Justice Assistance Division (CJAD), which is another grant process. There are also federal grants and local and county funding.

State support agencies include the Office of Court Administration (OCA), the Specialty Courts Advisory Council (SCAC), and the Texas Judicial Council (TJC). In addition, national organizations like the National Association for Drug Courts Professionals and the National Drug Court Institute evaluate and analyze these programs that ultimately help transform lives.

### **Justice Dennise Garcia, 5<sup>th</sup> Court of Appeals**

As a former family law judge for 16 years, Justice Garcia was able to provide insight into family law courts and their related specialty courts. Two of the related specialty courts are child protection courts and a legacy court, or a drug diversion court.

The biggest problem Justice Garcia has witnessed in the family courts involves the utilization of a drug diversion program. The deadline to complete a CPS case is one year; one extension is allowed, if necessary, for six months. Many understand, however, that drug rehabilitation may take longer than a year to eighteen months. Consequently, there is a balancing act in making sure the children are taken care of as much as possible and not remain in the state system, while also making sure rehabilitation is done correctly.

The other type of diversion court in Dallas is the child protection court, or CPC. It is modeled on a Houston child protection court, and we have had excellent results with it. These are cases where unfortunately children have as their conservator the State of Texas. Under the Family Code, the court is required to do a checkback every six months; however CPC courts have more frequent check-ins — if necessary, daily, weekly, or monthly. These frequent check-ins help better address the needs of the children. Additional follow-ups with the children help ensure that they are better equipped and have seen a reduction in the amount of time that children are staying in the system.

Other courts in Dallas are the IV-D courts, which are child courts set up to address the volume of the IV-D cases, and the protective order court, which is staffed by visiting judges who only hear protective order cases.

### **Megan LaVoie, Office of Court Administration**

As of April of 2022, there are 204 known and operating specialty courts in Texas registered with the Office of Court Administration (OCA); this is up from 126 in 2012. Of these 204 courts, there are:



- 56 adult drug courts
- 33 veterans treatment courts
- 24 adult mental health courts
- 20 DWI courts
- 21 juvenile drug treatment courts
- 15 DWI/drug hybrid courts
- 15 family drug treatment courts
- 6 reentry courts
- 5 commercial sexual exploitation program courts
- 5 juvenile mental health courts
- 3 co-occurring disorder courts
- 1 public safety employees treatment court

The landscape and oversight of specialty courts significantly changed in 2019, when the Legislature passed HB 2955 by Representative Price, which requires specialty courts to register with OCA prior to operating, requires OCA and the Texas Judicial Council to provide guidance on best practices, and requires OCA to coordinate with the Criminal Justice Division of the Governor's Office on oversight of specialty courts. In addition, an ombudsman was established within OCA to deal with questions and complaints concerning the operation of specialty courts. The Texas Judicial Council is in charge of adopting best practice standards and has adopted Volumes I and II of the National Association of Drug Court Professionals' Adult Best Practice Standards and Family Drug Treatment Best Practices.

Going forward, OCA will be focusing on increased training and technical assistance, increased statewide data collection, regular reporting on the performance of registered courts, and a case management system.

### **Lee Parsley, Texans for Lawsuit Reform**

Many businesses incorporate in Delaware for two reasons. The first is the substantive law in Delaware, which provides good guidelines for companies to operate and which Texas has successfully duplicated. The second is Delaware's judicial system that deals with its substantive law in a way that corporations and other entities understand and can rely on — a business court.

Texas' courts are specialized from the high courts to the municipal courts, but the one specialty court Texas does not have is a business specialty court. 29 states have some form of specialty business court, either a pilot program or a full court, while Texas remains behind.

In the 87<sup>th</sup> Session, HB 1875 by Representative Landgraf was filed, a specialty courts bill which ultimately did not pass. It would have provided that Texas would have a court system that would adhere shareholder derivative actions and lawsuits between businesses regarding business issues. Texans for Lawsuit Reform (TLR) supported HB 1875 and encourages the Legislature to consider this issue as a good economic development tool in Texas to bring more corporations to incorporate here while knowing they have a court system in Texas that is reliable, quick, and will uniformly apply the laws over time.

Texas is the 10<sup>th</sup> largest economy in the world, and that is not by accident. It is because the Legislature has persistently taken steps like this to continue being the best place in the nation to

do business, and establishing business courts would be another intentional step following many steps Texas has taken over the years.

On the election of judges, the Texas Constitution allows for the creation of other courts; it does not however say those judges must be elected. TLR argues it is not correct to say that our judiciary is wholly elected; it has parts that are and parts that are not. Texas have more of a combination system than we all collectively think oftentimes that we do. It would be up to the Legislature then to create business courts and either have the judges elected or unelected.

As an additional resource, the TLR Foundation has published on this issue, arguing for the case for specialized business courts in Texas<sup>16</sup>.

### **Laura Tamez, Texas Trial Lawyers Association**

During the 87<sup>th</sup> Session, the Texas Trial Lawyers Association (TTLA) issued a letter provided to the Committee, which, along with the Texas Association of Defense Counsel (TADC) and the Texas Chapters of American Board of Trial Advocates (TEX-ABOTA), wrote against the proposal of specialty business courts.

Since then, TTLA points out there has been no study or analysis that has shown evidence of a demonstrable need for business dispute courts, no concerns over a backlog of these cases, nor evidence of a boost to the economy in other states. Additionally, in creating a separate trial and appellate court system that has concurrent jurisdiction with Texas' district courts, TTLA suggests there are concerns as to how those judges would be selected or appointed.

Lastly, it is worth mentioning that if a Texas court is dealing with specialized or complex litigation in business disputes, Chapter 74 of the Government Code allows for additional resources to be provided to that courts so that they can manage and try these specialized cases.

### **Mike Tankersley, Texas Business Law Foundation**

The Texas Business Law Foundation (TBLF) proposes that Texas join the 25 other states that have business courts and that Texas competes with. In states like New York, business courts are very developed, are widely recognized, bring business and litigation to the state, and have a notable efficiency effect and a more rapid decisional process.

In Texas, the discussion of business courts was notably picked up in 2015 when Representative Villalba introduced legislation that would have established a chancery court system. In 2021, HB 1875 by Representative Landgraf showed no resemblance to the 2015 bill and had nothing to do with chancery courts. Additionally, the statute very expressly preserved trial by jury.

TBLF strongly supports the establishment of a dedicated business court system for Texas. These business courts would adjudicate complex business-law cases, such as shareholder-derivative actions or large corporate-governance disputes or securities law claims. This would be a monumental step forward in the continuing development of Texas as a leading business state. It strongly complements the state's innovate and attractive set of business laws as codified in the Texas Business Organizations Code.

An effective and active business court system focused exclusively on business-law issues, with specialized judges making decisions based on what is important in Texas, will provide an efficient,

consistent, and stable form for the resolution of complex business disputes. It will underscore the state's commitment to a strong and healthy business environment and move the state to the next level in attracting astute companies and businesses to locate here. Ultimately, it will not only affect Texas law, but will positively impact legal precedent nationally and internationally.

### **Jennifer Doan, Texas Chapters of American Board of Trial Advocates**

The Texas Chapters of American Board of Trial Advocates (TEX-ABOTA) reiterates its commitment to protecting the right to a trial by jury, the independence of the judiciary, and the rule of law. Specialty courts are set up county by county, whereas the proposed business courts are not county by county, but rather are set up for the entire state for certain businesses.

Data has not shown that a specialty business court in Texas is warranted. There is no overflow of business cases that are being set. Texas has good jurisdictions and good courts to hear business matters; very experienced trial lawyers and judges have the intelligence and capabilities to hear these cases.

With regard to previous business court legislation, and presumably future legislation, TEX-ABOTA encourages additional studying to see if this is indeed the type of specialty court that Texas needs.

## **Recommendations**

### **Funding and Utilizing Specialty Courts**

Specialty courts operate throughout the state and provide rigorous monitoring and supervision, along with intensive community-based treatment services that are ultimately aimed at reducing recidivism, preventing incarceration, and promoting recovery. These courts have the specific goal of diverting a defendant from the criminal justice system and ensuring they have access to treatment to help them ultimately succeed. There are over 200 specialty courts in Texas and they have shown positive results. The Legislature should continue to fund and utilize specialty courts where appropriate and where the efficiency and effectiveness of the judiciary can be improved.

### **Creating a Texas Business Court**

For the last several sessions, the Legislature has considered legislation to create a specialized court to handle complex business matters. Corporations frequently incorporate in other states that have such a specialized court, and Texas is reportedly losing out on bringing more businesses to the state due to lacking a similar and specialized judicial structure. Data presented to the Committee suggests that twenty-three states have pursued some form of business court, including Delaware, Tennessee, Arizona, Georgia and Nevada. The Supreme Court of Texas, pursuant to an express recommendation of the Texas Judicial Council, was tasked with creating a pilot program to explore the creation of a business court system. However, due to the COVID-19 pandemic, the plans for the pilot program were delayed. Post-pandemic, the Supreme Court is once again tasked with creating a pilot program. The pilot program would establish a business court program for complex business legislation and should be a part of or parallel to the existing court structure. Additionally, such a specialized business court will hold proceedings regionally so parties throughout the state have reliable access to the court without undue delay or strain. Further, such a structure would allow an opt-in option for the parties. While the Committee disagrees on the necessity of a Court, if a business court is to be created and commissioned by the Legislature, this Committee believes this recommendation is the best path forward — working within the existing court structure while

still allowing for specialization and expertise for high level, high value, highly specialized cases for our Texas business and corporations. To be clear, our Committee recommends that the Legislature closely monitors the pilot program, observe which aspects work and don't work, and implement legislation accordingly.

## Charge 6: Jury Service

*Study state laws and procedures relating to jury service eligibility, including a review of existing jury exemptions, and make recommendations to ensure the privilege, right, and duty of jury service is protected and promoted.*

### Background

#### ***Jury Service Qualifications***

Texas has certain qualifications for potential jurors to meet before serving on a jury. Qualifications<sup>17</sup> include:

- is at least eighteen years of age
- is a United States citizen
- is a Texas resident and of the county of jury service
- qualified under the Constitution and laws to vote in the county in which the person is able to serve as a juror
- of sound mind and good moral character
- able to read and write
- has not served as a juror for six days during the preceding three months in the county court or during the preceding six months in the district court
- has not been convicted of a misdemeanor theft or felony
- is not under indictment or other legal accusation for misdemeanor theft or felony

#### ***Jury Service Exemptions***

Texas provides exemptions for jury service for individuals who wish to claim one. Exemptions<sup>18</sup> include:

- over seventy years of age
- has legal custody of a child younger than twelve years of age and the person's service on the jury requires leaving the child without adequate supervision
- a student of a public or private secondary school
- a person enrolled and in actual attendance at an institution of higher education
- an officer or an employee of the legislature or legislative branch of state government
- a member of the U.S. military service on active duty and deployed out of the county of residence
- the primary caretaker of a person who is unable to take care for himself/herself
- in a county with 200,000 or more and has served on a jury within the past two years
- in a county with 250,000 or more and has served on a jury within the past three years
- has physical or mental impairments, or the inability to comprehend English
- religious holidays (subject to judicial review)
- hardships (subject to judicial review)

### Summary of Committee Action

On October 12, 2022, the Committee met in a public hearing at the Capitol to consider Charge 6. The following witness were invited testimony:

Megan LaVoie, Administrative Director, Office of Court Administration

In addition to Ms. LaVoie's testimony, the Committee collected written testimony from Texans for Lawsuit Reform and the Texas Trial Lawyers Association.

## Summary of Testimony

### **Megan LaVoie, Office of Court Administration**

The U.S. Constitution and the Texas Constitution both guarantee the right to a trial by an impartial jury. Jurors may be called to serve in criminal or civil trials, as well as grand juries. Jury service lists are generated by voter registration, driver licenses, and identification cardholders from the county in which the respective juror resides. Various levels of the U.S. and Texas district court systems depend on jury service, including justices of the peace, municipal courts, county courts, district courts, and federal district courts. In a non-pandemic year, Texas usually has 10,000 jury trials each year.

Jurors are funded through the Jury Service Fund from the State Court Fee, which is collected from both civil and criminal cases. 6.409% of the State Court Fee funds the Jury Service Fund, which reimburses the counties \$34/day after the first day for paid juror compensation. For the first day, jurors cannot be paid less than \$6. Starting on the second day until completion, jurors cannot be paid less than \$40 per day.

While they do not collect data on jury service exemptions at the state level, OCA was able to survey counties in order to see how exemptions are impacting jury pools. (*See Appendix C.*)

- In 2019, Harris County's District and County Court-at-Law summoned 558,180 jurors in a jury pool of 2,970,686. The total number of exemptions was 91,498, about 16.3% of the jurors summoned. The top exemption claimed was students (34,676), followed by custody of a child under the age of twelve (29,115), and the third was primary caretaker (16,412).
- In 2022, Hidalgo County's District and County Court-at-Law has seen 20% of the jury pool receive an exemption. Nearly 20% of these exemptions (3,594) were for COVID-19-related reasons.
- In a survey of ten counties — Harris, Hidalgo, Frio, Chambers, Dallas, Raines, Nacogdoches, Tarrant, Tom Green, and Shackelford Counties — between 2019 and 2022, the most common exemptions were custody of a child under 12, students, 70 years or older, and primary caretakers.
- Lastly, the ten aforementioned counties reported examples of jury summons' responses. 46% were no response, 17% were confirmed, 9% were undeliverable, 9% were excused, 9% were disqualified, 2% were deferred, 7% become panel members, and 1% serve on the jury.

OCA expects jury trials to get to or exceed pre-pandemic levels by the end of 2022. With the court backlog, the demand for jury trials is only going to increase, and the need for well qualified and diverse jury pools becomes all the more important.

When looking at other states, eight have passed laws requiring employers to cover the days of jury services; other states have expanded their jury rolls, including using property tax rolls.

Clerks have also found ways to utilize technology by responding to a summons online and receiving a text saying whether a juror is needed or not. It does cost money, but OCA encourages more clerks to follow this approach.

**Texans for Lawsuit Reform**  
(See Appendix C.)

**Texas Trial Lawyers Association**  
(See Appendix D.)

## **Recommendations**

### **Raising Juror Pay and Employer Compensation**

The Legislature should elevate jury service — recognizing such service as a precious right and privilege, and a solemn responsibility for any Texan who is blessed to be called and selected to serve. We should start with raising the amount of daily juror pay and enacting wage protections for those selected to serve. Current daily rates do not cover the costs needed to serve — sometimes not even covering the cost of courthouse parking for some jurors who are not ultimately selected to serve on a jury. Additionally, the Legislature should consider removing employment barriers that prevent Texans from being able to serve on a jury. While an employer cannot terminate an employee for missing work due to jury service, they are not required to pay for hours missed. Texas should ensure that those selected for jury service are adequately compensated, either through increasing the level of compensation for service or by adding wage protections for those selected to serve.

### **Narrowing Juror Exemptions**

The Committee recommends narrowing the existing exemptions for jury service. Texas currently provides 10 exemptions for jury service. The Legislature should consider narrowing these exemptions to provide for a wider jury pool and elevate the duty of serving on a jury. We should start with doing away with the exemption available to those over 70 years of age — increasing it to 75 years of age.

### **Addressing Failures to Respond**

While there are current laws on the books, including penalties, for failure to respond to a jury summons, they are rarely enforced or utilized. The Legislature should considering tightening enforcement for failures to respond.

## Letter from Members



December 30, 2022

The Honorable Dade Phelan  
Speaker, Texas House of Representatives  
*and*  
Honorable Members of the Texas House of Representatives

Dear Mr. Speaker & Members:

We are proud of what the Committee on Judiciary and Civil Jurisprudence accomplished in addressing its interim charges and have added our signatures to the committee's report.

However, we believe the report's recommendation related to Texas business courts warrants further discussion. Adding any specialty court to our judicial system is a significant step that requires just as significant a conversation, which we expect to continue during the coming session. As a result, we cannot concur in the recommendation that Texas create specialty business courts at this time.

We commend Chairman Leach's leadership in guiding this committee and look forward to improving Texas justice for all Texans this coming session as a result of this interim work.

Respectfully,

A handwritten signature in black ink, appearing to read "Harold V. Dutton, Jr." with a stylized flourish at the end.

HAROLD V. DUTTON, JR.

A handwritten signature in black ink, appearing to read "Joe Moody" with a stylized flourish at the end.

JOE MOODY

A handwritten signature in black ink, appearing to read "Julie Johnson" with a stylized flourish at the end.

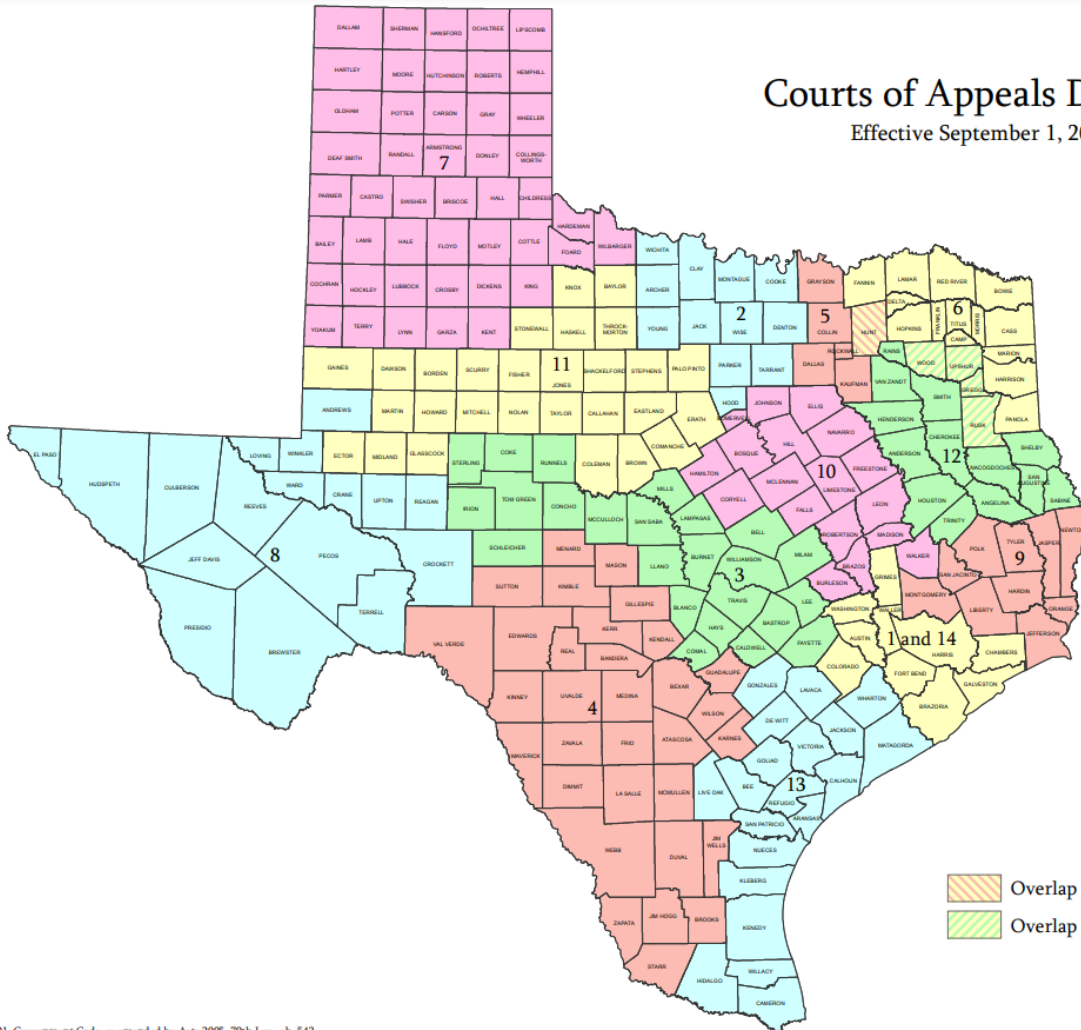
JULIE JOHNSON



# Appendix A

## Courts of Appeals Districts

Effective September 1, 2005



Source: Section 22.201, Government Code, as amended by Acts 2005, 79th Leg., ch. 542

# Appendix B



## OFFICE OF COURT ADMINISTRATION

MEGAN LAVOIE  
Administrative Director

### Courts of Appeals Activity Data

Activity by State Fiscal Year

	17	18	19	20	21	22 through July
Cases Filed	10,443	10,277	10,396	8,695	7,254	8,171
Cases Disposed	10,378	10,422	10,294	8,695	8,271	7,504
Cases Pending	6,506	6,380	6,509	6,237	5,243	5,942
Clearance Rate	99%	101%	99%	100%	114%	

Activity by State Fiscal Year

	17	18	19	20	21	22 through July
Cases Filed	10,443	-2%	1%	-16%	-17%	13%
Cases Disposed	10,378	0%	-1%	-16%	-5%	-9%
Cases Pending	6,506	-2%	2%	-4%	-16%	13%

Total Cases Filed by Court (Including Transfers)

Court	Number of Justices	17	18	19	20	21	22 through July
1st/Houston	9	1,129	1,234	1,139	1,026	765	901
2nd/Fort Worth	7	878	915	918	707	618	764
3rd/Austin	6	802	758	836	646	597	618
4th/San Antonio	7	859	928	861	698	543	691
5th/Dallas	13	1,807	1,678	1,801	1,491	1,282	1,352
6th/Texarkana	3	376	349	412	315	270	274
7th/Amarillo	4	527	515	505	415	353	396
8th/El Paso	3	335	144	299	283	217	244
9th/Beaumont	4	492	475	435	390	347	397
10th/Waco	3	373	408	411	333	289	347
11th/Eastland	3	368	381	397	322	312	298
12th/Tyler	3	393	368	404	299	229	319
13th/Corpus Christi	6	846	864	769	692	588	628
14th/Houston	9	1,259	1,260	1,208	1,088	843	942
TOTAL	80	9,216	9,206	9,398	7,860	6,420	7,439

205 WEST 14<sup>TH</sup> STREET, SUITE 600 • TOM C. CLARK BUILDING • (512) 463-1625  
P. O. BOX 12066, CAPITOL STATION • AUSTIN, TEXAS 78711-2066  
[www.txcourts.gov](http://www.txcourts.gov)

**Clearance Rates**

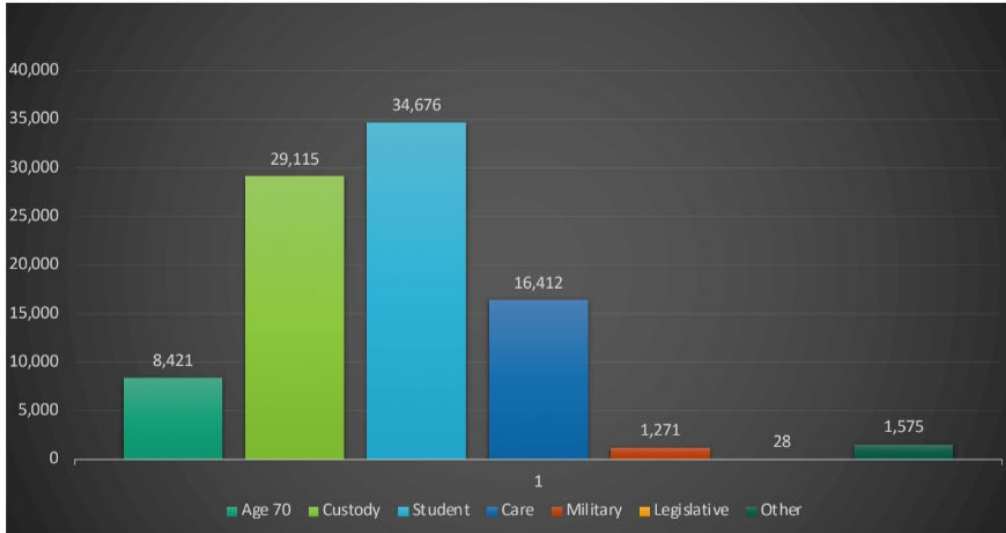
<b>Court</b>	<b>Number of Justices</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>
1st/Houston	9	101%	97%	104%	98%	115%
2nd/Fort Worth	7	101%	101%	102%	102%	121%
3rd/Austin	6	104%	104%	78%	117%	108%
4th/San Antonio	7	95%	100%	109%	107%	111%
5th/Dallas	13	98%	100%	96%	103%	101%
6th/Texarkana	3	107%	100%	96%	108%	102%
7th/Amarillo	4	88%	105%	112%	111%	120%
8th/El Paso	3	104%	201%	103%	87%	141%
9th/Beaumont	4	101%	100%	102%	100%	109%
10th/Waco	3	90%	96%	91%	116%	118%
11th/Eastland	3	107%	99%	99%	104%	120%
12th/Tyler	3	100%	100%	100%	102%	124%
13th/Corpus Christi	6	100%	102%	101%	101%	121%
14th/Houston	9	100%	97%	98%	100%	120%
<b>TOTAL</b>	<b>80</b>	<b>99%</b>	<b>101%</b>	<b>99%</b>	<b>100%</b>	<b>114%</b>

**Transfers**

<b>Court</b>	<b>Number of Justices</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>	<b>22 through July</b>
1st/Houston	9	51	128	51	43	-33	22
2nd/Fort Worth	7	-120	-114	-87	-75	-10	-45
3rd/Austin	6	-193	-158	-115	-212	-99	-143
4th/San Antonio	7	0	-15	-106	-52	-23	0
5th/Dallas	13	8	31	21	-37	7	-1
6th/Texarkana	3	60	71	78	56	57	20
7th/Amarillo	4	115	95	93	131	87	99
8th/El Paso	3	74	-85	56	88	56	76
9th/Beaumont	4	-41	-33	9	23	34	-10
10th/Waco	3	-103	-79	-43	-111	-70	-96
11th/Eastland	3	-9	-14	-35	-29	-14	-29
12th/Tyler	3	25	-19	-40	-21	0	10
13th/Corpus Christi	6	97	72	84	144	59	81
14th/Houston	9	37	120	33	58	-52	16
<b>TOTAL</b>	<b>80</b>	<b>-466</b>	<b>-517</b>	<b>-426</b>	<b>-537</b>	<b>-301</b>	<b>-324</b>

## Appendix C

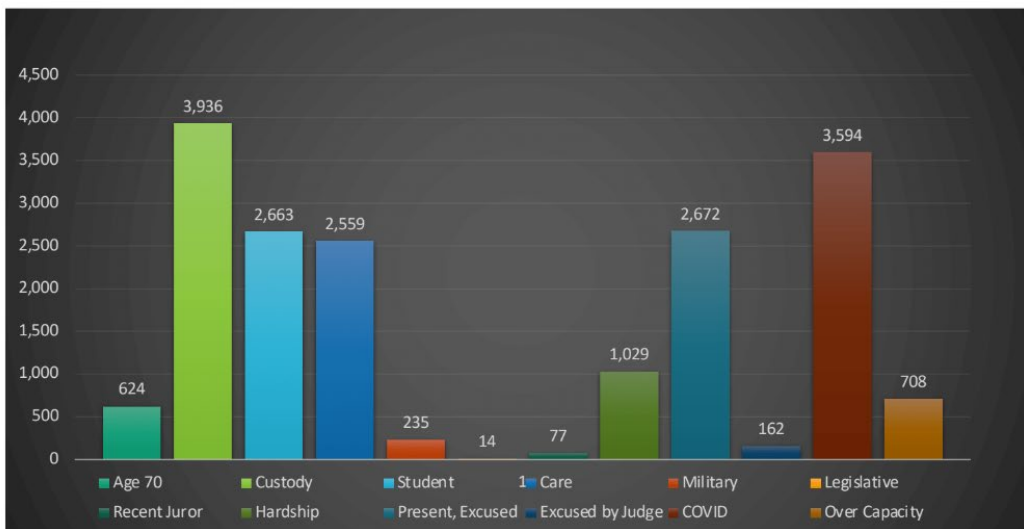
### HARRIS COUNTY DISTRICT & COUNTY COURT-AT-LAW 2019 EXEMPTIONS



Date Range: 01/01/2019 to 12/31/2019; Total Summured Jurors: 558,180; Jury Wheel: 2,970,686



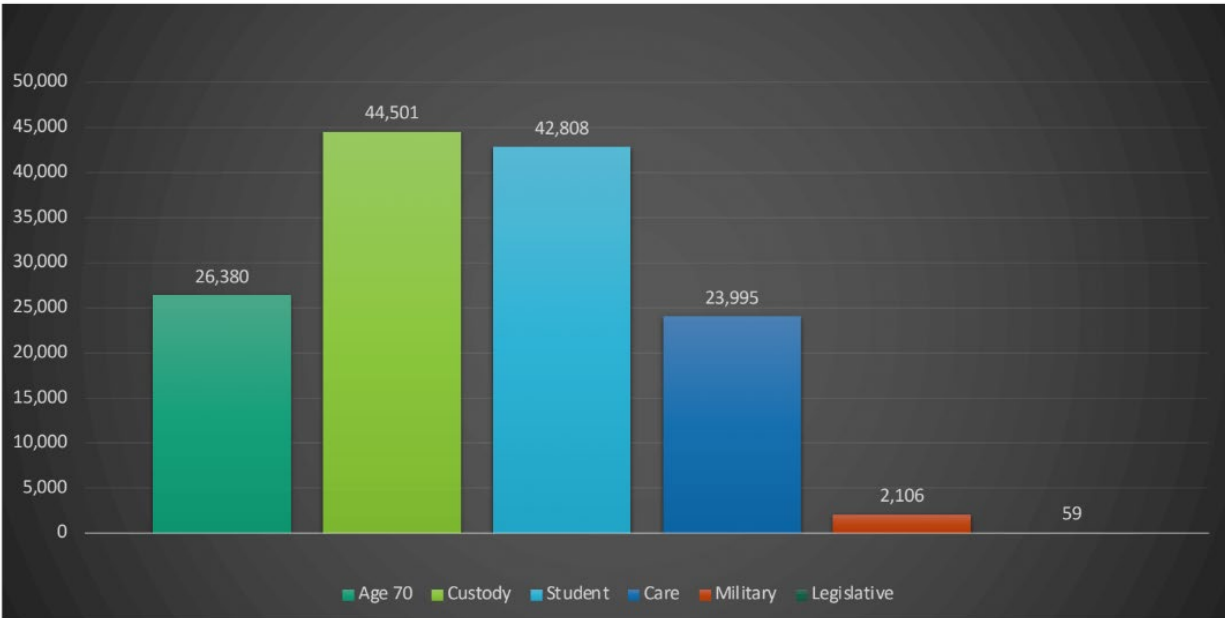
### HIDALGO COUNTY DISTRICT & COUNTY COURT-AT-LAW 2022 EXCUSED (COVID IMPACT)



Date Range: 01/01/2022 to 10/04/2022; Jury Pool: 93,702; Excused Total: 18,273

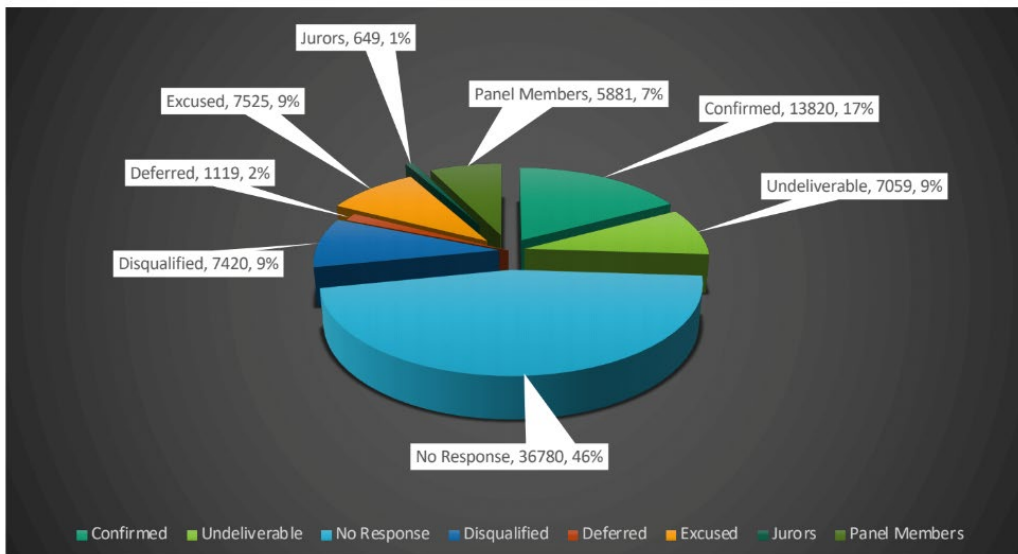


# COMMON EXEMPTIONS



Reported by: Harris, Hidalgo, Frio, Chambers, Dallas, Raines, Nacogdoches, Tarrant, Tom Green, and Shackelford Counties

# EXAMPLE OF RESPONSE TO JURY SUMMONS



10



## Appendix D



August 22, 2022

Honorable Jeff Leach  
Chair, Judiciary and Civil Jurisprudence Committee  
Texas House of Representatives  
Texas Capitol, Room E2.120  
Austin, Texas 78701

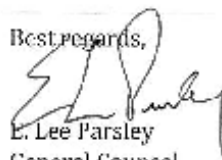
RE: Interim study on laws and procedures relating to jury service

Dear Chairman Leach,

Although it receives far less attention, citizen service on a jury—a grand jury or a petit jury in a civil or criminal matter—is equal in importance to voting. In the criminal context, grand petit juries are the primary mechanism provided in the U.S. and Texas constitutions to deter an overly aggressive or actively repressive government from using prosecutions and imprisonment to silence dissent and punish dissidents. In the civil context, a jury trial is our mechanism for settling disputes fairly and without resort to violence.

Over the years, the Legislature has provided multiple exemptions from jury service. The creation and expansion of exemptions conveys the message to our citizens that jury service is not important—that it is something to be avoided rather than embraced. It removes from jury pools some of our society's most engaged citizens. TLR has testified in past sessions against expanding jury service exemptions, and we remain committed to that position. If anything, TLR would prefer to see the Legislature narrow or remove existing exemptions, and begin an effort to emphasize the critical nature of jury service to all Texans.

Best regards,



E. Lee Parsley  
General Counsel

cc: Honorable Dale Phelan

## Appendix E



TEXAS TRIAL LAWYERS ASSOCIATION  
P.O. Box 788, Austin, Texas 78767 • 1220 Colorado, Suite 500, Austin, Texas 78701  
512.476.3852 • Fax: 512.473.7411 • www.ttla.com

October 11, 2022

The Honorable Jeff Leach  
P.O. Box 2910  
Texas Capitol  
Austin, Texas 78711

Dear Mr. Chairman,

In light of your upcoming hearing on the interim charge regarding jury service and existing exemptions from service, we offer the following statement.

In both civil and criminal trials, the right to a trial by jury of one's peers is enshrined in both the United States and the Texas Constitution. To that end, TTLA stands for the proposition that the right to a jury trial must remain inviolate and Texas citizens must be counted on to perform their civic duty and report for jury service when called. A citizen jury of one's peers is the bedrock of our democracy and the only mechanism by which a Texan can hold accountable those who are negligent or intrude on their rights, whether it's the private sector or their government.

While TTLA does not see any need for further exemptions, to ensure as broad a cross-section of the community as possible, any expansion of exemptions should be carefully considered and narrowly targeted. The strength of an in-person citizen jury should not be diluted.

*"Protecting Texas Families, Fighting For You."*

## ENDNOTES

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- <sup>1</sup> [Texas Judicial Council's Civil Justice Committee 2022 Report and Recommendations](#)
  - <sup>2</sup> *Id.*
  - <sup>3</sup> [Office of Court Administration's FY 2021 Annual Statistical Report](#)
  - <sup>4</sup> [National Center for State Courts Texas Remote Hearing Assessment Report December 2021](#)
  - <sup>5</sup> [Targeting the Texas Citizen Participation Act: The 2019 Texas Legislature's Amendment to a Most Consequential Law](#)
  - <sup>6</sup> <https://casetext.com/case/chesser-v-aucoin>
  - <sup>7</sup> <https://casetext.com/case/ml-dev-lp-v-ross-dress-for-less-inc-2>
  - <sup>8</sup> <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>
  - <sup>9</sup> <https://gov.texas.gov/news/post/governor-abbott-dps-launch-operation-lone-star-to-address-crisis-at-southern-border>
  - <sup>10</sup> <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.22.htm#22.201>
  - <sup>11</sup> <https://www.txcourts.gov/about-texas-courts/courts-of-appeals/>
  - <sup>12</sup> <https://www.txcourts.gov/media/1436367/1-counties-in-each-district-2005.pdf>
  - <sup>13</sup> <https://www.txcourts.gov/media/1453413/guardianship-annual-report-fy-21-final.pdf>
  - <sup>14</sup> <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.121.htm>
  - <sup>15</sup> <https://www.nadcp.org/treatment-courts-work/>
  - <sup>16</sup> [https://www.tlrfoundation.org/foundation\\_papers/the-case-for-specialized-business-courts-in-texas/](https://www.tlrfoundation.org/foundation_papers/the-case-for-specialized-business-courts-in-texas/)
  - <sup>17</sup> <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.62.htm>
  - <sup>18</sup> <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.62.htm>