

Texas Judicial Council Legislative Proposals – 85th Legislative Session

The Texas Judicial Council is a statutorily created judicial body responsible for the continuous study of “the organization, rules, procedures and practice, work accomplished, results, and uniformity of the discretionary powers of the state courts and methods for their improvement.”¹ The council is required to “receive and consider advice from judges, public officials, members of the bar, and citizens concerning remedies for faults in the administration of justice.”² To receive this advice, Chief Justice Nathan Hecht requested that numerous entities provide their legislative proposals to the Council for consideration at its August 19th meeting. While many of the proposals that were received had substantial merit, the Council is asked to consider those with significant policy implications in the administration of justice pursuant to the Council’s charge. The Council proposed the following resolution for legislative consideration (in no particular order):

1. A resolution advocating for adequate funding of the courts, with a special focus on funding for judicial education.
2. A resolution encouraging additional funding by the state for the increased cost of indigent defense since the passage of the Fair Defense Act.
3. A resolution in support of adequate funding for civil legal aid in Texas.
4. A resolution supporting an increase in judicial compensation and the recommendations of the Judicial Compensation Commission.
5. A resolution encouraging modification of the procedural statutes governing the assessment and satisfaction of criminal court costs.
6. A resolution supporting the recommendations of the Criminal Justice Committee regarding pretrial release.
7. A resolution supporting the recommendations of the Mental Health Committee.
8. A resolution supporting the recommendations of the Court Security Committee.
9. A resolution supporting the Elders Committee recommendations.
10. A resolution encouraging consolidation of civil filing fees and standardization of certain service fees, along with the standardization of costs for electronic copies of certain court documents.
11. A resolution encouraging repeal or modification of statutes requiring sensitive data in court filings.
12. A resolution supporting the recommendations of the Timothy Cole Exoneration Review Commission.
13. A resolution supporting recommended revisions to the reconstitution of the jury wheel.
14. A resolution requesting clarification that judicial branch state appointed officials file their oaths of office and statements of officer with the Texas Secretary of State.

¹ Texas Government Code 71.031

² Texas Government Code 71.032

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Ensuring Adequate Court Funding

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, the Texas Constitution divides the powers of the government of the State of Texas into three distinct departments: the Legislative, Executive and Judicial Departments; and

WHEREAS, the Judiciary, having neither the “sword nor the purse,”¹ relies upon the legislative and executive branches to provide sufficient funding to carry out its constitutional and statutory purposes; and

WHEREAS, a strong judiciary able to uphold the rule of law is critical to attracting business growth and maintaining a prosperous state; and

WHEREAS, delayed justice costs Texas businesses and citizens money, while effective and efficient courts save taxpayers money; and

WHEREAS, the total state appropriations to the Judiciary represented 0.38% of the total state budget in the 2016-17 biennium; and

WHEREAS, the Judiciary has used technology and other administrative measures to increase efficiency and make significant technological improvements; and

WHEREAS, ensuring that an adequate level of funding is provided to the Judiciary is essential to promoting access to the courts for Texans to resolve their disputes and protect the citizenry from abuse of their individual rights; and

WHEREAS, the Judiciary must continue to utilize funding to improve the way it administers justice to better meet the needs of citizens and employers in Texas through innovation, education and technological advances;

¹ Hamilton, Alexander. “Federalist #78.” *The Federalist*. (New York: Fine Creative Media)

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council urges the Legislature and County Commissioners Courts to provide adequate funding to:

- (1) Support core services to the judicial branch, as outlined in the legislative appropriations requests for the state-funded courts and judicial branch agencies;
- (2) Restore state leadership-directed appropriation reductions to the state-funded courts and judicial branch agencies identified as critical needs by those entities;
- (3) Provide sufficient judicial education to the over 3,300 judges of this state;
- (4) Retain and recruit knowledgeable and dedicated employees through targeted salary increases at the courts and judicial branch agencies;
- (5) Strengthen judicial services to families, including creating new child protection courts, and enhanced judicial services to the elderly and incapacitated;
- (6) Ensure access to justice is available to individuals seeking justice through basic civil legal services; and
- (7) Ensure appropriate constitutional protection through criminal indigent defense services.

Honorable Nathan L. Hecht
Chair, Texas Judicial Council

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STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

In Support of full State Funding of Criminal Indigent Defense

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code;

WHEREAS, the Texas Indigent Defense Commission (Commission) is a permanent standing committee of the Texas Judicial Council, created under Chapter 79, Texas Government Code; and,

WHEREAS, the Commission is charged with promoting compliance by counties with the requirements of state law related to indigent defense pursuant to the *Fair Defense Act of 2001*; and,

WHEREAS, the Commission provides State funds through grants to counties that demonstrate a commitment to comply with the requirements of state law relating to indigent defense; and,

WHEREAS, the right to counsel is also guaranteed in the U.S. and Texas Constitutions; and,

WHEREAS, the government, whether it is the state or the county, must pay these costs; and,

WHEREAS, the State funding through the Commission has directly led to improved compliance and innovations that enhance quality and effectiveness of indigent defense representation; and,

WHEREAS, thousands more Texans are now receiving constitutionally guaranteed defense representation as a result of more effective indigent defense delivery systems; and

WHEREAS, counties pay 88% of criminal indigent defense costs compared to the State's contribution of 12%; and,

WHEREAS, indigent defense in Texas is primarily funded through local property taxes, and,

WHEREAS, the underfunding of indigent defense can lead to costly litigation; and,

WHEREAS, over half of the states in this nation fully fund indigent defense; and,

WHEREAS, over two-thirds of the states in this nation fund more than 50 percent of the costs for providing indigent defense; and,

WHEREAS, the Regional Public Defender's Office for Capital Cases is a Lubbock County program serving 178 counties; and,

WHEREAS, in the most serious criminal cases where the death penalty is a possibility, the State has a unique interest in ensuring that appropriate defense representation is provided; and,

WHEREAS, Articles 16.22 and 17.032, Code of Criminal Procedure, provide for the early identification and release on a personal recognizance bond of arrestees with mental illness if an evaluation and treatment plan is in place; and,

WHEREAS, creating and enhancing defender programs to assist with implementation of Articles 16.22 and 17.032 statewide would provide access to specialized counsel and mental health professionals shortly after arrest, resulting in fewer jail days and earlier case resolution for arrestees.

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council recommends that the Texas Legislature:

- 1) Provide local property tax relief to Texas Counties by providing full state funding (100%) for criminal indigent defense through a stepped-up funding approach over the next six-year years by appropriating General Revenue in the amount of \$212 million or 50% of the expected spending on indigent defense in FY18/19 as part of a transition to full state funding by the FY22/23 biennium;
- 2) Support the statewide Regional Public Defender Office for Capital Cases by providing \$2.9 million from General Revenue to deliver necessary State support to the program;
- 3) Support early identification and representation of defendants with mental illness programs across the state by providing \$10 million in General Revenue to incentivize the statewide implementation of articles 16.22 and 17.032 of the Texas Code of Criminal Procedure; and,
- 4) Restore the four percent reduction in funding in the base budget since the program is already severely underfunded at current levels.

Honorable Nathan L. Hecht
Chair, Texas Judicial Council

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STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Supporting Funding for Civil Legal Aid in Texas

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, the Texas Judicial Council embraces the principles that our nation promises justice for all, not just for those who can afford to pay for it; and

WHEREAS, the most recent U.S. Census reports that more than 5.3 million Texans qualify for civil legal aid; and

WHEREAS, low-income Texans are often the most vulnerable in our communities, including veterans, the elderly, persons with disabilities and mental health needs, and victims of domestic abuse; and for many disadvantaged Texans access to legal help might be all that stands between them and homelessness, health, safety, and income to provide food on their table and shelter for their children; and

WHEREAS, the Texas Access to Justice Foundation was created by Supreme Court Order in 1984 to administer the Interest on Lawyers' Trust Accounts (IOLTA) program to fund nonprofit organizations that provide free civil legal aid to low-income Texans; and

WHEREAS, historically low interest rates have dramatically reduced funding for the IOLTA program from \$20.1 million in 2007 to approximately \$4.9 million in 2015, a 75 percent loss in funding since 2007; and

WHEREAS, Texas ranks 47th in access to legal aid lawyers, with approximately one legal aid lawyer for every 9,800 Texans who qualify for legal aid services, a fact exacerbated by Texas legal aid providers having been forced to lay off staff and cut services due to declines in funding, resulting in thousands of Texans being denied critical, life-changing legal representation.

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council supports the Supreme Court of Texas' appropriations request for basic civil legal services funding from the Texas Legislature and supports the Texas Access to Justice Commission and Foundation proposals for additional funding for basic civil legal services.

Honorable Nathan L. Hecht
Chair, Texas Judicial Council

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STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Judicial Compensation Commission Recommendations

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Compensation Commission was created by the 80th Legislature to recommend the proper salaries to be paid by the state for all justices and judges of the Supreme Court, the Court of Criminal Appeals, the Courts of Appeals and the District Courts; and

WHEREAS, the Judicial Compensation Commission has studied judicial compensation in Texas and found a need for an increase in compensation; and

WHEREAS, while the 83rd Legislature provided an increase in judicial compensation, the Legislature did not fully fund the Commission-recommended increase and indicated a review would occur during the 84th Legislature; and

WHEREAS, the 84th Legislature did not address judicial compensation; and

WHEREAS, the salary of Texas' Supreme Court justices and Court of Criminal Appeals judges ranks 22nd in the nation when compared with the salary of other high court judges; and

WHEREAS, the salary of Texas' Courts of Appeals justices ranks 21st in the nation when compared with the salary of other appellate judges; and

WHEREAS, the salary of Texas' District Court judges ranks 24th in the nation when compared with the salary of other general-jurisdiction court judges; and

WHEREAS, absent an increase in judicial compensation, the salary of Texas' judges will again be below compensation levels from 1991 when one factors in the consumer price index increase; and

WHEREAS, the proper compensation of Texas' judges is essential to attract qualified candidates and retain experienced judges who effectively administer justice;

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council urges the Legislature to adopt the recommendations of the Judicial Compensation Commission to:

- Increase judicial compensation of the justices and judges of the Supreme Court, Court of Criminal Appeals, Courts of Appeals, and District Judges by 10.2 percent;
- Enact legislation requiring the Commission’s salary recommendations be listed in the introduced versions of the General Appropriations Acts filed in the House and Senate;
- Reduce the number of years required to receive judicial longevity pay from sixteen years of service to two years of service and to provide the judge or justice 0.2 percent of their current monthly state salary for every two years of judicial service;
- Fund an increase in the salaries of the Children’s Court Associate Judges at 90 percent of a district judge’s salary; and
- Delink the pension benefits of state officers and employees currently linked to the salary of a district judge.

Honorable Nathan L. Hecht
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STATE OF TEXAS

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TEXAS JUDICIAL COUNCIL

Modification of Statutes Governing Assessment and Satisfaction of Criminal Court Costs

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, in 1971 the United States Supreme Court held that imprisoning a defendant unable to pay fines denied equal protection;¹ and

WHEREAS, in 1983 the United States Supreme Court held that a person could not be punished for his or her poverty and that before imposing jail for failure to pay court costs or fines, courts are required to inquire as to whether the missed payment was attributable to inability to pay, and if so, “consider alternative measures of punishment other than imprisonment;”² and

WHEREAS, the *Bearden* case also found that “states are not powerless to enforce judgments against those financially unable to pay a fine...[and can] establish a reduced fine or alternate public service in lieu of a fine that adequately serves the state’s goals of punishment and deterrence, given the defendant’s diminished financial resources;” and

WHEREAS, in fiscal year 2015, the Texas justice and municipal courts assessed over \$1 billion in court costs and fines in fine-only offenses; and

WHEREAS, despite the fact that the courts in the state are provided statutory authority to allow defendants to satisfy these legal financial obligations through community service, work programs, electronic monitoring and tutoring programs, less than 2 percent (only 67,108) of the cases were fully or partially satisfied through these options; and

WHEREAS, over 16 percent of the assessments in these fine-only offenses were satisfied by jail credit; and

WHEREAS, judges need additional flexibility and tools to ensure that defendants comply with their legal financial obligations without causing an undue hardship on the defendant.

¹ *Tate v. Short*, 401 U.S. 395 (1971)

² *Bearden v. Georgia*, 461 U.S. 660 (1983)

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council urges the Legislature to:

1. Require that citations, summon, and other notices from the court to defendants contain standard language regarding options for the defendant, if found guilty, to satisfy the fines and court costs, including non-monetary alternatives authorized under law, and the consequences for failing to appear;
2. Require courts to provide – via telephone, electronically or by mail – to the defendant notice of options for reestablishing compliance, including non-monetary alternatives authorized under law, at least 30 days prior to issuance of a warrant for failure to appear or a *capias pro fine*;
3. Prohibit courts from requiring defendants not in custody to post bail in order to set a hearing with the court or to have a warrant lifted and be permitted to plead not guilty on a ticket where there was a previous failure to appear at the initial appearance;
4. Prohibit courts from requiring any defendant in custody on a Class C misdemeanor charge from having to post monetary bail to secure release;
5. Clarify that judges are required to assess a defendant’s ability to pay fines and court costs prior to assessment of those fines and court costs;
6. Provide judges the express authority to waive fines and court costs at any time if a defendant has an inability to pay those fines and costs;
7. Provide additional options for judges and defendants to satisfy court costs and fines;
8. Increase the amount of credit provided to individuals satisfying court costs and fines through community service from \$50 per 8 hours to \$100 per 8 hours;
9. Ensure that judges review non-compliance with payment of fines and court costs for willful non-compliance prior to issuance of a warrant by holding a show cause hearing to determine whether the defendant willfully did not pay the fines and costs owed in the case;
10. Ensure that defendants voluntarily seeking to reestablish compliance at a court are not arrested at the court on warrants on Class C misdemeanors issued for failure to pay fines and court costs;
11. Repeal or amend court costs and fees that are imposed on defendants due to their inability to pay fines and court costs immediately, including repealing the time payment fee (\$25), transaction fee (\$2), and the driver’s responsibility program;
12. Authorize judges to waive the omnibase fee and scofflaw program fee for defendants who have an inability to pay;
13. Limit the percentage authorized to be charged in fees by private collections companies and attorneys to no more than 15 percent of the total debt owed to the court;
14. Limit impacts of failure to pay that result in further recidivism by capping the amount of time a driver’s license can be suspended for failure to pay to 2 years;
15. Grant similar authority to municipal judges as justice court judges to issue occupational drivers’ licenses; and
16. Prohibit courts from referring cases to private collections companies prior to adjudication of guilt.

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STATE OF TEXAS

RESOLUTION

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TEXAS JUDICIAL COUNCIL

Criminal Justice Committee Recommendations

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, since the founding of our great state, Texans have recognized that individuals' liberty should not be withheld except in carefully limited circumstances; and

WHEREAS, the United States Supreme Court has found that bail should not be used as "a device for keeping persons in jail upon mere accusation until it is found convenient to give them trial;"¹ and

WHEREAS, over 41,000 individuals are currently being held in Texas jails awaiting trial; and

WHEREAS, the percentage of individuals being held in Texas jails awaiting trial has increased from 32 percent to 75 percent of the total population since 1994; and

WHEREAS, the annual cost to local governments for housing inmates pretrial amounts to almost \$1 billion; and

WHEREAS, individuals who are held in jails awaiting trial are more likely to be convicted, sentenced to longer terms of incarcerations, and pay more in court costs than individuals released from jail; and

WHEREAS, low-risk individuals who are held in jails awaiting trial for two to three days are significantly more likely to commit new crimes before trial than individuals who are quickly released from jail; and

WHEREAS, low-risk individuals who are held in jails awaiting trial between eight and fourteen days are significantly more likely to commit new crimes within two years after completion of their cases than individuals who are quickly released from jail; and

¹ Stack v. Boyle, 342 U.S. 1, 7-8 (1952)

WHEREAS, pretrial bail detention decisions made without objective information tend to produce decisions that may reflect racial disparities in the bail decision; and

WHEREAS, pretrial bail decisions have negative impacts on individuals' ability to retain employment, financial and residential stability, and support of dependent children; and

WHEREAS, Texas' current system of pretrial decision-making by magistrates:

1. Is primarily void of evidence-based pretrial risk assessment with which to determine the defendant's flight risk or risk to public safety;
2. Addresses ensuring that the defendant will appear and answer the accusation brought against him/her most often through a monetary condition of release;
3. Prohibits managing the risks of pretrial misconduct through the denial of bail. For all defendants charged with a crime, with certain few exceptions, the Texas Constitution requires a bail to be set or the defendant released;
4. Is primarily dependent upon a defendant's ability to post money bail, which, in turn, is dependent upon his/her financial resources;
5. Results in detention of poor defendants who present low risks of flight or danger to the community;
6. Results in release of more affluent defendants who present severe risks of flight or danger to the community;
7. Attempts to mitigate risk of flight or danger to the community through nonmonetary conditions of release, such as interlock devices on vehicles and "no contact" conditions, or through the setting of a high amount of monetary bail;
8. Is dependent upon the defendant's compliance with nonmonetary conditions to protect the public; and
9. Is ineffective in ensuring the defendant's compliance with nonmonetary conditions due to a lack of supervision in place to monitor the defendant's compliance with nonmonetary conditions; and

WHEREAS, in June 2015 this Council formed the Criminal Justice Committee to "assess the impact of pretrial criminal justice statutes and policies in Texas to determine if there are ways in which Texas courts can enhance public safety and social outcomes when making pretrial confinement decisions, and identify judicial policies or initiatives that could be enacted to further those goals;" and

WHEREAS, the Criminal Justice Committee has worked in conjunction with an advisory committee, composed of judges, court officials, prosecutors, defense attorneys, probation officers, pretrial services officers, judicial education providers, advocacy organizations, and research organizations, and has made recommendations for legislative changes; and

WHEREAS, the Council believes that the legislative changes will result in meaningful change in enhancing public safety and social outcomes when making pretrial confinement decisions;

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council requests that the Legislature:

1. Require defendants arrested for jailable misdemeanors and felonies to be assessed using a validated pretrial risk assessment prior to appearance before a magistrate under Article 15.17, Code of Criminal Procedure;
2. Amend the Texas Constitution bail provision and related bail statutes to provide for a presumption of pretrial release through personal bond, leaving discretion with judges to utilize all existing forms of bail;
3. Amend the Texas Constitution and enact related statutes to provide that defendants posing a high flight risk and/or high risk to community safety may be held in jail without bail pending trial after certain findings are made by a magistrate and a detention hearing is held;
4. Provide funding to ensure that pretrial supervision is available to defendants released on a pretrial release bond so that those defendants are adequately supervised;
5. Provide funding to ensure that magistrates making pretrial release decisions are adequately trained on evidence-based pretrial decision-making and appropriate supervision levels;
6. Ensure that data on pretrial release decisions is collected and maintained for further review;
7. Expressly authorize the Court of Criminal Appeals to adopt any necessary rules to implement the provisions enacted by the Legislature pursuant to these recommendations; and
8. Provide for a sufficient transition period to implement the provisions of these recommendations.

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STATE OF TEXAS

RESOLUTION

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TEXAS JUDICIAL COUNCIL

Mental Health Committee Recommendations

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, approximately 1 million Texans experience serious mental illness, with half of those adults having serious and persistent mental illnesses such as schizophrenia, bipolar disorder, major depression, and post-traumatic stress disorder;¹ and

WHEREAS, approximately 500,000 children aged 17 and younger have severe emotional disturbance;² and

WHEREAS, an estimated 1.6 million adult Texans and 181,000 children aged 12 to 17 have substance use disorders;³ and

WHEREAS, approximately 36,000 “super utilizers” live in poverty, suffer from mental illness, and frequently use jails, emergency rooms, crisis services, emergency medical services, hospitals, and other resources for short-term interventions; and

WHEREAS, these “super utilizers” cost Texas an estimated \$650 million in local justice system costs annually; and

WHEREAS, the Texas criminal justice system serves as a default provider of mental health services for many individuals and most inmates eventually return home, where the consequences of inadequate treatment capacity for mental illness play out in predictable and damaging ways for these individuals, their families, and their communities; and

WHEREAS, approximately 20- to 24-percent of the inmate population in Texas has a mental health need, and adults with untreated mental health conditions are eight times more likely to be incarcerated than the general population; and

¹ Texas Statewide Behavioral Health Strategic Plan, Fiscal Years 2017-2021, at 10 (May 2016) (Tex. Health and Human Servs. Comm’n).

² *Id.*

³ *Id. at 11.*

WHEREAS, in June 2016 this Council formed the Mental Health Committee to “examine best practices in the administration of civil and criminal justice for those suffering from or affected by mental illness, identify and review systemic approaches for diversion of individuals with mental illness from entering the criminal justice system, and make recommendations to the Judicial Council on systemic approaches for improving the administration of justice in cases involving mental health issues;” and

WHEREAS, the Mental Health Committee has worked in conjunction with an advisory committee, composed of judges, local mental health officials, mental health providers, and advocacy group representatives, and has made recommendations for legislative changes; and

WHEREAS, the Council believes that the legislative changes will result in meaningful change in identifying and improving the systemic approaches to dealing with individuals with mental illness involved in the justice system;

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council requests that the Legislature:

- 1) Improve transmission of mental health screening information to magistrates under Code of Criminal Procedure Article 16.22;
- 2) Evaluate the effectiveness of Article 16.22 - compliance, timing requirements, the feasibility of standardized forms, the fiscal impact on smaller communities of screening requirements, and the effectiveness of statewide reporting;
- 3) Evaluate amendments to Code of Criminal Procedure Article 17.032 to increase flexibility regarding bond availability and conditions for mentally ill, non-violent defendants;
- 4) Reevaluate whether persons charged with non-violent, misdemeanor offenses should be committed to a state mental health facility for competency restoration;
- 5) Clarify existing law to provide local communities with the authority to offer competency restoration and maintenance in any safe and clinically appropriate setting that meets appropriate standards and broaden judicial discretion in choosing the best use of local competency restoration options, across appropriate settings, to help reduce backlogs in county jails and state hospitals;
- 6) Simplify the procedure for reimbursing counties for a restored inmate’s medication and studying the resources necessary to address this population’s medication needs adequately;
- 7) Address the effects of trial delays after competency restoration has occurred;
- 8) Shift the legal education component of competency restoration to an appropriate non-medical environment after psychiatric stabilization has been achieved; and
- 9) Continue and expand the SB 1185 jail diversion pilot program if it is shown to be effective based upon the upcoming evaluation

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STATE OF TEXAS

RESOLUTION

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TEXAS JUDICIAL COUNCIL

Court Security Committee Recommendations

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, in 2006 this Council passed a resolution calling for statutory changes that would improve the security environment for courts and judges and referring to, among other things, a high number of security incidents in Texas's courts, and security deficiencies in Texas's courthouses and courtrooms; and

WHEREAS, the 2006 resolution recommended increased training on security matters, more and better data regarding security incidents around the state, the protection of judges' personal information by exempting it from disclosure, and the hiring of an individual to work in the Office of Court Administration to assist courts in addressing security issues; and

WHEREAS, ten years later, in conducting its review of court security issues, the Court Security Committee has found that these conditions persist and that the proposed remedies, were not fully acted on and still have relevance; and

WHEREAS, after the November 2015 shooting of Travis County District Judge Julie Kocurek, the Office of Court Administration surveyed judges across the state, revealing significant concerns regarding court security; and

WHEREAS, the Court Security Committee has found:

- There is a lack of uniformity or best practices readily available to or used by court staff or law enforcement personnel responsible for court security.
- There is a lack of communication between and among judges, court staff, and law enforcement regarding court security best practices.
- There is a lack of training for judges, court personnel and security personnel on court security.
- There is a lack of reliable and useful data on court security incidents in the state.
- There is no individual at the state level dedicated to judicial branch security issues with whom judges, county/city officials, and state and local law enforcement officials can engage on the wide range of court security issues confronting courts today.
- There is a lack of ongoing planning occurring in counties and cities dedicated to identifying and sustaining court security improvements.
- There is a lack of funding in many counties and cities for incorporating desired court security improvements.

- It is difficult for judges, as appropriate, to conceal their identity for the purpose of protecting their safety and that of their families, including delisting their personal addresses and contact information from publicly searchable databases.

WHEREAS, in February 2016 this Council formed the Court Security Committee to “assess the status of court security in the state to ensure that the Texas courts remain a safe and open place for individuals to access justice to appropriately resolve their disputes and for judges and court personnel to administer justice, and identify statutes, funding sources, judicial policies or initiatives that could be enacted to further those goals;” and

WHEREAS, the Court Security Committee has studied these issues and has made recommendations for legislative changes; and

WHEREAS, the Council believes that the legislative changes will result in meaningful change to improve court security in our state to ensure that the Texas courts remain a safe and open place for individuals to access justice;

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council requests that the Legislature:

1. Establish the position of Director of Security and Emergency Preparedness at the Office of Court Administration to assist judges and county officials in addressing court security needs;
2. Amend Sections 30.00007 (municipal courts of record) and 74.092 (local administrative district judges) and add a provision to Chapter 29 (municipal courts – not of record) of the Texas Government Code to require Municipal Judges (MJ) and Local Administrative Judges (LADJ) to establish a court security committee chaired by the MJ/LADJ or his or her designee, and require that the committee include both the entity with primary responsibility for providing court security and a representative of the county/city/funding authority;
3. Repeal or amend the reporting requirement of Art. 102.017(f), Code of Criminal Procedure, to promote greater reliability and utility of the security-related information reported;
4. Require all individuals providing court security to be appropriately certified in specialized court security;
5. Increase funding for courthouse security available to counties/cities by appropriating sufficient general revenue funds to cover essential security needs;
6. Consider amending statutes impacting a judge’s personal security as follows:
 - Allow judges to delist addresses to make delisting of personal information, including judge/spouse telephone numbers, from all public records automatic upon qualification for office;
 - Allow spouses to be included in delisting on appraisal records, including county deed records;
 - Authorize the retroactive and prospective removal of personal addresses from Texas Ethics Commission online searches;
 - Provide for penalties, as appropriate, to apply in situations in which a judge’s personal information is released; and
7. Consider authorizing and, if necessary, providing resources to DPS to provide personal security to threatened or attacked judges, at the discretion of DPS when a threat or attack is deemed credible.

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STATE OF TEXAS

RESOLUTION

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Elders Committee Recommendations

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, the population of Texans over 65 years of age is estimated at 3.2 million individuals¹ and is expected to more than double in the next 15 years²; and

WHEREAS, over 750,000 Texans have an intellectual disability, many of whom are individuals with a guardian³; and

WHEREAS, an increasing number of persons, both young and old, with diminished capacity require the protection of the courts; and

WHEREAS, in June 2013 this Council formed the Elders Committee to “assess the ways in which the Texas courts interact with the elderly, including guardianship, probate, elder abuse and other proceedings, and identify judicial policies or initiatives that could be enacted to protect the quality of life” for the elderly and individuals with intellectual disabilities; and

WHEREAS, the Council’s 2013 Elders Committee recommendations were adopted by this Council and most were approved by the Legislature, and those recommendations have received praise statewide and nationwide; and

WHEREAS, the only recommendation of the 2013 Elders Committee that was not enacted by the 84th Legislature was the recommendation for the creation of a statewide public guardianship office, a recommendation made consistently by various groups who have studied guardianship in Texas since at least 1992; and

WHEREAS, the Council has worked in conjunction with the Texas Working Interdisciplinary Network of Guardianship Stakeholders, composed of judges, advocacy group

¹ *Quick Facts: Texas*. United States Census Bureau. Last accessed at <http://www.census.gov/quickfacts/table/PST045215/48> on October 14, 2016.

² *Aging in Texas: Introduction*. Texas Demographic Center. (2016)

³ Know the Facts on Intellectual and Developmental Disabilities in Texas. The Arc of Texas. (2013)

representatives, and state agencies representatives, and has made recommendations for legislative, rules and policy changes that will further protect our most vulnerable citizens; and

WHEREAS, the Council believes that the legislative changes will result in meaningful change in protecting and improving the quality of life for the elderly and incapacitated;

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council requests that the Legislature:

- 1) Expand the Office of Court Administration Guardianship Compliance Pilot Project statewide;
- 2) Mandate that all guardians not currently required to be certified to register with the Judicial Branch Certification Commission;
- 3) Expand the Judicial Branch Certification Commission's authority to regulate guardianship programs;
- 4) Authorize the creation of a statewide guardianship registry that is available for query by certain individuals, including law enforcement;
- 5) Establish a statewide public guardianship office; and
- 6) Establish regional specialized guardianship courts.

Honorable Nathan L. Hecht
Chair, Texas Judicial Council

Contact: David Slayton
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STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Consolidation of Civil Filing Fees and Standardization of Service Fees

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, a 2014 study by the Office of Court Administration found 221 separate fees associated with filing a civil case or requesting services in a civil case; and

WHEREAS, effective January 2016, there were 41 separate civil filing fees spread across 8 categories, some required and some optional; and

WHEREAS, administering this complex system of civil filing fees is confusing to litigants and to the clerks responsible for collecting the appropriate fees; and

WHEREAS, the fees charged in civil cases for services provided by the clerk are not uniform between the district courts and county courts, including fees like the issuance of a citation (\$8 in the district court and \$4 in the county court) and an abstract of judgment (\$8 in the district court and \$5 in the county court), and

WHEREAS, the cost of performing these services is similar in the offices of the district clerk and county clerk; and

WHEREAS, current statutes for providing non-certified copies of court documents to the public have not been amended to consider providing electronic copies of documents to the public and are set by statute at “not to exceed \$1 per page” in the district court and “\$1 per page” in the county court; and

WHEREAS, the cost to provide non-certified electronic copies of court documents is not as large as the cost to provide paper copies; and

WHEREAS, there is a need for uniformity in the cost of non-certified electronic copies of court documents in the state.

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council urges the Legislature to:

1. Consolidate civil filing fees to reduce the complexity of the filing fee structure;
2. Standardize the fees for services provided by the clerk of the district court and county court; and
3. Amend the statutes for provision of non-certified copies to add provisions for the cost of providing these documents in an electronic format.

Honorable Nathan L. Hecht
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STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Repeal of Statutes Requiring Sensitive Data

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, Texans ranks 5th in the nation in the number of reported identity theft cases, with more than 25,000 Texans reporting being victims of identity theft each year; and

WHEREAS, thousands more Texans may be unaware that their information and bank accounts have been targeted; and

WHEREAS, the Supreme Court of Texas and Court of Criminal Appeals have recognized this threat and taken action to reduce the amount of information in court documents containing sensitive data that could be used for identity theft by prohibiting documents from containing this information unless “required by a statute, court rule, or administrative regulation”;¹

WHEREAS, many statutes require the inclusion of sensitive data in court documents, including social security numbers, dates of birth, driver’s license numbers, tax identification numbers, bank account numbers, credit card numbers, other financial account numbers, names of minors, and names of victims; and

WHEREAS, the Judicial Council believes that sensitive data should not required to be included in court documents, or where necessary, that the information should be shielded from public inspection by inclusion in a separately sealed document.

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council urges the Legislature to repeal the provisions in statute that require sensitive data to be included in court documents, or where that information is necessary, require that sensitive data be filed in a separately sealed document.

Honorable Nathan L. Hecht
Chair, Texas Judicial Council

¹ Rule 21c, Texas Rules of Civil Procedure; Rule 9.9 and 9.10, Texas Rules of Appellate Procedure; Rule 5, Statewide Rules governing Electronic Filing in Criminal Cases.

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STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

In Support of the Recommendations of the Timothy Cole Exoneration Review Commission

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, Timothy Cole was convicted of rape in 1986 and sentenced to 25 years in prison for a crime he did not commit; and

WHEREAS, Timothy Cole died in prison in 1999 of asthma complications while serving his sentence for rape; and

WHEREAS, Timothy Cole was posthumously exonerated in 2009 through DNA evidence and was pardoned by the governor in 2010; and

WHEREAS, there have been over 150 exonerations of individuals convicted in Texas of crimes of which they did not commit; and

WHEREAS, the 84th Legislature established the Timothy Cole Exoneration Review Commission and placed it under the Texas Judicial Council; and

WHEREAS, the Commission was charged to “review cases in the State of Texas in which an innocent defendant was convicted of a crime and then, on or after January 1, 2010, was exonerated; consider potential implementation plans, costs, cost savings, and the impact on the criminal justice system for each potential solution identified through the work of the commission; and review and update the research, report, and recommendations of the Timothy Cole Advisory Panel on Wrongful Convictions established by the 81st Legislature;” and

WHEREAS, the Commission has studied the reasons for exonerations in Texas since 2010 and has made recommendations to improve the criminal justice system to prevent wrongful convictions; and

WHEREAS, the Commission is expected to make final recommendations to:

1. Electronically record interrogations in felony cases;
2. Institute regulations on jailhouse informant testimony;
3. Improve procedures associated with eyewitness identifications; and

4. Improve drug testing protocols for field tests and crime lab tests.

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council supports the recommendations of the Timothy Cole Exoneration Review Commission and urges the Legislature to approve the recommendations.

Honorable Nathan L. Hecht
Chair, Texas Judicial Council

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STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Jury Wheel Reconstitution Revisions

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, the Secretary of State is the chief election officer for the State of Texas, and, through its Elections Division, reconstitutes jury wheels for all 254 counties on an annual or multiyear basis and provides a jury management tool for 117 counties to manage jurors and jury selection; and

WHEREAS, the Secretary of State has convened a working group of interested officials to examine improvements to the jury wheel reconstitution provisions; and

WHEREAS, Chapter 62 of the Government Code sets forth the law regarding use of the jury wheel and jury service; and

WHEREAS, several amendments to Chapter 62 of the Government Code are necessary to achieve uniformity with the Election Code, to comply with federal legislation, to clarify the use of a single source for jury wheel reconstitutions, to provide more accurate jury information and lists, to require a single, updated jury plan for counties using alternative methods of jury selection, and to update language when it comes to the flow of information to counties to reflect current practices.

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council supports the Secretary of State's request for following amendments to the Government Code:

- Amend Section 62.001(a) to achieve uniformity with the Election Code and materials generated by the Secretary of State by striking the word "citizens" and replacing it with the word "residents";
- Amend Section 62.001(a), (c), and (e) in order to comply with the Help America Vote Act's (HAVA) mandate that the official list of registered voters be maintained in a state voter registration system rather than requiring counties to submit separate voter registration lists to the Secretary of State in order to reconstitute their jury wheels;
- Amend Section 62.001(d) and (e) should be amended to require counties to exclude the names of persons on a suspense list maintained under Section 15.081 of the Election Code for registered voters with potential address issues;

- Amend Section 62.001(g) to reflect the current method that information is provided to the counties by the Secretary of State, namely, through electronic means;
- Amend Section 62.011 to require counties to file their respective jury plan, if any, with the Office of Court Administration, and to update the filing if the plan is modified;
- Amend Sections 62.113 and 62.114 to require clerks of the court to submit their respective list of noncitizens, required under Section 62.113, and list of nonresidents, required under Section 62.114, separately to the county voter registrar, in order to avoid confusion or, in the alternative, amend the sections to require clerks of the court to clearly identify the nature of the exclusion or disqualification for each person listed on a single combined list; and
- Amend Section 62.113 to require counties to submit their respective list of noncitizens to the Secretary of State in an electronic format prescribed by the Secretary of State, in order to facilitate the comparison of information on the statewide voter registration list.

Honorable Nathan L. Hecht
Chair, Texas Judicial Council

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STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Filing of Oaths and Statements of Officer for Judicial Appointees

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, Article 16, Section 1 of the Texas Constitution requires that all elected and appointed officers taken an oath of office and subscribe to an anti-bribery statement prior to taking the oath; and

WHEREAS, there are several appointed officers within the judicial branch who are appointed to state positions, including commissioners of the State Commission on Judicial Conduct and the Judicial Branch Certification Commission, as well as associate judges of the child support and child protection courts established under Subchapter B and C, Chapter 201 of the Texas Family Code; and

WHEREAS, it is important that the oaths of office for judicial branch state appointed officials be available for public inspection; and

WHEREAS, there is a lack of clarity as to where the oaths of office for these appointed officials should be filed; and

WHEREAS, the Judicial Council believes that the oaths of office for judicial branch state appointed officials should be filed with the Texas Secretary of State.

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council requests that the Legislature clarify that oaths of office and anti-bribery statements for state officials appointed by the Supreme Court, Court of Criminal Appeals or State Bar of Texas, as well as associate judges appointed under Subchapter B and C, Chapter 201 of the Texas Family Code, should be filed with the Texas Secretary of State.

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