



# INTERIM REPORT

*to the 87<sup>th</sup> Texas Legislature*



HOUSE COMMITTEE ON  
JUDICIARY & CIVIL JURISPRUDENCE



JANUARY 2021

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**HOUSE COMMITTEE ON JUDICIARY & CIVIL JURISPRUDENCE  
TEXAS HOUSE OF REPRESENTATIVES  
INTERIM REPORT 2020**

**A REPORT TO THE  
HOUSE OF REPRESENTATIVES  
87TH TEXAS LEGISLATURE**

**JEFF LEACH  
CHAIRMAN**

**COMMITTEE CLERK  
CASSIDY ZGABAY**

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Committee On Judiciary  
& Civil Jurisprudence

January 5, 2021

Jeff Leach  
Chairman

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

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

Dear Mr. Speaker and Fellow Members:

The Committee on Judiciary & Civil Jurisprudence of the Eighty-sixth Legislature hereby submits its interim report for consideration by the Eighty-seventh Legislature.

Respectfully Submitted,

Handwritten signature of Victoria Neave in black ink.

Victoria Neave

Handwritten signature of James White in black ink.

James White

Handwritten signature of Morgan Meyer in black ink.

Morgan Meyer

Handwritten signature of Julie Johnson in black ink.

Julie Johnson

Handwritten signature of Jeff Leach in black ink, with a horizontal line underneath.

Jeff Leach

Yvonne Davis

Handwritten signature of Matt Krause in black ink.

Matt Krause

Handwritten signature of Reggie Smith in black ink.

Reggie Smith

Handwritten signature of Anna Eastman in black ink.

Anna Eastman

Victoria Neave  
Vice-Chairman

Members: Yvonne Davis, James White, Matt Krause, Morgan Meyer, Reggie Smith, Julie Johnson, Anna Eastman

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## ACKNOWLEDGEMENTS

To the Judges, Clerks, and Staff of the Texas Judiciary — It is with sincere gratitude that we thank and congratulate you on your response to the challenges arising from the COVID-19 pandemic. Amidst these unprecedented difficulties, we wish to recognize the incredible adaptivity, innovation, and resilience that you yourselves have shown. The pandemic has brought new and unique challenges to our 21<sup>st</sup> century world, but throughout these trials, the Texas Judiciary set an example for the nation and was appropriately, though not fully, recognized for doing so. We cannot be more thankful for your incredible work to ensure that our Texas Justice System is open and accessible, transparent and trustworthy. In word and deed, you have worked tirelessly to safeguard the rights, liberties and freedoms of every Texan.

To Speaker Dennis Bonnen — The Committee wishes to thank you for your service to the people of Texas. Each of us was honored to serve under your Speakership and consider it a great privilege to be appointed to this prestigious and important House Committee. For many years, you proved yourself to be a smart, reliable and passionate public servant — wholly committed to serving the people of your District and all of the people of Texas. The Texans of today, and future Texans of tomorrow, will be blessed by your leadership.

To Jessica Farrar, our Former House Colleague, Vice Chair and Friend — We thank you for your passionate pursuit of justice, freedom and liberty for all Texans. We were grateful to be your House Colleague and are still grateful to be your friend.

To All Texans — From day one, this Committee has been committed to working tirelessly to ensure the Texas Justice System is one that all Texans can rely on and can be proud of. Every day, we have sought to ensure our Courts are open, accessible, reliable, trustworthy, fair and Constitutional. We are proud of the way in which we worked together and are proud of the results we have delivered for the Lone Star State.

As we emerge from the healthcare, economic and educational crisis created by COVID-19 — truly a crisis of historic proportions — we cannot ignore the pressing challenges facing our Judiciary. Nor can we ignore the incredible opportunities to build upon our recent successes. After all, crisis does not just build character ... crisis reveals character. And this crisis has revealed the strong state of our Texas Judicial System.

The tasks ahead of us are clear:

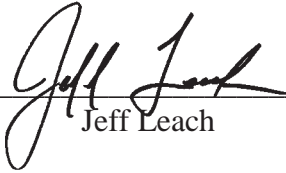
We must empower and support our Judges. We must recommit ourselves to our Constitutional framework and to the Rule of Law. We must advocate for those who cannot advocate for themselves, including, most importantly, those Texans who find themselves on hard times. We must ensure that every single Texan — from the wealthiest business owner to the poorest indignant Defendant — not only has access to our Courts, but has full trust that the Courts are applying the Rule of Law and protecting the rights, liberties and freedoms guaranteed by our beloved United States and Texas Constitutions.


These important endeavors must remain the call and the commission of this important Committee.

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As we look back, and as we continue to prepare for the 87<sup>th</sup> Legislative Session, we must continue to lock arms and examine and deliberate on meaningful statewide solutions that will ensure continued success for the Texas Judiciary in the months and years to come. We stand ready to continue working with every single Texan who is committed to those same goals.

With Gratitude,

  
Jeff Leach

  
Victoria Neave

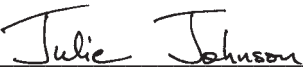
Yvonne Davis

  
James White

  
Matt Krause

  
Morgan Meyer

  
Reggie Smith

  
Julie Johnson

  
Anna Eastman

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## INTRODUCTION

On January 23, 2019, Speaker Dennis Bonnen appointed nine members to the House Committee on Judiciary & Civil Jurisprudence. The Committee membership included the following: Jeff Leach, Chairman; Jessica Farrar, Vice Chair; Yvonne Davis, James White, Matt Krause, Morgan Meyer, Victoria Neave, Reggie Smith, and Julie Johnson.

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

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

During the 86<sup>th</sup> Legislative Session, 305 bills were referred to the Committee. 258 bills were scheduled for a public hearing; of these, 226 bills were voted out of the Committee. In total, 87 bills were signed into law. To the Committee's knowledge, not a single bill that passed out of the Committee and that made it to the floor for a full vote of the Texas House was voted down. Further, not a single bill that passed the Committee was subject so a sustainable point of order – thanks in large part due to the hard work of our Committee Clerk, Cassidy Zgabay.

Following the Legislative Session, Speaker Bonnen assigned four interim charges to the Committee. The Committee had intended to hold two public hearings; however, both were cancelled due to the COVID-19 pandemic. Consequently, the Committee issued a Formal Request for Information (RFI), asking for written testimony from state agencies, interested parties, and the public regarding all interim charges, as well as the effects of COVID-19 in areas within its jurisdiction.

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## INTERIM CHARGES

**CHARGE 1:** Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 86<sup>th</sup> Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including the following:

- HB 2899, which specifies that highway construction contractors are not liable for design defects. Investigate whether expansion of those policies to other areas of public/private contracting is in the best interest of the state.
- HB 3809, which raises the statute of limitations for suit for injuries from a sexual assault of a child from 15 years to 30 years. Study and deliberate ways to enhance protections for victims of sexual abuse. Review other Texas laws relating to reporting and investigating incidents of workplace sexual harassment. Make recommendations to remove barriers to reporting and investigating incidents of sexual harassment and to make improvements to existing policies where necessary.
- HB 4531, which authorizes adults under guardianship to consent to forensic medical examination protocols. Monitor the impact of the legislation on the prevention, investigation, and prosecution of sexual assault, and study the impact on other related offenses and the treatment and services provided to victims of those offenses.
- SB 2342, which increases the amount in controversy for certain courts and expedited proceedings and makes reforms to jury requirements in order to improve access to courts. Review the impact of the legislation on the administration of justice and access to courts for Texas citizens.

**CHARGE 2:** Study opportunities to modernize and improve local and statewide data collection throughout the criminal justice system in Texas, including improving the collection and reporting of court records, to promote transparency and ensure uniform data collection processes.

**CHARGE 3:** Study the Rule Against Perpetuities as used by trusts. Examine whether statutory changes are necessary and appropriate to make Texas more competitive and keep trust capital and estate planning business in Texas.

**CHARGE 4:** Monitor the State Auditor's review of agencies and programs under the Committee's jurisdiction. The Chair shall seek input and periodic briefings on completed audits for the 2019 and 2020 fiscal years and bring forth pertinent issues for full committee consideration.



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## CHARGE 1

*Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 86<sup>th</sup> Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including HB 2899, HB 3809, HB 4531, and SB 2342.*

### SUMMARY OF COMMITTEE ACTION

Due to the COVID-19 pandemic and the challenges in scheduling public hearings, the Committee issued a Formal Request for Information (RFI), asking for written testimony from state agencies, interested parties, and the public regarding all interim charges, including Charge 1.

### SUMMARY OF TESTIMONY

The Committee received written testimony addressing HB 2899 and SB 2342. *See Appendix A.*

#### *HB 2899*

**Associated Builders & Contractors of Texas (ABC)**

**Associated General Contractors - Texas Building Branch (AGC-TBB)**

**Texas Construction Association (TCA)**

Messrs. McAdams, Van Arsdale, and Ms. Fagan provided joint written testimony.

**Texas Construction Association (TCA)**

Ms. Fagan provided supplemental written testimony.

**American Council of Engineering Companies of Texas (ACEC)**

Mr. Stewart provided written testimony.

**Texas Society of Architects (TxA)**

Mmes. Grant and Walker provided written testimony.

#### *SB 2342*

**Justices of the Peace and Constables Association of Texas (JPCA)**

Judge Hill provided written testimony.

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## CHARGE 2

*Study opportunities to modernize and improve local and statewide data collection throughout the criminal justice system in Texas, including improving the collection and reporting of court records, to promote transparency and ensure uniform data collection processes.*

### SUMMARY OF COMMITTEE ACTION

Due to the COVID-19 pandemic and the challenges in scheduling public hearings, the Committee issued a Formal Request for Information (RFI), asking for written testimony from state agencies, interested parties, and the public regarding all interim charges, including Charge 2.

### SUMMARY OF TESTIMONY

The Committee received written testimony addressing Texas' statewide data collection. *See Appendix B.*

#### **Office of Court Administration (OCA)**

Mr. Slaton and Ms. LaVoie provided written testimony.

#### **Texas Department of Public Safety (DPS)**

Mr. Cooper provided written testimony.

#### **Texas Justice Initiative (TJI)**

Ms. Moravec provided written testimony.

#### **Disability Rights Texas (DRTx)**

Ms. Hayes provided written testimony.

#### **National Alliance on Mental Illness (NAMI) Texas**

Mr. Lovitt provided written testimony.

#### **The Arc of Texas**

Ms. Cogan provided written testimony.

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## CHARGE 3

*Study the Rule Against Perpetuities as used by trusts. Examine whether statutory changes are necessary and appropriate to make Texas more competitive and keep trust capital and estate planning business in Texas.*

### SUMMARY OF COMMITTEE ACTION

Due to the COVID-19 pandemic and the challenges in scheduling public hearings, the Committee issued a Formal Request for Information (RFI), asking for written testimony from state agencies, interested parties, and the public regarding all interim charges, including Charge 3.

### SUMMARY OF TESTIMONY

The Committee received written testimony addressing the Rule Against Perpetuities. *See Appendix C.*

#### **Real Estate, Probate & Trust Law Section of the State Bar of Texas (REPTL)**

Ms. Hunt provided written testimony.

#### **Texas Bankers Association (TBA) - Wealth Management & Trust Division**

Mr. Burklund, on behalf of TBA, provided written testimony.

#### **Sage Trust Company LTA**

Mr. Vane, on behalf of Sage Trust, provided written testimony.

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## **CHARGE 4**

*Monitor the State Auditor's review of agencies and programs under the Committee's jurisdiction. The Chair shall seek input and periodic briefings on completed audits for the 2019 and 2020 fiscal years and bring forth pertinent issues for full committee consideration.*

### **SUMMARY OF COMMITTEE ACTION**

Due to the COVID-19 pandemic and the challenges in scheduling public hearings, the Committee issued a Formal Request for Information (RFI), asking for written testimony from state agencies, interested parties, and the public regarding all interim charges, including Charge 4.

### **SUMMARY OF TESTIMONY**

The Committee received written testimony addressing the statewide review of agencies. *See Appendix D.*

#### **State Auditor's Office (SAO)**

Ms. Collier provided written testimony.

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# THE COVID-19 PANDEMIC

## SUMMARY OF COMMITTEE ACTION

In addition to requesting written testimony on all interim charges, the Committee requested information regarding the effects of COVID-19 in areas within its jurisdiction. In its Formal Request for Information (RFI), the Committee included the following questions:

1. *Have you had any difficulty acquiring PPE for your court, county, or staff?*
2. *How have your caseloads been impacted by COVID-19? Do you have a backlog of cases?*
3. *What has been your experience in using Zoom or other online platforms for court proceedings?*
4. *How has the pandemic impacted court staff, e.g. space teleworking, flexible work shifts, etc.?*

## SUMMARY OF TESTIMONY

The Committee received written testimony responding to the aforementioned questions regarding the effects of COVID-19. *See Appendix E.*

### **Office of Court Administration (OCA)**

Mr. Slayton and Ms. LaVoie provided written testimony.

### **Texas Access to Justice Commission**

Ms. McAllister provided written testimony.

### **Justices of the Peace and Constables Association of Texas (JPCA)**

Judge Hill provided written testimony.

### **Judge Patricia Bennett, 360th Judicial District Court**

Judge Bennett provided written testimony.

### **Judge Brooke Allen, Probate Court No. 2**

Judge Allen provided written testimony.

### **Houston Forensic Science Center**

Ms. Plushnick-Masti provided written testimony.

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## **RECOMMENDATIONS**

In addition to affecting public testimony, the COVID-19 pandemic unfortunately limited the opportunities for discussion and deliberation among members of the Committee with regard to the assigned interim charges. Consequently, the Committee was unable to identify new recommendations, but strongly encourages future discussions and solutions during the 87<sup>th</sup> Legislative Session. It is of critical importance that the topics and issues raised in the interim charges continue to be examined and addressed. We look forward to participating in these discussions and working with our colleagues in the Legislature in order to pass strong and sensible reform in civil law and the judiciary.

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## APPENDICES

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## APPENDIX A

### Interim Charge 1 Submissions

#### Submission 1: ABC, AGC-TBB, and TCA Joint Response



November 30, 2020

The Honorable Jeff Leach  
Chairman, Texas House Committee on Judiciary and Civil Jurisprudence  
P.O. Box 2910,  
Austin, TX 78768

Re: Notice of Formal Request for Information

Dear Chairman Leach:

In response to the Committee on Judiciary and Civil Jurisprudence Request for Information of November 6, 2020, the Associated Builders and Contractors of Texas (ABC), the Texas Construction Association (TCA), and the Associated General Contractors – Texas Building Branch (AGC-TBB) provide the following joint response:

*Interim Charge 1: Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 86th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including the following:*

- *HB 2899, which specifies that highway construction contractors are not liable for design defects. Investigate whether expansion of those policies to other areas of public/private contracting is in the best interest of the state.*

All but two states in our country have adopted the *Spearin*<sup>1</sup> doctrine. The *Spearin* doctrine states that as between the contractor and the owner, the owner assumes the risk for owner-provided plans and specifications. Stated more clearly, the contractor is entitled to rely on the accuracy and sufficiency of the plans provided to the contractor. Liability for design defects lies with the party that produced or procured the designs. This doctrine is consistent with other liability policies enshrined in our statutes and parallels policies grounded in personal responsibility, and therefore, this concept should be fully adopted in Texas for all types of construction, not just transportation projects.

House Bill 2899 became effective September 1, 2019. To date, there have been no reported claims as a result of this new law. Therefore, there is no increase in litigation associated with the adoption of the *Spearin* doctrine; possibly because it serves to clarify the lines of responsibility instead of reinforcing the illogical notion of allowing liability to be assigned to a non-responsible party (i.e. the contractor who did not produce nor procure the design documents). Additionally, there is no meaningful difference between transportation projects and other types of construction that would serve as rationale to deny expansion of this doctrine to all types of construction.

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<sup>1</sup> *United States vs. Spearin*, 248 U.S. 132 (1918).



The more than 5000 members of the Associated General Contractors, the Associated Builders and Contractors and the Texas Construction Association support the expansion of the protections provided by H.B. 2899 to all types of construction; bringing Texas in line with the vast majority of the country.

Why adopt the *Spearin* doctrine for all construction projects? Without this expansion, contractors are forced to artificially increase their prices to cover the risk of defective plans created by others. This artificial price increase damages the Texas economy and limits justified new construction, renovation, and growth. Without expansion contractors are forced in most instances to practice architectural or engineering services in violation of Texas law. Contractors will continue to bear the risk of liability for which it is difficult to procure insurance, while design professionals have access to insurance products intended to cover liability for defective designs. Additionally, without this expansion, the responsible party who prepared the defective plans or specifications may escape responsibility for their work product. Due to the economic loss rule,<sup>2</sup> the contractor is barred from bringing a claim directly against the architect or engineer, and due to the current state of the law in Texas, the contractor is left with no remedy.<sup>3</sup>

In conclusion, there is no credible argument that contractors should be held responsible for defective plans and specifications created by others. This is why the other 48 states follow *Spearin*. The 86<sup>th</sup> Legislature began the process of correcting Texas law to appropriately assign liability for design defects and the 87<sup>th</sup> Legislature should continue by adopting the *Spearin* doctrine for all types of construction. By doing so, the construction industry and the Texas economy would benefit.

Sincerely,



Will McAdams, President  
Associated Builders & Contractors of Texas



Corbin Van Arsdale, President  
Associated General Contractors – Texas Building Branch



Jennifer Fagan, Vice President  
Texas Construction Association

<sup>2</sup> *LAN/STV v. Martin K. Eby Construction Co., Inc.* 435 S.W.3d 234 (Tex. 2014).

<sup>3</sup> *El Paso Field Services v. Mastec N.A.* 389 S.W.3d 802 (Tex. 2012).

## Submission 2: Texas Construction Association (TCA) Supplemental Response



### Board of Directors

Andy Adams  
American Subcontractors  
Association – Houston

Brian Chester  
American Subcontractors  
Association – North Texas

Carmen Smith  
American Subcontractors  
Association – Texas Chapters

Chris Lambert  
Central Texas Subcontractors  
Association

Robbie Ketch  
DFW Drywall and Acoustical  
Contractors Association

David Stone  
Fire Sprinkler Contractors  
Association of Texas

Jeff Henkener  
Mechanical Contractors  
Association of Texas

Don Konezky  
National Electrical  
Contractors Assn-Texas

Courtney Talley  
National Utilities  
Contractors Assn-Texas

Ken Boen  
Plumbing Heating Cooling  
Contractors of Texas

Fred Heldenfels IV  
Precast Concrete  
Manufacturers Association of TX

Victor Longo  
Southwest Terrazzo  
Association

Paul Holden  
Subcontractors Association  
of the Metroplex

Allan Woodruff  
Texas Crane Owners  
Association

Roger Fisher  
Texas Council of Painting  
& Decorating Contractors

Felix Munson  
Texas Glass Association

Keith Colvin  
Texas Iron Workers  
Employers Association

Kevin Camarata  
Texas Masonry Council

Jerry Bratton  
Texas Structural Steel  
Institute

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www.texcon.org

November 30, 2020

The Honorable Jeff Leach  
House Committee on Judiciary & Civil Jurisprudence  
Texas State Capitol  
P.O. Box 2910  
Austin, Texas 78711

Re: Notice of Formal Request for Information

Dear Chairman Leach,

The Texas Construction Association (TCA) respectfully provides the comments below in response to the Request for Information related to Interim Charge 1. These comments are intended to supplement joint comments submitted by TCA, the Associated Builders & Contractors (ABC) and the Associated General Contractors (AGC-TBB).

*Interim Charge 1: Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 86th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including the following:*

*HB 2899, which specifies that highway construction contractors are not liable for design defects. Investigate whether expansion of those policies to other areas of public/private contracting is in the best interest of the state.*

As stated in our joint comments, TCA supports the expansion of the *Spearin* doctrine that construction contractors are not liable for design defects, to all classifications of construction. During the 86<sup>th</sup> legislative session, TCA had the opportunity to provide live testimony to the Committee in support of this position and H.B. 2901.

TCA member, Carmen Smith with NTD Mechanical in Dallas testified about a specific public project wherein the design documents ordered the use of "Blue Duct" – a specific material that had precise installation requirements – so much so that NTD had to fly the manufacturer's representative to DFW to be at the jobsite on the day of installation. During installation, the general contractor revealed the intent to pack the soil above the ductwork to 60,000 pounds; this exceeded the manufacturer's specifications and the general contractor was told so. However, the general contractor was adamant about following the design documents provided by the project owner.

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Ms. Smith testified that if she had refused to install the Blue Duct at the insistence of the general contractor, she would have been notified that she was in breach of her contract and the general contractor would have been within his rights to hire another contractor to complete the work, at NTD's expense. Therefore, stuck between a rock and a hard place, the duct was installed, the ground was packed and the duct collapsed. Because of the current Texas law, Ms. Smith knew she could be sued for the collapsed ductwork, therefore, she made the decision to dig up the duct and replace it with the appropriate product, entirely at her expense.

Ms. Smith noted that this experience was just one in a long line of jobs where a contractor finds itself in an untenable position. Contractors such as NTD want to be able to point out potential design defects, however, often in Ms. Smith's experience, the general contractor or architect fails to pass on request to the mechanical engineers or she is accused of practicing engineering without a license. Ms. Smith concluded her testimony by noting that the current law fails by creating an adversarial process for construction; correcting the law will foster a more collaborative work environment, resulting in better construction.

The current law was adopted in 1907 when the Texas Supreme Court ruled against the contractor in *Lonergan v. San Antonio Loan & Trust Co.*, 104 S.W. 1061 (Tex. 1907). However, there have been countless changes in the construction industry which have led 48 other states to adopt the *Spearin* doctrine. Texas should follow suit. A contractor should not be liable for construction that is defective due to erroneous design documents furnished to the contractor by the owner. This is as true for all contractors as it is for highway construction contractors, therefore the 87<sup>th</sup> Legislature should expand the *Spearin* doctrine in H.B. 2899 accordingly.

Sincerely,



Jennifer Fagan  
Vice President Government Affairs

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## Submission 3: American Council of Engineering Companies (ACEC) Response



November 30, 2020

The Honorable Jeff Leach  
Chairman, House Committee on Judiciary and Civil Jurisprudence  
Texas House of Representatives  
ATTN: Ms. Cassidy Zgabay, Committee Clerk  
P.O. Box 2910  
Austin, TX 78768

**RE: Request For Information – Interim Charge 1: HB 2899**

Chairman Leach and Committee Members:

Thank you for the opportunity to submit testimony and comments on Interim Charge 1 – HB 2899 to the House Committee on Judiciary and Civil Jurisprudence. The American Council of Engineering Companies of Texas (ACEC Texas) is the business association of Texas engineering firms, representing over 450 firms practicing in a variety of engineering disciplines.

The passage of House Bill 2899 during the 86<sup>th</sup> Legislative Session stipulating that highway construction contractors are not liable for design defects partially addressed a nationwide debate on a complex issue in the construction industry. These debates can be attributed to two differing court cases, 1.) *Loneragan v. San Antonio Loan & Trust Co.*, in which the Texas Supreme Court found that a “contractor bore the risk and liability of a building collapse that was the result of defective design documents; and 2.) *United States v. Sperm*, which found that “the owner impliedly warrants the sufficiency of plans and specifications.”

In the construction industry, project liability typically falls on the three parties involved: the project owner (owner), the contractor, and the engineer and/or architect (designer). Customarily, the owner retains a designer to prepare drawings and specifications for the project, that are then bid out by the owner to a potential contractor to construct the project per the given design details. The ongoing debate has been whether the contractor should bore any liability if defects in the design are found. HB 2899, which takes a *Sperm* approach, removes the contractor as one of the three parties that may be held liable for project design defects.

The concern that ACEC Texas raised with HB 2899 was this would in turn shift liability to the owner, who would then likely seek action against the designer. Consequently, moving forward to reduce their own risks, owners would seek to contractually hold designers to an uninsurable, heightened standard of care, mandating “perfect” project plans and specifications. Moreover, professional liability insurance, which covers all practicing design professionals, will not cover a heightened standard of care provision in a project contract. Having a designer contractually held to a standard of care beyond the level that would be typically provided would leave the designer overly exposed to increased and uninsurable liability.

ACEC Texas worked with Chairman Leach and committee members to include language in HB 2899 that mandates the ordinary and reasonable standard of care to prevent uninsurable and unfair heightened standards of care. In essence, the standard of care language included requires that designers perform at the level of skill and care of other, similarly situated professionals engaged in similar work.

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American Council of Engineering Companies of Texas

DESIGNING THE FUTURE OF TEXAS

1001 Congress Ave., Suite 200 • Austin, Texas 78701 • (512) 474-1474 • Fax (512) 474-1490 •  
www.acectx.org

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As the Committee considers moving forward with discussions and potential legislation regarding *Sperin* and construction liability, we believe it to be imperative to include mandating the ordinary and reasonable standard of care to ensure protections for project designers. Allowing owners to contractually hold a designer to a heightened standard of care would create new liability and insurability concerns.

Thank you for the opportunity to submit testimony and please contact Scott Stewart, Vice President for Legislative Affairs, at (512) 474-2653 or [Scott@ACECTX.org](mailto:Scott@ACECTX.org) if you have any questions.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'S Stewart', written over a faint circular watermark or background.

Scott Stewart  
Vice President for Legislative Affairs  
ACEC Texas

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## Submission 4: Texas Society of Architects (TxA) Response

Texas Society of Architects  
Becky Walker, Government Relations Director  
(512) 478-7386  
500 Chicon Street  
Austin, TX 78702

Written Comments of Texas Society of Architects on Interim Charge 1  
Submitted to House Judiciary & Civil Jurisprudence Committee  
November 30, 2020

On behalf of the Texas Society of Architects (TxA) and our 7,400 architect members, we respectfully submit these comments in response to the House Judiciary and Civil Jurisprudence Committee, Interim Charge 1, regarding HB 2899, authored by Chairman Leach and enacted by the 86<sup>th</sup> Texas Legislature in 2019.

TxA is a state component of the American Institute of Architects (AIA) and is one of the nation's largest organizations for the architecture profession, with 18 regional components across Texas. Architects bring highly specialized knowledge and training to their work in the built environment and provide important professional services designed to ensure that the health, safety and welfare of the public is considered and prioritized in the design and construction process.

TxA provides these brief comments to assist the committee in its investigation into whether expanding the policies contained in the newly enacted HB 2899 to other areas of public/private contracting is in the best interest of the state. Interim Charge 1 reads as follows:

***Interim Charge 1: Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 86th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including the following:***

***HB 2899, which specifies that highway construction contractors are not liable for design defects. Investigate whether expansion of those policies to other areas of public/private contracting is in the best interest of the state.***

According to the bill analysis for the engrossed version of the legislation, HB 2899 "amends current law relating to civil liability and responsibility for defects in the plans, specifications, or other documents for the construction or repair of roads, highways, and related improvements". The legislation, as described in the bill analysis, addresses a problem created by the 1907 Texas Supreme Court ruling in a case referred to as *Lonergan*, which held that "unless contractual language states otherwise, a contractor could be liable to the owner for design defects in the design prepared by the owner's designer".

The bill analysis further describes the policy of the legislation as providing "a narrow exception to public policy and provides that a contractor is not civilly liable or responsible for design defects in a design prepared by certain government entities or their designers. This legislation does not apply to a private owner or any governmental entity not specifically listed in the proposed legislation. This legislation also does not eliminate a contractor's liability or responsibility for design defects in a design prepared by the

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*contractor or a designer working for the contractor. This legislation is applicable only to public, governmental entities authorized to construct road or highway projects under the Texas Transportation Code.”*

In this 1907 judicial precedent, the Texas Supreme Court found a contractor responsible when a building collapsed during construction due to apparent design defects. Notably, there were no architects or licensed design professionals involved in the *Loneragan* case, and the court found that absent any express contract language assigning liability, the construction contractor had more knowledge and expertise than the owner. As is the case with many construction services contracts in Texas, an architect is not required by Texas law and is often not involved in the design of the project.

Importantly, while contractors have argued that *Loneragan* has created an implied liability of the contractor for design defects, the *Loneragan* Court rejected implied warranty as a basis for its holding. Instead, it stated:

*“liability of the builder does not rest upon a guaranty of the specifications, but upon his failure to perform his contract to complete and deliver the structure”. (See 104 S.W. at 1067)*

Expanding the policies in HB 2899 would no longer hold harmless private commercial building owners or residential homeowners. And if expanded in the form previously proposed, these policies would grant unnecessary and inappropriate statutory protections for contractors to the detriment of the private owners who enter into contracts with them, including residential home owners and other small business owners obtaining construction services contractually.

An expansion of these policies as previously proposed would make them apply to all governmental entities, well beyond the sophisticated public owners and contractors who are parties to contracts authorizing road construction and highway projects under the Texas Transportation Code. Expanding these policies as previously proposed would also eliminate a contractor’s liability or responsibility for design defects in a design prepared by the contractor or a designer working for the contractor.

TxA’s previous concerns relating to expansion of the policies contained in HB 2899 have included opposition to provisions that appear to statutorily limit all liability for contractors and builders in all types of construction projects, such that a contractor could be relieved of liability even in a situation where common sense would suggest they are responsible because they affirmatively assumed responsibility through their acts or omissions, or under the terms of their contracts. Such an approach would leave owners in other types of construction projects – such as design build, construction manager-at-risk, guaranteed maximum price, or commercial building projects under 20,000 sq. ft. where no architect is required – with no remedy for a construction defect caused by a contractor’s errors.

Further, TxA has found no evidence to support the view that contractors and subcontractors are being held liable for design defects – or that architects and engineers are requiring contractors to hold them harmless, nor is TxA aware of any evidence provided by others that would substantiate such a view. We believe claims made by contractors that design professionals are requiring indemnification, or that courts are holding contractors liable for design professionals’ breach of professional duty are misleading and unfounded. A review of relevant cases that have dealt with construction litigation between owners and contractors have resulted in outcomes based on contracts between the owner and the contractor, not on any type of common-law implied warranty.



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Provisions that specify mandatory “non-negotiable, non-waivable” contract requirements stand out as particularly objectionable from a policy perspective, as these types of provisions would deny a contractor the ability to accept risk that might give it a competitive advantage, thus tilting the competitive marketplace by eliminating those willing to accept risk contractually based on the expectation of enhanced financial returns. Contractors, subcontractors, and large construction companies who have promoted these policies are sophisticated parties capable of evaluating and assessing risk through complex contractual arrangements, and do not need or merit this type of blanket legal protection. TxA opposes policies that would take contract negotiations out of the hands of the parties and substitute a legislative “one size fits all” solution, potentially creating a new set of unintended and problematic consequences.

TxA believes any proposed legislation should include appropriate provisions that preserve contract law and protect the health, safety and welfare of the public, such as amendment language added to similar legislation in 2017:

- contractor’s duty to inform (see Senate author’s floor amendment to 2017 bill)
- mutual waiver authority (see House committee amendment to 2017 bill)
- standard of care (see House floor amendment to 2017 bill)

TxA remains concerned about many of the provisions contained in previously proposed legislation and opposes legislative policies that would relieve contractors of liability to owners when they have agreed to it contractually, or when they have participated in the design process or are contractually responsible for the design, or for the entire design and construction of the project.

The policy issue that appears warranted for discussion relates to the assignment of any implied liability if a construction contract between an owner and a builder is otherwise silent, or when the contract has unclear or conflicting provisions regarding the assignment of risk. Those are the only instances in which the century-old doctrine of *Loneragan* is applicable.

TxA would be willing to consider an approach to legislation that would simply clarify that a contractor does not impliedly warrant the sufficiency of the plans and specifications prepared by others for a construction project. However, we continue to strongly oppose any legislative remedy that provided, as a matter of law, that contractors are never liable for problems they could or should have foreseen during the bidding and construction process, despite any contractual assurances to the contrary given the owner.

TxA appreciates the complicated nature of the issues involved and recognizes the significant amount of risk and liability that exists for everyone in the design and construction process but does not believe previously proposed changes to Texas contract law are necessary or beneficial. TxA is committed to working with other stakeholders and with Chairman Leach and other members of the Legislature on these important policy issues and would be pleased to provide additional research or information to the committee.



## Submission 5: Justices of the Peace & Constables Association (JPCA) Response



### *Justices of the Peace and Constables Association of Texas, Inc.*

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November 30, 2020

Dear Chairman Leach and Members of the House Committee on Judiciary and Civil Jurisprudence,

The Justices of the Peace and Constables Association of Texas (JPCA) would like to thank you for allowing our organization the opportunity to weigh in on the committee's interim charges. Interim charge 1 is of great interest to the roughly 2,000 members of our organization.

**Interim Charge 1: Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 86th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including the following:**

- SB 2342, which increases the amount in controversy for certain courts and expedited proceedings and makes reforms to jury requirements in order to improve access to courts. Review the impact of the legislation on the administration of justice and access to courts for Texas citizens.

Recommendation

The Legislature should consider amending the Local Government Code to increase the fee for services rendered before judgment in justice courts.

Background

During the 86<sup>th</sup> Legislative Session, SB 2342 by Sen. Creighton (R-Conroe) increased the justice courts jurisdiction of civil matters in which the amount in controversy does not exceed from \$10,000 to \$20,000. The increase went into effect on September 1, 2020.

The justice courts are the most accessible courts in Texas. For the majority of people, justice courts are their only interaction with the judiciary. We are committed to providing the best services for our constituents, and are pleased to be able to help more Texans because of the jurisdictional increase. JPCA would like to thank Chairman Leach for his leadership on this bill.

Findings

*Jurisdiction Increase and Caseload Data*

Considering the jurisdiction increase has only been effective for a short time and during the COVID-19 pandemic, more time and data will be needed in order to determine the true impact of SB 2342 on our courts.

In order to give the committee a snapshot of what is happening across the state, we have provided numbers below from Waller County. These numbers indicate an increase in filings from the previous period compared to the period since September 1<sup>st</sup> of this year. However, the county is gaining population daily and the increase in filings is across the board.

The table below accounts for cases in Waller County affected by SB 2342. Justice courts are seeing a high percentage of small claim cases in excess of \$10,000 but are not yet seeing the same numbers in debt claim cases. The numbers in Waller County are indicative to the trend judges are experiencing across the state. JPCA expects the number of debt claim case filings to rapidly increase as debt collection companies increase their efforts once the COVID crisis subsides. It should be noted that the information below does not include Waller County Precinct 1 Justice of the Peace, they are for the remaining three justice precincts in Waller County. However, that court has not had any cases filed affected by SB 2342.

JPCA of TEXAS, INC. P.O. Box 115 Granbury, Texas 76048 1-800-662-5722 www.jpca.com

	Small Claims	Debt Claims
Total number of cases filed 9/1/19 through 8/31/20	43	307
Total number of cases filed 9/1/20 through 11/15/20	28	137
Total number of cases filed affected by SB2342 filed	4	5
Percentage of cases filed since 9/1/20 > \$10,000	14.29%	3.65%

The Texas Judicial Council's Civil Justice Committee reported that "pre-pandemic court data reveal a civil justice system with year-over-year increases in case filings and a backlog of cases. According to Fiscal Year 2019 (FY19) Texas court data, the number of new civil filings in district, county, and justice courts continues to trend upward. In 2019, the number of new civil cases (excluding civil cases related to criminal matters) filed in justice courts by 18%. Clearance rates for all civil cases in district and county courts as well as for debt cases in justice courts all sit well below 100%, indicating that backlogs pre-pandemic were already growing."<sup>1</sup>

*Cost to File in Justice Court*

The cost to file in justice court in most counties is \$46 and has not increased in 14 years, which is also when the last jurisdiction increase (\$5,000 to \$10,000) occurred. Over the past 14 years, the cost to run the courts have dramatically increased causing courts to do more with less. Judges statewide are bracing for an increase in caseloads as the jurisdiction increase becomes more widely known and used. Justice courts are the least expensive, and most widely used courts in our state. However, increased personnel cost, budgetary constraints, and training demonstrate a vital need for additional funding to the court through an increase in filing cost. An increase will not hinder access to justice because judges have the authority to waive these filing fees due to inability to pay. For all of these reasons, it is important that the legislature consider increasing the cost to file in justice court which could help provide counties with vital resources, including additional court personnel and training which would benefit all counties.

My organization and I look forward to working with the committee this upcoming legislative session. Please do not hesitate to contact me should you need further information.

Sincerely,



Hon. Rick Hill  
President, Justices of the Peace and Constables Association of Texas

<sup>1</sup> 2020 Civil Justice Committee Report and Recommendations, Texas Judicial Council, September 2020. JPCA of TEXAS, INC. P.O. Box 115 Granbury, Texas 76048 1-800-662-5722 [www.jpca.com](http://www.jpca.com)

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## **APPENDIX B**

### **Interim Charge 2 Submissions**

#### **Submission 1: Office of Court Administration (OCA) Response**

##### **Judicial Data Collection**

Written Testimony to the House Judiciary and Civil Jurisprudence Committee  
November 30, 2020

**Interim Charge 2:** Study opportunities to modernize and improve local and statewide data collection throughout the criminal justice system in Texas, including improving the collection and reporting of court records, to promote transparency and ensure uniform data collection processes.

##### **Background on Judicial Data Collection**

The Texas Legislature established the Texas Judicial Council in 1929 to continuously study and report on the organization and best practices of the Texas Judicial Branch. The Council is the policy-making body for the judiciary, and one of its main duties is gathering judicial statistics and other pertinent information from judges and court officials. The Executive Director of the Council is David Slayton, who also serves as Administrative Director for the Office of Court Administration.

The Council began collecting aggregate court statistics in 1929, first with the appellate and district courts. Later, in 1973, data collection expanded to the county, justice, and municipal courts. Over the years, data collection evolved as resources and technology improved the capability of the Council to collect more and different information. Judicial data collection requirements also come from the Legislature. Over the last two decades, the Legislature has established more than 20 requirements mandating collection of specific information on case activity. In recent years, The Council has recommended moving away from collecting aggregate data to collect case-level data.

##### **Aggregate Case Data**

Aggregate statistics often cannot provide the Council or other decisionmakers with sufficient detail to analyze and monitor important policy issues and study the administration of justice. More robust and timely information is needed, and current technological capabilities now permit the collection of more and better data.

In some situations, needed data are either inadequate or nonexistent. Consider the following recent examples:

- The Council's Criminal Justice Committee was charged with studying the impact of opioid drug use on the Texas judiciary, but no court data are available to assess the volume of or outcomes in cases involving an opioid or any other specific drug.
- The Council's Civil Justice Committee was charged with studying the landscape of civil justice in Texas and recommending reforms to improve access to justice in the courts, but only



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limited data were available on self-represented litigants in the district and county courts, and no data were available for other courts.

- The Council’s Juvenile Justice Committee was charged with studying the adjudication of fine-only offense cases involving juveniles, yet only high-level, aggregate data on filings are available.
- Based on Council recommendations, the Legislature passed major school ticketing and truancy reform bills in recent years, but other than a reduction in filings there are no data to illustrate the outcomes in these cases.
- Recent mass shootings have brought renewed scrutiny to the completeness of reporting by responsible entities to the National Instant Background Check System (NICS) to ensure that disqualified individuals are not allowed to purchase firearms. Without case level court activity data, the Texas judiciary cannot determine whether all eligible cases are being reported to NICS.
- Hurricane Harvey caused massive, widespread damage throughout Texas in August 2017. Detailed data are unavailable to fully assess the extent of the disruption to the judicial system.

### **Case-Level Data**

The Council recommended moving to collecting case-level data in June of 2018. In response, the OCA has instituted a Statewide Case Level Data Consolidation Project. The project will create a centralized judicial data warehouse that will allow both judicial staff and the public to access statewide case level information for statistical reporting and analysis.

To assist with this effort, the 86<sup>th</sup> Legislature appropriated \$29.6 million dollars in funding to OCA for a Statewide Uniform Case Management System. The is required to:

1. Collect county judicial data, including mental health adjudications and domestic violence protective orders;
2. Provide timely and accurate reporting of judicial data to the office and the national criminal history record information and mental health record repositories;
3. Easily integrate with existing state and countywide systems to allow frequent sharing of information between systems; and
4. Include adequate reporting standards to ensure the accurate reporting of information through the system.

APITAL MURDER | MURDER | OTHER  
OMICIDES | ASSAULT OR ATTEMPTED  
MURDER | SEXUAL ASSAULT OF AN  
ADULT | INDECENCY OR SEXUAL ASSAULT  
OF A CHILD | FAMILY VIOLENCE ASSAULT  
AGGRAVATED ROBBERY OR ROBBERY  
BURGLARY | THEFT | AUTOMOBILE  
THEFT | DRUG SALE OR MANUFACTURE  
DRUG POSSESSION | FELONY D.W.I. |  
THIR FELOINIES | ALL MISDEMEANORS  
INJURY OR DAMAGE | OTHER INJURY OR  
DAMAGE | REAL PROPERTY—EMINENT  
DOMAIN | OTHER REAL PROPERTY |  
CONTRACT—CONSUMER/COMMERCIAL/  
REBT | OTHER CONTRACT | CIVIL CASES  
RELATING TO CRIMINAL MATTERS  
| OTHER CIVIL CASES | DIVORCE |  
PARENT-CHILD—NO DIVORCE | CHILD  
PROTECTIVE SERVICES | TERMINATION  
OF PARENTAL RIGHTS | ADOPTION |  
PROTECTIVE ORDERS | TITLE IV-D | D.W.I.  
THEFT | DRUG POSSESSION | FAMILY  
VIOLENCE ASSAULT | TRAFFIC | D.W.L.S./  
D.W.L. | INDEPENDENT ADMINISTRATION  
| DEPENDENT ADMINISTRATION |  
ALL OTHER ESTATE PROCEEDINGS  
GUARDIANSHIP | MENTAL HEALTH  
SERVICES | TRAFFIC MISDEMEANORS  
NON-TRAFFIC MISDEMEANORS |  
MALL CLAIMS SUITS | FORCIBLE  
ENTRY AND DETAINER (EVICTIONS



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The Request for Offer (RFO) for the Uniform Case Management System was released in November 2020. Implementation of the system is projected to be complete in the Summer of 2022.

For information on the Council's recommendations on Case Level Data please see the 2018 Data Committee Report on the Council's website <https://www.txcourts.gov/media/1441878/data-committee-report.pdf>



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**Submission 2: Texas Department of Public Safety (DPS) Response**

**Texas Department of Public Safety  
Crime Records**

**Response to a House Judiciary & Civil Jurisprudence  
Committee Information Request for Interim Charge 2**

November 30, 2020

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**HOUSE OF REPRESENTATIVES  
NOTICE OF FORMAL REQUEST FOR INFORMATION**

COMMITTEE: Judiciary & Civil Jurisprudence

CHAIR: Rep. Jeff Leach

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Due to the ongoing COVID-19 pandemic and the challenges in scheduling public hearings at this time, the Committee is requesting written submissions from state agencies, interested parties, and the public regarding all assigned interim charges. In addition, the Committee is seeking information regarding the effects of COVID-19 in areas within its jurisdiction.

Topic:

Interim Charge 2: Study opportunities to modernize and improve local and statewide data collection throughout the criminal justice system in Texas, including improving the collection and reporting of court records, to promote transparency and ensure uniform data collection processes.

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## Introduction

DPS appreciates this opportunity to articulate the work and planning of the Crime Records Service (CRS) to streamline data reporting and collection of critical criminal justice and court records. The department has many responsibilities related to criminal justice reporting, including the computerized criminal history system, the sex offender registry, and others. This report is limited in scope to the uniform crime reporting and incident-based reporting programs and systems. If similar information is requested related to one or more additional criminal justice systems, DPS can provide that information.

CRS is currently undertaking a comprehensive, long-term endeavor to resolicit each and every one of its repositories, software applications, and tracking systems. These new systems will modernize operations and allow for more nimble changes based on mandates and efficiencies. Part of this effort looks at the current configuration of collected systems and offers possibilities to repackage systems and processes more functionally.

One of the first awarded new systems is what DPS refers to as a data broker. This broker will seamlessly ingest data from local law enforcement for multiple systems and deliver data to the proper system in the appropriate format. The broker initially will accept data which can then be shared with the National Data Exchange (N-DEX) and the Uniform Crime Reporting (UCR) incident-based reporting system. The award for the new UCR will occur in FY 21. The new UCR System will modernize UCR reporting from its current hybrid reporting methodology to an all incident based reporting (NIBRS) reporting methodology. As the modernization continues, DPS expects to discover additional efficiencies for local agencies' reporting data to CRS.

CRS also participated in the State Auditor's Office (SAO) *Audit Report on Investigation and Prosecution Processes for Reported Sexual Assaults in Texas*, Report No. 21-002, dated October 2020. The [Report](#) can be found on the SAO website, but DPS provides additional context at the end of this Response.



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## Background

### Uniform Crime Reporting:

*National Requirements.* The theory of UCR began in the 1920s as a need for national crime statistics was recognized and, after a committee review of state criminal codes and recordkeeping practices, an initial plan was implemented in 1929 as the foundation of the national UCR program. The Federal Bureau of Investigation (FBI) operates UCR at the national level and new offenses, data points, and methodologies have been added for more useful and comprehensive reporting throughout the years.

Summary reporting was the primary submission method for many years, but in 1989 the FBI began accepting National Incident-Based Reporting System (NIBRS) submissions, which provided much more detail for crime incidents and eliminated the need for paper submissions. Due partly to the improvements in technology but also to the changing landscape of crime and incident data, new NIBRS changes have been rolled out more frequently. These changes include capturing additional information related to bias-motivated offenses (1990), the presence of gang activity (1997), data for law enforcement officers killed and assaulted (2003), new codes to further specify location types and property types (2010), offender ethnicity (2013), identity theft and hacking/computer invasion (2016).

CRS has worked over the last several years with law enforcement agencies (LEAs) to transition from a combination of summary reporting and incident-based reporting to only accepting NIBRS data. The Texas Legislature provided needed funding for LEAs to accomplish this conversion without negatively impacting local budgets. As of now, 328 LEAs who currently report summary information have not completed the transition to NIBRS. The majority of these agencies do not yet have a target date for the transition, while just over 100 plan to report using NIBRS beginning sometime in 2020 or 2021. The summary reporting system will be permanently retired January 1, 2021 and NIBRS will be the single methodology for reporting incident data to the state and FBI UCR program. Until all participating agencies update their systems to report using NIBRS, Texas will suffer a decrease in data.

*Texas Requirements.* Beginning in 1991, the Texas Legislature directed DPS to begin collecting data on family violence incidents in addition to the FBI's offenses and criteria. This was followed up with a mandate in 1992 for "the collection and analysis of information relating to crimes that are motivated by prejudice, hatred, or advocacy of violence." Data collection

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related to sexual assault incidents began in 2008, but the greater variance in the offenses collected in the compilation of sexual assault data in Texas over the rape offense collected under the crime index nationally means that the figures should not be used comparatively. The collection of specific mandates passed by the Texas Legislature are commonly referred to as Segment Levels 8 and 9, which relates to their positions in the NIBRS system. Segment Levels 1 through 7 contain the national program's data requirements.

National Data Exchange (N-DEx):

The N-DEx compiles law enforcement incident records and other non-intelligence criminal justice information into a central repository for sharing across jurisdictions. Texas LEAs that participated in the Texas Data Exchange (TDEx) submitted a wealth of information pertaining to incidents, suspects, bookings, incarceration records, and other criminal justice information. The Department recently solicited for a system that would facilitate data sharing not only within a single program but to share like data across multiple systems. That new solicitation was a Data Broker. The data broker will serve as the central reporting point for data pushed to N-DEx and UCR. Once submitted to N-DEx, the data can be used by authorized criminal justice professionals to search, link, and analyze aggregated data on a state and national level.

The configuration of the data broker to allow reporting for more than a single program is part of the modernization efforts in progress by CRS. Additional opportunities to realize efficiencies across programs will be identified as the requirements are developed for other systems replacements and on a continuous basis in the future.

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## **Data Broker Vision**

The data broker allows local LEAs to submit one electronic file to DPS to meet the reporting requirement for multiple programs. At system implementation, N-DEx and UCR data can be submitted collectively and the data broker will separate the data and report it to the appropriate repository. This submission method improvement gives LEAs control over the data they contribute and which voluntary programs they participate in while streamlining the submission process. CRS is not content to stop with the efficiency of reporting for just two systems. Other systems internal and external to CRS – and to DPS – may be candidates for increased ease of reporting. That analysis will take time, but the benefit to the criminal justice community could be significant.

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## Status of Project

The data broker project is fully underway. Functional requirements documents and the first interface control document have been approved. System design and system security documentation is nearing final approval. DPS has identified agencies that have agreed to participate in a pilot of the new system, including the DPS law enforcement case management and reporting system. The project team continues to refine technical specifications that local LEAs can use for reporting data and works to resolve any issues with field mapping.

The data broker is scheduled to be implemented during calendar year 2021. Following implementation of the data broker, DPS will work with local LEAs to provide access to the system and will continue to examine its programs for additional consolidations and efficiencies related to crime records reporting.

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## SAO Audit Report Context

CRS administers two of the three reporting systems mentioned in the *Investigation and Prosecution Processes for Reported Sexual Assaults in Texas*, UCR and the computerized criminal history system (CCH). These disparate systems not only collect data at different points of the criminal justice process, but participation in CCH is mandated and participation in UCR is voluntary. In addition, UCR data is event-driven and does not contain criminal history data. CCH, in contrast, is individual-centric as it records criminal justice details tied to a person across time.

The data contained in the two systems as they stand today has no tangible relationship and therefore no mechanism to reliably compare information between the two systems. Further complicating matters is that the UCR system relies predominantly on offense definitions established by the FBI and do not match Texas penal criteria in sexual assault and other crimes. No current system tracks crimes, investigations, and prosecutions throughout the entirety of the process at the state level.

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### Submission 3: Texas Justice Initiative (TJI) Response



December 1, 2020

House Committee on Judiciary and Civil Jurisprudence

Rep. Jeff Leach, Chair

Cassidy Zgabay, Committee Clerk

submitted via email: [cassidy.zgabay\\_hc@house.texas.gov](mailto:cassidy.zgabay_hc@house.texas.gov)

Dear Chair Leach, Vice Chair Neave and Committee Members:

Thank you for the opportunity to write to you today in order to submit my input on the House Committee on Judiciary and Civil Jurisprudence's Interim Charge No. 2:

**Interim Charge 2:** Study opportunities to modernize and improve local and statewide data collection throughout the criminal justice system in Texas, including improving the collection and reporting of court records, to promote transparency and ensure uniform data collection processes.

I am the executive director of the Texas Justice Initiative, a nonprofit organization founded in 2016 in order to create a portal for data on the Texas criminal justice system. Since we launched our website, TJI has provided real-time data on officer-involved shootings and deaths in custody in Texas in formats people can understand. Over the years, we have added data visualization tools and data sets like a dashboard detailing the deaths of people who were jailed awaiting trial, deaths of incarcerated individuals due to COVID-19, law enforcement COVID-19 deaths and serious incidents in Texas county jails.

TJI deals in data that is publicly available – accessible via open records requests – but is otherwise not made public in a useable way. As you all are aware, many state laws are passed with the caveat that data be collected in order to analyze the impact of such laws – yet, all too often, that data sits in filing cabinets or on hard drives for years without getting a passing glance. TJI pays attention to this fine print

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Texas Justice Initiative • P.O. Box 164286 • Austin, TX 78746 • [www.TexasJusticeInitiative.org](http://www.TexasJusticeInitiative.org)

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and collects this underutilized data from the government, then cleans it and processes it to be displayed on our website, in filterable and understandable visualizations, to the public for free.

Currently, many types of criminal justice data are maintained in PDFs. Even data that is collected electronically – such as monthly jail population reports, thanks to last session’s HB 3440 – is not made *available* to the public in an electronic format like a spreadsheet. TJI undertakes the process of freeing data from PDFs and processing it for easier use, but would like to encourage that any future data collection requirements are accompanied with a requirement to make the data available in a user-friendly format.

There are many different agencies under the umbrella of criminal justice that collect various sets of data, and TJI exists to collect all of these sets in one place to give a more comprehensive picture of the criminal justice system. However, it would be helpful if agencies that are required to collect data are also required to post the data in a particular place on their own websites so that the public does not have to go through the process of filing open records requests.

Finally, while TJI supports enhancing the collection of criminal justice data in Texas, we would caution that the inconsistent collection of data is not very helpful in conducting any analysis that could lead to identifying best practices, anomalies and aspects of our system that need improvement. Any new requirements should be uniformly required in all applicable agencies, and the same data should be collected in the same fashion across the board.

Thank you for the opportunity to provide my feedback to the Texas Legislature, and please reach out if I can be of further assistance.

Best,

Eva Ruth Moravec

Executive Director

Texas Justice Initiative

[eva.ruth@texasjusticeinitiative.org](mailto:eva.ruth@texasjusticeinitiative.org)

210-422-9737

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## Submission 4: Disability Rights Texas (DRTx) Response



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FAX 512.454.3999

### Disability Rights Texas Response to Request for Information Committee on Judiciary and Civil Jurisprudence – Interim Charges November 30, 2020

Disability Rights Texas (DRTx) is designated as the federally mandated Protection and Advocacy System in Texas. Our charge is to protect, promote and advance the rights of individuals with disabilities. In that effort DRTx engages in individual casework, legal representation, and systemic advocacy for individuals with a mental illness as well as individuals with an intellectual disability living in the community and in institutional settings (including jails).

We appreciate the opportunity to provide comment on selected interim committee charges for the Committee on Judiciary and Civil Jurisprudence. These comments are specific to Interim Charge 2: *Study opportunities to modernize and improve local and statewide data collection throughout the criminal justice system in Texas, including improving the collection and reporting of court records, to promote transparency and ensure uniform data collection processes.*

Like states across the country, Texas faces a growing crisis in effectively serving Texans with mental illness that are involved with the criminal justice system. The number of individuals found Incompetent to stand trial and added to Texas' waitlist for competency restoration services continues to increase, and with over 1200 individuals on the forensic waitlist and 70% of state hospital beds in Texas currently utilized by the forensic population. A systemic approach to forensic and diversion services is needed to both reduce the number of individuals entering the criminal justice system and more efficiently utilize resources for individuals who need them.<sup>1</sup> Since the time this report was written the waitlist has grown to over 1400 individuals.

DRTx comments focus on this intersection between the HHSC state hospital forensic system and the population of individuals with disabilities who are held in jail awaiting a bed in a state hospital. HHSC strives to facilitate the cross agency coordination of a behavioral health and jail diversion for individuals with a mental illness or an intellectual disability in the criminal justice system. To do so, HHSC must develop a more complete and accurate picture of the forensic service system. This involves examining total capacity across the state including gathering information on jail utilization similar to that for state hospital as well as data on jail based competency restoration programs.

HHSC utilizes the Joint Committee on Access to Forensic Services (JCAFS), a statutorily-mandated advisory body, charged with making recommendations for the implementation of bed day utilization review protocol. §25 TAC 411 Subchapter A. A goal of HHSC and JCAFS is to:

(2) Develop a comprehensive state-level plan for the coordination and oversight of forensic services in Texas. There is no comprehensive and coordinated plan to address the systemic drivers of this waitlist. A strategic plan would establish priorities, programs and processes to improve forensic and diversion

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<sup>1</sup> Joint committee on Access and Forensic Services: 2020 Annual Report, October 2020 @ 7



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services, including how to reduce and triage the forensic waitlist, identify measures for quality and effectiveness; and ensure coordination internally and with multiple system stakeholders, external partners, settings and disciplines.<sup>2</sup>

This effort is hampered because while HHSC is able to collect data on use of state hospital beds and inpatient mental health facilities on contract with HHSC, HHSC is unable to gather information on the number and status of individuals in jail awaiting a state hospital bed. The data used to assess the system has focused on the use of state hospital beds. The JCAFS report released October 2020 recommended additions to the current data collection in order to develop a systematic approach to forensic and diversion services and reduce the number of individuals entering the criminal justice system. Given the substantial cost to counties of holding individuals in their jail while they are on this waitlist, it is essential that this data be available in the effort to resolve the problem of the waitlist.

8. In order to get a better idea of which areas of the state are driving the growth of the waitlist, which areas have developed alternatives to inpatient competency restoration and where to target the expansion of alternative programming, it is recommended that the new Office of Forensic Services begin to collect and report the following metrics to JCAFS.

- current waitlists (Maximum Security and Non-Maximum Security broken out by county/jail.
- number on the list (at the beginning of each month)
- waitlist broken out by charge type (felony and misdemeanor),
- mean time on list (for the previous month),
- information on each jail based competency restoration program (JBCR), outpatient competency based restoration program (OCRO, diversion program and mental health deputy program<sup>3</sup>

DRTx recommends additional data to be collected and request the committee mandate that these data items be routinely collected and considered by HHSC:

- the numbers of individuals with a disability in the jails ;
- the numbers of individuals with an intellectual disability found incompetent to stand trial and waiting in jails for a state hospital bed, a state supported living center bed, an OCR bed or a JBCR bed.
- each county jail should report monthly to TCJS and HHSC the following information: the name of each individual currently waiting for a state hospital or state supported living center bed; the date they were booked into jail; the date they were found incompetent to stand trial or not guilty by reason of insanity, the level of crime, the date the individual is removed from the waitlist; and the reason they were removed from the waitlist,(i.e. placement in JBCR, OCR, a state hospital, a state supported living center, becomes competent, or is bonded into the community).
- data be collected and reported on the length of time between booking and when the individual with a disability is seen by a mental health professional.

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<sup>2</sup> Joint committee on Access and Forensic Services: 2020 Annual Report, October 2020 @9

<sup>3</sup> Joint committee on Access and Forensic Services: 2020 Annual Report, October 2020 @12 & 13

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- data to be collected and reported on the length of time between booking and administration of medication.
  - how many people are arrested from an inpatient psychiatric facility, emergency room, emergency observation unit, crisis stabilization unit or upon immediate discharge from one of these settings and the circumstances that caused the arrest. This should assist in identifying what must be put in place for successful pre-arrest diversion. (DRTx is involved in a case with an individual who was discharged from a private psychiatric facility and subsequently attempted suicide by setting himself on fire. Ultimately the young man was charged with arson, obviously an inappropriate response to the precipitating behavior).

Additionally, there are sections from the JBCR rules 26 TAC Chapter 307 that should be included as data sets for state hospitals, forensic contractors, state supported living centers and outpatient competency restoration programs:

- (A) the number of individuals on felony charges;
- (B) the number of individuals on misdemeanor charges;
- (C) the average number of days for an individual charged with a felony to be restored to competency
- (D) the average number of days for an individual charged with a misdemeanor to be restored to competency;
- (E) the number of individuals charged with a misdemeanor and not restored to competency, for whom an extension was sought;
- (F) the number of individuals restored to competency

To capture information about Outpatient Competency Restoration programs, DRTx recommends including the number of inmates found incompetent to stand trial who were screened out of or deemed inappropriate for the OCR program and the reason why.

DRTx appreciates your time and consideration of our comments. If you have questions or require additional information, please contact Aaryce Hayes, [ahayes@drtx.org](mailto:ahayes@drtx.org)

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## Submission 5: National Alliance on Mental Illness (NAMI) Texas Response



### Judiciary and Civil Jurisprudence: Interim Charge 2

November 24, 2020  
Matthew Lovitt  
Peer Policy Fellow, NAMI Texas

**Interim Charge 2:** Study opportunities to modernize and improve local and statewide data collection throughout the criminal justice system in Texas, including improving the collection and reporting of court records, to promote transparency and ensure uniform data collection processes.

NAMI Texas is a nonprofit 501(c)3 organization founded by volunteers in 1984. We are part of the nation's largest grassroots mental health organizations and we exist to help improve the quality of life for individuals with mental illness and their families. Around the state, we have 27 local NAMI affiliate organizations and approximately 2,000 members.

#### The State of Mental Health Care for Justice-Involved Individuals

More 5 million adult Texans are living with a mental illness.<sup>1</sup> Roughly 1.8 million adult Texas have a substance use condition that causes significant clinical impairment.<sup>2</sup> Individuals with an untreated mental health or substance use concerns are 8x more likely to be incarcerated.<sup>3</sup> In 2015, an estimated 30% of jail inmates have one or more SMIs, which equates to nearly 20,000 Texans.<sup>3</sup> The prevalence of SMI in county jails is likely currently much higher due to population growth and worsening mental health workforce shortages.<sup>4</sup>

Unfortunately, only 38% of jail inmates experiencing mental illness receive the appropriate services.<sup>5</sup> Of those, only 30% receive psychiatric medications. The consequences of providing inadequate treatment to inmates living with SMI include increased risk of exploitation, neglect, and isolation, which can worsen mental health outcomes and increase risk of homelessness, emergency service utilization, substance use, and recidivism upon prison or jail exit.<sup>6</sup>

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<sup>1</sup> Mental Health America of Greater Dallas. (2014). *Texas Mental Health Numbers: Community-Based Services*. Retrieved from <https://www.mhadallas.org/wp-content/uploads/2014/12/TEXAS-MENTAL-HEALTH-NUMBERS.pdf>

<sup>2</sup> Statewide Behavioral Health Coordinating Council. (2019). *Texas Statewide Behavioral Health: Fiscal Years 2017-2021 Strategic Plan Update and the Foundation for the IDD Strategic Plan (2<sup>nd</sup> ed.)*. *Texas Health & Human Services*. Retrieved from <https://hhs.texas.gov/reports/2019/02/statewide-behavioral-health-strategic-plan-update-idd-strategic-plan-foundation>

<sup>3</sup> House Select Committee on Mental Health. (2016). *Interim Report to the 85<sup>th</sup> Legislature. Texas House of Representatives*. Retrieved from <http://www.houstontx.gov/txlege/static/documents/hb1486/12-2016-Mental-Health-Select-Committee-Interim-Report.pdf>

<sup>4</sup> Hogg Foundation for Mental Health. (2018). *Public Behavioral Health Services in Texas*. Retrieved from <https://hogg.utexas.edu/wp-content/uploads/2018/11/Public-Behavioral-Health-Services-in-Texas.pdf>

<sup>5</sup> Bureau of Justice Statistics. (2017). *Indicators of mental health problems reported by prisoners and jail inmates, 2011-12*. Retrieved from [https://www.bjs.gov/content/pub/pdf/imhprpji1112\\_sum.pdf](https://www.bjs.gov/content/pub/pdf/imhprpji1112_sum.pdf)

<sup>6</sup> Zgoba, K., Reeves, R., Tamburello, A., & DeBilio, L. (2020). Criminal Recidivism in Inmates with Mental Illness and Substance Use Disorders. *Journal of the American Academy of Psychiatry and the Law Online*, 48(2). DOI: 10.29158/JAAPL003913-20

Inadequate mental health care in jails and prisons disproportionately impacts communities of color and the poor. Black men and women are six times and two times more likely to be incarcerated than the White men and women, respectively.<sup>7</sup> Formerly incarcerated individuals are almost ten times more likely to be homeless than the general public, with rates of homelessness increasing with number of incarcerations, recency of release, and gender and ethnicity.<sup>8</sup> Further, incarceration exacerbates inequities in employment, housing, and relational dynamics, increasing risk of recidivism.<sup>9</sup>

In addition to the human cost, the consequences of providing inadequate mental health care to justice involved individuals has fiscal implication for the state. Inmates living with mental illness often serve longer sentences due to repeated rule violations and verbal or physical altercations with jail staff or other inmates.<sup>10</sup> Currently, county jails house roughly 65,000 inmates in Texas at an average cost of \$59 per day.<sup>11, 12</sup> If 30% of jail inmates are living with a mental illness, Texas spends \$1.15 million for each additional day of incarceration. In addition to jeopardizing staff safety, lengthier inmate sentences contribute to high turnover rates for jail staff.<sup>13</sup>

### The Importance of Better, Smarter Data in Criminal Justice

Inadequate and inefficient data collection, standardization, and reporting is a significant obstacle in the delivery of mental health services to justice-involved individuals living with mental illness. Thankfully, a shift from “tough on crime” to “smart on crime” initiatives have contributed to improvements in the delivery of mental health services. For example, the expansion of mental health and drug courts in Georgia has contributed to a decrease in crime and incarceration across the state.<sup>14</sup> Referrals to mental health and drug courts hinge on the data collected by peace officers and jailers.

In addition to collection, data standardization is an essential element in improving the care provided to those living with mental illness. Data standardization ensures that data is consistent, reliable, and comparable, to improve efficiency and efficacy in the delivery of pre-

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<sup>7</sup> Carson, E. (2014). *Prisoners in 2013*. United States Department of Justice: Bureau of Justice Statistics. Retrieved from <https://www.bjs.gov/content/pub/pdf/p13.pdf>

<sup>8</sup> Couloute, L. (2018). *Nowhere to go: Homelessness among formerly incarcerated people*. Prison Policy Initiative. <https://www.prisonpolicy.org/reports/housing.html#raceandgender>

<sup>9</sup> Blankenship, K., del Rio Gonzalez, A., Keene, D., Groves, A., & Rosenburg, A. (2018). Mass incarceration, race inequality, and health: Expanding concepts and assessing impacts on well-being. *Social Science & Medicine*, 215, 45-52

<sup>10</sup> Bureau of Justice Statistics. (2006). *Special Report: Mental Health Problems of Prison and Jail Inmates*. Retrieved from <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>

<sup>11</sup> Texas Commission on Jail Standards. (2020). *Abbreviated Population Report for 10/01/2020*. Retrieved from <https://www.tcjs.state.tx.us/wp-content/uploads/2020/10/AbbreRptCurrent.pdf>

<sup>12</sup> Texas Criminal Justice Coalition. (2016). *Travis County, Texas: Adult Criminal Justice Data Sheet*. Retrieved from [https://www.texasajc.org/system/files/publications/Adult%20Travis%20County%20Data%20Sheet%202016\\_0.pdf](https://www.texasajc.org/system/files/publications/Adult%20Travis%20County%20Data%20Sheet%202016_0.pdf)

<sup>13</sup> Galvin, G. (2017). Underfunded, Overcrowded State Prisons Struggle with Reform. *U.S. News & World Report*. Retrieved from <https://www.usnews.com/news/best-states/articles/2017-07-26/understaffed-and-overcrowded-state-prisons-crippled-by-budget-constraints-bad-leadership>

<sup>14</sup> The Associated Press. (2018, February 22). *Georgia's Top Judge Applauds Criminal Justice Reform Success*. Retrieved from <https://www.seattletimes.com/nation-world/georgias-top-judge-applauds-criminal-justice-reform-success/>



and post-booking mental health services. According to a report published by the Harvard Kennedy School, the utilization of nonsystematic data to inform the development and implementation of mental health programs for justice-involved individuals may amplify existing inequities in care delivery.<sup>15</sup>

Finally, consistent data reporting is essential to improve transparency in the delivery of care for justice-involved individuals living with mental illness. The publication of complete, accurate, and timely information can help stakeholders to identify successes and setbacks in the delivery of mental health services, improve inmate and jail staff safety, and increase public confidence in the restoration processes provided to those most in need.<sup>16</sup> Further, improved transparency will help criminal justice agencies to identify areas of potential cost savings, reducing the fiscal burden placed on the state.

### **Policies to Improve Data Collection and Reporting**

To improve the care provided to justice-involved individuals living with mental illness, Texas must promote improved data collection and reporting of pre-booking jail diversion, greater communication between criminal justice agencies, and enhanced uniformity in statewide reporting protocols.

**Improved Data Collection and Reporting of Pre-Booking Jail Diversion**—Article 16.23 of the Texas Code of Criminal Procedure requires law enforcement agencies to make good faith efforts in diverting individuals experiencing a mental health or substance use crisis to community-based treatment. Community-based jail diversion programs have been shown to improve mental health outcomes, reduce criminal justice involvement, and lower costs associated with unnecessary law enforcement, hospital, and crisis service utilization.<sup>17</sup> Unfortunately, inadequate and inconsistent reporting of jail diversions prevents monitoring of diversion practices and assessment of program effectiveness. In order to improve pre-booking jail diversion, Texas should amend Article 2 of the Texas Code of Criminal Procedure to provide clear instruction to peace officers on data collection and reporting related to mental health diversion and establish guidelines for diversion data compilation, analysis, and reporting by law-enforcement agencies.

**Enhance Data Collection and Communication in Municipal Jails**—Article 16.22 of the Texas Code of Criminal Procedure requires sheriffs and jailers to provide notice to the magistrate within 12 hours of receiving information that may indicate an inmate is living with mental illness. The notice must include information regarding the defendant’s behavior immediately before, during, or after the arrest. Unfortunately, information gathered by peace officers is

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<sup>15</sup> Chien, C., & Tashea, J. (2018). Better Data and Smarter Data Policy for a Smarter Criminal Justice System. *Harvard Kennedy School: Shorenstein Center on Media, Politics, and Public Policy*. Retrieved from <https://ai.shorensteincenter.org/ideas/2018/12/10/better-data-and-smarter-data-policy-for-a-smarter-criminal-justice-system-system>

<sup>16</sup> Geraghty, S., & Velez, M. (2011). Bringing Transparency and Accountability to Criminal Justice Institutions in the South. *Stanford Law & Policy Review*, 22(2), 455-488. Retrieved from [https://law.stanford.edu/wp-content/uploads/2018/03/geraghty\\_vezlez.pdf](https://law.stanford.edu/wp-content/uploads/2018/03/geraghty_vezlez.pdf)

<sup>17</sup> Meadows Mental Health Policy Institute. (2016, February 10). *Texas Mental Health Landscape – Brief Overview*. Retrieved from <https://www.texasstateofmind.org/wp-content/uploads/2016/02/Brief-Overview-of-Landscape.pdf>



inconsistently shared with jail staff, which may delay reporting of a suspected mental illness to the magistrate and hinder the delivery of mental health services. To improve the consistency and continuity of care provided to justice-involved individuals living with mental illness, Texas should amend Article 2 of the Texas Code of Criminal Procedures to require peace officers to communicate mental health-related information to jail staff at jail booking.

**Establish Uniform State Reporting Protocols for Early Identification Interviews**—Early identification interviews are essential in ensuring that individuals with mental health concerns are able to access the appropriate mental health services. However, there is no uniform system for reporting this vital information to the state. Inadequate and inconsistent statewide reporting on the number of mental health screenings conducted, location of those screenings, and screening outcome hinders monitoring of law implementation and efficacy. In order to improve transparency in the assessment and provision of behavioral health services to inmates, Texas should amend Section 511 of the Government Code to require the Texas Commission on Jail Standards to develop uniform state-wide data practices that promote improved consistency and timeliness in service delivery, including the number of completed mental health screenings, 16.22 magistrate notifications, and completed mental health assessments, in addition to data on location, method, out outcome of assessment.

#### Conclusion

Individuals living with mental illness are more likely to interface with the criminal justice system. Unfortunately, inadequate and inefficient data collection, standardization, and reporting create barriers in the delivery of mental health services. To improve the care provided to justice-involved individuals living with mental illness, Texas must promote improved data collection and reporting of pre-booking jail diversion, greater communication between criminal justice agencies, and enhanced uniformity in statewide reporting protocols.



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## Submission 6: The Arc of Texas Response



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Texas House of Representatives  
Committee on Judiciary & Civil Jurisprudence

### The Arc of Texas Comments on 86(R) Interim Committee Charges November 20, 2020

Submitted by: Alex Cogan, LMSW, Manager of Public Policy & Advocacy, The Arc of Texas  
Direct email: [acogan@thearcoftexas.org](mailto:acogan@thearcoftexas.org), Direct phone: 512-485-9737  
Office: 8001 Centre Park Dr., Suite 100, Austin, TX 78754

Thank you for this opportunity to comment on interim charges to the Committee on Judiciary & Civil Jurisprudence for the 86<sup>th</sup> Texas Legislature. The Arc of Texas is a statewide advocacy organization that promotes, protects, and advocates for the human rights and self-determination of Texans with intellectual and/or developmental disabilities, also known as I/DD. We are the largest and oldest member-driven organization in the state that advocates for individuals with intellectual and/or developmental (I/DD). We are committed to ensuring that this particularly vulnerable population receives access to quality services and supports within the community and institutional settings.

#### Interim Charge No. 2

Study opportunities to modernize and improve local and statewide data collection throughout the criminal justice system in Texas, including improving the collection and reporting of court records, to promote transparency and ensure uniform data collection processes.

#### Comments

Texas is not alone in its challenge to serve individuals with mental illness and intellectual and/or developmental disabilities (I/DD). What makes this issue more complex is the inability to properly identify this population upon entry into local county jails. The Arc of Texas appreciates the Committee's charge to modernize and improve data collection throughout the criminal justice system, and we believe to best serve this population, it is imperative to first determine who resides within Texas local county jails.

The total number of individuals with I/DD detained in local county jails is unknown to the Texas Commission on Jail Standards (TCJS) due to an insufficient and outdated screening questionnaire coupled with a lack of robust training for jailers who administer the



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questionnaire.<sup>1</sup> To improve local and statewide data collection, and thus the collection and reporting of court records, Texas must properly screen individuals who enter jails through modification and adjustment to the 16.22 Screening Form for Suicide and Medical/Mental/Developmental Impairments.

Once the 16.22 Screening Form is adjusted and jails are able to accurately capture the number of individuals with mental health and I/DD, a monthly report of these numbers should be sent to the TCJS and the Health and Human Services Commission (HHSC). In particular, the Community Programs division of HHSC should be notified so the cause of criminal justice involvement can be assessed and addressed in order to prevent individuals with MH and/or IDD from continuing to enter the system.

HHSC collaborated with law enforcement systems (TLETS or Texas Law Enforcement Telecommunication System) to match individuals who received services through Local Intellectual and Developmental Disability Authority's (LIDDA) in the past three years using their electronic system called MBOW, or Mental Health and ID Business Objects Warehouse. Though this cross-identification system exists as of September 2020, it's important to recognize that this matching process is not encompassing all individuals with I/DDs. In fact, those who enter the criminal justice system are far less likely to have been identified as having an I/DD, thus will not have received services and supports through LIDDAs, which may contribute to their initial involvement in the criminal justice system.

In addition to updating the 16.22 Screening Form, jailers and other administrators of the screening form must be newly trained on the form's importance and implications of its results. Administrative leaders within county jails have mentioned the need for an updated and more robust training for their jailers to understand the purpose of providing the 16.22 form to individuals upon entry. We recommend adding more mental health professionals to the jail to help identify those in need of special accommodations and services. This may be done by supporting collaboration between county jails and Local Mental Health Authorities (LMHAs) and LIDDAs so coordination of services is initiated while incarcerated and easily continued upon release.

Finally, we want to highlight that mental health diagnoses and intellectual and/or developmental diagnoses can be co-occurring.<sup>2</sup> An individual who presents with symptoms that are associated with a mental health diagnosis may also have an I/DD that is overshadowed

<sup>1</sup> <https://cadd.texas.gov/resources/criminal-justice-and-idd-in-texas>

<sup>2</sup> Sissom & Cogan. (2020). Misunderstood and Mistreated: How Individuals with Intellectual and Developmental Disabilities Experience the Texas Criminal Legal System. <https://www.texasccic.org/system/files/publications/Misunderstood%20and%20Mistreated%20Individuals%20with%20IDD.pdf>





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by these apparent symptoms. It is important that these individuals are correctly diagnosed by professionally trained clinicians, social workers or qualified mental health professionals.

**Recommendations**

- Properly screen individuals who enter Texas jails through by modifying the 16.22 Screening Form for Suicide and Medical/Mental/Developmental Impairments.
- Review and update the instructions for the 16.22 Screening Form
- Provide an updated and robust online training to every jailer on the purpose, importance, and implications of the 16.22 Screening Form.
- Require jails to send a monthly report of individuals with I/DD to TCJS and HHSC.
- Increase and/or add mental health professionals to jails to help identify those in need of special accommodations and services by supporting collaboration between county jails and Local Mental Health Authorities (LMHAs) and LIDDAs so coordination of services is initiated while incarcerated and easily continued upon release.

Additionally, The Arc of Texas has reviewed and supports Disability Rights Texas' comments on Interim Charge No. 2.

The Arc of Texas appreciates your time in reviewing these comments. If you have questions or need additional information, please contact Alex Cogan, [acogan@thearcoftexas.org](mailto:acogan@thearcoftexas.org)

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**APPENDIX C**  
**Interim Charge 3 Submissions**

**Submission 1: State Bar - Real Estate, Probate & Trust Law Section (REPTL) Response**

**OSBORNE, HELMAN, KNEBEL & SCOTT, LLP**  
ATTORNEYS AT LAW

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November 11, 2020

The Honorable Jeff Leach  
c/o Cassidy Zgabay, Committee Clerk  
Judiciary and Civil Jurisprudence Committee  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

*via email: [Cassidy.Zgabay\\_hc@housg.texas.gov](mailto:Cassidy.Zgabay_hc@housg.texas.gov)*

Re: Response to Interim Charge 3 – the Rule Against Perpetuities

Dear Chairman Leach and Members of the House Judiciary and Civil Jurisprudence Committee:

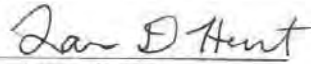
My name is Lauren D. Hunt and I am a trust and estate litigation attorney in Austin. I am currently a Co-Chair of the Estate and Trust Legislative Affairs Committee for the Real Estate, Probate and Trust Law Section of the State Bar of Texas ("REPTL").

This letter is in response to the Committee's November 6, 2020 Formal Request for Information regarding Interim Charge 3, which relates to the Rule Against Perpetuities.

REPTL has over 9,000 attorney members, many of whom routinely consider or deal with the Rule Against Perpetuities, so as a group, we are likely among the most versed in its impact. The REPTL Council has had many healthy debates over the Rule Against Perpetuities. Because no consensus has been reached and no position on the topic has been approved by the State Bar, the State Bar prevents REPTL from taking a formal position in the discussion. However, I can be of assistance in offering insight on this issue, please do not hesitate to contact me. I will be happy to answer any questions, or to put you in touch with my REPTL colleagues who are particularly well-versed on the subject.

Very truly yours,

OSBORNE, HELMAN,  
KNEBEL & SCOTT, LLP

By:   
Lauren D. Hunt

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cc: Clint Hackney, [cphackney@yahoo.com](mailto:cphackney@yahoo.com)  
Craig Hopper, Co-Chair of REPTL Estate and Trust Legislative Affairs Committee,  
[chopper@hoppermikeska.com](mailto:chopper@hoppermikeska.com)  
Gene Wolf, Chair of the REPTL Trusts Committee, [gene.wolf@kempsmith.com](mailto:gene.wolf@kempsmith.com)

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## Submission 2: Texas Bankers Association (TBA) Response



### Texas Bankers Association Response to Request For Information Texas House Committee on Judiciary & Jurisprudence Interim Charge – Rule Against Perpetuities

#### **Charge**

**Interim Charge 3:** Study the Rule Against Perpetuities as used by trusts. Examine whether statutory changes are necessary and appropriate to make Texas more competitive and keep trust capital and estate planning businesses in Texas.

#### **Request For Information**

Due to the ongoing COVID-19 pandemic and the challenges in scheduling public hearings at this time, the Committee is requesting written submissions from state agencies, interested parties, and the public regarding all assigned interim charges. In addition, the Committee is seeking information regarding the effects of COVID-19 in areas within its jurisdiction.

#### **Submission Guidelines:**

- Submissions must be in Microsoft Word or Adobe PDF.
- Submissions are limited to five (5) pages in length.
- Submissions must be submitted via email to the Committee Clerk, Cassidy Zgabay, at [cassidy.zgabay\\_hc@house.texas.gov](mailto:cassidy.zgabay_hc@house.texas.gov).
- Submissions must include the submitter's name, organization or entity (if applicable), phone number, and mailing address.
- If responding to multiple topics, please submit separate submissions for each one.
- **The deadline for all submissions is Monday, November 30, 2020.**

All submissions will be distributed to each member of the Committee after the deadline and posted on the House website.

#### **Response**

##### *Overview*

The Rule Against Perpetuities ("RAP") is an antiquated legal principal based on English feudal law that defines a permissible duration for certain trusts. Texas' Rule Against Perpetuities statute generally provides that an interest in a trust must be finally settled (vest) no later than 21 years after some life in being at the time of the creation of the trust. The restrictive nature of Texas' RAP statute not only limits Texans' choices as they develop estate and gift plans, it also puts the state at an economic disadvantage because the estate plans of Texans are being developed in one of the numerous other states that have already extended their RAP statutes. These dollars leave the state for generations.

##### *Other States*

The following states have either eliminated the rule against perpetuities to or modified it to allow significantly extended durations for trusts: Alabama, Alaska, Arizona, Colorado, Delaware, Florida, Idaho, Illinois, Kentucky, Maine, Maryland, Michigan, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Virginia, Wisconsin and Wyoming.

203 W 10<sup>th</sup> Street, Austin, Texas 78701



*Texas*

With respect to estate planning, Texas is currently at a disadvantage. As previously noted, the majority of states have updated or eliminated their RAP laws and Texas must do the same to prevent the flow of millions of dollars in assets into more favorable jurisdictions. While we do not believe that elimination of the RAP is necessary to achieve this goal, two critical changes must be made to Section 112.036 of the Texas Property Code:

1. Clarify the maximum allowable term for a Texas trust. The current statutory language should be replaced with a defined term of years. This will eliminate confusion and allow for better planning and administration of trust assets.
2. Specify a maximum allowable term that is reasonable and competitive with other states. Because a number of states have eliminated the RAP or adopted very long, fixed permissible periods for the Rule, Texas residents who desire more flexibility in their estate planning process may simply move their assets elsewhere. To be competitive with these other states, Texas should establish a maximum vesting term of at least 360 years.

Thank you for the opportunity to provide feedback on this issue.

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### Submission 3: Sage Trust Company Response

## SAGE TRUST COMPANY, LTA

12800 Northwest Freeway  
Houston, Texas 77040  
(713) 460-2000

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November 30, 2020

November 30, 2020

The Honorable Jeff Leach  
Chairman, Texas House of Representatives Committee on Judiciary & Civil Jurisprudence  
P.O. Box 2910  
Austin, Tx 78768-2910  
Submitted via email: [cassidy.zgabay\\_hc@house.texas.gov](mailto:cassidy.zgabay_hc@house.texas.gov)

***RE: Comments on Interim Charge 3: Study on the Rule Against Perpetuities***

Dear Chairman Leach:

Sage Trust Company LTA (“Sage Trust”) was created in Texas in 2017 to protect and grow the assets of a certain Texas family under the applicable federal and state laws. Until relatively recently, laws created hundreds of years ago in England remained in effect throughout the United States and limited how long a trust could exist to protect assets. This convoluted concept, known as the “Rule Against Perpetuities”, has since been modified or eliminated by a majority of states in this nation, thereby creating a more stable, predictable body of law that people may rely on when establishing trusts to protect wealth for future generations. Texas, however, has retained the historical Rule Against Perpetuities.

In order to take advantage of the more beneficial laws found in other states, the family that founded Sage Trust established new trusts to be administered outside of Texas. If not for the current state of Texas law, the family would have kept the business in Texas.

Sage Trust was created by Texans for Texans and would like opportunity to pay Texans to manage its assets. Instead, because of a legal theory – the origins of which can be traced before the existence of not only Texas but the United States – this business has been taken to another state.

A majority of other states have chosen an economic development tool that Texas does not yet subscribe to. According to the American College of Trust and Estate Counsel (“ACTEC”), the common law Rule Against Perpetuities remains intact in only three states: Alabama, New York, and Texas, which has codified the concept in Section 112.036, Texas Property Code.

At least eight states have repealed the Rule Against Perpetuities. At least nine states have adopted longer fixed periods for the rule against perpetuities, sometimes only for certain types of property. Seventeen states have retained the rule against perpetuities but allowed certain trusts to

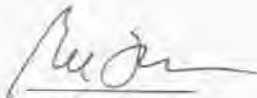
November 30, 2020  
Page 2

continue without application of the rule. ACTEC provides a list of these states we can send to you upon your request.

Sage Trust believes that the Texas Legislature in 2021 should amend its laws to move out of the 17<sup>th</sup> Century and join the majority of states whose laws allow for trusts to exist for a more defined, longer period set of time. With or without a law change, Texans who wish to set up trusts will be able to avoid the unpredictable limits established by Texas' Rule Against Perpetuities. However, if the Texas Legislature changes this law, Texas' economy – and not that of other states – will see the economic benefits of establishing such trusts in Texas.

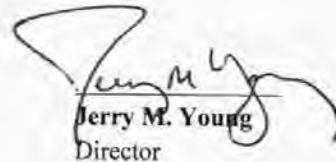
Please let us know if you have any questions or would like to discuss the contents of this letter in more detail. We appreciate your service to the State of Texas.

Sincerely,



**Brad Tucker**  
Director

**Ron Nixon**  
Director



**Jerry M. Young**  
Director

## APPENDIX D

### Interim Charge 4 Submission

#### Submission 1: State Auditor's Office (SAO) Response



Lisa R. Collier,  
CPA, CFE, CIDA,  
First Assistant State Auditor

November 30, 2020

The Honorable Chair Jeff Leach  
House Committee on Judiciary and Civil Jurisprudence  
Texas House of Representatives  
Room GN.9  
Austin, TX 78701

Dear Chair Leach,

I want to take this opportunity to provide you with current information regarding the interim charge for monitoring the State Auditor's review of agencies and programs under the jurisdiction of the House Committee on Judiciary and Civil Jurisprudence.

The State Auditor's Office (SAO) released reports in fiscal years 2019 and 2020 that have a potential impact for your committee's interim charges. Those reports are listed on the following pages, which also include hyperlinks to the full reports on the SAO's website. The SAO originally submitted a similar document to your committee in January 2020. We have updated this document to respond to your committee posting.

In addition, the following State Auditor's Office reports were released after the period prescribed by the interim charge (fiscal years 2019 and 2020) but may be of interest to the Committee:

- *An Audit Report on Investigation and Prosecution Processes for Reported Sexual Assaults in Texas* (SAO Report No. [21-002](#), October 2020), and
- *A Supplemental Report on Survey Results for an Audit of Investigation and Prosecution Processes for Reported Sexual Assaults in Texas* (SAO Report No. [21-303](#), October 2020).

Additionally, I will notify you of additional reports as they are completed that may be relevant to the Committee's work.

I hope this information is helpful to you. I am available to you and your staff at your convenience. Thank you for the work that you do.

My best,

*Lisa R. Collier*

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First Assistant State Auditor

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## STATE AUDITOR'S OFFICE

*Lisa R. Collier, CPA, CFE, CIDA, First Assistant State Auditor*

# House Committee on Judiciary and Civil Jurisprudence


The State Auditor's Office (SAO) reports below may be of interest to the Committee while addressing the Speaker of the House of Representatives' interim charge regarding monitoring the State Auditor's review of agencies and programs. The reports included were released during fiscal years 2019 and 2020. Since the previous document was provided, the list of reports has been updated to include a report released after January 2020. These reports may relate to the agencies under the Committee's jurisdiction and/or other interim charges issued to the Committee. Each report number is hyperlinked to the full report on the SAO website. Our Office will continue to keep the Committee informed of any additional reports released that may be of interest.


The reports listed below are divided into two sections: (1) audit and review reports and reports completed by the State Classification Team and (2) reports on work completed to follow up on select recommendations previously issued by the SAO and/or the Sunset Advisory Commission.


## State Auditor's Office Contact Information

First Assistant State Auditor Lisa R. Collier, CPA, CFE, CIDA, and the State Auditor's Office personnel are available as a resource to the Committee on any of our reports.

For additional information regarding any report, please contact:

 Verma Elliott, Assistant State Auditor, (512) 936-9300, [verma.elliott@sao.texas.gov](mailto:verma.elliott@sao.texas.gov)

 State Auditor's Office Website: <https://www.sao.texas.gov>

 Address: Robert E. Johnson, Sr. Building, 1501 North Congress Ave., Austin, TX 78701



## STATE AUDITOR'S OFFICE

Report Title	Report Number	Release Date
<b>Reports Released</b>		
Best Practices Guide: Applying for an Occupational License After Conviction or Deferred Adjudication	<u>20-327</u>	08/14/2020
A Report on the State Auditor's Office's Methodology for Examining the Investigation and Prosecution Processes for Reported Sexual Assaults in Texas	<u>20-014</u>	12/16/2019
<b>Review of Prior Recommendations</b>		
A Report on the Implementation Status of Prior State Auditor's Office Recommendations	<u>19-027</u>	02/06/2019
Entities included:		
<ul style="list-style-type: none"><li>▪ Department of Motor Vehicles</li><li>▪ Office of the Attorney General</li><li>▪ Water Development Board</li></ul>	<ul style="list-style-type: none"><li>▪ Department of State Health Services</li><li>▪ Office of the Comptroller of Public Accounts</li></ul>	<ul style="list-style-type: none"><li>▪ General Land Office</li><li>▪ School for the Deaf</li></ul>
A Report on the Self-reported Implementation of Sunset Advisory Commission Management Actions	<u>19-012</u>	11/30/2018
Entities included:		
<ul style="list-style-type: none"><li>▪ Board of Chiropractic Examiners</li><li>▪ Department of Licensing and Regulation</li><li>▪ Palo Duro Water District</li><li>▪ Sulphur River Basin Authority</li><li>▪ Upper Colorado River Authority</li></ul>	<ul style="list-style-type: none"><li>▪ Board of Pharmacy</li><li>▪ Employees Retirement System</li><li>▪ Railroad Commission</li><li>▪ Texas Board of Nursing</li></ul>	<ul style="list-style-type: none"><li>▪ Board of Veterinary Medical Examiners</li><li>▪ Optometry Board</li><li>▪ State Bar of Texas</li><li>▪ Department of Transportation</li></ul>

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## APPENDIX E

### COVID-19 Input Submissions

#### Submission 1: Office of Court Administration (OCA) Response

##### COVID-19 and the Courts

Written Testimony to the House Judiciary and Civil Jurisprudence Committee  
November 30, 2020

Texas saw its first diagnosed case of COVID-19 on March 4, 2020. In the weeks prior, the Texas Judiciary had begun preparing for the potential impact of the Coronavirus by participating in preparedness briefings with Governor Greg Abbott, emergency services, and health and human services staff starting on February 27. Based upon the information gathered at those briefings, the Texas Judiciary activated its response plan and began taking actions including preparing to hold court online. The Office of Court Administration (OCA) also began to issue regular COVID-19 Guidance to thousands across the state including judges, clerks, and court staff.

It's estimated that one-percent of Texas' population visits a courthouse in one of our 254 counties every weekday. That is roughly 325,000 Texans going in and out of courthouses daily. The Judiciary recognized that if it did not get safety precautions and procedures right, Texans would get sick and it would set our state back in fighting the virus.

##### Zoom Hearings

On March 13, hours after Governor Abbott issued a disaster declaration and public health emergency declaration for the state, the Supreme Court, joined by the Court of Criminal Appeals, used its emergency powers under Section 22.0035(b), Texas Government Code, to issue the First Emergency Order Regarding the COVID-19 State of Disaster. The order permitted all courts in all cases, without a participant's consent, to modify or suspend deadlines, allow or require remote participation by anyone involved in a hearing or proceeding (except jurors), conduct proceedings away from the court's usual location, and to extend statutes of limitations in civil cases.

OCA considered several technology platforms that would enable judges to conduct court proceedings remotely. After testing several different options, OCA determined that Zoom would be the best fit for the Texas Judiciary. OCA secured more than 3,000 Zoom licenses for every judge in the state. Texas judges fully adapted to the technology holding an estimated 760,000 remote hearings in every case type and type of proceeding, including bench and jury trials, with 2.3 million participants, lasting more than 1.5 million hours during the eight-month period between March and November. To satisfy open court constitutional provisions, judges stream the proceedings online via YouTube. A listing of court YouTube channels can be found at <http://streams.txcourts.gov>.

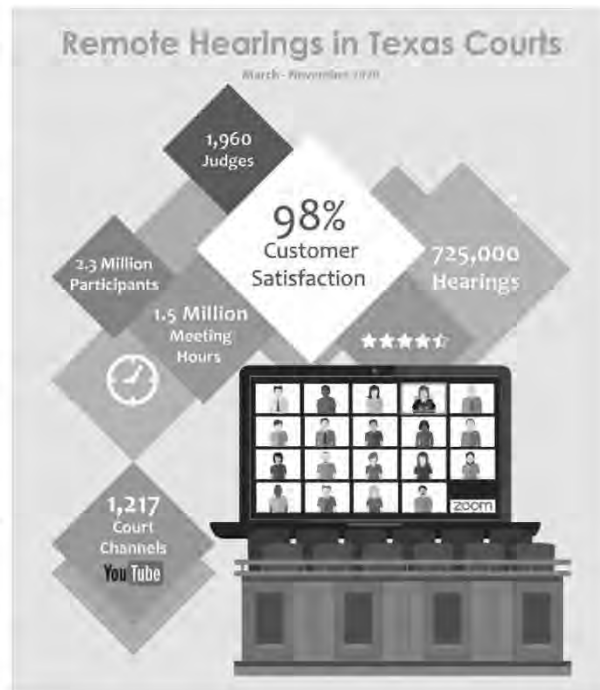


David Slayton, Administrative Director  
Office of Court Administration  
P.O. Box 12066  
Austin, TX 78711-2066  
(512) 463-1625

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Nine months into the pandemic, the Texas Judiciary continues to lead the nation with its innovation and ability to adapt. Texas was the first state to have its nine-member Supreme Court host remote oral arguments, the first state to hold a virtual non-binding civil jury trial in May 2020, and it became the first state to hold a virtual criminal jury trial in August 2020.

Many judges have reported that they are seeing greater participation from litigants via Zoom due to the ease of using the platform and the fact that litigants can more efficiently attend court hearings by simply logging in to their computer or mobile device. Judges are also reporting cost savings from traveling to and from court and the same savings for litigants and attorneys. Access to interpreters has increased - OCA's Texas Court Remote Interpreter Service (TCRIS) reports that demand is up 60% from March-September 2020 over the same time period in 2019.



### **Emergency Orders**

If the Governor declares a State of Disaster, the Supreme Court has broad authority to manage the judicial branch in times of emergency under Section 22.0035(b) of the Government Code. Throughout the pandemic, the Supreme Court has issued 29 Emergency Orders. Three remain in effect as of November 30. The orders can last up to 90 days and can be renewed by the Chief Justice of the Supreme Court. All Emergency Orders are on the Supreme Court's website <https://www.txcourts.gov/supreme/administrative-orders/2020/>.

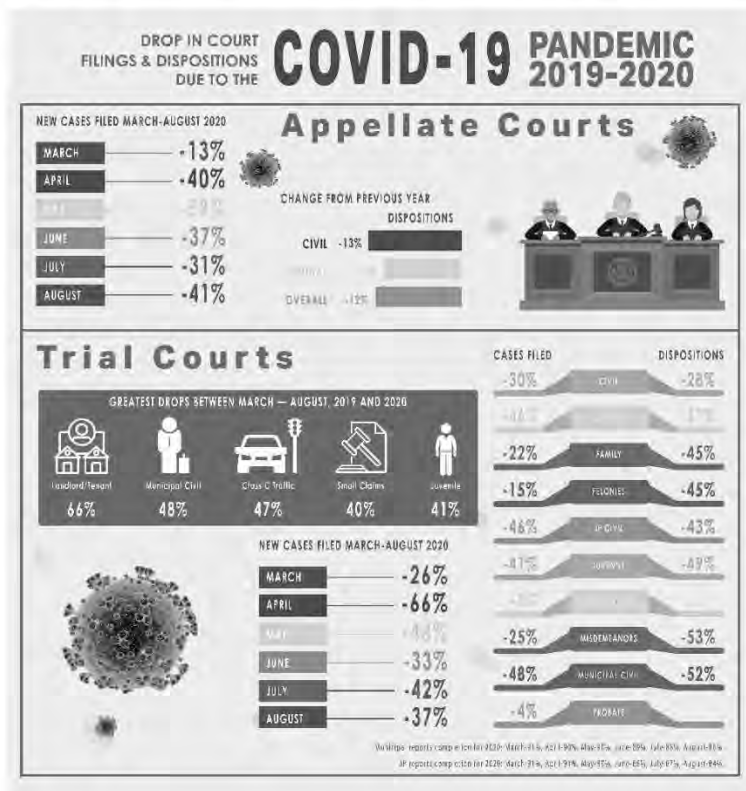


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**Filings/Dispositions**

Court filings took a significant hit during the pandemic with the biggest decline in filings coming in May 2020 for the Courts of Appeals with a 59% drop from May 2019 compared to May 2020. Trial courts saw the biggest decline in filings in April 2020 with a 66% drop in filings compared to the same time period in 2019. Case types seeing the biggest declines were landlord/tenant, civil-municipal, and Class C Misdemeanor traffic tickets.

Disposition rates were also down across the board and will lead to backlogs in resolving cases. While case filings are down in the present, long-term, we expect case filings to increase, especially at the appellate level. Historically, major economic hardships produce a flood of cases related to business disputes, employment litigation, consumer debts and foreclosures. In addition, due to the unique circumstances of COVID-19, the judiciary anticipates a rise in domestic violence/child abuse/sexual abuse cases, divorces and parental termination suits, as well as litigation over the numerous orders and directives issued by the executive branch, the Texas Supreme Court and associated state agencies.



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## Jury Trials

Prior to the pandemic, Texas trial courts were holding an average of 186 jury trials per week. In its Seventeenth Emergency Order Regarding the COVID-19 State of Disaster issued on May 27, the Supreme Court prohibited courts from holding jury proceedings, including jury selection or a jury trial, prior to August 1 (the date was later extended to October 1.) In addition, the Court required OCA to coordinate with the Regional Presiding Judges and local administrative judges to assist trial courts in conducting a limited number of jury proceedings. In that May 27 order, the Court required consent from all parties to proceed with the limited jury trials, but the consent requirement was removed in the Eighteenth Emergency Order on June 29. The Court required OCA to submit a report to the Court outlining its observations regarding those jury proceedings. From June – September, OCA reviewed 97 requests to hold jury trials. Forty-five of those cases went to trial and received a verdict. OCA's full report - *Jury Trials During the COVID-19 Pandemic: Observations and Recommendations* is published here <https://txcourts.gov/media/1449660/jury-report-to-scotx-final.pdf>.

The Supreme Court's 29<sup>th</sup> Emergency Order issued on November 11 outlines the plans for trials and in person proceedings moving forward. The order:

- requires all courts to continue to use all reasonable efforts to conduct proceedings remotely
- requires courts to submit an operating plan prior to holding any in-person proceedings and a jury plan prior to holding jury trials
- prohibits Justice and Municipal Courts from holding in person jury trials through February 1
- requires motions/objections to in-person/virtual trials to be heard on the record and decided on in a timely manner
- requires waivers and consent from the defendant and prosecutor forailable criminal cases to be held virtually
- requires the judge to consult with the local health department prior to holding in-person trials to monitor COVID levels in the community.

OCA has assisted more than a dozen courts with holding virtual jury trials. OCA has found that the challenges with holding virtual jury trials are unrelated to the pandemic. Rather, the challenges are related to technology. With planning, practice and preparation, the courts that have conducted these

## JURY TRIAL GUIDANCE – PLAN REQUIREMENTS

- Summons
- Locations
- Screening
- Face Coverings
- Social Distancing
- Alternates
- Courtroom arrangement
- Microphones
- Exhibits/evidence
- Vulnerable witnesses
- Food
- Cleaning



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types of trials have reported great success and jury engagement. To facilitate remote trials, OCA acquired iPads with cell service that could be secured and used for jurors who have a technology need and could not otherwise participate.

**Teleworking and Technology**

In early March, OCA anticipated an extended period facilitating remote work for our users due to the pandemic. In addition to doubling the bandwidth available to our Austin complex, OCA prepared and issued more than 70 loaner laptops for judicial branch agency employees, appellate court judges, and staff to use when their home computing equipment would not be able to support remote work. OCA has plans to keep employees teleworking at least through the end of 2020.



David Slayton, Administrative Director  
Office of Court Administration  
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Austin, TX 78711-2066  
(512) 463-1625



## Submission 2: Texas Access to Justice Commission Response



**CHAIR**  
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Houston

**COMMISSIONERS**  
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Dallas

Hon. J. Brett Busby  
Austin

Alistair Dawson  
Houston

Smaranda Draghla  
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Harriet E. Miers  
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Austin

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Austin

For the Lieutenant Governor  
Hon. Judith Zaffirini  
Laredo

For the Speaker of the House  
Rep. Gene Wu  
Houston

**CHAIR EMERITUS**  
James B. Sales  
Houston

**EXECUTIVE DIRECTOR**  
Patricia E. McAllister

November 23, 2020

Honorable Jeff Leach and Committee Members  
House Judiciary and Civil Jurisprudence Committee  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768

RE: Response to Request for Submissions: "What has been your experience in using Zoom or other online platforms for court proceedings?"

Dear Honorable Leach and Committee Members,

The Supreme Court of Texas created the Texas Access to Justice Commission in 2001 to serve as the statewide umbrella organization for all efforts to expand access and reduce barriers to justice in civil legal matters for the poor. The pandemic has disproportionately impacted our client community and resulted in a myriad of legal issues, including unemployment, housing instability, increased domestic violence, and a lack of childcare. As legal aid was only able to meet 10% of the legal needs before the pandemic and has been inundated with requests for help, more people will be facing their legal situations without representation in a virtual hearing.

Throughout the pandemic, the Commission has worked with experts and stakeholders to provide information and input about evolving access to justice issues and what steps could be taken to address them. The Commission has worked extensively with the Supreme Court of Texas, the Office of Court Administration, the Texas Justice Court Training Center, individual courts, and national access to justice leaders on issues arising from the shift from in-person to virtual court hearings. At OCA's request, the Commission created guides, sample forms, and best practices to guide courts working with self-represented litigants in virtual hearings to help improve access to justice. The Commission also created several guides to assist self-represented litigants with navigating their remote hearings.

While technological innovations certainly offer an effective and efficient means of ensuring the justice system continues to serve the public, those innovations can inadvertently cause barriers to access and justice. On the one hand, virtual court proceedings can make it easier for some people to participate. The convenience of participating from home instead of taking a full day off work or traveling long distances to get to the courthouse has definitely boosted public participation in legal matters, especially among self-represented litigants who have reliable access to the internet and the ability to submit evidence digitally.

On the other hand, there are common, unresolved issues that must be addressed for self-represented litigants to achieve meaningful participation in virtual hearings. Self-represented litigants often appear in court in cases involving basic human needs, like housing or family matters. They may lack the technology or the experience needed to effectively participate in the hearings. For example:



- 
1. Some people do not have reliable access to the internet. A lack of internet may also mean that the person does not have regular access to their email account. Using free WiFi in a public space is problematic due to privacy issues that hinder a person's ability to freely articulate the facts of their case, especially in sensitive areas such as family matters or domestic violence.
  2. Some people only have access to a landline or phone that does not have video capability. Requiring people to participate only by phone deprives the litigant of the ability to see the witnesses and judge, and potentially any evidence presented against them.
  3. Some people do not have a phone with a camera, a smart phone, scanner, or other way to present evidence in their case. There have been many reports from judges of people who are participating by phone only who state they have evidence to show their side of the facts but were not able to present that evidence because there was no way to upload it or show it visually. Short of resetting the case, a judge was left in the untenable position of ruling against them.
  4. Accessibility issues for people with disabilities and those who have limited English proficiency can also present challenges.

The use of Zoom and other remote platforms for court proceedings can be a great tool to continue in the post-pandemic justice system as long as their use does not inadvertently cause barriers to access and justice. We should be mindful to strategically leverage and apply these remote solutions to make our justice system more accessible, efficient, convenient, and cost-effective. They create an additional path into and through the court system, with the potential to expand access to, and the fairness of, our justice system.

Sincerely ,



Patricia E. McAllister  
Executive Director  
Texas Access to Justice Commission

## Submission 3: Justices of the Peace and Constables Association (JPCA) Response



### *Justices of the Peace and Constables Association of Texas, Inc.*

#### President

**Judge Rick Hill**  
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\*\*\*\*\*

#### President - Elect

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\*\*\*\*\*

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#### Third Vice President

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\*\*\*\*\*

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\*\*\*\*\*

#### Judge Advocate

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\*\*\*\*\*

#### Sgt-At-Arms

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\*\*\*\*\*

#### Past President

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dthrasher@co.hood.tx.us

November 30, 2020

Dear Chairman Leach and Members of the House Committee on Judiciary and Civil Jurisprudence,

The Justices of the Peace and Constables Association of Texas (JPCA) would like to thank you for allowing our organization the opportunity to weigh in how COVID-19 has impacted the justice courts. Our roughly 2,000 members have adapted rapidly to ensure access to justice is maintained and services continue for our constituents.

JPCA surveyed judges and constables throughout the state to answer the committee's important questions. The answers below demonstrate our consolidated findings and recommendations.

#### **1. Have you had any difficulty acquiring PPE for your court, county, or staff?**

In the beginning of the pandemic PPE was slow to get distributed to justice courts. During the first few weeks many judges were hesitant to go on death inquests because of lack of PPE and protocols were not yet established. As guidelines were created, judges were able to safely perform those duties. Additionally, some judges that were not utilizing video magistration were concerned about magistration at the jails. As technology became more readily available, more video magistration occurred.

Overall, because of great collaboration with state leadership, county officials, Texas Department of Emergency Management (TDEM), and various stakeholders throughout the state, PPEs have been easier to acquire.

Additionally, Travis County, Precinct 5 Constable's office was notified by the County Attorney that they would need to be prepared to serve restraining orders in person to several students who were infected with COVID-9. It took the office about a week to be able to locate any PPE. 15 of the offices essential employees were infected by COVID-19 which resulted in a skeleton crew and overtime pay. Unfortunately, while serving court process, one of the Sergeants was infected with COVID-19 which resulted in a line of duty death.

#### **2. How have your caseloads been impacted by COVID-19? Do you have a backlog of cases?**

Generally, judges are seeing varying impacts on caseloads. Prior to the pandemic backlog has increased statewide and has continued to increase during the pandemic. The Texas Justice Court Training Center (TJCTC) developed a [comprehensive webpage](#) which updates our members on the most current regulations and information.

#### *Evictions*

Eviction cases have decreased given the [CDC moratorium](#) issued on September 1, 2020. The Texas Supreme Court issued [Emergency Order 28](#) on November 9, 2020, renewing and extending the Texas Eviction Diversion Program. The program provides financial assistance to vulnerable tenants. Pilot counties were able to utilize the program beginning October 12, 2020 and will be available to all counties January 1, 2021. This order expires on February 1, 2021 unless extended by the Texas Supreme Court. Pilot counties are already seeing success with the program. JPCA will be closely monitoring caseloads after the moratorium expires as it is expected that evictions and civil filings due to non-payment will increase.

#### *Civil Caseloads*

According to OCA, "from March to July 2020, the number of new civil cases filed dropped by 47% in justice courts and the dispositions in those courts dropped by 46%. However, clearance rate in justice courts have improved from the same period in 2019, increase from 89% to 92%." 1 Judges experienced an

1 [2020 Civil Justice Committee Report and Recommendations, Texas Judicial Council, September 2020](#)  
JPCA of TEXAS, INC. P.O. Box 115 Granbury, Texas 76048 1-800-662-5722 [www.jpca.com](#)

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initial slowing of civil cases being filed but they are starting to see a rise, especially in debt claim cases. This trend is anticipated to continue as debt collection companies increase their efforts once the COVID crisis subsides.

On September 1, 2020 SB 2342 by Sen. Creighton (R-Conroe) became effective, thus increasing the justice courts jurisdiction of civil matters in which the amount in controversy does not exceed from \$10,000 to \$20,000. JPCA expects civil filings to increase the more widely known the law becomes.

#### *Criminal Caseloads*

Criminal caseloads appear to vary greatly statewide. Some judges have experienced an increase in criminal caseloads while others have decreased. More data is needed to determine the reason for this. Although, most judges that were surveyed expressed experiencing a slight increase in criminal jury trials.

### **3. What has been your experience in using Zoom or other online platforms for court proceedings?**

JPCA's members have voiced their support for using Zoom for virtual court proceedings. In the beginning of the pandemic many judges were hesitant to switch to an online platform. OCA and the Texas Justice Court Training Center (TJCTC) quickly aided judges by offering virtual training, [comprehensive written guidance](#), and webinars. For example, TJCTC created a [YouTube channel](#) to educate judges on how to effectively use Zoom in their courts. Critical duties have been able to continue because of the resources OCA and TJCTC have provided.

#### *Magistration*

Video magistration is more widely being used. Judges in rural areas are benefitting from video magistration because they have cut down on commuting to the jails thus reducing their potential exposure to COVID-19.

Additionally, Governor Greg Abbott issued [Executive Order GA-13](#) on March 29, 2020 prohibiting the release of a defendant on personal bond who was "previously convicted of a crime that involves physical violence or the threat of physical violence, or any person currently arrested for such a crime that is supported by probable cause"<sup>2</sup>. Magistrates voiced concern over how they would be able to successfully implement this order because many do not receive criminal history information. In order to assist magistrates, The Texas Commission on Jail Standards issued a [Technical Assistance Memorandum](#) requiring a magistrate to be provided with a copy of the Current Criminal History (CCH) of the defendant. This requirement will be in effect until modified, amended, rescinded, or superseded by the governor. CCH information is vital to magistrates and they recommend this requirement to be permanent.

**Recommendation: JPCA recommends that the Legislature consider permanently requiring magistrates be provided a copy of the Current Criminal History of the defendant.**

#### *Jury Trials*

Justice courts have experienced increases in both criminal and civil jury trials with backlogs in both as well. Texas Supreme Court issued [Executive Order 29](#) on November 11, 2020, extending the previous authorization and requiring justice courts to halt in-person jury proceedings until February 1, 2021. While some judges have the option of virtual jury trials, broadband access and personal bandwidth are prominent challenges in rural areas. However, Zoom has proven to be an essential tool in minimizing backlog. Hon. Nicholas Chu (Justice of the Peace, Precinct 5-Travis County) conducted the first fully virtual criminal jury trial in the nation. His leadership sparked nationwide recognition<sup>3</sup> and helped OCA develop guidelines for conducting jury trials.

JPCA is appreciative of the Office of Court Administration's (OCA) guidance and assistance with virtual jury trials. The use of Zoom and other online platforms have been beneficial to justice courts.

**Recommendation: JPCA recommends that the legislature consider allowing justice courts to continue to utilize virtual platforms after the pandemic subsides.**

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<sup>2</sup> Gov. Greg Abbott, [Executive Order GA-13](#), March 29, 2020

<sup>3</sup> See [Washington Post](#) (August 2020)

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**4. How has the pandemic impacted court staff, e.g. space teleworking, flexible work shifts, etc.?**

Court staff has been practicing social distancing and CDC guidelines to ensure safety. In our rural areas, broadband and expensive technology hardware are still challenges. Technology and staffing needs vary greatly county to county. Even with the hardships, Justices of the Peace, Constables, and their staff are managing to provide essential services to their constituents.

Once again, JPCA would like to thank you for allowing our organization the opportunity to weigh in how COVID-19 has impacted the justice courts. We hope that our recommendations and findings provide insight for you moving into the 87<sup>th</sup> Legislative Session. Please do not hesitate to reach out should you need additional information.

Sincerely,



Hon. Rick Hill  
President, Justices of the Peace and Constables Association of Texas

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**Submission 4: Judge Patricia Bennett Response**



**Patricia Bennett\***  
Family District Judge  
360<sup>th</sup> Judicial District  
200 E. Weatherford Street  
Fort Worth, Texas 76196  
(817) 884-2743

Matthew Riek\*  
Associate Judge



November 30, 2020

Via email to: [cassidy\\_reabay\\_lc@house.texas.gov](mailto:cassidy_reabay_lc@house.texas.gov)  
Judiciary & Civil Jurisprudence Committee  
Texas House of Representatives

To the Honored Members of the Committee:

I have not had an opportunity to read SB2342. I would like to see a text of it so that I may comment further. I am quite concerned that the reforms for the "administration of justice and access to the courts" are creating more problems than they are solving. However, as I have only read the description of the legislation and not the legislation itself, I will not comment further on the specific actions.

If it is about allowing for remote jury trials, I feel that is a terrible idea. The Texas Constitution states that the right to a trial by jury is inviolate. The right to a jury trial in civil and criminal matters is protected in the Bill of Rights. I have dealt with the technical issues of a bench trial via Zoom for the past several months. Adding 12 people with 12 different internet connections to that mix would be a nightmare. It is difficult enough for someone who weighs witnesses for a living to determine the truth over Zoom, it would be substantially more difficult for 12 lay people to so remotely. I have seen attempts to conduct a nonbinding jury trial. There was a jury who answered a phone call. There is no way to tell if 3<sup>rd</sup> parties are influencing the jury.

I will answer the questions below:

1. Have you had any difficulty acquiring PPE for your court, county, or staff?

Tarrant County and the Office of Court Administration have both worked hard to make sure that my Court is provided with all the personal protective equipment that we need. The only product we have a hard time obtaining is a Lysol product to clean the air that does not make us feel like we are suffocating. The County purchased a very powerful product that probably kills all viruses, but it also makes it hard to breath.

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Britni D. Macias  
Court Coordinator  
(817) 884-2899

Katherine Kramer, CSR  
Court Reporter  
(817) 884-2722

2. How have your caseloads been impacted by COVID-19? Do you have a backlog of cases?

I normally have an average of 2,700 to 3,000 pending cases. From April to September 2020 I had 200 more cases filed than were disposed. In October I was able to dispose a few more cases than were filed in my court. I anticipate that I will continue to dispose of more cases than are filed in my court, but it will take at least 2 years to clear the backlog if something is not done. I also anticipate many litigants wanting trials when we are no longer remote that have waited for that opportunity.

3. What has been your experience in using Zoom or other online platforms for court proceedings?

I began using Zoom in April 2020. It is adequate for some types of trials and hearings, but it is far from ideal. I would not want my fundamental rights tried in this manner if given the option. I feel we can safely socially distance in our courtrooms. I also believe the trial judges who were duly elected by the citizens should be allowed to determine how to run their respective courtrooms.

I have found that cases are less likely to settle when people don't see each other face to face. Often my Associate Judge would have 10 to 20 cases set on his morning docket, but most would settle before they came to bar. The parties and the attorneys are not seeing each other face to face and are not settling the cases while waiting in the hallway as they used to do. There is something about walking into the courthouse that creates a sense of formality and helps increase the parties' desire to settle a case.

I would often double- and triple-book cases for final trial. I find that many cases will settle once they have an actual trial date. With remote hearings I can set only one case at a time and I find cases are not settling at the rate that they used to when we had in-person hearings and trials. This has led to the increased backlog of cases on my docket.

As a trial judge, I have conducted multi-day and multi-party cases with almost 100 exhibits presented over Zoom. Tarrant County has provided my court with adequate technology to operate during the time courts have been closed to in-person hearings and trials; however, I lack an easy way to obtain and maintain exhibits from attorneys or parties during online hearings and trials.

I have noticed many disadvantages in online hearings and trials. The parties are often in their own living rooms or at their own kitchen tables. There isn't the same sense of decorum. There isn't the same sense of importance and dignity to the proceeding. This lack of urgency decreases settlement and increases costs.

I have the advantage of seeing the faces of all the parties on my screen during a hearing or trial; however, there is a disadvantage in not being able to observe the subtle body language and other tells which I am able to see in open court and which I rely upon to assist in determining the veracity of the person's testimony. The attorneys and parties also do not



have the advantage of seeing each other during the course of a proceeding, which can be helpful to them during the proceeding. It is more difficult in a virtual proceeding when more than one person is trying to speak at the same time.

I cannot see if another person is in the room or enters the room where a party is testifying during a proceeding, especially someone who might be excluded from being present during such testimony because of Rule 614 of the Texas Rules of Evidence (The Rule). Asking the party to scan the room with his or her device at the beginning of the proceeding does not ensure compliance with The Rule throughout or prevent an excluded person from hiding out of sight. Compliance with The Rule cannot be ensured even if the party is testifying from their attorney's office. If a matter involves children, I only have the word of the parties that the children are not present during a proceeding. Virtual hearings and trials do not offer the same level of confidence as an in-court proceeding that children will not be present during or within hearing of testimony.

Another concern and problem with virtual proceedings is that the parties cannot see each other. This decreases the effectiveness of the parents of a child or children to communicate with each other as human beings. Interactions between the parties are diminished by the virtual proceeding (as compared with an in-person proceeding), and this affects their ability to appreciate that they must continue to have a relationship with each other for the rest of their lives as the parents of the child or children.

Virtual proceedings also impair the ability of attorneys and parties to communicate effectively with each other, especially if they are in different locations--the party at home and the attorney at his or her office. The process for a party to inform his or her counsel of something during testimony is not easily accomplished--you cannot simply lean over and whisper in your attorney or client's ear. This situation also disrupts the flow of a proceeding if the Court has to stop the action to take measures to ensure each participant is unable to listen in on private discussions between attorney and client.

If the parties are at their attorney's office they appear in one of two ways, (1) on the same computer as their attorney or (2) in a separate room on a different computer. When they are on the same computer it is very difficult, sometimes impossible, for my court reporter to do her job during testimony. She cannot always see the speaker's lips, which is something she uses to help her during testimony and with two people in the same frame it can be very distracting when one person is moving about while the other person is speaking. It is more difficult trying to focus on a small square on a screen than a person sitting in the witness box. They also must be next to each other and cannot social distance from each other.

If they are in different rooms they cannot easily communicate with each other during the hearing as they would if sitting next to each other at the same counsel table. This situation also disrupts the flow of the proceeding if there is a need to stop so counsel can have a moment with his or her client during a hearing.

There is often a better sense of decorum when the client is at an attorney's office rather than at home, but it still does not rise to the same level as being at court.

Attorneys tell me it takes much more time to prepare a case for a remote setting. This increases the cost to litigants. The parties may save on parking and travel time, but I am told that the increased preparation time exceeds such savings. The way attorneys must prepare for a remote hearing to comply with the court's rules is very time consuming. Exhibits have to be organized in a particular manner. They must be exchanged in a particular manner. This increases the attorney billing and lengthens the proceeding itself.

Child Protective Services cases have seen a mixture of advantages and disadvantages. The poorest parents have the advantage of being more able to participate in proceedings. Some parties who do not live on bus routes and/or did not have rides to court, which reduced their ability to participate, can now be involved because the transportation hurdle is removed. The remote hearings often enable them to participate without taking time off from work. But remote hearings also may prevent them from being face to face with their attorneys during a proceeding, which may impact the outcome. Virtual proceedings also diminish the effectiveness of the hearing when the participants are on their phones in their car, not to mention the safety of the participant. I believe trial judges who are familiar with the cases are best suited to determine which cases on their dockets should be remote and which should be in person. There is a careful balance that must be respected on a case by case basis.

My Associate Judge handles cases in the CPS Recovery Court. That court is designed to help drug addicted parents obtain the help they need for their addiction so that they can eventually parent their children. However, the impersonal atmosphere of Zoom has made it much more difficult. Like everything in Family Court, it requires the personal touch of a caring judge. Judge Riek does his best to give each party the attention they need, but virtual proceedings are no substitute for in-person proceedings.

I also feel this in my courtroom in all of my cases. Mine is a family court. I deal with people who often cannot settle because of unresolved feelings and other issues. Relegating these matters to a screen sometimes makes the case more contentious. People will treat each other in a manner over a computer screen that they would not do in person. The computer screen often emboldens participants to be less cooperative and less respectful. More cases are being litigated and this causes increased costs to the litigants.

I believe that trial judges can best decide when virtual proceedings are appropriate. I will certainly continue to use Zoom for pretrial matters, short prove-ups, and other matters that lend themselves to Zoom. Even before the pandemic, I allowed witnesses and parties to testify via remote means in very selective instances. I was elected by the people of Tarrant County to do this job. It is a job I take seriously and I wish to be allowed to make the decisions as to when virtual proceedings are appropriate and not appropriate.

I take issue with the Texas Supreme Court and the Office of Court Administration micromanaging my courtroom. The Texas Constitution allows the Texas Supreme Court to govern the uniform system of justice. However, I believe the detailed instructions on how to conduct our courts goes beyond this power. I am in my courtroom everyday and have run my docket under these orders. These orders create an inefficient management of justice. The Texas Supreme Court has been amazing at getting us the technology and allowing us to continue to



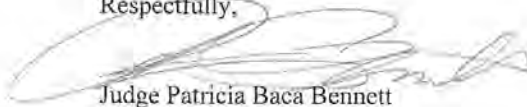
work when courts around the country and the world were closed. But in my opinion, the trial judge is best situated to know what does and does not work in his or her respective court. I do not feel that either the Texas Supreme Court or the legislature can run a courtroom that they do not see on a daily basis.

4. How has the pandemic impacted court staff, e.g. space teleworking, flexible work shifts, etc.?

I gave my staff the option to work from home, but they choose to come to the courthouse most days. Platforms such as Zoom allow for flexibility for all of us to work from home when we need to, but we find working in our offices at the courthouse a more efficient way to handle matters. My staff still has the option of working remotely from home, but they rarely want to do so. We have enough space to socially distance. We have all the masks and cleaning supplies we need. More importantly, we can meet at a moment's notice to discuss a matter of importance without having to go through the process of scheduling a Zoom meeting.

Thank you for taking the time to read this letter. Please feel free to contact me if you have any further questions or concerns.

Respectfully,



Judge Patricia Baca Bennett  
360<sup>th</sup> Judicial District Court

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**Submission 5: Judge Brooke Allen Response**



**TARRANT COUNTY**  
FORT WORTH, TEXAS 76196-7752

**BROOKE ALLEN**  
JUDGE, PROBATE COURT NO. 2

100 WEATHERFORD  
AREA CODE 817.384.1415

November 30, 2020

Texas House Judiciary Committee

*Via Electronic Mail*

Re: Request for Information

Dear Chairman Leach and the Texas House Judiciary Committee,

Enclosed with this letter is a letter sent July 28, 2020 regarding the forced technology. I hope you will consider it with this letter regarding the requested information.

Probate Court No. 2 in Tarrant County, Texas, ("PC2") has received plenty of PPE for the court and staff.

The caseload of PC2 is significantly backlogged. For example, I used to hear three simple, uncontested will prove-ups every 15 minutes. Now, only one can be heard every ten minutes. I heard approximately 40 every Monday, versus approximately 25 now. Heirships were heard one per 15 minutes. Now it is one per 30 minutes. Contested matters also take significantly longer due to issues with technology – time take to login and live stream, making sure everyone is on and can be heard and seen, parties or their attorneys "dropping off", the "freezing" of screens, etc...

PC2 uses Zoom for most hearings/trials and Lifesize for most mental health trials. As mentioned above and in the attached letter, other than it taking significantly longer, they have been acceptable for uncontested matters. However, for contested evidentiary matters, these platforms are no substitute for in-person hearings and trials. Please see the attached letters for descriptions of many of the issues. These have continued since the letter was written. In addition, the lack of respect for the judiciary and judicial system has increased. When one can sit comfortably on their couch in their living room for trial, many times the importance and immediacy of the proceedings is lost.

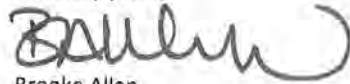
Court staff initially worked from home. Production fell. The staff is back at the courthouse working. All of our staff has their own office. Thus, we are able to properly space and PPE is provided and utilized. I never stopped working at the courthouse. Flexible scheduling is allowed. No one is known to have contracted the virus from working in the courthouse.

Thank you for the opportunity to provide insight to the judiciary. I hope to open my court fully using reasonable precautions. No judge should be placed in the position of choosing between

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providing full access to justice or defending a judicial ethics complaint as we are now with the current orders of the Texas Supreme Court.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Brooke Allen", written in a cursive style.

Brooke Allen



**TARRANT COUNTY**  
FORT WORTH, TEXAS 76196-7752

**BROOKE ALLEN**  
JUDGE, PROBATE COURT NO. 2

100 WEATHERFORD  
AREA CODE 817.884.1415

July 28, 2020

Texas House Judiciary Committee

*Via Electronic Mail*

Re: Forced Technology in Lieu of In-Person Evidentiary Hearings and Trials

Dear Chairman Leach and the Texas House Judiciary Committee,

As a former attorney who litigated numerous cases involving multiple parties, large sums of money, and sometimes a person's rights, and now as a Judge who presides over probate, guardianship, mental health, and general civil litigation, I strongly urge you not to implement evidentiary hearings or trials via electronics.

In my current role, many of the litigants I see are allegedly incompetent or have a mental health diagnosis. Per Texas law, they are entitled and receive a court-appointed attorney. Prior to COVID, these attorneys met with the proposed ward or patient in-person prior to trial. They conducted the trial in-person where there was contemporaneous effective assistance of counsel and valuable confrontation of witnesses. The outcome of these trials determines whether they lose their civil liberties such as deciding where they live, to marry, to vote, etc... Or, in the mental health context, the outcome determines whether they are forced to stay in a mental institution or be injected with psychiatric drugs against their will. The stakes are high.

David Slayton, with the Office of Court Administration, has articulated Zoom provides effective assistance of counsel. He states a person can go into a "back room" and speak with their attorney. They can chat on a cell phone. However, this is not contemporaneous effective assistance of counsel which is imperative to effective representation. Moreover, for persons who are allegedly incompetent or have a mental health diagnosis, is this truly functional? These people have to see their attorney on a screen. They have to waive their hand or interrupt to speak with counsel. They must remember the issue to discuss. Then, they must go into a "back room" or on a cell phone to have the conversation. And, if they do not hit mute, the attorney client privilege may be deemed waived. This seems to be a huge burden on the proposed ward or patient (and really any litigant).

Another issue is the veracity of witnesses along with confrontation of witnesses. Although the confrontation clause has not yet been applied to civil cases, should not someone who is facing the loss of their civil liberties, involuntary confinement, and/or the forcing of psychiatric drugs into their body, have a fair opportunity to confront those against them? Should the judge or jury not have the opportunity to judge the witnesses' body language along with their testimony? Do you know if anyone is with the witness prompting testimony? Do they have notes? Could damaging testimony be stalled or changed by a bad connection or simply by someone dropping off the "meeting"? Again, the OCA says the veracity of a witness is not a valid reason for an in-person trial. (This also begs the question as to whether the OCA is

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usurping a trial judge's discretion to proceed in their own courtroom as they see fit in order to ensure procedural and substantive rights and due process.)

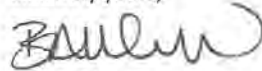
Even in uncontested matters, electronic hearings pose their own issues. The more people "attending", the more user errors as far as unmuting and muting, people dropping off, and screens freezing. Moreover, in my experience, zoom hearings take two to three times longer than a hearing in person. Thus, the court

dockets are backing up substantially. This is on top of the due process issues which are bound to arise with the issue mentioned above and those not covered in this letter.

Finally, the respect for the judiciary and our legal system is ignored via electronics. Callers are on the dealership floor selling cars while zooming, wearing their pajamas, driving their car or boat, talking to others in the room or on their cell phone during the hearing, etc... There is no way to enforce contempt after a warning to please refrain from these behaviors. There is no bailiff to assist. The judge and the judicial system are at the mercy of those "participating." I can only imagine the complications, both procedurally and substantively, with having voir dire and a jury trial over technology.

As a passionate supporter of the American and Texas judicial systems being the best in the world, I implore you not to force electronics on the judges, attorneys, and litigants, especially in contested, evidentiary, proceedings. People deserve their day in court. They deserve justice. They do not deserve Brady-bunch theatrics posing as due process.

Sincerely yours,



Brooke Allen

cc: Craig Goldman  
Charlie Geren  
Stephanie Klick  
Giovanni Capriglione  
Johnathan Stickland  
Bill Zedler  
Tony Tinderholt  
Jane Nelson  
Kelly Hancock  
Beverly Powell  
Brian Birdwell

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## Submission 6: Houston Forensic Science Center Response



Houston Forensic Science Center  
500 Jefferson St., 13<sup>th</sup> floor  
Houston, Texas 77002

### Impacts of COVID-19 on the Houston Forensic Science Center

The House Jurisprudence Committee has requested information on the impacts of COVID-19 that appears to be specific to courts. However, the impacts have been felt across the justice system and the Houston Forensic Science Center is providing responses in the hopes of providing a broader view of how the pandemic is affecting stakeholders.

#### 1. Have you had any difficulty acquiring PPE for your court, county or staff?

At the start of the pandemic, it became rapidly apparent that PPE could become a potentially debilitating problem for HFSC. There are areas, such as forensic biology/DNA, crime scene and seized drugs, where it is impossible to operate without masks \_including N-95s\_ gloves, gowns and booties. HFSC identified vendors that could supply certain PPE in bulk for six months, ensuring continued operations. It took until August to get a six to 12-month supply of critical PPE on the floor of the supply room. Some items, such as gloves, still run at a 4-month supply. Other supplies take several months to arrive after an order has been placed. But probably the most staggering, and impactful change, is in cost. For example, lab coats or gowns, which a year ago cost \$248 for 100 now cost \$570 for 100, a 230 percent increase. Surgical masks, one of the most essential items among our PPE needs, have seen an even more drastic cost increase. A year ago, these masks cost 13 cents/mask. At the start of the pandemic, we purchased the same masks at a cost of \$1.14/each, an 877 percent increase. Later, we did find a supplier who sold us a year's supply of masks at a cost of 57 cents each, a better price point but still a 438 percent increase in cost. N-95 masks have also seen cost increases of between 150 percent and 400 percent, and we are still unable to purchase our preferred brand. Finally, gloves, used in all disciplines, are not only more difficult to purchase in the bulk amounts we need do to vendor restrictions, forcing us to buy from multiple suppliers, prices have increased nearly 200 percent. HFSC has received some CARES funding to cover these cost increases, however, that money will only run through the end of this year, likely forcing us to use regular budget dollars to make these critical PPE purchases so we can remain operational.

#### 2. How have your caseloads been impacted by COVID-19? Do you have a backlog of cases?

HFSC has been operating on a rotating schedule since March to minimize onsite numbers in an attempt to minimize opportunities for exposure among our staff, better protecting the health and safety of staff and operations. And while technology and software purchases and adjustments have allowed more work to be completed remotely, there is a still a great deal that can **only** be done in the laboratory and onsite. At the same time, crime, especially violent crimes and homicides, have spiked this year, significantly increasing the workload in some sections, especially the crime scene unit. As a result, certain disciplines are struggling with growing backlogs. This is most apparent in the crime scene unit, where a team of 28 has been pummeled by a 40-plus percent increase in

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homicides. Prior to the pandemic, the unit largely operated with no backlog and a 30-day turnaround. Now they have a backlog of nearly 500 cases. In addition, the seized drug section, which had no backlog and an 8-day turnaround time prior to the pandemic, is now struggling with a growing backlog, in part due to the rotating schedules implemented in March. Finally, the forensic biology/DNA section, which had a clear plan to eliminate a longer-standing backlog, has struggled keeping up with the plan and the work has slowed down. Once backlogs build up in forensic science they are extraordinarily difficult to eliminate since nearly all labs, ours included, run on the ragged edge of needed resources in the best of times. Depending on how long this lasts, and how rapid the increase in crime is, it could take years for HFSC \_ and all crime laboratories in the state \_ to dig out of the hole created by the pandemic.

**3. What has been your experience in using Zoom or other online platforms for court proceedings?**

HFSC analysts have not testified in trial since March, when the courts in Harris County shutdown. Several, however, have testified in Zoom hearings before a judge. One analyst testified remotely prior to the pandemic when a jury was present. The experiences have been positive, especially since testifying remotely saves on travel and wait time. For the one analyst that testified prior to the pandemic with a jury present the inability to connect with the jury was a drawback. On the flip side, there was less "courtroom drama" and greater focus on the testimony itself. One analyst that testified remotely in a hearing where the attorneys and judge were physically present in the courtroom found it a little difficult to hear since the people that were in person were masked. Despite the few drawbacks, however, the few analysts that have experience testifying remotely believe that as the kinks of the virtual world are ironed out the experience will be favorable for all involved.

**4. How has the pandemic impacted court staff, e.g. space teleworking, flexible work shifts, etc.?**

HFSC has operated on rotating schedules, except for the crime scene unit, and this looks different for each discipline. Each section has adjusted to best accommodate their process and workflow. For example, latent print examiners have been working from home almost exclusively since their workflow is entirely digital. The multimedia section, however, rotates one day onsite and one day offsite. Other executive team members and administrative divisions come onsite at least once a week. Some areas have remained as productive as they were prior to the pandemic while others, as outlined earlier, have struggled keeping up with the workload. HFSC has had to make significant IT purchases, including laptops, headsets, software licenses and network upgrades, to ensure remote work is effective, efficient and secure. Despite some difficulties, the group has largely adjusted to meeting and communicating in the remote environment.

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