

# Proposed Texas Judicial Council Legislative Resolutions – 84<sup>th</sup> Legislative Session

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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.”<sup>1</sup> 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.”<sup>2</sup> To receive this advice, Chief Justice Nathan Hecht requested that numerous entities provide their legislative proposals to the Council for consideration at its August 22<sup>nd</sup> meeting. While many of the proposals that were received have substantial merit, the Council narrowed the proposals to those with significant policy implications in the administration of justice pursuant to the Council’s charge. At the August 22<sup>nd</sup> meeting, the Council endorsed the concepts below<sup>3</sup> and requested staff to prepare draft resolution for consideration at the November 14<sup>th</sup> meeting:

1. A resolution advocating for adequate funding of the courts.
2. A resolution supporting adequate resources for counties for electronic filing.
3. A resolution encouraging additional funding by the state for the increased cost of indigent defense since the passage of the Fair Defense Act.
4. A resolution in support of adequate funding for civil legal aid in Texas.
5. A resolution supporting the Judicial Compensation Commission recommendations.
6. A resolution supporting judicial selection reform.
7. A resolution supporting the Elders Committee recommendations.
8. A resolution supporting the Juvenile Justice Committee’s recommendations (TBD – i.e. failure to attend school as juvenile offense in Justice and Municipal Courts).
9. A resolution encouraging revision of the statutes that mandate a pre-technology process in a technology-driven court system (i.e. paper notices required to be mailed by first class mail, etc).
10. A resolution supporting broadening the statutory eligibility requirements of specialty courts (i.e. drug courts, veterans’ courts, etc) and other recommendations related to veterans’ courts.
11. A resolution supporting clarification of the law regarding assessment of court costs on multiple counts.

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<sup>1</sup> Texas Government Code 71.031

<sup>2</sup> Texas Government Code 71.032

<sup>3</sup> Due to complications affecting to standardize court cost and filings fees for same functions/processes within clerks’ offices, the County and District Clerks Association, who submitted this proposal, have requested that this proposal be removed from consideration at this time to allow them more time to develop a concrete proposal for Council and legislative consideration.

**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,”<sup>1</sup> 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 2014-15 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;

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<sup>1</sup> 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) Strengthen judicial services to families, including direct legal assistance for veterans, new child protection courts and staff, and enhanced judicial services to the elderly and incapacitated;
- (3) Retain and recruit knowledgeable and dedicated employees through targeted salary increases at the courts and judicial branch agencies;
- (4) Bring judicial technology into the 21<sup>st</sup> century by providing grants to counties to implement E-Filing and replacing legacy judicial branch technology; and
- (5) Adequately fund criminal indigent defense, including the Regional Capital Public Defender's Office.

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Honorable Nathan L. Hecht  
Chair, Texas Judicial Council

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**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Adequate Funding of the Court E-Filing System**

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 Supreme Court of Texas mandated court electronic filing (e-Filing) in civil cases in the district courts, statutory county courts, constitutional county courts and statutory probate courts in December 2012; and

WHEREAS, the e-Filing mandate first took effect on January 1, 2014, for the Supreme Court of Texas, the Court of Criminal Appeals, the intermediate appellate courts and courts in counties with a population of 500,000 or more; and

WHEREAS, the e-Filing mandate took effect on July 1, 2014, for courts in counties with a population of 200,000 or more; and

WHEREAS, mandatory e-Filing will be phased in for all courts based on population, with the smallest counties becoming mandatory on July 1, 2016; and

WHEREAS, 225 district and county clerks' offices in 109 counties covering over 93% of the state's population now provide for e-Filing in their jurisdictions; and

WHEREAS, the full implementation of e-Filing in the courts will result in greater efficiency for attorneys, litigants, clerks and the courts; and

WHEREAS, some counties in the state lack the technology resources to allow the county to take full advantage of the e-Filing system; and

WHEREAS, one-time grant funding to counties without adequate technology resources will enable the counties to see the full advantages from e-Filing, saving the courts, counties and taxpayers considerable dollars.

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

- (1) provide adequate funding for E-Filing, as requested by the Office of Court Administration in its Legislative Appropriations Request;

- (2) provide funding to allow the Office of Court Administration to procure an automated case management system for counties under 20,000 without means to do so; and
- (3) provide grant funds to counties across Texas to implement mandatory e-Filing, primarily to less populous counties who are required to fully implement e-Filing between January and July 2016.

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Honorable Nathan L. Hecht  
Chair, Texas Judicial Council

Contact: David Slayton  
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**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Additional State Funding for Indigent Defense**

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

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 both the Texas Constitution and the United States Constitution; 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, the overwhelming share of the increased indigent defense costs since the passage of *Fair Defense Act of 2001* has fallen largely upon counties; and,

WHEREAS, the overall costs expended by counties has increased by almost 140 percent; and,

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

WHEREAS, the Regional Public Defender Office for Capital Cases was created in 2009 by Lubbock County with a grant from the Commission to serve indigent defendants in capital cases in counties with less than 300,000 population; and,

WHEREAS, the Regional Public Defender Office for Capital Cases provides high quality and cost effective representation to defendants in capital murder cases; and,

WHEREAS, the Regional Public Defender Office for Capital Cases provides budget predictability for participating counties to protect against the dramatic impact a capital case can have on county budgets; and,

WHEREAS, the rural counties in Texas struggle financially to comply with the requirements of the Fair Defense Act; and,

WHEREAS, a dearth of qualified attorneys in rural counties aggravates the challenge posed to provide competent representation in serious cases in rural counties; and,

WHEREAS, the Commission provided a 2011 discretionary grant to Bell County to develop an electronic process management tool that helps the county administer its indigent defense system and monitor key data regarding compliance with the requirements of state law and local rules;

WHEREAS, the Commission awarded a 2014 discretionary grant to work with the Texas Conference of Urban Counties' TechShare program to further develop this system and make it available to more counties; and,

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

- 1) Support the statewide Regional Public Defender Office for Capital Cases by providing \$3.1 million annually from General Revenue to continue the development of and provide ongoing support to the program; and,
- 2) Support the multi-county indigent defense technology grant program by providing \$1.5 million annually from General Revenue to continue the development and expansion of the multi-county indigent defense technology grant program to more counties; and,
- 3) Close the Fair Defense Act funding gap by providing \$98.4 million annually from General Revenue to defray the unfunded increased costs associated with the passage of the *Fair Defense Act of 2001*.
- 4) Provide General Revenue to support regional public defender offices in rural counties operated by non-profit legal services corporations.

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Honorable Nathan Hecht  
Chief Justice, Supreme Court of Texas  
Chairman, Texas Judicial Council

**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 5.6 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 million in 2014, an 80 percent loss in funding since 2007; and

WHEREAS, Texas ranks 50<sup>th</sup> in access to legal aid lawyers, with approximately one legal aid lawyer for every 11,000 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.

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Honorable Nathan L. Hecht  
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**STATE OF TEXAS**

**RESOLUTION**

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**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 80<sup>th</sup> 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 83<sup>rd</sup> 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 84<sup>th</sup> Legislature;

WHEREAS, the salary of Texas judges ranks 18<sup>th</sup> in the nation when compared with the salary of other 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 provide funding to increase state judicial compensation to the levels recommended by the Commission.

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**STATE OF TEXAS**

**RESOLUTION**

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**TEXAS JUDICIAL COUNCIL**

**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 to more than double in the next 25 years<sup>1</sup>; 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 or improve the quality of life for the elderly in Texas;” and

WHEREAS, the Elders Committee has worked in conjunction with the Texas Working Interdisciplinary Network of Guardianship Stakeholders, composed of judges, advocacy group representatives and state agencies, and has made recommendations for legislative changes that will address some of the issues involved with the protection of our most vulnerable citizens; and

WHEREAS, the Council believes that these 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 recommends that the Texas Legislature should:

- 1) Strengthen guardianship alternatives and improve guardianships by:
  - a) recognizing supported decision-making agreements, a less restrictive alternative to guardianship for adults with a disability who need assistance with decisions regarding daily living but who do not wish to delegate authority over those decisions to an agent;
  - b) requiring that a court make a finding that no less restrictive alternatives exist to resolve the need for a guardianship deny the appointment of a guardian is a preexisting guardianship alternative meets the need of an adult who is the subject of

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<sup>1</sup> Population Projections for the State of Texas by Age Group for 2010-2050, Texas State Data Center.

- a guardianship proceeding; and the court shall consider terminating or modifying a guardianship if a guardianship alternative meets the need of the adult;
- c) requiring that the court find by clear and convincing evidence that alternatives to guardianship that would avoid the need for appointment of a guardian have been explored and determined not to be feasible;
  - d) requiring that the applicant or applicant's attorney certify to the court that the guardianship is necessary and alternatives to guardianship have been explored;
  - e) defining supports and services and considering those resources in determining the need for a guardianship and the limits of power or authority of a guardian over an incapacitated person;
  - f) requiring that the physician examination letter or certificate state whether improvement in the proposed ward's condition is possible and, if so, state the period of time after which the individual should be re-evaluated to determine if the guardianship is necessary;
  - g) requiring that the court consider the ward's right to make personal decisions about residence;
  - h) requiring the court to consider the adult's preference of the person to be appointed guardian by the court;
  - i) requiring that the applicant's attorney be certified by the State Bar of Texas as having successfully completed a course of study in guardianship law and procedure and by increasing the certification from three to four hours, with one hour of that training on alternatives to guardianship and supports and services available to proposed wards; and
  - j) requiring court approval before a guardian places a ward in a more restrictive care facility;
- 2) Create a statewide guardian of last resort; and
  - 3) Fund the Office of Court Administration's legislative appropriations request exceptional item entitled "enhance judicial services to the elderly and incapacitated."

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**STATE OF TEXAS**

**RESOLUTION**

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**TEXAS JUDICIAL COUNCIL**

**Decriminalizing Failure to Attend School**

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, students who violate the compulsory school attendance laws in Texas are prosecuted for either truancy in the juvenile courts or for failure to attend school in the justice and municipal courts; and

WHEREAS, very few truancy cases are filed in the juvenile courts; and

WHEREAS, the number of failure to attend school cases filed in Fiscal Year 2014 in the justice and municipal courts exceeded 65,000 cases, more than the number of cases filed for this offense in all other states combined;

WHEREAS, Texas law currently mandates schools to refer students to the courts if the student fails to attend ten or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period, regardless of whether the school is engaging in prevention and intervention services with the student; and

WHEREAS, students convicted of failure to attend school are subjected to criminal penalties, including criminal histories, courts costs and potential fines; and

WHEREAS, studies have consistently shown that youth involvement in the criminal justice system can have lifelong consequences for future criminality; and

WHEREAS, addressing failure to attend school with prevention and intervention measures is likely to have more positive outcomes on future student conduct.

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

- 1) Decriminalize failure to attend school;
- 2) Relax statutory provisions that require schools to refer failure to attend and truancy cases to the courts if the schools are engaged in prevention and intervention with students;

- 3) Ensure schools have access to adequate resources and incentives to provide prevention and intervention services to at-risk children engaged in failure to attend school; and
- 4) Equip justice and municipal courts with access to adequate resources to provide prevention and intervention services to children referred to the court for failure to attend school.

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**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Statutory Revisions of Statutes to Contemplate Court Technology**

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 Judiciary has made use of technology to become more efficient and allowing better service to court users; and

WHEREAS, over 93% of Texans now have access to electronic filing in Texas state courts and those courts will receive almost 4 million documents electronically during 2014; and

WHEREAS, courts and clerks now have the ability to provide electronic notices to individuals registered in the electronic filing system, saving taxpayers money and providing a more efficient way of distributing information to court users; and

WHEREAS, several existing statutes contemplate a pre-technology environment and mandate a paper-based approach to provide notices and information to court users, inhibiting courts and clerks from utilizing the more efficient technology resources;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council recommends that the Texas Legislature amend existing statutes to provide courts and clerks with the option of utilizing technology to deliver notices and other information to court users.

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Chief Justice, Supreme Court of Texas  
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**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Eligibility for Specialty Courts**

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, there are 165 specialty courts in Texas, operating as drug courts, DWI courts, veterans courts, family drug treatment courts and similar programs; and

WHEREAS, national research has consistently shown that treating drug-involved offenders in the intensive specialty court format results in much better outcomes than other traditional forms of rehabilitation or punishment; and

WHEREAS, national best practice standards indicate that when using proper screening and assessment tools, specialty courts can be very effective in meeting the treatment needs of high-risk and high-need offenders<sup>1</sup> without compromising public safety; and

WHEREAS, Texas law currently prohibits drug courts and DWI courts from admitting individuals arrested for, charged with, or convicted of certain violent offenses<sup>2</sup>; and

WHEREAS, individuals arrested for, charged with, or convicted of certain violent offenses are eligible for other less-intensive forms of community supervision and could benefit from the intensive specialty court format; and

WHEREAS, other types of specialty courts are able to admit individuals arrested for, charged with, or convicted of certain violent offenses<sup>3</sup>; and

WHEREAS, Texas law currently limits participation in a veterans court to individuals serving in a combat zone or other similar hazardous duty area<sup>4</sup>; and

WHEREAS, appropriate measures to protect the public and serve the public interest could be put into place to allow the participation of violent offenders and veterans who did not serve in a combat zone or other similar hazardous duty area; and

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<sup>1</sup> Adult Drug Court Best Practices Standards, Volume I. (2013). *National Association of Drug Court Professionals*.

<sup>2</sup> Government Code §§ 123.002(1)(B); 123.002(2)(B)

<sup>3</sup> Government Code §§ 122.002; 124.002(a); 125.002

<sup>4</sup> Government Code § 124.002(a)(2)(A)

WHEREAS, the Council believes that specialty courts should be an option, when appropriate, for violent offenders and those who did not serve in a combat zone or other similar hazardous duty area.

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

- 1) Remove the prohibition for admitting violent offenders to drug courts and DWI courts, subject to certain provisions to protect the public and serve the public interest; and
- 2) Expand the eligibility criteria for veterans courts to include veterans who did not serve in a combat zone or other hazard duty area.

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Honorable Nathan L. Hecht  
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**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Assessment of Court Costs in Multiple-Count Criminal Actions**

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, criminal defendants are often convicted of multiple counts of an offense or offenses in a single criminal action; and

WHEREAS, the Texas Attorney General recently addressed the assessment of criminal court costs in such multiple-count criminal actions (Att’y Gen. Op. No. GA-1063 (2014)); and

WHEREAS, the attorney general suggested that costs not based on the performance of a particular service should be assessed on each count; and

WHEREAS, criminal court costs are “a nonpunitive recoupment of the costs of judicial resources expended in connection with the trial of [a] case” (*Weir v. State*, 278 S.W.3d 364, 366-67 (Tex. Crim. App. 2009)); and

WHEREAS, the assessment of court costs on each count is unnecessary to recoup the costs of judicial resources expended in connection with the trial of the case;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council requests the Texas Legislature to establish that court costs be assessed only once multi-count criminal actions.

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