

Senate Committee on Jurisprudence

Interim Report to the 78th Legislature

November 2002

SENATE COMMITTEE ON JURISPRUDENCE

77TH LEGISLATURE

SENATOR ROYCE WEST
Chairman



SENATOR DAVID BERNSEN
Vice Chair
SENATOR J.E. "BUSTER" BROWN
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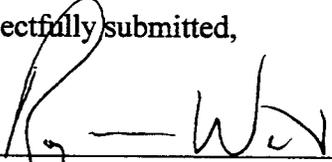
October 23, 2002

The Honorable Bill Ratliff
Lieutenant Governor of the State of Texas
Capitol, Room 3S-05
Austin, Texas 78701

Dear Governor Ratliff:

The Senate Committee on Jurisprudence submits its interim report for consideration by the Seventy-Eighth Legislature.

Respectfully submitted,



Royce West, Chairman



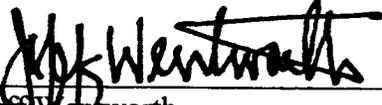
David Bernsen, Vice Chairman



Rodney Ellis



Robert Duncan



Jeff Wentworth



Mike Jackson



Interim Charges

The Committee shall:

1. Study the effectiveness of the progressive sanction guidelines for juvenile offenders. Determine whether the guidelines established by H.B. 327, 74th Legislature, are bringing consistency, uniformity, and predictability to juvenile dispositions in an effort to facilitate juvenile justice planning and improve the allocation of resources within the juvenile justice system. The Committee shall make recommendations for improving the effectiveness of juvenile sanctions in protecting public safety and rehabilitating offenders.
2. Study the judicial system's revenue structure and make recommendations for improving the collection, dispersal, and accounting of court costs, fees, and fines by state and local entities. This study should include a review of all court costs and fees (except those related to the Crime Victim's Compensation Fund) to ensure that they are necessary and are adequately fulfilling their intended purpose.
3. Study and make recommendations for reapportionment of judicial districts pursuant to Article V, Section 7a, Texas Constitution.
4. Study and make recommendations for improving the structure of the state's trial court system, including, but not limited to: improving the quality, cost-effectiveness, and uniformity of the visiting judge program; devising objective criteria to be used by the Legislature to determine when and where additional trial courts should be created; and clarifying jurisdictional conflicts between courts.
5. Monitor the implementation of SB 1074, 77th Legislature, relating to the prevention of racial profiling by certain peace officers.

Reports

The Committee shall submit copies of its final report as soon as possible, but no later than November 15, 2002. This date will allow the findings of the Committee to be considered when the Legislative Budget Board is developing performance and budget recommendations to the 78th Legislature. Copies of the final report should be sent to the Lieutenant Governor, Secretary of the Senate, Legislative Council, and Legislative Reference Library.

The final report of the Committee should be approved by a majority of the voting members of the Committee and include any recommended statutory changes. Draft legislation containing recommended statutory changes should be attached to the report. Recommended agency rule changes should also be attached to the report.

Budget and Staff

The Committee shall use its existing staff and utilize the budget approved by the Senate Committee on Administration. Where appropriate, the Committee should obtain assistance from the Senate Research Center and legislative agencies, including the Legislative Budget Board, the Legislative Council, and the State Auditor. The Committee should also seek the assistance of appropriate Executive Branch agencies with responsibilities in the areas related to the Committee's interim charges.

Interim Appointments

Pursuant to Section 301.041, Government Code, it may be necessary to change the membership of a committee if a member is not returning to the Legislature in 2003. This will ensure that the work of interim committees is carried forward into the 78th Legislative Session.

Hearings by the Senate Committee on Jurisprudence

Date	Location	Charge
November 5, 2001	Austin Capital Extension, E1.012	Organizational Meeting Invited and Public Testimony
January 24, 2002	Austin Capitol Extension, E1.028	Charges 2 & 5 Invited and Public Testimony
February 21, 2002	Austin Capitol Extension, E1.012	Charge 3 Invited and Public Testimony
March 27, 2002	Austin Capitol Extension, E1.036	Charge 4 Invited and Public Testimony
April 25, 2002	Houston Burnett-Bayland Home Harris County Juvenile Probation Facility	Charge 1 Invited and Public Testimony

Acknowledgments

The Committee Chairman would like to acknowledge the efforts of the Committee members for their work on the broad scope of the Committee charges, particularly in the area of judicial reapportionment.

The Committee Chairman would also like to acknowledge the valuable assistance and expertise of the following individuals provided on each of the Committee's charges: Chief Justice Phillips of the Texas Supreme Court, the presiding judges of the nine administrative judicial regions, including Judge John Ovard, Judge Olen Underwood, Judge B.B. Schraub, Judge David Peeples, Judge Darrell Hester, Judge Stephen Ables, Judge Dean Rucker, Judge Jeff Walker, and Judge Kelly Moore; Judge Lamar McCorkle, Alan Ware and Kelley Hosek of the Texas Legislative Council, Professor Robert Dawson of the University of Texas School of Law, Mary Cowherd and Rene Henry of the Office of Court Administration, Elizabeth Kilgo of the Texas Judicial Council, Verma Elliott and Dan Wattles of the Texas State Auditor's Office, Chief Elmer Bailey and the Harris County Juvenile Probation Department, Vicki Spriggs of the Texas Juvenile Probation Commission, Tony Fabelo of the Criminal Justice Policy Council, Mary Hawkins and Rod Dietz of the Office of the State Comptroller, and the numerous district judges across the state who participated in the Committee's redistricting survey and participated in the regional meetings held this summer.

The Committee would also like to thank everyone who took the time to testify, submitted written reports and other information, or otherwise assisted the Committee in completing the interim study.

Executive Summary of Recommendations

Executive Summary of Recommendations

Charge #1

Study the effectiveness of the progressive sanction guidelines for juvenile offenders. Determine whether the guidelines established by H.B. 327, 74th Legislature, are bringing consistency, uniformity, and predictability to juvenile dispositions in an effort to facilitate juvenile justice planning and improve the allocation of resources within the juvenile justice system. The Committee shall make recommendations for improving the effectiveness of juvenile sanctions in protecting public safety and rehabilitating offenders.

1. The Legislature should require the Texas Juvenile Probation Commission (TJPC) to provide additional training to juvenile probation officers and other key personnel regarding how the guidelines should be applied, what the Legislature considers to constitute a deviation from the guidelines, and how to accurately and comprehensively report deviations when they occur.
2. The Legislature should enable TJPC to improve its reporting software used by courts and probation departments, and require the Criminal Justice Policy Council (CJPC) to report data on every county on its sanction levels and report that information to the Legislature as currently required by statute. This will provide the Legislature with more detailed information on deviations from the guidelines.
3. The Legislature should review funding currently appropriated for programming at Levels 1, 2 and 3 of the progressive sanctions guidelines to determine if the purpose of the funding is being met and whether counties should be required to meet specified levels of compliance in order to qualify for funding.

Charge #2

Study the judicial system's revenue structure and make recommendations for improving the collection, dispersal, and accounting of court costs, fees, and fines by state and local entities. This study should include a review of all court costs and fees (except those related to the Crime Victim's Compensation Fund) to ensure that they are necessary and are adequately fulfilling their intended purpose.

1. The Legislature should create a new chapter in the Texas Government Code solely for court costs, fees and fines. All existing authority that creates or provides for the administration of court costs, fees, and fines should be re-designated to the new chapter. Additionally, any

legislation concerning the creation of court costs, fees and fines should be considered by only one legislative committee in each house of the Texas Legislature.

2. The Legislature should consolidate the collection and remittance of the five remaining criminal court costs and fees not covered in the 1997 consolidation legislation in addition to new costs and fees adopted by the Legislature after 1997. The Legislature should make reporting dates for all civil fees consistent to simplify reporting efforts of municipalities and counties.
3. The Legislature should direct the Office of the State Comptroller to submit a cost estimate and proposal for the routine monitoring and reporting of data on costs and fees collected by municipalities and counties, to ensure that the State has complete information on the source of funds being collected by all courts, that each municipality and county is reporting in compliance with statute, and that money is correctly being allocated to the appropriate funds.
4. The Legislature should enact legislation that provides a clear and uniform definition of “court cost,” “fee” and “fine.”
5. The Legislature should subject all funds in which court costs, fees and fines are deposited to the Sunset review process to determine which of those funds continue to be necessary and capable of fulfilling their intended purpose.
6. The Legislature should designate a purpose for the six court costs and fees identified by the State Auditor’s Office as having no designation other than the General Revenue Fund. __

Charge #3

Study and make recommendations for reapportionment of judicial districts pursuant to Article V, Section 7a, Texas Constitution.

1. The Legislature should not adopt a judicial reapportionment plan unless it assures as best possible that there has been an accurate assessment of judicial burden on the various district courts across the state. The Committee recommends that during the 78th Legislative Session, the Senate Jurisprudence Committee continue to work with the judiciary to develop a reasonable reapportionment plan for the Texas judicial system. The Legislature should urge the Texas Judicial Council and the Office of Court Administration to collect more accurate data on the true nature of each court’s judicial burden as it pertains to the nature and types of cases handled, personnel and other court resources, equipment and technology, and administrative duties.

Charge #4

Study and make recommendations for improving the structure of the state's trial court system, including, but not limited to: improving the quality, cost-effectiveness, and uniformity of the visiting judge program; devising objective criteria to be used by the Legislature to determine when and where additional trial courts should be created; and clarifying jurisdictional conflicts between courts.

1. Visiting Judge Program

The Legislature should require the Office of Court Administration (OCA) to report meaningful data to the Legislature regarding the need for and assignment of visiting judges. OCA should be required to use a reporting form that requests full explanation for the assignment of visiting judges, such as illness, vacation, special cases, recusal, reported backlog, etc., as well as the type of service provided if appropriate, such as backlog reduction, trial, and uncontested hearings.

2. New Court Creation

The Senate should adopt new rules related to legislation creating new courts. The rules should include, but not be limited to, establishing criteria for new court creation that takes into account case filings, population, and expected population growth of the county making the request; giving a single committee oversight over all court creation bills; and requiring the author or sponsor of such legislation to provide supporting documents to justify the request for a new court. Documentation should establish that the problems justifying the need for a new court cannot be eliminated by other means - i.e., evening court dockets, associate judges, etc.

3. Jurisdictional Conflicts Between Courts

The Legislature should require the Office of Court Administration to submit an in-depth analysis of the various jurisdictional responsibilities of each Texas court, the extent of jurisdictional overlap and challenges this presents, and recommendations for solving the jurisdictional conflicts that occur.

Charge #5

Monitor the implementation of S.B. 1074, 77th Legislature, relating to the prevention of racial profiling by certain peace officers.

1. The Legislature should continue to monitor the implementation of S.B. 1074 and related efforts by law enforcement agencies to prevent racial profiling by peace officers.

Interim Report

Charge 1: *Study the effectiveness of the progressive sanction guidelines for juvenile offenders. Determine whether the guidelines established by H.B. 327, 74th Legislature, are bringing consistency, uniformity, and predictability to juvenile dispositions in an effort to facilitate juvenile justice planning and improve the allocation of resources within the juvenile justice system. The Committee shall make recommendations for improving the effectiveness of juvenile sanctions in protecting public safety and rehabilitating offenders.*

Recommendations

- 1. The Legislature should require the Texas Juvenile Probation Commission (TJPC) to provide additional training to juvenile probation officers and other key personnel regarding how the guidelines should be applied, what the Legislature considers to constitute a deviation from the guidelines, and how to accurately and comprehensively report deviations when they occur.**
- 2. The Legislature should enable TJPC to improve its reporting software used by courts and probation departments, and require the Criminal Justice Policy Council (CJPC) to report data on every county on its sanction levels and report that information to the Legislature as currently required by statute. This will provide the Legislature with more detailed information on deviations from the guidelines.**
- 3. The Legislature should review funding currently appropriated for programming at Levels 1, 2 and 3 of the progressive sanctions guidelines to determine if the purpose of the funding is being met and whether counties should be required to meet specified levels of compliance in order to qualify for funding.**

Background

The Progressive Sanctions Guidelines establish seven disposition levels to be applied in the sentencing of similarly situated juvenile offenders in Texas. The guidelines are not mandatory, but rather, are to be used by judges as a benchmark in determining the most appropriate disposition for a juvenile depending upon the offense, with the objective of ensuring that juveniles are treated equally and fairly across the state.¹

Progressive Sanctions Guidelines

Offense Classification	Recommended Sanction	Levels
Class C Misdemeanor or CINS offenses	Supervisory Caution	1
Class A or B Misdemeanor (no weapon) Expulsion from AEP for serious misbehavior Contempt of Court	Deferred Prosecution	2
Any Misdemeanor involving weapon use State Jail Felony or Third Degree Felony	Court Ordered Probation	3
Second Degree Felony	Intensive Supervision + Probation	4
First Degree Felony, not involving a deadly weapon or serious bodily injury	Secure Residential Placement + Probation	5
Capital Offense; First Degree Felony involving deadly weapon or serious bodily injury Aggravated Controlled Substance Felony	Commitment to Texas Youth Commission	6
Capital Offense; First Degree Felony involving deadly weapon or serious bodily injury Aggravated Controlled Substance Felony	Discretionary Certification and Transfer to Criminal Court or Determinate Sentence to TYC	7

The most recent data reported by the Criminal Justice Policy Council (CJPC) shows that in 1999, more than half, or 56%, of all dispositions reported did not match the guidelines. The significant level of deviations has raised the concern among legislators that the ultimate goal of the guidelines are not being met.

In 1999, 44 % of juvenile dispositions were issued within the guidelines, as compared to 31 % in 1995. Seventeen percent of dispositions in 1999 were more severe than the suggested guideline level, compared to 10% in 1995, and 39% were less severe than the guidelines, compared to 59 % in 1995. CJPC also reports that in 1999, the highest compliance within the guidelines was at Level 1 and Level 7, the least and most severe sanction levels, with 83 % of all dispositions appropriately occurring at Level 1 and 81 % of dispositions appropriately occurring at Level 7.² The lowest compliance with the guidelines has occurred at Levels 2 through 6, with the practice being toward disposing to less severe sanctions than suggested by state policy.³

CJPC reports that courts often apply different sanctions for similar offenders, despite the similarity in county demographics and availability of resources, and that juveniles with the most indicators representing social factors leading to delinquency were disposed more severely than others regardless of offense or history.⁴ In 1999, the guidelines recommended that 1,130 juveniles be disposed to Texas

Youth Commission (TYC). However, there were 410 more TYC dispositions than recommended by the guidelines.⁵ Additionally, there is a question as to whether significant deviation from the guidelines in the state's largest counties has contributed to the high incidence of disparate minority confinement in the state's juvenile justice facilities. The following chart shows the percentage of all juvenile cases in the largest Texas counties disposed to more severe cases by race in 1999:

Percentage of All Cases Disposed to More Severe Sanctions by County by Race, 1999⁶

County	Overall More Severe	More Severe for African American Juveniles	More Severe for Hispanic Juveniles	More Severe for Anglo Juveniles
Dallas	16%	16%	16%	16%
El Paso	15%	18%	15%	15%
Tarrant	12%	12%	12%	11%
Nueces	7%	9%	7%	8%
Travis	16%	16%	19%	12%
Harris	29%	33%	33%	23%

As the chart indicates, minority juveniles were disposed to more severe sanctions than non-minority juveniles 7% to 33 % of the time. These figures, particularly those for Harris County, are disturbing, especially given the fact that similarly situated counties, such as Tarrant or Dallas, have lower rates. No rationale exists to explain what makes Harris County so different, or why minority juveniles would be treated so substantially different in that county than in similarly situated counties.⁷

During Committee hearings and meetings of the Progressive Sanctions Workgroup, judges, attorneys, scholars and probation officers all agreed that the availability of services and rehabilitation resources in a particular county often dictate whether and to what extent deviations from the guidelines are made.⁸ They argued that for some counties, the best and most appropriate resources for a juvenile's rehabilitation occur at lower sanction levels, while, in other counties, the most appropriate resources occur at higher sanction levels. Moreover, some argue that cases involving mental health problems, substance abuse, or sexual offenses often lead to gray areas that justify deviations to provide the youth with the necessary help. A judge will generally make dispositions to fit the needs of the juvenile and the availability of the resources, even if it requires deviation from the guidelines. If a youth has a history of drug abuse and has been in trouble for drug-related offenses in the past, but is being sanctioned for a non-drug related offense, it is nonetheless likely that the court will attempt to get the youth the substance abuse treatment, or other services he or she needs, usually with the consent of the

defense attorney and probation officers involved in the case. If these services are at a facility recommended at a higher sanction level, the juvenile will generally be sanctioned at that level, rather than one which fits the actual offense.

Recent developments in the Legislature should assist judges in staying within the guidelines where treatment is an issue. In May 2002, the CJPC issued a report reviewing the Enhanced Mental Health Services Initiative (“Initiative”), passed by the 77th Legislature, that increased funding for adult and juvenile mentally ill offenders under community supervision. The purpose of the Initiative was to address the lack of services for adult and juvenile mentally ill offenders in the community, particularly those on probation.⁹ Prior to the Initiative, offenders incarcerated in Texas Department of Criminal Justice (TDCJ) facilities and the Texas Youth Commission (TYC) had better access to mental health services than did offenders in local jails, on probation, or on parole. The following chart provides a list of the range of services available to youth in TYC facilities:¹⁰

**Services Available to Youth at Texas Youth Commission Facilities
Budgeted Treatment Costs
FY 2002**

Categories	FY 2002
Counseling Services	3,124,290
Psychological Services (Mental Health)	12,210,116
Psychiatric Services	1,612,169
Specialized Treatment Services	4,961,775
Specialized Parole Services	1,181,000
Subtotal	23,089,350
Educational Services	32,702,255
TOTAL TREATMENT COSTS	55,791,605

As CJPC reports, without appropriate treatment and supervision, these offenders are more likely to recidivate to TYC or prison.¹¹ The Initiative funding is critical because it will be a significant step toward keeping juvenile offenders in community-based treatment and accommodate less severe, non-placement sanctions for juveniles when warranted by the guidelines.

Making the Guidelines Mandatory

During Committee hearings and meetings with staff, judges, probation officers and juvenile attorneys

(both prosecutors and defense attorneys) opposed making the guidelines mandatory. They argued that each juvenile comes to the system with a unique set of circumstances, offense history, and need for services that are not, and cannot be, contemplated by a mandatory sanctions structure. Reportedly, a judge will not only look at the guideline level that fits the offense, but will take into consideration a variety of factors, including the youth's family situation, age, mitigating circumstances, recent offense history, the maturity of the offender, his or her educational standing, input of the victim, advice of counsel, prosecutorial and court resources, the juvenile's mental health needs, substance abuse treatment needs, and advice of the probation department.¹² As stated earlier, many judges spend a significant amount of time consulting with the juvenile, in order to make an assessment of the youth's need for additional services and his or her level of commitment to rehabilitation. This comprehensive assessment often results in deviations, either upward or downward from the suggested level, that will provide the youth with the best chance of rehabilitation.

Making the guidelines mandatory would significantly alter the ability of judges to work with the other parties to provide the best possible outcome for the juvenile offender. The Committee recognizes that this comprehensive, discretionary approach is critical in assuring that juveniles have the best opportunity possible to achieve rehabilitation. However, while the Committee understands that there may be significant drawbacks to making the guidelines mandatory, it cannot ignore recent CJPC reports on the high rate of deviations from the guidelines, or the high racial disparity in dispositions among similarly situated offenders in similarly situated counties. \$20.4 million was appropriated by the Legislature for FY 2002 and FY 2003 for programs associated with Levels 1, 2 and 3 of the guidelines.¹³ The Committee recommends that the Legislature evaluate whether the appropriations made to the counties, through the Texas Juvenile Probation Commission, are consistent with the intent of the progressive sanctions and whether they should be continued at their current levels.

Reporting and Data Collection

The Criminal Justice Policy Council is responsible for collecting data on juvenile sanctions and monitoring guideline compliance by analyzing individual case records from local juvenile probation departments in 23 Texas counties determined by CJPC to be most representative of the state.

The Committee commends the CJPC for its diligent and thorough work and recognizes that its reports on progressive sanctions have provided the Legislature with an accurate, but general overview of the status of the juvenile justice system. However, given the significant disparities in compliance among the counties currently evaluated, the Committee believes that a more detailed assessment of each county would provide the Legislature with more comprehensive data upon which to base future policy decisions.

Since all counties are currently required to submit such data to the Texas Juvenile Probation Commission (TJPC), this data is currently available to CJPC. The Committee recognizes, however, that certain changes would have to be made to the software and reporting parameters available to the courts, probation departments, and the Texas Juvenile Probation Commission, and recommends that

the Legislature pass legislation to achieve that objective. Subject to a cost estimate of such changes, the Committee believes that changes to the reporting system used by TJPC incorporating more in-depth analysis of juvenile sanctions in every county will allow the Legislature to make more informed decisions regarding its planning, evaluation, and resource allocation. Additionally, juvenile courts/probation departments must be encouraged to report their dispositions and deviations consistently and in significant detail. Additional training by TJPC to probation departments will help in this regard. At every stage of the juvenile justice system, and in every county, the Legislature must be confident that juvenile offenders face similar dispositions that correspond to the seriousness of the offense.

Another problem related to data collection concerns the interpretation by courts as to what constitutes a reportable deviation from the guidelines. For example, some judges have said that they consider a deviation of one to two upward or downward to be insignificant and often do not report corresponding dispositions as deviations. Some believe that they should only report deviations that “seem” significant, i.e. from a Level 2 to a Level 5 or Level 6. In addition, many judges neglect to include in their reports critical information on the circumstances of the case that support deviations. This inconsistency in interpretation and incomplete reporting by judges as to whether and how to report deviations from the guidelines results in skewed data that does not accurately reflect disposition trends across the state.

At every stage of the juvenile justice system, and in every county, the Legislature must be confident that juvenile offenders face similar dispositions that correspond to the seriousness of the offense while balancing public protection and rehabilitation. All agencies collecting data on juvenile sanctions must be encouraged to provide better information to assist the Legislature in planning, evaluation, and resource allocation decisions. The information must be reported consistently by every judge issuing dispositions to juveniles, and collected in such a way that gives the Legislature an accurate assessment of how the guidelines are being handled.

Proposed Legislation

The Progressive Sanctions Workgroup, which consists of juvenile probation officers, judges, prosecutors, defense attorneys, scholars, and representatives of the Texas Juvenile Probation Commission, met several times this spring to review the key issues concerning the guidelines. As a response to legislators’ concerns over the high number of deviations across the state, the workgroup developed a series of amendments to the existing statute that would improve the ability of judges to adhere to the guidelines, eliminate unnecessary or inappropriate deviations from the guidelines, minimize reporting burdens on local probation departments, and emphasize that the guidelines are intended to be a model for dispositions, rather than a mandatory requirement for compliance.¹⁴

The Committee takes no official position on the proposal at this time, but recommends that any legislation adopted by the Legislature that emphasizes judicial flexibility should only be encouraged if it results in sanctions shown to promote fair treatment and adequate rehabilitation for every juvenile

in the state. Moreover, the Legislature should be clear that adherence to the guidelines is the first priority in juvenile sanctions, followed by judicial discretion.

Charge #2

Study the judicial system's revenue structure and make recommendations for improving the collection, dispersal, and accounting of court costs, fees, and fines by state and local entities. This study should include a review of all court costs and fees (except those related to the Crime Victim's Compensation Fund) to ensure that they are necessary and are adequately fulfilling their intended purpose.

Recommendations

1. The Legislature should create a new chapter in the Texas Government Code solely for court costs, fees and fines. All existing authority that creates or provides for the administration of court costs, fees, and fines should be re-designated to the new chapter. Additionally, any legislation concerning the creation of court costs, fees and fines should be considered by only one legislative committee in each house of the Texas Legislature.
2. The Legislature should consolidate the collection and remittance of the five remaining criminal court costs and fees not covered in the 1997 consolidation legislation in addition to new costs and fees adopted by the Legislature after 1997. The Legislature should make reporting dates for all civil fees consistent to simplify reporting efforts of municipalities and counties.
3. The Legislature should direct the Office of the State Comptroller to submit a cost estimate and proposal for the routine monitoring and reporting of data on costs and fees collected by municipalities and counties, to ensure that the State has complete information on the source of funds being collected by all courts, that each municipality and county is reporting in compliance with statute, and that money is correctly being allocated to the appropriate funds.
4. The Legislature should enact legislation that provides a clear and uniform definition of "court cost," "fee" and "fine."
5. The Legislature should subject all funds in which court costs, fees and fines are deposited to the Sunset review process to determine which of those funds continue to be necessary and capable of fulfilling their intended purpose.
6. The Legislature should designate a purpose for the six court costs and fees identified by the State Auditor's Office as having no designation other than the General Revenue Fund.

Background

Under current law, an offender of a municipal ordinance, misdemeanor or felony, or a party to a civil action or filing (i.e. to obtain a birth certificate) must pay state and local court costs, fees and fines which must be collected by the municipality or county and submitted to the state via the Office of the State Comptroller. Court costs, fees and fines can be imposed on individuals for a wide variety of criminal offenses or civil actions, and are codified in separate areas of the law. Money collected from costs, fees and fines is designated by municipal and county clerks to a number of state and local funds. Each municipality and county must keep track of all court costs, fees or fines that must be levied; all applicable funds in which the monies are to be designated; and when payments must be reported to the state.¹⁵ To date, a municipality or county may be responsible for collecting and allocating 30 to 40 different court costs, fees and fines to multiple state and local funds for a single violation.¹⁶

Each legislative session, the Legislature routinely creates new court costs, fees and fines, and often increases the cap on existing costs, fees or fines, sometimes without regard to those already in existence.

Additionally, according to witnesses who testified at Committee hearings, state court costs, fees, and fines are difficult to administer, in part because there are so many of them, and also because there are several different reporting forms to be completed with varying reporting deadlines that must be tracked accurately by clerks.

Streamlining the Process

The confusing structure of the current system makes it difficult to determine whether all costs, fees and fines mandated by law are, in fact, being collected in the amounts required. Anyone seeking information on the various court costs, fees and fines must be familiar with the various statutory locations of each one, a prospect which is tedious and lends itself to incomplete analysis. Moreover, because new costs, fees or fines are created under varying sections of the Texas Code, related legislation is routinely heard in numerous, separate legislative committees in both houses, resulting in a haphazard process that lacks consistency or coordination. The Committee recommends the creation of a uniform cost, fee and fine chapter in the Texas Government Cod and recommends that all related legislation be considered by only one legislative committee in each house of the Texas Legislature. The Committee believes that this streamlined procedure will eliminate many of the problems associated with the complicated and haphazard approach to legislating in this area.

Consolidation

In 1997, the Legislature enacted legislation that consolidated ten criminal court costs into one fee, giving the Office of the State Comptroller the responsibility for allocating the combined court costs to the required funds according to a statutorily determined percentage. This represented only a partial

consolidation, and so, in addition to the Consolidated Court Cost payment, a city or county is still required to remit payment to the Office of the State Comptroller for the Fugitive Apprehension Fund, the Juvenile Crime and Delinquency Fund, the Compensation to Victims of Crime Fund, the Judicial and Court Personnel Training Fund, the Time Payment Fee, the Judicial Fund, fees for services of peace officers, and the Failure to Appear Fee.¹⁷ With the exception of the Time Payment Fee, the Judicial Fund, Failure to Appear Fee, and fees for services of peace officers, monies generated from the remaining fees are applied in all criminal cases.

The Office of the State Comptroller reports that 94 % of revenue generated from these funds come from Class C misdemeanors, and recommends that all state court costs imposed on any criminal conviction be consolidated by category of offense, i.e. Class A, B, or C misdemeanor felony.¹⁸ Under that agency's proposal, specified in its SCR 12 Report, money would be collected by the city or county based only upon the offense, and remitted to the Office of the State Comptroller on a quarterly basis. The Office of the State Comptroller would then allocate the cost to the appropriate fund.¹⁹ The agency also recommends applying consistent due dates for the remittance of all criminal costs and fees, as well as all civil fees, such that reporting must be done on a quarterly basis.²⁰ These recommendations, if passed by the Legislature, would streamline the collection process and would reduce the chaotic reporting requirements currently imposed on court clerks.

During the 77th Legislative Session, the Legislature passed S.J.R. 49, an amendment to the Texas Constitution which voters subsequently approved, that provides that if the Legislature enacts a bill to consolidate civil or criminal court fees, all future fees must conform to that consolidation.²¹ Additionally, any fee adopted in the future may not take effect prior to the following January unless approved by two-thirds vote of the members of each house. This measure represents a significant step by the Legislature toward reducing the administrative burden and confusion of court cost fee assessment, collection and remittance to the state. Further consolidation of the remaining court costs and fees would significantly reduce the burden on municipalities and counties collecting court costs and fees, and would assist the Office of the State Comptroller in its efforts to better monitor money remitted to the state by those entities.

Data Collection and Monitoring

Currently, there is no centralized database on court costs, fees and fines collected by local and county entities and no routine monitoring mechanism in place to determine whether statutory collection and reporting requirements have been complied with. Data is currently collected by the Office of the State Comptroller as well as the Office of Court Administration, although neither agency has a complete database on every court cost, fee or fine collected at the local or state level. Currently OCA collects data only on criminal costs, while the Office of the State Comptroller collects data on criminal and civil costs.

Although some costs, fees or fines have statutory restrictions, there is no standard procedure in either agency for checking whether statutory restrictions have been complied with. As a result, it is unclear

exactly how much money is or should be sent by municipalities and counties to the state, since the Office of the State Comptroller must rely on the accuracy of reporting clerks. It is also unclear whether clerks are accurately reporting data as required. This means that the Legislature may add new fees or fines each session without an accurate understanding of the total cost to citizens paying the fees, fines or costs. The Legislature needs a better mechanism of tracking and evaluating these fees and fines collected at the municipal and county levels.

The Office of the State Comptroller is the agency responsible for collecting the fees from municipalities and counties, and so may be in a better position than OCA to maintain a comprehensive court cost and fee database for both civil and criminal cases. The agency is also in a better position to conduct frequent and routine monitoring of the system. The Committee recognizes that additional monitoring will require additional funds to be appropriated for this purpose, and recommends directing the Office of the State Comptroller to submit a cost estimate of implementing such a mechanism prior to legislation enacting such a directive. If feasible, the Office of the State Comptroller would be required to track all fees and fines at the local, county and state levels, whether or not funds tracked are required to be remitted to the state.

Uniform Definitions

During Committee hearings and staff meetings with OCA, the State Auditor's Office (SAO) and the Office of the State Comptroller, the concern was raised that no statutory definition exists for the terms "court cost," "fee" and "fine." As a result, various agencies, municipalities and counties interpret these terms differently. For example, OCA looks only to criminal actions in its analysis of court costs, while the Office of the State Comptroller considers both criminal and civil actions in its analyses. The State Auditor's Office, charged with conducting an audit of the state's court cost and fee structure, reports in its May 2002 report that it had to devise its own definition of court cost by consulting with representatives of both agencies. The Legislature should rectify this situation by statutorily defining each term. Doing so will help eliminate confusion and uncertainty among municipalities, counties, and state agencies involved in the collection and reporting of courts costs and fees and fines.

Sunset Review of Funds

S.B. 1377, passed by the 77th Legislature, directed the Texas State Auditor's Office (SAO) to review each fund and account into which money collected as court costs is directed by law to be deposited to determine whether the money is being used for the intended purpose and whether the amount of the court cost is appropriate, considering its intended purpose.²² In its May 2002 report, SAO did not conduct an audit of all mandated court costs and fees, but rather, based upon a risk analysis of all funds, audited four agencies that administered eight funds and two fees, and "analyzed" an additional ten funds.²³

Although the SAO report did not offer recommendations on reforming the state's court cost and fee structure, it, together with the Office of the State Comptroller's report, verified to the Committee that the current structure is convoluted and burdensome enough to justify significant review and possibly restructuring by the Legislature. SAO could not provide assurances that certain grantees, contractors and award recipients that received court costs and fees from funds administered by certain agencies always spent the funds for their intended purposes.

For example, SAO reports that in fiscal year 2001, the Governor's Office, the Office of the Attorney General, and the Children's Trust Fund of Texas Council expended \$191 million from funds for which a part of the revenue source was court costs and fees, and while SAO determined that the costs and fees were used by the agencies to fund programs that fulfilled established purposes, SAO reports that these agencies did not have processes for ensuring that the grantees, contractors, or award recipients spent the funds as intended, or, they did not follow their internal processes. In all, SAO questioned as much as \$4.6 million in expenditures made by those agencies' grantees, contractors and award recipients, citing lack of documentation supporting certain expenditures in some cases; instances where grantees and contractors received funds not allowed by statute or for services not rendered; and instances where agencies did not ensure that grantees, contractors, or the agency itself complied with statute or contract requirements.²⁴

SAO reports that in fiscal year 2001, agencies expended \$360 million from funds for which a source of revenue was court costs and fees.²⁵ Given the anticipated budgetary concerns in the upcoming fiscal year, the Legislature should ensure that money generated from court costs and fees are allocated to only to funds that continue to serve a compelling state purpose, and that agencies responsible for administering those funds carry out their obligations and properly monitor those funds according to statute. The Committee recommends that the Legislature submit all funds for which a source of revenue are court costs and fees to the Sunset Review process to allow for a comprehensive, in-depth analysis of each fund.

The State Auditor's Office also found six court costs and fees that do not currently have a specific purpose directing the expenditure of the funds.²⁶ These are the Arrest Fee, the Time Payment Fee, the Substance Abuse Felony Program Fee, the Birth Certificate Fee, the Juvenile Probation Fee, and the Abused Children's Counseling Fee.

Chart of Court Costs/Fees Without Designated Purpose

Court Cost/Fee	Reason for Collecting Fee	Use of Funds and Purpose of Expenditure	FY2001 Revenues Per Comptroller Cash Report
Arrest Fee	Fee is collected for services provided by peace officers.	Fee was not allocated for any designated purpose or to a specific agency.	\$2,356,189
Time Payment Fee	Fee is collected if a convicted person needs to pay a portion of assessed court costs, fees, fines, or restitution more than 31 days from the day judgement is entered.	Fee was not allocated for any designated purpose or to a specific agency.	\$8,438,163
Substance Abuse Felony Program Fee	Fee is collected if a judge decides that a convicted person needs to attend a substance abuse program.	Fee was not allocated for any designated purpose or to a specific agency.	No funds collected.
Birth Certificate Fee	Fee is collected for the issuance of birth certificates.	Fee was collected to support the Work and Family Policy Clearinghouse. The fund in which the fee was deposited was abolished, but the fee was not abolished.	\$2,239,966*
Juvenile Probation Diversion Fee	Fee is collected after hearing from a parent, guardian, or child in a disposition hearing.	The Juvenile Probation Commission collected the fee to support the diversion of juveniles. The fund in which the fee was deposited was abolished, but the fee was not abolished.	\$12,264,662
Abused Children's Counseling Fee	Fee was originally dedicated to the Central Education Agency. That agency was abolished and the fee was not dedicated to another agency.	Cannot be traced. No purpose exists.	\$3,449*
Failure to Appear Fee (Dedicated to the Department of Public Safety and Comptroller of Public Accounts.)	Fee is collected from people who fail to appear for a complaint or citation. The fee is allocated in thirds to the local entity, the Comptroller of Public Accounts, and the Department of Public Safety.	The fees are deposited throughout the fiscal year into a fund dedicated to the Department of Public Safety. The Department was not appropriated money from this fund by the 75th, 76th, or 77th Legislatures. The funds were collected but not used in fiscal year 2001. At the end of the fiscal year the funds were deposited into the General Revenue Fund. Revenue allocated to the Comptroller of Public Accounts is deposited to the General Revenue Fund and expenditure of funds cannot be traced.	\$2,189,586*

*This amount contains court costs and fees in addition to other revenue. Amount shown is reported in the Comptroller's Cash Report and is captured by revenue code.

For each of these, the fee was either collected to support a particular fund which was later abolished, but the fee continued to be collected, or no specific designation was made for a particular purpose or to a particular agency. According to the SAO report, these fees generated approximately \$25 million in fiscal year 2001, but it was impossible to track how the money from the fees was spent. The money was deposited into the state's General Revenue Fund.

With respect to the Failure to Appear Fee, included in the chart, the fees are dedicated to the Department of Public Safety, but DPS was not appropriated money from this fund by the last three Texas Legislatures. They were collected, but not used, in fiscal year 2001, and deposited into the General Revenue Fund at the end of the year. The portion of the Failure to Appear Fee allocated to the Comptroller's Office is deposited to the General Revenue Fund and cannot be traced.²⁷

The Committee urges the Legislature to either direct the money generated from these fees to a specific purpose, or abolish them.

Charge #3

Study and make recommendations for reapportionment of judicial districts pursuant to Article V, Section 7a, Texas Constitution.

Recommendation

1. **The Legislature should not adopt a judicial reapportionment plan unless it assures as best possible that there has been an accurate assessment of judicial burden on the various district courts across the state. The Committee recommends that during the 78th Legislative Session, the Senate Jurisprudence Committee continue to work with the judiciary to develop a reasonable reapportionment plan for the Texas judicial system. The Legislature should urge the Texas Judicial Council and the Office of Court Administration to collect more accurate data on the true nature of each court's judicial burden as it pertains to the nature and types of cases handled, personnel and other court resources, equipment and technology, and administrative duties.**

Background

The Texas Constitution requires the Judicial Districts Board (JDB) to make a statewide reapportionment of judicial districts if the Legislature fails to do so following each federal decennial census. If the JDB fails to do so by August of the third year following the decennial census, the responsibility falls to the Legislative Redistricting Board.²⁸

Despite this Constitutional mandate, the state's district courts, which are the primary trial courts in Texas, have not been comprehensively redistricted since 1876. A 1985 constitutional amendment provided for periodic redistricting through the Judicial Redistricting Board, but a judicial redistricting plan was never adopted by the Legislature.

The primary goal of any reapportionment plan, whether legislative or judicial, is to conduct a realignment or change in districts to reflect changes in population to ensure that all citizens have equal representation by elected officials. Texas law specifies that the purpose of judicial reapportionment is to promote the "prompt and efficient" administration of government by equalizing the "judicial burdens" of the "district courts of various judicial districts."²⁹ An appropriate plan may redistrict all or only a portion of the districts and counties, if such proposals adequately "equalize" the judicial burden.³⁰

In order to equalize judicial burden, it is necessary to have data that adequately assess current judicial workloads. Due to the complexity of the Texas court system, no data currently exists that adequately measures this component. In the last 100 years that have lapsed since the courts were reapportioned, the Legislature and counties have filled in the gaps by randomly and periodically creating new courts to meet the changing needs of each region. Moreover, neither the Texas judiciary nor the Legislature has ever developed an accurate method of measuring, let alone equalizing, judicial burden of the numerous courts across the state, which makes the task of reapportionment particularly challenging.

The Legislature uses no specific guideline or procedure for determining whether and where new courts are justified. This ad hoc procedure that has resulted in a convoluted court system that has been difficult to monitor or evaluate. This stopgap approach has also resulted in varying degrees of judicial burden, with some courts in urban districts having caseloads several times greater than those of courts in rural areas, or judges in certain areas, such as West Texas, having significantly more administrative duties and travel requirements than judges in districts with smaller geographical areas or greater county resources.

Structure of the Texas Court System

The Texas district court system consists of 418 district courts, 465 county-level courts, 869 municipal courts (with 1, 294 municipal judges), and 835 Justice of the Peace courts. These courts administer justice across 254 diverse Texas counties. At the county level, the 465 county level courts consist of 254 constitutional county courts (one court in each county), 195 county courts at law (established in only 74 counties) and 16 probate courts (established in only 8 counties). County courts share the same jurisdiction as district courts and often share the same clerks, and courts have varying resources depending upon the general wealth of the county.³¹

A majority of the judicial districts in Texas overlap one another. The Texas Judicial Council has identified six jurisdictional overlap patterns:³²

<u>Jurisdictional Overlap Patterns</u>	<u>No of Counties</u>	<u>No. of Courts</u>
Single County/Multiple Courts	22	237
Single County/Single Court	18	18
Multiple Counties/Multiple Courts/Identical Jurisdiction	25	15
Multiple Counties/Single Court	75	26
Multiple Counties/Multiple Courts/One Separate Jurisdiction	41	47
Multiple Counties/Multiple Courts/Many Separate Jurisdictions	73	75

In addition to district court overlaps, there are jurisdictional overlaps between district courts and county courts.

Interim Activities of the Committee

Hearings

The Committee held an organizational hearing on November 5, 2002 and an additional hearing on February 21, 2002 to address this charge. During both hearings, the Committee heard public and invited testimony from judges from every judicial level, redistricting experts, and interested advocates on reapportionment. Shortly after its last hearing on reapportionment, the Committee began to develop a reasonable reapportionment plan that would equalize the judicial burden of the numerous, diverse district courts across the state. The Committee staff consulted extensively with Legislative Council,

the Office of Court Administration, and district judges in an effort to gather and process all relevant data that would assist the Committee in developing maps and data on each district court.

Judicial Districts Board Recommendations

Assuming that judges themselves should have the best notion of what truly constitutes a judicial burden, in November 2001, the Committee asked the members of the Judicial Districts Board (which is composed of the presiding judges of the nine Administrative Judicial Regions as well as other legal practitioners) to meet and make recommendations on which criteria should be used to determine judicial burden.

Judicial Survey

In December 2001, the Committee mailed a survey to every district court, county court and county court-at-law in the state, asking those judges to rank the most important of the statutory criteria to determine a judicial burden.³³

Legislative Input

The Committee sent a letter to every legislator in the Texas House and Senate asking for their input on judicial reapportionment, as well as an additional letter asking each legislator to appoint staff to monitor the charge as the Committee moved through the interim process.³⁴ The Committee sent another letter to district judges and interested parties asking for any information or input they believed should be considered on the issue.³⁵

Administrative Judicial Region Meetings

Members of the Committee conducted meetings across the state in the nine Administrative Judicial Regions with district judges in each region to gather their input, concerns and questions on reapportionment, since ultimately, any reapportionment scheme enacted by the Legislature will affect the courts and the counties they serve. All 418 district judges were invited to attend meetings in their region.³⁶ Chairman West also sent a final letter to the nine presiding judges of the Administrative Judicial Regions asking for their recommendation on how to reapportion the judicial districts.³⁷

Committee Website Postings

To aid in the judges' understanding of the data being considered by the Committee, the Committee posted on its website maps and current case filings and population data on each district court, along with explanatory memoranda from the Texas Legislative Council on how the data was derived.³⁸

Additional Surveys

The Committee also asked the Office of Court Administration to conduct additional surveys on technology and administrative resources, personnel resources, and other information that would be helpful in making as accurate an assessment as possible of a judicial burden.³⁹ Ninety-eight percent of all the courts responded.

Criteria for Reapportionment

To begin its work, the Committee turned to statutory authority for guidance on how best to equalize judicial burden among the district courts. Texas Government Code § 24.945 enumerates Rules and Conditions for Reapportionment that should be considered by the Judicial Districts Board when reapportioning judicial districts of this state:

- (1) the numbers and types of cases filed in the district courts of the counties to be affected by the reapportionment;
- (2) the numbers of types of cases disposed of by dismissal or judgment in the district courts of those counties;
- (3) the numbers and types of cases pending in the district courts of those counties;
- (4) the number of district courts in those counties;
- (5) the population of the counties;
- (6) the area to be covered by a judicial district; and
- (7) the actual growth or decline of population and district court case load in the counties to be affected.

These criteria are not mandatory for the Legislature, but they provide a relevant starting point for analyzing the legitimacy of a judicial reapportionment proposal. In response to the Committee request for its recommendations, the Judicial Districts Board submitted to the Committee a list of seven guidelines selected from the above-referenced statutory list to be the most appropriate criteria that would result in a balanced and justifiable reapportionment scheme, given the complexity of our court system⁴⁰:

- (1) Population and Case Filings for the past three years are the two most important criteria to be considered for the reapportionment of the judicial districts;
- (2) No single-member judicial district should be larger than five counties;
- (3) Due to travel time and additional administrative burdens, multi-county judicial districts

should have fewer cases and less population than single-county judicial districts;

- (4) Where it is geographically feasible, somewhat larger judicial districts with more judges are preferable to smaller judicial districts with only one judge;
- (5) Additional judicial resources that must also be considered include: the jurisdiction of the district court; the existence, jurisdiction, and caseload of the statutory county courts; the use and availability of associate judges, masters, and visiting judges; and the court's staff, equipment, facilities, and county budget;
- (6) The creation of additional non-coterminous overlapping judicial districts should be avoided; and
- (7) The number of cases disposed of and the number of cases pending in the district courts are not accurate indicators of future judicial need and therefore should not be considered.

Responses by district judges to the Committee survey to determine the relevant criteria reflected similar sentiments. Of the 418 district courts, 135 (32%) responded, and reinforced the Judicial Districts Board recommendations. The survey asked the judges to rate each factor as to the importance in evaluating the efficiency and promptness of a particular court in administering justice. Fifty-one percent listed availability of court support staff as a critical factor; 48 % listed a dedicated courtroom provided by the county; 43 % listed the budget of the district court; 41% listed the numbers and types of cases filed in the district courts of the counties to be redistricted; and 40 % listed the number of district courts in those counties.⁴¹

Several of the judges submitted additional comments in the survey, which were taken into consideration by the Committee as well.⁴² In general, there were several comments which appeared more frequently than others, indicating a general consensus across the state courts. The judges listed the following additional factors as critical in evaluating and equalizing judicial burden among the various courts of the state:

- administrative duties, particularly if the court is the only court in a multi-county, rural area
- distance and time in travel to counties within the district
- population of sister cities of counties located on the Texas-Mexico border
- types and complexity of cases filed and handled by a court
- number of complex litigation cases filed in a court
- length of time from filing to disposition of cases
- lack of state funding for computer technology, electronic filing and docket control
- size and demographics of the community in the district
- differences between urban and rural counties
- use of visiting judges, special masters, etc.
- location of prison in the district
- proximity of the district to high drug-traffic corridors
- rate of population growth and expected population in counties close to larger, urban areas

Applying the JDB Recommendations

Legislative Council conducted an analysis of the JDB guidelines for apportionment, to assist the Committee in determining how to begin the effort of creating a judicial index. With respect to the JDB's recommendations providing that multi-county districts should have fewer cases and less population than single-county judicial districts, Legislative Council acknowledged that in 1993, Chief Justice Phillips created a matrix of ideal judicial index values to account for these factors by analyzing the disposition rates of single and multi-county judicial districts. Given this fact, Legislative Council believed that a similar matrix could be created using new data. Legislative Council also found that it would be easy to construct a plan that avoided the creation of additional non-coterminous overlapping judicial districts.

Legislative Council noted that there were several recommended criteria that, while crucial to a thorough analysis of judicial burden, could not easily be quantified for purposes of reapportionment.⁴³ These included the recommendation that, where geographically feasible, somewhat larger judicial districts with more judges are preferable to smaller judicial districts with only one judge, and the suggestion that the jurisdiction of the district court, the existence, jurisdiction and caseload of statutory county courts; the use and availability of associate judges, masters and visiting judges; and court staff, equipment, facilities and county budget, be considered as well.

The JDB recommended that the Committee should avoid considering the number of cases disposed of and the number of cases pending in the districts courts, stating that those factors were not accurate indicators of future judicial need. In their responses to the Committee survey, as well as during the regional meetings during the summer, several district judges disagreed with the JDB, stating that pending and disposed cases were, in many instances, an important indicator of judicial burden, particularly if the Committee looked at the types of cases pending and disposed, and the length of time involved in both pending and disposed cases.

Administrative Judicial Regional Meetings with District Judges Comments by Judges on Judicial Reapportionment

During the Administrative Judicial Regional meetings with district judges throughout the state, several key issues were raised that are worthy of note in this report. Most judges agreed that the factors set out by the JDB were perhaps the most significant, but many felt that those factors alone were not sufficient to determine judicial burden. Some of the more compelling comments, some of which are mentioned elsewhere in this report, are included below:

First Administrative Judicial Region

- “Counties should be distinguished from one another by size and court types, and by whether courts operating in those counties are courts of either specialized or general jurisdiction.”
- “Number of cases filed must be considered by each type of court and the impact of special

courts that share that caseload. For example, in Dallas County there are two drug courts staffed full-time by visiting judges; a civil motion docket court staffed four days a week, by a visiting judge; a “child victims sex crimes” court staffed full-time by a visiting judge; and a protective order court run four days a week. These courts affect the workload of each court in Dallas County -- but are not accounted for in the standard judicial index developed for the Committee.”

- “In addition, in multiple counties, Title IV-D Masters preside over cases that involve the collection of child support payments by the Office of the Attorney General.”
- “Staff and support personnel should be taken into consideration, as some counties do not have adequate personnel for existing courts and lack budget requirements to increase their staffs.”
- “Some courts do not have computers or fax machines. An effort to determine the automation needs and assistance in acquiring these items might aid in the disposition rate.”
- “There are several different types of cases that take an extraordinary amount of time to dispose of, while others are more routinely disposed of.”
- “The use of visiting judges can and does greatly assist in docket management when utilized properly. The program provided needed flexibility to a complex subject.”
- “Some courts have a lot of case filings but these matters are heard by Associates or Magistrates in Drug Courts, CPS Courts, etc. If case filings in a court are used as the main criteria for reapportionment, the numbers will be skewed upward because one judge is not hearing all the cases that are reported as filed in that court. The overall average number of filings seems to be the key component of the index, and will be higher because of the large number of case filings in those courts with ancillary courts. That does not reflect the true number of cases that one judge can, or should, handle.”
- “Some courts, both rural and urban, routinely use visiting judges (some almost on a full-time basis) to assist in the large number of filings they have. This would skew the index upward, if you do not take into account the use of such assistance.”
- “The location of prisons and state mental hospitals within a district make a difference. For example, a county court-at-law judge in Dallas County is at the state hospital two days a week and consequently a district court handles some of the county court-at-law cases. These cases show to be filed in the county court-at-law and are not reflected in the district court’s case filings, thus reducing that district’s judicial index.”
- “Some counties have more than one district but only one administrative judge. That administrative judge may then handle not only his case filings, but also the administrative details regarding adult probation, juvenile probation, auditor’s office, etc.”
- “In cases such as family law cases, the preliminary matters such as temporary restraining

orders, temporary hearings, discovery hearings, etc., often take much more time than the final disposition. Yet they are only considered as one case filing in determining the judicial index.”

Second Administrative Judicial Region

- “The data OCA collects is not complete, and may be inaccurate, in part because some clerks send county court at law filings combined with district court filings, despite OCA” forms that require separation.
- “It is not realistic to eliminate tax cases altogether. For example, 42 % of the docket in Liberty County is comprised of tax cases. Dallas County also has a large number of tax cases assigned to its courts.”
- “Every court is different. There is no way you can measure the work a judge is doing simply by looking at case filings. The data is not going to be accurate, and not every court sends OCA the data as requested.”

Third Administrative Judicial Region

- “Consider the effect that any change to judicial districts would have on district attorneys as well as juvenile boards and other boards and organizations that judges are required to sit on.”
- “Case filings can often be influenced by whether or not a county has a county court at law which handles most of the juvenile cases or family law cases. Figures showing case dispositions should not be used, especially with respect to criminal cases since the district attorney can move dockets or slow them down.”
- “Just because a case is filed in a certain court does not mean that court will ultimately dispose of the case. In some counties, certain types of cases are always filed in a certain court but are then parceled out to another court. Instead of trying to reapportion the whole state, a better idea would be for judges to report back on changes that could be made within their administrative region.”
- “The use of visiting judges and masters must be factored in as a reason why certain districts are able to dispose of cases quickly.”
- “Visiting judges are very important to courts in helping judges handle crowded dockets.”
- “The case filings component can be influenced by large cases such as asbestos cases where each case has 100 plus plaintiffs. The docket shows only one case but it takes a great deal of the judge’s time because of motion hearings, etc.”

- “Reapportionment is such a political process that it is difficult to identify objective criteria that can be used. It will be very difficult to collect information about each district and quantify it so that districts can be compared to each other. For example, the fact that a county court at law has concurrent jurisdiction with a district court influences case filings, dispositions, etc.”

Fourth Administrative Judicial Region

- “His combination of counties works very well. It is good to have multiple judges in rural areas because someone is always available to hear a case.”
- “The personality of the lawyers involved in a case can have an effect on its length.”
- “In order to accurately reflect the judicial burden on districts that border Mexico, you must factor in some percentage for Mexican population that ends up in Texas court.”
- “In Webb County, most family law cases and juvenile proceedings are done in county courts at law. Most of the drug cases are concentrated in one of district courts and are usually handled by a visiting judge. They must also do most proceedings in both English and Spanish, causing proceedings to be longer.”
- “Some credit must be given to border counties for percentage of Mexican population that ends up in those courts.”

Fifth Administrative Judicial Region

- “County population used in the judicial index formula does not include the influx of population that the counties in the valley receive from Mexico. The courts in the valley hear a high number of cases involving illegal aliens and Mexican citizens who work in the United States. These factors should be considered by the Committee.”
- “The judges of the Fifth Administrative Judicial Region have looked for help beyond requesting new courts through the legislative process. In Hidalgo County, for example, the courts have created six positions to assist the courts with overloaded drug-case dockets. These six courts consist of two criminal auxiliary courts which are run by two full-time visiting judges. The county has also created additional positions to handle child welfare and juvenile cases, and child support cases. All positions are funded through various grants.”

Sixth Administrative Judicial Region

- “A big concern is the effect reapportionment will have on rural areas of Texas. One formula will not satisfy the needs of every district around the state. If any reapportionment plan is

adopted, the Legislature should start with suggestions from the courts first to develop a successful judicial reapportionment plan.”

- “Travel presents a problem not only for judges, but for court reporters, litigators, and even jury members. Judges can arrange their schedules according to the docket they set in each county, but attorneys and other courtroom figures have different schedules that must be taken into consideration. One attorney may be trying separate cases in separate counties, so the drive time limits his or her ability to commute from one courtroom to another.”
- “Two judges preside over Texas counties that connect with Mexico border towns. The populations of the border towns should be considered when calculating the overall population. For example, one district in particular includes two major highways, where many drug traffickers are arrested after crossing the border. Most of that court’s caseload is generated from highway traffic, rather than from residential population over which the court presides. This illustrates how reapportionment should not be based solely on caseload and population -- other factors should be considered.”
- “Overlapping courts in an area work efficiently because the judges can share funds between the wealthy and the poor counties. Although two counties might be located relatively close together, it does not mean that they have issues in common. Conflicts between counties should be taken into consideration before redrawing lines.”
- “Although a reapportionment plan adopted by the Legislature in the next session would likely be based upon the 2000 Census, the Legislature should also consider the projected growth trends for the next ten years.”
- “The 6th AJR is a diverse area and the rural district courts’ concerns are entirely different from those of the El Paso County district courts, also in the 6th district. These judges are concerned that they are not classified as an urban county. When considering the population of El Paso, for example, the population of Juarez should also be calculated into the equation because there is a close relationship between the two cities. When considered in conjunction with Juarez, El Paso County is viewed as having a population approaching two million people; approximately 700,000 in El Paso County and close to 1 million in Juarez.”
- “There is probably an under-representation of population in El Paso County in the most recent Census because individuals there were wary of filling out forms due to lack of understanding and language barriers.”

Seventh Administrative Judicial Region

- “By using the population and case filings statistics collected by OCA, the actual judicial burden of the rural or small urban court is not adequately reflected. When measuring the actual judicial burden of a judge, the Committee should also consider the following:

- Travel time between different counties and courts;
 - Flexibility and learning curve expertise required to handle different types of cases including family law, criminal law, civil law, probate, child protective services cases, etc.;
 - General administrative responsibilities;
 - Developing budgets for numerous county courthouses;
 - Travel to each county within the judicial district to appoint and administer the oath to grand jury commissioners, empanel a grand jury, and receive the grand jury report;
 - Employment, dismissal, supervision, evaluation and setting of compensation of the County Auditor for each county within the judicial district;
 - Supervision of the Community Supervision and Corrections Department, including the employment of key personnel such as the Director as well as approval of budgets;
 - Service on the Community Justice Council;
 - Compliance with the requirements of legislative initiatives, including S.B. 7;
 - Training and supervision of the court coordinator and bailiff;
 - Acting as the bailiff and court coordinator in those judicial districts not served by these positions;
 - Legal research and writing;
 - Acting as a resource for all non-lawyer judges in each county within the judicial district; and
 - Acting as a resource for all courthouse disputes.”
- “The basic premise utilized in the maps prepared by the Texas Legislative Council should be reconsidered. Nationwide, the statistics indicate that there is a direct correlation between population and case filings. As populations increase, so too do case filings. Thus, by using both of these factors, the statistics clearly reflect duplicative information. As a result, these numbers alone adversely affect non-urban and rural courts while unduly benefitting large urban courts.”
 - “The only real way to compare judicial burdens statewide is to conduct an in-depth analysis of the burden of each judicial district. In addition to determining the judicial burden of each court, a fair analysis would also include whether there are other resources in that district that

ease the court's burden.”

- “The citizens of West Texas could be adversely impacted if judicial reapportionment caused the removal of one or more judicial districts from West Texas to another part of the State. The removal of a multi-county judicial district and the necessary inclusion of those counties with other multi-county judicial districts may work a hardship on citizens within those counties who need ready access to the court. Resulting districts may be so large geographically that travel within the district could become unmanageable for the public.”
- “In some instances an elected District Attorney is specifically tied to a particular court. We cannot comment on how the reapportionment might affect these elected officials or whether that poses any constitutional problems, but we thought you should be aware of the issue.”

Eighth Administrative Judicial Region

- “Committee must consider the resources of each district court - several courts don't have the basics of what every court should have. This is important when considering the workload of each judge.”
- “Try to factor in the fact that there are drug courts, IV-D courts, etc., that should be considered. (OCA sent out a request letter to all IV-D Masters and Assistants in the state on June 10, at our request, asking for clarification that the reported statistics from the district courts include Title IV-D cases in the monthly reports. These could account for a good number of case filings in urban areas, and would skew the numbers, depending on how and whether it is reported consistently.) “

Ninth Administrative Judicial Region

- “The judicial and administrative burdens of a West Texas rural judge are fairly significant and should be considered for they take a lot of time as compared with the duties of other judges.”
- “The time and distances required in travel from one county seat to another can be extreme. It is not unusual for a judge to log between 20,000 and 25,000 miles a year sitting in a multi-county district and fulfilling assignments.”
- “Although population and pending cases should be weighed during redistricting, the administrative duties and certain disadvantages of rural, multi-county judges should be taken into consideration before a final decision is reached. For example, where there is only one felony prosecutor in the district, there will be limitations on the number of criminal cases that the district attorney can prepare for jury trial in each county. If a jury trial case settles, there is no backup case to take to trial, leaving a two to three day period of unscheduled downtime to occur.”

- “Many of the rural districts have no staff, excluding the court reporter. The lack of a secretary, court coordinator, bailiff or law clerk results in time-consuming activities for the judge to handle, such as scheduling, legal research, jury management, etc..”
- “The partial listing of duties of rural judges could most likely be multiplied by the number of rural judges in Texas and still not contain all of the responsibilities (whether Constitutional, statutory, or by necessity) of the rural judge. However, the performance of these types of duties is just as crucial to the delivery of justice in rural Texas as is the disposition of large numbers of cases crucial to the delivery of justice in urban Texas.”
- “The duties of a multi-county, single district judge is doubled. One judge, serving in two counties, for example, serves on two juvenile boards, has to select and meet with two sets of grand jury commissioners and oversee two grand juries per year, serves as the judicial representative of one of the bail bond boards, has to deal with courthouse security in the aftermath of September 11 in both counties, work with other county officials to deal with jail over-crowding, etc., activities which take a lot of meeting time, travel time, etc. (Just because a county has fewer filings does not mean the judge is not working in that community.)”

These are some representative comments made by the district judges at the various regional meetings held during the Interim. What is clear is that each judge has a different interpretation of just what constitutes judicial burden and how that burden should be equalized.

Developing a Judicial Index

Relying on the recommendation of the Judicial Districts Board that case filings may be the best indicator the state has in making a determination of a judicial burden, the Committee asked Legislative Council to develop a judicial index using non-tax case filings from data contained in the 1999, 2000, and OCA’s 2001 Annual Report of the Texas Judicial System and population of each county as determined by the 2000 Census. At Committee request, the case filings component of the judicial index was weighted three times greater than the population component.

$\text{Judicial Index} = \frac{3 \text{ (Filings Factor)} + 1 \text{ (Population Factor)}}{4}$
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Alan Ware, Redistricting Program Director of the Legislative Council submitted to Senator West a memo detailing the rationale behind the judicial index as formulated.⁴⁴ In that memo, several constraints were identified that seriously affected the ability of the Committee to conduct an accurate assessment of the judicial burden in the state. For one thing, OCA, the agency responsible for collecting all data on the Texas court system, only collects district court case filing data by county, rather than by court, which made it problematic to determine case filings for each individual court. Ware noted that in the major urban areas with many courts in the same county, it would not be

necessary to determine the number of case filings for each court to evaluate the appropriate number of courts to be assigned to the county. Rather, in counties where courts have overlapping jurisdictions, it was necessary to estimate the amount of judicial burden being handled by each court.

To do this, the Committee asked OCA to survey each judge with jurisdiction in multiple counties, and ask each judge to estimate the percentage of the court's time currently allocated to each county served. For those courts, the total judicial index for each county, based on the county's case filings and 2000 population, was allocated to each court in a county based on the proration of time allocated to the county by all the courts with jurisdiction in the county. Ware notes in his memo to Senator West that a judge's estimate of his or her workload in each county may not be totally accurate, but that no other method of allocating case filings among the counties of the multi-county courts is available. The inability to make a precise assessment of numerous courts' case filings raised serious concerns as to the viability and fairness of a reapportionment plan based upon the data available.

To complicate this situation, most counties have both a district court and a county court with identical jurisdiction, and often, the district clerk of a county will report data from both the county court and the district court on the same form to OCA. Once this practice among district clerks was discovered, Chairman West asked OCA to determine which district clerks were reporting bundled data including both county and district court filings, and requested that those counties submit new forms with separated data.⁴⁵

Ware also reported that some missing data had to be estimated, since eight courts did not respond to the OCA survey by the deadline of March 26, 2002. In those cases, Legislative Council approximated data on time spent in each county based roughly on the 2000 population from each county.

Once the data was collected, Legislative Council placed the districts in categories according to the six jurisdictional overlap patterns identified by OCA. Legislative Council went one step further than the Judicial Council by dividing the Judicial Council's first category, single county/multiple courts/no courts serving another jurisdiction, into "major urban" and "other" components, creating a total of seven jurisdictional overlap patterns. An average categorical index was determined for counties within each index, and each district could then be compared either with other courts in its category by observing the percentage or actual deviation from the average categorical index.⁴⁶

Inherent Geographical Differences and Resource Inequities

Among district courts alone, there is significant variation in the operation, administrative responsibilities, caseload, and travel requirements of each court. Geographical location adds another layer of variance to this complex situation. A district court judge with sole jurisdiction in more than four counties in West Texas will be required to travel far more miles and longer hours than a judge in East Texas with jurisdiction over the same number of counties, particularly if those counties are closer together in terms of square mileage. It is not uncommon for one district judge to have sole jurisdiction over a district of four counties encompassing a total area of 3,000 square miles.

During meetings held with district judges during the interim, it was reported that, particularly in West

Texas and the Panhandle, the time and distances required in travel from one county seat to another can be extreme. It is not unusual for a judge to log between 20,000 and 25,000 miles a year sitting in a multi-county district and fulfilling assignments. Moreover, although Texas has more judges than any other state, a significant number of Texas courts are seriously understaffed. Court facilities are seriously inadequate in many regions of the state. In many regions, courts do not have adequate staffing nor adequate facilities to conduct court business.

At the request of district judges, Senator West asked OCA to conduct yet two additional surveys of district courts, one on technology and resource availability, and a second on staffing and personnel. For courts serving multiple counties and/or with shared jurisdiction, questions were asked regarding whether staff were shared with other courts, whether staff traveled with the judge, and whether staff served the district on a part-time or full-time basis. The difficulty arose when trying to determine how best to factor this information into a reapportionment analysis. Such data, while not easily quantified, has the additional distinction of being overly subjective based upon the interpretation of the questions by hundreds of district clerks and judges, particularly when an employee of the court serves several different counties and splits his or her time between two overlapping districts. There is no guarantee that an individual assessment of time spent in each district will be accurate, and even if it is, it is difficult, if not impossible, to assess that information for comparison among districts in a meaningful way.

The Ideal Court

During one meeting, the suggestion arose that if the Committee could determine the key elements of an ideal court, that model could serve as a benchmark against which all courts could be measured. For example, several judges in the meeting of the 8th Administrative Judicial Region suggested that an ideal court consist of a judge, a bailiff, a court coordinator, a district clerk, an up-to-date computer system, and, believe it or not, a courtroom. Any court that did not possess these basic factors would be at a disadvantage in terms of its performance as measured against courts that did have these resources. When asked whether and how this data, once collected, could be quantified and measured for purposes of comparison of judicial burden, Legislative Council and OCA both suggested that it would be difficult to do so accurately in a way that would be fair to all courts. At most, this information could be used to look at each district on a case-by-case basis before taking steps to make significant changes to each district.

Developing a Proposal

There were some basic criteria built into initial Committee proposals that could be applied consistently. For each potential change to a district, each of the seven criteria recommended by the JDB were adhered to, where applicable. For example, no district was made larger than five counties, and large districts were created only where the average case filings for the past three years were inordinately low and the distance between counties would be small enough to minimize the travel burden on the judge as much as possible. Where possible, the attempt was made to reduce overlap, except in instances where overlap was warranted, for example, where counties did not have sufficient population, case filings or staff resources to support their own district courts.

However, a number of issues were raised which made it clear that several subjective policy decisions would have to be made in order to move forward with a proposal. For example, once the data was gathered, the decision had to be made as to what the acceptable deviation range would be for each jurisdictional category. Unlike the laws on legislative redistricting, which set a statutory requirement for a 10% deviation, there are no statutory guidelines for judicial reapportionment that provide what deviation is acceptable. Is it acceptable for a court to be within a deviation range of 10% from its category average index? Or would 20% be a fairer standard? If 10% becomes the chosen standard, then would a 10% deviation be acceptable for all categories? That is, should a single-court, multiple-county judge responsible for four very large counties in West Texas (with significant travel requirements) be held to the same standard as a single-court, multiple-county judge presiding over two relatively smaller counties in East Texas? Clearly not, yet, this was a dilemma that the Committee would face in making its determinations. And although the JDB recommended that factors such as travel time, variance in resources, etc., be taken into account by the Committee, such factors cannot be easily quantified, and the Committee would have to make subjective decisions as to how to apply non-quantifiable factors in developing a plan that was fair and consistent across the board.

Moreover, how should the Committee evaluate the variance in available resources of each court? How should the Committee compare a court in a small, rural county that lacks an established courtroom or a court coordinator to a court in a larger, well-funded county that has all the necessary staff and up-to-date technological resources? What about changes in population in certain counties, the existence of county courts with shared jurisdiction, or courts in counties with large prisons whose dockets reflect an abundance of inmate-related cases? What about courts in border communities with high levels of drug-related arrests? How should the Committee determine the judicial burden of courts that handle primarily family law cases, which tend to move quickly, as compared to those that handle primarily capital murder cases, that take longer to dispose of? What about districts that have Title IV-D masters, cluster courts for foster children, use associate judges or visiting judges, or have specialized courts as opposed to courts of general jurisdiction? How should these differences be factored into a reapportionment scheme?

Once maps were developed reflecting the current indexes of the district courts, it became clear that any changes made to the existing district lines would have to be done randomly without a logical pattern or methodology. Applying the various non-quantifiable criteria to each proposed change, while seemingly appropriate and fair, only complicated matters further. The rationale for proposed changes that worked for one block of counties and corresponding courts in one area of the state could not be applied in other areas, making it difficult to justify any change at all. The Texas judicial system has grown into a multi-headed hydra that has been changed on a piecemeal, county-by-county basis by the Legislature to fit the changing needs of each county, but without any consistent, reasonable approach or analysis.

These were all issues that were raised during the Committee hearings, meetings with judges across the state, letters received from interested parties, and the extensive research conducted by the Committee. The answers to each one of these questions, as well as many more, would impact any proposal made by the Committee. The only way a reapportionment plan would be feasible at this stage would be to either unravel the existing structure and start over, which the Committee feels would cause undue community disruption, or to develop an approach that factors in the numerous differences among each district court and the counties they serve.

Charge #4

Study and make recommendations for improving the structure of the state's trial court system, including, but not limited to: improving the quality, cost-effectiveness, and uniformity of the visiting judge program; devising objective criteria to be used by the Legislature to determine when and where additional trial courts should be created; and clarifying jurisdictional conflicts between courts.

Recommendations

1. Visiting Judge Program

The Legislature should require the Office of Court Administration (OCA) to report meaningful data to the Legislature regarding the need for and assignment of visiting judges. OCA should be required to use a reporting form that requests full explanation for the assignment of visiting judges, such as illness, vacation, special cases, recusal, reported backlog, etc., as well as the type of service provided if appropriate, such as backlog reduction, trial, and uncontested hearings.

2. New Court Creation

The Senate should adopt new rules related to legislation creating new courts. The rules should include, but not be limited to, establishing criteria for new court creation that takes into account case filings, population, and expected population growth of the county making the request; giving a single committee oversight over all court creation bills; and requiring the author or sponsor of such legislation to provide supporting documents to justify the request for a new court. Documentation should establish that the problems justifying the need for a new court cannot be eliminated by other means - i.e., evening court dockets, associate judges, etc.

3. Jurisdictional Conflicts Between Courts

The Legislature should require the Office of Court Administration to submit an in-depth analysis of the various jurisdictional responsibilities of each Texas court, the extent of jurisdictional overlap and challenges this presents, and recommendations for solving the jurisdictional conflicts that occur.

Background

As stated earlier in this report, the unique structure of the Texas court system presents numerous challenges to anyone seeking to implement effective and comprehensive changes to any aspect of the system. Charge 4 requires the Committee to review three critical aspects of the Texas judiciary: the visiting judge program, the mechanism by which new courts are created in the state, and jurisdictional conflicts among Texas courts. The Committee urges readers to consider the information in this report regarding judicial reapportionment while reviewing these three issues, primarily because the underlying issues and problems complicating a judicial reapportionment analysis are the same issues and problems that complicate making reasonable recommendations on the visiting judge program, new court creation,

and jurisdictional conflicts. The primary problem is the lack of comprehensive data available to the Legislature that would enable this body to make logical changes to a convoluted system.

Visiting Judge Program

Texas Government Code Sections 74.054 - 74.056 sets basic qualification for the use of visiting judges and procedures to be used in assigning them. The presiding judge from each judicial region is required to maintain a list of retired and former judges who meet the statutory criteria for serving as a visiting judge. That list is to be divided into area specialities of criminal, civil, or domestic relations cases, and a visiting judge is to be assigned only to a case in that judge's area of specialty.⁴⁷

The use of visiting judges represents an important tool for the state in the effort to promote an effective and efficient judicial system. Over the last decade, the district courts have seen a steady increase in cases added to their docket, cases pending, and cases disposed of. The Constitution prohibits a judge from sitting in any case if the judge may be interested, connected with a party by affinity or consanguinity, or has served as counsel.⁴⁸ In addition, Texas statute allows the administrative judge to assign a judge or visiting judge to alleviate accumulated cases.⁴⁹ Other reasons such as illness, temporary absence, regular judge sitting in complex trial, or the need for a judge with particular expertise may cause a need for a visiting judge.⁵⁰

The use of visiting judges also represents a significant investment on behalf of the state in the judicial system. In the 2000 - 2001 biennium the state budgeted and estimated \$82,783,859 for salaries of 418 district judges.⁵¹ During the same biennium, the state spent an additional \$20,141,572 for visiting judges salaries - an additional 25% expenditure on judicial compensation.⁵²

In addition to the Lt. Governor's charge to the Jurisprudence Committee to evaluate the visiting judge program, the Office of Court Administrations and the Judicial Council have also been charged with looking at the visiting judge program. Article IV of the General Appropriations Act provides:

“Rider 12 - It is the intent of the Legislature that the Office of Court Administration or its successor compile statistics on the use of visiting judges and the efficiency of the current district court system. The Office of Court Administration or its successor shall report data for district courts in such fashion that docket activity of visiting judges shall be segregated by court. It is the intent of the Legislature that the Texas Judicial Council prepare a report on current district court locations, populations served, docket activity and other appropriate variables that would inform a legislative determination on the need for creating additional district courts. The Texas Judicial Council shall submit the report to the Legislature and the Governor no later than January 2003.”⁵³

Need for More Information

In efforts to study the state's visiting judge program, Committee staff found a dearth of comprehensive information regarding the use and assignment of visiting judges in the state. The Office of Court Administration collects and reports the number of assignments made in the nine Administrative Judicial Regions in the state, but does not provide critical data on the use of visiting judges on a court-by-court basis, the reasons for appointments, or the various functions performed during assignments.

In fact, OCA merely reports in its FY2001 Annual Report of the Texas Judicial System that in 2001, the equivalent of 98 full-time judges were added to the Texas trial courts.

The Judiciary Section of the Office of the State Comptroller maintains a log of the total number of days a visiting judge was assigned to a given court. The information collected by OCA and the Office of the State Comptroller offers little help to the Legislature in evaluating the State's use of visiting judges and ensuring efficient and effective use of the visiting judge system.

To evaluate the visiting judge program, the Legislature needs more complete information, including in-depth reporting by presiding judges and courts regarding the reason for each visiting judge assignment. Such information will help the Legislature to identify regions, counties, or districts with an accumulated caseload (backlog of cases) and to make a reasonable assessment of judicial need. This dearth of information on visiting judge use is not a circumstance limited to Texas. In 2000, the Florida Judicial Management Council's Committee on Trial Court Performance and Accountability subcommittee on Senior Judges, recommended several items important to management and data reporting. Included in the report were several recommendations that information on the use of senior judges include the circuit/county where service was provided, the number of days being reimbursed, the actual number of hours served, the number of days served by division of the court, the number of days served by service requirements, (i.e., caseload, long-term trial, coverage for long term absence, special service such as a referee).

This data identified by Florida courts as critical information for decision-makers is similar to the type of information that would be useful to the Texas Legislature in evaluating the visiting judge system in order to make critical decisions regarding the judiciary as a whole.

During public testimony before the Committee, witnesses identified several other issues related to the visiting program, including the retention and recruitment of visiting judges and the need to encourage former judges to participate in the program. In order to address these issues and make necessary reforms to the program, the Legislature must have access to more in-depth, comprehensive data that is collected on a consistent basis by OCA.

New Court Creation

As stated earlier in this report regarding judicial reapportionment, evaluating the courts in Texas is more complicated than it may be in other states due to the lack of meaningful data currently available on the Texas courts that could assist the Legislature in undertaking meaningful reform of the Texas court system. The creation of new courts is no exception. The haphazard, subjective manner in which new courts are created each session by the Legislature has resulted in a very diverse court system with overlapping jurisdictions in many areas. In the past, legislators have supported the need for new courts in their districts by citing an overabundance of case filings in a region, or projected population growth. However, in public testimony before the Committee and in past public forums, numerous witnesses have pointed out the problems with using case filing in isolation (i.e., without consideration of other factors such as the difficulty and time involved in hearing a capitol murder case as opposed to hearing an agreed to divorce). Additionally, as the Committee found during its analysis of judicial reapportionment, there are a large number of factors that must be considered when evaluating judicial efficiency and the possible need for additional courts in a given region. Moreover, the Legislature must

consider the court system as a whole when making decisions on each individual court, particularly when a court is likely to share jurisdiction with a number of other courts in its region.

Despite the lack of comprehensive data available to the Legislature at this time, the Legislature could still take steps to streamline the process by which new courts are created each session. The Committee recommends that the Senate adopt new rules that would establish criteria for new court creation that takes into account case filings, population, and expected population growth of the county making the request; give a single committee oversight over all court creation bills; and require the author or sponsor of such legislation to provide supporting documents to justify the request for a new court.

Supporting documentation submitted by a bill's author or sponsor should verify that the problems justifying the need for a new court cannot be eliminated by other means, such as increasing the use of associate or visiting judges, holding court in the evenings, etc.

Jurisdictional Conflicts Between Courts

As stated earlier, the complex nature of the Texas court system makes it difficult to offer solutions in a vacuum. There are several factors contributing to the incidence of jurisdictional overlap and the special conflicts that have resulted, in part, from the lack of reapportionment over the last century. During Committee hearings, witnesses provided the Committee with some insight into the problems associated with jurisdictional conflicts. However, after careful consideration of the options available, it appears that any steps short of full reapportionment of the court system, as well as the removal of the existing jurisdictional overlaps, will at best only provide a piecemeal, and thus ineffective, solution to a serious problem. Moreover, the lack of current data on the precise nature of the extent of jurisdictional overlaps in the Texas courts prevents the Committee from conducting a reasonable analysis of the issue. Because OCA currently collects relevant data on the courts, the Committee recommends that the agency be required to submit an in-depth analysis of the jurisdictional conflicts inherent in the Texas courts to assist the Legislature in making related policy decisions.

Charge #5

Monitor the implementation of S.B. 1074, 77th Legislature, relating to the prevention of racial profiling by certain peace officers.

Recommendation

1. **The Legislature should continue to monitor the implementation of S.B. 1074 and related efforts by law enforcement agencies to prevent racial profiling by peace officers.**

Background

S.B. 1074, passed by the 77th Legislature, prohibits racial profiling by peace officers. Under the statute, Texas law enforcement agencies are required to adopt a detailed written policy on racial profiling that, among other things, defines acts that constitute racial profiling; prohibits peace officers employed by the agency from engaging in those acts, and implements a process by which an individual may file a racial profiling complaint with the agency.⁵⁴

Each agency is also required to provide public education relating to its complaint process; require appropriate corrective action to be taken against a peace officer who is shown to have engaged in racial profiling in violation of that agency's policy; and require the collection of information relating to traffic stops in which a citation is issued and/or relating to arrests resulting from those traffic stops.⁵⁵ Once an agency has adopted a racial profiling policy, it must examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to conduct traffic stops. If such equipment is installed, the agency's policy must include standards for reviewing video and audio documentation.⁵⁶ Installation and use of this equipment in compliance with the statute will exempt an agency and its officers from extensive reporting requirements required otherwise.

Collection of Information

Unless statutory exemptions apply, a peace officer who stops a motor vehicle for an alleged violation of a traffic law or ordinance, or a pedestrian for any suspected offense, must submit a report to its employing law enforcement agency information relating to the stop.⁵⁷ That information must include a physical description of each person detained as a result of the stop,⁵⁸ specifying the person's gender⁵⁹ and the person's race or ethnicity, as stated by the person or, if not stated, as determined by the officer to the best of the officer's ability.⁶⁰ The report must also provide details of the stop and the

officer's reasons for conducting the stop.⁶¹ Throughout the year, a law enforcement agency is required to compile and analyze the information contained in each racial profiling report received from its officers, and submit a report on the compiled information not later than March 1st of each year to the governing body of each county or municipality served by the agency.⁶²

Exemptions and Equipment Use

As stated earlier, a law enforcement agency and its officers are exempt from the reporting requirements described above if, during the calendar year prior to the March 1st deadline, the agency has in place video and audio equipment provided for in statute. Specifically, the agency must be able to show that each law enforcement motor vehicle and motorcycle regularly used to make traffic and pedestrian stops is equipped with video camera and transmitter-activated equipment, and each traffic or pedestrian stop that is capable of being recorded by video and audio or audio equipment is, in fact, being recorded.⁶³ Exemptions may also occur if the governing body of the county or municipality served by the law enforcement agency certifies to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment and the agency does not receive sufficient funds (as determined by the department) from the state to accomplish that purpose.⁶⁴

A law enforcement agency that is exempt from reporting requirements for the reasons stated above must retain the video and audio or audio documentation of each traffic and pedestrian stop for at least 90 days after the date of the stop.⁶⁵ If a complaint is filed with the law enforcement agency alleging that a peace officer of the agency engaged in racial profiling, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.⁶⁶

The statute requires the Department of Public Safety to adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing such equipment. DPS must also specify criteria for prioritizing funding or equipment provided to law enforcement agencies, which may include consideration of tax effort, financial hardship, available revenue, and budget surpluses.⁶⁷

Recent Developments

During the Interim, Senator West asked Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) to collect policies from all law enforcement agencies to determine whether each agency's proposed policy meets statutory requirements. Agencies failing to meet the key criteria under the statute are directed by TCLEOSE to amend their policies where necessary. To date, TCLEOSE has notified all law enforcement agencies in writing and requested a copy of their racial profiling policy. Of 2,711 agencies notified, 2,149 responded as of the end of September, 2002. TCLEOSE is still in

the process of evaluating which agencies meet the key elements provided by law. Additionally, in October 2002, TCLEOSE reported that 80% of Texas' nearly 66,000 officers have received training addressing racial profiling.

Last session, voters approved as part of a constitutional amendment \$18.5 million for the purchase of audio/visual equipment for law enforcement use. Those dollars will equip more than 7,500 vehicles used in traffic enforcement throughout the state of Texas. A contract to provide the audio/visual equipment for the purposes of S.B. 1074 has been awarded. The first delivery of cameras is scheduled for November, 2002 and will continue through August 2003. Equipment will be distributed to small law enforcement agencies first, and then to larger agencies in regions such as Dallas and Houston.

The Committee is satisfied that the early stages of implementation of S.B. 1074 have been productive, but recognizes that there is much work to be done in the coming year as local law enforcement agencies begin to receive the equipment and carry out the provisions of the bill. The Committee recommends that the Legislature continue to monitor the implementation process to assure compliance with the statute and make appropriate improvements to the legislation if necessary.

Endnotes

Endnotes

1. Section 59.001, Texas Family Code. The Legislature made changes to the Guidelines in 1997, 1999, and 2001 adding Capital Offenses to Level 6, limiting Level 5 to secure placement only and adding expulsion from Alternative Education Program (AEP) to Level 2, among other changes.
2. Criminal Justice Policy Council, “An In-Depth Analysis of the Use of Progressive Sanction Guidelines in 1999,” March 2001.
3. *Id.*
4. Criminal Justice Policy Council, “Social Factors of Adjudicated Juvenile Offenders in Texas,” at 17, 25 (August 2002).
5. Criminal Justice Policy Council, “Big Picture Policy Questions to Explore Related to Progressive Sanction Guidelines Policy,” Testimony before the Senate Jurisprudence Committee, at 12 (November 5, 2001).
6. *Id.*
7. *Id.*
8. The Workgroup is comprised of juvenile court judges, probation officers, prosecutors, defense attorneys, juvenile justice agencies, researchers and legislative staff. For a list of Workgroup Meeting Participants, see Appendix A.
9. Criminal Justice Policy Council, “Overview of the Enhanced Mental Health Services Initiative,” at i (May 2002).
10. Memorandum from Neil Nichols, General Counsel, Texas Youth Commission, to Committee staff, June 5, 2002.
11. Criminal Justice Policy Council, *supra*, note 9.
12. “Progressive Disposition Model,” A Presentation by Vicki Spriggs, Executive Director, Texas Juvenile Probation Commission, Testimony before the Senate Jurisprudence Committee (April 25, 2002).
13. Rider 6, page V-32, Chapter 1515, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act).
14. See Appendix A for proposed legislation.
15. “Structure of State Court Costs and Fees: Report of the Comptroller as required by SCR 12, 76th Legislative Session,” (March 2001) provides a comprehensive analysis of the state court

cost and fee system.

16. *Id.* at 1.

17. *Id.* at 6-7.

18. *Id.* at 8.

19. *Id.*

20. *Id.* at 9, 11.

21. Section 46, Article III, Texas Constitution.

22. Section 321.017, Texas Government Code.

23. State Auditor's Report No. 02-049, "An Audit Report on Funds Collected as Court Costs," (May 2002).

24. *Id.* at i- ii.

25. *Id.* at i.

26. *Id.* at 3.

27. *Id.* at 4.

28. Section 7a(e), Article V, Texas Constitution.

29. Section 24.941, Texas Government Code.

30. See Section 24.942 (2), Texas Government Code.

31. Office of Court Administration & the Texas Judicial Council, Annual Report of the Texas Judicial System, Fiscal Year 2001.

32. "Assessing Judicial Workload in Texas' District Courts," Texas Judicial Council Committee on District Courts, at 2 (October 2002).

33. See Appendix B, Jurisprudence Committee Survey to District and County Judges.

34. See Appendix B, December 7, 2001 and February 20, 2002 letters from Senator Royce West to House and Senate members.

35. See Appendix B, December 14, 2001 and February 27, 2002 letters from Senator Royce West to District Judges and interested parties.

36. See Appendix B, March 1, 2002 letter from Chairman West to Committee Members regarding Administrative Judicial Region Meetings.
37. See Appendix B, letters from AJR presiding judges to Chairman West.
38. See Committee website for further information:
<http://www.senate.state.tx.us/75r/senate/commit/c550/c550.htm>
39. See Appendix B for a copy of the OCA surveys.
40. See Appendix B, December 4, 2001 letter from Chief Justice Phillips to Senator Royce West.
41. See Appendix B, February 11, 2002 Memorandum to Committee Staff From Senate Research Center regarding survey results.
42. Comments from survey are not included in this report due to the confidential nature of the survey. The Committee intentionally submitted a blind survey, although most judges listed the county location or district number in their responses.
43. See Appendix B, "TLC Analysis of JDB Suggested Guidelines for Judicial Redistricting," presentation of Alan Ware, Legislative Council, to the Committee at the February 21, 2002 Committee Hearing on Judicial Reapportionment.
44. See Appendix B, March 28, 2002 Memorandum to Senator Royce West from Alan Ware, Redistricting Program Director, regarding the Development of Judicial Index for Judicial Redistricting.
45. See Appendix B, OCA Report titled "County Courts at Law."
46. See Appendix B, Plan Analysis Reports System/Plan Caseload Analysis/State District Courts - PlanD100 (JUD219A).
47. Section 74.055, Texas Government Code.
48. Sections 74.052, 74.056, Texas Government Code.
49. Section 11, Article V, Texas Constitution
50. Section 11, Article V, Texas Constitution provides that "vacancies" in inferior courts may be filled as prescribed by law.
51. Item 1 (Salaries for District Judges. . .), page IV-17, Chapter 1589, Acts of the 76th Legislature, Regular Session, 1999 (the General Appropriations Act).

52. As reported by the Office of the State Comptroller, Judiciary Section.
53. Rider 12, page IV-14, Chapter 1515, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act).
54. Article 2.132(b), Texas Code of Criminal Procedure.
55. Article 2.132(b)(6), Texas Code of Criminal Procedure.
56. Article 2.132(d), Texas Code of Criminal Procedure.
57. Article 2.133(b), Texas Code of Criminal Procedure.
58. Article 2.133(b)(1), Texas Code of Criminal Procedure.
59. Article 2.133 (b)(1)(A), Texas Code of Criminal Procedure.
60. Article 2.133(b)(1)(B), Texas Code of Criminal Procedure.
61. See Article 2. 133(b)(1) - (b)(8), Texas Code of Criminal Procedure.
62. Article 2.134(b), Texas Code of Criminal Procedure.
63. Article 2.135(a)(1), Texas Code of Criminal Procedure.
64. Article 2.135(a)(2), Texas Code of Criminal Procedure.
65. Article 2.135(b), Texas Code of Criminal Procedure.
66. Article 2.135(b), Texas Code of Criminal Procedure.
67. Article 2.137, Texas Code of Criminal Procedure.