



## The Supreme Court of Texas

CHIEF JUSTICE  
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May 31, 2019

Mr. Charles L. "Chip" Babcock  
Chair, Supreme Court Advisory Committee  
Jackson Walker L.L.P.  
cbabcock@jw.com

Re: Referral of Rules Issues

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters. Some require immediate attention, while others are longer-range initiatives. I have provided a complete list for the Committee's information.

Several matters arise from legislation passed by the 86th Legislature, which, if signed by the Governor, takes effect immediately or on September 1, 2019. The Committee should conclude its work on them by its June 21, 2019 meeting. Many of the changes may be simple and straightforward. They are:

**Joint Judicial Campaign Activity.** The State Commission on Judicial Conduct has disciplined judges for joint campaign activities based on Canons 2B and 5(2) of the Code of Judicial Conduct. Canon 2B states in part: "A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge." Canon 5(2) states in part: "A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party." HB 3233, passed by the 86th Legislature, adds Election Code § 253.1612, which states that the "Code of Judicial Conduct may not prohibit, and a judicial candidate may not be penalized for, a joint campaign activity conducted by two or more judicial candidates." The Committee should consider whether the text of the rules should be changed or a comment added to reference or restate the statute.

**MDL Applicability.** Government Code §§ 74.161-.201 create the Judicial Panel on Multidistrict Litigation, and Rule of Judicial Administration 13 governs its operation. SB 827, § 2 adds § 74.1625 to prohibit the MDL panel from transferring two types of actions: (1) DTPA actions (unless specifically allowed under the DTPA) and (2) Texas Medicaid Fraud Prevention Act actions. The amendment does not direct that Rule 13 be changed, but the Committee should consider whether the text of Rule 13.1 should be changed and a comment added to reference or restate the statute.

**Expedited Actions.** Rule of Civil Procedure 169 implements Government Code § 22.004(h). SB 2342 adds § 22.004(h-1), which calls for rules, “[i]n addition to the rules adopted under [s]ubsection (h), . . . to promote the prompt, efficient, and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed \$250,000 . . . balanc[ing] the need for lowering discovery costs in these actions against the complexity of and discovery needs in these actions.” Rules necessary to implement this change must be adopted by January 1, 2021. But the statute makes various other changes that take effect September 1, 2019. The Committee should consider whether other rules should be changed, such as Rules of Civil Procedure 47, 224, and 500.3, or comments added to reference or restate the statute by that date.

**Dismissal.** Rule of Civil Procedure 91a provides for the dismissal of baseless causes of action, implementing Government Code § 22.004(g). Civil Practice and Remedies Code § 30.021 mandates an award of costs and attorney fees to the prevailing party. HB 3300 amends § 30.021 to make an award discretionary and applies to cases commenced on or after September 1, 2019. The Committee should consider whether other rules should be changed or comments added to reference or restate the statute by that date.

**Notice of Appeal.** SB 891, § 7.02, adds Civil Practice and Remedies Code § 51.017 to require service of notice of appeal on court reporters. The Committee has already considered this change. The statute is effective September 1, 2019.

One other matter arising from legislation passed by the 86th Legislature requires rule-making by January 1, 2020:

**Public Guardians.** Section 24 of SB 667, passed by the 86th Legislature, adds Subchapter G-1 to Chapter 1104 of the Estates Code, which governs public guardians and directs the Court “in consultation with the Office of Court Administration . . . and the presiding judge of the statutory probate courts . . . [to] adopt rules necessary to implement this subchapter.” Section 67 of the bill provides that the Court “shall adopt rules necessary to implement Subchapter G-1, . . . including rules governing the transfer of the guardianship of the person or of the estate of a ward, or both, if appropriate, to an office of public guardian established under that subchapter or a public guardian contracted under that subchapter.” OCA and Judge Guy Herman will draft these rules, and the Committee should review them.

Other matters arising from legislation passed this Session set extended deadlines for rule-making:

**Citation.** SB 891, passed by the 86th Legislature, amends several state statutes to address citation. The bill adds Government Code § 72.034 directing the Court “by rule [to] establish procedures for the submission of public information to the public information Internet website by a person who is required to publish the information” by June 1, 2020. The bill also adds Civil Practice and Remedies Code § 17.033 requiring the Court to “adopt rules to provide for the substituted service of citation by an electronic communication sent to a defendant through a social media presence” by December 31, 2020. The Committee should make recommendations.

**Protective Order Registry Forms.** SB 325 requires the Office of Court Administration to create an online registry for family violence protective orders and applications and to permit public access to certain information about the protective orders by June 1, 2020. The bill also adds Government Code § 72.158 directing the Court to “prescribe a form for use by a person requesting a grant or removal of public access” to the information and permits the Court to prescribe related procedures. The bill does not specify a deadline for the forms. The Committee should recommend appropriate forms.

**Criminal Forms.** HB 51 adds Government Code § 72.0245 requiring the Office of Court Administration to create a number of forms for use in criminal actions, such as forms to waive a jury trial and enter a plea of guilty or nolo contendere, and forms for a trial court to admonish a defendant before accepting a guilty or nolo contendere plea. It also requires the Supreme Court to “by rule . . . set the date by which all courts with jurisdiction over criminal actions must adopt and use the forms created . . . .” OCA will work with Holly Taylor, the Court of Criminal Appeals’ Rules Attorney, to formulate a plan to develop the forms. The Committee should review the forms when drafted. The statutory deadline is September 1, 2020.

**Procedures Related to Mental Health.** SB 362 directs the Supreme Court to “adopt rules to streamline and promote the efficiency of court processes under Chapter 573, Health and Safety Code” and “adopt rules or implement other measures to create consistency and increase access to the judicial branch for mental health issues.” The Judicial Commission on Mental Health will draft these rules, and the Committee should review them.

**CPS and Juvenile Cases.** HB 2737 requires the Court and its Children’s Commission to “annually . . . provide guidance to judges who preside over child protective services cases or juvenile cases,” and requires the Court to “adopt the rules necessary to accomplish the purpose of this section.” The statute sets no deadline. The Children’s Commission is developing an implementation plan. The Committee should review any rules proposed by the Commission.

**Transfer on Death Deed Forms.** SB 874 requires the Court to promulgate “a form for use to create a transfer on death deed and a form for use to create an instrument for revocation of a transfer on death deed.” The statute sets no deadline. The Probate Forms Task Force will develop these and other forms for the Committee’s review.

Finally, there are several matters unrelated to recent legislation on which the Court requests the Committee's recommendations.

**Suits Affecting the Parent-Child Relationship.** In response to HB 7, passed by the 85th Legislature, the Court appointed the HB 7 Task Force to draft the rules required by the statute and to make any other recommendations for expediting and improving the trial and appeal of cases governed by Family Code Chapter 264. On November 27, 2017, the HB 7 Task Force submitted a report and recommendations to the Court ("Phase I Report"). The Committee studied the Phase I Report and made recommendations to the Court. Subsequently, on December 31, 2018, the Task Force submitted a second report and recommendations to the Court ("Phase II Report"). The Phase II Report is attached to this letter. The Committee should review the Phase II Report and make recommendations.

**Out-of-Time Appeals in Parental Rights Termination Cases.** A parent whose appeal from a judgment terminating his rights in a child is untimely may contend that the delay is not his fault and may blame ineffective assistance of counsel. This can complicate and extend the appellate process. The Committee should consider rules to address this situation, including:

- a narrow late-appeal procedure;
- an abate-and-remand procedure like the one proposed in the Phase II Report;
- a habeas- or bill-of-review-style procedure; and
- prophylactic procedures not considered in the Phase I or Phase II Reports, such as a requirement that trial counsel stay on until the notice of appeal has been filed.

**Registration of In-House Counsel.** A majority of states require that an attorney employed as in-house counsel and residing in one state but licensed in another either register, obtain a limited license, or be fully licensed to practice in the state of residence. The Board of Law Examiners has approved new Rule 23 of the Rules Governing Admission to the Bar, requiring only registration of in-house counsel. The proposed rule is attached. The Committee should review the rule and make recommendations.

**Civil Rules in Municipal Courts.** Municipal Court Judge Ryan Henry has proposed that procedural rules be adopted for civil cases in municipal courts. The Committee should set up a process for considering Judge Henry's proposals and making recommendations.

**Motions for Rehearing in the Courts of Appeals.** Justice Christopher and the State Bar Court Rules Committee have each proposed amendments to Rule of Appellate Procedure 49.3, which are attached. The Committee should consider both and make recommendations.

**Parental Leave Continuance Rule.** In the attached memorandum, the State Bar Court Rules Committee proposes a parental leave continuance rule. The State of Florida has studied such a procedure in depth. The Committee should consider that work and the proposal and make recommendations.

As always, the Court is grateful for the Committee's counsel and your leadership.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan L. Hecht", with a long horizontal flourish extending to the right.

Nathan L. Hecht  
Chief Justice

Attachments

AN ACT

relating to the Judicial Campaign Fairness Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 253.152, Election Code, is amended to read as follows:

Sec. 253.152. DEFINITIONS. In this subchapter:

(1) "Child" means a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes [~~"Complying candidate" or "complying officeholder" means a judicial candidate who files a declaration of compliance under Section 253.164(a)(1)].~~

(2) "In connection with an election" means:

(A) with regard to a contribution that is designated in writing for a particular election, the election designated; or

(B) with regard to a contribution that is not designated in writing for a particular election [~~or that is designated as an officeholder contribution~~], the next election for that office occurring after the contribution is made.

(3) "Judicial district" means the territory from which a judicial candidate is elected or appointed.

(4) "Law firm" means a partnership, limited liability partnership, limited liability company, professional corporation, or other entity organized for the practice of law.

1           (5) "Law firm group" means:

2                   (A) a law firm;

3                   (B) a general-purpose committee established or  
4 controlled by the law firm or a member of the law firm;

5                   (C) a member of the law firm; and

6                   (D) the spouse of a member of the law firm.

7           (6) "Member of a law firm" means:

8                   (A) a person designated "of counsel" or "of the  
9 firm";

10                   (B) a partner of the law firm, whether an  
11 individual or an entity;

12                   (C) an associate of the law firm;

13                   (D) a shareholder of the law firm, whether an  
14 individual or an entity; or

15                   (E) an employee of the law firm [~~"Noncomplying~~  
16 ~~candidate" means a judicial candidate who:~~

17                   ~~[(A) files a declaration of intent to exceed the~~  
18 ~~limits on expenditures under Section 253.164(a)(2);~~

19                   ~~[(B) files a declaration of compliance under~~  
20 ~~Section 253.164(a)(1) but later exceeds the limits on expenditures;~~

21                   ~~[(C) fails to file a declaration of compliance~~  
22 ~~under Section 253.164(a)(1) or a declaration of intent under~~  
23 ~~Section 253.164(a)(2); or~~

24                   ~~[(D) violates Section 253.173 or 253.174].~~

25           (7) [(5)] "Statewide judicial office" means the  
26 office of chief justice or justice, supreme court, or presiding  
27 judge or judge, court of criminal appeals.

SECTION 2. The heading to Section 253.1541, Election Code, is amended to read as follows:

Sec. 253.1541. ACCEPTANCE OF POLITICAL ~~[OFFICEHOLDER]~~ CONTRIBUTIONS BY PERSON APPOINTED TO FILL VACANCY.

SECTION 3. Section 253.1541(b), Election Code, is amended to read as follows:

(b) Notwithstanding Section 253.153, a person to whom this section applies may accept political ~~[officeholder]~~ contributions beginning on the date the person assumes the duties of office and ending on the 60th day after that date.

SECTION 4. Section 253.155, Election Code, is amended by amending Subsections (a), (b), and (e) and adding Subsection (d-1) to read as follows:

(a) A ~~[Subject to Section 253.1621, a]~~ judicial candidate or officeholder may not~~[, except as provided by Subsection (c),]~~ knowingly accept political contributions from a person that, in the aggregate, exceed the contribution limits prescribed by Subsection (b) in connection with each election in which the judicial candidate's name appears on the ballot ~~[person is involved]~~.

(b) The contribution limits under this section are:

(1) for a statewide judicial office, \$5,000; or

(2) for any other judicial office:

(A) \$1,000, if the population of the judicial district is less than 250,000;

(B) \$2,500, if the population of the judicial district is 250,000 to one million; or

(C) \$5,000, if the population of the judicial



1 district is more than one million.

2 (d-1) In addition to the contribution limits imposed on each  
3 contributor under this section, a judicial candidate or  
4 officeholder may not accept a political contribution in excess of  
5 \$50 from a person if:

6 (1) the person is part of a law firm group; and

7 (2) the contribution, when aggregated with all  
8 political contributions accepted by the candidate or officeholder  
9 from the same law firm group in connection with the election, would  
10 exceed six times the applicable contribution limit under this  
11 section.

12 (e) A person who receives a political contribution that  
13 violates this section [~~Subsection (a)~~] shall return the  
14 contribution to the contributor not later than the later of:

15 (1) the last day of the reporting period in which the  
16 contribution is received; or

17 (2) the fifth day after the date the contribution is  
18 received.

19 SECTION 5. The heading to Section 253.157, Election Code,  
20 is amended to read as follows:

21 Sec. 253.157. LIMIT ON CONTRIBUTION BY [~~LAW FIRM OR MEMBER~~  
22 ~~OR~~] GENERAL-PURPOSE COMMITTEES [~~COMMITTEE OF LAW FIRM~~].

23 SECTION 6. Section 253.157, Election Code, is amended by  
24 adding Subsections (a-1) and (a-2) and amending Subsections (b) and  
25 (c) to read as follows:

26 (a-1) A judicial candidate or officeholder may not  
27 knowingly accept political contributions from a general-purpose

1 committee that, in the aggregate, exceed the contribution limits  
2 prescribed by this subsection in connection with an election in  
3 which the judicial candidate's name appears on the ballot. The  
4 contribution limits under this subsection are:

5 (1) for a statewide judicial office, \$25,000; or

6 (2) for any other judicial office, \$5,000.

7 (a-2) In addition to the contribution limits imposed on each  
8 contribution in Subsection (a-1), a judicial candidate or  
9 officeholder may not accept a political contribution in excess of  
10 \$50 from a general-purpose committee if the contribution, when  
11 aggregated with all political contributions from all  
12 general-purpose committees in connection with an election, would  
13 exceed:

14 (1) for a statewide judicial office, \$300,000;

15 (2) for the office of chief justice or justice, court  
16 of appeals:

17 (A) \$75,000, if the population of the judicial  
18 district is more than one million; or

19 (B) \$52,500, if the population of the judicial  
20 district is one million or less; or

21 (3) for an office other than an office included under  
22 Subdivision (1) or (2):

23 (A) \$52,500, if the population of the judicial  
24 district is more than one million;

25 (B) \$30,000, if the population of the judicial  
26 district is 250,000 to one million; or

27 (C) \$15,000, if the population of the judicial

1 district is less than 250,000.

2 (b) A person who receives a political contribution that  
3 violates this section [~~Subsection (a)~~] shall return the  
4 contribution to the contributor not later than the later of:

5 (1) the last day of the reporting period in which the  
6 contribution is received; or

7 (2) the fifth day after the date the contribution is  
8 received.

9 (c) A person who violates this section [~~fails to return a~~  
10 ~~political contribution as required by Subsection (b)~~] is liable for  
11 a civil penalty not to exceed three times the [~~total~~] amount of the  
12 political contributions accepted in violation of this section [~~from~~  
13 ~~the law firm, members of the law firm, or general-purpose~~  
14 ~~committees established or controlled by the law firm in connection~~  
15 ~~with the election~~].

16 SECTION 7. Sections [253.158](#), [253.159](#), and [253.1601](#),  
17 Election Code, are amended to read as follows:

18 Sec. 253.158. CONTRIBUTION BY SPOUSE OR CHILD [~~CONSIDERED~~  
19 ~~TO BE CONTRIBUTION BY INDIVIDUAL~~]. (a) For purposes of this  
20 subchapter [~~Sections [253.155](#) and [253.157](#)~~], a contribution by the  
21 spouse [~~or child~~] of an individual is not considered to be a  
22 contribution by the individual.

23 (b) For purposes of this subchapter, a contribution by a  
24 child of an individual is considered to be a contribution by the  
25 individual [~~In this section, "child" means a person under 18 years~~  
26 ~~of age who is not and has not been married or who has not had the~~  
27 ~~disabilities of minority removed for general purposes~~].

1           Sec. 253.159. EXCEPTION TO CONTRIBUTION LIMITS. Section  
2 ~~[Sections]~~ 253.155 does ~~[and 253.157 do]~~ not apply to an individual  
3 who is related to the candidate or officeholder within the second  
4 degree by consanguinity, as determined under Subchapter B, Chapter  
5 573, Government Code.

6           Sec. 253.1601. CONTRIBUTION TO CERTAIN COMMITTEES  
7 CONSIDERED CONTRIBUTION TO CANDIDATE OR OFFICEHOLDER. For purposes  
8 of Sections 253.155 and ~~[7]~~ 253.157, ~~[and 253.160,~~ a contribution  
9 to a specific-purpose committee for the purpose of supporting a  
10 judicial candidate, opposing the candidate's opponent, or  
11 assisting a judicial ~~[the candidate as an]~~ officeholder is  
12 considered to be a contribution to the candidate or officeholder.

13           SECTION 8. Sections 253.161(a) and (b), Election Code, are  
14 amended to read as follows:

15           (a) A judicial candidate or officeholder, a  
16 specific-purpose committee for supporting or opposing a judicial  
17 candidate, or a specific-purpose committee for assisting a judicial  
18 officeholder may not use a political contribution to make a  
19 campaign expenditure for judicial office or to make an officeholder  
20 expenditure in connection with a judicial office if the  
21 contribution was accepted while the candidate or officeholder:

22                   (1) was a candidate for an office other than a judicial  
23 office; or

24                   (2) held an office other than a judicial office,  
25 unless the person had become a candidate for judicial office and the  
26 contribution was made in connection with an election for judicial  
27 office.

(b) A candidate, officeholder, or specific-purpose committee for supporting, opposing, or assisting the candidate or officeholder may not use a political contribution to make a campaign expenditure for an office other than a judicial office or to make an officeholder expenditure in connection with an office other than a judicial office if the contribution was accepted while the candidate or officeholder:

(1) was a candidate for a judicial office; or

(2) held a judicial office, unless the person had become a candidate for another office and the contribution was made in connection with an election for nonjudicial office.

SECTION 9. Subchapter F, Chapter 253, Election Code, is amended by adding Section 253.1612 to read as follows:

Sec. 253.1612. CERTAIN CAMPAIGN ACTIVITIES AUTHORIZED. The Code of Judicial Conduct may not prohibit, and a judicial candidate may not be penalized for, a joint campaign activity conducted by two or more judicial candidates.

SECTION 10. Sections 253.162(a) and (c), Election Code, are amended to read as follows:

(a) A [Subject to Section 253.1621, a] judicial candidate or officeholder who makes political expenditures from the person's personal funds or who accepts one or more political contributions in the form of a loan, including an extension of credit or guarantee of a loan or extension of credit, from one or more persons related to the candidate or officeholder within the second degree of affinity or consanguinity, as determined under Subchapter B, Chapter 573, Government Code, may not reimburse those [the]

1 personal funds or repay those loans from political contributions in  
2 amounts that in the aggregate exceed, for each election in which the  
3 person's name appears on the ballot:

4 (1) for a statewide judicial office, \$100,000; or

5 (2) for an office other than a statewide judicial  
6 office, five times the applicable contribution limit under Section  
7 253.155.

8 (c) A person who is both a candidate and an officeholder may  
9 reimburse the person's personal funds in only ~~[in]~~ one capacity.

10 SECTION 11. Section 253.1621, Election Code, is amended to  
11 read as follows:

12 Sec. 253.1621. APPLICATION OF CONTRIBUTION AND  
13 REIMBURSEMENT LIMITS TO CERTAIN CANDIDATES. (a) For purposes of  
14 the ~~[a]~~ contribution limits ~~[limit]~~ prescribed by Section 253.155  
15 ~~or~~ ~~[7]~~ 253.157 ~~[7, or 253.160]~~ and the limit on reimbursement of  
16 personal funds and repayment of certain loans prescribed by Section  
17 253.162, the general and primary elections ~~[election and general~~  
18 ~~election for state and county officers]~~ are considered separate  
19 elections for a candidate whose name appears on the ballot ~~[to be a~~  
20 ~~single election in which a judicial candidate is involved if the~~  
21 ~~candidate.~~

22 ~~[(1) is unopposed in the primary election, or~~

23 ~~[(2) does not have an opponent in the general election~~  
24 ~~whose name is to appear on the ballot].~~

25 (b) For purposes of the ~~[a candidate to whom Subsection (a)~~  
26 ~~applies, each applicable]~~ contribution limits ~~[limit]~~ prescribed  
27 by Sections ~~[Section]~~ 253.155 and ~~[7]~~ 253.157 and the limits on

1 reimbursement of personal funds and repayment of certain loans  
2 prescribed by Section 253.162, a runoff election in which the  
3 candidate's name is on the ballot is considered a separate  
4 election~~[, or 253.160 is increased by 25 percent. A candidate who~~  
5 ~~accepts political contributions from a person that in the aggregate~~  
6 ~~exceed the applicable contribution limit prescribed by Section~~  
7 ~~253.155, 253.157, or 253.160 but that do not exceed the adjusted~~  
8 ~~limit as determined under this subsection may use the amount of those~~  
9 ~~contributions that exceeds the limit prescribed by Section 253.155,~~  
10 ~~253.157, or 253.160 only for making an officeholder expenditure].~~

11 SECTION 12. The heading to Section 253.167, Election Code,  
12 is amended to read as follows:

13 Sec. 253.167. CERTIFICATION OF POPULATION; NOTICE OF  
14 CONTRIBUTION [~~AND EXPENDITURE~~] LIMITS.

15 SECTION 13. Section 253.167, Election Code, is amended by  
16 amending Subsection (b) and adding Subsection (c) to read as  
17 follows:

18 (b) Following certification of population under Subsection  
19 (a), the commission or county clerk, as appropriate, shall make  
20 available to each candidate for an office covered by this  
21 subchapter written notice of the contribution [~~and expenditure~~]  
22 limits applicable to the office the candidate seeks.

23 (c) The commission shall post the written certification  
24 required by this section on the commission's Internet website.

25 SECTION 14. Section 253.171, Election Code, is amended to  
26 read as follows:

27 Sec. 253.171. CONTRIBUTION FROM OR DIRECT CAMPAIGN

EXPENDITURE BY POLITICAL PARTY. A political expenditure  
[~~(a) Except as provided by Subsection (b), a political~~  
~~contribution to or a direct campaign expenditure on behalf of a~~  
~~complying candidate~~] that is made by the principal political  
committee of the state executive committee or a county executive  
committee of a political party [~~is considered to be a political~~  
~~expenditure by the candidate for purposes of the expenditure limits~~  
~~prescribed by Section 253.168.~~

[~~(b) Subsection (a) does not apply to a political~~  
~~expenditure~~] for a generic get-out-the-vote campaign or to create  
and distribute [~~for~~] a written list of two or more candidates is not  
considered a contribution to a judicial candidate who benefits from  
the get-out-the-vote campaign or is included in the written list  
and is not subject to the limits of Section 253.155 or 253.157 if  
the get-out-the-vote campaign or written list [~~that~~]:

(1) identifies the party's candidates by name and  
office sought, office held, or photograph;

(2) does not include any reference to the judicial  
philosophy or positions on issues of the party's judicial  
candidates; and

(3) is not broadcast, cablecast, published in a  
newspaper or magazine, or placed on a billboard.

SECTION 15. Section 253.176(a), Election Code, is amended  
to read as follows:

(a) The commission may impose a civil penalty against a  
person as provided by this subchapter only after a formal hearing as  
provided by Subchapter E, Chapter 571, Government Code.



SECTION 16. Section 254.0611(b), Election Code, is amended to read as follows:

(b) In this section:

(1) "Child" and "law firm" have ~~[has]~~ the meanings ~~[meaning]~~ assigned by Section 253.152 ~~[253.158]~~.

(2) "Member" has ~~["Law firm" and "member" have]~~ the meaning ~~[meanings]~~ assigned to "member of a law firm" by Section 253.152 ~~[253.157]~~.

SECTION 17. The following provisions of the Election Code are repealed:

- (1) Section 253.155(d);
- (2) Sections 253.157(a), (d), and (e);
- (3) Section 253.160;
- (4) Section 253.161(c);
- (5) Section 253.162(b);
- (6) Sections 253.163, 253.164, 253.165, 253.166, 253.168, 253.169, 253.170, 253.172, 253.173, 253.174, and 253.175;
- and
- (7) Section 253.176(c).

SECTION 18. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.

H.B. No. 3233

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President of the Senate

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Speaker of the House

I certify that H.B. No. 3233 was passed by the House on May 3, 2019, by the following vote: Yeas 139, Nays 3, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 3233 was passed by the Senate on May 19, 2019, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

---

Governor

AN ACT

relating to the transfer of civil cases by the judicial panel on multidistrict litigation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 74.162, Government Code, is amended to read as follows:

Sec. 74.162. TRANSFER OF CASES BY PANEL. Subject to Section 74.1625 and notwithstanding ~~[Notwithstanding]~~ any other law ~~[to the contrary]~~, the judicial panel on multidistrict litigation may transfer civil actions involving one or more common questions of fact pending in the same or different constitutional courts, county courts at law, probate courts, or district courts to any district court for consolidated or coordinated pretrial proceedings, including summary judgment or other dispositive motions, but not for trial on the merits. A transfer may be made by the judicial panel on multidistrict litigation on its determination that the transfer will:

(1) be for the convenience of the parties and witnesses; and

(2) promote the just and efficient conduct of the actions.

SECTION 2. Subchapter H, Chapter 74, Government Code, is amended by adding Section 74.1625 to read as follows:

Sec. 74.1625. PROHIBITED TRANSFER OF CASES.

1 (a) Notwithstanding any other law, the judicial panel on  
2 multidistrict litigation may not transfer:

3 (1) an action brought under Subchapter E, Chapter 17,  
4 Business & Commerce Code, except an action specifically authorized  
5 by Section 17.50 of that code; or

6 (2) an action brought under Chapter 36, Human  
7 Resources Code.

8 (b) Notwithstanding Section 22.004, the supreme court may  
9 not amend or adopt rules in conflict with this section.

10 SECTION 3. The changes in law made by this Act apply to an  
11 action commenced on or after the effective date of this Act, or  
12 pending on that date, and for which the trial, or any new trial or  
13 retrial following a motion, appeal, or otherwise, begins on or  
14 after that date.

15 SECTION 4. This Act takes effect immediately if it receives  
16 a vote of two-thirds of all the members elected to each house, as  
17 provided by Section 39, Article III, Texas Constitution. If this  
18 Act does not receive the vote necessary for immediate effect, this  
19 Act takes effect September 1, 2019.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 827 passed the Senate on April 11, 2019, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 827 passed the House on May 16, 2019, by the following vote: Yeas 99, Nays 35, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

AN ACT

relating to the jurisdiction of, and practices and procedures in civil cases before, justice courts, county courts, statutory county courts, and district courts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 22.004, Government Code, is amended by amending Subsection (h) and adding Subsection (h-1) to read as follows:

(h) The supreme court shall adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions. The rules shall apply to civil actions in district courts, county courts at law, and statutory probate courts in which the amount in controversy, inclusive of all claims for damages of any kind, whether actual or exemplary, a penalty, attorney's fees, expenses, costs, interest, or any other type of damage of any kind, does not exceed \$100,000. The rules shall address the need for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system. The supreme court may not adopt rules under this subsection that conflict with other statutory law ~~[a provision of:~~

~~[(1) Chapter 74, Civil Practice and Remedies Code,~~

~~[(2) the Family Code,~~

~~[(3) the Property Code, or~~

~~[(4) the Tax Code].~~

1        (h-1) In addition to the rules adopted under Subsection (h),  
2 the supreme court shall adopt rules to promote the prompt,  
3 efficient, and cost-effective resolution of civil actions filed in  
4 county courts at law in which the amount in controversy does not  
5 exceed \$250,000. The rules shall balance the need for lowering  
6 discovery costs in these actions against the complexity of and  
7 discovery needs in these actions. The supreme court may not adopt  
8 rules under this subsection that conflict with other statutory law.

9        SECTION 2. Section 25.0003(c), Government Code, is amended  
10 to read as follows:

11        (c) In addition to other jurisdiction provided by law, a  
12 statutory county court exercising civil jurisdiction concurrent  
13 with the constitutional jurisdiction of the county court has  
14 concurrent jurisdiction with the district court in:

15            (1) civil cases in which the matter in controversy  
16 exceeds \$500 but does not exceed \$250,000 [~~\$200,000~~], excluding  
17 interest, statutory or punitive damages and penalties, and  
18 attorney's fees and costs, as alleged on the face of the petition;  
19 and

20            (2) appeals of final rulings and decisions of the  
21 division of workers' compensation of the Texas Department of  
22 Insurance regarding workers' compensation claims, regardless of  
23 the amount in controversy.

24        SECTION 3. Section 25.0007, Government Code, is amended by  
25 amending Subsection (b) and adding Subsection (c) to read as  
26 follows:

27        (b) Practice in a statutory county court is that prescribed

by law for county courts, except that practice, procedure, rules of evidence, issuance of process and writs, the drawing of jury panels, the selection of jurors, and all other matters pertaining to the conduct of trials and hearings in the statutory county courts~~[, other than the number of jurors,]~~ that involve those matters of concurrent jurisdiction with district courts are governed by the laws and rules pertaining to the district courts in the county in which the statutory county court is located. This section does not affect local rules of administration adopted under Section 74.093.

(c) In a civil case pending in a statutory county court in which the matter in controversy exceeds \$250,000, the jury shall be composed of 12 members unless all of the parties agree to a jury composed of a lesser number of jurors.

SECTION 4. Section 25.0052(a), Government Code, as amended by Chapters 614 (S.B. 1428) and 746 (H.B. 66), Acts of the 72nd Legislature, Regular Session, 1991, is reenacted and amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Angelina County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in~~+~~

~~[(A) civil cases in which the matter in controversy exceeds \$500 but does not exceed \$50,000, excluding interest, and~~



1                   [~~(B)~~] family law cases and proceedings.

2           SECTION 5. Section 25.0102(h), Government Code, is amended  
3 to read as follows:

4           (h) If a family law case or proceeding is tried before a  
5 jury, the jury shall be composed of 12 members; in all other cases  
6 the jury shall be composed of six members except as provided by the  
7 constitution, Section 25.0007(c), or other law.

8           SECTION 6. Section 25.0202(a), Government Code, is amended  
9 to read as follows:

10          (a) In addition to the jurisdiction provided by Section  
11 25.0003 and other law, a county court at law in Bosque County has  
12 concurrent jurisdiction with the district court in:

13               (1) family law cases and proceedings; and

14               (2) [~~civil cases in which the matter in controversy~~  
15 ~~exceeds \$500 but does not exceed \$200,000, excluding interest,~~  
16 ~~court costs, and attorney's fees, and~~

17               [~~(3)~~] contested probate matters under Section 32.003,  
18 Estates Code.

19          SECTION 7. Section 25.0222(m), Government Code, is amended  
20 to read as follows:

21          (m) When a jury trial is requested in a case of concurrent  
22 jurisdiction between the district courts and statutory county  
23 courts, and the case was instituted in district court, the jury  
24 shall be composed of 12 members. In all other cases in which a jury  
25 trial is requested in the statutory county courts the jury shall be  
26 composed of six jurors except as provided by the constitution,  
27 Section 25.0007(c), or other law.

SECTION 8. Section 25.0362(f), Government Code, is amended to read as follows:

(f) Except as otherwise provided by this subsection, a jury in a county court at law shall be composed of six members except as provided by [unless] the constitution, Section 25.0007(c), or other law [requires a 12-member jury]. Failure to object before a six-member jury is seated and sworn constitutes a waiver of a 12-member jury. In matters in which the constitution or other law does not require a 12-member jury and the county court at law has concurrent jurisdiction with the district court, the jury may be composed of 12 members if a party to the suit requests a 12-member jury [and the judge of the court consents]. In a civil case tried in a county court at law, the parties may, by mutual agreement [and with the consent of the judge], agree to try the case with any number of jurors and have a verdict rendered and returned by the vote of any number of those jurors that is less than the total number of jurors.

SECTION 9. Section 25.0722(i), Government Code, is amended to read as follows:

(i) If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members. In all other cases the jury shall be composed of six members except as provided by the constitution, Section 25.0007(c), or other law.

SECTION 10. Section 25.0812(k), Government Code, is amended to read as follows:

(k) If a jury trial is requested in a case of concurrent jurisdiction between the district courts and the county courts at

1 law, and the case was instituted in the district court, the jury  
2 shall be composed of 12 members. In all other cases in which a jury  
3 trial is requested in the county courts at law, the jury shall be  
4 composed of six members except as provided by the constitution,  
5 Section 25.0007(c), or other law.

6 SECTION 11. Section 25.0862(n), Government Code, is amended  
7 to read as follows:

8 (n) If a jury trial is requested in a case that is in a  
9 county court at law's jurisdiction as provided by Subsection (a),  
10 the jury shall be composed of six members unless the constitution,  
11 Section 25.0007(c), or other law requires a 12-member jury.  
12 Failure to object before a six-member jury is seated and sworn  
13 constitutes a waiver of a 12-member jury.

14 SECTION 12. Section 25.0942(1), Government Code, is amended  
15 to read as follows:

16 (1) Except as otherwise provided by this subsection, a jury  
17 in a county court at law shall be composed of six members, unless  
18 the constitution, Section 25.0007(c), or other law requires a  
19 12-member jury. Failure to object before a six-member jury is  
20 seated and sworn constitutes a waiver of a 12-member jury. In  
21 matters in which the constitution or other law does not require a  
22 12-member jury and the county court at law has concurrent  
23 jurisdiction with the district court, the jury shall be composed of  
24 12 members if a party to the suit requests a 12-member jury. In a  
25 civil case tried in a county court at law, the parties may, by  
26 mutual agreement [~~and with the consent of the judge~~], agree to try  
27 the case with any number of jurors and have a verdict rendered and

1 returned by the vote of any number of those jurors that is less than  
2 the total number of jurors.

3 SECTION 13. Section 25.1042(h), Government Code, is amended  
4 to read as follows:

5 (h) A jury must be composed of 12 members in[+  
6 ~~[(1) any civil case pending in which the amount in~~  
7 ~~controversy is \$200,000 or more, and~~  
8 ~~[(2)] any felony case.~~

9 SECTION 14. Sections 25.1132(c) and (o), Government Code,  
10 are amended to read as follows:

11 (c) A county court at law in Hood County has concurrent  
12 jurisdiction with the district court in:

13 (1) ~~[civil cases in which the matter in controversy~~  
14 ~~exceeds \$500 but does not exceed \$250,000, excluding interest,~~

15 ~~[(2)] family law cases and related proceedings;~~

16 (2) ~~[(3)]~~ contested probate matters under Section  
17 32.003(a), Estates Code; and

18 (3) ~~[(4)]~~ contested matters in guardianship  
19 proceedings under Section 1022.003(a), Estates Code.

20 (o) If a family law case or proceeding is tried before a jury  
21 in a county court at law, the jury shall be composed of 12 members.  
22 In all other cases, the jury shall be composed of six members except  
23 as provided by the constitution, Section 25.0007(c), or other law.

24 SECTION 15. Section 25.1142(b), Government Code, is amended  
25 to read as follows:

26 (b) A county court at law does not have jurisdiction of:

27 (1) ~~[civil cases in which the amount in controversy~~

~~exceeds \$200,000, excluding interest,~~

~~(2)~~ felony jury trials;

(2) ~~(3)~~ suits on behalf of the state to recover penalties or escheated property;

(3) ~~(4)~~ misdemeanors involving official misconduct;  
or

(4) ~~(5)~~ contested elections.

SECTION 16. Sections 25.1252(j) and (m), Government Code, are amended to read as follows:

(j) If a family law case or proceeding is tried before a jury in a county court at law, the jury shall be composed of 12 members. In all other cases, the jury shall be composed of six members except as provided by the constitution, Section 25.0007(c), or other law  
~~[A county court at law may exercise the jurisdiction vested in the district court for the drawing, selection, and service of jurors. A panel not exceeding 24 jurors shall be drawn for any one week of a court, and the juries selected may not exceed six].~~

(m) Section ~~[Sections]~~ 25.0006 does ~~[and 25.0007 do]~~ not apply to the county courts at law of Jefferson County.

SECTION 17. Sections 25.1272(b) and (h), Government Code, are amended to read as follows:

(b) A county court at law in Jim Wells County has concurrent jurisdiction with the district court in:

(1) ~~[civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000, excluding interest,~~

~~(2)~~ family law cases and proceedings;

(2) ~~(3)~~ Class A and Class B misdemeanors;

1           (3) [~~(4)~~] juvenile cases; and

2           (4) [~~(5)~~] appeals from justice and municipal courts.

3           (h) If a jury trial is requested in a case that is in a  
4 county court at law's jurisdiction, the jury shall be composed of  
5 six members unless the constitution, Section 25.0007(c), or other  
6 law requires a 12-member jury. Failure to object before a  
7 six-member jury is seated and sworn constitutes a waiver of a  
8 12-member jury.

9           SECTION 18. Sections 25.1412(a) and (p), Government Code,  
10 are amended to read as follows:

11           (a) In addition to the jurisdiction provided by Section  
12 25.0003 and other law, a county court at law in Lamar County has:

13               (1) concurrent jurisdiction with the district court  
14 in:

15                       (A) probate matters and proceedings, including  
16 will contests;

17                       (B) family law cases and proceedings, including  
18 juvenile cases; and

19                       (C) felony cases to conduct arraignments and  
20 pretrial hearings and to accept guilty pleas; and

21                       ~~[(D) civil cases in which the amount in~~  
22 ~~controversy does not exceed \$200,000, excluding interest, and]~~

23               (2) concurrent jurisdiction with the county and  
24 district courts over all suits arising under the Family Code.

25           (p) Except as otherwise provided by this subsection, a jury  
26 in a county court at law shall be composed of six members unless the  
27 constitution, Section 25.0007(c), or other law requires a 12-member

1 jury. Failure to object before a six-member jury is seated and  
2 sworn constitutes a waiver of a 12-member jury. In matters in  
3 which the constitution or other law does not require a 12-member  
4 jury and the county court at law has concurrent jurisdiction with  
5 the district court, the jury may be composed of 12 members if a  
6 party to the suit requests a 12-member jury and the judge of the  
7 court consents. In a civil case tried in a county court at law, the  
8 parties may, by mutual agreement [~~and with the consent of the~~  
9 ~~judge~~], agree to try the case with any number of jurors and have a  
10 verdict rendered and returned by the vote of any number of those  
11 jurors that is less than the total number of jurors.

12 SECTION 19. Section 25.1722(f), Government Code, is amended  
13 to read as follows:

14 (f) Except as otherwise provided by this subsection, the  
15 constitution, Section 25.0007(c), or other law, juries in a county  
16 court at law shall be composed of six members. Juries in family law  
17 cases and proceedings shall be composed of 12 members, unless the  
18 parties agree to a six-member jury.

19 SECTION 20. Section 25.1732(1), Government Code, is amended  
20 to read as follows:

21 (1) A jury in a county court at law is composed of six  
22 persons unless the constitution, Section 25.0007(c), or other law  
23 requires a 12-member jury.

24 SECTION 21. Section 25.1802(o), Government Code, is amended  
25 to read as follows:

26 (o) If a jury trial is requested in a case that is in a  
27 county court at law's jurisdiction, the jury shall be composed of

1 six members unless the constitution, Section 25.0007(c), or other  
2 law requires a 12-member jury. Failure to object before a  
3 six-member jury is seated and sworn constitutes a waiver of a  
4 12-member jury.

5 SECTION 22. Section 25.1862(k), Government Code, is amended  
6 to read as follows:

7 (k) If a jury trial is requested in a case that is in a  
8 county court at law's jurisdiction as provided by Subsection (a),  
9 the jury shall be composed of six members unless the constitution,  
10 Section 25.0007(c), or other law requires a 12-member jury.  
11 Failure to object before a six-member jury is seated and sworn  
12 constitutes a waiver of a 12-member jury.

13 SECTION 23. Section 25.2142(v), Government Code, is amended  
14 to read as follows:

15 (v) Except as otherwise provided by this section, the  
16 constitution, Section 25.0007(c), or other law, juries in a county  
17 court at law shall be composed of six members. In matters of  
18 concurrent jurisdiction with the district court to which Section  
19 25.0007(c) does not apply, if a party to the suit requests a  
20 12-member jury, the jury shall be composed of 12 members. In a  
21 civil case tried in a county court at law, the parties may, by  
22 mutual agreement [~~and with the consent of the judge~~], agree to try  
23 the case with any number of jurors and agree to have a verdict  
24 rendered and returned by the vote of any number of jurors less than  
25 all those hearing the case.

26 SECTION 24. Section 25.2232(a), Government Code, is amended  
27 to read as follows:



1 (a) In addition to the jurisdiction provided by Section  
2 25.0003 and other law, a county court at law in Taylor County has[+]

3 [~~(1)~~] concurrent jurisdiction with the county court in  
4 the trial of cases involving insanity and approval of applications  
5 for admission to state hospitals and special schools if admission  
6 is by application[~~, and~~

7 [~~(2) concurrent jurisdiction with the district court~~  
8 ~~in civil cases in which the matter in controversy exceeds \$500 but~~  
9 ~~does not exceed \$200,000, excluding interest]~~.

10 SECTION 25. Section 25.2292(d), Government Code, is amended  
11 to read as follows:

12 (d) In civil cases, the jury is composed of six members  
13 except as otherwise provided by the constitution, Section  
14 25.0007(c), or other law. Failure to object before a six-member  
15 jury is seated and sworn constitutes a waiver of a 12-member jury  
16 ~~[unless:~~

17 [~~(1) the amount in controversy exceeds \$100,000, and~~  
18 [~~(2) a party to the case files a written request for a~~  
19 ~~12-member jury not later than the 30th day before the date of the~~  
20 ~~trial]~~.

21 SECTION 26. Section 25.2362(i), Government Code, is amended  
22 to read as follows:

23 (i) If a jury trial is requested in a case that is in a  
24 county court at law's jurisdiction, the jury shall be composed of  
25 six members unless the constitution or other law requires a  
26 12-member jury.

27 SECTION 27. Section 25.2412(j), Government Code, is amended

to read as follows:

(j) If a case or proceeding in which a county court at law has concurrent jurisdiction with a district court is tried before a jury, the jury shall be composed of 12 members, except as provided by Section 25.0007(c). In all other cases, the jury shall be composed of six members except as provided by the constitution or other law.

SECTION 28. Section 25.2462(k), Government Code, is amended to read as follows:

(k) A jury in a county court at law shall be composed of six members except as provided by the constitution, Section 25.0007(c), or other law.

SECTION 29. Section 25.2482(l), Government Code, is amended to read as follows:

(l) A jury in a county court at law shall be composed of six members except as provided by the constitution, Section 25.0007(c), or other law.

SECTION 30. Section 25.2512(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Wise County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) eminent domain cases; and

(B) ~~[civil cases in which the amount in~~

1 ~~controversy exceeds \$500, but does not exceed \$200,000, excluding~~  
2 ~~interest and attorney's fees, and~~

3 [~~C~~] family law cases and proceedings.

4 SECTION 31. Section 26.042(a), Government Code, is amended  
5 to read as follows:

6 (a) A county court has concurrent jurisdiction with the  
7 justice courts in civil cases in which the matter in controversy  
8 exceeds \$200 in value but does not exceed \$20,000 [~~\$10,000~~],  
9 exclusive of interest.

10 SECTION 32. Section 27.031(a), Government Code, is amended  
11 to read as follows:

12 (a) In addition to the jurisdiction and powers provided by  
13 the constitution and other law, the justice court has original  
14 jurisdiction of:

15 (1) civil matters in which exclusive jurisdiction is  
16 not in the district or county court and in which the amount in  
17 controversy is not more than \$20,000 [~~\$10,000~~], exclusive of  
18 interest;

19 (2) cases of forcible entry and detainer;

20 (3) foreclosure of mortgages and enforcement of liens  
21 on personal property in cases in which the amount in controversy is  
22 otherwise within the justice court's jurisdiction; and

23 (4) cases arising under Chapter 707, Transportation  
24 Code, outside a municipality's territorial limits.

25 SECTION 33. Section 62.301, Government Code, is amended to  
26 read as follows:

27 Sec. 62.301. NUMBER OF JURORS. The jury in the county

1 courts and in the justice courts is composed of six persons except  
2 as provided by the constitution or other law.

3 SECTION 34. The following provisions of the Government Code  
4 are repealed:

- 5 (1) Section 25.0007(a);
- 6 (2) Section 25.1092(p);
- 7 (3) Sections 25.2292(a) and (m); and
- 8 (4) Section 25.2392(i).

9 SECTION 35. Not later than January 1, 2021, the Supreme  
10 Court of Texas shall adopt rules as necessary to implement Section  
11 22.004(h-1), Government Code, as added by this Act.

12 SECTION 36. This Act applies only to a cause of action filed  
13 on or after the effective date of this Act. A cause of action filed  
14 before that date is governed by the law in effect immediately before  
15 that date, and that law is continued in effect for that purpose.

16 SECTION 37. This Act takes effect September 1, 2020.

<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <div>President of the Senate</div>	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <div>Speaker of the House</div>
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I hereby certify that S.B. No. 2342 passed the Senate on April 17, 2019, by the following vote: Yeas 28, Nays 3; May 23, 2019, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 23, 2019, House granted request of the Senate; May 26, 2019, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <div>Secretary of the Senate</div>
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I hereby certify that S.B. No. 2342 passed the House, with amendments, on May 17, 2019, by the following vote: Yeas 124, Nays 22, one present not voting; May 23, 2019, House granted request of the Senate for appointment of Conference Committee; May 26, 2019, House adopted Conference Committee Report by the following vote: Yeas 91, Nays 48, three present not voting.

	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <div>Chief Clerk of the House</div>
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Approved:

<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <div>Date</div>	
<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <div>Governor</div>	

AN ACT

relating to an award of costs and attorney's fees in a motion to dismiss for certain actions that have no basis in law or fact.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 30.021, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 30.021. AWARD OF ATTORNEY'S FEES IN RELATION TO CERTAIN MOTIONS TO DISMISS. In a civil proceeding, on a trial court's granting or denial, in whole or in part, of a motion to dismiss filed under the rules adopted by the supreme court under Section 22.004(g), Government Code, the court may ~~[shall]~~ award costs and reasonable and necessary attorney's fees to the prevailing party. This section does not apply to actions by or against the state, other governmental entities, or public officials acting in their official capacity or under color of law.

SECTION 2. The change in law made by this Act applies only to a civil action commenced on or after the effective date of this Act. A civil action commenced before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2019.

H.B. No. 3300

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President of the Senate

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Speaker of the House

I certify that H.B. No. 3300 was passed by the House on May 2, 2019, by the following vote: Yeas 136, Nays 5, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 3300 was passed by the Senate on May 21, 2019, by the following vote: Yeas 31, Nays 0.

---

Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

---

Governor

AN ACT

relating to the operation and administration of and practice in and grants provided by courts in the judicial branch of state government; increasing and imposing fees; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. DISTRICT COURTS

SECTION 1.01. Section 24.104(b), Government Code, is amended to read as follows:

(b) The terms of the 4th District Court begin on the first Mondays in January and ~~and~~ ~~March, May,~~ July ~~and~~ ~~September, and November~~.

SECTION 1.02. (a) The heading to Section 24.124, Government Code, is amended to read as follows:

Sec. 24.124. 23RD JUDICIAL DISTRICT (~~BRAZORIA,~~ MATAGORDA~~]~~ AND WHARTON COUNTIES).

(b) Sections 24.124(a) and (b), Government Code, are amended to read as follows:

(a) The 23rd Judicial District is composed of ~~Brazoria,~~ Matagorda~~]~~ and Wharton counties.

(b) The terms of the 23rd District Court begin:

(1) ~~[in Brazoria County on the first Mondays in April and October, and the terms are designated the April-September and October-March terms,~~



1           ~~[(2)]~~ in Matagorda County on the first Mondays in June  
2 and December, and the terms are designated the June-November and  
3 December-May terms; and

4           (2) ~~[(3)]~~ in Wharton County on the first Mondays in  
5 July and January, and the terms are designated the July-December  
6 and January-June terms.

7           (c) Subchapter C, Chapter 24, Government Code, is amended by  
8 adding Section 24.6005 to read as follows:

9           Sec. 24.6005. 461ST JUDICIAL DISTRICT (BRAZORIA COUNTY).

10          (a) The 461st Judicial District is composed of Brazoria County.

11          (b) The 461st District Court shall give preference to family  
12 law matters.

13          (d) The local administrative district judge shall transfer  
14 to the 461st District Court all cases from Brazoria County that are  
15 pending in the 23rd District Court on the effective date of this  
16 Act.

17          (e) When a case is transferred as provided by Subsection (d)  
18 of this section:

19               (1) all processes, writs, bonds, recognizances, or  
20 other obligations issued from the 23rd District Court are  
21 returnable to the 461st District Court as if originally issued by  
22 that court; and

23               (2) the obligees on all bonds and recognizances taken  
24 in and for the 23rd District Court and all witnesses summoned to  
25 appear in the 23rd District Court are required to appear before the  
26 461st District Court as if originally required to appear before  
27 that court.

(f) The 461st Judicial District is created on September 1, 2019.

SECTION 1.03. (a) Section 24.140, Government Code, is amended to read as follows:

Sec. 24.140. 38TH JUDICIAL DISTRICT (~~[MEDINA]~~ REAL~~[7]~~ AND UVALDE COUNTIES). ~~[(a)]~~ The 38th Judicial District is composed of ~~[Medina]~~ Real~~[7]~~ and Uvalde counties.

~~[(b) The terms of the 38th District Court begin:~~

~~[(1) in Medina County on the first Mondays in January and June,~~

~~[(2) in Real County on the first Mondays in April and November, and~~

~~[(3) in Uvalde County on the first Mondays in February and September.]~~

(b) Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.598 to read as follows:

Sec. 24.598. 454TH JUDICIAL DISTRICT (MEDINA COUNTY). The 454th Judicial District is composed of Medina County.

(c) The local administrative district judge shall transfer to the 454th District Court all cases from Medina County that are pending in the 38th District Court on the effective date of this Act.

(d) When a case is transferred as provided by Subsection (c) of this section:

(1) all processes, writs, bonds, recognizances, or other obligations issued from the 38th District Court are returnable to the 454th District Court as if originally issued by

1 that court; and

2 (2) the obligees on all bonds and recognizances taken  
3 in and for the 38th District Court and all witnesses summoned to  
4 appear in the 38th District Court are required to appear before the  
5 454th District Court as if originally required to appear before  
6 that court.

7 (e) The 454th Judicial District is created on September 1,  
8 2019.

9 SECTION 1.04. (a) Effective October 1, 2020, Subchapter C,  
10 Chapter 24, Government Code, is amended by adding Section 24.599 to  
11 read as follows:

12 Sec. 24.599. 455TH JUDICIAL DISTRICT (TRAVIS COUNTY).

13 (a) The 455th Judicial District is composed of Travis County.

14 (b) The 455th District Court shall give preference to civil  
15 and family law matters.

16 (b) The 455th Judicial District is created on October 1,  
17 2020.

18 SECTION 1.05. (a) Effective January 1, 2021, Subchapter C,  
19 Chapter 24, Government Code, is amended by adding Section 24.600 to  
20 read as follows:

21 Sec. 24.600. 456TH JUDICIAL DISTRICT (GUADALUPE COUNTY).

22 (a) The 456th Judicial District is composed of Guadalupe County.

23 (b) The 456th District Court shall give preference to civil  
24 cases.

25 (b) The 456th Judicial District is created on January 1,  
26 2021.

27 SECTION 1.06. (a) Subchapter C, Chapter 24, Government

Code, is amended by adding Section 24.6001 to read as follows:

Sec. 24.6001. 457TH JUDICIAL DISTRICT (MONTGOMERY COUNTY).

The 457th Judicial District is composed of Montgomery County.

(b) The 457th Judicial District is created on September 1, 2019.

SECTION 1.07. (a) Effective January 1, 2021, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60091 to read as follows:

Sec. 24.60091. 466TH JUDICIAL DISTRICT (COMAL COUNTY). The

466th Judicial District is composed of Comal County.

(b) The 466th Judicial District is created on January 1, 2021.

SECTION 1.08. (a) Effective January 1, 2021, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60092 to read as follows:

Sec. 24.60092. 467TH JUDICIAL DISTRICT (DENTON COUNTY).

The 467th Judicial District is composed of Denton County.

(b) The 467th Judicial District is created on January 1, 2021.

SECTION 1.09. (a) Subchapter C, Chapter 24, Government Code, is amended by adding Sections 24.60093 and 24.60094 to read as follows:

Sec. 24.60093. 468TH JUDICIAL DISTRICT (COLLIN COUNTY).

(a) The 468th Judicial District is composed of Collin County.

(b) The 468th District Court shall give preference to family law matters.

Sec. 24.60094. 471ST JUDICIAL DISTRICT (COLLIN COUNTY).

1 (a) The 471st Judicial District is composed of Collin County.

2 (b) The 471st District Court shall give preference to civil  
3 matters.

4 (b) The 468th District Court is created on September 1,  
5 2019.

6 (c) The 471st District Court is created on September 1,  
7 2019.

8 ARTICLE 2. STATUTORY COUNTY COURTS

9 SECTION 2.01. (a) Section 25.0202, Government Code, is  
10 amended by amending Subsection (a) and adding Subsection (g) to  
11 read as follows:

12 (a) In addition to the jurisdiction provided by Section  
13 25.0003 and other law, a county court at law in Bosque County has  
14 concurrent jurisdiction with the district court in:

15 (1) family law cases and proceedings;

16 (2) civil cases in which the matter in controversy  
17 exceeds \$500 but does not exceed \$200,000, excluding interest,  
18 court costs, and attorney's fees; ~~and~~

19 (3) contested probate matters under Section 32.003,  
20 Estates Code; and

21 (4) felony cases transferred from the district court  
22 to conduct arraignments, pretrial hearings, and motions to  
23 adjudicate or revoke and to accept guilty pleas.

24 (g) In matters of concurrent jurisdiction, including  
25 transferred felony proceedings, the judge of a county court at law  
26 and the district judge may exchange benches, transfer cases, assign  
27 each other to hear cases in accordance with orders signed and

approved by the judges, and otherwise manage their respective dockets under local administrative rules.

(b) The changes in law made to Section 25.0202, Government Code, apply only to a criminal case filed on or after the effective date of this Act. A criminal case filed before that date is governed by the law in effect on the date the case is filed, and that law is continued in effect for that purpose.

SECTION 2.02. (a) Effective January 1, 2021, Subchapter C, Chapter 25, Government Code, is amended by adding Sections 25.0381 and 25.0382 to read as follows:

Sec. 25.0381. CHAMBERS COUNTY. Chambers County has one statutory county court, the County Court at Law of Chambers County.

Sec. 25.0382. CHAMBERS COUNTY COURT AT LAW PROVISIONS.

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Chambers County has concurrent jurisdiction with the district court in:

(1) arraignments, pleas, and pretrial motions for felony cases; and

(2) family law cases and proceedings.

(b) In matters of concurrent jurisdiction, a judge of a county court at law and a judge of a district court in Chambers County may transfer cases between the courts in the same manner that judges of district courts may transfer cases under Section 24.003.

(c) The judge of a county court at law shall be paid an annual salary in an amount at least equal to the amount that is \$1,000 less than the total annual salary, including supplements, received by a district judge in the county. The salary shall be

1 paid out of the county treasury on order of the commissioners court.

2 (d) The judge of a county court at law is entitled to travel  
3 expenses and necessary office expenses, including administrative  
4 and clerical help, in the same manner as a district judge in the  
5 county.

6 (e) The district clerk serves as clerk of a county court at  
7 law in matters of concurrent jurisdiction with the district court  
8 other than misdemeanor cases and probate matters and proceedings.  
9 The county clerk serves as clerk for all other cases. Each clerk  
10 shall establish a separate docket for a county court at law. The  
11 commissioners court may employ as many deputy sheriffs and bailiffs  
12 as are necessary to serve the court.

13 (f) If a case or proceeding in which a county court at law  
14 has concurrent jurisdiction with a district court is tried before a  
15 jury, the jury shall be composed of 12 members. In all other cases,  
16 the jury shall be composed of six members.

17 (g) The judge of a county court at law may, instead of  
18 appointing an official court reporter, contract for the services of  
19 a court reporter under guidelines established by the commissioners  
20 court.

21 (h) The laws governing the drawing, selection, service, and  
22 pay of jurors for county courts apply to a county court at law.  
23 Jurors regularly impaneled for a week by the district court may, on  
24 a request of a judge of the county court at law, be made available  
25 and shall serve for the week in a county court at law.

26 (i) A county court at law has the same terms of court as a  
27 district court in Chambers County.

(b) The County Court at Law of Chambers County is created on January 1, 2021.

SECTION 2.03. (a) Section 25.0481, Government Code, is amended to read as follows:

Sec. 25.0481. COMAL COUNTY. Comal County has the following statutory county courts:

- (1) County Court at Law No. 1 of Comal County; ~~and~~
- (2) County Court at Law No. 2 of Comal County; and
- (3) County Court at Law No. 3 of Comal County.

(b) The County Court at Law No. 3 of Comal County is created on September 1, 2019.

SECTION 2.04. Section 25.0512, Government Code, is amended by adding Subsections (a) and (b) to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Cooke County has concurrent jurisdiction with the district court in family law cases and proceedings.

(b) The district clerk serves as clerk of a county court at law in family law cases and proceedings, and the county clerk serves as clerk of the court in all other cases and proceedings.

SECTION 2.05. (a) Effective January 1, 2021, Section 25.0721, Government Code, is amended to read as follows:

Sec. 25.0721. ELLIS COUNTY. Ellis County has the following statutory county courts:

- (1) the County Court at Law No. 1 of Ellis County; ~~and~~
- (2) the County Court at Law No. 2 of Ellis County; and



1           (3) the County Court at Law No. 3 of Ellis County.

2           (b) The County Court at Law No. 3 of Ellis County is created  
3 on January 1, 2021.

4           SECTION 2.06. (a) Effective October 1, 2019, Subchapter C,  
5 Chapter 25, Government Code, is amended by adding Sections 25.0881  
6 and 25.0882 to read as follows:

7           Sec. 25.0881. GILLESPIE COUNTY. Gillespie County has one  
8 statutory county court, the County Court at Law of Gillespie  
9 County.

10          Sec. 25.0882. GILLESPIE COUNTY COURT AT LAW PROVISIONS.

11          (a) In addition to the jurisdiction provided by Section 25.0003  
12 and other law, a county court at law in Gillespie County has  
13 concurrent jurisdiction with the district court in:

14               (1) family law cases and proceedings; and

15               (2) juvenile law cases and proceedings.

16          (b) The district clerk serves as clerk of a county court at  
17 law for family law cases and proceedings and the county clerk serves  
18 as clerk for all other cases. The commissioners court may employ as  
19 many deputy sheriffs and bailiffs as are necessary to serve the  
20 court.

21          (c) If a case or proceeding in which a county court at law  
22 has concurrent jurisdiction with a district court is tried before a  
23 jury, the jury shall be composed of 12 members. In all other cases,  
24 the jury shall be composed of six members.

25          (b) The County Court at Law of Gillespie County is created  
26 on October 1, 2019.

27          SECTION 2.07. (a) Section 25.1101(a), Government Code, is

amended to read as follows:

(a) Hidalgo County has the following statutory county courts:

(1) County Court at Law No. 1 of Hidalgo County;

(2) County Court at Law No. 2 of Hidalgo County;

(3) County Court at Law No. 4 of Hidalgo County;

(4) County Court at Law No. 5 of Hidalgo County;

(5) County Court at Law No. 6 of Hidalgo County;

(6) County Court at Law No. 7 of Hidalgo County; ~~and~~

(7) County Court at Law No. 8 of Hidalgo County;

(8) County Court at Law No. 9 of Hidalgo County; and

(9) County Court at Law No. 10 of Hidalgo County.

(b) The County Court at Law No. 9 of Hidalgo County and County Court at Law No. 10 of Hidalgo County are created on September 1, 2019.

SECTION 2.08. (a) Section 25.1312, Government Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a statutory county court in Kaufman County has, except as limited by Subsection ~~[Subsections]~~ (b) ~~[and (b-1)]~~, the jurisdiction provided by the constitution and general law for district courts.

(d) A jury must be composed of 12 members in:

(1) civil cases in which the amount in controversy is \$200,000 or more;

(2) family law cases and proceedings; and

1           (3) felony cases.

2           (b) Section 25.1312, Government Code, as amended by this  
3 Act, applies only to a cause of action filed on or after the  
4 effective date of this Act. A cause of action filed before that  
5 date is governed by the law in effect immediately before that date,  
6 and that law is continued in effect for that purpose.

7           SECTION 2.09. (a) Section 25.1481, Government Code, is  
8 amended to read as follows:

9           Sec. 25.1481. LIBERTY COUNTY. (a) Liberty County has the  
10 following statutory county courts:

11           (1) [~~one statutory county court,~~] the County Court at  
12 Law of Liberty County; and

13           (2) the County Court at Law No. 2 of Liberty County.

14           (b) The county courts at law [~~County Court at Law~~] of  
15 Liberty County sit [~~sits~~] in Liberty.

16           (b) The County Court at Law No. 2 of Liberty County is  
17 created on September 1, 2019.

18           SECTION 2.10. Section 25.1902, Government Code, is amended  
19 by adding Subsection (b-1) to read as follows:

20           (b-1) In addition to the jurisdiction provided by  
21 Subsections (a) and (b), the County Court at Law No. 1 of Potter  
22 County has concurrent jurisdiction with the district court in  
23 felony cases to conduct arraignments, conduct pretrial hearings,  
24 and accept pleas in uncontested matters.

25           SECTION 2.11. Section 25.1972, Government Code, is amended  
26 by amending Subsections (a), (e), and (g) and adding Subsections  
27 (b) and (f) to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, and except as limited by Subsection (b), a county court at law in Reeves County has:

(1) concurrent jurisdiction with the district court:

(A) in disputes ancillary to probate, eminent domain, condemnation, or landlord and tenant matters relating to the adjudication and determination of land titles and trusts, whether testamentary, inter vivos, constructive, resulting, or any other class or type of trust, regardless of the amount in controversy or the remedy sought;

(B) over civil forfeitures, including surety bond forfeitures without minimum or maximum limitation as to the amount in controversy or remedy sought;

(C) in all actions by or against a personal representative, in all actions involving an inter vivos trust, in all actions involving a charitable trust, and in all actions involving a testamentary trust, whether the matter is appertaining to or incident to an estate;

(D) in proceedings under Title 3, Family Code;  
and

(E) in any proceeding involving an order relating to a child in the possession or custody of the Department of Family and Protective Services or for whom the court has appointed a temporary or permanent managing conservator;

(2) jurisdiction in mental health matters, original or appellate, provided by law for constitutional county courts, statutory county courts, or district courts with mental health

jurisdiction, including proceedings under:

(A) Chapter 462, Health and Safety Code; and

(B) Subtitles C and D, Title 7, Health and Safety Code;

(3) jurisdiction over the collection and management of estates of minors, persons with a mental illness or intellectual disability, and deceased persons; and

(4) jurisdiction in all cases assigned, transferred, or heard under Sections 74.054, 74.059, and 74.094.

(b) A county court at law does not have jurisdiction of:

(1) felony cases, except as otherwise provided by law;

(2) misdemeanors involving official misconduct unless assigned under Sections 74.054 and 74.059;

(3) contested elections; or

(4) except as provided by Subsections (a)(1)(D) and (E), family law cases [and proceedings].

(e) A [The] judge of a county court at law in Reeves County shall be paid an annual salary equal to the amount that is \$1,000 less than [that does not exceed 90 percent of] the [total] salary paid by the state to a district judge in the county. The salary shall be paid in the same manner and from the same fund as prescribed by law for the county judge [out of the county treasury on order of the commissioners court. The judge is entitled to travel expenses and necessary office expenses, including administrative and clerical assistance].

(f) A county court at law may not issue writs of habeas corpus in felony cases.

1 (g) The district clerk serves as clerk of a county court at  
2 law in the [~~family law~~] cases described by Subsection (a) [and  
3 proceedings], and the county clerk serves as clerk of the court in  
4 all other matters.

5 SECTION 2.12. (a) Section 25.2011, Government Code, is  
6 amended to read as follows:

7 Sec. 25.2011. ROCKWALL COUNTY. Rockwall County has the  
8 following statutory county courts:

9 (1) [~~one statutory county court,~~] the County Court at  
10 Law No. 1 of Rockwall County; and

11 (2) the County Court at Law No. 2 of Rockwall County.

12 (b) Sections 25.2012(c), (g), and (h), Government Code, are  
13 amended to read as follows:

14 (c) The district clerk serves as clerk of a county court at  
15 law except that the county clerk serves as clerk of a [~~the~~] county  
16 court at law in matters of mental health, the probate and criminal  
17 misdemeanor docket, and all civil matters in which a [~~the~~] county  
18 court at law does not have concurrent jurisdiction with a [~~the~~]  
19 district court.

20 (g) When administering a case for a [~~the~~] county court at  
21 law, the district clerk shall charge civil fees and court costs as  
22 if the case had been filed in a [~~the~~] district court. In a case of  
23 concurrent jurisdiction, the case shall be assigned to either a  
24 [~~the~~] district court or a [~~the~~] county court at law in accordance  
25 with local administrative rules established by the local  
26 administrative judge.

27 (h) The judge of a [~~the~~] county court at law shall appoint an

1 official court reporter for the judge's court and shall set the  
2 official court reporter's annual salary, subject to approval by the  
3 county commissioners court. The official court reporter of a ~~[the]~~  
4 county court at law shall take an oath or affirmation as an officer  
5 of the court. The official court reporter holds office at the  
6 pleasure of the judge ~~[of the court]~~ and shall be provided a private  
7 office in close proximity to the court. The official court reporter  
8 is entitled to all rights and benefits afforded all other county  
9 employees.

10 (c) The County Court at Law No. 2 of Rockwall County is  
11 created on September 1, 2019.

12 ARTICLE 3. MUNICIPAL COURTS

13 SECTION 3.01. (a) Section 30.00044(1), Government Code,  
14 is amended to read as follows:

15 (1) Sections ~~[Section]~~ 30.00007(b)(5) and 30.00009(c) and  
16 (d) do ~~[does]~~ not apply to this subchapter.

17 (b) Section 30.00044(1), Government Code, as amended by  
18 this section, applies to a clerk and other court personnel of the  
19 municipal court of record of the City of Lubbock employed on or  
20 after the effective date of this Act, regardless of whether the  
21 clerk or other personnel began employment before, on, or after the  
22 effective date of this Act.

23 ARTICLE 4. SENIOR DISTRICT JUDGES

24 SECTION 4.01. Section 832.101, Government Code, is amended  
25 to read as follows:

26 Sec. 832.101. INELIGIBILITY FOR MEMBERSHIP. A retiree who  
27 makes an election under Subchapter C of Chapter 74 ~~[or who is]~~

1 ~~appointed under Subchapter C of Chapter 75]~~ may not rejoin the  
2 retirement system or receive credit in the retirement system for  
3 the period of an appointment or for any service performed under  
4 assignment.

5 SECTION 4.02. Section 836.006, Government Code, is amended  
6 to read as follows:

7 Sec. 836.006. DIVERSION OF MONEY PROHIBITED. Except as  
8 provided by Section ~~[Sections 840.101(b) and]~~ 840.305(c), no part  
9 of the money contributed to the retirement system under Section  
10 840.102 ~~[or 840.104]~~ and no part of the contribution described by  
11 Section 840.103(b)(2) may be used for or diverted to any purpose  
12 other than the exclusive benefit of members, their beneficiaries,  
13 and annuitants of the retirement system.

14 SECTION 4.03. Section 837.101, Government Code, is amended  
15 to read as follows:

16 Sec. 837.101. JUDICIAL ASSIGNMENT. A retiree who makes an  
17 election under Subchapter C of Chapter 74 ~~[or who is appointed under~~  
18 ~~Subchapter C of Chapter 75]~~ may not rejoin or receive credit in the  
19 retirement system for the period of an appointment or for any  
20 service performed under assignment.

21 ARTICLE 5. MASTERS AND MAGISTRATES

22 SECTION 5.01. Article 2.09, Code of Criminal Procedure, is  
23 amended to read as follows:

24 Art. 2.09. WHO ARE MAGISTRATES. Each of the following  
25 officers is a magistrate within the meaning of this Code: The  
26 justices of the Supreme Court, the judges of the Court of Criminal  
27 Appeals, the justices of the Courts of Appeals, the judges of the



1 District Court, the magistrates appointed by the judges of the  
 2 district courts of Bexar County, Dallas County, or Tarrant County  
 3 that give preference to criminal cases, the criminal law hearing  
 4 officers for Harris County appointed under Subchapter L, Chapter  
 5 54, Government Code, the criminal law hearing officers for Cameron  
 6 County appointed under Subchapter BB, Chapter 54, Government Code,  
 7 the magistrates or associate judges appointed by the judges of the  
 8 district courts of Lubbock County, Nolan County, or Webb County,  
 9 the magistrates appointed by the judges of the criminal district  
 10 courts of Dallas County or Tarrant County, the associate judges  
 11 appointed by the judges of the district courts and the county courts  
 12 at law that give preference to criminal cases in Jefferson County,  
 13 the associate judges appointed by the judges of the district courts  
 14 and the statutory county courts of Brazos County, Nueces County, or  
 15 Williamson County, the magistrates appointed by the judges of the  
 16 district courts and statutory county courts that give preference to  
 17 criminal cases in Travis County, the criminal magistrates appointed  
 18 by the Brazoria County Commissioners Court, the criminal  
 19 magistrates appointed by the Burnet County Commissioners Court, the  
 20 magistrates appointed by the El Paso Council of Judges, the county  
 21 judges, the judges of the county courts at law, judges of the county  
 22 criminal courts, the judges of statutory probate courts, the  
 23 associate judges appointed by the judges of the statutory probate  
 24 courts under Chapter 54A, Government Code, the associate judges  
 25 appointed by the judge of a district court under Chapter 54A,  
 26 Government Code, the magistrates appointed under Subchapter JJ,  
 27 Chapter 54, Government Code, the magistrates appointed by the

1 Collin County Commissioners Court, the magistrates appointed by the  
2 Fort Bend County Commissioners Court ~~[as added by H.B. No. 2132,~~  
3 ~~Acts of the 82nd Legislature, Regular Session, 2011]~~, the justices  
4 of the peace, and the mayors and recorders and the judges of the  
5 municipal courts of incorporated cities or towns.

6 SECTION 5.02. Article 4.01, Code of Criminal Procedure, is  
7 amended to read as follows:

8 Art. 4.01. WHAT COURTS HAVE CRIMINAL JURISDICTION. The  
9 following courts have jurisdiction in criminal actions:

- 10 1. The Court of Criminal Appeals;
- 11 2. Courts of appeals;
- 12 3. The district courts;
- 13 4. The criminal district courts;
- 14 5. The magistrates appointed by the judges of the district  
15 courts of Bexar County, Dallas County, Tarrant County, or Travis  
16 County that give preference to criminal cases and the magistrates  
17 appointed by the judges of the criminal district courts of Dallas  
18 County or Tarrant County;
- 19 6. The county courts;
- 20 7. All county courts at law with criminal jurisdiction;
- 21 8. County criminal courts;
- 22 9. Justice courts;
- 23 10. Municipal courts; ~~and~~
- 24 11. The magistrates appointed by the judges of the district  
25 courts of Lubbock County; and
- 26 12. The magistrates appointed by the El Paso Council of  
27 Judges.

SECTION 5.03. Chapter 54, Government Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. BELL COUNTY TRUANCY MASTERS

Sec. 54.101. APPOINTMENT. (a) The Commissioners Court of Bell County may select masters to serve the justice courts of Bell County having jurisdiction in truancy matters.

(b) The commissioners court shall establish the minimum qualifications, salary, benefits, and other compensation of each master position and shall determine whether the position is full-time or part-time.

(c) A master appointed under this section serves at the pleasure of the commissioners court.

Sec. 54.102. JURISDICTION. A master appointed under this subchapter has concurrent jurisdiction with the judges of the justice of the peace courts of Bell County over cases involving truant conduct in accordance with Section 65.004, Family Code.

Sec. 54.103. POWERS AND DUTIES. (a) The Commissioners Court of Bell County shall establish the powers and duties of a master appointed under this subchapter.

(b) An order of referral may limit the use or power of a master.

(c) Unless limited by published local rule, by written order, or by an order of referral, a master may perform all acts and take all measures necessary and proper to perform the tasks assigned in a referral.

(d) A master may administer oaths.

Sec. 54.104. JUDICIAL IMMUNITY. A master has the same

1 judicial immunity as a district judge.

2 Sec. 54.105. TRAINING. A master appointed under this  
3 subchapter must successfully complete all training a justice of the  
4 peace is required to complete under state law.

5 Sec. 54.106. FAILURE TO COMPLY WITH SUMMONS OR ORDER. If an  
6 attorney, party, witness, or any other person fails to comply with a  
7 summons or order, the master may certify that failure in writing to  
8 the referring court for appropriate action.

9 Sec. 54.107. WITNESSES. (a) A witness appearing before a  
10 master is subject to the penalties of perjury as provided by Chapter  
11 37, Penal Code.

12 (b) A witness referred to the court under Section 54.106 is  
13 subject to the same penalties and orders that may be imposed on a  
14 witness appearing in a hearing before the court.

15 SECTION 5.04. Chapter 54, Government Code, is amended by  
16 adding Subchapter MM to read as follows:

17 SUBCHAPTER MM. MAGISTRATES IN COLLIN COUNTY

18 Sec. 54.2201. AUTHORIZATION; APPOINTMENT; TERMINATION;  
19 ELIMINATION. (a) The Commissioners Court of Collin County by  
20 majority vote may appoint one or more part-time or full-time  
21 magistrates to perform the duties authorized by this subchapter.

22 (b) An order appointing a magistrate must be signed by the  
23 county judge of Collin County, and the order must state:

24 (1) the magistrate's name; and

25 (2) the date the magistrate's employment begins.

26 (c) A magistrate may be terminated by a majority vote of the  
27 Commissioners Court of Collin County.

1       (d) An authorized magistrate's position may be eliminated  
2 on a majority vote of the Commissioners Court of Collin County.

3       Sec. 54.2202. QUALIFICATIONS; OATH OF OFFICE. (a) To be  
4 eligible for appointment as a magistrate, a person must:

5               (1) be a citizen of the United States;

6               (2) have resided in Collin County for at least the four  
7 years preceding the person's appointment; and

8               (3) have been licensed to practice law in this state  
9 for at least four years.

10       (b) A magistrate appointed under Section 54.2201 must take  
11 the constitutional oath of office required of appointed officers of  
12 this state.

13       Sec. 54.2203. COMPENSATION. A magistrate is entitled to  
14 the compensation set by the Commissioners Court of Collin County.  
15 The compensation shall be paid from the general fund of the county.

16       Sec. 54.2204. JUDICIAL IMMUNITY. A magistrate has the same  
17 judicial immunity as a district judge.

18       Sec. 54.2205. PROCEEDING THAT MAY BE REFERRED. (a) The  
19 judge of a district court or county court at law or a justice of the  
20 peace may refer to a magistrate any case or matter relating to a  
21 case for proceedings involving:

22               (1) a negotiated plea of guilty or no contest and  
23 sentencing before the court;

24               (2) a bond forfeiture, remittitur, and related  
25 proceedings;

26               (3) a pretrial motion;

27               (4) a writ of habeas corpus;

- (5) an examining trial;
- (6) an occupational driver's license;
- (7) a petition for an order of expunction under Chapter 55, Code of Criminal Procedure;
- (8) an asset forfeiture hearing as provided by Chapter 59, Code of Criminal Procedure;
- (9) a petition for an order of nondisclosure of criminal history record information or an order of nondisclosure of criminal history record information that does not require a petition provided by Subchapter E-1, Chapter 411;
- (10) a motion to modify or revoke community supervision or to proceed with an adjudication of guilt;
- (11) setting conditions, modifying, revoking, and surrendering of bonds, including surety bonds;
- (12) specialty court proceedings;
- (13) a waiver of extradition;
- (14) selection of a jury; and
- (15) any other matter the judge or justice of the peace considers necessary and proper.

(b) A judge may refer to a magistrate a civil case arising out of Chapter 59, Code of Criminal Procedure, for any purpose authorized by that chapter, including issuing orders, accepting agreed judgments, enforcing judgments, and presiding over a case on the merits if a party has not requested a jury trial.

(c) A magistrate may accept a plea of guilty from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses.

1        (d) If the magistrate is acting as an associate judge under  
2 Section 54.2216, the magistrate may hear any case referred under  
3 Section 54A.106.

4        (e) A magistrate may not preside over a criminal trial on  
5 the merits, regardless of whether the trial is before a jury.

6        (f) A magistrate may not hear any jury trial on the merits.

7        Sec. 54.2206. ORDER OF REFERRAL. (a) To refer one or more  
8 cases to a magistrate, a judge or justice of the peace must issue an  
9 order of referral specifying the magistrate's duties.

10       (b) An order of referral may:

11           (1) limit the powers of the magistrate and direct the  
12 magistrate to report only on specific issues, perform particular  
13 acts, or receive and report on evidence only;

14           (2) set the time and place for the hearing;

15           (3) prescribe a closing date for the hearing;

16           (4) provide a date for filing the magistrate's  
17 findings;

18           (5) designate proceedings for more than one case over  
19 which the magistrate shall preside;

20           (6) direct the magistrate to call the court's docket;  
21 and

22           (7) set forth general powers and limitations of  
23 authority of the magistrate applicable to any case referred.

24        Sec. 54.2207. POWERS. (a) Except as limited by an order of  
25 referral, a magistrate to whom a case is referred may:

26           (1) conduct hearings;

27           (2) hear evidence;

- 1           (3) compel production of relevant evidence in civil or  
2 criminal matters;
- 3           (4) rule on disputes regarding civil discovery;
- 4           (5) rule on admissibility of evidence;
- 5           (6) issue summons for the appearance of witnesses;
- 6           (7) examine witnesses;
- 7           (8) swear witnesses for hearings;
- 8           (9) make findings of fact on evidence;
- 9           (10) formulate conclusions of law;
- 10          (11) rule on a pretrial motion;
- 11          (12) recommend the rulings, orders, or judgment to be  
12 made in a case;
- 13          (13) regulate proceedings in a hearing;
- 14          (14) accept a plea of guilty from a defendant charged  
15 with misdemeanor, felony, or both misdemeanor and felony offenses;
- 16          (15) select a jury;
- 17          (16) accept a negotiated plea on a probation  
18 revocation;
- 19          (17) conduct a contested probation revocation  
20 hearing;
- 21          (18) sign a dismissal in a misdemeanor case;
- 22          (19) enter an order of dismissal or non-suit on  
23 agreement of the parties in a civil case;
- 24          (20) in any case referred under Section 54.2205(a)(1),  
25 accept a negotiated plea of guilty or no contest and:
- 26               (A) enter a finding of guilt and impose or  
27 suspend the sentence; or



1                   (B) defer adjudication of guilt;

2                   (21) conduct initial juvenile detention hearings if  
3 approved by the juvenile board of Collin County; and

4                   (22) perform any act and take any measure necessary  
5 and proper for the efficient performance of the duties required by  
6 the order of referral.

7           (b) A magistrate may sign a motion to dismiss submitted by  
8 an attorney representing the state on cases referred to the  
9 magistrate, or on dockets called by the magistrate, and may  
10 consider unadjudicated cases at sentencing under Section [12.45](#),  
11 Penal Code.

12           (c) Except as provided by Sections 54.2205(e) and (f), a  
13 magistrate has all of the powers of a magistrate under the laws of  
14 this state and may administer an oath for any purpose.

15           Sec. 54.2208. FORFEITURES. Bail bonds and personal bonds  
16 may be forfeited by the magistrate court in the manner provided by  
17 Chapter [22](#), Code of Criminal Procedure, and those forfeitures shall  
18 be filed with:

19                   (1) the district clerk if associated with a felony  
20 case;

21                   (2) the county clerk if associated with a Class A or  
22 Class B misdemeanor case; or

23                   (3) the same justice court clerk associated with the  
24 Class C misdemeanor case in which the bond was originally filed.

25           Sec. 54.2209. COSTS. (a) When the district clerk is the  
26 clerk under this subchapter, the district clerk shall charge the  
27 same court costs for cases filed in, transferred to, or assigned to

1 the magistrate court that are charged in the district courts.

2 (b) When the county clerk is the clerk under this  
3 subchapter, the county clerk shall charge the same court costs for  
4 cases filed in, transferred to, or assigned to the magistrate court  
5 that are charged in the county courts.

6 (c) When a justice clerk is the clerk under this subchapter,  
7 the justice clerk shall charge the same court costs for cases filed  
8 in, transferred to, or assigned to the magistrate court that are  
9 charged in the justice courts.

10 Sec. 54.2210. CLERK. (a) The district clerk serves as  
11 clerk of the magistrate court, except that:

12 (1) after a Class A or Class B misdemeanor is filed in  
13 the county court at law and assigned to the magistrate court, the  
14 county clerk serves as clerk for that misdemeanor case; and

15 (2) after a Class C misdemeanor is filed in a justice  
16 court and assigned to the magistrate court, the originating justice  
17 court clerk serves as clerk for that misdemeanor case.

18 (b) The district clerk shall establish a docket and keep the  
19 minutes for the cases filed in or transferred to the magistrate  
20 court. The district clerk shall perform any other duties that local  
21 administrative rules require in connection with the implementation  
22 of this subchapter. The local administrative judge shall ensure  
23 that the duties required under this subsection are performed. To  
24 facilitate the duties associated with serving as the clerk of the  
25 magistrate court, the district clerk and the deputies of the  
26 district clerk may serve as deputy justice clerks and deputy county  
27 clerks at the discretion of the district clerk.

1        (c) The clerk of the case shall include as part of the record  
2 on appeal a copy of the order and local administrative rule under  
3 which a magistrate court acted.

4        Sec. 54.2211. COURT REPORTER. At the request of a party,  
5 the court shall provide a court reporter to record the proceedings  
6 before the magistrate.

7        Sec. 54.2212. WITNESS. (a) A witness who appears before a  
8 magistrate and is sworn is subject to the penalties for perjury  
9 provided by law.

10       (b) A referring court may issue attachment against and may  
11 fine or imprison a witness whose failure to appear after being  
12 summoned or whose refusal to answer questions has been certified to  
13 the court.

14       Sec. 54.2213. PAPERS TRANSMITTED TO JUDGE. At the  
15 conclusion of the proceedings, a magistrate shall transmit to the  
16 referring court any papers relating to the case, including the  
17 magistrate's findings, conclusions, orders, recommendations, or  
18 other action taken.

19       Sec. 54.2214. COSTS OF MAGISTRATE. The court shall  
20 determine if the nonprevailing party is able to defray the costs of  
21 the magistrate. If the court determines the nonprevailing party is  
22 able to pay those costs, the court shall assess the magistrate's  
23 costs against the nonprevailing party.

24       Sec. 54.2215. JUDICIAL ACTION. (a) A referring court may  
25 modify, correct, reject, reverse, or recommit for further  
26 information any action taken by the magistrate.

27       (b) If the court does not modify, correct, reject, reverse,

1 or recommit an action of the magistrate, the action becomes the  
2 decree of the court.

3 (c) At the conclusion of each term during which the services  
4 of a magistrate are used, the referring court shall enter a decree  
5 on the minutes adopting the actions of the magistrate of which the  
6 court approves.

7 Sec. 54.2216. MAGISTRATE AS ASSOCIATE JUDGE. A magistrate  
8 appointed under this subchapter may act as a civil associate judge  
9 under Subchapter B, Chapter 54A. To the extent of any conflict with  
10 this subchapter, a magistrate acting as an associate judge shall  
11 comply with provisions regarding the appointment, termination,  
12 referral of cases, powers, duties, and immunities of associate  
13 judges under Subchapter B, Chapter 54A.

14 SECTION 5.05. Chapter 54, Government Code, is amended by  
15 adding Subchapter NN to read as follows:

16 SUBCHAPTER NN. MAGISTRATES IN KERR COUNTY

17 Sec. 54.2301. AUTHORIZATION; APPOINTMENT; ELIMINATION.

18 (a) The Commissioners Court of Kerr County may authorize the  
19 judges of the district and statutory county courts in Kerr County to  
20 appoint one or more part-time or full-time magistrates to perform  
21 the duties authorized by this subchapter.

22 (b) The judges of the district and statutory county courts  
23 in Kerr County by a unanimous vote may appoint magistrates as  
24 authorized by the Commissioners Court of Kerr County.

25 (c) An order appointing a magistrate must be signed by the  
26 local presiding judge of the district courts serving Kerr County,  
27 and the order must state:

1           (1) the magistrate's name; and

2           (2) the date the magistrate's employment is to begin.

3           (d) An authorized magistrate's position may be eliminated  
4 on a majority vote of the Commissioners Court of Kerr County.

5           Sec. 54.2302. QUALIFICATIONS; OATH OF OFFICE. (a) To be  
6 eligible for appointment as a magistrate, a person must:

7           (1) be a citizen of the United States;

8           (2) have resided in Kerr County for at least the two  
9 years preceding the person's appointment; and

10          (3) be at least 30 years of age.

11          (b) A magistrate appointed under Section 54.2301 must take  
12 the constitutional oath of office required of appointed officers of  
13 this state.

14          Sec. 54.2303. COMPENSATION. (a) A magistrate is entitled  
15 to the salary determined by the Commissioners Court of Kerr County.

16          (b) A full-time magistrate's salary may not be less than  
17 that of a justice of the peace of Kerr County as established by the  
18 annual budget of Kerr County.

19          (c) A part-time magistrate's salary is equal to the per-hour  
20 salary of a justice of the peace. The per-hour salary is determined  
21 by dividing the annual salary by a 2,000 work-hour year. The local  
22 administrative judge of the district courts serving Kerr County  
23 shall approve the number of hours for which a part-time magistrate  
24 is to be paid.

25          (d) The magistrate's salary is paid from the county fund  
26 available for payment of officers' salaries.

27          Sec. 54.2304. JUDICIAL IMMUNITY. A magistrate has the same

1 judicial immunity as a district judge.

2 Sec. 54.2305. TERMINATION OF EMPLOYMENT. (a) A magistrate  
3 may be terminated by a majority vote of all the judges of the  
4 district and statutory county courts of Kerr County.

5 (b) To terminate a magistrate's employment, the local  
6 administrative judge of the district courts serving Kerr County  
7 must sign a written order of termination. The order must state:

8 (1) the magistrate's name; and

9 (2) the final date of the magistrate's employment.

10 Sec. 54.2306. JURISDICTION; RESPONSIBILITY; POWERS.

11 (a) The judges of the district or statutory county courts shall  
12 establish standing orders to be followed by a magistrate or parties  
13 appearing before a magistrate, as applicable.

14 (b) To the extent authorized by this subchapter and the  
15 standing orders, a magistrate has jurisdiction to exercise the  
16 authority granted by the judges of the district or statutory county  
17 courts.

18 (c) A magistrate has all of the powers of a magistrate under  
19 the laws of this state and may administer an oath for any purpose.

20 (d) A magistrate shall give preference to performing the  
21 duties of a magistrate under Article 15.17, Code of Criminal  
22 Procedure.

23 (e) A magistrate is authorized to:

24 (1) set, adjust, and revoke bonds before the filing of  
25 an information or the return of an indictment;

26 (2) conduct examining trials;

27 (3) determine whether a defendant is indigent and

1 appoint counsel for an indigent defendant;

2 (4) issue search and arrest warrants;

3 (5) issue emergency protective orders;

4 (6) order emergency mental commitments; and

5 (7) conduct initial juvenile detention hearings if  
6 approved by the Kerr County Juvenile Board.

7 (f) With the express authorization of a justice of the  
8 peace, a magistrate may exercise concurrent criminal jurisdiction  
9 with the justice of the peace to dispose as provided by law of cases  
10 filed in the precinct of the authorizing justice of the peace,  
11 except for a trial on the merits following a plea of not guilty.

12 (g) A magistrate may:

13 (1) issue notices of the setting of a case for a  
14 hearing;

15 (2) conduct hearings;

16 (3) compel production of evidence;

17 (4) hear evidence;

18 (5) issue summons for the appearance of witnesses;

19 (6) swear witnesses for hearings;

20 (7) regulate proceedings in a hearing; and

21 (8) perform any act and take any measure necessary and  
22 proper for the efficient performance of the duties required by the  
23 magistrate's jurisdiction and authority.

24 Sec. 54.2307. PERSONNEL, EQUIPMENT, AND OFFICE SPACE. The  
25 Commissioners Court of Kerr County shall provide:

26 (1) personnel for the legal or clerical functions  
27 necessary to perform the magistrate's duties authorized by this

1 chapter; and

2 (2) sufficient equipment and office space for the  
3 magistrate and personnel to perform the magistrate's essential  
4 functions.

5 SECTION 5.06. Chapter 54, Government Code, is amended by  
6 adding Subchapter OO to read as follows:

7 SUBCHAPTER OO. MAGISTRATES IN FORT BEND COUNTY

8 Sec. 54.2401. AUTHORIZATION; APPOINTMENT; ELIMINATION.

9 (a) The Commissioners Court of Fort Bend County may authorize the  
10 judges of the district and statutory county courts in Fort Bend  
11 County to appoint one or more part-time or full-time magistrates to  
12 perform the duties authorized by this subchapter.

13 (b) The judges of the district and statutory county courts  
14 in Fort Bend County by a unanimous vote may appoint magistrates as  
15 authorized by the Commissioners Court of Fort Bend County.

16 (c) An order appointing a magistrate must be signed by the  
17 local administrative judge and must state:

18 (1) the magistrate's name; and

19 (2) the date the magistrate's employment is to begin.

20 (d) An authorized magistrate's position may be eliminated  
21 on a majority vote of the Commissioners Court of Fort Bend County.

22 Sec. 54.2402. QUALIFICATIONS; OATH OF OFFICE. (a) To be  
23 eligible for appointment as a magistrate, a person must:

24 (1) be a citizen of the United States;

25 (2) have resided in Fort Bend County for at least the  
26 four years preceding the person's appointment; and

27 (3) have been licensed to practice law in this state



1 for at least four years.

2 (b) A magistrate appointed under Section 54.2401 must take  
3 the constitutional oath of office required of appointed officers of  
4 this state.

5 Sec. 54.2403. COMPENSATION. A magistrate is entitled to  
6 the compensation set by the Commissioners Court of Fort Bend  
7 County. The compensation shall be paid from the general fund of the  
8 county.

9 Sec. 54.2404. JUDICIAL IMMUNITY. A magistrate has the same  
10 judicial immunity as a district judge.

11 Sec. 54.2405. PROCEEDING THAT MAY BE REFERRED. (a) The  
12 judge of a district court or county court at law or a justice of the  
13 peace may refer to a magistrate any case or matter relating to a  
14 case for proceedings involving:

15 (1) a negotiated plea of guilty or no contest and  
16 sentencing before the court;

17 (2) a bond forfeiture, remittitur, and related  
18 proceedings;

19 (3) a pretrial motion;

20 (4) a writ of habeas corpus;

21 (5) an examining trial;

22 (6) an occupational driver's license;

23 (7) a petition for an order of expunction under  
24 Chapter 55, Code of Criminal Procedure;

25 (8) an asset forfeiture hearing as provided by Chapter  
26 59, Code of Criminal Procedure;

27 (9) a petition for an order of nondisclosure of

1 criminal history record information or an order of nondisclosure of  
2 criminal history record information that does not require a  
3 petition provided by Subchapter E-1, Chapter 411;

4 (10) a motion to modify or revoke community  
5 supervision or to proceed with an adjudication of guilt;

6 (11) setting conditions, modifying, revoking, and  
7 surrendering of bonds, including surety bonds;

8 (12) specialty court proceedings;

9 (13) a waiver of extradition;

10 (14) selection of a jury; and

11 (15) any other matter the judge or justice of the peace  
12 considers necessary and proper.

13 (b) A judge may refer to a magistrate a civil case arising  
14 out of Chapter 59, Code of Criminal Procedure, for any purpose  
15 authorized by that chapter, including issuing orders, accepting  
16 agreed judgments, enforcing judgments, and presiding over a case on  
17 the merits if a party has not requested a jury trial.

18 (c) A magistrate may accept a plea of guilty from a  
19 defendant charged with misdemeanor, felony, or both misdemeanor and  
20 felony offenses.

21 (d) If the magistrate is acting as an associate judge under  
22 Section 54.2416, the magistrate may hear any case referred under  
23 Section 54A.106.

24 (e) A magistrate may not preside over a criminal trial on  
25 the merits, regardless of whether the trial is before a jury.

26 (f) A magistrate may not hear any jury trial on the merits.

27 Sec. 54.2406. ORDER OF REFERRAL. (a) To refer one or more

1 cases to a magistrate, a judge or justice of the peace must issue an  
2 order of referral specifying the magistrate's duties.

3 (b) An order of referral may:

4 (1) limit the powers of the magistrate and direct the  
5 magistrate to report only on specific issues, perform particular  
6 acts, or receive and report on evidence only;

7 (2) set the time and place for the hearing;

8 (3) prescribe a closing date for the hearing;

9 (4) provide a date for filing the magistrate's  
10 findings;

11 (5) designate proceedings for more than one case over  
12 which the magistrate shall preside;

13 (6) direct the magistrate to call the court's docket;  
14 and

15 (7) set forth general powers and limitations of  
16 authority of the magistrate applicable to any case referred.

17 Sec. 54.2407. POWERS. (a) Except as limited by an order of  
18 referral, a magistrate to whom a case is referred may:

19 (1) conduct hearings;

20 (2) hear evidence;

21 (3) compel production of relevant evidence in civil or  
22 criminal matters;

23 (4) rule on disputes regarding civil discovery;

24 (5) rule on admissibility of evidence;

25 (6) issue summons for the appearance of witnesses;

26 (7) examine witnesses;

27 (8) swear witnesses for hearings;

- 1           (9) make findings of fact on evidence;
- 2           (10) formulate conclusions of law;
- 3           (11) rule on a pretrial motion;
- 4           (12) recommend the rulings, orders, or judgment to be  
5 made in a case;
- 6           (13) regulate proceedings in a hearing;
- 7           (14) accept a plea of guilty from a defendant charged  
8 with misdemeanor, felony, or both misdemeanor and felony offenses;
- 9           (15) select a jury;
- 10           (16) accept a negotiated plea on a probation  
11 revocation;
- 12           (17) conduct a contested probation revocation  
13 hearing;
- 14           (18) sign a dismissal in a misdemeanor case;
- 15           (19) enter an order of dismissal or nonsuit on  
16 agreement of the parties in a civil case;
- 17           (20) in any case referred under Section 54.2405(a)(1),  
18 accept a negotiated plea of guilty or no contest and:
- 19                   (A) enter a finding of guilt and impose or  
20 suspend the sentence; or
- 21                   (B) defer adjudication of guilt;
- 22           (21) conduct initial juvenile detention hearings if  
23 approved by the juvenile board of Fort Bend County; and
- 24           (22) perform any act and take any measure necessary  
25 and proper for the efficient performance of the duties required by  
26 the order of referral.
- 27           (b) A magistrate may sign a motion to dismiss submitted by

1 an attorney representing the state on cases referred to the  
2 magistrate, or on dockets called by the magistrate, and may  
3 consider unadjudicated cases at sentencing under Section 12.45,  
4 Penal Code.

5 (c) Except as provided by Sections 54.2405(e) and (f), a  
6 magistrate has all of the powers of a magistrate under the laws of  
7 this state and may administer an oath for any purpose.

8 Sec. 54.2408. FORFEITURES. Bail bonds and personal bonds  
9 may be forfeited by the magistrate court in the manner provided by  
10 Chapter 22, Code of Criminal Procedure, and those forfeitures shall  
11 be filed with:

12 (1) the district clerk if associated with a felony  
13 case;

14 (2) the county clerk if associated with a Class A or  
15 Class B misdemeanor case; or

16 (3) the same justice court clerk associated with the  
17 Class C misdemeanor case in which the bond was originally filed.

18 Sec. 54.2409. COSTS. (a) When the district clerk is the  
19 clerk under this subchapter, the district clerk shall charge the  
20 same court costs for cases filed in, transferred to, or assigned to  
21 the magistrate court that are charged in the district courts.

22 (b) When the county clerk is the clerk under this  
23 subchapter, the county clerk shall charge the same court costs for  
24 cases filed in, transferred to, or assigned to the magistrate court  
25 that are charged in the county courts.

26 (c) When a justice clerk is the clerk under this subchapter,  
27 the justice clerk shall charge the same court costs for cases filed

1 in, transferred to, or assigned to the magistrate court that are  
2 charged in the justice courts.

3 Sec. 54.2410. CLERK. (a) The district clerk serves as  
4 clerk of the magistrate court, except that:

5 (1) after a Class A or Class B misdemeanor is filed in  
6 the county court at law and assigned to the magistrate court, the  
7 county clerk serves as clerk for that misdemeanor case; and

8 (2) after a Class C misdemeanor is filed in a justice  
9 court and assigned to the magistrate court, the originating justice  
10 court clerk serves as clerk for that misdemeanor case.

11 (b) The district clerk shall establish a docket and keep the  
12 minutes for the cases filed in or transferred to the magistrate  
13 court. The district clerk shall perform any other duties that local  
14 administrative rules require in connection with the implementation  
15 of this subchapter. The local administrative judge shall ensure  
16 that the duties required under this subsection are performed. To  
17 facilitate the duties associated with serving as the clerk of the  
18 magistrate court, the district clerk and the deputies of the  
19 district clerk may serve as deputy justice clerks and deputy county  
20 clerks at the discretion of the district clerk.

21 (c) The clerk of the case shall include as part of the record  
22 on appeal a copy of the order and local administrative rule under  
23 which a magistrate court acted.

24 Sec. 54.2411. COURT REPORTER. At the request of a party,  
25 the court shall provide a court reporter to record the proceedings  
26 before the magistrate.

27 Sec. 54.2412. WITNESS. (a) A witness who appears before a

1 magistrate and is sworn is subject to the penalties for perjury  
2 provided by law.

3 (b) A referring court may issue attachment against and may  
4 fine or imprison a witness whose failure to appear after being  
5 summoned or whose refusal to answer questions has been certified to  
6 the court.

7 Sec. 54.2413. PAPERS TRANSMITTED TO JUDGE. At the  
8 conclusion of the proceedings, a magistrate shall transmit to the  
9 referring court any papers relating to the case, including the  
10 magistrate's findings, conclusions, orders, recommendations, or  
11 other action taken.

12 Sec. 54.2414. COSTS OF MAGISTRATE. The court shall  
13 determine if the nonprevailing party is able to defray the costs of  
14 the magistrate. If the court determines the nonprevailing party is  
15 able to pay those costs, the court shall assess the magistrate's  
16 costs against the nonprevailing party.

17 Sec. 54.2415. JUDICIAL ACTION. (a) A referring court may  
18 modify, correct, reject, reverse, or recommit for further  
19 information any action taken by the magistrate.

20 (b) If the court does not modify, correct, reject, reverse,  
21 or recommit an action of the magistrate, the action becomes the  
22 decree of the court.

23 (c) At the conclusion of each term during which the services  
24 of a magistrate are used, the referring court shall enter a decree  
25 on the minutes adopting the actions of the magistrate of which the  
26 court approves.

27 Sec. 54.2416. MAGISTRATE AS ASSOCIATE JUDGE. A magistrate

appointed under this subchapter may act as a civil associate judge under Subchapter B, Chapter 54A. To the extent of any conflict with this subchapter, a magistrate acting as an associate judge shall comply with provisions regarding the appointment, termination, referral of cases, powers, duties, and immunities of associate judges under Subchapter B, Chapter 54A.

ARTICLE 6. DISTRICT AND COUNTY ATTORNEYS

SECTION 6.01. Section 43.105(a), Government Code, is amended to read as follows:

(a) The voters of Montgomery County elect a district attorney for the 9th Judicial District who represents the state in that district court only in that county. The district attorney also acts as district attorney for the 410th and 457th Judicial Districts [~~District in Montgomery County~~].

SECTION 6.02. Section 43.108, Government Code, is amended to read as follows:

Sec. 43.108. 21ST JUDICIAL DISTRICT. (a) The voters of Washington County [~~and Burleson counties~~] elect a district attorney for the 21st Judicial District who represents the state in that district court only in that county [~~those counties~~].

(b) The district attorney also represents the state and performs the duties of district attorney before the 335th District Court in Washington County [~~and Burleson counties~~].

SECTION 6.03. (a) Section 43.123, Government Code, is amended to read as follows:

Sec. 43.123. 38TH JUDICIAL DISTRICT. (a) The voters of the 38th Judicial District elect a district attorney.



1        (b) The district attorney of the 38th Judicial District also  
2 represents the state and performs the duties of the district  
3 attorney before the 454th Judicial District. This subsection  
4 expires January 1, 2021.

5        (b) Effective January 1, 2021, Section 44.001, Government  
6 Code, is amended to read as follows:

7        Sec. 44.001. ELECTION. The voters of each of the following  
8 counties elect a criminal district attorney: Anderson, Austin,  
9 Bastrop, Bexar, Bowie, Brazoria, Caldwell, Calhoun, Cass, Collin,  
10 Comal, Dallas, Deaf Smith, Denton, Eastland, Fannin, Galveston,  
11 Grayson, Gregg, Harrison, Hays, Hidalgo, Jackson, Jasper,  
12 Jefferson, Kaufman, Kendall, Lubbock, McLennan, Madison, Medina,  
13 Navarro, Newton, Panola, Polk, Randall, Rockwall, San Jacinto,  
14 Smith, Tarrant, Taylor, Tyler, Upshur, Van Zandt, Victoria, Walker,  
15 Waller, Wichita, Wood, and Yoakum.

16        (c) Effective January 1, 2021, Subchapter B, Chapter 44,  
17 Government Code, is amended by adding Section 44.263 to read as  
18 follows:

19        Sec. 44.263. MEDINA COUNTY. (a) The criminal district  
20 attorney of Medina County must meet the following qualifications:

- 21                (1) be at least 30 years old;  
22                (2) have been a practicing attorney in this state for  
23 at least five years; and  
24                (3) have been a resident of Medina County for at least  
25 one year before election or appointment.

26        (b) The criminal district attorney has all the powers,  
27 duties, and privileges in Medina County that are conferred by law on

1 county and district attorneys in the various counties and  
2 districts.

3 (c) The criminal district attorney shall attend each term  
4 and session of the district and inferior courts of Medina County,  
5 except municipal courts, held for the transaction of criminal  
6 business and shall exclusively represent the state in all criminal  
7 matters before those courts.

8 (d) The criminal district attorney shall represent Medina  
9 County in any court in which the county has pending business. This  
10 subsection does not require the criminal district attorney to  
11 represent the county in a delinquent tax suit or condemnation  
12 proceeding and does not prevent the county from retaining other  
13 legal counsel in a civil matter at any time it considers  
14 appropriate.

15 (e) The criminal district attorney shall collect the fees,  
16 commissions, and perquisites that are provided by law for similar  
17 services rendered by a district or county attorney.

18 (f) The criminal district attorney is entitled to receive in  
19 equal monthly installments compensation from the state equal to the  
20 amount paid by the state to district attorneys. The state  
21 compensation shall be paid by the comptroller as appropriated by  
22 the legislature. The Commissioners Court of Medina County shall  
23 pay the criminal district attorney an additional amount so that the  
24 total compensation of the criminal district attorney equals at  
25 least 90 percent of the total salary paid to the judge of the 454th  
26 District Court in Medina County. The compensation paid by the  
27 county shall be paid in semiweekly or bimonthly installments, as

1 determined by the commissioners court.

2 (g) The criminal district attorney or the Commissioners  
3 Court of Medina County may accept gifts and grants from any  
4 individual, partnership, corporation, trust, foundation,  
5 association, or governmental entity for the purpose of financing or  
6 assisting effective prosecution, crime prevention or suppression,  
7 rehabilitation of offenders, substance abuse education, treatment  
8 and prevention, or crime victim assistance programs in Medina  
9 County. The criminal district attorney shall account for and  
10 report to the commissioners court all gifts or grants accepted  
11 under this subsection.

12 (h) The criminal district attorney, for the purpose of  
13 conducting affairs of the office, may appoint a staff composed of  
14 assistant criminal district attorneys, investigators,  
15 stenographers, clerks, and other personnel that the commissioners  
16 court may authorize. The salary of a staff member is an amount  
17 recommended by the criminal district attorney and approved by the  
18 commissioners court. The commissioners court shall pay the  
19 salaries of the staff in equal semiweekly or bimonthly installments  
20 from county funds.

21 (i) The criminal district attorney shall, with the advice  
22 and consent of the commissioners court, designate one or more  
23 individuals to act as an assistant criminal district attorney with  
24 exclusive responsibility for assisting the commissioners court. An  
25 individual designated as an assistant criminal district attorney  
26 under this subsection must have extensive experience in  
27 representing public entities and knowledge of the laws affecting

1 counties, including the open meetings and open records laws under  
2 Chapters 551 and 552.

3 (j) Medina County is entitled to receive from the state an  
4 amount equal to the amount provided in the General Appropriations  
5 Act to district attorneys for the payment of staff salaries and  
6 office expenses.

7 (k) The legislature may provide for additional staff  
8 members to be paid from state funds if it considers supplementation  
9 of the criminal district attorney's staff to be necessary.

10 (l) The criminal district attorney and assistant criminal  
11 district attorney may not engage in the private practice of law or  
12 receive a fee for the referral of a case.

13 (d) Effective January 1, 2021, the office of county attorney  
14 of Medina County is abolished.

15 (e) Notwithstanding Section 41.010, Government Code, the  
16 initial vacancy in the office of the criminal district attorney of  
17 Medina County shall be filled by election. The office of the  
18 criminal district attorney of Medina County exists for purposes of  
19 the primary and general elections in 2020. The qualified voters of  
20 Medina County shall elect the initial criminal district attorney of  
21 Medina County at the general election in 2020 for a four-year term  
22 of office.

23 (f) The criminal district attorney of Medina County retains  
24 all powers, duties, and privileges in Medina County that were  
25 previously held by the office of the district attorney of the 38th  
26 Judicial District and the office of the county attorney of Medina  
27 County, including all powers, duties, and privileges in all pending

1 matters of the county and district attorney and all pending matters  
2 before any court.

3 SECTION 6.04. Subchapter B, Chapter 45, Government Code, is  
4 amended by adding Section 45.126 to read as follows:

5 Sec. 45.126. BURLESON COUNTY. In Burleson County, the  
6 county attorney of Burleson County shall perform the duties imposed  
7 on and have the powers conferred on district attorneys by general  
8 law and is entitled to be compensated by the state in the manner and  
9 amount set by general law relating to the salary paid to district  
10 attorneys by the state.

11 SECTION 6.05. Effective September 1, 2019, Section 46.002,  
12 Government Code, is amended to read as follows:

13 Sec. 46.002. PROSECUTORS SUBJECT TO CHAPTER. This chapter  
14 applies to the state prosecuting attorney, all county prosecutors,  
15 and the following state prosecutors:

16 (1) the district attorneys for Kenedy and Kleberg  
17 Counties and for the 1st, 2nd, 8th, 9th, 18th, 21st, 23rd, 24th,  
18 26th, 27th, 29th, 31st, 32nd, 33rd, 34th, 35th, 36th, 38th, 39th,  
19 42nd, 43rd, 46th, 47th, 49th, 50th, 51st, 52nd, 53rd, 63rd, 64th,  
20 66th, 69th, 70th, 76th, 79th, 81st, 83rd, 84th, 85th, 88th, 90th,  
21 97th, 100th, 105th, 106th, 109th, 110th, 112th, 118th, 119th,  
22 123rd, 132nd, 142nd, 143rd, 145th, 156th, 159th, 173rd, 196th,  
23 198th, 216th, 220th, 229th, 235th, 253rd, 258th, 259th, 266th,  
24 268th, 271st, 286th, 287th, 329th, 344th, 349th, 355th, 369th,  
25 452nd, and 506th judicial districts;

26 (2) the criminal district attorneys for the counties  
27 of Anderson, Austin, Bastrop, Bexar, Bowie, Brazoria, Caldwell,

Calhoun, Cass, Collin, Comal, Dallas, Deaf Smith, Denton, Eastland,  
Fannin, Galveston, Grayson, Gregg, Harrison, Hays, Hidalgo,  
Jasper, Jefferson, Kaufman, Kendall, Lubbock, McLennan, Madison,  
Navarro, Newton, Panola, Polk, Randall, Rockwall, San Jacinto,  
Smith, Tarrant, Taylor, Tyler, Upshur, Van Zandt, Victoria, Walker,  
Waller, Wichita, Wood, and Yoakum; and

(3) the county attorneys performing the duties of  
district attorneys in the counties of Andrews, Aransas, Burleson,  
Callahan, Cameron, Castro, Colorado, Crosby, Ellis, Falls,  
Freestone, Gonzales, Guadalupe, Lamar, Lamb, Lampasas, Lavaca,  
Lee, Limestone, Marion, Milam, Morris, Ochiltree, Oldham, Orange,  
Rains, Red River, Robertson, Rusk, Swisher, Terry, Webb, and  
Willacy.

SECTION 6.06. Effective January 1, 2021, Section [46.002](#),  
Government Code, is amended to read as follows:

Sec. 46.002. PROSECUTORS SUBJECT TO CHAPTER. This chapter  
applies to the state prosecuting attorney, all county prosecutors,  
and the following state prosecutors:

(1) the district attorneys for Kenedy and Kleberg  
Counties and for the 1st, 2nd, 8th, 9th, 18th, 21st, 23rd, 24th,  
26th, 27th, 29th, 31st, 32nd, 33rd, 34th, 35th, 36th, 38th, 39th,  
42nd, 43rd, 46th, 47th, 49th, 50th, 51st, 52nd, 53rd, 63rd, 64th,  
66th, 69th, 70th, 76th, 79th, 81st, 83rd, 84th, 85th, 88th, 90th,  
97th, 100th, 105th, 106th, 109th, 110th, 112th, 118th, 119th,  
123rd, 132nd, 142nd, 143rd, 145th, 156th, 159th, 173rd, 196th,  
198th, 216th, 220th, 229th, 235th, 253rd, 258th, 259th, 266th,  
268th, 271st, 286th, 287th, 329th, 344th, 349th, 355th, 369th,

452nd, and 506th judicial districts;

(2) the criminal district attorneys for the counties of Anderson, Austin, Bastrop, Bexar, Bowie, Brazoria, Caldwell, Calhoun, Cass, Collin, Comal, Dallas, Deaf Smith, Denton, Eastland, Fannin, Galveston, Grayson, Gregg, Harrison, Hays, Hidalgo, Jasper, Jefferson, Kaufman, Kendall, Lubbock, McLennan, Madison, Medina, Navarro, Newton, Panola, Polk, Randall, Rockwall, San Jacinto, Smith, Tarrant, Taylor, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Wichita, Wood, and Yoakum; and

(3) the county attorneys performing the duties of district attorneys in the counties of Andrews, Aransas, Burleson, Callahan, Cameron, Castro, Colorado, Crosby, Ellis, Falls, Freestone, Gonzales, Guadalupe, Lamar, Lamb, Lampasas, Lavaca, Lee, Limestone, Marion, Milam, Morris, Ochiltree, Oldham, Orange, Rains, Red River, Robertson, Rusk, Swisher, Terry, Webb, and Willacy.

#### ARTICLE 7. COURT REPORTERS AND BAILIFFS

SECTION 7.01. Section 322.003, Business & Commerce Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as otherwise provided in Subsections ~~[Subsection]~~ (b) and (e), this chapter applies to electronic records and electronic signatures relating to a transaction.

(e) This chapter does not apply to the transmission, preparation, completion, enforceability, or admissibility of a document in any form that is:

(1) produced by a court reporter appointed under

1 Chapter 52, Government Code, or a court reporter certified under or  
2 a shorthand reporting firm registered under Chapter 154, Government  
3 Code, for use in the state or federal judicial system; or

4 (2) governed by rules adopted by the supreme court,  
5 including rules governing the electronic filing system established  
6 by the supreme court.

7 SECTION 7.02. Subchapter B, Chapter 51, Civil Practice and  
8 Remedies Code, is amended by adding Section 51.017 to read as  
9 follows:

10 Sec. 51.017. SERVICE OF NOTICE ON COURT REPORTER. (a) In  
11 addition to requirements for service of notice of appeal imposed by  
12 Rule 25.1(e), Texas Rules of Appellate Procedure, notice of appeal,  
13 including an interlocutory appeal, must be served on each court  
14 reporter responsible for preparing the reporter's record.

15 (b) Notwithstanding Section 22.004, Government Code, the  
16 supreme court may not amend or adopt rules in conflict with this  
17 section.

18 SECTION 7.03. Chapter 52, Government Code, is amended by  
19 adding Subchapter B to read as follows:

20 SUBCHAPTER B. DUTIES OF SHORTHAND REPORTING FIRMS

21 Sec. 52.011. PROVISION OF SIGNED CERTIFICATION. On request  
22 of a court reporter who reported a deposition, a court reporting  
23 firm shall provide the reporter with a copy of the document related  
24 to the deposition, known as the further certification, that the  
25 reporter has signed or to which the reporter's signature has been  
26 applied.

27 SECTION 7.04. Section 53.002(d), Government Code, is



1 amended to read as follows:

2 (d) The judges of the 15th, ~~[and]~~ 59th, and 397th district  
3 courts and the judges of the statutory county courts in Grayson  
4 County may each appoint a bailiff.

5 SECTION 7.05. Section 53.004(c), Government Code, is  
6 amended to read as follows:

7 (c) A bailiff in the 15th, ~~[or]~~ 59th, or 397th district  
8 court or a statutory county court in Grayson County must be a  
9 citizen of the United States ~~[and a resident of Grayson County]~~.

10 SECTION 7.06. Section 53.009(g), Government Code, is  
11 amended to read as follows:

12 (g) Each bailiff appointed by a judge of the 15th, ~~[or]~~  
13 59th, or 397th district court or appointed by a statutory county  
14 court judge in Grayson County is entitled to receive from the county  
15 a salary set by the judge within the budget guidelines established  
16 by the Commissioners Court of Grayson County ~~[equal to the salary of~~  
17 ~~a jailer employed by the Grayson County sheriff]~~.

18 SECTION 7.07. Section 154.001(a), Government Code, is  
19 amended by adding Subdivisions (1-a) and (3-a) to read as follows:

20 (1-a) "Apprentice court reporter" means a person to  
21 whom an apprentice court reporter certification is issued as  
22 authorized by Section 154.1011.

23 (3-a) "Provisional court reporter" means a court  
24 reporter to whom a provisional certification is issued as  
25 authorized by Section 154.1011.

26 SECTION 7.08. Sections 154.101(b), (c), and (e), Government  
27 Code, are amended to read as follows:

1 (b) A person may not engage in shorthand reporting in this  
2 state unless the person is certified as:

3 (1) a shorthand reporter by the supreme court under  
4 this section; or

5 (2) an apprentice court reporter or provisional court  
6 reporter certified as authorized by Section 154.1011, subject to  
7 the terms of the person's certification.

8 (c) A certification issued under this section [~~chapter~~]  
9 must be for one or more of the following methods of shorthand  
10 reporting:

11 (1) written shorthand;

12 (2) machine shorthand;

13 (3) oral stenography; or

14 (4) any other method of shorthand reporting authorized  
15 by the supreme court.

16 (e) A person may not assume or use the title or designation  
17 "court recorder," "court reporter," or "shorthand reporter," or any  
18 abbreviation, title, designation, words, letters, sign, card, or  
19 device tending to indicate that the person is a court reporter or  
20 shorthand reporter, unless the person is certified as a shorthand  
21 reporter or provisional court reporter by the supreme court.  
22 Nothing in this subsection shall be construed to either sanction or  
23 prohibit the use of electronic court recording equipment operated  
24 by a noncertified court reporter pursuant and according to rules  
25 adopted or approved by the supreme court.

26 SECTION 7.09. (a) Subchapter C, Chapter 154, Government  
27 Code, is amended by adding Sections 154.1011 and 154.1012 to read as

1 follows:

2 Sec. 154.1011. APPRENTICE COURT REPORTER AND PROVISIONAL  
3 COURT REPORTER CERTIFICATIONS. (a) Subject to Section 152.101,  
4 the commission by rule may provide for:

5 (1) the certification of an apprentice court reporter  
6 who may engage in court reporting only:

7 (A) under the direct supervision of a certified  
8 court reporter; and

9 (B) for the types of legal proceedings authorized  
10 by commission rule; and

11 (2) the provisional certification of a court reporter,  
12 including a court reporter described by Section 154.1012(f), that  
13 allows a person to engage in court reporting only in accordance with  
14 the terms and for the period expressly authorized by commission  
15 rule.

16 (b) Rules adopted under Subsection (a) may allow for the  
17 issuance of a certification under Section 154.101 to:

18 (1) a certified apprentice court reporter who  
19 satisfactorily completes the apprenticeship and passes Part A of  
20 the examination required by Section 154.103; or

21 (2) a court reporter who holds a provisional  
22 certification on the reporter's completion of the terms of the  
23 commission's conditional approval.

24 Sec. 154.1012. RECIPROCITY. (a) The commission may waive  
25 any prerequisite to obtaining a court reporter certification for an  
26 applicant after reviewing the applicant's credentials and  
27 determining the applicant holds a certification or license issued

1 by another jurisdiction that has certification or licensing  
2 requirements substantially equivalent to those of this state.

3 (b) The commission shall develop and periodically update on  
4 a schedule established by the commission a list of states that have  
5 certification or licensing requirements for court reporters  
6 substantially equivalent to those of this state.

7 (c) The commission shall certify to the supreme court the  
8 name of each qualified applicant who:

9 (1) holds a certification or license to engage in  
10 court reporting issued by another state that, as determined by the  
11 commission:

12 (A) has certification or licensing requirements  
13 to engage in court reporting that are substantially equivalent to  
14 the requirements of this state for a court reporter governed by this  
15 chapter and Chapter 52; or

16 (B) is included on the list developed by the  
17 commission under Subsection (b); and

18 (2) before certification in this state:

19 (A) passes Part B of the examination required by  
20 Section 154.103; and

21 (B) provides proof acceptable to the commission  
22 that the applicant has been actively performing court reporting in  
23 another jurisdiction for at least three of the preceding five  
24 years.

25 (d) A reciprocity agreement approved by the supreme court  
26 under Section 152.202(b) must require an applicant who holds a  
27 certification or license to engage in court reporting issued by

1 another state and who applies for certification as a court reporter  
2 in this state to:

3 (1) pass Part B of the examination required by Section  
4 154.103;

5 (2) provide proof acceptable to the commission that  
6 the applicant has been actively performing court reporting in  
7 another jurisdiction for at least three of the preceding five  
8 years; and

9 (3) hold a certification or license that the  
10 commission determines is at least equivalent to the registered  
11 professional reporter designation or similar designation.

12 (e) A person who applies for certification as a court  
13 reporter in this state and meets the requirements under Subsection  
14 (c) is not required to meet the requirement under Subsection  
15 (d)(3).

16 (f) Subject to Section 152.101, the commission may adopt  
17 rules requiring the issuance of a provisional certification under  
18 Section 154.1011 to an applicant described by Subsection (c) or (d)  
19 that authorizes the applicant to serve as a court reporter in this  
20 state for a limited time and under conditions the commission  
21 considers reasonably necessary to protect the public interest.

22 (b) In developing rules under Section 154.1011, Government  
23 Code, as added by this section, the Judicial Branch Certification  
24 Commission shall:

25 (1) establish a stakeholder work group to receive  
26 input; and

27 (2) solicit comments from the Texas Court Reporters

1 Association, the Texas Deposition Reporters Association, court  
2 reporting schools, and other interested parties.

3 (c) Not later than June 1, 2020, the Judicial Branch  
4 Certification Commission shall develop the list required by Section  
5 154.1012(b), Government Code, as added by this section.

6 (d) Not later than January 1, 2020, the Judicial Branch  
7 Certification Commission shall communicate with the appropriate  
8 regulatory officials in each state to inquire whether the state  
9 desires to enter into a reciprocity agreement with this state as  
10 authorized by Section 152.202(b), Government Code. Not later than  
11 April 1, 2020, the commission shall submit a report on the results  
12 of the inquiry to the Texas Supreme Court or the court's designee.

13 SECTION 7.10. Section 154.102, Government Code, is amended  
14 to read as follows:

15 Sec. 154.102. APPLICATION FOR EXAMINATION. If applicable,  
16 a [A] person seeking certification must file an application for  
17 examination with the commission not later than the 30th day before  
18 the date fixed for the examination. The application must be  
19 accompanied by the required fee.

20 SECTION 7.11. Section 154.104, Government Code, is amended  
21 to read as follows:

22 Sec. 154.104. CERTIFICATION TO SUPREME COURT. (a) The  
23 commission shall certify to the supreme court the name of each  
24 qualified applicant for certification under Section 154.101 who has  
25 passed the examination.

26 (b) The commission shall certify to the supreme court the  
27 name of each applicant who meets the qualifications for

1 certification as:

2 (1) an apprentice court reporter; or

3 (2) a provisional court reporter.

4 SECTION 7.12. Section 154.105(a), Government Code, is  
5 amended to read as follows:

6 (a) On certification under Section 154.101 or as a  
7 provisional court reporter, a shorthand reporter may use the title  
8 "Certified Shorthand Reporter" or the abbreviation "CSR."

9 SECTION 7.13. Section 154.107, Government Code, is amended  
10 by adding Subsection (d) to read as follows:

11 (d) Notwithstanding Section 152.2015 and Subsection (c) of  
12 this section, a shorthand reporting firm shall pay a registration  
13 or renewal fee in an amount equal to the fee for court reporter  
14 certification under Section 154.101 in lieu of the fee required for  
15 a shorthand reporting firm registration if a certified court  
16 reporter of the firm:

17 (1) has an ownership interest in the firm of more than  
18 50 percent; and

19 (2) maintains actual control of the firm.

20 SECTION 7.14. Subchapter C, Chapter 154, Government Code,  
21 is amended by adding Section 154.108 to read as follows:

22 Sec. 154.108. CONTINUING EDUCATION. Subject to Section  
23 152.101, the commission by rule shall require each court reporter  
24 who holds a certification issued by the commission and at least one  
25 person who has management responsibility for a shorthand reporting  
26 firm registered in this state to complete continuing professional  
27 education.

SECTION 7.15. Section 154.110(a), Government Code, is amended to read as follows:

(a) After receiving a complaint and giving the certified shorthand reporter notice and an opportunity for a hearing as prescribed by Subchapter B, Chapter 153, the commission shall revoke, suspend, or refuse to renew the shorthand reporter's certification or issue a reprimand to the reporter for:

- (1) fraud or corruption;
- (2) dishonesty;
- (3) wilful or negligent violation or failure of duty;
- (4) incompetence;
- (5) fraud or misrepresentation in obtaining certification;
- (6) a final conviction of a felony or misdemeanor that directly relates to the duties and responsibilities of a certified shorthand reporter, as determined by supreme court rules;
- (7) engaging in the practice of shorthand reporting using a method for which the reporter is not certified;
- (8) engaging in the practice of shorthand reporting while certification is suspended;
- (9) unprofessional conduct, including giving directly or indirectly, benefiting from, or being employed as a result of any gift, incentive, reward, or anything of value to attorneys, clients, or their representatives or agents, except for nominal items that do not exceed \$100 in the aggregate for each recipient each year;
- (10) entering into or providing services under a



1 prohibited contract described by Section 154.115; or

2 (11) committing any other act that violates this  
3 chapter or a rule or provision of the code of ethics adopted under  
4 this subtitle~~[, or~~

5 [~~(12) other sufficient cause~~].

6 SECTION 7.16. (a) Section 154.111, Government Code, is  
7 amended by amending Subsections (a) and (b) and adding Subsection  
8 (g) to read as follows:

9 (a) After receiving a complaint and giving the shorthand  
10 reporting firm or affiliate office notice and an opportunity for a  
11 hearing as prescribed by Subchapter B, Chapter 153, the commission  
12 shall reprimand, assess a reasonable fine against, or suspend,  
13 revoke, or refuse to renew the registration of a shorthand  
14 reporting firm or affiliate office for:

15 (1) fraud or corruption;

16 (2) dishonesty;

17 (3) conduct on the part of an officer, director, or  
18 managerial employee of the shorthand reporting firm or affiliate  
19 office if the officer, director, or managerial employee orders,  
20 encourages, or permits conduct that the officer, director, or  
21 managerial employee knows or should have known violates this  
22 subtitle;

23 (4) conduct on the part of an officer, director, or  
24 managerial employee or agent of the shorthand reporting firm or  
25 affiliate office who has direct supervisory authority over a person  
26 for whom the officer, director, employee, or agent knows or should  
27 have known violated this subtitle and knowingly fails to take

1 reasonable remedial action to avoid or mitigate the consequences of  
2 the person's actions;

3 (5) fraud or misrepresentation in obtaining  
4 registration;

5 (6) a final conviction of an officer, director, or  
6 managerial employee of a shorthand reporting firm or affiliate  
7 office for a felony or misdemeanor that is directly related to the  
8 provision of court reporting services, as determined by supreme  
9 court rules;

10 (7) engaging the services of a reporter that the  
11 shorthand reporting firm or affiliate office knew or should have  
12 known was using a method for which the reporter is not certified;

13 (8) knowingly providing court reporting services  
14 while the shorthand reporting firm's or affiliate office's  
15 registration is suspended or engaging the services of a shorthand  
16 reporter whose certification the shorthand reporting firm or  
17 affiliate office knew or should have known was suspended;

18 (9) unprofessional conduct, including:

19 (A) [a pattern of] giving directly or indirectly  
20 or benefiting from or being employed as a result of giving any gift,  
21 incentive, reward, or anything of value to attorneys, clients, or  
22 their representatives or agents, except for nominal items that do  
23 not exceed \$100 in the aggregate for each recipient each year; or

24 (B) repeatedly committing to provide at a  
25 specific time and location court reporting services for an attorney  
26 in connection with a legal proceeding and unreasonably failing to  
27 fulfill the commitment under the terms of that commitment;

1           (10) entering into or providing services under a  
2 prohibited contract described by Section 154.115; or

3           (11) committing any other act that violates this  
4 chapter or a rule or provision of the code of ethics adopted under  
5 this subtitle[~~, or~~

6           [~~(12) other sufficient cause~~].

7           (b) Nothing in Subsection (a)(9)(A) [~~(a)(9)~~] shall be  
8 construed to define providing value-added business services,  
9 including long-term volume discounts, such as the pricing of  
10 products and services, as prohibited gifts, incentives, or rewards.

11          (g) The commission by rule shall define the conditions under  
12 which a shorthand reporting firm's or affiliate office's repeated  
13 failure to fulfill a commitment to provide court reporting services  
14 as described by Subsection (a)(9)(B) is considered unprofessional  
15 conduct and grounds for disciplinary action.

16          (b) In developing rules under Section 154.111(g),  
17 Government Code, as added by this section, the Judicial Branch  
18 Certification Commission shall:

19               (1) establish a stakeholder work group to receive  
20 input; and

21               (2) solicit comments from the Texas Court Reporters  
22 Association, the Texas Deposition Reporters Association, court  
23 reporting schools, and other interested parties.

24          SECTION 7.17. Section 154.113, Government Code, is amended  
25 by adding Subsection (a-1) to read as follows:

26          (a-1) A person commits an offense if the person provides  
27 shorthand reporting firm services in this state in violation of

1 Section 154.106. Each day of violation constitutes a separate  
2 offense.

3 SECTION 7.18. Section 154.115, Government Code, is amended  
4 to read as follows:

5 Sec. 154.115. PROHIBITED CONTRACTS. (a) A court reporter  
6 or shorthand reporting firm may not enter into or provide services  
7 under any contractual agreement, written or oral, exclusive or  
8 nonexclusive, that:

9 (1) undermines the impartiality of the court reporter;

10 (2) requires a court reporter to relinquish control of  
11 an original deposition transcript and copies of the transcript  
12 before it is certified and delivered to the custodial attorney;

13 (3) requires a court reporter to provide any service  
14 not made available to all parties to an action; ~~[or]~~

15 (4) gives or appears to give an exclusive advantage to  
16 any party; or

17 (5) restricts an attorney's choice in the selection of  
18 a court reporter or shorthand reporting firm.

19 (b) Subsections (a)(2) and (3) do ~~[This section does]~~ not  
20 apply to a contract for court reporting services for a court,  
21 agency, or instrumentality of the United States or this state.

22 ARTICLE 8. JUVENILE BOARDS

23 SECTION 8.01. Section 152.0811, Human Resources Code, is  
24 amended by amending Subsections (a) and (b) and adding Subsections  
25 (a-1) and (d) to read as follows:

26 (a) The juvenile board of Fayette County is composed of:

27 (1) the county judge;

1           (2) [and] the judge of each [a] district court in  
2 Fayette County;

3           (3) the judge of each statutory county court in  
4 Fayette County; and

5           (4) a public member only if the total number of board  
6 members described by Subdivisions (1)-(3) is fewer than three or is  
7 an even number [as determined by the commissioners court].

8           (a-1) A public member who serves on the board must be  
9 appointed by a majority of the other members of the board. The  
10 public member serves a two-year term.

11           (b) The commissioners court may pay the juvenile board  
12 members ~~[additional annual]~~ compensation of ~~[not more than]~~ \$1,200  
13 annually for the ~~[added]~~ duties imposed on the members. The  
14 ~~[additional]~~ compensation shall be paid in equal monthly  
15 installments from the general fund or any other available fund of  
16 the county.

17           (d) The board member who has the greatest number of years of  
18 judicial service and is willing to serve is the chair of the board.

19           SECTION 8.02. Section 152.0941, Human Resources Code, is  
20 amended by amending Subsection (c) and adding Subsection (d) to  
21 read as follows:

22           (c) Sections 152.0002, 152.0004, and 152.0005 ~~[, 152.0006,~~  
23 ~~152.0007, and 152.0008]~~ do not apply to the juvenile board of Goliad  
24 County.

25           (d) The juvenile board of Goliad County and the juvenile  
26 boards of one or more counties that are adjacent to or in close  
27 proximity to Goliad County may agree to operate together with

1 respect to all matters, or with respect to certain matters  
2 specified by the juvenile boards. Juvenile boards operating  
3 together may appoint one fiscal officer to receive and disburse  
4 funds for the boards.

5 SECTION 8.03. Section 152.0991(a), Human Resources Code, is  
6 amended to read as follows:

7 (a) The juvenile board of Grimes County is composed of the  
8 county judge, ~~and~~ the district judges in Grimes County, and the  
9 judge of each county court at law in the county.

10 SECTION 8.04. Section 152.2411, Human Resources Code, is  
11 amended by amending Subsections (b) and (f) and adding Subsection  
12 (g) to read as follows:

13 (b) The juvenile board shall elect one of its members as  
14 chairman of the board ~~[court judge is the]~~ ~~[and its chief~~  
15 ~~administrative officer]~~.

16 (f) Sections 152.0002, 152.0004, and 152.0005 ~~[, 152.0006,~~  
17 ~~152.0007, and 152.0008]~~ do not apply to the juvenile board of  
18 Victoria County.

19 (g) The juvenile board of Victoria County and the juvenile  
20 boards of one or more counties that are adjacent to or in close  
21 proximity to Victoria County may agree to operate together with  
22 respect to all matters, or with respect to certain matters  
23 specified by the juvenile boards. Juvenile boards operating  
24 together may appoint one fiscal officer to receive and disburse  
25 funds for the boards.

ARTICLE 9. THE OFFICE OF COURT ADMINISTRATION OF THE TEXAS JUDICIAL  
SYSTEM

SECTION 9.01. (a) Section 22A.002(d), Government Code, is amended to read as follows:

(d) The comptroller [~~Office of Court Administration of the Texas Judicial System~~] shall pay from funds appropriated to the comptroller's judiciary section the travel expenses and other incidental costs related to convening a special three-judge district court under this chapter.

(b) The change in law made by this section applies only to a travel expense or other incidental cost incurred on or after the effective date of this Act. A travel expense or other incidental cost incurred before the effective date of this Act is governed by the law in effect on the date the travel expense or other incidental cost was incurred, and the former law is continued in effect for that purpose.

SECTION 9.02. (a) Sections 51.607(a) and (b), Government Code, are amended to read as follows:

(a) Following each regular session of the legislature, the Office of Court Administration of the Texas Judicial System [~~comptroller~~] shall identify each law enacted by that legislature, other than a law disapproved by the governor, that imposes or changes the amount of a court cost or fee collected by the clerk of a district, county, statutory county, municipal, or justice court from a party to a civil case or a defendant in a criminal case, including a filing or docketing fee, jury fee, cost on conviction, or fee or charge for services or to cover the expenses of a public

official or agency. This subsection does not apply to attorney's fees, civil or criminal fines or penalties, or amounts charged, paid, or collected on behalf of another party to a proceeding other than the state in a criminal case, including restitution or damages.

(b) The Office of Court Administration of the Texas Judicial System ~~[comptroller]~~ shall prepare a list of each court cost or fee covered by Subsection (a) to be imposed or changed and shall publish the list in the Texas Register not later than August 1 after the end of the regular session of the legislature at which the law imposing or changing the amount of the cost or fee was enacted. The office ~~[comptroller]~~ shall include with the list a statement describing the operation of this section and stating the date the imposition or change in the amount of the court cost or fee will take effect under Subsection (c).

(b) The change in law made by this section applies only to a law imposing or changing the amount of a court cost or fee that takes effect on or after the effective date of this Act.

SECTION 9.03. Subchapter C, Chapter 72, Government Code, is amended by adding Sections 72.033 and 72.034 to read as follows:

Sec. 72.033. LIST OF NEW OR AMENDED COURT COSTS AND FEES.  
The office biennially shall prepare and publish a list of new or amended court costs and fees as required by Section 51.607.

Sec. 72.034. PUBLIC INFORMATION INTERNET WEBSITE. (a) In this section:

(1) "Public information" means citation, other related public or legal notice that a person, including a party to a



1 cause of action, is required to publish under a statute or rule, and  
2 any other information that the person submits for publication on  
3 the public information Internet website to effectuate service of  
4 citation by publication.

5 (2) "Public information Internet website" means the  
6 official statewide Internet website developed and maintained by the  
7 office under this section for the purpose of providing citation by  
8 publication.

9 (b) The office shall develop and maintain a public  
10 information Internet website that allows a person to easily publish  
11 public information on the Internet website or the office to post  
12 public information on the Internet website on receipt from the  
13 person.

14 (c) The public information Internet website shall allow the  
15 public to easily access, search, and sort the public information.

16 (d) The supreme court by rule shall establish procedures for  
17 the submission of public information to the public information  
18 Internet website by a person who is required to publish the  
19 information.

20 SECTION 9.04. (a) The Texas Supreme Court shall adopt the  
21 rules necessary to implement Section 72.034, Government Code, as  
22 added by this article, not later than June 1, 2020.

23 (b) The Office of Court Administration of the Texas Judicial  
24 System shall develop the public information Internet website for  
25 the purposes of providing citation by publication as required by  
26 Section 72.034, Government Code, as added by this article, not  
27 later than June 1, 2020.

SECTION 9.05. Section 121.002, Government Code, is amended by amending Subsections (c) and (d) and adding Subsections (f) and (g) to read as follows:

(c) Notwithstanding any other law, a specialty court program may not operate until the judge, magistrate, or coordinator:

(1) provides to the Office of Court Administration of the Texas Judicial System ~~[criminal justice division of the governor's office]~~:

(A) written notice of the program;

(B) any resolution or other official declaration under which the program was established; and

(C) a copy of the applicable strategic plan that incorporates duties related to supervision that will be required under the program; and

(2) receives from the office ~~[division]~~ written verification of the program's compliance with Subdivision (1).

(d) A specialty court program shall:

(1) comply with all programmatic best practices recommended by the Specialty Courts Advisory Council under Section 772.0061(b)(2) and approved by the Texas Judicial Council; and

(2) report to the criminal justice division of the governor's office and the Texas Judicial Council any information required by the division or council regarding the performance of the program.

(f) The Office of Court Administration of the Texas Judicial System shall:

1           (1) on request provide technical assistance to the  
2 specialty court programs;

3           (2) coordinate with an entity funded by the criminal  
4 justice division of the governor's office that provides services to  
5 specialty court programs;

6           (3) monitor the specialty court programs for  
7 compliance with programmatic best practices as required by  
8 Subsection (d)(1); and

9           (4) notify the criminal justice division of the  
10 governor's office if a specialty court program fails to comply with  
11 programmatic best practices as required by Subsection (d)(1).

12           (g) The Office of Court Administration of the Texas Judicial  
13 System shall coordinate with and provide information to the  
14 criminal justice division of the governor's office on request of  
15 the division.

16           SECTION 9.06. (a) The Office of Court Administration of  
17 the Texas Judicial System shall contract with the National Center  
18 for State Courts to conduct a study of the caseloads of the district  
19 and statutory county courts in this state. The study must  
20 concentrate on the weighted caseload of each court, considering the  
21 nature and complexity of the cases heard.

22           (b) Not later than December 1, 2020, the National Center for  
23 State Courts shall report the results of the study required by  
24 Subsection (a) of this section to the Office of Court  
25 Administration of the Texas Judicial System. Not later than  
26 January 1, 2021, the office shall file a report on those results  
27 with the governor, the lieutenant governor, the speaker of the

1 house of representatives, and the chairs of the standing committees  
2 of the senate and house of representatives with jurisdiction over  
3 the judicial system.

4 ARTICLE 10. ELECTRONIC PUBLICATION, SERVICE, AND DISPLAY OF LEGAL  
5 DOCUMENTS

6 SECTION 10.01. Sections 9.160(a), (b), and (c), Business  
7 Organizations Code, are amended to read as follows:

8 (a) Except as provided by Section 17.032, Civil Practice and  
9 Remedies Code, if [~~If~~] process in an action under this subchapter is  
10 returned not found, the attorney general shall publish notice on  
11 the public information Internet website maintained as required by  
12 Section 72.034, Government Code, and in a newspaper in the county in  
13 which the registered office of the foreign filing entity in this  
14 state is located. The notice must contain:

- 15 (1) a statement of the pendency of the action;  
16 (2) the title of the court;  
17 (3) the title of the action; and  
18 (4) the earliest date on which default judgment may be  
19 entered by the court.

20 (b) Notice under this section must be published on the  
21 public information Internet website for at least two consecutive  
22 weeks and in a newspaper at least once a week for two consecutive  
23 weeks. Notice may be published [~~beginning~~] at any time after the  
24 citation has been returned.

25 (c) The attorney general may include in a [~~one~~] published  
26 notice the name of each foreign filing entity against which an  
27 action for involuntary revocation is pending in the same court.

SECTION 10.02. Sections 11.310(a) and (b), Business Organizations Code, are amended to read as follows:

(a) Except as provided by Section 17.032, Civil Practice and Remedies Code, if ~~[If]~~ process in an action under this subchapter is returned not found, the attorney general shall publish notice on the public information Internet website maintained as required by Section 72.034, Government Code, and in a newspaper in the county in which the registered office of the filing entity in this state is located. The notice must contain:

- (1) a statement of the pendency of the action;
- (2) the title of the court;
- (3) the title of the action; and
- (4) the earliest date on which default judgment may be entered by the court.

(b) Notice under this section must be published on the public information Internet website for at least two consecutive weeks and in a newspaper at least once a week for two consecutive weeks. Notice may be published ~~[beginning]~~ at any time after the citation has been returned.

SECTION 10.03. Subchapter B, Chapter 17, Civil Practice and Remedies Code, is amended by adding Section 17.032 to read as follows:

Sec. 17.032. CITATION BY PUBLICATION.

(a) Notwithstanding any statute or rule requiring a person to publish citation or notice on the public information Internet website maintained as required by Section 72.034, Government Code, and in a newspaper of general circulation, the person may publish

1 the citation or notice only on the public information Internet  
2 website if:

3 (1) the person files a statement of inability to  
4 afford payment of court costs under the Texas Rules of Civil  
5 Procedure;

6 (2) the total cost of the required publication exceeds  
7 the greater of \$200 each week or the amount set by the supreme court  
8 under Subsection (b); or

9 (3) the county in which the publication of the  
10 citation or notice is required does not have any newspaper  
11 published, printed, or generally circulated in the county.

12 (b) The supreme court shall adjust for inflation the maximum  
13 amount of publication costs established in Subsection (a)(2).

14 SECTION 10.04. (a) Subchapter B, Chapter 17, Civil  
15 Practice and Remedies Code, is amended by adding Section 17.033 to  
16 read as follows:

17 Sec. 17.033. SUBSTITUTED SERVICE THROUGH SOCIAL MEDIA  
18 PRESENCE. (a) If substituted service of citation is authorized  
19 under the Texas Rules of Civil Procedure, the court, in accordance  
20 with the rules adopted by the supreme court under Subsection (b),  
21 may prescribe as a method of service an electronic communication  
22 sent to the defendant through a social media presence.

23 (b) The supreme court shall adopt rules to provide for the  
24 substituted service of citation by an electronic communication sent  
25 to a defendant through a social media presence.

26 (b) The Texas Supreme Court shall adopt rules under Section  
27 17.033, Civil Practice and Remedies Code, as added by this section,

not later than December 31, 2020.

(c) Section 17.033, Civil Practice and Remedies Code, as added by this section, applies only to an action commenced on or after the effective date of the rules adopted by the Supreme Court of Texas under that section.

SECTION 10.05. Sections 51.054(a) and (b), Estates Code, are amended to read as follows:

(a) Except as provided by Section 17.032, Civil Practice and Remedies Code, citation [Citation] or notice to a person to be served by publication shall be published one time on the public information Internet website maintained as required by Section 72.034, Government Code, and in a newspaper of general circulation in the county in which the proceeding is pending. The publication must be made at least 10 days before the return day of the service, excluding the date of publication.

(b) The date of service of citation or notice by publication is the earlier of:

(1) the date the citation or notice is published on the public information Internet website under Subsection (a); or

(2) the date of publication printed on the newspaper in which the citation or notice is published.

SECTION 10.06. Section 51.103(b), Estates Code, is amended to read as follows:

(b) Proof of service consists of:

(1) if the service is made by a sheriff or constable, the return of service;

(2) if the service is made by a private person, the

1 person's affidavit;

2 (3) if the service is made by mail:

3 (A) the certificate of the county clerk making  
4 the service, or the affidavit of the personal representative or  
5 other person making the service, stating that the citation or  
6 notice was mailed and the date of the mailing; and

7 (B) the return receipt attached to the  
8 certificate or affidavit, as applicable, if the mailing was by  
9 registered or certified mail and a receipt has been returned; and

10 (4) if the service is made by publication:

11 (A) an affidavit:

12 (i) made by the Office of Court  
13 Administration of the Texas Judicial System or an employee of the  
14 office;

15 (ii) that contains or to which is attached a  
16 copy of the published citation or notice; and

17 (iii) that states the date of publication  
18 on the public information Internet website maintained as required  
19 by Section 72.034, Government Code; and

20 (B) [7] an affidavit:

21 (i) [~~A~~] made by the publisher of the  
22 newspaper in which the citation or notice was published or an  
23 employee of the publisher;

24 (ii) [~~B~~] that contains or to which is  
25 attached a copy of the published citation or notice; and

26 (iii) [~~C~~] that states the date of  
27 publication printed on the newspaper in which the citation or



notice was published.

SECTION 10.07. Sections 1051.054(a) and (b), Estates Code, are amended to read as follows:

(a) Except as provided by Section 17.032, Civil Practice and Remedies Code, citation [Citation] or notice to a person to be served by publication shall be published one time on the public information Internet website maintained as required by Section 72.034, Government Code, and in a newspaper of general circulation in the county in which the proceeding is pending. The publication must be made at least 10 days before the return day of the citation or notice, excluding the date of publication.

(b) The date of service of citation or notice by publication is the earlier of:

(1) the date the citation or notice is published on the public information Internet website under Subsection (a); or

(2) the date of publication printed on the newspaper in which the citation or notice is published.

SECTION 10.08. Section 1051.153(b), Estates Code, is amended to read as follows:

(b) Proof of service consists of:

(1) if the service is made by a sheriff or constable, the return of service;

(2) if the service is made by a private person, the person's affidavit;

(3) if the service is made by mail:

(A) the certificate of the county clerk making the service, or the affidavit of the guardian or other person making

the service that states that the citation or notice was mailed and the date of the mailing; and

(B) the return receipt attached to the certificate, if the mailing was by registered or certified mail and a receipt has been returned; and

(4) if the service is made by publication:

(A) an affidavit that:

(i) is made by the Office of Court Administration of the Texas Judicial System or an employee of the office;

(ii) contains or to which is attached a copy of the published citation or notice; and

(iii) states the date of publication on the public information Internet website maintained as required by Section 72.034, Government Code; and

(B) [7] an affidavit that:

(i) [~~A~~] is made by the publisher of the newspaper in which the citation or notice was published or an employee of the publisher;

(ii) [~~B~~] contains or to which is attached a copy of the published citation or notice; and

(iii) [~~C~~] states the date of publication printed on the newspaper in which the citation or notice was published.

SECTION 10.09. Section 3.305, Family Code, is amended to read as follows:

Sec. 3.305. CITATION BY PUBLICATION. (a) Except as

1 provided by Section 17.032, Civil Practice and Remedies Code, if  
 2 ~~[If]~~ the residence of the respondent, other than a respondent  
 3 reported to be a prisoner of war or missing on public service, is  
 4 unknown, citation shall be published on the public information  
 5 Internet website maintained as required by Section 72.034,  
 6 Government Code, and in a newspaper of general circulation  
 7 published in the county in which the petition was filed. ~~[If that~~  
 8 ~~county has no newspaper of general circulation, citation shall be~~  
 9 ~~published in a newspaper of general circulation in an adjacent~~  
 10 ~~county or in the nearest county in which a newspaper of general~~  
 11 ~~circulation is published.]~~

12 (b) The notice shall be published on the public information  
 13 Internet website for at least two consecutive weeks before the  
 14 hearing and in a newspaper once a week for two consecutive weeks  
 15 before the hearing. Neither~~[, but the first]~~ notice may ~~[not]~~ be  
 16 initially published after the 20th day before the date set for the  
 17 hearing.

18 SECTION 10.10. Sections 102.010(a), (b), and (e), Family  
 19 Code, are amended to read as follows:

20 (a) Except as provided by Section 17.032, Civil Practice and  
 21 Remedies Code, citation ~~[Citation]~~ may be served ~~[by publication as~~  
 22 ~~in other civil cases]~~ to persons entitled to service of citation who  
 23 cannot be notified by personal service or registered or certified  
 24 mail and to persons whose names are unknown by publication on the  
 25 public information Internet website maintained as required by  
 26 Section 72.034, Government Code, and in a newspaper of general  
 27 circulation published in the county in which the petition was

1 filed.

2 (b) Citation by publication shall be published not later  
 3 than the 20th day before the date set for the hearing ~~[one time]~~.  
 4 ~~[If the name of a person entitled to service of citation is unknown,~~  
 5 ~~the notice to be published shall be addressed to "All Whom It May~~  
 6 ~~Concern."]~~ One or more causes to be heard on a certain day may be  
 7 included in one notice and hearings may be continued from time to  
 8 time without further notice.

9 (e) In a suit filed under Chapter 161 or 262 in which the  
 10 last name of the respondent is unknown, the court may order  
 11 substituted service of citation by publication, including  
 12 publication by posting the citation at the courthouse door for a  
 13 specified time, if the court finds and states in its order that the  
 14 method of substituted service is as likely as citation by  
 15 publication on the public information Internet website maintained  
 16 as required by Section 72.034, Government Code, or in a newspaper in  
 17 the manner described by Subsection (b) to give the respondent  
 18 actual notice of the suit. If the court orders that citation by  
 19 publication shall be completed by posting the citation at the  
 20 courthouse door for a specified time, service must be completed on,  
 21 and the answer date is computed from, the expiration date of the  
 22 posting period. If the court orders another method of substituted  
 23 service of citation by publication, service shall be completed as  
 24 directed by the court.

25 SECTION 10.11. Effective September 1, 2019, Subchapter D,  
 26 Chapter 51, Government Code, is amended by adding Section 51.3032  
 27 to read as follows:

1        Sec. 51.3032. ELECTRONIC DISPLAY OF OFFICIAL AND LEGAL  
2 NOTICES BY DISTRICT CLERK. A district clerk may post an official  
3 and legal notice by electronic display, instead of posting a  
4 physical document, in the manner provided for a county clerk by  
5 Section 82.051, Local Government Code.

6        SECTION 10.12. Section 715.006(c), Health and Safety Code,  
7 is amended to read as follows:

8        (c) Except as provided by Section 17.032, Civil Practice and  
9 Remedies Code, if [~~If~~] the address or identity of a plot owner is  
10 not known and cannot be ascertained with reasonable diligence,  
11 service by publication shall be made on the plot owner by publishing  
12 notice on the public information Internet website maintained as  
13 required by Section 72.034, Government Code, and at least three  
14 times in a newspaper of general circulation in the county in which  
15 the cemetery is located. [~~If there is not a newspaper of general~~  
16 ~~circulation in the county in which the cemetery is located, the~~  
17 ~~notice may be published in a newspaper of general circulation in an~~  
18 ~~adjoining county.~~]

19        SECTION 10.13. Except as otherwise provided by this  
20 article, this article takes effect June 1, 2020.

21                    ARTICLE 11. NOTARIZATION REQUIREMENTS

22        SECTION 11.01. Section 31.008(d), Family Code, is amended  
23 to read as follows:

24        (d) The [~~Notwithstanding Section 132.001, Civil Practice~~  
25 ~~and Remedies Code, the~~] waiver must be sworn before a notary public  
26 who is not an attorney in the suit or conform to the requirements  
27 for an unsworn declaration under Section 132.001, Civil Practice

1 and Remedies Code. This subsection does not apply if the party  
2 executing the waiver is incarcerated.

3 SECTION 11.02. Section 45.107(d), Family Code, is amended  
4 to read as follows:

5 (d) The [~~Notwithstanding Section 132.001, Civil Practice~~  
6 ~~and Remedies Code, the~~] waiver must be sworn before a notary public  
7 who is not an attorney in the suit or conform to the requirements  
8 for an unsworn declaration under Section 132.001, Civil Practice  
9 and Remedies Code. This subsection does not apply if the party  
10 executing the waiver is incarcerated.

11 ARTICLE 12. COURT GRANT PROGRAMS

12 SECTION 12.01. Section 22.017, Government Code, is amended  
13 to read as follows:

14 Sec. 22.017. GRANTS BY COMMISSIONS ESTABLISHED BY SUPREME  
15 COURT [~~FOR CHILD PROTECTION~~]. (a) In this section:

16 (1) [~~7~~] "Children's commission" means the Permanent  
17 Judicial Commission for Children, Youth and Families established by  
18 the supreme court.

19 (2) "Mental health commission" means the Texas  
20 Judicial Commission on Mental Health established by the supreme  
21 court.

22 (b) The children's commission shall develop and administer  
23 a program to provide grants from available funds for initiatives  
24 that will:

25 (1) improve well-being, safety, and permanency  
26 outcomes in child protection cases; or

27 (2) [~~7~~] enhance due process for the parties[~~7~~] or

1 ~~[increase]~~ the timeliness of resolution in ~~[child protection]~~ cases  
2 involving the welfare of a child.

3 (c) The children's commission may develop and administer a  
4 program to provide grants from available funds for:

5 (1) initiatives designed to prevent or minimize the  
6 involvement of children in the juvenile justice system or promote  
7 the rehabilitation of children involved in the juvenile justice  
8 system; and

9 (2) any other initiatives identified by the children's  
10 commission or the supreme court to improve the administration of  
11 justice for children.

12 (d) To be eligible for a grant administered by the  
13 children's commission under this section, a prospective recipient  
14 must:

15 (1) use the grant money to:

16 (A) improve well-being, safety, or permanency  
17 outcomes in child protection cases;

18 (B) [7] enhance due process for the parties or  
19 the~~[7 or increase]~~ timeliness of resolution in ~~[child protection]~~  
20 cases involving the welfare of a child;

21 (C) prevent or minimize the involvement of  
22 children in the juvenile justice system or promote the  
23 rehabilitation of children involved in the juvenile justice system;  
24 or

25 (D) accomplish any other initiatives identified  
26 by the children's commission or the supreme court to improve the  
27 administration of justice for children; and

1           (2) apply for the grant in accordance with procedures  
2 developed by the children's commission and comply with any other  
3 requirements of the supreme court.

4           (e) The mental health commission may develop and administer  
5 a program to provide grants from available funds for initiatives  
6 that will improve the administration of justice for individuals  
7 with mental health needs or an intellectual or developmental  
8 disability.

9           (f) To be eligible for a grant administered by the mental  
10 health commission under this section, a prospective recipient must:

11                 (1) use the grant money to improve the administration  
12 of justice for individuals with mental health needs or an  
13 intellectual or developmental disability; and

14                 (2) apply for the grant in accordance with procedures  
15 developed by the mental health commission and comply with any other  
16 requirements of the supreme court.

17           (g) [(d)] If the children's commission or the mental health  
18 commission awards a grant under this section, the commission  
19 administering the grant shall:

20                 (1) direct the comptroller to distribute the grant  
21 money; and

22                 (2) monitor the use of the grant money.

23           (h) [(e)] The children's commission and the mental health  
24 commission may accept gifts, grants, and donations for purposes of  
25 this section. [The commission may not use state funds to provide a  
26 grant under this section or to administer the grant program.]



ARTICLE 13. CASES BROUGHT BY ATTORNEY GENERAL

SECTION 13.01. Section 231.103(a), Family Code, is amended to read as follows:

- (a) The Title IV-D agency may:
- (1) charge a reasonable application fee;
  - (2) charge a \$35 [~~\$25~~] annual service fee; and
  - (3) to the extent permitted by federal law, recover costs for the services provided in a Title IV-D case.

SECTION 13.02. Section 402.006(c), Government Code, is amended to read as follows:

(c) In a case in which the state is entitled to recover a penalty or damages the attorney general is entitled, in addition to any other remedy available by law and on behalf of the state, to reasonable attorney's fees and court costs.

ARTICLE 14. VISITING JUDGES

SECTION 14.01. Section 25.0022, Government Code, is amended by adding Subsections (v) and (w) to read as follows:

(v) A judge who is assigned under this section to a court in a county other than the county in which the judge serves is not an employee of the other county.

(w) A former or retired judge who is assigned under this section is not an employee of the county in which the assigned court is located.

SECTION 14.02. Section 74.061, Government Code, is amended by adding Subsections (l) and (m) to read as follows:

(l) A judge of a district, statutory probate, constitutional county, or statutory county court who is assigned

under this chapter to a court in a county other than the county in which the judge serves is not an employee of the other county.

(m) A former or retired judge or an active judge or justice of the supreme court, the court of criminal appeals, or a court of appeals who is assigned under this chapter is not an employee of the county in which the assigned court is located.

SECTION 14.03. Subchapter A, Chapter 75, Government Code, is amended by adding Section 75.004 to read as follows:

Sec. 75.004. EMPLOYEE STATUS. A former or retired judge or justice who is assigned under this subchapter is not an employee of the county in which the assigned court is located.

#### ARTICLE 15. REPEALERS AND TRANSITIONS

SECTION 15.01. The following provisions of the Code of Criminal Procedure are repealed:

- (1) Article 103.003(b-1); and
- (2) Article 103.0033.

SECTION 15.02. The following provisions of the Estates Code are repealed:

- (1) Section 51.054(c); and
- (2) Section 1051.054(c).

SECTION 15.03. The following provisions of the Government Code are repealed:

- (1) Section 25.1312(b-1);
- (2) Section 43.111(c);
- (3) Subchapter C, Chapter 75;
- (4) Section 832.001(b);
- (5) Section 835.103;

1           (6) Section 837.001(b); and

2           (7) Section 840.104.

3           SECTION 15.04. The following provisions of the Local  
4 Government Code are repealed:

5           (1) Section 133.058(e); and

6           (2) Section 133.103(c-1).

7           SECTION 15.05. The Office of Court Administration of the  
8 Texas Judicial System is required to implement a provision of this  
9 Act only if the legislature appropriates money specifically for  
10 that purpose. If the legislature does not appropriate money  
11 specifically for that purpose, the office may, but is not required  
12 to, implement a provision of this Act using other appropriations  
13 available for that purpose.

14                   ARTICLE 16. EFFECTIVE DATE

15           SECTION 16.01. Except as otherwise provided by this Act,  
16 this Act takes effect September 1, 2019.

<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <div>President of the Senate</div>	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <div>Speaker of the House</div>
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I hereby certify that S.B. No. 891 passed the Senate on April 16, 2019, by the following vote: Yeas 31, Nays 0; May 20, 2019, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2019, House granted request of the Senate; May 26, 2019, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <div>Secretary of the Senate</div>
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I hereby certify that S.B. No. 891 passed the House, with amendments, on May 17, 2019, by the following vote: Yeas 141, Nays 2, three present not voting; May 22, 2019, House granted request of the Senate for appointment of Conference Committee; May 26, 2019, House adopted Conference Committee Report by the following vote: Yeas 144, Nays 2, one present not voting.

	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <div>Chief Clerk of the House</div>
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Approved:

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Date

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Governor

AN ACT

relating to probate and guardianship matters and certain procedures for persons who are incapacitated or have a mental illness.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 30.014(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) In a civil action, including a probate or guardianship proceeding, filed in a district court, county court, ~~or~~ statutory county court, or statutory probate court, each party or the party's attorney shall include in its initial pleading:

(1) the last three numbers of the party's driver's license number, if the party has been issued a driver's license; and

(2) the last three numbers of the party's social security number, if the party has been issued a social security number.

SECTION 2. Section 33.101, Estates Code, is amended to read as follows:

Sec. 33.101. TRANSFER TO OTHER COUNTY IN WHICH VENUE IS PROPER. If probate proceedings involving the same estate are commenced in more than one county and the court making a determination of venue as provided by Section 33.053 determines that venue is proper in another county, the court clerk shall make and retain a copy of the entire file in the case and transmit the original file in electronic or paper form to the court in the county

1 in which venue is proper. The court to which the file is  
2 transmitted shall conduct the proceeding in the same manner as if  
3 the proceeding had originally been commenced in that county.

4 SECTION 3. Section 33.102(a), Estates Code, is amended to  
5 read as follows:

6 (a) If it appears to the court at any time before the final  
7 order in a probate proceeding is rendered that the court does not  
8 have priority of venue over the proceeding, the court shall, on the  
9 application of an interested person, transfer the proceeding to the  
10 proper county by transmitting to the proper court in that county in  
11 electronic or paper form:

12 (1) the original file in the case; and

13 (2) certified copies of all entries that have been  
14 made in the judge's probate docket in the proceeding.

15 SECTION 4. Section 33.103, Estates Code, is amended by  
16 adding Subsection (c) to read as follows:

17 (c) The transmittal under Subsection (b) of the original  
18 file and the certified copy of the index may be in electronic or  
19 paper form, except that an original will filed in the probate  
20 proceeding, if any, must be delivered to the court to which the  
21 proceeding is transferred.

22 SECTION 5. Section 51.003(b), Estates Code, is amended to  
23 read as follows:

24 (b) A citation or notice issued by the county clerk must be  
25 styled "The State of Texas" and be signed by the clerk under the  
26 court's ~~clerk's~~ seal.

27 SECTION 6. Section 202.054, Estates Code, is amended to

1 read as follows:

2 Sec. 202.054. PERSONAL SERVICE OF CITATION MAY BE REQUIRED.

3 (a) The court may require that service of citation in a proceeding  
4 to declare heirship be made by personal service on some or all of  
5 those named as distributees in the application filed under Section  
6 202.005.

7 (b) If a distributee to be cited under Subsection (a) is  
8 absent from or is not a resident of this state, any disinterested  
9 person competent to make an oath that the citation was served may  
10 serve the citation.

11 SECTION 7. Section 351.351, Estates Code, is amended to  
12 read as follows:

13 Sec. 351.351. APPLICABILITY. This subchapter does not  
14 apply to:

15 (1) the appointment of an independent executor or  
16 administrator under Section 401.002 or 401.003(a); or

17 (2) the appointment of a successor independent  
18 administrator ~~[executor]~~ under Section 404.005.

19 SECTION 8. Section 404.0036(b), Estates Code, is amended to  
20 read as follows:

21 (b) If an independent executor is removed by the court under  
22 Section 404.003 or 404.0035, the court may, on application, appoint  
23 a successor independent administrator ~~[executor]~~ as provided by  
24 Section 404.005.

25 SECTION 9. The heading to Section 404.005, Estates Code, is  
26 amended to read as follows:

27 Sec. 404.005. COURT-APPOINTED SUCCESSOR INDEPENDENT

1 ADMINISTRATOR [~~EXECUTOR~~].

2 SECTION 10. Sections 404.005(a), (b), (c), (h), and (i),  
3 Estates Code, are amended to read as follows:

4 (a) If the will of a person who dies testate names an  
5 independent executor who, having qualified, fails for any reason to  
6 continue to serve, or is removed for cause by the court, and the  
7 will does not name a successor independent executor or if each  
8 successor executor named in the will fails for any reason to qualify  
9 as executor or indicates by affidavit filed with the application  
10 for an order continuing independent administration the successor  
11 executor's inability or unwillingness to serve as successor  
12 independent executor, all of the distributees of the decedent as of  
13 the filing of the application for an order continuing independent  
14 administration may apply to the probate court for the appointment  
15 of a qualified person, firm, or corporation to serve as successor  
16 independent administrator [~~executor~~]. If the probate court finds  
17 that continued administration of the estate is necessary, the court  
18 shall enter an order continuing independent administration and  
19 appointing the person, firm, or corporation designated in the  
20 application as successor independent administrator [~~executor~~],  
21 unless the probate court finds that it would not be in the best  
22 interest of the estate to do so. The successor independent  
23 administrator [~~executor~~] shall serve with all of the powers and  
24 privileges granted to the successor's predecessor independent  
25 executor.

26 (b) Except as otherwise provided by this subsection, if a  
27 distributee described in this section is an incapacitated person,



1 the guardian of the person of the distributee may sign the  
2 application on behalf of the distributee. If the probate court  
3 finds that either the continuing of independent administration or  
4 the appointment of the person, firm, or corporation designated in  
5 the application as successor independent administrator [~~executor~~]  
6 would not be in the best interest of the incapacitated person, then,  
7 notwithstanding Subsection (a), the court may not enter an order  
8 continuing independent administration of the estate. If the  
9 distributee is an incapacitated person and has no guardian of the  
10 person, the court may appoint a guardian ad litem to make  
11 application on behalf of the incapacitated person if the probate  
12 court considers such an appointment necessary to protect the  
13 interest of that distributee. If a distributee described in this  
14 section is a minor and has no guardian of the person, a natural  
15 guardian of the minor may sign the application for the order  
16 continuing independent administration on the minor's behalf unless  
17 a conflict of interest exists between the minor and the natural  
18 guardian.

19 (c) Except as otherwise provided by this subsection, if a  
20 trust is created in the decedent's will or if the decedent's will  
21 devises property to a trustee as described by Section 254.001, the  
22 person or class of persons entitled to receive property outright  
23 from the trust on the decedent's death and those first eligible to  
24 receive the income from the trust, determined as if the trust were  
25 to be in existence on the date of the filing of the application for  
26 an order continuing independent administration, shall, for the  
27 purposes of this section, be considered to be the distributee or

1 distributees on behalf of the trust, and any other trust or trusts  
2 coming into existence on the termination of the trust, and are  
3 authorized to apply for an order continuing independent  
4 administration on behalf of the trust without the consent or  
5 agreement of the trustee or any other beneficiary of the trust, or  
6 the trustee or any beneficiary of any other trust which may come  
7 into existence on the termination of the trust. If a person  
8 considered to be a distributee under this subsection is an  
9 incapacitated person, the trustee or cotrustee may apply for the  
10 order continuing independent administration or sign the  
11 application on the incapacitated person's behalf if the trustee or  
12 cotrustee is not the person proposed to serve as the independent  
13 administrator ~~[executor]~~.

14 (h) If a successor independent administrator ~~[executor]~~ is  
15 appointed under this section, then, unless the probate court shall  
16 waive bond on application for waiver, the successor independent  
17 administrator ~~[executor]~~ shall be required to enter into bond  
18 payable to and to be approved by the judge and the judge's  
19 successors in a sum that is found by the judge to be adequate under  
20 all circumstances, or a bond with one surety in an amount that is  
21 found by the judge to be adequate under all circumstances, if the  
22 surety is an authorized corporate surety.

23 (i) Absent proof of fraud or collusion on the part of a  
24 judge, the judge may not be held civilly liable for the commission  
25 of misdeeds or the omission of any required act of any person, firm,  
26 or corporation designated as a successor independent administrator  
27 ~~[executor]~~ under this section. Section 351.354 does not apply to an

1 appointment of a successor independent administrator ~~[executor]~~  
2 under this section.

3 SECTION 11. Section 452.006, Estates Code, is amended by  
4 adding Subsection (c) to read as follows:

5 (c) The appointee shall file with the court proof of service  
6 of the notice required under Subsection (a) in the manner provided  
7 by Section 51.103(b)(3).

8 SECTION 12. Section 503.002, Estates Code, is amended to  
9 read as follows:

10 Sec. 503.002. RECORDING OF CERTAIN FOREIGN TESTAMENTARY  
11 INSTRUMENTS IN LANGUAGE OTHER THAN ENGLISH ~~[ORIGINAL SIGNATURES NOT~~  
12 ~~REQUIRED]~~. (a) An authenticated copy of a will or other  
13 testamentary instrument described by Section 503.001(a), along  
14 with a copy of the judgment, order, or decree by which the  
15 instrument was admitted to probate that has the attestation and  
16 certificate required by Section 501.002(c), that is written in  
17 whole or in part in a language other than English may be filed for  
18 recording in the deed records in any county in this state in which  
19 the land conveyed or disposed of in the instrument is located if:

20 (1) a correct English translation is recorded with the  
21 authenticated copies of the will or other testamentary instrument  
22 and judgment, order, or decree by which the instrument was admitted  
23 to probate; and

24 (2) the accuracy of the translation is sworn to before  
25 an officer authorized to administer oaths ~~[Notwithstanding Section~~  
26 ~~501.002(c), the original signatures required by that section may~~  
27 ~~not be required for a recordation in the deed records in accordance~~

1 ~~with Section 503.001 or for a purpose described by Section 503.051~~  
2 ~~or 503.052]~~.

3       (b) The recording of an authenticated copy of a will or  
4 other testamentary instrument and a copy of the judgment, order, or  
5 decree in the manner provided by Subsection (a) operates as  
6 constructive notice from the date of filing to all persons of the:

7               (1) existence of the instrument; and

8               (2) title or titles conferred by the instrument.

9       SECTION 13. Chapter 1002, Estates Code, is amended by  
10 adding Sections 1002.0215 and 1002.0265 to read as follows:

11       Sec. 1002.0215. OFFICE OF PUBLIC GUARDIAN. "Office of  
12 public guardian" means an office of public guardian established by  
13 the commissioners court of a county under Subchapter G-1, Chapter  
14 1104.

15       Sec. 1002.0265. PUBLIC GUARDIAN. "Public guardian" means a  
16 person:

17               (1) appointed to administer an office of public  
18 guardian by the commissioners court of a county under Subchapter  
19 G-1, Chapter 1104; or

20               (2) with which one or more counties enter into an  
21 agreement under Section 1104.327(a)(2) or (d).

22       SECTION 14. Section 1021.001, Estates Code, is amended to  
23 read as follows:

24       Sec. 1021.001. MATTERS RELATED TO GUARDIANSHIP PROCEEDING.

25 (a) For purposes of this code, in a county in which there is no  
26 statutory probate court or county court of law exercising original  
27 probate jurisdiction, a matter related to a guardianship proceeding

1 includes:

2 (1) the granting of letters of guardianship;

3 (2) the settling of an account of a guardian and all  
4 other matters relating to the settlement, partition, or  
5 distribution of a ward's estate;

6 (3) a claim brought by or against a guardianship  
7 estate;

8 (4) an action for trial of title to real property that  
9 is guardianship estate property, including the enforcement of a  
10 lien against the property;

11 (5) an action for trial of the right of property that  
12 is guardianship estate property;

13 (6) after a guardianship of the estate of a ward is  
14 required to be settled as provided by Section [1204.001](#):

15 (A) an action brought by or on behalf of the  
16 former ward against a former guardian of the ward for alleged  
17 misconduct arising from the performance of the person's duties as  
18 guardian;

19 (B) an action calling on the surety of a guardian  
20 or former guardian to perform in place of the guardian or former  
21 guardian, which may include the award of a judgment against the  
22 guardian or former guardian in favor of the surety;

23 (C) an action against a former guardian of the  
24 former ward that is brought by a surety that is called on to perform  
25 in place of the former guardian;

26 (D) a claim for the payment of compensation,  
27 expenses, and court costs, and any other matter authorized under

Chapter 1155; and

(E) a matter related to an authorization made or duty performed by a guardian under Chapter 1204; and

(7) the appointment of a trustee for a trust created under Section 1301.053 or 1301.054, the settling of an account of the trustee, and all other matters relating to the trust.

(a-1) For purposes of this code, in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, a matter related to a guardianship proceeding includes:

(1) all matters and actions described in Subsection (a);

(2) the interpretation and administration of a testamentary trust in which a ward is an income or remainder beneficiary; and

(3) the interpretation and administration of an inter vivos trust in which a ward is an income or remainder beneficiary.

(b) For purposes of this code, in a county in which there is a statutory probate court, a matter related to a guardianship proceeding includes:

(1) all matters and actions described in Subsections ~~[Subsection]~~ (a) and (a-1);

(2) a suit, action, or application filed against or on behalf of a guardianship or a trustee of a trust created under Section 1301.053 or 1301.054; and

(3) a cause of action in which a guardian in a guardianship pending in the statutory probate court is a party.

SECTION 15. Section 1023.006, Estates Code, is amended to read as follows:

Sec. 1023.006. TRANSFER OF RECORD. When an order of transfer is made under Section 1023.005, the clerk shall record any unrecorded papers of the guardianship required to be recorded. On payment of the clerk's fee, the clerk shall transmit in electronic or paper form to the county clerk of the county to which the guardianship was ordered transferred:

- (1) the case file of the guardianship proceedings; and
- (2) a certified copy of the index of the guardianship records.

SECTION 16. Section 1023.007, Estates Code, is amended to read as follows:

Sec. 1023.007. TRANSFER EFFECTIVE. The order transferring a guardianship does not take effect until:

- (1) the case file and a certified copy of the index required by Section 1023.006 are filed in electronic or paper form in the office of the county clerk of the county to which the guardianship was ordered transferred; and

- (2) a certificate under the clerk's official seal and reporting the filing of the case file and a certified copy of the index is filed in electronic or paper form in the court ordering the transfer by the county clerk of the county to which the guardianship was ordered transferred.

SECTION 17. Section 1051.003(b), Estates Code, is amended to read as follows:

- (b) A citation or notice issued by the county clerk must be

1 styled "The State of Texas" and be signed by the clerk under the  
2 court's ~~[clerk's]~~ seal.

3 SECTION 18. The heading to Chapter 1054, Estates Code, is  
4 amended to read as follows:

5 CHAPTER 1054. COURT OFFICERS, ~~[AND]~~ COURT-APPOINTED PERSONS, AND  
6 ATTORNEYS

7 SECTION 19. The heading to Subchapter E, Chapter 1054,  
8 Estates Code, is amended to read as follows:

9 SUBCHAPTER E. QUALIFICATIONS TO SERVE AS ~~[COURT-APPOINTED]~~  
10 ATTORNEY

11 SECTION 20. Section 1054.201, Estates Code, is amended by  
12 amending Subsection (a) and adding Subsection (c) to read as  
13 follows:

14 (a) Except as provided by Subsection (c), an ~~[An]~~ attorney  
15 representing any person's interests ~~[for an applicant for~~  
16 ~~guardianship and a court-appointed attorney]~~ in a guardianship  
17 proceeding, including an attorney ad litem, must be certified by  
18 the State Bar of Texas, or a person or other entity designated by  
19 the state bar, as having successfully completed a course of study in  
20 guardianship law and procedure sponsored by the state bar or the  
21 state bar's designee.

22 (c) An attorney may commence representation of a person's  
23 interests and file an appearance in a guardianship proceeding  
24 before completing the course required for certification under  
25 Subsection (a), but must complete the course not later than the 14th  
26 day after the date of filing the appearance and before filing any  
27 substantive motion in the guardianship proceeding.



SECTION 21. Section 1101.001(b), Estates Code, is amended to read as follows:

(b) The application must be sworn to by the applicant and state:

(1) the proposed ward's name, sex, date of birth, and address;

(2) the name, former name, if any, relationship, and address of the person the applicant seeks to have appointed as guardian;

(3) whether guardianship of the person or estate, or both, is sought;

(3-a) whether alternatives to guardianship and available supports and services to avoid guardianship were considered;

(3-b) whether any alternatives to guardianship and supports and services available to the proposed ward considered are feasible and would avoid the need for a guardianship;

(4) the nature and degree of the alleged incapacity, the specific areas of protection and assistance requested, and the limitation or termination of rights requested to be included in the court's order of appointment, including a termination of:

(A) the right of a proposed ward who is 18 years of age or older to vote in a public election;

(B) the proposed ward's eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code; and

(C) the right of a proposed ward to make personal

1 decisions regarding residence;

2 (5) the facts requiring the appointment of a guardian;

3 (6) the interest of the applicant in the appointment  
4 of a guardian;

5 (7) the nature and description of any kind of  
6 guardianship existing for the proposed ward in any other state;

7 (8) the name and address of any person or institution  
8 having the care and custody of the proposed ward;

9 (9) the approximate value and a detailed description  
10 of the proposed ward's property, including:

11 (A) liquid assets, including any compensation,  
12 pension, insurance, or allowance to which the proposed ward may be  
13 entitled; and

14 (B) non-liquid assets, including real property;

15 (10) the name and address of any person whom the  
16 applicant knows to hold a power of attorney signed by the proposed  
17 ward and a description of the type of power of attorney;

18 (11) for a proposed ward who is a minor, the following  
19 information if known by the applicant:

20 (A) the name of each of the proposed ward's  
21 parents and either the parent's address or that the parent is  
22 deceased;

23 (B) the name and age of each of the proposed  
24 ward's siblings, if any, and either the sibling's address or that  
25 the sibling is deceased; and

26 (C) if each of the proposed ward's parents and  
27 adult siblings are deceased, the names and addresses of the

1 proposed ward's other living relatives who are related to the  
2 proposed ward within the third degree by consanguinity and who are  
3 adults;

4 (12) for a proposed ward who is a minor, whether the  
5 minor was the subject of a legal or conservatorship proceeding in  
6 the preceding two years and, if so:

7 (A) the court involved;

8 (B) the nature of the proceeding; and

9 (C) any final disposition of the proceeding;

10 (13) for a proposed ward who is an adult, the following  
11 information if known by the applicant:

12 (A) the name of the proposed ward's spouse, if  
13 any, and either the spouse's address or that the spouse is deceased;

14 (B) the name of each of the proposed ward's  
15 parents and either the parent's address or that the parent is  
16 deceased;

17 (C) the name and age of each of the proposed  
18 ward's siblings, if any, and either the sibling's address or that  
19 the sibling is deceased;

20 (D) the name and age of each of the proposed  
21 ward's children, if any, and either the child's address or that the  
22 child is deceased; and

23 (E) if there is no living spouse, parent, adult  
24 sibling, or adult child of the proposed ward, the names and  
25 addresses of the proposed ward's other living relatives who are  
26 related to the proposed ward within the third degree by  
27 consanguinity and who are adults;

(14) facts showing that the court has venue of the proceeding; and

(15) if applicable, that the person whom the applicant seeks to have appointed as a guardian is a private professional guardian who is certified under Subchapter C, Chapter 155, Government Code, and has complied with the requirements of Subchapter G, Chapter 1104.

SECTION 22. Section 1101.153(a), Estates Code, is amended to read as follows:

(a) A court order appointing a guardian must:

(1) specify:

(A) ~~[(1)]~~ the name of the person appointed;

(B) ~~[(2)]~~ the name of the ward;

(C) ~~[(3)]~~ whether the guardian is of the person or estate of the ward, or both;

(D) ~~[(4)]~~ the amount of any bond required;

(E) ~~[(5)]~~ if it is a guardianship of the estate of the ward and the court considers an appraisal to be necessary, one, two, or three disinterested persons to appraise the estate and to return the appraisement to the court; and

(F) ~~[(6)]~~ that the clerk will issue letters of guardianship to the person appointed when the person has qualified according to law; and

(2) if the court waives the guardian's training requirement, contain a finding that the waiver is in accordance with rules adopted by the supreme court under Section 155.203, Government Code.

SECTION 23. Section 1104.251(a), Estates Code, is amended to read as follows:

(a) An individual must be certified under Subchapter C, Chapter 155, Government Code, if the individual:

(1) is a private professional guardian;

(2) will represent the interests of a ward as a guardian on behalf of a private professional guardian;

(3) is providing guardianship services to a ward of a guardianship program on the program's behalf, except as provided by Section 1104.254; ~~or~~

(4) is an employee of the Health and Human Services Commission ~~[Department of Aging and Disability Services]~~ providing guardianship services to a ward of the commission;

(5) is a public guardian; or

(6) will represent the interests of a ward as a guardian on behalf of a public guardian ~~[department]~~.

SECTION 24. Chapter 1104, Estates Code, is amended by adding Subchapter G-1 to read as follows:

SUBCHAPTER G-1. PUBLIC GUARDIANS

Sec. 1104.326. DEFINITION. In this subchapter, unless the context otherwise requires, "office" means an office of public guardian established under this subchapter.

Sec. 1104.327. ESTABLISHMENT OF OFFICES; PUBLIC GUARDIANS.

(a) The commissioners court of a county by order may:

(1) create an office of public guardian to provide guardianship services described by Section 1104.334 to incapacitated persons; or

1           (2) enter into an agreement with a person operating a  
2 nonprofit guardianship program or private professional  
3 guardianship program located in the county or in an adjacent county  
4 to act as a public guardian by providing guardianship services  
5 described by Section 1104.334 to incapacitated persons.

6           (b) Subject to Subsection (c) and Section 1104.328, the  
7 commissioners court of a county shall appoint an individual as  
8 public guardian to administer the office of public guardian  
9 established under Subsection (a)(1) and may employ or authorize the  
10 public guardian to employ personnel necessary to perform the duties  
11 of the office, including personnel who will represent the interests  
12 of a ward as a guardian on behalf of the office if approved by the  
13 commissioners court.

14           (c) The commissioners court of a county may enter into an  
15 agreement with an individual to act as public guardian under  
16 Subsection (b) on a part-time basis with appropriate compensation  
17 if:

18                 (1) the commissioners court determines a full-time  
19 appointment does not serve the needs of the county; and

20                 (2) the individual who is appointed on a part-time  
21 basis is not employed in or does not hold another position that  
22 presents a conflict of interest.

23           (d) The commissioners courts of two or more counties may  
24 collectively enter into an agreement:

25                 (1) to create and fund an office of public guardian for  
26 purposes of Subsection (a)(1) and to appoint the same individual as  
27 public guardian to that office under Subsection (b); or

1           (2) with a person operating a guardianship program  
2 described by Subsection (a)(2) to serve as a public guardian for  
3 purposes of that subdivision.

4           (e) An individual appointed as public guardian under  
5 Subsection (b) serves a term of five years.

6           Sec. 1104.328. QUALIFICATIONS OF PUBLIC GUARDIAN. To be  
7 appointed as public guardian under Section 1104.327(b), an  
8 individual must:

9           (1) be a licensed attorney or be certified under  
10 Subchapter C, Chapter 155, Government Code; and

11           (2) have demonstrable guardianship experience.

12           Sec. 1104.329. CONFLICT OF INTEREST. (a) Except as  
13 provided by Subsection (b), an office or public guardian must be  
14 independent from providers of services to wards and proposed wards  
15 and may not directly provide housing, medical, legal, or other  
16 direct, non-surrogate decision-making services to a ward or  
17 proposed ward, unless approved by the court.

18           (b) An office or public guardian may provide money  
19 management services described by Section 531.125, Government Code,  
20 or other representative payee services to a ward or proposed ward.

21           Sec. 1104.330. COMPENSATION. A person appointed or acting  
22 as public guardian under Section 1104.327 shall receive  
23 compensation as set by the commissioners court and is not entitled  
24 to compensation under Subchapter A, Chapter 1155, unless approved  
25 by the court or the person is appointed as guardian of a ward in  
26 accordance with Section 1104.334(a)(2)(B).

27           Sec. 1104.331. BOND REQUIREMENT. (a) A public guardian

1 shall file with the court clerk a general bond in an amount fixed by  
2 the commissioners court payable to the county and issued by a surety  
3 company approved by the county judge. The bond must be conditioned  
4 on the faithful performance by the person of the person's duties  
5 and, if the public guardian administers an office, the office's  
6 duties.

7 (b) The bond required by this section satisfies any bond  
8 required under Chapter [1105](#).

9 Sec. 1104.332. VACANCY. If an individual appointed as  
10 public guardian under Section 1104.327(b) vacates the position, the  
11 commissioners court shall appoint, subject to Section 1104.328, an  
12 individual to serve as public guardian for the unexpired term.

13 Sec. 1104.333. POWERS AND DUTIES. (a) An office or public  
14 guardian shall:

15 (1) if applicable, evaluate the financial status of a  
16 proposed ward to determine whether the proposed ward is eligible to  
17 have the office or public guardian appointed guardian of the ward  
18 under Section 1104.334(a)(2)(A); and

19 (2) serve as guardian of the person or of the estate of  
20 a ward, or both, on appointment by a court in accordance with the  
21 requirements of this title.

22 (b) In connection with a financial evaluation under  
23 Subsection (a)(1) and on the request of an office or public  
24 guardian, a court with jurisdiction over the guardianship  
25 proceeding may order the release of public and private records,  
26 including otherwise confidential records, to the office or public  
27 guardian.



1        (c) Notwithstanding Section 552.261, Government Code, a  
2 state agency may not charge an office or public guardian for  
3 providing the office or public guardian with a copy of public  
4 information requested from the agency by the office or public  
5 guardian.

6        Sec. 1104.334. APPOINTMENT OF OFFICE OR PUBLIC GUARDIAN AS  
7 GUARDIAN. (a) In accordance with applicable law, including  
8 Subchapter C, Chapter 1101, a court may appoint an office or public  
9 guardian to serve as guardian of the person or of the estate of a  
10 ward, or both, if:

11            (1) on the date the guardianship application is filed,  
12 the ward resides in or is located in the county served by the office  
13 or public guardian; and

14            (2) the court finds that the ward:

15                    (A) does not have sufficient assets or other  
16 resources to pay a private professional guardian to serve as the  
17 ward's guardian and the appointment is in the ward's best interest;  
18 or

19                    (B) has sufficient assets or other resources to  
20 pay a private professional guardian to serve as the ward's  
21 guardian, the appointment is in the ward's best interest, and:

22                            (i) the ward's family members who are  
23 eligible for appointment as the ward's guardian agree to the  
24 appointment of an office or public guardian to serve as the ward's  
25 guardian or are unable to agree on the person or persons that should  
26 be appointed as the ward's guardian; or

27                            (ii) the ward does not have a family member,

1 friend, or other suitable person willing and able to serve as the  
2 ward's guardian.

3 (b) For purposes of Subsection (a)(2), the determination of  
4 a ward's ability to pay a private professional guardian is  
5 dependent on:

6 (1) the nature, extent, and liquidity of the ward's  
7 assets;

8 (2) the ward's disposable net income, including income  
9 of a recipient of medical assistance that is used to pay expenses  
10 under Section 1155.202(a);

11 (3) the nature of the guardianship;

12 (4) the type, duration, and complexity of services  
13 required by the ward; and

14 (5) additional, foreseeable expenses.

15 (c) The number of appointments of an office under this  
16 section may not exceed 35 wards for each guardian representing the  
17 interests of wards on behalf of the office.

18 (d) If each guardian representing the interests of wards on  
19 behalf of an office reaches the limitation provided by Subsection  
20 (c), the office shall immediately give notice to the courts.

21 Sec. 1104.335. CONFIDENTIALITY AND DISCLOSURE OF  
22 INFORMATION. (a) All files, reports, records, communications, or  
23 working papers used or developed by an office or public guardian in  
24 the performance of duties relating to a financial evaluation under  
25 Section 1104.333(a)(1) or the provision of guardianship services  
26 are confidential and not subject to disclosure under Chapter 552,  
27 Government Code.

1        (b) Confidential information may be disclosed only for a  
2 purpose consistent with this subchapter, as required by other state  
3 or federal law, or as necessary to enable an office or public  
4 guardian to exercise the powers and duties as guardian of the person  
5 or of the estate of a ward, or both.

6        (c) A court on its own motion or on the motion of an  
7 interested person may order disclosure of confidential information  
8 only if:

9                (1) a hearing on the motion is conducted;

10               (2) notice of the hearing is served on the office or  
11 public guardian and each interested person; and

12               (3) the court determines after the hearing and an in  
13 camera review of the information that disclosure is essential to  
14 the administration of justice and will not endanger the life or  
15 safety of any individual who:

16                        (A) is being assessed for guardianship services;

17                        (B) is a ward of the office or public guardian; or

18                        (C) provides services to a ward of the office or  
19 public guardian.

20        (d) The Office of Court Administration of the Texas Judicial  
21 System shall establish policies and procedures for the exchange of  
22 information between offices, public guardians, and other  
23 appropriate governmental entities, as necessary for offices,  
24 public guardians, and governmental entities to properly execute  
25 their respective duties and responsibilities relating to  
26 guardianship services or other needed services for a ward. An  
27 exchange of information under this subsection does not constitute a

1 release for purposes of waiving the confidentiality of the  
2 information exchanged.

3 (e) To the extent consistent with policies and procedures  
4 adopted by an office or public guardian, the office or public  
5 guardian on request may release confidential information in the  
6 record of an individual who is a former ward of the office or public  
7 guardian to:

- 8 (1) the individual;  
9 (2) the individual's guardian; or  
10 (3) an executor or administrator of the individual's  
11 estate.

12 (f) Before releasing confidential information under  
13 Subsection (e), an office or public guardian shall edit the  
14 information to protect the identity of any individual whose life or  
15 safety may be endangered by the release. A release of information  
16 under Subsection (e) does not constitute a release for purposes of  
17 waiving the confidentiality of the information released.

18 Sec. 1104.336. CERTAIN ADMINISTRATIVE COSTS. (a) If an  
19 office or public guardian is appointed guardian of the person or of  
20 the estate of a ward, or both, the administrative costs of the  
21 guardianship services provided to the ward may not be charged to the  
22 ward's estate unless the court determines, subject to Subsection  
23 (b), that the ward is financially able to pay all or part of the  
24 costs.

25 (b) A court shall measure a ward's ability to pay for costs  
26 under Subsection (a) by whether the ward has sufficient assets or  
27 other resources to pay a private professional guardian to serve as

1 the ward's guardian in accordance with Section 1104.334(b).

2 Sec. 1104.337. OFFICE OF COURT ADMINISTRATION OF THE TEXAS  
3 JUDICIAL SYSTEM; REPORT. (a) Not later than December 1 of each  
4 even-numbered year, the Office of Court Administration of the Texas  
5 Judicial System shall submit a report to the governor and the  
6 legislature that contains an evaluation of public guardians  
7 established under this subchapter, including the establishment and  
8 operation of offices of public guardians under this subchapter and  
9 the provision of guardianship services by the offices. The report  
10 must include:

11 (1) an analysis of costs and offsetting savings or  
12 other benefits to the state as a result of the establishment and  
13 operation of offices and public guardians under this subchapter;  
14 and

15 (2) recommendations for legislation, if any.

16 (b) If it is cost-effective and feasible, the Office of  
17 Court Administration of the Texas Judicial System may contract with  
18 an appropriate research or public policy entity with expertise in  
19 gerontology, disabilities, and public administration to conduct  
20 the analysis described by Subsection (a)(1).

21 Sec. 1104.338. RULES. The supreme court, in consultation  
22 with the Office of Court Administration of the Texas Judicial  
23 System and the presiding judge of the statutory probate courts  
24 elected under Section 25.0022, Government Code, shall adopt rules  
25 necessary to implement this subchapter.

26 SECTION 25. Section 1104.402, Estates Code, is amended to  
27 read as follows:

1           Sec. 1104.402. COURT CLERK'S DUTY TO OBTAIN CRIMINAL  
2 HISTORY RECORD INFORMATION[~~, AUTHORITY TO CHARGE FEE~~].

3 [~~(a)~~] Except as provided by Section [~~1104.403,~~] 1104.404[~~,~~] or  
4 1104.406(a), the clerk of the county having venue of the proceeding  
5 for the appointment of a guardian shall obtain criminal history  
6 record information that is maintained by the Department of Public  
7 Safety or the Federal Bureau of Investigation identification  
8 division relating to:

9           (1) a private professional guardian;

10           (2) each person who represents or plans to represent  
11 the interests of a ward as a guardian on behalf of the private  
12 professional guardian;

13           (3) each person employed by a private professional  
14 guardian who will:

15                   (A) have personal contact with a ward or proposed  
16 ward;

17                   (B) exercise control over and manage a ward's  
18 estate; or

19                   (C) perform any duties with respect to the  
20 management of a ward's estate;

21           (4) each person employed by or volunteering or  
22 contracting with a guardianship program to provide guardianship  
23 services to a ward of the program on the program's behalf; or

24           (5) any other person proposed to serve as a guardian  
25 under this title, including a proposed temporary guardian and a  
26 proposed successor guardian, other than an attorney.

27           ~~[(b) The clerk may charge a \$10 fee to recover the costs of~~

~~obtaining criminal history record information under Subsection (a).]~~

SECTION 26. Section 1104.402(a), Estates Code, is amended to read as follows:

(a) Except as provided by Section 1104.403, 1104.404, or 1104.406(a), the clerk of the county having venue of the proceeding for the appointment of a guardian shall obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to:

(1) a private professional guardian;

(2) each person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian;

(3) each person employed by a private professional guardian who will:

(A) have personal contact with a ward or proposed ward;

(B) exercise control over and manage a ward's estate; or

(C) perform any duties with respect to the management of a ward's estate;

(4) each person employed by or volunteering or contracting with a guardianship program to provide guardianship services to a ward of the program on the program's behalf; ~~or~~

(5) a public guardian appointed under Section 1104.327(b);

1           (6) each person who represents or plans to represent  
2 the interests of a ward as a guardian on behalf of an office of  
3 public guardian;

4           (7) each person employed by an office of public  
5 guardian who will:

6                   (A) have personal contact with a ward or proposed  
7 ward;

8                   (B) exercise control over and manage a ward's  
9 estate; or

10                   (C) perform any duties with respect to the  
11 management of a ward's estate; or

12           (8) any other person proposed to serve as a guardian  
13 under this title, including a proposed temporary guardian and a  
14 proposed successor guardian, other than an attorney.

15           SECTION 27. Section 1104.405(a), Estates Code, is amended  
16 to read as follows:

17           (a) Criminal history record information obtained or  
18 provided under Section 1104.402 [~~1104.403~~] or 1104.404 is  
19 privileged and confidential and is for the exclusive use of the  
20 court. The criminal history record information may not be released  
21 or otherwise disclosed to any person or agency except on court order  
22 or consent of the person being investigated.

23           SECTION 28. Section 1104.409, Estates Code, is amended to  
24 read as follows:

25           Sec. 1104.409. USE OF INFORMATION BY COURT. The court shall  
26 use the information obtained under this subchapter only in  
27 determining whether to:



1           (1) appoint, remove, or continue the appointment of a  
2 private professional guardian, a guardianship program, an office of  
3 public guardian, or the Health and Human Services Commission  
4 ~~[department]~~; or

5           (2) appoint any other person proposed to serve as a  
6 guardian under this title, including a proposed temporary guardian  
7 and a proposed successor guardian, other than an attorney.

8           SECTION 29. Subchapter A, Chapter 1151, Estates Code, is  
9 amended by adding Section 1151.005 to read as follows:

10          Sec. 1151.005. LEGAL PROCEEDINGS IN WHICH WARD IS PARTY OR  
11 WITNESS. The guardian of the person or of the estate of a ward may  
12 not be excluded from attending a legal proceeding in which the ward  
13 is:

14                 (1) a party; or

15                 (2) participating as a witness.

16           SECTION 30. Section 1151.351(b), Estates Code, is amended  
17 to read as follows:

18           (b) Unless limited by a court or otherwise restricted by  
19 law, a ward is authorized to the following:

20                 (1) to have a copy of the guardianship order and  
21 letters of guardianship and contact information for the probate  
22 court that issued the order and letters;

23                 (2) to have a guardianship that encourages the  
24 development or maintenance of maximum self-reliance and  
25 independence in the ward with the eventual goal, if possible, of  
26 self-sufficiency;

27                 (3) to be treated with respect, consideration, and

1 recognition of the ward's dignity and individuality;

2 (4) to reside and receive support services in the most  
3 integrated setting, including home-based or other community-based  
4 settings, as required by Title II of the Americans with  
5 Disabilities Act (42 U.S.C. Section 12131 et seq.);

6 (5) to consideration of the ward's current and  
7 previously stated personal preferences, desires, medical and  
8 psychiatric treatment preferences, religious beliefs, living  
9 arrangements, and other preferences and opinions;

10 (6) to financial self-determination for all public  
11 benefits after essential living expenses and health needs are met  
12 and to have access to a monthly personal allowance;

13 (7) to receive timely and appropriate health care and  
14 medical treatment that does not violate the ward's rights granted  
15 by the constitution and laws of this state and the United States;

16 (8) to exercise full control of all aspects of life not  
17 specifically granted by the court to the guardian;

18 (9) to control the ward's personal environment based  
19 on the ward's preferences;

20 (10) to complain or raise concerns regarding the  
21 guardian or guardianship to the court, including living  
22 arrangements, retaliation by the guardian, conflicts of interest  
23 between the guardian and service providers, or a violation of any  
24 rights under this section;

25 (11) to receive notice in the ward's native language,  
26 or preferred mode of communication, and in a manner accessible to  
27 the ward, of a court proceeding to continue, modify, or terminate

1 the guardianship and the opportunity to appear before the court to  
2 express the ward's preferences and concerns regarding whether the  
3 guardianship should be continued, modified, or terminated;

4 (12) to have a court investigator or[~~7~~] guardian ad  
5 litem[~~7, or attorney ad litem~~] appointed by the court to investigate  
6 a complaint received by the court from the ward or any person about  
7 the guardianship;

8 (13) to participate in social, religious, and  
9 recreational activities, training, employment, education,  
10 habilitation, and rehabilitation of the ward's choice in the most  
11 integrated setting;

12 (14) to self-determination in the substantial  
13 maintenance, disposition, and management of real and personal  
14 property after essential living expenses and health needs are met,  
15 including the right to receive notice and object about the  
16 substantial maintenance, disposition, or management of clothing,  
17 furniture, vehicles, and other personal effects;

18 (15) to personal privacy and confidentiality in  
19 personal matters, subject to state and federal law;

20 (16) to unimpeded, private, and uncensored  
21 communication and visitation with persons of the ward's choice,  
22 except that if the guardian determines that certain communication  
23 or visitation causes substantial harm to the ward:

24 (A) the guardian may limit, supervise, or  
25 restrict communication or visitation, but only to the extent  
26 necessary to protect the ward from substantial harm; and

27 (B) the ward may request a hearing to remove any

1 restrictions on communication or visitation imposed by the guardian  
2 under Paragraph (A);

3           (17) to petition the court and retain counsel of the  
4 ward's choice who holds a certificate required by Subchapter E,  
5 Chapter 1054, to represent the ward's interest for capacity  
6 restoration, modification of the guardianship, the appointment of a  
7 different guardian, or for other appropriate relief under this  
8 subchapter, including a transition to a supported decision-making  
9 agreement, except as limited by Section 1054.006;

10           (18) to vote in a public election, marry, and retain a  
11 license to operate a motor vehicle, unless restricted by the court;

12           (19) to personal visits from the guardian or the  
13 guardian's designee at least once every three months, but more  
14 often, if necessary, unless the court orders otherwise;

15           (20) to be informed of the name, address, phone  
16 number, and purpose of Disability Rights Texas, an organization  
17 whose mission is to protect the rights of, and advocate for, persons  
18 with disabilities, and to communicate and meet with representatives  
19 of that organization;

20           (21) to be informed of the name, address, phone  
21 number, and purpose of an independent living center, an area agency  
22 on aging, an aging and disability resource center, and the local  
23 mental health and intellectual and developmental disability  
24 center, and to communicate and meet with representatives from these  
25 agencies and organizations;

26           (22) to be informed of the name, address, phone  
27 number, and purpose of the Judicial Branch Certification Commission

1 and the procedure for filing a complaint against a certified  
2 guardian;

3 (23) to contact the Department of Family and  
4 Protective Services to report abuse, neglect, exploitation, or  
5 violation of personal rights without fear of punishment,  
6 interference, coercion, or retaliation; and

7 (24) to have the guardian, on appointment and on  
8 annual renewal of the guardianship, explain the rights delineated  
9 in this subsection in the ward's native language, or preferred mode  
10 of communication, and in a manner accessible to the ward.

11 SECTION 31. Sections 1153.001(a) and (c), Estates Code, are  
12 amended to read as follows:

13 (a) Within one month after receiving letters of  
14 guardianship, a guardian of an estate shall provide notice  
15 requiring each person who has a claim against the estate to present  
16 the claim within the period prescribed by law. The notice must be:

17 (1) published in a newspaper of general circulation  
18 ~~[printed]~~ in the county in which the letters were issued; and

19 (2) sent to the comptroller by certified or registered  
20 mail, if the ward remitted or should have remitted taxes  
21 administered by the comptroller.

22 (c) If there is no ~~[a]~~ newspaper of general circulation ~~[is~~  
23 ~~not printed]~~ in the county in which the letters of guardianship were  
24 issued, the notice must be posted and the return made and filed as  
25 otherwise required by this title.

26 SECTION 32. Section 1155.054(d), Estates Code, is amended  
27 to read as follows:

1 (d) If the court finds that a party in a guardianship  
2 proceeding acted in bad faith or without just cause in prosecuting  
3 or objecting to an application in the proceeding, the court may  
4 order ~~[require]~~ the party to reimburse the ward's estate for all or  
5 part of the attorney's fees awarded under this section and shall  
6 issue judgment against the party and in favor of the estate for the  
7 amount of attorney's fees ordered ~~[required]~~ to be reimbursed to  
8 the estate.

9 SECTION 33. Section 1155.151(a), Estates Code, is amended  
10 to read as follows:

11 (a) In a guardianship proceeding, the court costs of the  
12 proceeding, including the costs described by Subsection (a-1),  
13 shall, except as provided by Subsection (c), be paid as follows, and  
14 the court shall issue the judgment accordingly:

15 (1) out of the guardianship estate, if a guardianship  
16 of the estate has been created for the benefit of the ward and the  
17 court determines it is in the ward's best interest;

18 (2) out of the management trust, if a management trust  
19 has been created for the benefit of the ward under Chapter 1301 and  
20 the court determines it is in the ward's best interest;

21 (3) by the party to the proceeding who incurred the  
22 costs, unless that party filed, on the party's own behalf, an  
23 affidavit of inability to pay the costs under Rule 145, Texas Rules  
24 of Civil Procedure, that shows the party is unable to afford the  
25 costs, if:

26 (A) there is no guardianship estate or no  
27 management trust has been created for the ward's benefit; or

1 (B) the assets of the guardianship estate or  
2 management trust, as appropriate, are insufficient to pay the  
3 costs; or

4 (4) out of the county treasury if:

5 (A)(i) there is no guardianship estate or  
6 management trust;

7 (ii) ~~or~~ the assets of the guardianship  
8 estate or management trust, as appropriate, are insufficient to pay  
9 the costs; or

10 (iii) a guardianship of the estate has been  
11 created for the benefit of the ward and the court determines it is  
12 not in the ward's best interest to pay the costs; and

13 (B) the party to the proceeding who incurred the  
14 costs filed, on the party's own behalf, an affidavit of inability to  
15 pay the costs under Rule 145, Texas Rules of Civil Procedure, that  
16 shows the party is unable to afford the costs.

17 SECTION 34. Section 1155.151(a-2), Estates Code, is amended  
18 to read as follows:

19 (a-2) Notwithstanding any other law requiring the payment  
20 of court costs in a guardianship proceeding, the following are not  
21 required to pay court costs on the filing of or during a  
22 guardianship proceeding:

23 (1) an attorney ad litem;

24 (2) a guardian ad litem;

25 (3) a person or entity who files an affidavit of  
26 inability to pay the costs under Rule 145, Texas Rules of Civil  
27 Procedure, that shows the person or entity is unable to afford the

1 costs;

2 (4) a nonprofit guardianship program;

3 (5) a governmental entity, including an office of  
4 public guardian; and

5 (6) a government agency or nonprofit agency providing  
6 guardianship services.

7 SECTION 35. Section 1163.005(a), Estates Code, is amended  
8 to read as follows:

9 (a) The guardian of the estate shall attach to an account  
10 the guardian's affidavit stating:

11 (1) that the account contains a correct and complete  
12 statement of the matters to which the account relates;

13 (2) that the guardian has paid the bond premium for the  
14 next accounting period;

15 (3) that the guardian has filed all tax returns of the  
16 ward due during the accounting period;

17 (4) that the guardian has paid all taxes the ward owed  
18 during the accounting period, the amount of the taxes, the date the  
19 guardian paid the taxes, and the name of the governmental entity to  
20 which the guardian paid the taxes; and

21 (5) if the guardian is a private professional  
22 guardian, a guardianship program, an office of public guardian, or  
23 the Health and Human Services Commission [~~Department of Aging and~~  
24 ~~Disability Services~~], whether the guardian or an individual  
25 certified under Subchapter C, Chapter 155 [~~111~~], Government Code,  
26 who is providing guardianship services to the ward and who is  
27 swearing to the account on the guardian's behalf, is or has been the



1 subject of an investigation conducted by the Judicial Branch  
2 [~~Guardianship~~] Certification Commission [~~Board~~] during the  
3 accounting period.

4 SECTION 36. Section 1163.101(c), Estates Code, is amended  
5 to read as follows:

6 (c) The guardian of the person shall file a sworn affidavit  
7 that contains:

8 (1) the guardian's current name, address, and  
9 telephone number;

10 (2) the ward's date of birth and current name, address,  
11 telephone number, and age;

12 (3) a description of the type of home in which the ward  
13 resides, which shall be described as:

14 (A) the ward's own home;

15 (B) a nursing home;

16 (C) a guardian's home;

17 (D) a foster home;

18 (E) a boarding home;

19 (F) a relative's home, in which case the  
20 description must specify the relative's relationship to the ward;

21 (G) a hospital or medical facility; or

22 (H) another type of residence;

23 (4) statements indicating:

24 (A) the length of time the ward has resided in the  
25 present home;

26 (B) the reason for a change in the ward's  
27 residence, if a change in the ward's residence has occurred in the

1 past year;

2 (C) the date the guardian most recently saw the  
3 ward;

4 (D) how frequently the guardian has seen the ward  
5 in the past year;

6 (E) whether the guardian has possession or  
7 control of the ward's estate;

8 (F) whether the ward's mental health has  
9 improved, deteriorated, or remained unchanged during the past year,  
10 including a description of the change if a change has occurred;

11 (G) whether the ward's physical health has  
12 improved, deteriorated, or remained unchanged during the past year,  
13 including a description of the change if a change has occurred;

14 (H) whether the ward has regular medical care;  
15 and

16 (I) the ward's treatment or evaluation by any of  
17 the following persons during the past year, including the person's  
18 name and a description of the treatment:

19 (i) a physician;

20 (ii) a psychiatrist, psychologist, or other  
21 mental health care provider;

22 (iii) a dentist;

23 (iv) a social or other caseworker; or

24 (v) any other individual who provided  
25 treatment;

26 (5) a description of the ward's activities during the  
27 past year, including recreational, educational, social, and

1 occupational activities, or a statement that no activities were  
2 available or that the ward was unable or refused to participate in  
3 activities;

4 (6) the guardian's evaluation of:

5 (A) the ward's living arrangements as excellent,  
6 average, or below average, including an explanation if the  
7 conditions are below average;

8 (B) whether the ward is content or unhappy with  
9 the ward's living arrangements; and

10 (C) unmet needs of the ward;

11 (7) a statement indicating whether the guardian's  
12 power should be increased, decreased, or unaltered, including an  
13 explanation if a change is recommended;

14 (8) a statement indicating that the guardian has paid  
15 the bond premium for the next reporting period;

16 (9) if the guardian is a private professional  
17 guardian, a guardianship program, an office of public guardian, or  
18 the Health and Human Services Commission [~~Department of Aging and~~  
19 ~~Disability Services~~], whether the guardian or an individual  
20 certified under Subchapter C, Chapter 155, Government Code, who is  
21 providing guardianship services to the ward and who is filing the  
22 affidavit on the guardian's behalf, is or has been the subject of an  
23 investigation conducted by the Judicial Branch [~~Guardianship~~  
24 ~~Certification Commission~~ Board] during the preceding year; and

25 (10) any additional information the guardian desires  
26 to share with the court regarding the ward, including:

27 (A) whether the guardian has filed for emergency

1 detention of the ward under Subchapter A, Chapter 573, Health and  
2 Safety Code; and

3 (B) if applicable, the number of times the  
4 guardian has filed for emergency detention and the dates of the  
5 applications for emergency detention.

6 SECTION 37. Section 1253.001, Estates Code, is amended to  
7 read as follows:

8 Sec. 1253.001. APPLICATION TO TRANSFER GUARDIANSHIP TO  
9 FOREIGN JURISDICTION. On application of the guardian or on the  
10 court's own motion, a [~~A guardian of the person or estate may apply~~  
11 ~~to the~~] court that has jurisdiction over the guardianship may [~~to~~]  
12 transfer the guardianship to a court in a foreign jurisdiction to  
13 which the ward has permanently moved.

14 SECTION 38. Subchapter B, Chapter 1301, Estates Code, is  
15 amended by adding Section 1301.0511 to read as follows:

16 Sec. 1301.0511. NOTICE REQUIRED FOR APPLICATION FOR  
17 CREATION OF TRUST; CITATION OF APPLICANT NOT REQUIRED. (a) On the  
18 filing of an application for creation of a management trust and  
19 except as provided by Subsection (d), notice shall be issued and  
20 served in the manner provided by Subchapter C, Chapter 1051, for the  
21 issuance and service of notice on the filing of an application for  
22 guardianship.

23 (b) It is not necessary to serve a citation on a person who  
24 files an application for the creation of a management trust under  
25 this subchapter or for that person to waive the issuance and  
26 personal service of citation.

27 (c) If the person for whom an application for creation of a

1 management trust is filed is a ward, the sheriff or other officer,  
2 in addition to serving the persons described by Section 1051.103,  
3 shall personally serve each guardian of the ward with citation to  
4 appear and answer the application.

5 (d) Notice under this section is not required if a  
6 proceeding for the appointment of a guardian is pending for the  
7 person for whom an application for creation of a management trust is  
8 filed.

9 SECTION 39. Section 1301.101(a), Estates Code, is amended  
10 to read as follows:

11 (a) Except as provided by Subsection (c), a management trust  
12 created for a ward or incapacitated person must provide that:

13 (1) the ward or incapacitated person is the sole  
14 beneficiary of the trust;

15 (2) the trustee may disburse an amount of the trust's  
16 principal or income as the trustee determines is necessary to spend  
17 for the health, education, maintenance, or support of the person  
18 for whom the trust is created;

19 (3) the trust income that the trustee does not  
20 disburse under Subdivision (2) must be added to the trust  
21 principal;

22 (4) a trustee that is a corporate fiduciary serves  
23 without giving a bond; ~~and~~

24 (5) subject to the court's approval and Subsection  
25 (b), a trustee is entitled to receive reasonable compensation for  
26 services the trustee provides to the person for whom the trust is  
27 created as the person's trustee; and

1           (6) the trust terminates:

2                   (A) except as provided by Paragraph (B), if the  
3 person for whom the trust is created is a minor:

4                           (i) on the earlier of:

5                                   (a) the person's death; or

6                                   (b) the person's 18th birthday; or

7                           (ii) on the date provided by court order,  
8 which may not be later than the person's 25th birthday;

9                   (B) if the person for whom the trust is created is  
10 a minor and is also incapacitated for a reason other than being a  
11 minor:

12                           (i) on the person's death; or

13                           (ii) when the person regains capacity; or

14                   (C) if the person for whom the trust is created is  
15 not a minor:

16                           (i) according to the terms of the trust;

17                           (ii) on the date the court determines that  
18 continuing the trust is no longer in the person's best interests,  
19 subject to Section 1301.202(c); or

20                           (iii) on the person's death.

21           SECTION 40. Section 1301.154(b), Estates Code, is amended  
22 to read as follows:

23           (b) The trustee of a management trust created for a ward  
24 shall provide a copy of the annual account to each ~~the~~ guardian of  
25 the ward ~~[ward's estate or person]~~.

26           SECTION 41. Section 1301.203, Estates Code, is amended by  
27 amending Subsection (a) and adding Subsection (a-1) to read as

1 follows:

2 (a) Except as provided by Subsection (a-1), if ~~[If]~~ the  
3 person for whom a management trust is created is a minor, the trust  
4 terminates on:

5 (1) the earlier of:

6 (A) the person's death; or

7 (B) the person's 18th birthday; or

8 (2) the date provided by court order, which may not be  
9 later than the person's 25th birthday.

10 (a-1) If the person for whom a management trust is created  
11 is a minor and is also incapacitated for a reason other than being a  
12 minor, the trust terminates:

13 (1) on the person's death; or

14 (2) when the person regains capacity.

15 SECTION 42. Sections [1355.002](#)(b), (c), (d), (e), and (f),  
16 Estates Code, are amended to read as follows:

17 (b) This section applies only to a nonresident creditor who  
18 is:

19 (1) a nonresident minor and has a nonresident guardian  
20 of the estate appointed by a foreign court;

21 (2) [7] a nonresident person who is adjudged by a  
22 foreign court [of competent jurisdiction] to be incapacitated and  
23 has a nonresident guardian of the estate appointed by that  
24 court; [7] or

25 (3) the nonresident former ward of a guardianship  
26 terminated under Chapter [1204](#) who has no legal guardian qualified  
27 in this state.

1 (c) A debtor in this state who owes money to a nonresident  
2 creditor to whom this section applies may pay the money:

3 (1) to the creditor's guardian of the estate qualified  
4 in the domiciliary jurisdiction; or

5 (2) to the county clerk of:

6 (A) any county in this state in which real  
7 property owned by the creditor is located; or

8 (B) if the creditor is not known to own real  
9 property in this state, the county in which the debtor resides.

10 (d) A payment made under this section is for the nonresident  
11 creditor's account and for the nonresident creditor's use and  
12 benefit.

13 (e) A receipt for payment signed by the county clerk is  
14 binding on the nonresident creditor as of the date and to the extent  
15 of payment if the receipt states:

16 (1) the creditor's name; and

17 (2) the creditor's post office address, if the address  
18 is known.

19 (f) A county clerk who receives a payment under Subsection  
20 (c) for a nonresident creditor shall handle the money in the same  
21 manner as provided for a payment to the account of a resident  
22 creditor under Sections 1355.001, 1355.051, 1355.052, 1355.102,  
23 1355.103, and 1355.104. Those sections apply to the handling and  
24 disposition of money or any increase, dividend, or income paid to  
25 the clerk for the use, benefit, and account of the nonresident  
26 creditor to whom this section applies.

27 SECTION 43. Section 1355.105, Estates Code, is amended to



1 read as follows:

2           Sec. 1355.105. WITHDRAWAL OF MONEY BY CREDITOR OR  
3 CREDITOR'S HEIR, [OR] REPRESENTATIVE, OR GUARDIAN. (a) On  
4 presentation to the court clerk of an order of a county or probate  
5 court of the county in which the money is held, money that is not  
6 withdrawn by an authorized person as provided by this chapter may be  
7 withdrawn by:

8                   (1) the creditor, after termination of the creditor's  
9 disability;

10                   (2) a subsequent personal representative of the  
11 creditor; ~~[or]~~

12                   (3) the creditor's heirs; or

13                   (4) a nonresident guardian of the estate appointed by  
14 a foreign court for a creditor who is:

15                               (A) a nonresident minor; or

16                               (B) a nonresident person who is adjudged to be  
17 incapacitated.

18           (b) Except as provided by Subsection (b-1), a [A] withdrawal  
19 under Subsection (a) may be made at any time and without a special  
20 bond for that purpose.

21                   (b-1) A court may require a nonresident guardian of the  
22 estate of a creditor who is a nonresident minor or nonresident  
23 incapacitated person as described by Subsection (a)(4) to provide  
24 proof that the nonresident guardian of the estate gave an adequate  
25 bond in the foreign jurisdiction if the court determines that it is  
26 in the nonresident minor's or nonresident incapacitated person's  
27 best interest.

(c) The order presented under Subsection (a) must direct the court clerk to deliver the money to:

- (1) the creditor;
- (2) [✓] the creditor's personal representative;
- (3) [~~✓~~] the creditor's heirs named in the order; or
- (4) if the creditor is a nonresident minor or nonresident person who is adjudged to be incapacitated, the creditor's nonresident guardian of the estate.

(d) Before the court may issue an order under this section, the person's identity and credentials must be proved to the court's satisfaction. For purposes of this subsection, a nonresident guardian of the estate described by Subsection (c)(4) must present to the court exemplified copies of the order of a foreign court appointing the guardian and current letters of guardianship issued in the foreign jurisdiction.

SECTION 44. Section 25.0006, Government Code, is amended by amending Subsection (a) and adding Subsection (a-5) to read as follows:

(a) Notwithstanding any other law except Subsection (a-4), Subsections (a-1), (a-2), [~~and~~] (a-3), and (a-5) control over a specific provision for a particular court or county that attempts to create a requirement for a bond or insurance that conflicts with those subsections.

(a-5) A bond executed under Subsection (a-1) by the judge elected or appointed to a statutory county court or an insurance policy obtained under Subsection (a-3) shall provide the same coverage to a visiting judge assigned to the court as the bond or

1 insurance policy provides to the judge elected or appointed to the  
2 court.

3 SECTION 45. Section 25.00231, Government Code, is amended  
4 by adding Subsection (f) to read as follows:

5 (f) Notwithstanding Subsection (e), a bond executed under  
6 Subsection (b) by the judge elected or appointed to a statutory  
7 probate court or an insurance policy obtained under Subsection (c)  
8 shall provide the same coverage to a visiting judge assigned to the  
9 court as the bond or insurance policy provides to the judge elected  
10 or appointed to the court.

11 SECTION 46. Section 26.001, Government Code, is amended by  
12 adding Subsection (d) to read as follows:

13 (d) A bond executed under Subsection (a) by the judge  
14 elected or appointed to a county court or an insurance policy  
15 obtained under Subsection (c) shall provide the same coverage to a  
16 visiting judge assigned to the court as the bond or insurance policy  
17 provides to the judge elected or appointed to the court.

18 SECTION 47. Section 81.114, Government Code, is amended by  
19 amending Subsection (a) and adding Subsection (e) to read as  
20 follows:

21 (a) The state bar shall provide a course of instruction for  
22 attorneys who represent any person's interests ~~[parties]~~ in  
23 guardianship cases or who serve as court-appointed guardians.

24 (e) The course of instruction described by this section must  
25 be low-cost and available to persons throughout this state,  
26 including on the Internet provided through the state bar.

27 SECTION 48. Section 101.0814, Government Code, is amended

to read as follows:

Sec. 101.0814. STATUTORY COUNTY COURT FEES AND COSTS:  
LOCAL GOVERNMENT CODE. The clerk of a statutory county court shall  
collect fees and costs under the Local Government Code as follows:

(1) additional filing fee to fund contingency fund for  
liability insurance, if authorized by the county commissioners  
court (Sec. 82.003, Local Government Code) . . . not to exceed \$5;

(2) civil court actions (Sec. 118.052, Local  
Government Code):

(A) filing of original action (Secs. 118.052 and  
118.053, Local Government Code):

(i) garnishment after judgment (Sec.  
118.052, Local Government Code) . . . \$15; and

(ii) all others (Sec. 118.052, Local  
Government Code) . . . \$40;

(B) filing of action other than original (Secs.  
118.052 and 118.054, Local Government Code) . . . \$30; and

(C) services rendered after judgment in original  
action (Secs. 118.052 and 118.0545, Local Government Code):

(i) abstract of judgment (Sec. 118.052,  
Local Government Code) . . . \$5; and

(ii) execution, order of sale, writ, or  
other process (Sec. 118.052, Local Government Code) . . . \$5;

(3) probate court actions (Sec. 118.052, Local  
Government Code):

(A) probate original action (Secs. 118.052 and  
118.055, Local Government Code):

1 (i) probate of a will with independent  
2 executor, administration with will attached, administration of an  
3 estate, guardianship or receivership of an estate, or muniment of  
4 title (Sec. 118.052, Local Government Code) . . . \$40;

5 (ii) community survivors (Sec. 118.052,  
6 Local Government Code) . . . \$40;

7 (iii) small estates (Sec. 118.052, Local  
8 Government Code) . . . \$40;

9 (iv) declarations of heirship (Sec.  
10 118.052, Local Government Code) . . . \$40;

11 (v) mental health or chemical dependency  
12 services (Sec. 118.052, Local Government Code) . . . \$40; and

13 (vi) additional, special fee (Secs. 118.052  
14 and 118.064, Local Government Code) . . . \$5;

15 (B) services in pending probate action (Secs.  
16 118.052 and 118.056, Local Government Code):

17 (i) filing an inventory and appraisement  
18 (Secs. 118.052 and 118.056(d), Local Government Code) . . . \$25;

19 (ii) approving and recording bond (Sec.  
20 118.052, Local Government Code) . . . \$3;

21 (iii) administering oath (Sec. 118.052,  
22 Local Government Code) . . . \$2;

23 (iv) filing annual or final account of  
24 estate (Sec. 118.052, Local Government Code) . . . \$25;

25 (v) filing application for sale of real or  
26 personal property (Sec. 118.052, Local Government Code) . . . \$25;

27 (vi) filing annual or final report of

guardian of a person (Sec. 118.052, Local Government Code) . . .  
\$10; and

(vii) filing a document not listed under  
this paragraph after the filing of an order approving the inventory  
and appraisement or after the 120th day after the date of the  
initial filing of the action, whichever occurs first (Secs. 118.052  
and 191.007, Local Government Code), if more than 25 pages . . .  
\$25;

(C) adverse probate action (Secs. 118.052 and  
118.057, Local Government Code) . . . \$40;

(D) claim against estate (Secs. 118.052 and  
118.058, Local Government Code) . . . \$10;

(E) supplemental public ~~[court-initiated]~~  
guardianship and related services fee (Secs. 118.052 and 118.067,  
Local Government Code) . . . \$20; and

(F) supplemental public probate administrator  
fee (Secs. 118.052 and 118.068, Local Government Code) . . . \$10;

(4) other fees (Sec. 118.052, Local Government Code):

(A) issuing document (Secs. 118.052 and 118.059,  
Local Government Code):

(i) original document and one copy (Sec.  
118.052, Local Government Code) . . . \$4; and

(ii) each additional set of an original and  
one copy (Sec. 118.052, Local Government Code) . . . \$4;

(B) certified papers (Secs. 118.052 and 118.060,  
Local Government Code):

(i) for the clerk's certificate (Sec.

1 118.052, Local Government Code) . . . \$5; and

2 (ii) a fee per page or part of a page (Sec.  
3 118.052, Local Government Code) . . . \$1;

4 (C) noncertified papers, for each page or part of  
5 a page (Secs. 118.052 and 118.0605, Local Government Code) . . .  
6 \$1;

7 (D) letters testamentary, letter of  
8 guardianship, letter of administration, or abstract of judgment  
9 (Secs. 118.052 and 118.061, Local Government Code) . . . \$2;

10 (E) safekeeping of wills (Secs. 118.052 and  
11 118.062, Local Government Code) . . . \$5;

12 (F) mail service of process (Secs. 118.052 and  
13 118.063, Local Government Code) . . . same as sheriff; and

14 (G) records management and preservation fee  
15 (Secs. 118.052, 118.0546, and 118.0645, Local Government Code)  
16 . . . \$5;

17 (5) additional filing fee for filing any civil action  
18 or proceeding requiring a filing fee, including an appeal, and on  
19 the filing of any counterclaim, cross-action, intervention,  
20 interpleader, or third-party action requiring a filing fee, to fund  
21 civil legal services for the indigent (Sec. 133.153, Local  
22 Government Code) . . . \$10;

23 (6) on the filing of a civil suit, an additional filing  
24 fee to be used for court-related purposes for the support of the  
25 judiciary (Sec. 133.154, Local Government Code) . . . \$42;

26 (7) additional filing fee to fund the courthouse  
27 security fund, if authorized by the county commissioners court

(Sec. 291.008, Local Government Code) . . . not to exceed \$5;

(8) additional filing fee for filing documents not subject to certain filing fees to fund the courthouse security fund, if authorized by the county commissioners court (Sec. 291.008, Local Government Code) . . . \$1;

(9) additional filing fee to fund the courthouse security fund in Webb County, if authorized by the county commissioners court (Sec. 291.009, Local Government Code) . . . not to exceed \$20; and

(10) court cost in civil cases other than suits for delinquent taxes to fund the county law library fund, if authorized by the county commissioners court (Sec. 323.023, Local Government Code) . . . not to exceed \$35.

SECTION 49. Section 101.1013, Government Code, is amended to read as follows:

Sec. 101.1013. STATUTORY PROBATE COURT FEES AND COSTS: LOCAL GOVERNMENT CODE. The clerk of a statutory probate court shall collect fees and costs under the Local Government Code as follows:

(1) additional filing fee for filing any civil action or proceeding requiring a filing fee, including an appeal, and on the filing of any counterclaim, cross-action, intervention, interpleader, or third-party action requiring a filing fee to fund civil legal services for the indigent (Sec. 133.153, Local Government Code) . . . \$10;

(2) additional filing fee to fund contingency fund for liability insurance, if authorized by the county commissioners court (Sec. 82.003, Local Government Code) . . . not to exceed \$5;



1           (3) probate court actions (Sec. 118.052, Local  
2 Government Code):

3           (A) probate original action (Secs. 118.052 and  
4 118.055, Local Government Code):

5           (i) probate of a will with independent  
6 executor, administration with will attached, administration of an  
7 estate, guardianship or receivership of an estate, or muniment of  
8 title (Sec. 118.052, Local Government Code) . . . \$40;

9           (ii) community survivors (Sec. 118.052,  
10 Local Government Code) . . . \$40;

11           (iii) small estates (Sec. 118.052, Local  
12 Government Code) . . . \$40;

13           (iv) declarations of heirship (Sec.  
14 118.052, Local Government Code) . . . \$40;

15           (v) mental health or chemical dependency  
16 services (Sec. 118.052, Local Government Code) . . . \$40; and

17           (vi) additional, special fee (Secs. 118.052  
18 and 118.064, Local Government Code) . . . \$5;

19           (B) services in pending probate action (Secs.  
20 118.052 and 118.056, Local Government Code):

21           (i) filing an inventory and appraisement  
22 (Secs. 118.052 and 118.056(d), Local Government Code) . . . \$25;

23           (ii) approving and recording bond (Sec.  
24 118.052, Local Government Code) . . . \$3;

25           (iii) administering oath (Sec. 118.052,  
26 Local Government Code) . . . \$2;

27           (iv) filing annual or final account of

estate (Sec. 118.052, Local Government Code). . . \$25;

(v) filing application for sale of real or personal property (Sec. 118.052, Local Government Code) . . . \$25;

(vi) filing annual or final report of guardian of a person (Sec. 118.052, Local Government Code) . . . \$10; and

(vii) filing a document not listed under this paragraph after the filing of an order approving the inventory and appraisement or after the 120th day after the date of the initial filing of the action, whichever occurs first (Secs. 118.052 and 191.007, Local Government Code), if more than 25 pages . . . \$25;

(C) adverse probate action (Secs. 118.052 and 118.057, Local Government Code) . . . \$40;

(D) claim against estate (Secs. 118.052 and 118.058, Local Government Code) . . . \$10;

(E) supplemental public ~~[court-initiated]~~ guardianship and related services fee (Secs. 118.052 and 118.067, Local Government Code) . . . \$20; and

(F) supplemental public probate administrator fee (Secs. 118.052 and 118.068, Local Government Code) . . . \$10;

(4) other fees (Sec. 118.052, Local Government Code):

(A) issuing document (Secs. 118.052 and 118.059, Local Government Code):

(i) original document and one copy (Sec. 118.052, Local Government Code) . . . \$4; and

(ii) each additional set of an original and

one copy (Sec. 118.052, Local Government Code) . . . \$4;

(B) certified papers (Secs. 118.052 and 118.060, Local Government Code):

(i) for the clerk's certificate (Sec. 118.052, Local Government Code) . . . \$5; and

(ii) a fee per page or part of a page (Sec. 118.052, Local Government Code) . . . \$1;

(C) noncertified papers, for each page or part of a page (Secs. 118.052 and 118.0605, Local Government Code) . . . \$1;

(D) letters testamentary, letter of guardianship, letter of administration, or abstract of judgment (Secs. 118.052 and 118.061, Local Government Code) . . . \$2;

(E) safekeeping of wills (Secs. 118.052 and 118.062, Local Government Code) . . . \$5;

(F) mail service of process (Secs. 118.052 and 118.063, Local Government Code) . . . same as sheriff; and

(G) records management and preservation fee (Secs. 118.052 and 118.0645, Local Government Code) . . . \$5; and

(5) court cost in civil cases other than suits for delinquent taxes to fund the county law library fund, if authorized by the county commissioners court (Sec. 323.023, Local Government Code) . . . not to exceed \$35.

SECTION 50. Section 101.1214, Government Code, is amended to read as follows:

Sec. 101.1214. COUNTY COURT FEES AND COSTS: LOCAL GOVERNMENT CODE. The clerk of a county court shall collect the

1 following fees and costs under the Local Government Code:

2 (1) additional filing fee to fund contingency fund for  
3 liability insurance, if authorized by the county commissioners  
4 court (Sec. 82.003, Local Government Code) . . . not to exceed \$5;

5 (2) civil court actions (Sec. 118.052, Local  
6 Government Code):

7 (A) filing of original action (Secs. 118.052 and  
8 118.053, Local Government Code):

9 (i) garnishment after judgment (Sec.  
10 118.052, Local Government Code) . . . \$15; and

11 (ii) all others (Sec. 118.052, Local  
12 Government Code) . . . \$40;

13 (B) filing of action other than original (Secs.  
14 118.052 and 118.054, Local Government Code) . . . \$30; and

15 (C) services rendered after judgment in original  
16 action (Secs. 118.052 and 118.0545, Local Government Code):

17 (i) abstract of judgment (Sec. 118.052,  
18 Local Government Code) . . . \$5; and

19 (ii) execution, order of sale, writ, or  
20 other process (Sec. 118.052, Local Government Code) . . . \$5;

21 (3) probate court actions (Sec. 118.052, Local  
22 Government Code):

23 (A) probate original action (Secs. 118.052 and  
24 118.055, Local Government Code):

25 (i) probate of a will with independent  
26 executor, administration with will attached, administration of an  
27 estate, guardianship or receivership of an estate, or muniment of

1 title (Sec. 118.052, Local Government Code) . . . \$40;  
2 (ii) community survivors (Sec. 118.052,  
3 Local Government Code) . . . \$40;  
4 (iii) small estates (Sec. 118.052, Local  
5 Government Code) . . . \$40;  
6 (iv) declarations of heirship (Sec.  
7 118.052, Local Government Code) . . . \$40;  
8 (v) mental health or chemical dependency  
9 services (Sec. 118.052, Local Government Code) . . . \$40; and  
10 (vi) additional, special fee (Secs. 118.052  
11 and 118.064, Local Government Code) . . . \$5;  
12 (B) services in pending probate action (Secs.  
13 118.052 and 118.056, Local Government Code):  
14 (i) filing an inventory and appraisalment  
15 (Secs. 118.052 and 118.056(d), Local Government Code) . . . \$25;  
16 (ii) approving and recording bond (Sec.  
17 118.052, Local Government Code) . . . \$3;  
18 (iii) administering oath (Sec. 118.052,  
19 Local Government Code) . . . \$2;  
20 (iv) filing annual or final account of  
21 estate (Sec. 118.052, Local Government Code) . . . \$25;  
22 (v) filing application for sale of real or  
23 personal property (Sec. 118.052, Local Government Code) . . . \$25;  
24 (vi) filing annual or final report of  
25 guardian of a person (Sec. 118.052, Local Government Code) . . .  
26 \$10; and  
27 (vii) filing a document not listed under

1 this paragraph after the filing of an order approving the inventory  
2 and appraisement or after the 120th day after the date of the  
3 initial filing of the action, whichever occurs first (Secs. 118.052  
4 and 191.007, Local Government Code), if more than 25 pages . . .  
5 \$25;

6 (C) adverse probate action (Secs. 118.052 and  
7 118.057, Local Government Code) . . . \$40;

8 (D) claim against estate (Secs. 118.052 and  
9 118.058, Local Government Code) . . . \$10;

10 (E) supplemental public ~~[court-initiated]~~  
11 guardianship and related services fee (Secs. 118.052 and 118.067,  
12 Local Government Code) . . . \$20; and

13 (F) supplemental public probate administrator  
14 fee (Secs. 118.052 and 118.068, Local Government Code) . . . \$10;

15 (4) other fees (Sec. 118.052, Local Government Code):

16 (A) issuing document (Secs. 118.052 and 118.059,  
17 Local Government Code):

18 (i) original document and one copy (Sec.  
19 118.052, Local Government Code) . . . \$4; and

20 (ii) each additional set of an original and  
21 one copy (Sec. 118.052, Local Government Code) . . . \$4;

22 (B) certified papers (Secs. 118.052 and 118.060,  
23 Local Government Code):

24 (i) for the clerk's certificate (Sec.  
25 118.052, Local Government Code) . . . \$5; and

26 (ii) a fee per page or part of a page (Sec.  
27 118.052, Local Government Code) . . . \$1;

1 (C) noncertified papers, for each page or part of  
2 a page (Secs. 118.052 and 118.0605, Local Government Code) . . .  
3 \$1;

4 (D) letters testamentary, letter of  
5 guardianship, letter of administration, or abstract of judgment  
6 (Secs. 118.052 and 118.061, Local Government Code) . . . \$2;

7 (E) safekeeping of wills (Secs. 118.052 and  
8 118.062, Local Government Code) . . . \$5;

9 (F) mail service of process (Secs. 118.052 and  
10 118.063, Local Government Code) . . . same as sheriff; and

11 (G) records management and preservation fee  
12 (Secs. 118.052, 118.0546, and 118.0645, Local Government Code)  
13 . . . \$5;

14 (5) deposit on filing petition requesting permission  
15 to create a municipal civic center authority (Sec. 281.013, Local  
16 Government Code) . . . \$200;

17 (6) additional filing fee to fund the courthouse  
18 security fund, if authorized by the county commissioners court  
19 (Sec. 291.008, Local Government Code) . . . not to exceed \$5;

20 (7) additional filing fee for filing documents not  
21 subject to certain filing fees to fund the courthouse security  
22 fund, if authorized by the county commissioners court (Sec.  
23 291.008, Local Government Code) . . . \$1;

24 (8) additional filing fee to fund the courthouse  
25 security fund in Webb County, if authorized by the county  
26 commissioners court (Sec. 291.009, Local Government Code) . . . not  
27 to exceed \$20;

1           (9) court cost in civil cases other than suits for  
2 delinquent taxes to fund the county law library fund, if authorized  
3 by the county commissioners court (Sec. 323.023, Local Government  
4 Code) . . . not to exceed \$35;

5           (10) additional filing fee for filing any civil action  
6 or proceeding requiring a filing fee, including an appeal, and on  
7 the filing of any counterclaim, cross-action, intervention,  
8 interpleader, or third-party action requiring a filing fee, to fund  
9 civil legal services for the indigent (Sec. 133.153, Local  
10 Government Code) . . . \$10; and

11           (11) on the filing of a civil suit an additional filing  
12 fee to be used for court-related purposes for the support of the  
13 judiciary (Sec. 133.154, Local Government Code) . . . \$42.

14           SECTION 51. Section 155.001, Government Code, is amended by  
15 amending Subdivisions (4), (6), and (6-a) and adding Subdivisions  
16 (5-a) and (6-b) to read as follows:

17           (4) "Guardianship program" means a local, county, or  
18 regional program, other than an office of public guardian, that  
19 provides guardianship and related services to an incapacitated  
20 person or other person who needs assistance in making decisions  
21 concerning the person's own welfare or financial affairs.

22           (5-a) "Office of public guardian" has the meaning  
23 assigned by Section 1002.0215, Estates Code.

24           (6) "Private professional guardian" means a person,  
25 other than an attorney, ~~or~~ a corporate fiduciary, or an office of  
26 public guardian, who is engaged in the business of providing  
27 guardianship services.



1           (6-a) "Public guardian" has the meaning assigned by  
2 Section 1002.0265, Estates Code.

3           (6-b) Notwithstanding Section 151.001, "registration"  
4 means registration of a guardianship under this chapter.

5           SECTION 52. Subchapter B, Chapter 155, Government Code, is  
6 amended by adding Section 155.053 to read as follows:

7           Sec. 155.053. MONITORING OF COUNTY PUBLIC GUARDIANSHIP AND  
8 RELATED SERVICES FUNDS. The office shall monitor counties to  
9 ensure money is appropriately deposited into the public  
10 guardianship and related services funds established by counties  
11 under Section 118.067, Local Government Code, and being used in  
12 compliance with that section. Not later than December 1 of each  
13 year, the office shall submit a report to the legislature detailing  
14 how money in the funds is being used by counties across the state.

15           SECTION 53. Section 155.101(a), Government Code, is amended  
16 to read as follows:

17           (a) The commission shall adopt minimum standards for:

18               (1) the provision of guardianship services or other  
19 similar but less restrictive types of assistance or services by:

20                   (A) individuals employed by or contracting with  
21 guardianship programs to provide the assistance or services on  
22 behalf of the programs; and

23                   (B) private professional guardians; ~~and~~

24               (2) the provision of guardianship services by the  
25 Health and Human Services Commission; and

26               (3) the provision of guardianship services by offices  
27 of public guardians ~~[Department of Aging and Disability Services or~~

1 ~~its successor agency~~].

2 SECTION 54. Section 155.102(a), Government Code, is amended  
3 to read as follows:

4 (a) To provide guardianship services in this state, the  
5 following individuals must hold a certificate issued under this  
6 section:

7 (1) an individual who is a private professional  
8 guardian;

9 (2) an individual who will provide those services to a  
10 ward of a private professional guardian on the guardian's behalf;  
11 ~~[and]~~

12 (3) an individual, other than a volunteer, who will  
13 provide those services or other services under Section 161.114,  
14 Human Resources Code, to a ward of a guardianship program or the  
15 Health and Human Services Commission ~~[Department of Aging and~~  
16 ~~Disability Services]~~ on the program's or commission's  
17 ~~[department's]~~ behalf;

18 (4) an individual who is a public guardian; and

19 (5) an individual who will provide those services to a  
20 ward of an office of public guardian.

21 SECTION 55. Section 155.105, Government Code, is amended by  
22 adding Subsection (b-1) to read as follows:

23 (b-1) Not later than January 31 of each year, each office of  
24 public guardian shall provide to the commission a report containing  
25 for the preceding year:

26 (1) the number of wards served by the office;

27 (2) the total amount of any money received from this

1 state for the provision of guardianship services; and

2 (3) the amount of money received from any other public  
3 source, including a county or the federal government, for the  
4 provision of guardianship services, reported by source, and the  
5 total amount of money received from those public sources.

6 SECTION 56. Section 155.205(b), Government Code, is amended  
7 to read as follows:

8 (b) The commission shall obtain:

9 (1) fingerprint-based criminal history record  
10 information of a proposed guardian ~~[an applicant]~~ if:

11 (A) the liquid assets of the estate of a ward  
12 exceed \$50,000; or

13 (B) the proposed guardian is not a resident of  
14 this state; or

15 (2) name-based criminal history record information of  
16 a proposed guardian, including any criminal history record  
17 information under the current name and all former names of the  
18 proposed guardian, ~~[an applicant]~~ if:

19 (A) the liquid assets of the estate of a ward are  
20 \$50,000 or less; and

21 (B) the proposed guardian is a resident of this  
22 state.

23 SECTION 57. Section 411.1386(a), Government Code, is  
24 amended to read as follows:

25 (a) Except as provided by Subsections (a-1), (a-5), and  
26 (a-6), the clerk of the county having venue over a proceeding for  
27 the appointment of a guardian under Title 3, Estates Code, shall

1 obtain from the department criminal history record information  
2 maintained by the department that relates to:

3 (1) a private professional guardian;

4 (2) each person who represents or plans to represent  
5 the interests of a ward as a guardian on behalf of the private  
6 professional guardian;

7 (3) each person employed by a private professional  
8 guardian who will:

9 (A) have personal contact with a ward or proposed  
10 ward;

11 (B) exercise control over and manage a ward's  
12 estate; or

13 (C) perform any duties with respect to the  
14 management of a ward's estate;

15 (4) each person employed by or volunteering or  
16 contracting with a guardianship program to provide guardianship  
17 services to a ward of the program on the program's behalf; ~~or~~

18 (5) a public guardian, as defined by Section  
19 1002.0265(1), Estates Code;

20 (6) each person who represents or plans to represent  
21 the interests of a ward as a guardian on behalf of an office of  
22 public guardian;

23 (7) each person employed by an office of public  
24 guardian, as defined by Section 1002.0215, Estates Code, who will:

25 (A) have personal contact with a ward or proposed  
26 ward;

27 (B) exercise control over and manage a ward's

1 estate; or

2 (C) perform any duties with respect to the  
3 management of a ward's estate; or

4 (8) any other person proposed to serve as a guardian  
5 under Title 3, Estates Code, including a proposed temporary  
6 guardian and a proposed successor guardian, other than an attorney.

7 SECTION 58. Section 571.013, Health and Safety Code, is  
8 amended to read as follows:

9 Sec. 571.013. METHOD OF GIVING NOTICE. Except as otherwise  
10 provided by this subtitle, notice required under this subtitle may  
11 be given by:

12 (1) personal delivery of [delivering] a copy of the  
13 notice or document by a constable or sheriff of the county; [in  
14 person] or

15 (2) [in] another manner directed by the court that is  
16 reasonably calculated to give actual notice.

17 SECTION 59. Section 571.014(c), Health and Safety Code, is  
18 amended to read as follows:

19 (c) A person may ~~[initially]~~ file a paper with the county  
20 clerk by the use of reproduced, photocopied, or electronically  
21 transmitted paper copies of [if the person files] the original  
22 signed copies of the paper. A person who files a reproduced,  
23 photocopied, or electronically transmitted paper must maintain  
24 possession of the original signed copies of the paper and shall make  
25 the original paper available for inspection on request by the  
26 parties or the court [with the clerk not later than the 72nd hour  
27 after the hour on which the initial filing is made. If the 72-hour

1 ~~period ends on a Saturday, Sunday, or legal holiday, the filing~~  
 2 ~~period is extended until 4 p.m. on the first succeeding business~~  
 3 ~~day. If extremely hazardous weather conditions exist or a disaster~~  
 4 ~~occurs, the presiding judge or magistrate may by written order made~~  
 5 ~~each day extend the filing period until 4 p.m. on the first~~  
 6 ~~succeeding business day. The written order must declare that an~~  
 7 ~~emergency exists because of the weather or the occurrence of a~~  
 8 ~~disaster. If a person detained under this subtitle would otherwise~~  
 9 ~~be released because the original signed copy of a paper is not filed~~  
 10 ~~within the 72-hour period but for the extension of the filing period~~  
 11 ~~under this section, the person may be detained until the expiration~~  
 12 ~~of the extended filing period. This subsection does not affect~~  
 13 ~~another provision of this subtitle requiring the release or~~  
 14 ~~discharge of a person].~~

15 SECTION 60. Section 161.103, Human Resources Code, is  
 16 amended to read as follows:

17 Sec. 161.103. CONTRACT FOR GUARDIANSHIP SERVICES. (a) If  
 18 appropriate, the commission ~~[department]~~ may contract with a  
 19 political subdivision of this state, a guardianship program as  
 20 defined by Section 1002.016, Estates Code, a private agency, or  
 21 another state agency for the provision of guardianship services  
 22 under this section.

23 (b) A contract under Subsection (a) may allow for the  
 24 provision of guardianship services by an office of public guardian,  
 25 as defined by Section 1002.0215, Estates Code.

26 SECTION 61. Section 118.052, Local Government Code, is  
 27 amended to read as follows:

1           Sec. 118.052. FEE SCHEDULE. Each clerk of a county court  
2 shall collect the following fees for services rendered to any  
3 person:

4           (1) CIVIL COURT ACTIONS

5                 (A) Filing of Original Action (Sec. 118.053):

6                     (i) Garnishment after judgment . . . \$15.00

7                     (ii) All others . . . \$40.00

8                 (B) Filing of Action Other than Original (Sec.  
9 118.054) . . . \$30.00

10                (C) Services Rendered After Judgment in Original  
11 Action (Sec. 118.0545):

12                     (i) Abstract of judgment . . . \$5.00

13                     (ii) Execution, order of sale, writ, or  
14 other process . . . \$5.00

15           (2) PROBATE COURT ACTIONS

16                 (A) Probate Original Action (Sec. 118.055):

17                     (i) Probate of a will with independent  
18 executor, administration with will attached, administration of an  
19 estate, guardianship or receivership of an estate, or muniment of  
20 title . . . \$40.00

21                     (ii) Community survivors . . . \$40.00

22                     (iii) Small estates . . . \$40.00

23                     (iv) Declarations of heirship . . . \$40.00

24                     (v) Mental health or chemical dependency  
25 services . . . \$40.00

26                     (vi) Additional, special fee (Sec. 118.064)  
27 . . . \$5.00

(B) Services in Pending Probate Action (Sec. 118.056):

(i) Filing an inventory and appraisement as provided by Section 118.056(d) . . . \$25.00

(ii) Approving and recording bond . . . \$3.00

(iii) Administering oath . . . \$2.00

(iv) Filing annual or final account of estate . . . \$25.00

(v) Filing application for sale of real or personal property . . . \$25.00

(vi) Filing annual or final report of guardian of a person . . . \$10.00

(vii) Filing a document not listed under this paragraph after the filing of an order approving the inventory and appraisement or after the 120th day after the date of the initial filing of the action, whichever occurs first, if more than 25 pages . . . \$25.00

(C) Adverse Probate Action (Sec. 118.057) . . . \$40.00

(D) Claim Against Estate (Sec. 118.058) . . . \$10.00

(E) Supplemental Public ~~[Court-Initiated]~~ Guardianship and Related Services Fee in Probate Original Actions and Adverse Probate Actions (Sec. 118.067) . . . \$20.00

(F) Supplemental Public Probate Administrator Fee For Counties That Have Appointed a Public Probate Administrator



(Sec. 118.068) . . . \$10.00

(3) OTHER FEES

(A) Issuing Document (Sec. 118.059):

original document and one copy . . . \$4.00

each additional set of an original and one copy . . . \$4.00

(B) Certified Papers (Sec. 118.060):

for the clerk's certificate . . . \$5.00

plus a fee per page or part of a page of . . . \$1.00

(C) Noncertified Papers (Sec. 118.0605):

for each page or part of a page . . . \$1.00

(D) Letters Testamentary, Letter of

Guardianship, Letter of Administration, or Abstract of Judgment

(Sec. 118.061) . . . \$2.00

(E) Deposit and Safekeeping of Wills (Sec.

118.062) . . . \$5.00

(F) Mail Service of Process (Sec. 118.063) . . .

same as sheriff

(G) Records Management and Preservation Fee

. . . \$5.00

(H) Records Technology and Infrastructure Fee if

authorized by the commissioners court of the county (Sec. 118.026)

. . . \$2.00

SECTION 62. Section 118.067, Local Government Code, is amended to read as follows:

Sec. 118.067. SUPPLEMENTAL PUBLIC [~~COURT-INITIATED~~] GUARDIANSHIP AND RELATED SERVICES FEE. (a) The "supplemental public [~~court-initiated~~] guardianship and related services fee"

under Section 118.052(2)(E) is for the support of guardianship services provided by public guardians, as defined by Section 1002.0265 ~~[the judiciary in guardianships initiated under Chapter 1102]~~, Estates Code, or guardianship and other less restrictive alternative services provided to indigent incapacitated persons who do not have family members suitable and willing to serve as guardians or provide less restrictive alternative services. Fees collected under Section 118.052(2)(E) shall be deposited in a public ~~[court-initiated]~~ guardianship and related services fund in the county treasury and may be used only to supplement, rather than supplant, other available county funds used to fund guardianship services or other less restrictive alternative services provided to individuals who are indigent ~~[~~

~~(1) pay the compensation of a guardian ad litem appointed by a court under Section 1102.001, Estates Code,~~

~~(2) pay the compensation of an attorney ad litem appointed by a court to represent a proposed ward in a guardianship proceeding initiated under Chapter 1102, Estates Code, and~~

~~(3) fund local guardianship programs that provide guardians for indigent incapacitated persons who do not have family members suitable and willing to serve as guardians]~~.

(b) The supplemental public ~~[court-initiated]~~ guardianship and related services fee is charged for:

(1) a probate original action described by Section 118.055 and for which a fee is charged in accordance with Section 118.052(2)(A)(i), (ii), (iii), (iv), or (v); and

(2) an adverse probate action described by Section

1 118.057 and for which a fee is charged in accordance with Section  
2 118.052(2)(C).

3 (c) The supplemental public [~~court-initiated~~] guardianship  
4 and related services fee must be paid by the person against whom the  
5 fee for a probate original action or adverse probate action, as  
6 applicable, is charged and is due at the time that fee is due.

7 (d) The supplemental public [~~court-initiated~~] guardianship  
8 and related services fee is in addition to all other fees charged in  
9 probate original actions and adverse probate actions.

10 SECTION 63. Section 1104.403, Estates Code, is repealed.

11 SECTION 64. Section 571.014(d), Health and Safety Code, is  
12 repealed.

13 SECTION 65. (a) Section 202.054, Estates Code, as amended  
14 by this Act, applies only to a proceeding to declare heirship  
15 commenced on or after the effective date of this Act. A proceeding  
16 to declare heirship commenced before that date is governed by the  
17 law in effect on the date the proceeding was commenced, and the  
18 former law is continued in effect for that purpose.

19 (b) Section 452.006(c), Estates Code, as added by this Act,  
20 applies only to a temporary administrator appointed on or after the  
21 effective date of this Act. A temporary administrator appointed  
22 before the effective date of this Act is governed by the law in  
23 effect on the date the administrator was appointed, and the former  
24 law is continued in effect for that purpose.

25 (c) Section 503.002, Estates Code, as amended by this Act,  
26 applies only to a copy of a testamentary instrument or other  
27 document filed for recording on or after the effective date of this

1 Act. A copy of a testamentary instrument or other document filed  
2 before the effective date of this Act is governed by the law in  
3 effect on the date the instrument or document was filed, and the  
4 former law is continued in effect for that purpose.

5 (d) The changes in law made by this Act to Sections 25.0006,  
6 25.00231, and 26.001, Government Code, apply only to an insurance  
7 policy delivered, issued for delivery, or renewed on or after  
8 January 1, 2020. An insurance policy delivered, issued for  
9 delivery, or renewed before January 1, 2020, is governed by the law  
10 as it existed immediately before the effective date of this Act, and  
11 that law is continued in effect for that purpose.

12 SECTION 66. (a) Except as otherwise provided by this  
13 section, the changes in law made by this Act apply to:

14 (1) a guardianship created before, on, or after the  
15 effective date of this Act; and

16 (2) an application for a guardianship pending on, or  
17 filed on or after, the effective date of this Act.

18 (b) The changes in law made by this Act to Section 1021.001,  
19 Estates Code, apply only to an action filed on or after the  
20 effective date of this Act. An action filed before the effective  
21 date of this Act is governed by the law in effect on the date the  
22 action was filed, and the former law is continued in effect for that  
23 purpose.

24 (c) The changes in law made by this Act to Sections  
25 1054.201, 1101.153, 1155.054(d), and 1155.151(a), Estates Code,  
26 and Section 155.205(b), Government Code, apply only to a  
27 guardianship proceeding commenced on or after the effective date of

1 this Act. A guardianship proceeding commenced before the effective  
2 date of this Act is governed by the law in effect on the date the  
3 proceeding was commenced, and the former law is continued in effect  
4 for that purpose.

5 (d) Section 1301.0511, Estates Code, as added by this Act,  
6 applies only to an application for creation of a management trust  
7 filed on or after the effective date of this Act. An application  
8 for creation of a management trust filed before the effective date  
9 of this Act is governed by the law in effect on the date the  
10 application was filed, and the former law is continued in effect for  
11 that purpose.

12 (e) The changes in law made by this Act to Sections 1301.101  
13 and 1301.203, Estates Code, apply only to an application for the  
14 creation or modification of a management trust filed on or after the  
15 effective date of this Act. An application for the creation or  
16 modification of a management trust filed before the effective date  
17 of this Act is governed by the law in effect on the date the  
18 application was filed, and the former law is continued in effect for  
19 that purpose.

20 (f) The changes in law made by this Act to Section 1355.105,  
21 Estates Code, apply only to an application for an order for the  
22 delivery of money that is filed on or after the effective date of  
23 this Act. An application for an order for the delivery of money  
24 that is filed before the effective date of this Act is governed by  
25 the law in effect on the date the application was filed, and the  
26 former law is continued in effect for that purpose.

27 (g) Section 1101.001, Estates Code, as amended by this Act,

1 applies only to an application for the appointment of a guardian  
2 filed on or after the effective date of this Act. An application  
3 for the appointment of a guardian filed before the effective date of  
4 this Act is governed by the law in effect on the date the  
5 application was filed, and the former law is continued in effect for  
6 that purpose.

7 (h) The following provisions of this Act apply only to the  
8 appointment of a guardian of the person or of the estate of a ward,  
9 or both, made on or after July 1, 2020:

10 (1) Sections 1002.0215 and 1002.0265 and Subchapter  
11 G-1, Chapter 1104, Estates Code, as added by this Act;

12 (2) Sections 1104.251(a), 1104.402(a), 1104.409,  
13 1155.151(a-2), 1163.005(a), and 1163.101(c), Estates Code, as  
14 amended by this Act;

15 (3) Sections 101.0814, 101.1013, 101.1214,  
16 155.001(4), (6), and (6-a), 155.101(a), 155.102(a), and  
17 411.1386(a), Government Code, as amended by this Act;

18 (4) Sections 155.001(5-a) and (6-b), 155.053, and  
19 155.105(b-1), Government Code, as added by this Act;

20 (5) Section 161.103, Human Resources Code, as amended  
21 by this Act; and

22 (6) Sections 118.052 and 118.067, Local Government  
23 Code, as amended by this Act.

24 (i) Notwithstanding any other law, a person who,  
25 immediately before July 1, 2020, is serving as guardian of the  
26 person or of the estate of a ward, or both, and who, under Section  
27 1104.334, Estates Code, as added by this Act, would be eligible for

1 appointment of an office of public guardian as the ward's guardian,  
2 may continue to serve as guardian of the person or of the estate of  
3 the ward, or both, unless otherwise removed as provided by law.

4       SECTION 67. Not later than January 1, 2020, the supreme  
5 court shall adopt rules necessary to implement Subchapter G-1,  
6 Chapter 1104, Estates Code, as added by this Act, including rules  
7 governing the transfer of a guardianship of the person or of the  
8 estate of a ward, or both, if appropriate, to an office of public  
9 guardian established under that subchapter or a public guardian  
10 contracted under that subchapter.

11       SECTION 68. This Act takes effect September 1, 2019.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 667 passed the Senate on March 26, 2019, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 23, 2019, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 667 passed the House, with amendments, on May 21, 2019, by the following vote: Yeas 115, Nays 26, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor



AN ACT

relating to establishing a protective order registry and the duties of court personnel and other persons and entities in regard to the registry.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 72, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. PROTECTIVE ORDER REGISTRY

Sec. 72.151. DEFINITIONS. In this subchapter:

(1) "Authorized user" means a person to whom the office has given permission and the means to submit records to or modify or remove records in the registry. The term does not include members of the public who may only access through the registry's Internet website certain information regarding protective orders entered into the registry.

(2) "Peace officer" has the meaning assigned by Article 2.12, Code of Criminal Procedure.

(3) "Protective order" means an order issued by a court in this state to prevent family violence, as defined by Section 71.004, Family Code. The term includes a magistrate's order for emergency protection issued under Article 17.292, Code of Criminal Procedure, with respect to a person who is arrested for an offense involving family violence.

(4) "Protective order registry" or "registry" means

the protective order registry established under Section 72.153.

(5) "Race or ethnicity" means a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

Sec. 72.152. APPLICABILITY. This subchapter applies only to:

(1) an application for a protective order filed under:

(A) Chapter 82, Family Code; or

(B) Article 17.292, Code of Criminal Procedure, with respect to a person who is arrested for an offense involving family violence; and

(2) a protective order issued under:

(A) Chapter 83 or 85, Family Code; or

(B) Article 17.292, Code of Criminal Procedure, with respect to a person who is arrested for an offense involving family violence.

Sec. 72.153. PROTECTIVE ORDER REGISTRY. (a) In consultation with the Department of Public Safety and the courts of this state, the office shall establish and maintain a centralized Internet-based registry for applications for protective orders filed in this state and protective orders issued in this state.

(b) The office shall establish and maintain the registry in a manner that allows municipal and county case management systems to easily interface with the registry.

Sec. 72.154. PUBLIC ACCESS TO PROTECTIVE ORDER REGISTRY.

(a) Subject to Subsections (c) and (d) and Section 72.158, the office shall establish and maintain the registry in a manner that

allows a member of the public, free of charge, to electronically search for and receive publicly accessible information contained in the registry regarding each protective order issued in this state.

The registry must be searchable by:

(1) the county of issuance;

(2) the name of a person who is the subject of the protective order; and

(3) the birth year of a person who is the subject of the protective order.

(b) Publicly accessible information regarding each protective order must consist of the following:

(1) the court that issued the protective order;

(2) the case number;

(3) the full name, county of residence, birth year, and race or ethnicity of the person who is the subject of the protective order;

(4) the dates the protective order was issued and served;

(5) the date the protective order was vacated, if applicable; and

(6) the date the protective order expired or will expire, as applicable.

(c) A member of the public may only access the information in the registry described by Subsection (b).

(d) The office may not allow a member of the public to access through the registry any information related to a protective order issued under Article [17.292](#), Code of Criminal Procedure, or Chapter

1 83, Family Code.

2 Sec. 72.155. RESTRICTED ACCESS TO PROTECTIVE ORDER  
3 REGISTRY. (a) The registry must include a copy of each  
4 application for a protective order filed in this state and a copy of  
5 each protective order issued in this state, including a vacated or  
6 expired order. Only an authorized user, the attorney general, a  
7 district attorney, a criminal district attorney, a county attorney,  
8 a municipal attorney, or a peace officer may access that  
9 information under the registry.

10 (b) The office shall ensure that an authorized user, the  
11 attorney general, a district attorney, a criminal district  
12 attorney, a county attorney, a municipal attorney, or a peace  
13 officer is able to search for and receive a copy of a filed  
14 application for a protective order or a copy of an issued protective  
15 order through the registry's Internet website.

16 Sec. 72.156. ENTRY OF APPLICATIONS. (a) Except as  
17 provided by Subsection (b), as soon as possible but not later than  
18 24 hours after the time an application for a protective order is  
19 filed, the clerk of the court shall enter a copy of the application  
20 into the registry.

21 (b) A clerk may delay entering information under Subsection  
22 (a) into the registry only to the extent that the clerk lacks the  
23 specific information required to be entered.

24 (c) The office shall ensure that a member of the public is  
25 not able to access through the registry's Internet website the  
26 application or any information related to the application entered  
27 into the registry under Subsection (a).

1       Sec. 72.157. ENTRY OF ORDERS. (a) Except as provided by  
2 Subsection (c), as soon as possible but not later than 24 hours  
3 after the time a court issues an original or modified protective  
4 order or extends the duration of a protective order, the clerk of  
5 the court shall enter into the registry:

6           (1) a copy of the order and, if applicable, a notation  
7 regarding any modification or extension of the order; and

8           (2) the information required under Section 72.154(b).

9       (b) For a protective order that is vacated or that has  
10 expired, the clerk of the applicable court shall modify the record  
11 of the order in the registry to reflect the order's status as  
12 vacated or expired.

13       (c) A clerk may delay entering information under Subsection  
14 (a) into the registry only to the extent that the clerk lacks the  
15 specific information required to be entered.

16       Sec. 72.158. REQUEST FOR GRANT OR REMOVAL OF PUBLIC ACCESS.

17 (a) The office shall ensure that the public may access information  
18 about protective orders, other than information about orders under  
19 Article 17.292, Code of Criminal Procedure, or Chapter 83, Family  
20 Code, through the registry, only if:

21           (1) a protected person requests that the office grant  
22 the public the ability to access the information described by  
23 Section 72.154(b) for the order protecting the person; and

24           (2) the office approves the request.

25       (b) A person whose request under Subsection (a) was approved  
26 by the office may request that the office remove the ability of the  
27 public to access the information that was the subject of the

person's earlier approved request. Not later than the third business day after the office receives a request under this subsection, the office shall remove the ability of the public to access the information.

(c) The Supreme Court of Texas:

(1) shall prescribe a form for use by a person requesting a grant or removal of public access as described by Subsections (a) and (b); and

(2) by rule may prescribe procedures for requesting a grant or removal of public access as described by Subsections (a) and (b).

SECTION 2. (a) Except as provided by Subsection (b) of this section, not later than June 1, 2020, the Office of Court Administration of the Texas Judicial System shall establish the protective order registry required by Section 72.153, Government Code, as added by this Act.

(b) The Office of Court Administration of the Texas Judicial System may delay establishing the protective order registry described by Subsection (a) of this section for a period not to exceed 90 days if the delay is authorized by resolution of the Texas Judicial Council.

(c) Not later than June 1, 2020, the Office of Court Administration of the Texas Judicial System shall establish and supervise a training program for magistrates, court personnel, and peace officers on the use of the protective order registry described by Subsection (a) of this section. The training program must make all materials for use in the training program available to

1 magistrates, court personnel, and peace officers.

2       SECTION 3. Notwithstanding Section 2 of this Act, the  
3 Office of Court Administration of the Texas Judicial System may not  
4 allow a member of the public to view before September 1, 2020,  
5 publicly accessible information described by Section 72.154(b),  
6 Government Code, as added by this Act, through the Internet website  
7 of the protective order registry established under Subchapter F,  
8 Chapter 72, Government Code, as added by this Act.

9       SECTION 4. Subchapter F, Chapter 72, Government Code, as  
10 added by this Act, applies only to an application for a protective  
11 order filed or a protective order issued on or after September 1,  
12 2020.

13       SECTION 5. The Office of Court Administration of the Texas  
14 Judicial System is required to implement a provision of this Act  
15 only if the legislature appropriates money specifically for that  
16 purpose. If the legislature does not appropriate money  
17 specifically for that purpose, the Office of Court Administration  
18 of the Texas Judicial System may, but is not required to, implement  
19 a provision of this Act using other appropriations available for  
20 that purpose.

21       SECTION 6. This Act takes effect September 1, 2019.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 325 passed the Senate on April 9, 2019, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 325 passed the House on April 29, 2019, by the following vote: Yeas 137, Nays 6, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor



AN ACT

relating to the creation and promulgation of certain standard forms for statewide use in criminal actions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 72, Government Code, is amended by adding Section 72.0245 to read as follows:

Sec. 72.0245. STANDARD FORMS IN CRIMINAL ACTIONS. (a) The office shall create and promulgate for use in criminal actions by the courts standard forms for:

(1) waiving a jury trial and entering a plea of guilty or nolo contendere in a felony case under Article 1.15, Code of Criminal Procedure, including for:

(A) the waiver of appearance, confrontation, and cross-examination of witnesses;

(B) the defendant's consent to an oral stipulation of evidence and testimony; and

(C) the introduction of any documentary evidence;

(2) waiving a jury trial and entering a plea of guilty or nolo contendere in a misdemeanor case under Article 27.14, Code of Criminal Procedure;

(3) a trial court to admonish a defendant under Article 26.13, Code of Criminal Procedure, and, if applicable, Article 27.14(e), Code of Criminal Procedure, before accepting the

1 defendant's plea of guilty or nolo contendere;

2 (4) a defendant who receives admonitions in writing  
3 under Article 26.13, Code of Criminal Procedure, to acknowledge  
4 that the defendant understands the admonitions and is aware of the  
5 consequences of the defendant's plea;

6 (5) a trial court to enter into the record the court's  
7 certification of a defendant's right to appeal under Rule  
8 25.2(a)(2), Texas Rules of Appellate Procedure;

9 (6) waiving the defendant's right to discovery under  
10 Article 39.14, Code of Criminal Procedure;

11 (7) acknowledging the disclosure, receipt, and list of  
12 all evidence provided to the defendant under Article 39.14, Code of  
13 Criminal Procedure, as required by Subsection (j) of that article;

14 (8) documenting the punishment that the prosecutor  
15 recommends as part of a plea bargain agreement, including a  
16 defendant's consent to waiving certain appeal rights under Rule  
17 25.2(a)(2), Texas Rules of Appellate Procedure, if the punishment  
18 assessed by the court does not exceed the punishment recommended by  
19 the prosecutor and agreed to by the defendant; and

20 (9) waiving a defendant's right to an expunction or to  
21 an order of nondisclosure of criminal history record information.

22 (b) The office shall update the forms as necessary.

23 (c) The supreme court by rule shall set the date by which all  
24 courts with jurisdiction over criminal actions must adopt and use  
25 the forms created under Subsection (a), and if updated, the date by  
26 which those courts must adopt and use a form updated under  
27 Subsection (b).

1        (d) A court shall accept a form promulgated by the office  
2 under this section unless the form has been completed in a manner  
3 that causes a substantive defect that cannot be cured.

4        SECTION 2. Not later than September 1, 2020, the Office of  
5 Court Administration of the Texas Judicial System shall create and  
6 promulgate the forms required by Section 72.0245, Government Code,  
7 as added by this Act.

8        SECTION 3. This Act takes effect September 1, 2019.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 51 was passed by the House on April 12, 2019, by the following vote: Yeas 144, Nays 0, 1 present, not voting.

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 51 was passed by the Senate on May 21, 2019, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

APPROVED: \_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

AN ACT

relating to court-ordered mental health services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 137.008(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) A physician or other health care provider may subject the principal to mental health treatment in a manner contrary to the principal's wishes as expressed in a declaration for mental health treatment only:

(1) if the principal is under an order for temporary or extended mental health services under Section 574.034, 574.0345, ~~or~~ 574.035, or 574.0355, Health and Safety Code, and treatment is authorized in compliance with Section 574.106, Health and Safety Code; or

(2) in case of an emergency when the principal's instructions have not been effective in reducing the severity of the behavior that has caused the emergency.

SECTION 2. Article 16.22, Code of Criminal Procedure, is amended by amending Subsection (c) and adding Subsections (c-1), (c-2), and (c-3) to read as follows:

(c) After the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b-1) or elects to use the results of a previous determination as described by Subsection (a)(2), the trial court may, as applicable:

1           (1) resume criminal proceedings against the  
2 defendant, including any appropriate proceedings related to the  
3 defendant's release on personal bond under Article 17.032 if the  
4 defendant is being held in custody;

5           (2) resume or initiate competency proceedings, if  
6 required, as provided by Chapter 46B ~~[or other proceedings~~  
7 ~~affecting the defendant's receipt of appropriate court-ordered~~  
8 ~~mental health or intellectual disability services, including~~  
9 ~~proceedings related to the defendant's receipt of outpatient mental~~  
10 ~~health services under Section 574.034, Health and Safety Code]~~;

11           (3) consider the written assessment during the  
12 punishment phase after a conviction of the offense for which the  
13 defendant was arrested, as part of a presentence investigation  
14 report, or in connection with the impositions of conditions  
15 following placement on community supervision, including deferred  
16 adjudication community supervision; ~~[or]~~

17           (4) refer the defendant to an appropriate specialty  
18 court established or operated under Subtitle K, Title 2, Government  
19 Code; or

20           (5) if the offense charged does not involve an act,  
21 attempt, or threat of serious bodily injury to another person,  
22 release the defendant on bail while charges against the defendant  
23 remain pending and enter an order transferring the defendant to the  
24 appropriate court for court-ordered outpatient mental health  
25 services under Chapter 574, Health and Safety Code.

26           (c-1) If an order is entered under Subsection (c)(5), an  
27 attorney representing the state shall file the application for

1 court-ordered outpatient services under Chapter 574, Health and  
2 Safety Code.

3 (c-2) On the motion of an attorney representing the state,  
4 if the court determines the defendant has complied with appropriate  
5 court-ordered outpatient treatment, the court may dismiss the  
6 charges pending against the defendant and discharge the defendant.

7 (c-3) On the motion of an attorney representing the state,  
8 if the court determines the defendant has failed to comply with  
9 appropriate court-ordered outpatient treatment, the court shall  
10 proceed under this chapter or with the trial of the offense.

11 SECTION 3. Section 55.13(d), Family Code, is amended to  
12 read as follows:

13 (d) After conducting a hearing on an application under this  
14 section, the juvenile court shall:

15 (1) if the criteria under Section 574.034 or 574.0345,  
16 Health and Safety Code, are satisfied, order temporary mental  
17 health services for the child; or

18 (2) if the criteria under Section 574.035 or 574.0355,  
19 Health and Safety Code, are satisfied, order extended mental health  
20 services for the child.

21 SECTION 4. Section 55.38(b), Family Code, is amended to  
22 read as follows:

23 (b) After conducting a hearing under Subsection (a)(2), the  
24 juvenile court shall:

25 (1) if the criteria under Section 574.034 or 574.0345,  
26 Health and Safety Code, are satisfied, order temporary mental  
27 health services; or

1           (2) if the criteria under Section [574.035](#) or 574.0355,  
2 Health and Safety Code, are satisfied, order extended mental health  
3 services.

4           SECTION 5. Section [55.57](#)(b), Family Code, is amended to  
5 read as follows:

6           (b) After conducting a hearing under Subsection (a)(2), the  
7 juvenile court shall:

8           (1) if the criteria under Section [574.034](#) or 574.0345,  
9 Health and Safety Code, are satisfied, order temporary mental  
10 health services; or

11           (2) if the criteria under Section [574.035](#) or 574.0355,  
12 Health and Safety Code, are satisfied, order extended mental health  
13 services.

14           SECTION 6. Subchapter B, Chapter [22](#), Government Code, is  
15 amended by adding Section 22.1106 to read as follows:

16           Sec. 22.1106. JUDICIAL INSTRUCTION RELATED TO  
17 COURT-ORDERED OUTPATIENT MENTAL HEALTH SERVICES. The court of  
18 criminal appeals shall ensure that judicial training related to  
19 court-ordered outpatient mental health services is provided at  
20 least once every year. The instruction may be provided at the  
21 annual Judicial Education Conference.

22           SECTION 7. Section [501.057](#)(b), Government Code, is amended  
23 to read as follows:

24           (b) Not later than the 30th day before the initial parole  
25 eligibility date of an inmate identified as mentally ill, an  
26 institutional division psychiatrist shall examine the inmate. The  
27 psychiatrist shall file a sworn application for court-ordered



temporary mental health services under Chapter 574, Health and Safety Code, if the psychiatrist determines that the inmate is mentally ill and as a result of the illness the inmate meets at least one of the criteria listed in Section 574.034 or 574.0345, Health and Safety Code.

SECTION 8. Section 574.002(c), Health and Safety Code, is amended to read as follows:

(c) Any application must contain the following information according to the applicant's information and belief:

- (1) the proposed patient's name and address;
- (2) the proposed patient's county of residence in this state;
- (3) a statement that the proposed patient is a person with mental illness and meets the criteria in Section 574.034, 574.0345, ~~or~~ 574.035, or 574.0355 for court-ordered mental health services; and
- (4) whether the proposed patient is charged with a criminal offense.

SECTION 9. Section 574.031, Health and Safety Code, is amended by adding Subsections (d-1) and (d-2) to read as follows:

(d-1) In a hearing for temporary inpatient or outpatient mental health services under Section 574.034 or 574.0345, the proposed patient or the proposed patient's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and, if that right is waived, the court may admit, as evidence, the certificates of medical examination for mental illness. The certificates admitted under this subsection

constitute competent medical or psychiatric testimony, and the court may make its findings solely from the certificates. If the proposed patient or the proposed patient's attorney does not waive in writing the right to cross-examine witnesses, the court shall proceed to hear testimony. The testimony must include competent medical or psychiatric testimony.

(d-2) In a hearing for extended inpatient or outpatient mental health services under Section 574.035 or 574.0355, the court may not make its findings solely from the certificates of medical examination for mental illness but shall hear testimony. The court may not enter an order for extended mental health services unless appropriate findings are made and are supported by testimony taken at the hearing. The testimony must include competent medical or psychiatric testimony.

SECTION 10. The heading to Section 574.034, Health and Safety Code, is amended to read as follows:

Sec. 574.034. ORDER FOR TEMPORARY INPATIENT MENTAL HEALTH SERVICES.

SECTION 11. Sections 574.034(g) and (h), Health and Safety Code, are amended to read as follows:

(g) An order for temporary inpatient ~~[or outpatient]~~ mental health services shall provide for a period of treatment not to exceed ~~[state that treatment is authorized for not longer than]~~ 45 days, except that the order may specify a period not to exceed 90 days if the judge finds that the longer period is necessary.

(h) A judge may not issue an order for temporary inpatient ~~[or outpatient]~~ mental health services for a proposed patient who

1 is charged with a criminal offense that involves an act, attempt, or  
2 threat of serious bodily injury to another person.

3 SECTION 12. Subchapter C, Chapter 574, Health and Safety  
4 Code, is amended by adding Section 574.0345 to read as follows:

5 Sec. 574.0345. ORDER FOR TEMPORARY OUTPATIENT MENTAL HEALTH  
6 SERVICES. (a) The judge may order a proposed patient to receive  
7 court-ordered temporary outpatient mental health services only if:

8 (1) the judge finds that appropriate mental health  
9 services are available to the proposed patient; and

10 (2) the judge or jury finds, from clear and convincing  
11 evidence, that:

12 (A) the proposed patient is a person with severe  
13 and persistent mental illness;

14 (B) as a result of the mental illness, the  
15 proposed patient will, if not treated, experience deterioration of  
16 the ability to function independently to the extent that the  
17 proposed patient will be unable to live safely in the community  
18 without court-ordered outpatient mental health services;

19 (C) outpatient mental health services are needed  
20 to prevent a relapse that would likely result in serious harm to the  
21 proposed patient or others; and

22 (D) the proposed patient has an inability to  
23 participate in outpatient treatment services effectively and  
24 voluntarily, demonstrated by:

25 (i) any of the proposed patient's actions  
26 occurring within the two-year period that immediately precedes the  
27 hearing; or

1                   (ii) specific characteristics of the  
2 proposed patient's clinical condition that significantly impair  
3 the proposed patient's ability to make a rational and informed  
4 decision whether to submit to voluntary outpatient treatment.

5           (b) To be clear and convincing under Subsection (a)(2), the  
6 evidence must include expert testimony and evidence of a recent  
7 overt act or a continuing pattern of behavior that tends to confirm:

8                   (1) the deterioration of ability to function  
9 independently to the extent that the proposed patient will be  
10 unable to live safely in the community;

11                   (2) the need for outpatient mental health services to  
12 prevent a relapse that would likely result in serious harm to the  
13 proposed patient or others; and

14                   (3) the proposed patient's inability to participate in  
15 outpatient treatment services effectively and voluntarily.

16           (c) An order for temporary outpatient mental health  
17 services shall state that treatment is authorized for not longer  
18 than 45 days, except that the order may specify a period not to  
19 exceed 90 days if the judge finds that the longer period is  
20 necessary.

21           (d) A judge may not issue an order for temporary outpatient  
22 mental health services for a proposed patient who is charged with a  
23 criminal offense that involves an act, attempt, or threat of  
24 serious bodily injury to another person.

25           SECTION 13. The heading to Section 574.035, Health and  
26 Safety Code, is amended to read as follows:

27           Sec. 574.035. ORDER FOR EXTENDED INPATIENT MENTAL HEALTH

SERVICES.

SECTION 14. Sections 574.035(d), (h), and (i), Health and Safety Code, are amended to read as follows:

(d) The jury or judge is not required to make the finding under Subsection (a)(4) ~~[or (b)(2)(F)]~~ if the proposed patient has already been subject to an order for extended mental health services.

(h) An order for extended inpatient ~~[or outpatient]~~ mental health services must provide for a period of treatment not to exceed ~~[shall state that treatment is authorized for not longer than]~~ 12 months. ~~[The order may not specify a shorter period.]~~

(i) A judge may not issue an order for extended inpatient ~~[or outpatient]~~ mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

SECTION 15. Subchapter C, Chapter 574, Health and Safety Code, is amended by adding Section 574.0355 to read as follows:

Sec. 574.0355. ORDER FOR EXTENDED OUTPATIENT MENTAL HEALTH SERVICES. (a) The judge may order a proposed patient to receive court-ordered extended outpatient mental health services only if:

(1) the judge finds that appropriate mental health services are available to the proposed patient; and

(2) the judge or jury finds, from clear and convincing evidence, that:

(A) the proposed patient is a person with severe and persistent mental illness;

(B) as a result of the mental illness, the

1 proposed patient will, if not treated, experience deterioration of  
2 the ability to function independently to the extent that the  
3 proposed patient will be unable to live safely in the community  
4 without court-ordered outpatient mental health services;

5 (C) outpatient mental health services are needed  
6 to prevent a relapse that would likely result in serious harm to the  
7 proposed patient or others;

8 (D) the proposed patient has an inability to  
9 participate in outpatient treatment services effectively and  
10 voluntarily, demonstrated by:

11 (i) any of the proposed patient's actions  
12 occurring within the two-year period that immediately precedes the  
13 hearing; or

14 (ii) specific characteristics of the  
15 proposed patient's clinical condition that significantly impair  
16 the proposed patient's ability to make a rational and informed  
17 decision whether to submit to voluntary outpatient treatment;

18 (E) the proposed patient's condition is expected  
19 to continue for more than 90 days; and

20 (F) the proposed patient has received:

21 (i) court-ordered inpatient mental health  
22 services under this subtitle or under Subchapter D or E, Chapter  
23 46B, Code of Criminal Procedure, for a total of at least 60 days  
24 during the preceding 12 months; or

25 (ii) court-ordered outpatient mental  
26 health services under this subtitle or under Subchapter D or E,  
27 Chapter 46B, Code of Criminal Procedure, during the preceding 60

1 days.

2 (b) The jury or judge is not required to make the finding  
3 under Subsection (a)(2)(F) if the proposed patient has already been  
4 subject to an order for extended mental health services.

5 (c) To be clear and convincing under Subsection (a)(2), the  
6 evidence must include expert testimony and evidence of a recent  
7 overt act or a continuing pattern of behavior that tends to confirm:

8 (1) the deterioration of the ability to function  
9 independently to the extent that the proposed patient will be  
10 unable to live safely in the community;

11 (2) the need for outpatient mental health services to  
12 prevent a relapse that would likely result in serious harm to the  
13 proposed patient or others; and

14 (3) the proposed patient's inability to participate in  
15 outpatient treatment services effectively and voluntarily.

16 (d) An order for extended outpatient mental health services  
17 must provide for a period of treatment not to exceed 12 months.

18 (e) A judge may not issue an order for extended outpatient  
19 mental health services for a proposed patient who is charged with a  
20 criminal offense that involves an act, attempt, or threat of  
21 serious bodily injury to another person.

22 SECTION 16. Section 574.036(e), Health and Safety Code, is  
23 amended to read as follows:

24 (e) The judge may enter an order:

25 (1) committing the person to a mental health facility  
26 for inpatient care if the trier of fact finds that the person meets  
27 the commitment criteria prescribed by Section 574.034(a) or

1 574.035(a); or

2 (2) committing the person to outpatient mental health  
3 services if the trier of fact finds that the person meets the  
4 commitment criteria prescribed by Section 574.0345(a) [~~574.034(b)~~]  
5 or 574.0355(a) [~~574.035(b)~~].

6 SECTION 17. Sections 574.037(a), (b-2), and (c-2), Health  
7 and Safety Code, are amended to read as follows:

8 (a) The court, in an order that directs a patient to  
9 participate in outpatient mental health services, shall designate  
10 the person identified under Section 574.0125 as responsible for  
11 those services or may designate a different person if necessary.  
12 The person designated must be the facility administrator or an  
13 individual involved in providing court-ordered outpatient  
14 services. A person may not be designated as responsible for the  
15 ordered services without the person's consent unless the person is  
16 the facility administrator of a department facility or the facility  
17 administrator of a community center that provides mental health  
18 services:

19 (1) in the region in which the committing court is  
20 located; or

21 (2) in a county where a patient has previously  
22 received mental health services.

23 (b-2) The person responsible for the services shall submit  
24 the program to the court before the hearing under Section 574.0345  
25 or 574.0355 [~~574.034 or 574.035~~] or before the court modifies an  
26 order under Section 574.061, as appropriate.

27 (c-2) A court may [~~on its own motion~~] set a status



conference in accordance with Section 574.0665 ~~[with the person responsible for the services, the patient, and the patient's attorney]~~.

SECTION 18. Sections 574.061(a), (b), (c), (d), (e), and (h), Health and Safety Code, are amended to read as follows:

(a) The facility administrator of a facility to which a patient is committed for inpatient mental health services, not later than the 30th day after the date the patient is committed to the facility, shall assess the appropriateness of transferring the patient to outpatient mental health services. The facility administrator may recommend that ~~[may request]~~ the court that entered the commitment order ~~[to]~~ modify the order to require the patient to participate in outpatient mental health services.

(b) A ~~[The]~~ facility administrator's recommendation under Subsection (a) ~~[request]~~ must explain in detail the reason for the recommendation ~~[request]~~. The recommendation ~~[request]~~ must be accompanied by a supporting certificate of medical examination for mental illness signed by a physician who examined the patient during the seven days preceding the recommendation ~~[request]~~.

(c) The patient shall be given notice of a facility administrator's recommendation under Subsection (a) ~~[the request]~~.

(d) On request of the patient or any other interested person, the court shall hold a hearing on a facility administrator's recommendation that the court modify the commitment order ~~[the request]~~. The court shall appoint an attorney to represent the patient at the hearing and shall consult with the local mental health authority before issuing a decision.

The hearing shall be held before the court without a jury and as prescribed by Section 574.031. The patient shall be represented by an attorney and receive proper notice.

(e) If a hearing is not requested, the court may make a [the] decision regarding a facility administrator's recommendation based on:

- (1) [solely from] the recommendation;
- (2) [request and] the supporting certificate; and
- (3) consultation with the local mental health authority concerning available resources to treat the patient.

(h) A modified order may [not] extend beyond the term of the original order, but may not exceed the term of the original order by more than 60 days.

SECTION 19. Subchapter E, Chapter 574, Health and Safety Code, is amended by adding Section 574.0665 to read as follows:

Sec. 574.0665. STATUS CONFERENCE. A court on its own motion may set a status conference with the patient, the patient's attorney, and the person designated to be responsible for the patient's court-ordered outpatient services under Section 574.037.

SECTION 20. Section 574.069(e), Health and Safety Code, is amended to read as follows:

(e) The court shall dismiss the request if the court finds from clear and convincing evidence that the patient continues to meet the criteria for court-ordered extended mental health services prescribed by Section 574.035 or 574.0355.

SECTION 21. Section 574.081, Health and Safety Code, is amended by amending Subsections (b) and (c) and adding Subsections

(a-1), (c-1), and (c-2) to read as follows:

(a-1) Subject to available resources, Subsections (a), (b), (c), (c-1), and (c-2) apply to a patient scheduled to be furloughed or discharged from:

(1) a state hospital; or

(2) any psychiatric inpatient bed funded under a contract with the Health and Human Services Commission or operated by or funded under a contract with a local mental health authority or a behavioral mental health authority.

(b) The physician shall prepare the plan as prescribed by Health and Human Services Commission ~~[department]~~ rules and shall consult the patient and the local mental health authority in the area in which the patient will reside before preparing the plan. The local mental health authority shall be informed of and must participate in planning the discharge of a patient ~~[is not required to participate in preparing a plan for a patient furloughed or discharged from a private mental health facility]~~.

(c) The plan must address the patient's mental health and physical needs, including, if appropriate:

(1) the need for outpatient mental health services following furlough or discharge; and

(2) the need for sufficient psychoactive medication on furlough or discharge to last until the patient can see a physician~~[, and~~

~~[(2) the person or entity that is responsible for providing and paying for the medication]~~.

(c-1) Except as otherwise specified in the plan and subject

1 to available funding provided to the Health and Human Services  
2 Commission and paid to a private mental health facility for this  
3 purpose, a private mental health facility is responsible for  
4 providing or paying for psychoactive medication and any other  
5 medication prescribed to the patient to counteract adverse side  
6 effects of psychoactive medication on furlough or discharge  
7 sufficient to last until the patient can see a physician.

8 (c-2) The Health and Human Services Commission shall adopt  
9 rules to determine the quantity and manner of providing  
10 psychoactive medication, as required by this section. The  
11 executive commissioner may not adopt rules requiring a mental  
12 health facility to provide or pay for psychoactive medication for  
13 more than seven days after furlough or discharge.

14 SECTION 22. Sections [574.104](#)(a), (b), and (d), Health and  
15 Safety Code, are amended to read as follows:

16 (a) A physician who is treating a patient may, on behalf of  
17 the state, file an application in a probate court or a court with  
18 probate jurisdiction for an order to authorize the administration  
19 of a psychoactive medication regardless of the patient's refusal  
20 if:

21 (1) the physician believes that the patient lacks the  
22 capacity to make a decision regarding the administration of the  
23 psychoactive medication;

24 (2) the physician determines that the medication is  
25 the proper course of treatment for the patient;

26 (3) the patient is under an order for inpatient mental  
27 health services under this chapter or other law or an application

1 for court-ordered mental health services under Section [574.034](#),  
2 [574.0345](#), [~~or~~] [574.035](#), or [574.0355](#) has been filed for the patient;  
3 and

4 (4) the patient, verbally or by other indication,  
5 refuses to take the medication voluntarily.

6 (b) An application filed under this section must state:

7 (1) that the physician believes that the patient lacks  
8 the capacity to make a decision regarding administration of the  
9 psychoactive medication and the reasons for that belief;

10 (2) each medication the physician wants the court to  
11 compel the patient to take;

12 (3) whether an application for court-ordered mental  
13 health services under Section [574.034](#), [574.0345](#), [~~or~~] [574.035](#), or  
14 [574.0355](#) has been filed;

15 (4) whether a court order for inpatient mental health  
16 services for the patient has been issued and, if so, under what  
17 authority it was issued;

18 (5) the physician's diagnosis of the patient; and

19 (6) the proposed method for administering the  
20 medication and, if the method is not customary, an explanation  
21 justifying the departure from the customary methods.

22 (d) The hearing on the application may be held on the date of  
23 a hearing on an application for court-ordered mental health  
24 services under Section [574.034](#), [574.0345](#), [~~or~~] [574.035](#), or [574.0355](#)  
25 but shall be held not later than 30 days after the filing of the  
26 application for the order to authorize psychoactive medication. If  
27 the hearing is not held on the same day as the application for

1 court-ordered mental health services under those sections [~~Section~~  
2 ~~574.034~~ or ~~574.035~~] and the patient is transferred to a mental  
3 health facility in another county, the court may transfer the  
4 application for an order to authorize psychoactive medication to  
5 the county where the patient has been transferred.

6 SECTION 23. Section 574.151, Health and Safety Code, is  
7 amended to read as follows:

8 Sec. 574.151. APPLICABILITY. This subchapter applies only  
9 to a person for whom a motion for court-ordered mental health  
10 services is filed under Section 574.001, for whom a final order on  
11 that motion has not been entered under Section 574.034, 574.0345,  
12 [~~or~~] 574.035, or 574.0355 and who requests voluntary admission to  
13 an inpatient mental health facility:

14 (1) while the person is receiving at that facility  
15 involuntary inpatient services under Subchapter B or under Chapter  
16 573; or

17 (2) before the 31st day after the date the person was  
18 released from that facility under Section 573.023 or 574.028.

19 SECTION 24. Section 152.00164(b), Human Resources Code, is  
20 amended to read as follows:

21 (b) Before a child who is identified as having a mental  
22 illness is discharged from the custody of the juvenile board or  
23 local juvenile probation department under Section 152.00163(b),  
24 the juvenile board or local juvenile probation department shall  
25 arrange for a psychiatrist to examine the child. The juvenile board  
26 or local juvenile probation department shall refer a child  
27 requiring outpatient psychiatric treatment to the appropriate

1 mental health authority. For a child requiring inpatient  
2 psychiatric treatment, the juvenile board or local juvenile  
3 probation department shall file a sworn application for  
4 court-ordered mental health services, as provided in Subchapter C,  
5 Chapter 574, Health and Safety Code, if:

6 (1) the child is not receiving court-ordered mental  
7 health services; and

8 (2) the psychiatrist who examined the child determines  
9 that the child has a mental illness and the child meets at least one  
10 of the criteria listed in Section 574.034 or 574.0345, Health and  
11 Safety Code.

12 SECTION 25. Section 244.012(b), Human Resources Code, is  
13 amended to read as follows:

14 (b) Before a child who is identified as mentally ill is  
15 discharged from the department's custody under Section 244.011(b),  
16 a department psychiatrist shall examine the child. The department  
17 shall refer a child requiring outpatient psychiatric treatment to  
18 the appropriate mental health authority. For a child requiring  
19 inpatient psychiatric treatment, the department shall file a sworn  
20 application for court-ordered mental health services, as provided  
21 in Subchapter C, Chapter 574, Health and Safety Code, if:

22 (1) the child is not receiving court-ordered mental  
23 health services; and

24 (2) the psychiatrist who examined the child determines  
25 that the child is mentally ill and the child meets at least one of  
26 the criteria listed in Section 574.034 or 574.0345, Health and  
27 Safety Code.

SECTION 26. The Supreme Court shall:

(1) adopt rules to streamline and promote the efficiency of court processes under Chapter 573, Health and Safety Code; and

(2) adopt rules or implement other measures to create consistency and increase access to the judicial branch for mental health issues.

SECTION 27. The following provisions of the Health and Safety Code are repealed:

(1) Sections 574.034(b), (e), and (f); and

(2) Sections 574.035(b), (f), and (g).

SECTION 28. The Health and Human Services Commission is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the Health and Human Services Commission may, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

SECTION 29. The changes in law made by this Act to Chapter 574, Health and Safety Code, apply to a commitment proceeding under that chapter that occurs on or after the effective date of this Act, regardless of whether conduct of a proposed patient being evaluated for that purpose occurred before, on, or after the effective date of this Act.

SECTION 30. The changes in law made by this Act to Article 16.22, Code of Criminal Procedure, and Chapter 574, Health and Safety Code, apply to a proceeding for court-ordered mental health



1 services that occurs on or after the effective date of this Act,  
2 regardless of when an offense with which the defendant is charged  
3 was committed.

4 SECTION 31. This Act takes effect September 1, 2019.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 362 passed the Senate on April 11, 2019, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 21, 2019, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 362 passed the House, with amendment, on May 15, 2019, by the following vote: Yeas 141, Nays 4, three present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

AN ACT

relating to judicial guidance related to child protective services cases and juvenile cases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 22, Government Code, is amended by adding Section 22.0135 to read as follows:

Sec. 22.0135. JUDICIAL GUIDANCE RELATED TO CHILD PROTECTIVE SERVICES CASES AND JUVENILE CASES. (a) The supreme court, in conjunction with the Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families, annually shall provide guidance to judges who preside over child protective services cases or juvenile cases to establish greater uniformity across the state for:

(1) in child protective services cases, issues related to:

(A) placement of children with severe mental health issues;

(B) changes in placement; and

(C) final termination of parental rights; and

(2) in juvenile cases, issues related to:

(A) placement of children with severe mental health issues;

(B) the release of children detained in juvenile detention facilities;

1                    (C) certification of juveniles to stand trial as  
2 adults;

3                    (D) a child's appearance before a court in a  
4 judicial proceeding, including the use of a restraint on the child  
5 and the clothing worn by the child during the proceeding; and

6                    (E) commitment of children to the Texas Juvenile  
7 Justice Department.

8                    (b) The supreme court shall adopt the rules necessary to  
9 accomplish the purposes of this section.

10                    SECTION 2. This Act takes effect September 1, 2019.

H.B. No. 2737

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2737 was passed by the House on May 2, 2019, by the following vote: Yeas 141, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2737 was passed by the Senate on May 22, 2019, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor

AN ACT

relating to forms for creating or revoking a transfer on death deed.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 22.020(a), Government Code, is amended by adding Subdivision (3) to read as follows:

(3) "Transfer on death deed" has the meaning assigned by Section 114.002, Estates Code.

SECTION 2. Section 22.020(b), Government Code, is amended to read as follows:

(b) The supreme court shall, as the court considers appropriate, promulgate:

(1) forms for use by individuals representing themselves in certain probate matters, including forms for use in:

(A) a small estate affidavit proceeding under Chapter 205, Estates Code; and

(B) the probate of a will as a muniment of title under Chapter 257, Estates Code;

(2) a simple will form for:

(A) a married individual with an adult child;

(B) a married individual with a minor child;

(C) a married individual with no children;

(D) an unmarried individual with an adult child;

(E) an unmarried individual with a minor child;

and

1 (F) an unmarried individual with no children;

2 (2-a) a form for use to create a transfer on death deed  
3 and a form for use to create an instrument of revocation of a  
4 transfer on death deed under Chapter 114, Estates Code; and

5 (3) instructions for the proper use of each form or set  
6 of forms.

7 SECTION 3. The following provisions of the Estates Code are  
8 repealed:

9 (1) Section 114.002(b); and

10 (2) Subchapter D, Chapter 114.

11 SECTION 4. The repeal of Subchapter D, Chapter 114, Estates  
12 Code, by this Act does not affect the validity of a transfer on  
13 death deed or a cancellation of a transfer on death deed executed  
14 before, on, or after the effective date of this Act.

15 SECTION 5. This Act takes effect September 1, 2019.

<hr/> <p>President of the Senate</p>	<hr/> <p>Speaker of the House</p>
<p>I hereby certify that S.B. No. 874 passed the Senate on April 11, 2019, by the following vote: Yeas 31, Nays 0.</p>	

	<hr/> <p>Secretary of the Senate</p>
<p>I hereby certify that S.B. No. 874 passed the House on May 14, 2019, by the following vote: Yeas 141, Nays 0, two present not voting.</p>	

	<hr/> <p>Chief Clerk of the House</p>
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Approved:

<hr/> <p>Date</p>
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<hr/> <p>Governor</p>
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IN THE SUPREME COURT OF TEXAS

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Misc. Docket No. 17-9070

REPORT OF THE HOUSE BILL 7 TASK FORCE FOR PROCEDURAL  
RULES IN SUITS AFFECTING  
THE PARENT–CHILD RELATIONSHIP FILED BY A  
GOVERNMENTAL ENTITY

**Phase II**

Submitted to the Supreme Court of Texas on December 31, 2018



# TO THE HONORABLE SUPREME COURT:

## INTRODUCTION

The House Bill 7 Task Force for Procedural Rules in Suits Affecting the Parent-Child Relationship Filed by a Governmental Entity (“HB 7 Task Force”) was established on July 10, 2017 by the Supreme Court of Texas (hereinafter “Supreme Court”), pursuant to Misc. Docket No. 17-9070. The HB 7 Task Force was charged with the responsibility to advise the Supreme Court regarding rules to be adopted or revised for trial and post-trial proceedings in cases involving termination of the parent-child relationship.

The need for a revision of the rules arose from House Bill 7, enacted by the 85th Legislature (Act of May 26, 2017, 85th Leg., R.S., ch. 317), effective September 1, 2017. House Bill 7 added Section 105.002(d) of the Family Code, directing the Department of Family and Protective Services (“Department”) and the Supreme Court of Texas Children’s Commission (“Children’s Commission”) to consider whether broad-form or specific jury questions should be required in Suits Affecting the Parent Child Relationship (SAPCR) filed by the Department. House Bill 7 also added Section 263.4055 of the Texas Family Code (hereinafter “Family Code”) directing the Supreme Court to establish procedures to address the conflict between the filing of a motion for new trial and the filing of an appeal of a final order rendered under Chapter 263 of the Family Code, as well as the period of time, including an extension of at least 20 days, for a court reporter to submit the reporter’s record of a trial to an appellate court following a final order rendered under Chapter 263. In addition, the Supreme Court requested that the HB 7 Task Force examine possible reasons for the increase in parental termination appeals and make recommendations on how to address the increase. Supreme Court of Texas Misc. Order 17-9070 directed the HB 7

Task Force to advise the Court on the rules required by House Bill 7 as well as other recommendations deemed appropriate to expedite and improve the trial and appeal of cases governed by Family Code Chapter 263 no later than December 1, 2017. The HB 7 Task Force submitted a report on November 27, 2017. *See Appendix A.* House Bill 7 required recommendations to be submitted to the Texas Legislature no later than December 31, 2017, and that report was submitted on December 15, 2017.

The Supreme Court of Texas, in Misc. Order 17-9070, appointed the following persons to the HB 7 Task Force:

**Hon. Dean Rucker**, Chair, Presiding Judge, Seventh Administrative Judicial Region of Texas, Midland

**Hon. Eva Guzman**, Court Liaison to the HB 7 Task Force and Children’s Commission’s Chair, Justice, Supreme Court of Texas, Austin

**Hon. Debra H. Lehrmann**, Justice, Supreme Court of Texas, Austin

**Tina Amberboy**, Executive Director, Supreme Court Children’s Commission, Austin

**Mark Briggs**, Attorney, El Paso

**Hon. Ada Brown**, Justice, 5th Court of Appeals, Dallas

**Audrey Carmical**, General Counsel, Department of Family and Protective Services, Austin

**William B. Connolly**, Attorney, Houston

**Lawrence M. Doss**, Attorney, Lubbock

**Anna Ford**, Director of Litigation, Department of Family and Protective Services

**Sandra D. Hachem**, Assistant County Attorney for Harris County, Houston

**Lisa Bowlin Hobbs**, Attorney, Austin

**Anissa Johnson**, Attorney, Office of Court Administration, Austin

**Hon. Sandee Marion**, Chief Justice, 4th Court of Appeals, San Antonio

**Hon. Michael Massengale**, Justice, 1st Court of Appeals, Houston

**Dylan Moench**, Staff Attorney, Supreme Court Children’s Commission, Austin

**Richard R. Orsinger**, Attorney, San Antonio

**Hon. Paul Rotenberry**, Judge, 326<sup>th</sup> District Court, Abilene

**Georganna L. Simpson**, Attorney, Dallas

**Hon. John J. Specia**, Judge (Ret.), San Antonio

**Hon. Angela Tucker**, Judge, 199th District Court, McKinney

**Luz A. (“Lucy”) Williamson**, Attorney, Edinburg

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**Martha Newton**, Rules Attorney, Supreme Court of Texas, Austin

## RECOMMENDATIONS

The HB 7 Task Force recommended the following in its November 2017 Report to the Supreme Court:

**1. Amend Texas Rule of Civil Procedure 277 to eliminate the use of broad-form jury questions in termination of parental rights cases.**

The HB 7 Task Force recommended that the Supreme Court, as an exercise of its rulemaking authority, require granulated charges in parental termination cases and that Texas Rule of Civil Procedure (Tex. R. Civ. P.) 277 should be amended to eliminate the use of broad-form jury questions in termination of parental rights cases. The HB 7 Task Force also crafted a pattern jury charge (PJC) to effectuate the move from broad-form submission to separate questions on the two elements (grounds and best interest) required for termination under Sections 161.001(b)(1) and (2), Texas Family Code.

The Court referred the suggested rule change to the Supreme Court Advisory Committee (SCAC) for consideration. The SCAC considered the HB 7 Task Force recommendation on Friday, September 28, 2018 and voted to support the Rule 277 language submitted by the Task Force in its November 2017 Report, but declined to support the Task Force PJC suggestions. Rather, the SCAC voted to support its own PJCs and on November 14, 2018, Judge Dean Rucker, Chair of the HB 7 Task Force, along with the Executive Director of the Children's Commission submitted a memo to the Supreme Court General Counsel articulating concerns about the SCAC PJC recommendations. *See Appendix B*. This matter is pending before the Supreme Court.

**2. Amend Texas Rule of Appellate Procedure 28.4(b) to require that Notice of Appeal should be provided to the court reporter who prepared the record and to the trial judge who heard the case.**

In its November 2017 report, the Task Force further recommended that Texas Rule of Appellate Procedure (Tex. R. App. P.) 28.4(b) be amended to require that notice of appeal should be provided to the court reporter(s) who prepared the record(s) and to the trial judge who heard the case. *See Appendix A, Page 19*. The HB 7 Task Force also determined, at the time, that there was no conflict between the rules related to a motion for new trial and the filing of a notice of appeal and thus no related rule amendments were recommended when the original report was submitted on November 27, 2017. *See Appendix A, Page 7*. However, the motion for new trial was revisited by the HB 7 Task Force during Phase II as part of its discussion related to ineffective assistance of counsel.

**3. Amend Texas Rule of Appellate Procedure 35.1 to allow an extension of time for Filing of the Court Reporter Record**

Finally, the November 2017 report recommended that the Supreme Court extend the time to file the court reporter record from 10 to 15 days in all accelerated appeals. *See Appendix A, Page 20*.

#### **4. Additional Issues Considered by the Task Force in 2018**

Throughout 2018, the HB 7 Task Force continued to meet to discuss: (1) a parent’s right to counsel on appeal as well as notice of the right to appeal, and what procedures might be appropriate to ensure that appeals are pursued at the parent’s direction; (2) procedural issues related to motions for new trial and post-trial matters, such as a meaningful opportunity to establish a record to support a claim of ineffective assistance of counsel; (3) the appropriateness of *Anders*-style procedure or alternative methods for appellate counsel to indicate that a parental-termination appeal lacks merit; and (4) the increase in parental termination appeals. All matters were assigned to two subcommittees chaired by Justice Michael Massengale (First Court of Appeals) and Chief Justice Sandee Marion (Fourth Court of Appeals). The subcommittees’ recommendations were adopted by the HB 7 Task Force on October 17, 2018 and are outlined below.

##### **(1) Indigent Parent’s Right to Counsel on Appeal, Notice of Right to Appeal, and Show of Authority to Appeal**

An indigent parent in a parental-termination proceeding is entitled to representation of counsel until the case is dismissed, all appeals are exhausted or waived, or the attorney is relieved or replaced.<sup>1</sup>

The HB 7 Task Force proposes that a defendant in a parental-termination suit be notified in the citation about the right to counsel, including the right to counsel on appeal. This will provide an additional measure of notice in the event appointed counsel later declines to pursue an appeal due to abandonment of the case by the parent. The admonition could be added to the required notice and take the following form:

“You have the right to be represented by an attorney. If you are indigent and unable to afford an attorney, you have the right to request the appointment of an attorney by contacting the court at [address], [telephone number]. If you appear in opposition to the suit, claim indigence, and request the appointment of an attorney, the court will require you to sign an affidavit of indigence and the court may hear evidence to determine if you are indigent. If the court determines you are indigent and eligible for appointment of an attorney, the court will appoint an attorney to represent you.”

“You are further notified that if a judgment is rendered against you, you have a right to appeal the judgment to the court of appeals and to the Supreme Court of Texas, and if you are indigent an attorney will be appointed to conduct the appeal at no cost to you.”

To the extent the Supreme Court is currently considering a revision of Rule 99 to include standard form citations, the Task Force proposes the creation of a customized form citation, in English and Spanish (and with an internet citation to translations in other languages), to be used in parental

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<sup>1</sup> Tex. Fam. Code § 107.016(3)

termination cases. Such a citation could have language customized to address the availability of default judgments in parental-termination cases.

The filing of a notice of appeal starts the process of immediately preparing a record, for which a court reporter might not be compensated.<sup>2</sup> To avoid initiating the preparation of an appellate record in circumstances when a terminated parent may not be actually seeking to challenge a final order, the HB 7 Task Force recommends an amendment to Rule 28.4(c) to require that a notice of appeal include an attorney certification that “the attorney consulted with the appellant and the appellant has directed the attorney to pursue the appeal.” *See Appendix C, Rule 28.4(c)*. The Task Force further proposes a similar certification in a petition for review filed in the Supreme Court. *See Appendix D, Rule 53.2(l)*. As an enforcement mechanism, the Task Force proposes borrowing from the procedure in Texas Rule of Civil Procedure 12 to challenge an attorney’s authority but eliminating the requirement of a sworn motion.<sup>3</sup>

## **(2) Motion for New Trial and Ineffective Assistance of Counsel (IAC)**

The law applicable to claims of ineffective assistance of counsel (IAC) is heavily influenced by the development of the law in criminal contexts. There is a critical distinction between the procedural universes applicable to IAC claims in criminal and civil contexts. To the extent IAC law as implemented in Texas makes it very difficult to effectively advance an IAC claim on direct appeal,<sup>4</sup> the Court of Criminal Appeals has explained that direct appeal is not the preferred method of raising IAC, and post-conviction habeas corpus is the preferred procedural avenue.<sup>5</sup> Thus a person convicted of a crime gets a second bite at the IAC apple, albeit without a right to appointed counsel. By contrast, the exhaustion of a direct appeal in a parental-termination case is essentially the end of the procedural road, at least to the extent a terminated parent has no other procedural opportunity to collaterally attack a final order of termination.

The IAC standard has two elements: (1) deficient professional conduct, and (2) prejudice.<sup>6</sup> A major limitation on IAC claims under the *Strickland* standard is that because attorneys may have strategic reasons at the time they make decisions that may be second-guessed in hindsight, they are presumed to have acted reasonably<sup>7</sup> and generally will not be held ineffective unless they have had an opportunity to explain themselves.<sup>8</sup> In other words, an IAC claim generally must be supported by evidence beyond the mere record of the underlying proceeding. The successful IAC claimant usually needs a supplemental record consisting of at least affidavits, and often an evidentiary hearing.

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<sup>2</sup> Tex. R. App. P. 28.4(b)(1)

<sup>3</sup> Tex. R. Civ. P. 12

<sup>4</sup> *See e.g., Trevino v. Thaler*, 569 U.S. 413, 417, 133 S. Ct. 1911, 1915 (2013); *Robinson v. State*, 16 S.W.3d 808, 811 (Tex. Crim. App. 2000)

<sup>5</sup> *Mata v. State*, 226 S.W. 3d 425, 430 n. 14 (Tex. Crim. App. 2007); *Robinson*, 16 S.W.3d at 810

<sup>6</sup> *In re M.S.*, 115 S.W.3d 534, 545 (Tex. 2003) (citing *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

<sup>7</sup> *Id.*

<sup>8</sup> *See Walker v. Texas Dept. of Family & Protective Servs.*, 312 S.W.3d 608, 623 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2009 pet. denied

Post-judgment timelines in parental-termination cases provide a limited opportunity for a lawyer to evaluate potential IAC claims and build a record to support them, particularly when juxtaposed against the likelihood that the lawyer evaluating an IAC claim has been newly appointed at or after entry of a final order. If an appellate lawyer is appointed at the same time the final order is entered, to the extent there will be an IAC issue raised, the lawyer has to determine the grounds for IAC, ascertain how to create a sufficient evidentiary record to prove IAC, file the motion for new trial within 30 days of the order, and get the evidence into the record either in written form or by means of an evidentiary hearing before the 75th day, when the motion for new trial is denied by operation of law if not ruled upon earlier.<sup>9</sup>

Initially, the Task Force considered a proposal to amend Rule 329b of the Texas Rules of Civil Procedure for a suit for termination of the parent-child relationship or a suit affecting the parent child relationship seeking managing conservatorship filed by a governmental entity. The proposal required that the request for preparation of a reporter's record be made within 20 days of a final order in the case. The proposal then required that the motion for new trial be filed prior to or within 30 days after the filing of the completed reporter's record. The subcommittee also recommended an amendment to Texas Rule of Appellate Procedure 38.6(a) which would provide that if a motion for new trial was timely filed as provided, the appellant's brief must be filed within 20 days after the later of (1) the date the clerk's record was supplemented to include post-judgment filings; or (2) the date the reporter's record was supplemented to include post-judgment proceedings. Finally, the proposal provided for an amendment to Rule 6 of the Texas Rules of Judicial Administration to require that the intermediate appellate courts must bring a final disposition of an appeal within 180 days after the later of (1) the date the clerk's record was filed; or (2) the date the reporter's record was filed.

After discussion of the proposal at the October 17, 2018 Task Force meeting, the Task Force rejected the proposal. The Task Force then discussed and adopted a more facile proposal that would provide an opportunity for the limited abatement of an appeal for the purpose of holding an evidentiary hearing in support of an IAC claim. The abatement would not exceed twenty days and would toll the running of the 180-day period for the appellate court to bring the appeal to final disposition as required by Texas Rule of Judicial Administration 6.2(a). *See Appendix C, Rule 28.4(d).*

### **(3) *Anders* / Certificate of No Merit**

The HB 7 Task Force recognizes that there is significant momentum behind the *Anders* practice in the appellate courts,<sup>10</sup> and the Supreme Court gave no indication that it was seeking to eliminate the practice. The Supreme Court's charge directed the Task Force to draft *Anders* brief procedures in appeals of parental termination and child protection cases for inclusion in the Rules of Appellate Procedure. The Task Force was also asked to propose a rule addressing the inconsistency presented by the *In re P.M.* decision relating to the right to counsel through Supreme Court review in parental termination appeals in contrast to analogous procedures in the criminal-law context, in which there is

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<sup>9</sup> Tex. R. Civ. P. 329b(a); Tex. R. Civ. P. 329b(c)

<sup>10</sup> *E.g., In re P.M.*, 520 S.W.3d 24, 27 (Tex. 2016)

no statutory right to continued representation through the petition stage at the Court of Criminal Appeals.

Additional proposed amendments to Rules 28.4 and 53.2 provide a suggested procedure for attorney handling and appellate disposition of “frivolous parental termination and child protection appeals.” *See Appendix C, Rule 28.4(f), (g) and (h) and Rule 53.2(m)*. Amendments to these rules will resolve the *In re P.M.* dilemma by specifying that an appointed appellate lawyer invoking the frivolous-appeal procedure should not actually move to withdraw for that reason, nor should the court of appeals allow the attorney to withdraw solely for that reason. The proposed rule amendments otherwise codify the traditional *Anders* standard for explaining the basis for the attorney’s conclusion that the appeal is frivolous, as well as the procedure for the appellant to file a *pro se* response. Proposed Rule 53.2(m) would allow counsel, after the court of appeals has determined the appeal to be frivolous, to adopt the brief filed in the court of appeals by reference in a petition for review with the Texas Supreme in lieu of the contents required by subparts (f)-(j) above.

The Task Force also submits with this report a “Parental Termination Brief Checklist” suitable for publication on appellate court websites to guide the evaluation of parental-termination appeals and, if warranted, *Anders* briefs. *See Appendix E*.

#### **(4) Increase in Appeals/Opinion Templates**

HB 7 Task Force members discussed the increase in appellate filings in the intermediate appellate courts and the Texas Supreme Court during the initial phase of its work in 2017. The Task Force reviewed data on appellate filings since 2011 but did not arrive at a consensus for the reasons for the increase. At the Supreme Court’s direction as the Task Force entered into Phase II of its work, the Task Force considered whether the Supreme Court should promote or adopt a template designed to produce shorter Court of Appeals opinions. To that end, a HB 7 subcommittee drafted several templates designed to streamline COA review of appeals. *See Appendix F*. Template A is used when the issue on appeal is limited to statutory grounds only. Template B is used when the issue on appeal is limited to the best interest of the child. Template C is used when the issues on appeal involve both statutory grounds and best interest. The templates are appropriate only when the complaints on appeal are the legal and/or factual sufficiency of the evidence to support a ground for termination and/or the best interest finding.

## **CONCLUSION**

The members of the House Bill 7 Task Force are honored to have been entrusted with the opportunity to make recommendations to the Supreme Court on these post-trial issues. The discussions of this assembled body of distinguished jurists and attorneys were robust and enlightening. I trust that the Task Force has fully dispatched the charge of the Court. Should the Court determine that there are related issues that should be considered by this Task Force, we remain ready to be of service. Allow

me to express our gratitude for the privilege of assisting the Court in the exercise of its important role in overseeing the rules of procedure that govern litigation in the courts of our State.

A handwritten signature in blue ink, reading "Dean Rucker", with a horizontal line underneath.

**DEAN RUCKER**  
**Chair of the HB 7 Task Force**



Phase II Report  
Appendix A

IN THE SUPREME COURT OF TEXAS

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Misc. Docket No. 17-9070

REPORT OF THE HOUSE BILL 7 TASK FORCE FOR PROCEDURAL  
RULES IN SUITS AFFECTING  
THE PARENT-CHILD RELATIONSHIP FILED BY A  
GOVERNMENTAL ENTITY

Submitted to the Supreme Court of Texas on November 27, 2017

# **TO THE HONORABLE SUPREME COURT:**

## **I. INTRODUCTION**

The House Bill 7 Task Force for Procedural Rules in Suits Affecting the Parent-Child Relationship Filed by a Governmental Entity (“HB 7 Task Force”) was established on July 10, 2017 by the Supreme Court of Texas (hereinafter “Supreme Court”), pursuant to Misc. Docket No. 17-9070. The HB 7 Task Force was charged with the responsibility to advise the Supreme Court regarding rules to be adopted or revised for trial and post-trial proceedings in cases involving termination of the parent–child relationship.

The need for a revision of the rules arose from House Bill 7, enacted by the 85th Legislature (Act of May 26, 2017, 85th Leg., R.S., ch. 317), effective September 1, 2017. House Bill 7 added Section 105.002(d) of the Family Code, directing the Department of Family and Protective Services (“Department”) and the Supreme Court of Texas Children’s Commission (“Children’s Commission”) to consider whether broad-form or specific jury questions should be required in Suits Affecting the Parent Child Relationship (SAPCR) filed by the Department. House Bill 7 also added Section 263.4055 of the Texas Family Code (hereinafter “Family Code”) directing the Supreme Court to establish procedures to address the conflict between the filing of a motion for new trial and the filing of an appeal of a final order rendered under Chapter 263 of the Family Code, as well as the period of time, including an extension of at least 20 days, for a court reporter to submit the reporter’s record of a trial to an appellate court following a final order rendered under Chapter 263. In addition, the Supreme Court requested that the HB 7 Task Force examine possible reasons for the increase in parental termination appeals and make recommendations on how to address the increase. Supreme Court of Texas Misc. Order 17-9070 directs the HB 7 Task Force to advise the Court on the rules required by House Bill 7 as well as other recommendations deemed appropriate to expedite and improve the trial and appeal of cases governed by Family Code Chapter 263 no later than December 1, 2017. In formulating the recommendations, the HB 7 Task Force is to be guided by the principle that proceedings under Chapter 263 should be expedited to minimize disruption and confusion in the lives of children and parents without precluding full consideration of the issues and their just and fair resolution. House Bill 7 requires recommendations to be submitted to the Texas Legislature no later than December 31, 2017.

The Supreme Court of Texas, in Misc. Order 17-9070, appointed the following persons to the HB 7 Task Force:

**Hon. Dean Rucker**, Chair, Presiding Judge, Seventh Administrative Judicial Region of Texas, Midland

**Hon. Debra H. Lehrmann**, Justice, Supreme Court of Texas, Austin

**Tina Amberboy**, Executive Director, Supreme Court Children’s Commission, Austin

**Mark Briggs**, Attorney, El Paso

**Hon. Ada Brown**, Justice, 5th Court of Appeals, Dallas

**Audrey Carmical**, General Counsel, Department of Family and Protective Services, Austin

**William B. Connolly**, Attorney, Houston

**Lawrence M. Doss**, Attorney, Lubbock

**Anna Ford**, Director of Litigation, Department of Family and Protective Services

**Sandra D. Hachem**, Assistant County Attorney for Harris County, Houston

**Lisa Bowlin Hobbs**, Attorney, Austin

**Anissa Johnson**, Attorney, Office of Court Administration, Austin

**Hon. Sandee Marion**, Chief Justice, 4th Court of Appeals, San Antonio

**Hon. Michael Massengale**, Justice, 1st Court of Appeals, Houston

**Dylan Moench**, Staff Attorney, Supreme Court Children's Commission, Austin

**Richard R. Orsinger**, Attorney, San Antonio

**Hon. Paul Rotenberry**, Judge, 326<sup>th</sup> District Court, Abilene

**Georganna L. Simpson**, Attorney, Dallas

**Hon. John J. Specia**, Judge (Ret.), San Antonio

**Hon. Angela Tucker**, Judge, 199<sup>th</sup> District Court, McKinney

**Luz A. ("Lucy") Williamson**, Attorney, Edinburg

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**Hon. Eva Guzman**, Court Liaison to the HB 7 Task Force and Children's Commission's Chair, Justice, Supreme Court of Texas, Austin

**Martha Newton**, Rules Attorney, Supreme Court of Texas, Austin

## **II. PROCESS OF REVIEW**

The HB 7 Task Force worked in accordance with a timeline and a work plan that outlined the issues for review. The HB 7 Task Force held one in-person meeting on August 18, 2017. Additional

teleconferences were held on September 18<sup>th</sup>, October 11<sup>th</sup>, and October 18<sup>th</sup>. In addition to meetings and conference calls, the HB 7 Task Force reviewed and provided input to the Final Report.

**Work Plan (Schedule and Deliverables):**

08/18/17 (Fri)	HB7 TF met in Austin
09/01/17 (Fri)	8/18/17 meeting summary provided to HB7 TF
09/18/17 (Mon)	HB7 TF conference call, input collected
10/01/17 (Mon)	Report writing began
10/10/17 (Tues)	First draft of report to HB7 TF
10/11/17 (Wed)	HB7 TF conference call to discuss filing of court reporter record
10/18/17 (Wed)	HB7 TF conference call to discuss report
11/01/17 (Wed)	Second draft provided to HB7 TF
11/15/17 (Wed)	Edits completed
12/01/17 (Fri)	Report submitted to Supreme Court
12/29/17 (Fri)	Report submitted to Texas Legislature

### **III. RECOMMENDATIONS**

The HB 7 Task Force recommends that the Supreme Court, as an exercise of its rulemaking authority, require granulated charges in parental termination cases and that Texas Rule of Civil Procedure (Tex. R. Civ. P.) 277 should be amended to eliminate the use of broad-form jury questions in termination of parental rights cases. The Task Force further recommends that Texas Rule of Appellate Procedure (Tex. R. App. P.) 28.4(b) be amended to require that notice of appeal should be provided to the court reporter(s) who prepared the record(s) and to the trial judge who heard the case. The HB 7 Task Force determined that there is no conflict between the rules related to a motion for new trial and the filing of a notice of appeal and thus no related rule amendments are required or recommended. Finally, the HB 7 Task Force requests additional guidance from the Supreme Court on the issues related to the increase in number of appeals. The Supreme Court provided additional guidance prior to the September 18, 2017 conference call, and granted permission for the HB 7 Task Force to take up resolution of this last remaining issue after January 1, 2018. Thus, with regard to the increase in parental termination appeals, this report contains no recommendations or further discussion. The increase in parental termination appeals and related matters will be studied in early 2018 and a report will be issued to the Supreme Court in the near future.

#### **IV. Discussion: Broad-Form Jury Charge in Parental Termination Cases**

At the August 18, 2017 in-person meeting, the HB 7 Task Force discussed: (1) Broad-form Jury Submission; (2) Motion for New Trial and Notice of Appeal; (3) Filing of the Court Reporter's Record; and (4) Increase in Parental Termination Appeals. The discussion on broad-form submission centered on the case law in this area, the history of broad-form submission, the reasoning for the practice, and the problems presented by the use of broad-form submission. In particular, the inability to determine precisely which grounds form the basis of a termination presents a burden on the appellate courts because a challenge to the sufficiency of the evidence must address each and every alleged termination ground rather than being confined to those grounds actually found by a jury. The HB 7 Task Force also discussed the movement among parent advocates to require the jury to address each ground as to each parent, due process concerns, and whether changes to Rule 277 should apply to private termination cases.

Broad-form jury charges in parental termination cases have been specifically sanctioned by the Supreme Court since *Tex. Dep't of Human Servs. v. E.B.*, 802 S.W.2d 647 (Tex. 1990). The Court ruled that Tex. R. Civ. P. 277 (Rule 277) mandates broad-form submission to be used whenever feasible. However, in 2002, the Supreme Court allowed exceptions to the requirement for broad-form submissions in *Crown Life Ins. v. Casteel*, 22 S.W.3d 378 (Tex. 2000), stating that Rule 277 is not absolute. The 10<sup>th</sup> Court of Appeals in Waco extended the application of *Crown Life*, to termination cases in *In the Interest of B.L.D.*, 113 S.W.3d 340 (Tex. 2003) stating "in termination cases, procedural due process requires a strict application of [Tex. R. Civ. P.] 292's requirement of accord by ten or more jurors" and "the disjunctive form of the charge, without more, may violate due process because it allows for the possibility of termination based on a statutory ground not found by at least ten jurors to have been violated." *Id.* at 216. The Supreme Court overturned the appellate court's ruling on the ground that the error had not been properly preserved but did not reach the merits of the argument and acknowledged the intermediate appellate courts were divided on the issue. See Appendix A for additional history related to use of broad-form submission.

The Task Force also discussed whether the Supreme Court set precedent for granulated questions when in 2012 the Court amended Tex. R. Civ. P. 306 (Rule 306) to require that in a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship, the judgment must state the specific grounds for termination or for appointment of the managing conservator. Thus, amended Rule 306 may support that broad-form submission is no longer "feasible" under Rule 277.

At the end of the discussion, Judge Rucker appointed a subcommittee to lead the charge on drafting proposed amendments to Rule 277. Task Force members Richard Orsinger, Justice Michael Massengale, Bill Connolly, and Brenda Kinsler (a Department litigation specialist who attended the August 18<sup>th</sup> meeting on behalf of Task Force member Anna Ford), agreed to serve on the subcommittee and report back to the full committee on the conference call scheduled for September 18, 2017.

On the September 18, 2017 conference call, Task Force member Richard Orsinger noted for the group that the challenge in drafting an amended rule was dealing with multiple children and multiple parents and multiple grounds. The concept for the change proposed to the full HB 7 Task Force was to fold the ground into the question so that the individual ground would be integrated into a stand-alone question, as to the mother, and father, and as to each child separately.

The HB 7 Task Force discussed that it is a rare case that has only one mother and one father, acknowledging that there could be one mother with several children and different fathers for each child. Also, there was discussion that it is unlikely that the same termination grounds would be applicable to all parents. In other words, there could be a ground (and thus a jury question) that would relate to only one parent – or one child. Representatives from the Harris County Attorney’s Office noted that even if one parent abuses a child, but not others in the home, case law holds that parental rights can be terminated on all children based on the abuse of one child and the risk presented to others in the home. Task Force member Sandra Hachem expressed concern that granulated jury questions will cause confusion. Task Force member Justice Massengale noted that it is not always going to be the case that conduct endangering one child necessarily endangers another child and a jury needs to make a determination with regard to each ground and each child noting that the statutory language found in Family Code Sections 161.001(b)(1)(D) and (E) refer to “the child,” not “a child.”

The Task Force also discussed the House Bill 7 amendment to Section 161.206(a-1), Family Code, which requires clear and convincing evidence for each parent in order to terminate parental rights of that parent.

At the conclusion of the September 18, 2017 call, the HB 7 Task Force agreed to recommend amending Rule 277, adding a comment to the proposed rule change, and submitting an example of jury questions to be proposed for inclusion in the Supreme Court’s administrative order announcing the rule amendment. See Appendix B. Task Force member Sandra Hachem objected to amending Rule 277.

On the October 18, 2017 conference call, the HB 7 Task Force discussed Rule 277 again, including whether the rule change should apply to all terminations, private and state-sponsored. Judge Rucker notified Task Force members that he had informed the Executive Committee of the Family Law Council that the Task Force was considering a recommendation to amend Rule 277 and that the proposed recommendation would encompass both private and state-sponsored termination cases.

Task Force member Audrey Carmical, General Counsel for the Department of Family and Protective Services, expressed concerns about potential confusion of jurors if the state moves away from broad-form submission to granular questions. Ms. Carmical was invited by Judge Rucker to submit a written statement to the Task Force of the Department’s concerns. Ms. Carmical submitted a written statement on October 18, 2017, noting that while the Department acknowledges and appreciates the importance of enhancing parents’ due process protections, the use of granulated submission may lead to an unintended negative impact on permanency outcomes for children in care. Specifically, prior

to the *E.B.* decision, attorneys who utilized narrow form submission experienced cases in which jurors would often become confused as to which ground constituted abuse and which ground constituted neglect. As a result, nine jurors might find for termination under Family Code 161.001(b)(1)(D) but another three might find for termination under (E), failing to meet the required number of jurors to find for termination of parental rights. Ms. Carmical’s note went on to say that there were situations prior to *E.B.* where a judge was “forced to appoint DFPS as Permanent Managing Conservator of the subject children, leaving them to grow up in foster care.” The Department anticipates that confusion is likely to increase with the use of narrow submission as pursuant to Tex. R. Civ. P. 292(a), because the same ten or more jurors are required to agree on all answers made upon which the court bases its judgment. Ms. Carmical also requested that an analysis of *In re E.M.*, 494 S.W.3d 209, 229 (Tex. App.—Waco 2015, pet. denied) from the Waco Court of Appeals in 2015 and *In re C.C.*, No. 10-16-00129-CV, 2016 WL 6808944, at \*13 (Tex. App.—Waco Nov. 16, 2016, no pet.) be added as a report appendix. See Appendix C.

## **V. Discussion: Motion for New Trial and Notice of Appeal**

The 2012 changes made to Rule 28.4, Texas Rules of Appellate Procedure, required that parental termination appeals be treated as an accelerated appeal under Tex. R. App. P. 26.1 (Rule 26.1), including the requirement that a notice of appeal be filed 20 days after the judgment is signed. Under Tex. R. Civ. P. 329b (Rule 329b), motions for new trial may be filed up to 30 days after a final judgment is signed and a trial court has 75 days to rule on the motion. The 85th Texas Legislature proposed a solution to this perceived conflict in the filed version of House Bill 7, which required a motion for new trial within five days of a final judgment in a child protection case and required the trial court to rule on the motion within 14 days. The language was withdrawn from House Bill 7 before final passage so that this matter could be examined by the HB 7 Task Force.

At the August 18, 2017 meeting, the HB 7 Task Force discussed whether five days was too short a time to properly prepare a motion for a new trial because it is unlikely that a court reporter’s record could be produced in such a short amount of time. Also, there was concern that attorneys would not be able to properly review the record for errors and may therefore be motivated to file a boilerplate motion, potentially missing a point of error. The HB 7 Task Force also discussed the merits of shortening the time for disposition of a motion for new trial in parental termination and child protection cases from 75 days to 60 days after the signing of a final order. However, it was pointed out that there is no rule or law that prohibits an attorney from pursuing both a motion for new trial and filing a notice of appeal at the same time.

This point was reiterated and discussed again during the September 18, 2017 conference call, and it was noted that a trial court’s plenary power allows the court to rule on the motion for new trial even if a notice of appeal has been filed. Task Force member Justice Michael Massengale submitted additional reasons for not truncating the period for filing a motion for new trial in termination proceedings via an email sent to the Task Force on October 18, 2017, including that there may be a

different lawyer handling the appeal and the new attorney will need time to become familiar with the case. Also, the motion for new trial may need to be supported by evidence, adduced either through affidavits or an evidentiary hearing.

Thus, the HB 7 Task Force recommends that time to file a motion for new trial should not be amended and to do so in the manner envisioned by the filed version of House Bill 7 would dramatically truncate the timeline and potentially damage a parent's ability to challenge error. However, the HB 7 Task Force did agree to recommend amendment to Tex. R. App. P. 28.4 (Rule 28.4) to require the attorney filing the notice of appeal to provide notice to the court reporter(s) who prepared the record(s) and the trial judge who heard the case. See Appendix D.

## **VI. Discussion: Filing of the Court Reporter Record**

In 2011, the HB 906 Task Force appointed by the Texas Supreme Court studied the matters of time to file the reporter's record and the extension of time to file the record. In the HB 906 Task Force report submitted to the Supreme Court on October 14, 2011, the HB 906 Task Force recommended that court reporters be required to file the reporter's record within 30 days of the filing of the notice of appeal. The HB 906 Task Force also recommended that an extension or extensions could be granted by the court of appeals for good cause, not to exceed 60 days cumulatively, absent extraordinary circumstances. *Final Report of the Task Force for Post-Trial Rules in Cases Involving Termination of the Parental Relationship* (October 14, 2011), at pages 7 and 17. The Supreme Court did not adopt the recommendation and instead amended Tex. R. App. P. 35.3(c) to permit extensions of 10 days each in an accelerated appeal. The Court further provided in Tex. R. App. P. 28.4(b)(2) that any extension or extensions granted must not exceed 30 days cumulatively, absent extraordinary circumstances. Since that time, court reporters have voiced concern about their ability to complete a trial record within the 10-day period while maintaining their normal court duties. Court reporters have also stated that trial courts are often reluctant to release court reporters from their regular duties to complete a trial record or hire substitute court reporters due to budgetary pressure from county commissioners' courts.

At the August 18, 2017 meeting, the HB 7 Task Force discussed whether timelines should be adjusted to account for the number of days it takes to prepare a record as well as who should have responsibility to notify the court reporter that a notice of appeal has been filed. Many court reporters had reported to HB 7 Task Force members that much of the problem stems from not receiving timely notice that a notice of appeal has been filed, and that by the time they are made aware, the deadline to file the record is upon them or has already passed.

Task Force members discussed commencing the 180-day deadline for the appellate court to resolve the appeal from the date the reporter's record is filed rather than the date notice of appeal is filed, but there was strong resistance to any changes that might delay the resolution of the appeal. General



concern was also expressed that any changes that were made solely to parental termination and child protection cases would result in these cases receiving a lower priority than other accelerated appeals. Motions to extend the initial deadline for the reporter's record from 10 days to 15 days for all accelerated appeals, and to extend the initial deadline from 10 to 15 days only for child protection cases were considered by the HB 7 Task Force. Both motions failed to pass.

The HB 7 Task Force also discussed that the urgency of resolving child protection appeals outweighs a rule amendment allowing court reporters more time to file the reporter's record. This discussion was bolstered by the fact that the appellate court members of the Task Force stated that the courts of appeal are routinely granting requests for extensions of time to file the reporter record while still being able to timely issue opinions. It was also noted that the courts of appeal already have the authority to grant an extension beyond the 30 cumulative days for extraordinary circumstances, such as a lengthy jury trial.

All HB 7 Task Force members agreed that the Texas Rules of Appellate Procedure should be amended to require an attorney filing a notice of appeal to notify the court reporter at the time the notice of appeal is filed. This issue was revisited during the HB 7 Task Force's September 18, 2017 conference call and the decision was made to recommend that the attorney filing a notice of appeal also be required to notify the trial court judge who handled the trial. See Appendix D.

On the September 18, 2017, conference call, the HB 7 Task Force agreed to revisit the court reporter record issue once more and a conference call was scheduled for Wednesday, October 11, 2017. On the October 11, 2017 conference call, the HB 7 Task Force heard from three members about the volume of records created in CPS cases and that many court reporters are spending a great deal of their personal time to produce records timely. It was also reported that there is a shortage of substitute court reporters in certain parts of the state. A minority of members were of the opinion that the problem with filing the record timely is not related to whether there are 10 days or 15 days to do so, but rather the dearth of court reporter resources available throughout the state. Others expressed the opinion that if the deadline is to be extended to 15 days for this type of accelerated case, that the time to file the report record in all cases on an accelerated timetable should be adjusted to allow for 15 days rather than 10. The Task Force considered a motion to extend the time to file the reporter's record in all accelerated appeals from 10 days to 15 days, noting that extending to 15 days encompasses two weekends for the reporter to timely file the record instead of just one. The motion passed 12-2. Subsequent to the call held on October 11, 2017, Task Force Member Judge John J. Specia, submitted a written statement on October 16, 2017, to Judge Dean Rucker, Task Force Chair, requesting that his prior vote in favor of the motion be changed to reflect that he abstained from voting. Thus the vote was revised and recorded as eleven in favor, two opposed, and one in abstention.

On the October 18, 2017 conference call, the Task Force again discussed the issue of extending the time to file the reporter's record from 10 to 15 days. Prior to the October 18, 2017 conference call, Task Force member Lisa Hobbs, in support of the Task Force recommendation to extend the time to

file the reporter's record in all accelerated appeals, noted that it makes little sense to give more time solely to prepare a record in what should arguably be the most accelerated of appeals [appeals of parental termination and child protection cases] than other accelerated appeals, given the instability an appeal may create in a child's life. The HB 7 Task Force agreed to propose amendments to Tex. R. App. P 35.1 (Rule 35.1) to extend the time to file the court reporter(s) record(s) from 10 to 15 days. See Appendix E.

## **VII. CONCLUSION**

I am honored to have again been selected to chair this Task Force of distinguished justices, judges and lawyers. On behalf of the members of the House Bill 7 Task Force, please allow me to express our gratitude for the privilege of assisting the Court in the exercise of its important role in overseeing the rules of procedure that govern litigation in the courts of our State.

A handwritten signature in blue ink, reading "Dean Rucker", is written over a horizontal line.

**DEAN RUCKER**  
**Chair of the HB 7 Task Force**

## APPENDIX A

Background regarding broad-form submission was provided by Task Force Member Richard Orsinger of San Antonio, who served on the State Bar of Texas' Pattern Jury Charge Committee—Family Law that drafted the broad-form submission question for parental termination that is in use today. Orsinger explained that the Chair of that PJC Committee was U.T. Law Professor John J. Sampson, who wrote a law review article exploring the history of broad-form submission, *TDHS v E.B., The Coup de Grace For Special Issues*, 23 ST. MARY'S L.J. 221 (1991) ("Sampson"). Professor Sampson divided jury submission practice in Texas into three eras: the era from 1913-1973, where courts were required to submit issues "distinctly and separately;" the era from 1973-1988, where the courts had discretion to submit either separate questions or detailed instructions with questions in broad-form; and the era after January 1, 1988, where the courts were required to "submit ... the cause upon broad-form questions" "whenever feasible." *Id.* at 227-35 (quoting Tex. R. Civ. P. 277). Professor Sampson characterized the 1988 amendment to Rule 277 as a "radical" reform. *Id.* at 234. To add further context, Orsinger quoted the following language from Chief Justice Pope's unanimous Opinion for the Court in *Lemos v. Montez*, 680 S.W.2d 798, 801 (Tex. 1984):

Prior to 1913 there was such a gradual accumulation of instructions considered helpful to juries, that an errorless charge became almost impossible. In 1913, to escape from the unsuccessful general charge, the Texas Legislature enacted article 1984a. Submission of Special Issues Act, ch. 59, § 1, 1913 Tex. Gen. Laws 113. The new procedure required the use of special issues that would be submitted separately and distinctly.

In 1973, after sixty years, it became apparent that Texas courts, while escaping from the voluminous instructions to jurors, had substituted in the place of instructions, a jury system that was overloaded with granulated issues to the point that jury trials were again ineffective. The Supreme Court in 1973 amended Rule 277, Tex. R. Civ. P., by abolishing the requirement that issues be submitted distinctly and separately. Since that time, broad issues have been repeatedly approved by this court as the correct method for jury submission.

This court's approval and adoption of the broad issue submission was not a signal to devise new or different instructions and definitions. We have learned from history that the growth and proliferation of both instructions and issues come one sentence at a time. For every thrust by the plaintiff for an instruction or an issue, there comes a parry by the defendant. Once begun, the instructive aids and balancing issues multiply. Judicial history teaches that broad issues and accepted definitions suffice and that a workable jury system demands strict adherence to simplicity in jury charges.

Given this background, the PJC Family Law Committee suggested a broad-form submission where the grounds for termination were specified in instructions, and the jury was further instructed that termination must be in the best interest of the child, and the jury was asked: “Should the parent–child relationship between PARENT and CHILD be terminated?” This instruction was used in a 1988 Travis County parental-termination case, *TDHS v. E.B.* The mother was terminated by the trial court, but the Austin Court of Appeals reversed, saying that the broad-form submission could have resulted in termination when only five jurors thought the mother had placed the child in a dangerous situation while another five jurors thought the mother had engaged in dangerous conduct, but the minimum required ten jurors did not agree that any one ground for termination existed. Sampson, at 244-45.

The Court of Appeals also said that the jury question invaded the role of the trial court “to determine the ultimate legal question of whether the parent–child relationship should be terminated.” *Id.*

A unanimous Supreme Court reversed the Court of Appeals, in an opinion authored by Justice Eugene A. Cook, who was Board Certified in Family Law by the Texas Board of Legal Specialization, and who wrote:

The issue before this court is whether Rule 277 of the Texas Rules of Civil Procedure means exactly what it says, that is, “In all jury cases the court shall, whenever feasible, submit the cause upon broad-form questions.”

*Texas Dep’t of Human Servs. v. E.B.*, 802 S.W.2d 647, 648 (Tex. 1990). Justice Cook went on to say:

The charge in parental rights cases should be the same as in other civil cases. The controlling question in this case was whether the parent–child relationship between the mother and each of her two children should be terminated, not what specific ground or grounds under § 15.02 the jury relied on to answer affirmatively the questions posed. All ten jurors agree that the mother had endangered the child by doing one or the other of the things listed in § 15.02. Petitioner argues that the charge, as presented to the jury, violates her due process right by depriving a natural mother of her fundamental right to the care, custody and management of her children. Recognizing her rights does not change the form of submission. The standard for review of the charge is abuse of discretion, and abuse of discretion occurs only when the trial court acts without reference to any guiding principle. Here the trial court tracked the statutory language in the instruction and then asked the controlling question. This simply does not amount to abuse of discretion.

Broad-form questions reduce conflicting jury answers, thus reducing appeals and avoiding retrials. Rule 277 expedites trials by simplifying the charge conference and making questions easier for the jury to comprehend and answer.

Accordingly, we reverse the judgment of the court of appeals and affirm the judgment of the trial court.

*Id.* at 649. Broad-form submission thus became the rule in parental-termination cases.

The pendulum on broad-form submission began to swing back in the case of *Crown Life Ins. Co. v. Casteel*, 22 S.W.3d 378 (Tex. 2000), where the Supreme Court reversed a trial court for making a broad-form submission based on instructions relating to two theories of liability, one of which was valid under Texas law and the other of which was invalid. The Supreme Court wrote that Rule 277 required broad-form submission “whenever feasible,” but that broad-form submission was not feasible when one or more grounds for recovery was invalid or uncertain. *Id.* at 389-90. In the parental termination case of *In the Interest of B.L.D.*, 56 S.W.3d 203 (Tex. App.—Waco 2001), *rev’d on other grounds*, 113 S.W.3d 340 (Tex. 2003), the Court of Appeals held that a broad-form submission that does not guarantee that at least ten jurors agreed on the same ground for termination violates due process of law. *Id.* at 219.

## APPENDIX B

### **Rule 277. Submission to the Jury**

In all jury cases the court shall, whenever feasible, submit the cause upon broad-form questions.

The court shall submit such instructions and definitions as shall be proper to enable the jury to render a verdict.

Inferential rebuttal questions shall not be submitted in the charge. The placing of the burden of proof may be accomplished by instructions rather than by inclusion in the question.

In any cause in which the jury is required to apportion the loss among the parties the court shall submit a question or questions inquiring what percentage, if any, of the negligence or causation, as the case may be, that caused the occurrence or injury in question is attributable to each of the persons found to have been culpable. The court shall also instruct the jury to answer the damage question or questions without any reduction because of the percentage of negligence or causation, if any, of the person injured. The court may predicate the damage question or questions upon affirmative findings of liability.

In a suit in which termination of the parent–child relationship is requested, the court shall submit separate questions for each parent and each child on (1) each individual ground for termination of the parent–child relationship and (2) whether termination of the parent–child relationship is in the best interest of the child.

The court may submit a question disjunctively when it is apparent from the evidence that one or the other of the conditions or facts inquired about necessarily exists.

The court shall not in its charge comment directly on the weight of the evidence or advise the jury of the effect of their answers, but the court's charge shall not be objectionable on the ground that it incidentally constitutes a comment on the weight of the evidence or advises the jury of the effect of their answers when it is properly a part of an instruction or definition.

### **Comment to 2017 Change:**

The rule has been amended to require a jury question on each individual statutory ground for termination as to each parent and each child without requiring further granulated questions for subparts of an individual ground for termination. The rule has also been amended to require a separate question on best interest of the child as to each parent and each child.

### **Recommended Pattern Jury Charge**

The following format for the submission of each of the grounds pleaded are recommended for submission to the Pattern Jury Charge Family/Probate Committee should the Supreme Court adopt the HB 7 Task Force recommendations:

#### Question No. 1

Do you find by clear and convincing evidence that MOTHER [and/or] FATHER knowingly placed or knowingly allowed the child[ren] to remain in conditions or surroundings which endangered the physical or emotional well-being of the child[ren]?

Answer by writing “Yes” or “No” as to MOTHER.

CHILD 1. Answer: \_\_\_\_\_

CHILD 2. Answer: \_\_\_\_\_

Answer by writing “Yes” or “No” as to FATHER.

CHILD 1. Answer: \_\_\_\_\_

CHILD 2. Answer: \_\_\_\_\_

#### Question No. 2

Do you find by clear and convincing evidence that MOTHER [and/or] FATHER engaged in conduct or knowingly placed the child[ren] with persons who engaged in conduct that endangered the physical or emotional well-being of the child[ren]?

Answer by writing “Yes” or “No” as to MOTHER.

CHILD 1. Answer: \_\_\_\_\_ CHILD

2. Answer: \_\_\_\_\_

Answer by writing “Yes” or “No” as to FATHER.

CHILD 1. Answer: \_\_\_\_\_

CHILD 2. Answer: \_\_\_\_\_

#### Question No. 3

Do you find by clear and convincing evidence that MOTHER [and/o]r FATHER constructively abandoned the child[ren] who [has/have] been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months, and (i) the department has made reasonable efforts to return the child[ren] to the parent; (ii) the parent has not regularly visited or maintained significant contact with the child[ren]; and (iii) the parent has demonstrated as inability to provide the child[ren] with a safe environment.

Answer by writing “Yes” or “No” as to MOTHER.

CHILD 1. Answer: \_\_\_\_\_

CHILD 2. Answer: \_\_\_\_\_

Answer by writing “Yes” or “No” as to FATHER.

CHILD 1. Answer: \_\_\_\_\_

CHILD 2. Answer: \_\_\_\_\_

Question No. 4

Do you find by clear and convincing evidence that termination of the parent–child relationship between MOTHER [and/or] FATHER and the child is in the best interests of the child?

Answer by writing “Yes” or “No” as to MOTHER.

CHILD 1. Answer: \_\_\_\_\_

CHILD 2. Answer: \_\_\_\_\_

Answer by writing “Yes” or “No” as to FATHER.

CHILD 1. Answer: \_\_\_\_\_

CHILD 2. Answer: \_\_\_\_\_



## APPENDIX C

In *E.M.*, the Waco Court of Appeals, consistent with the Supreme Court's decision in *Tex. Dep't of Human Servs. v. E.B.*, 802 S.W. 3d 647, 649 (Tex. 1990), concluded the trial court did not abuse its discretion in refusing Mother's request for a jury charge instruction requiring the agreement of 10 jurors as to any predicate act. *In re E.M.*, 494 S.W.3d 209, 229 (Tex. App.—Waco 2015, pet. denied). In so finding, the Waco Court reiterated and in essence reaffirmed the Supreme Court's reasoning in *E.B.* by quoting the following passage from that case:

The controlling question in this case was whether the parent–child relationship between the mother and each of her two children should be terminated, not what specific ground or grounds under [the predecessor to family code section 161.001] the jury relied on to answer affirmatively the questions posed. All ten jurors agree that the mother had endangered the child by doing one or the other of the things listed in [the predecessor to section 161.001]. Respondent argues that the charge, as presented to the jury, violates her due process right by depriving a natural mother of her fundamental right to the care, custody and management of her children. Recognizing her rights does not change the form of submission.... Here the trial court tracked the statutory language in the instruction and then asked the controlling question. This simply does not amount to abuse of discretion.

*Tex. Dep't of Human Servs. v. E.B.*, 802 S.W. 3d at 649; *In re E.M.*, 494 S.W.3d 209, 229 (Tex. App.—Waco 2015, pet. denied).

Notably, the decision in *E.M.* was penned by Chief Justice Gray, who was the lone dissenter in the Waco Court of Appeals decision in *In re B.L.D.*, in which Justice Gray had stated:

[T]he due process argument regarding broad form submissions in a termination case has been considered and summarily rejected by the Supreme Court. *Texas Dept. of Human Services v. E.B.*, 802 S.W.2d 647, 649 (Tex.1990). The Dosseys have not brought themselves within the *Crown Life* exception because they have not shown that any theory submitted to the jury was “an improperly submitted invalid theory.” *Crown Life Ins. v. Casteel*, 22 S.W.3d 378, 388 (Tex. 2000). We fly in the face of existing Texas Supreme Court precedent on this issue by holding to the contrary.

*In re B.L.D.*, 56 S.W.3d 203, 221 (Tex. App.—Waco 2001), *rev'd on other grounds*, 113 S.W.3d 340 (Tex. 2003).

The Waco Court of Appeals also held the trial court did not abuse its discretion by submitting a broad-form jury charge on the six termination grounds. *In re C.C.*, No. 10-16-00129-CV, 2016 WL 6808944, at \*13 (Tex. App.—Waco Nov. 16, 2016, no pet.). In so concluding, the Waco Court stated that:

[L]ast year we noted that the Supreme Court has held that a trial court does not abuse its discretion by submitting a broad-form jury charge in a termination case.

*In re E.M.*, 494 S.W.3d 209, 229 (Tex. App.–Waco 2015, pet. denied) (citing *Tex. Dep't Human Servs. v. E.B.*, 802 S.W.2d 647, 649 (Tex. 1990) (op. on reh'g)).

## APPENDIX D

### **Rule 28.4 Accelerated Appeals in Parental Termination and Child Protection Cases**

#### ***(a) Application and Definitions.***

- (1) Appeals in parental termination and child protection cases are governed by the rules of appellate procedure for accelerated appeals, except as otherwise provided in Rule 28.4.
- (2) In Rule 28.4:
  - (A) a “parental termination case” means a suit in which termination of the parent–child relationship is at issue.
  - (B) a “child protection case” means a suit affecting the parent–child relationship filed by a governmental entity for managing conservatorship.

#### **(b) Notice of Appeal.**

- (1) Service of Notice.** In addition to requirements for service of notice of appeal imposed in Rule 25.1(e), the notice of appeal must be served on the court reporter or court reporters responsible for preparing the reporter’s record.
- (2) Clerk’s Duties.** In addition to the responsibility imposed on the trial court clerk in Rule 25.1(f), the trial court clerk must immediately send a copy of the notice of appeal to the judge who tried the case.

#### **(c) Appellate Record.**

- (1) Responsibility for Preparation of the Reporter’s Record.** In addition to the responsibility imposed on the trial court in Rule 35.3(c), when the reporter’s responsibility to prepare, certify and timely file the reporter’s record arises under Rule 35.3(b), the trial court must direct the official or deputy reporter to immediately commence the preparation of the reporter’s record. The trial court must arrange for a substitute reporter, if necessary.
- (2) Extension of Time.** The appellate court may grant an extension of time to file a record under Rule 35.3(c); however, the extension or extensions granted must not exceed 30 days cumulatively, absent extraordinary circumstances.
- (3) Restriction on Preparation Inapplicable.** Section 13.003 of the Civil Practice & Remedies Code does not apply to an appeal from a parental termination or child protection case.
- (d) Remand for New Trial.** If the judgment of the appellate court reverses and remands a parental termination or child protection case for a new trial, the judgment must instruct the trial court to commence the new trial no later than 180 days after the mandate is issued by the appellate court.

## **APPENDIX E**

### **Rule 35. Time to File Record; Responsibility for Filing Record**

**35.1. Civil Cases.** The appellate record must be filed in the appellate court within 60 days after the judgment is signed, except as follows:

- (a) if Rule 26.1(a) applies, within 120 days after the judgment is signed;
- (b) if Rule 26.1(b) applies, within ~~40~~ 15 days after the notice of appeal is filed; or
- (c) if Rule 26.1(c) applies, within 30 days after the notice of appeal is filed.

## Phase II Report Appendix B

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### HOUSE BILL 7 TASK FORCE ON RULES OF PROCEDURE IN SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP FILED BY A GOVERNMENTAL ENTITY (HB7 TASK FORCE)

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**TO:** NINA HESS HSU

**FROM:** HON. DEAN RUCKER, CHAIR, HB 7 TASK FORCE

**RE:** BROAD-FORM SUBMISSION OF JURY QUESTIONS IN PARENTAL TERMINATION CASES

**DATE:** NOVEMBER 14, 2018

In November 2017, after many months of meetings and deliberations, the House Bill 7 Task Force submitted a report to the Supreme Court recommending that the Supreme Court, as an exercise of its rulemaking authority, require granulated charges in parental termination cases and that Texas Rule of Civil Procedure (Tex. R. Civ. P.) 277 should be amended to eliminate the use of broad-form jury questions in termination of parental rights cases. The Court referred the suggested rule change to the Supreme Court Advisory Committee (SCAC) for consideration. The SCAC considered the HB 7 Task Force recommendation on Friday, September 28, 2018.

On behalf of the HB 7 Task Force, I write to inform the Court of our concerns with a portion of the recommendations made by the SCAC

In its November 2017 Report to the Supreme Court, the HB 7 Task Force recommended the following amendment to TRCP 277:

In a suit in which termination of the parent-child relationship is requested, the court shall submit separate questions for each parent and each child on (1) each individual ground for termination of the parent-child relationship and (2) whether termination of the parent-child relationship is in the best interest of the child.

The HB 7 Task Force also crafted a pattern jury charge (PJC) to effectuate the move from broad-form submission to separate questions on the two elements (grounds and best interest) required for termination under Sections 161.001(b)(1) and (2), Texas Family Code.

#### **HB 7 TF example (Texas Family Code Section 161.001(b)(1)(D) or “D” ground)**

Do you find by clear and convincing evidence that MOTHER [and/or] FATHER knowingly placed or knowingly allowed the child[ren] to remain in conditions or surroundings which endangered the physical or emotional well-being of the child[ren]?

Answer by writing “Yes” or “No” as to MOTHER

Child 1. Answer \_\_\_\_\_

Child 2. Answer \_\_\_\_\_

Answer by writing “Yes” or “No” as to FATHER

Child 1. Answer \_\_\_\_\_

Child 2. Answer \_\_\_\_\_

SCAC considered this PJC on September 28, 2018 and rejected it. Instead, the SCAC voted 26-2 to word the PJC related to grounds in Texas Family Code Section 161.001(b)(1) as follows:

**SCAC example (Texas Family Code Section 161.001(b)(1)(D) or “D” ground)**

As to those children named below, do you find by clear and convincing evidence that Parent 1 or Parent 2 knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endangered the child’s physical or emotional well-being.

Answer “Yes” or “No” as to Parent 1 as to each Child

Child 1. Answer \_\_\_\_\_

Child 2. Answer \_\_\_\_\_

Answer “Yes” or “No” as to Parent 2 as to each Child

Child 1. Answer \_\_\_\_\_

Child 2. Answer \_\_\_\_\_

The HB 7 Task Force agrees with the form of the proposed jury question recommended by the SCAC; however, the Task Force believes that any jury questions on a ground or grounds for termination of parental rights should strictly follow the statutory language for grounds in Section 161.001(b)(1), Texas Family Code.

As to the jury question on Best Interest, the following resulted.

**HB 7 TF example (Texas Family Code Section 161.001(b)(2) or “Best Interest”)**

Do you find by clear and convincing evidence that termination of the parent-child relationship between MOTHER [and/or] FATHER and the child is in the best interest of the child?

Answer by writing “Yes” or “No” as to MOTHER

Child 1. Answer \_\_\_\_\_

Child 2. Answer \_\_\_\_\_

Answer by writing “Yes” or “No” as to FATHER

Child 1. Answer \_\_\_\_\_

Child 2. Answer \_\_\_\_\_

SCAC considered this PJC on September 28, 2018 and rejected it. Instead, the SCAC voted 26-2 to word the PJC related to best interest as follows:

**SCAC example (Texas Family Code Section 161.001(b)(2) or “Best Interest”)**

If you have answered Question 1 [or 2 or 3, etc] “Yes” as to any Parent or any Child, then answer Question 2 [or 3 or 4, etc., depending on the number of grounds preceding] as to that Parent or Child. Otherwise do not answer Question 2.

Question 2:

As to those children named below, do you find by clear and convincing evidence that terminating the parent-child relationship is in the child’s best interest and that the parent–child relationship with Parent 1 or Parent 2 should be terminated?

Answer “Yes” or “No” as to Parent 1 as to each Child

Child 1. Answer \_\_\_\_\_

Child 2. Answer \_\_\_\_\_

Answer “Yes” or “No” as to Parent 2 as to each Child

Child 1. Answer \_\_\_\_\_

Child 2. Answer \_\_\_\_\_

While the Task Force agrees with SCAC’s recommendation predicating the answer to Question 2 (best interest) on whether the jury has answered Question 1 (grounds) in the affirmative, the Task

Force has concerns about the SCAC’s addition of the language “and that the parent-child relationship with Parent 1 or Parent 2 ***should be terminated?***” (emphasis supplied)

The inclusion of the additional language into the best interest question as suggested by SCAC adds a jury finding that is not required by statute and may lead to confusion. If that language remains in the best interest jury question as recommended by SCAC, an enterprising attorney could and likely will argue to the jury that although the jury may determine that there is clear and convincing evidence that a ground or grounds for termination exists, and that there is clear and convincing evidence that termination is in the child’s best interest, but that the jury could still answer “no” as to whether the parent–child relationship *should be terminated*, especially since the additional language is “*and that the parent–child relationship with Parent 1 or Parent 2 should be terminated*” is phrased in the conjunctive.

Further, the matter of whether the parent-child relationship “should be terminated” is subsumed in the jury question on best interest of the child. Any jury charge on termination will contain a definition of “best interest” and will set out the factors the jury should consider when determining whether the termination of parental rights is in a child’s best interest. The jury charge will set out the relevant factors set out in the Texas Supreme Court’s seminal decision in *Holley v. Adams*, 544 S.W.2d 367 (Tex. 1976). There is no need to risk confusing a jury by asking the jury whether the parent-child relationship “should be terminated.” Both the Family Code and caselaw clearly inform the bench and bar that only two elements are required to support a termination of parental rights, those being (1) a finding of a ground for termination of parental rights, and (2) a finding that the termination of parent rights is in the child’s best interest. Further, if the SCAC recommendation to include the “should be terminated” language as a finding in a termination case, does this third finding require clear and convincing evidence or will it be subject to some other standard of proof? The SCAC’s reasoning for including the “should be terminated” stems from the discretionary word “may” rather than “shall” in Texas Family Code Section 161.001(b)(1), which provides that a court *may* order termination of the parent-child relationship if the court finds by clear and convincing evidence on grounds and best interest. The SCAC has expressed a concern that even if a jury finds grounds for termination exist and that the termination is in the best interest of the child, the trial court has the discretion under Section 161.001(b)(1) to disregard the jury’s answers supporting termination of parental rights. However, it is unknown how often a judge enters a judgment notwithstanding the verdict when a jury finds grounds and best interest by clear and convincing evidence.

Rather than adopting the SCAC’s solution to this issue by asking a jury whether termination of the parent-child relationship “should be granted” as a part of the best interest question, the Task Force suggests that a better way to address the issue is by amending the Texas Family Code to ensure that a court may not contravene a jury verdict in a parental termination case.

The HB 7 Task Force will be submitting a final report on the additional issues referred by the Court. The Task Force’s concerns expressed in this memorandum will be contained in that report.

cc: Jaclyn Daumerie

Martha Newton



## Phase II Report Appendix C

### Rule 28. Accelerated, Agreed, and Permissive Appeals in Civil Cases

#### 28.4. Accelerated Appeals in Parental Termination and Child Protection Cases

(a) *Application and Definitions.*

- (1) Appeals in parental termination and child protection cases are governed by the rules of appellate procedure for accelerated appeals, except as otherwise provided in Rule 28.4.
- (2) In Rule 28.4:
  - (A) a “parental termination case” means a suit in which termination of the parent-child relationship is at issue.
  - (B) a “child protection case” means a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship.

(b) *Appellate Record.*

- (1) Responsibility for Preparation of Reporter’s Record. In addition to the responsibility imposed on the trial court in Rule 35.3(c), when the reporter’s responsibility to prepare, certify and timely file the reporter’s record arises under Rule 35.3(b), the trial court must direct the official or deputy reporter to immediately commence the preparation of the reporter’s record. The trial court must arrange for a substitute reporter, if necessary.
  - (2) Extension of Time. The appellate court may grant an extension of time to file a record under Rule 35.3(c); however, the extension or extensions granted must not exceed 30 days cumulatively, absent extraordinary circumstances.
  - (3) Restriction on Preparation Inapplicable. Section 13.003 of the Civil Practice & Remedies Code does not apply to an appeal from a parental termination or child protection case.
- (c) *Certification by Appointed Counsel and Motion to Show Authority.* A notice of appeal filed by appointed counsel must state that the attorney consulted with the appellant and the appellant has directed the attorney to pursue the appeal. A party, the district clerk, or a court reporter may, by written motion stating a belief that the appeal is being prosecuted without authority, cause the attorney to be cited to appear before the court and show his authority to act. The notice of the motion shall be served upon the challenged attorney at least three days before the hearing on the motion. At the hearing on the motion, the burden of proof shall be upon the challenged attorney to show sufficient authority to file the notice of appeal. Upon failure to show such authority, the court shall strike the notice of appeal. The motion shall be heard and determined within ten days of service of the motion, and all appellate deadlines shall be suspended pending the court’s ruling. The court must rule on the motion

to show authority not later than the third day following the date of the hearing on the motion, and if the court does not timely rule, the motion is considered to have been denied by operation of law.

- (d) Remand for Evidentiary Hearing. For good cause shown by written motion filed no later than 20 days after the later of the date the clerk's record was filed or the date the reporter's record was filed, the appellate court may order a remand for the limited purpose of holding an evidentiary hearing concerning an allegation of ineffective assistance of counsel. The appellate court must rule on the motion for remand within three days; otherwise it will be denied by operation of law. The trial court shall begin the evidentiary hearing no later than the seventh day after the abatement order. The hearing shall be recorded by a court reporter and the trial court shall make findings of fact as to whether any counsel rendered deficient performance on behalf of appellant and whether appellant was prejudiced as a result. No later than 20 days from the date of the abatement order the court reporter shall file a supplemental reporter's record of the hearing and the district clerk shall file a supplemental clerk's record, including the trial court's findings of fact, and the appeal shall be reinstated. The deadline in Rule 6.2(a) of the Rules of Judicial Administration shall be tolled for no more than 20 days pending an abatement ordered under this rule.
- (e) Remand for New Trial. If the judgment of the appellate court reverses and remands a parental termination or child protection case for a new trial, the judgment must instruct the trial court to commence the new trial no later than 180 days after the mandate is issued by the appellate court.
- (f) Frivolous Parental Termination and Child Protection Appeals. An appointed attorney representing a party appealing from a final order in a parental termination case or child protection case should not move to withdraw based upon a determination that the appeal is frivolous.<sup>[11]</sup> Instead, the attorney must:
- (1) certify that the attorney has determined the appeal to be frivolous because there are no appellate issues arguable on their merits;<sup>[12]</sup>
  - (2) contemporaneously file a brief that:
    - (A) demonstrates the attorney has mastered the record and researched the case adequately;
    - (B) explains the attorney's determination that there are no nonfrivolous grounds for appeal; and
    - (C) provides citations to the record to facilitate appellate review and to assist the client in exercising the right to file a pro se brief; and
    - (D) in a parental termination case, addresses all issues included in the Parental Termination Appeal Checklist approved by the Supreme Court;

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<sup>11</sup> *In re P.M.*, 520 S.W.3d 24, 26 (Tex. 2016); *In re A.M.*, 495 S.W.3d 573, 582-83 & n.2 (Tex. App.—Houston [1st Dist.] 2016, pet. denied).

<sup>12</sup> *In re D.A.S.*, 973 S.W.2d 296, 297 (Tex. 1998) (citing *Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396 (1967)).

- (3) notify the client in writing of the right to access the appellate record and provide the client with a form motion for pro se access to the appellate record; and
- (4) contemporaneously file a copy of the written notice provided to the client in satisfaction of Rule 28.4(d)(3).
- (g) *Pro Se Response to Certification of Frivolous Appeal.* A party appealing from a final order in a parental termination case or child protection case whose attorney has certified the appeal to be frivolous may file a pro se response identifying nonfrivolous grounds for appeal. Any such response must be filed on the schedule applicable to an appellee's brief under Rule 38.6(b). An appellate court may abate the appeal for appointment of a new lawyer to evaluate a nonfrivolous ground for appeal that has not been adequately addressed by counsel.
- (h) *Court of Appeals Disposition of Frivolous Parental Termination and Child Protection Appeals.* In addition to the requirements of Rule 47, upon determination that an appeal in a parental termination case or child protection case is frivolous because there are no appellate issues arguable on their merits, a court of appeals should affirm the final order, subject to the requirements that the attorney still must:
  - (1) within five days after the opinion is handed down, send the client a copy of the opinion and judgment;
  - (2) inform the client that the attorney and the court of appeals both determined the appeal is frivolous because there are no appellate issues arguable on their merits;
  - (3) advise the client that the attorney cannot recommend that further review of a frivolous appeal;
  - (4) notify the client of the right to file a petition for review under Rule 53; and
  - (5) file a petition for review if actually requested by the client. [13]

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<sup>13</sup> Cf. TEX. R. APP. P. 48.4 ("In criminal cases, the attorney representing the defendant on appeal shall, within five days after the opinion is handed down, send his client a copy of the opinion and judgment, along with notification of the defendant's right to file a pro se petition for discretionary review under Rule 68. This notification shall be sent certified mail, return receipt requested, to the defendant at his last known address. The attorney shall also send the court of appeals a letter certifying his compliance with this rule and attaching a copy of the return receipt within the time for filing a motion for rehearing. The court of appeals shall file this letter in its record of the appeal.").

## Phase II Report

### Appendix D

#### Rule 53. Petition for Review

##### 53.2. Contents of Petition

The petition for review must, under appropriate headings and in the order here indicated, contain the following items:

- (a) *Identity of Parties and Counsel.* The petition must give a complete list of all parties to the trial court's final judgment, and the names and addresses of all trial and appellate counsel.
- (b) *Table of Contents.* The petition must have a table of contents with references to the pages of the petition. The table of contents must indicate the subject matter of each issue or point, or group of issues or points.
- (c) *Index of Authorities.* The petition must have an index of authorities arranged alphabetically and indicating the pages of the petition where the authorities are cited.
- (d) *Statement of the Case.* The petition must contain a statement of the case that should seldom exceed one page and should not discuss the facts. The statement must contain the following:
  - (1) a concise description of the nature of the case (e.g., whether it is a suit for damages, on a note, or in trespass to try title);
  - (2) the name of the judge who signed the order or judgment appealed from;
  - (3) the designation of the trial court and the county in which it is located;
  - (4) the disposition of the case by the trial court;
  - (5) the parties in the court of appeals;
  - (6) the district of the court of appeals;
  - (7) the names of the justices who participated in the decision in the court of appeals, the author of the opinion for the court, and the author of any separate opinion;
  - (8) the citation for the court of appeals' opinion; and
  - (9) the disposition of the case by the court of appeals, including the disposition of any motions for rehearing or en banc reconsideration, and whether any motions for rehearing or en banc reconsideration are pending in the court of appeals at the time the petition for review is filed.
- (e) *Statement of Jurisdiction.* The petition must state, without argument, the basis of the Court's jurisdiction.
- (f) *Issues Presented.* The petition must state concisely all issues or points presented for review. The statement of an issue or point will be treated as covering every subsidiary question that is fairly included. If the matter complained of originated in the trial court, it

should have been preserved for appellate review in the trial court and assigned as error in the court of appeals.

- (g) *Statement of Facts.* The petition must affirm that the court of appeals correctly stated the nature of the case, except in any particulars pointed out. The petition must state concisely and without argument the facts and procedural background pertinent to the issues or points presented. The statement must be supported by record references.
- (h) *Summary of the Argument.* The petition must contain a succinct, clear, and accurate statement of the arguments made in the body of the petition. This summary must not merely repeat the issues or points presented for review.
- (i) *Argument.* The petition must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record. The argument need not address every issue or point included in the statement of issues or points. Any issue or point not addressed may be addressed in the brief on the merits if one is requested by the Court. The argument should state the reasons why the Supreme Court should exercise jurisdiction to hear the case with specific reference to the factors listed in Rule 56.1(a). The petition need not quote at length from a matter included in the appendix; a reference to the appendix is sufficient. The Court will consider the court of appeals' opinion along with the petition, so statements in that opinion need not be repeated.
- (j) *Prayer.* The petition must contain a short conclusion that clearly states the nature of the relief sought.
- (k) *Appendix.*

(1) Necessary Contents. Unless voluminous or impracticable, the appendix must contain a copy of:

- (A) the judgment or other appealable order of the trial court from which relief in the court of appeals was sought;
- (B) the jury charge and verdict, if any, or the trial court's findings of fact and conclusions of law, if any;
- (C) the opinion and judgment of the court of appeals; and
- (D) the text of any rule, regulation, ordinance, statute, constitutional provision, or other law on which the argument is based (excluding case law), and the text of any contract or other document that is central to the argument.

(2) Optional Contents. The appendix may contain any other item pertinent to the issues or points presented for review, including copies or excerpts of relevant court opinions, statutes, constitutional provisions, documents on which the suit

was based, pleadings, and similar material. Items should not be included in the appendix to attempt to avoid the page limits for the petition.

- (l) *Certification by Appointed Counsel.* In a case in which the petitioner has a statutory right to counsel for purposes of seeking review by the Supreme Court, a petition filed by appointed counsel must state that the attorney consulted with the petitioner and the petitioner has directed the attorney to file a petition for review.
- (m) *Review of Appeal Determined to be Frivolous by the Court of Appeals.* To the extent appointed counsel informed the court of appeals that, after thoroughly reviewing the record, counsel concluded that there are no non-frivolous grounds for appeal, and the court of appeals likewise determined the appeal to be frivolous, the petition may adopt the brief filed in the court of appeals by reference in lieu of the contents required by subparts (f)-(j) above.

## Phase II Report Appendix E

### PARENTAL TERMINATION BRIEF CHECKLIST

You are strongly encouraged to consult your client, consult trial counsel, and complete and append this checklist to your *Anders* brief to ensure compliance with the appellate rules and to assist the court in conducting its examination of the record. Provide citations to the record and to relevant authority, where appropriate, in the right-hand column to demonstrate compliance by the trial court or parties.

<b>Pretrial</b>	
Service of process	
Any adverse pretrial rulings	
Pretrial effectiveness of counsel	
Did counsel's representation reflect satisfaction of basic obligations to the client, as described in the American Bar Association's <i>Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases</i> ? <sup>14</sup>	
Did counsel's representation reflect an appropriate attorney-client relationship? <sup>15</sup>	
Did counsel's representation reflect an appropriate pretrial investigation? <sup>16</sup>	
Did counsel's representation reflect appropriate utilization of informal and formal discovery procedures? <sup>17</sup>	
Did counsel's pretrial representation reflect appropriate preparation? <sup>18</sup>	
<b>Trial</b>	
Timeliness of proceeding under Family Code § 263.401	
Jury selection, if applicable	
Any adverse rulings during trial on objections or motions	
Sufficiency of the evidence, including a recitation of applicable legal elements and evaluation of evidence adduced at trial, including any evidence suggesting that termination would not be in the best interest of the child	
Jury instructions, if applicable	
Effectiveness of counsel at trial	
Did counsel's representation at trial reflect appropriate preparation, including the identification, location, and preparation of all witnesses, as well as adequate cross-examination of adverse witnesses? <sup>19</sup>	
Did counsel object to inadmissible evidence and otherwise take appropriate steps to preserve error?	

<sup>14</sup> AM. BAR ASS'N, [STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES](https://www.americanbar.org/content/dam/aba/administrative/child_law/ParentStds.authcheckdam.pdf), at 8-11, [https://www.americanbar.org/content/dam/aba/administrative/child\\_law/ParentStds.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/child_law/ParentStds.authcheckdam.pdf) (basic obligations of parent's attorney) [hereinafter, *ABA Standards*]; see also TEX. FAM. CODE § 107.0131(a)(1)(I).

<sup>15</sup> *ABA Standards*, at 11-19 (relationship with the client).

<sup>16</sup> *ABA Standards*, at 19-20 (investigation).

<sup>17</sup> *ABA Standards*, at 20-21 (informal and formal discovery).

<sup>18</sup> *ABA Standards*, at 21-29 (court preparation, hearings).

<sup>19</sup> *ABA Standards*, at 21-29 (court preparation, hearings).

<b>Post-trial</b>	
Any adverse rulings on post-trial motions	
Post-trial effectiveness of counsel	
Was the client actually represented by counsel during the period when a motion for new trial could be filed?	
Did counsel utilize appropriate post-trial procedures, including the utilization of a motion for new trial as necessary to supplement the record and preserve error? <sup>20</sup>	
In the Supreme Court of Texas: Any issues identified by appellant in pro se filings responding to a previous certification that the appeal is frivolous	

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<sup>20</sup> [ABA Standards](#), at 29-32 (post hearings/appeals).



## **Phase II Report Appendix F**

### **INSTRUCTIONS FOR USE OF TEMPLATES**

The sample opinions are designed to provide guidance and are by no means comprehensive for use in all parental termination appeals.

These sample opinions are for use only when the complaints on appeal are the legal and/or factual sufficiency of the evidence to support a ground(s) for termination and/or the best interest finding.

Use only the footnotes applicable to the issues in the appeal.

Phase II Report, Appendix F  
Template A



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. \_\_\_\_ - \_\_\_\_ - \_\_\_\_ -CV

**IN THE INTEREST OF A.B.C. [and D.E.F.], Child/Children**

From the \_\_\_\_ Judicial District Court, \_\_\_\_ County, Texas

Trial Court No. \_\_\_\_

Honorable \_\_\_\_, Judge Presiding

Opinion by: \_\_\_\_, Justice

Sitting: \_\_\_\_, Justice

\_\_\_\_, Justice

\_\_\_\_, Justice

Delivered and Filed:

AFFIRMED

Appellant Father/Mother appeals the trial court's order terminating his/her parental rights to his/her child/children \_\_\_\_\_.<sup>1</sup> Father/Mother does not challenge the sufficiency of the evidence supporting the trial court's/jury's statutory predicate finding(s). Instead, Father/Mother asserts the evidence is neither legally nor factually sufficient for the trial court/jury to have found by clear and convincing evidence that terminating his/her parental rights is in his/her child's/children's best interests. We affirm the trial court's order.

## BACKGROUND2

[Recitation of basic facts: Department received report, filed petition, child/children removed, statutory ground(s) pleaded by Department . . . .] On \_\_\_\_\_, after a bench/jury trial, the trial court terminated Father's/Mother's parental rights. Father/Mother appeals.

### EVIDENCE REQUIRED, STANDARDS OF REVIEW

The evidentiary standards<sup>3</sup> the Department must meet and the statutory grounds<sup>4</sup> the trial court/jury must find to terminate a parent's rights to a child are well known, as are the applicable legal<sup>5</sup> and factual<sup>6</sup> sufficiency standards of review. We apply them here.

### BASES FOR TERMINATION

#### A. Father's/Mother's Course of Parental Conduct

The trial court/jury found by clear and convincing evidence that [statutory ground(s)]. *See* TEX. FAM. CODE ANN. § 161.001(b)(1) ([list grounds paragraphs *e.g.*, (N), (O)]). On appeal, Father/Mother does not challenge this/these predicate statutory ground/s finding/s.

#### B. Best Interests of the Child/Children

Instead, Father/Mother challenges the sufficiency of the evidence supporting the trial court's/jury's finding that terminating his/her parental rights is in his/her child/children's best interests. *See id.* § 161.001(b)(2). The non-exclusive *Holley* factors<sup>7</sup> for assessing best interests of children are well known. Applying each standard of review and the applicable factors, we examine the evidence pertaining to the best interests of the child/children.

#### C. Evidence of Best Interests of the Child/Children

A bench/jury trial was held on [date/s]. The trial court/jury heard testimony from [list of witnesses], and it received recommendations from the children's attorney ad litem. The trial court/jury heard testimony pertaining to the child's/children's best interests, and the trial court/jury

was the “sole judge[] of the credibility of the witnesses and the weight to give their testimony.”  
*See City of Keller v. Wilson*, 168 S.W.3d 802, 819 (Tex. 2005); *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006).

Father/Mother argues that the evidence that parental termination was in the child’s/children’s best interest is legally and factually insufficient because \_\_\_\_\_.

The Department responds \_\_\_\_\_.

The trial court/jury heard testimony that [key evidence of *Holley* factors, (and statutory factors, if appropriate) with cites after each key fact or facts; e.g., desires of the child, present and future emotional and physical needs of the child, present or future emotional and physical danger to the child, child’s age and physical and mental vulnerabilities, etc.] *Holley*, 544 S.W.2d at 372 (factors ( ), ( ), ( )); *see also* TEX. FAM. CODE ANN. § 263.307(b)( ), ( ), ( ).

Considering all the evidence in the light most favorable to the trial court’s/jury’s findings, we conclude the evidence is legally and factually sufficient to demonstrate that terminating Father’s/Mother’s parental rights to his/her child/children was in the child/children’s best interests. *See* TEX. FAM. CODE ANN. § 161.001(b)(2); *Holley*, 544 S.W.2d at 372.

### CONCLUSION

Because (1) Father/Mother does not challenge the trial court’s/jury’s finding, by clear and convincing evidence, of a predicate ground for termination and (2) the evidence is legally and factually sufficient to support the trial court’s/jury’s finding that termination of Father’s/Mother’s parental rights is in the best interest of the child/each child, we affirm the trial court’s order.

\_\_\_\_\_, Justice

<sup>1</sup> To protect the minors’ identities, we refer to the parent/parents and the child/children using aliases/initials. *See* TEX. R. APP. P. 9.8.

<sup>2</sup> Because Father/Mother is the only appellant, we limit our recitation of the facts to those that pertain to Father/Mother and the child/children.

<sup>3</sup> Clear and Convincing Evidence. If the Department moves to terminate a parent's rights to a child, the Department must prove by clear and convincing evidence that the parent's acts or omissions met one or more of the grounds for involuntary termination listed in section 161.001(b)(1) of the Family Code and that terminating the parent's rights is in the best interest of the child. TEX. FAM. CODE ANN. § 161.001(b) (West Supp. 2017); *In re J.F.C.*, 96 S.W.3d 256, 261 (Tex. 2002). "'Clear and convincing evidence' means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established." TEX. FAM. CODE ANN. § 101.007 (West 2014). The same evidence used to prove the parent's acts or omissions under section 161.001(b)(1) may be used in determining the best interest of the child under section 161.001(b)(2). *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002); *In re D.M.*, 452 S.W.3d 462, 471 (Tex. App.—San Antonio 2014, no pet.). The trial court may consider a parent's past deliberate conduct to infer future conduct in a similar situation. *D.M.*, 452 S.W.3d at 472.

<sup>4</sup> Statutory Grounds for Termination. The Family Code authorizes a court to terminate the parent-child relationship if, inter alia, it finds by clear and convincing evidence that the parent's acts or omissions met certain criteria. See TEX. FAM. CODE § 161.001(b). Here, the trial court/jury found Father's/Mother's conduct met the following criteria or ground [delete inapplicable grounds]:

- (A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;
- (B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;
- (C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;
- (D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;
- (E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;
- (F) failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition;
- (G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;
- (H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;
- (I) contumaciously refused to submit to a reasonable and lawful order of a court under Subchapter D, Chapter 261;
- (J) been the major cause of:
  - (i) the failure of the child to be enrolled in school as required by the Education Code; or
  - (ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;
- (K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;
- (L) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code, or under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections, or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:

- (i) Section 19.02 (murder);
- (ii) Section 19.03 (capital murder);
- (iii) Section 19.04 (manslaughter);
- (iv) Section 21.11 (indecent with a child);
- (v) Section 22.01 (assault);
- (vi) Section 22.011 (sexual assault);
- (vii) Section 22.02 (aggravated assault);
- (viii) Section 22.021 (aggravated sexual assault);
- (ix) Section 22.04 (injury to a child, elderly individual, or disabled individual);
- (x) Section 22.041 (abandoning or endangering child);
- (xi) Section 25.02 (prohibited sexual conduct);
- (xii) Section 43.25 (sexual performance by a child);
- (xiii) Section 43.26 (possession or promotion of child pornography);
- (xiv) Section 21.02 (continuous sexual abuse of young child or children);
- (xv) Section 20A.02(a)(7) or (8) (trafficking of persons); and
- (xvi) Section 43.05(a)(2) (compelling prostitution);
- (M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state;
- (N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months, and:
  - (i) the department has made reasonable efforts to return the child to the parent;
  - (ii) the parent has not regularly visited or maintained significant contact with the child; and
  - (iii) the parent has demonstrated an inability to provide the child with a safe environment;
- (O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child;
- (P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:
  - (i) failed to complete a court-ordered substance abuse treatment program; or
  - (ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance;
- (Q) knowingly engaged in criminal conduct that has resulted in the parent's:
  - (i) conviction of an offense; and
  - (ii) confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition;
- (R) been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription;
- (S) voluntarily delivered the child to a designated emergency infant care provider under Section 262.302 without expressing an intent to return for the child;
- (T) been convicted of:
  - (i) the murder of the other parent of the child under Section 19.02 or 19.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 19.02 or 19.03, Penal Code;
  - (ii) criminal attempt under Section 15.01, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.01, Penal Code, to commit the offense described by Subparagraph (i);
  - (iii) criminal solicitation under Section 15.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that

- contains elements that are substantially similar to the elements of an offense under Section 15.03, Penal Code, of the offense described by Subparagraph (i); or
- (iv) the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; or
  - (U) been placed on community supervision, including deferred adjudication community supervision, or another functionally equivalent form of community supervision or probation, for being criminally responsible for the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code.

*Id.* § 161.001(b)(1).

<sup>5</sup> Legal Sufficiency. When a clear and convincing evidence standard applies, a legal sufficiency review requires a court to “look at all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true.” *In re J.L.*, 163 S.W.3d 79, 85 (Tex. 2005) (quoting *J.F.C.*, 96 S.W.3d at 266). “[L]ooking at the evidence in the light most favorable to the judgment means that a reviewing court must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so, [and the] court should disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible.” *Id.* If the court “determines that [a] reasonable factfinder could form a firm belief or conviction that the matter that must be proven is true,” the evidence is legally sufficient. *Id.*

<sup>6</sup> Factual Sufficiency. Under a clear and convincing standard, evidence is factually sufficient if “a factfinder could reasonably form a firm belief or conviction about the truth of the State’s allegations.” *C.H.*, 89 S.W.3d at 25; *accord In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006). We must consider “whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding.” *J.F.C.*, 96 S.W.3d at 266; *accord H.R.M.*, 209 S.W.3d at 108. “If, in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient.” *J.F.C.*, 96 S.W.3d at 266.

<sup>7</sup> Holley Factors. The Supreme Court of Texas identified the following as factors to consider in determining the best interest of a child in its landmark case *Holley v. Adams*:

- (A) the desires of the child;
- (B) the emotional and physical needs of the child now and in the future;
- (C) the emotional and physical danger to the child now and in the future;
- (D) the parental abilities of the individuals seeking custody;
- (E) the programs available to assist these individuals to promote the best interest of the child;
- (F) the plans for the child by these individuals or by the agency seeking custody;
- (G) the stability of the home or proposed placement;
- (H) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and
- (I) any excuse for the acts or omissions of the parent.

*Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976) (footnotes omitted); *accord In re E.N.C.*, 384 S.W.3d 796, 807 (Tex. 2012) (reciting the *Holley* factors); *see also* TEX. FAM. CODE ANN. § 263.307 (West 2014) (articulating best-interest factors to “be considered by the court and the department in determining whether the child’s parents are willing and able to provide the child with a safe environment”).



**Fourth Court of Appeals  
San Antonio, Texas**

No. \_\_\_\_ - \_\_\_\_ - \_\_\_\_ -CV

**IN THE INTEREST OF A.B.C. [and D.E.F.], Child/Children**

From the \_\_\_\_ Judicial District Court, \_\_\_\_ County, Texas  
Trial Court No. \_\_\_\_  
Honorable \_\_\_\_, Judge Presiding

BEFORE JUSTICE \_\_\_\_, JUSTICE \_\_\_\_, AND JUSTICE \_\_\_\_

In accordance with this Court's opinion of this date, the trial court's order terminating \_\_\_\_'s parental rights to A.B.C. [and D.E.F.] is AFFIRMED. Appellant is indigent; no costs are taxed in this appeal.

SIGNED

\_\_\_\_\_  
\_\_\_\_\_, Justice



Phase II Report, Appendix F  
Template B



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. \_\_\_\_ - \_\_\_\_ - \_\_\_\_ -CV

**IN THE INTEREST OF A.B.C. [and D.E.F.], Child/Children**

From the \_\_\_\_ Judicial District Court, \_\_\_\_ County, Texas  
Trial Court No. \_\_\_\_  
Honorable \_\_\_\_, Judge Presiding

Opinion by: \_\_\_\_, Justice

Sitting: \_\_\_\_, Justice  
\_\_\_\_, Justice  
\_\_\_\_, Justice

Delivered and Filed:

AFFIRMED

Appellant Father/Mother appeals the trial court's order terminating his/her parental rights to his/her child/children \_\_\_\_.<sup>1</sup> Father/Mother asserts the evidence is neither legally nor factually sufficient for the trial court/jury to have found by clear and convincing evidence that his/her course of conduct met a statutory ground for termination. Because (1) the evidence was sufficient to support the trial court's/jury's finding of a predicate ground/predicate grounds for terminating Father's/Mother's parental rights, and (2) Father/Mother does not challenge the finding that terminating his/her parental rights was in the child's/children's best interest, we affirm the trial court's order.

## BACKGROUND<sup>2</sup>

[Recitation of basic facts: Department received report, filed petition, child/children removed. Father/Mother reoffended, did not complete service plan, or other ground.] On \_\_\_\_\_, after a bench/jury trial, the trial court terminated Father's/Mother's parental rights. Father/Mother appeals.

## EVIDENTIARY STANDARDS, STATUTORY GROUNDS, STANDARDS OF REVIEW

The evidentiary standards<sup>3</sup> the Department must meet and the statutory grounds<sup>4</sup> the trial court/jury must find to terminate a parent's rights to a child are well known, as are the applicable legal<sup>5</sup> and factual<sup>6</sup> sufficiency standards of review. We apply them here.

## BASES FOR TERMINATION

### A. First Statutory Ground Finding

The trial court/jury found by clear and convincing evidence that [first statutory ground].  
*See* TEX. FAM. CODE ANN. § 161.001(b)(1)(  ).

Father/Mother argues that the evidence to support this finding is legally and factually insufficient because \_\_\_\_\_.

The Department responds \_\_\_\_\_.

The trial court/jury heard evidence that . . . .[brief recitation of facts pertaining to and supporting the first statutory ground]

Considering all the evidence in the light most favorable to the trial court's/jury's findings, we conclude the trial court/jury could have formed a firm belief or conviction that [first statutory ground]. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(  ); [Texas Supreme Court case cite].

### B. Second Statutory Ground Finding

[Repeat the same format from first ground, or, state that one ground is sufficient. [cite]]

**C. Best Interests of the Child/Children**

Father/Mother does not challenge the sufficiency of the evidence supporting the trial court's/jury's finding that terminating his/her parental rights is in his/her child's/children's best interests. *See id.* § 161.001(b)(2).

**CONCLUSION**

Because (1) the evidence was legally and factually sufficient to support the trial court's/jury's finding by clear and convincing evidence of a predicate ground/predicate grounds for termination and (2) Father/Mother does not challenge the finding that termination of his/her parental rights is in the best interest of the child/each child, we affirm the trial court's order.

\_\_\_\_\_, Justice

<sup>1</sup> To protect the minors' identities, we refer to the parent/parents and the child/children using aliases/initials. *See* TEX. R. APP. P. 9.8.

<sup>2</sup> Because Father/Mother is the only appellant, we limit our recitation of the facts to those that pertain to Father/Mother and the child/children.

<sup>3</sup> Clear and Convincing Evidence. If the Department moves to terminate a parent's rights to a child, the Department must prove by clear and convincing evidence that the parent's acts or omissions met one or more of the grounds for involuntary termination listed in section 161.001(b)(1) of the Family Code and that terminating the parent's rights is in the best interest of the child. TEX. FAM. CODE ANN. § 161.001(b) (West Supp. 2017); *In re J.F.C.*, 96 S.W.3d 256, 261 (Tex. 2002). "Clear and convincing evidence" means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established." TEX. FAM. CODE ANN. § 101.007 (West 2014). The same evidence used to prove the parent's acts or omissions under section 161.001(b)(1) may be used in determining the best interest of the child under section 161.001(b)(2). *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002); *In re D.M.*, 452 S.W.3d 462, 471 (Tex. App.—San Antonio 2014, no pet.). The trial court may consider a parent's past deliberate conduct to infer future conduct in a similar situation. *D.M.*, 452 S.W.3d at 472.

<sup>4</sup> Statutory Grounds for Termination. The Family Code authorizes a court to terminate the parent-child relationship if, inter alia, it finds by clear and convincing evidence that the parent's acts or omissions met certain criteria. *See* TEX. FAM. CODE § 161.001(b). Here, the trial court/jury found Father's/Mother's conduct met the following criteria or ground [delete inapplicable grounds]:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;

- (B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;
- (C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;
- (D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;
- (E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;
- (F) failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition;
- (G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;
- (H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;
- (I) contumaciously refused to submit to a reasonable and lawful order of a court under Subchapter D, Chapter 261;
- (J) been the major cause of:
  - (i) the failure of the child to be enrolled in school as required by the Education Code; or
  - (ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;
- (K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;
- (L) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code, or under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections, or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:
  - (i) Section 19.02 (murder);
  - (ii) Section 19.03 (capital murder);
  - (iii) Section 19.04 (manslaughter);
  - (iv) Section 21.11 (indecent with a child);
  - (v) Section 22.01 (assault);
  - (vi) Section 22.011 (sexual assault);
  - (vii) Section 22.02 (aggravated assault);
  - (viii) Section 22.021 (aggravated sexual assault);
  - (ix) Section 22.04 (injury to a child, elderly individual, or disabled individual);
  - (x) Section 22.041 (abandoning or endangering child);
  - (xi) Section 25.02 (prohibited sexual conduct);
  - (xii) Section 43.25 (sexual performance by a child);
  - (xiii) Section 43.26 (possession or promotion of child pornography);
  - (xiv) Section 21.02 (continuous sexual abuse of young child or children);
  - (xv) Section 20A.02(a)(7) or (8) (trafficking of persons); and
  - (xvi) Section 43.05(a)(2) (compelling prostitution);
- (M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state;
- (N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months, and:
  - (i) the department has made reasonable efforts to return the child to the parent;

- (ii) the parent has not regularly visited or maintained significant contact with the child; and
- (iii) the parent has demonstrated an inability to provide the child with a safe environment;
- (O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child;
- (P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:
  - (i) failed to complete a court-ordered substance abuse treatment program; or
  - (ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance;
- (Q) knowingly engaged in criminal conduct that has resulted in the parent's:
  - (i) conviction of an offense; and
  - (ii) confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition;
- (R) been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription;
- (S) voluntarily delivered the child to a designated emergency infant care provider under Section 262.302 without expressing an intent to return for the child;
- (T) been convicted of:
  - (i) the murder of the other parent of the child under Section 19.02 or 19.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 19.02 or 19.03, Penal Code;
  - (ii) criminal attempt under Section 15.01, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.01, Penal Code, to commit the offense described by Subparagraph (i);
  - (iii) criminal solicitation under Section 15.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.03, Penal Code, of the offense described by Subparagraph (i); or
  - (iv) the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; or
- (U) been placed on community supervision, including deferred adjudication community supervision, or another functionally equivalent form of community supervision or probation, for being criminally responsible for the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code;

*Id.* § 161.001(b)(1).

<sup>5</sup> Legal Sufficiency. When a clear and convincing evidence standard applies, a legal sufficiency review requires a court to “‘look at all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true.’” *In re J.L.*, 163 S.W.3d 79, 85 (Tex. 2005) (quoting *J.F.C.*, 96 S.W.3d at 266). “[L]ooking at the evidence in the light most favorable to the judgment means that a reviewing court must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so, [and the] court should disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible.” *Id.* If the court “‘determines that [a] reasonable factfinder could form a firm belief or conviction that the matter that must be proven is true,’” the evidence is legally sufficient. *Id.*

<sup>6</sup> Factual Sufficiency. Under a clear and convincing standard, evidence is factually sufficient if “a factfinder could reasonably form a firm belief or conviction about the truth of the State’s allegations.” *C.H.*, 89 S.W.3d at 25; *accord In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006). We must consider “whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding.” *J.F.C.*, 96 S.W.3d at 266; *accord H.R.M.*, 209 S.W.3d at 108. “If, in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient.” *J.F.C.*, 96 S.W.3d at 266.



**Fourth Court of Appeals  
San Antonio, Texas**

**JUDGMENT**

No. \_\_\_\_ - \_\_\_\_ - \_\_\_\_ -CV

**IN THE INTEREST OF A.B.C. and [D.E.F.], Child/Children**

From the \_\_\_\_ Judicial District Court, \_\_\_\_ County, Texas

Trial Court No. \_\_\_\_

Honorable \_\_\_\_, Judge Presiding

BEFORE JUSTICE \_\_\_\_, JUSTICE \_\_\_\_, AND JUSTICE \_\_\_\_

In accordance with this Court's opinion of this date, the trial court's order terminating \_\_\_\_'s parental rights to A.B.C. [and D.E.F.] is AFFIRMED. Appellant is indigent; no costs are taxed in this appeal.

SIGNED

\_\_\_\_\_  
\_\_\_\_\_, Justice

Phase II Report, Appendix F  
Template C



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. \_\_\_\_ - \_\_\_\_ - \_\_\_\_ -CV

**IN THE INTEREST OF A.B.C. [and D.E.F.], Child/Children**

From the \_\_\_\_ Judicial District Court, \_\_\_\_ County, Texas

Trial Court No. \_\_\_\_

Honorable \_\_\_\_, Judge Presiding

Opinion by: \_\_\_\_, Justice

Sitting: \_\_\_\_, Justice

\_\_\_\_, Justice

\_\_\_\_, Justice

Delivered and Filed:

AFFIRMED

Appellant Father/Mother appeals the trial court's order terminating his/her parental rights to his/her child/children \_\_\_\_\_.<sup>1</sup> Father/Mother asserts the evidence is neither legally nor factually sufficient for the trial court/jury to have found by clear and convincing evidence that his/her course of conduct met a statutory ground for termination or that terminating his/her parental rights is in his/her child/children's best interests. Because the evidence was legally and factually sufficient to support the trial court's/jury's statutory ground(s) and best interest findings, we affirm the trial court's order.



## BACKGROUND<sup>2</sup>

[Recitation of basic facts: Department received report, filed petition, child/children removed. Father/Mother reoffended, did not complete service plan, or other ground.] On \_\_\_\_\_, after a bench/jury trial, the trial court terminated Father's/Mother's parental rights. Father/Mother appeals.

## EVIDENTIARY STANDARDS, STATUTORY GROUNDS, STANDARDS OF REVIEW

The evidentiary standards<sup>3</sup> the Department must meet and the statutory grounds<sup>4</sup> the trial court/jury must find to terminate a parent's rights to a child are well known, as are the applicable legal<sup>5</sup> and factual<sup>6</sup> sufficiency standards of review. We apply them here.

## BASES FOR TERMINATION

### A. First Statutory Ground Finding

The trial court/jury found by clear and convincing evidence that [first statutory ground].  
*See* TEX. FAM. CODE ANN. § 161.001(b)(1)(\_\_\_\_\_).

Father/Mother argues that the evidence to support this finding is legally and factually insufficient because \_\_\_\_\_.

The Department responds \_\_\_\_\_.

The trial court/jury heard evidence that \_\_\_\_\_ [brief recitation of facts pertaining to and supporting first statutory ground]

Considering all the evidence in the light most favorable to the trial court's/jury's findings, we conclude the trial court/jury could have formed a firm belief or conviction that [first statutory ground]. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(\_\_\_\_\_); [Texas Supreme Court case cite].

### B. Second Statutory Ground Finding

[Repeat the same format from first ground, or, state that one ground is sufficient. [cite]]

**C. Best Interests of the Child/Children**

Father/Mother also challenges the sufficiency of the evidence supporting the trial court's/jury's finding that terminating his/her parental rights is in his/her child's/children's best interests. *See id.* § 161.001(b)(2). The non-exclusive *Holley* factors<sup>7</sup> for assessing best interests of children are well known. Applying each standard of review and the applicable factors, we examine the evidence pertaining to the best interests of the child/children.

**D. Evidence of Best Interests of the Child/Children**

A bench/jury trial was held on [date/s]. The trial court/jury heard testimony from [list of witnesses], and it received recommendations from the children's attorney ad litem. The trial court/jury heard testimony pertaining to the child's/children's best interests, and the trial court/jury was the "sole judge[] of the credibility of the witnesses and the weight to give their testimony." *See City of Keller v. Wilson*, 168 S.W.3d 802, 819 (Tex. 2005); *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006).

Father/Mother argues that the evidence that parental termination was in the child's/children's best interest is legally and factually insufficient because \_\_\_\_\_.

The Department responds \_\_\_\_\_.

The trial court/jury heard testimony that \_\_\_\_\_.

[key evidence that implicates *Holley*, (and statutory factors, if appropriate) with cites after each key fact or facts; e.g., desires of the child, present and future emotional and physical needs of the child, present or future emotional and physical danger to the child, child's age and physical and mental vulnerabilities, etc.] *Holley*, 544 S.W.2d at 372 (factors ( ), ( ), ( )); *see also* TEX. FAM. CODE ANN. § 263.307(b)( ), ( ), ( ).

Considering all the evidence in the light most favorable to the trial court's/jury's findings, we conclude the evidence is legally and factually sufficient to demonstrate that terminating

Father's/Mother's parental rights to his/her child/children was in the child/children's best interests.

See TEX. FAM. CODE ANN. § 161.001(b)(2); *Holley*, 544 S.W.2d at 372.

### CONCLUSION

Because the evidence was legally and factually sufficient to support the trial court's/jury's finding, by clear and convincing evidence, (1) of a predicate ground/predicate grounds for termination and (2) that termination of Father's/Mother's parental rights is in the best interest of the child/each child, we affirm the trial court's order.

\_\_\_\_\_, Justice

<sup>1</sup> To protect the minors' identities, we refer to the parent/parents and the child/children using aliases/initials. See TEX. R. APP. P. 9.8.

<sup>2</sup> Because Father/Mother is the only appellant, we limit our recitation of the facts to those that pertain to Father/Mother and the child/children.

<sup>3</sup> Clear and Convincing Evidence. If the Department moves to terminate a parent's rights to a child, the Department must prove by clear and convincing evidence that the parent's acts or omissions met one or more of the grounds for involuntary termination listed in section 161.001(b)(1) of the Family Code and that terminating the parent's rights is in the best interest of the child. TEX. FAM. CODE ANN. § 161.001(b) (West Supp. 2017); *In re J.F.C.*, 96 S.W.3d 256, 261 (Tex. 2002). "Clear and convincing evidence" means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established." TEX. FAM. CODE ANN. § 101.007 (West 2014). The same evidence used to prove the parent's acts or omissions under section 161.001(b)(1) may be used in determining the best interest of the child under section 161.001(b)(2). *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002); *In re D.M.*, 452 S.W.3d 462, 471 (Tex. App.—San Antonio 2014, no pet.). The trial court may consider a parent's past deliberate conduct to infer future conduct in a similar situation. *D.M.*, 452 S.W.3d at 472.

<sup>4</sup> Statutory Grounds for Termination. The Family Code authorizes a court to terminate the parent-child relationship if, inter alia, it finds by clear and convincing evidence that the parent's acts or omissions met certain criteria. See TEX. FAM. CODE § 161.001(b). Here, the trial court/jury found Father's/Mother's conduct met the following criteria or ground [delete inapplicable grounds]:

- (A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;
- (B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;
- (C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;

- (D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;
- (E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;
- (F) failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition;
- (G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;
- (H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;
- (I) contumaciously refused to submit to a reasonable and lawful order of a court under Subchapter D, Chapter 261;
- (J) been the major cause of:
  - (i) the failure of the child to be enrolled in school as required by the Education Code; or
  - (ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;
- (K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;
- (L) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code, or under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections, or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:
  - (i) Section 19.02 (murder);
  - (ii) Section 19.03 (capital murder);
  - (iii) Section 19.04 (manslaughter);
  - (iv) Section 21.11 (indecent with a child);
  - (v) Section 22.01 (assault);
  - (vi) Section 22.011 (sexual assault);
  - (vii) Section 22.02 (aggravated assault);
  - (viii) Section 22.021 (aggravated sexual assault);
  - (ix) Section 22.04 (injury to a child, elderly individual, or disabled individual);
  - (x) Section 22.041 (abandoning or endangering child);
  - (xi) Section 25.02 (prohibited sexual conduct);
  - (xii) Section 43.25 (sexual performance by a child);
  - (xiii) Section 43.26 (possession or promotion of child pornography);
  - (xiv) Section 21.02 (continuous sexual abuse of young child or children);
  - (xv) Section 20A.02(a)(7) or (8) (trafficking of persons); and
  - (xvi) Section 43.05(a)(2) (compelling prostitution);
- (M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state;
- (N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months, and:
  - (i) the department has made reasonable efforts to return the child to the parent;
  - (ii) the parent has not regularly visited or maintained significant contact with the child; and
  - (iii) the parent has demonstrated an inability to provide the child with a safe environment;
- (O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for

- not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child;
- (P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:
    - (i) failed to complete a court-ordered substance abuse treatment program; or
    - (ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance;
  - (Q) knowingly engaged in criminal conduct that has resulted in the parent's:
    - (i) conviction of an offense; and
  - (R) confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition; been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription;
  - (S) voluntarily delivered the child to a designated emergency infant care provider under Section 262.302 without expressing an intent to return for the child;
  - (T) been convicted of:
    - (i) the murder of the other parent of the child under Section 19.02 or 19.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 19.02 or 19.03, Penal Code;
    - (ii) criminal attempt under Section 15.01, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.01, Penal Code, to commit the offense described by Subparagraph (i);
    - (iii) criminal solicitation under Section 15.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.03, Penal Code, of the offense described by Subparagraph (i); or
    - (iv) the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; or
  - (U) been placed on community supervision, including deferred adjudication community supervision, or another functionally equivalent form of community supervision or probation, for being criminally responsible for the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code;

*Id.* § 161.001(b)(1).

<sup>5</sup> Legal Sufficiency. When a clear and convincing evidence standard applies, a legal sufficiency review requires a court to “‘look at all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true.’” *In re J.L.*, 163 S.W.3d 79, 85 (Tex. 2005) (quoting *J.F.C.*, 96 S.W.3d at 266). “[L]ooking at the evidence in the light most favorable to the judgment means that a reviewing court must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so, [and the] court should disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible.” *Id.* If the court “‘determines that [a] reasonable factfinder could form a firm belief or conviction that the matter that must be proven is true,’” the evidence is legally sufficient. *Id.*

<sup>6</sup> Factual Sufficiency. Under a clear and convincing standard, evidence is factually sufficient if “a factfinder could reasonably form a firm belief or conviction about the truth of the State’s allegations.” *C.H.*, 89 S.W.3d at 25; *accord In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006). We must consider “whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding.” *J.F.C.*, 96 S.W.3d at 266; *accord H.R.M.*, 209 S.W.3d at 108. “If, in light of the entire record, the disputed evidence that a reasonable

factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient.” *J.F.C.*, 96 S.W.3d at 266.

<sup>7</sup> Holley Factors. The Supreme Court of Texas identified the following as factors to consider in determining the best interest of a child in its landmark case *Holley v. Adams*:

- (A) the desires of the child;
- (B) the emotional and physical needs of the child now and in the future;
- (C) the emotional and physical danger to the child now and in the future;
- (D) the parental abilities of the individuals seeking custody;
- (E) the programs available to assist these individuals to promote the best interest of the child;
- (F) the plans for the child by these individuals or by the agency seeking custody;
- (G) the stability of the home or proposed placement;
- (H) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and
- (I) any excuse for the acts or omissions of the parent.

*Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976) (footnotes omitted); accord *In re E.N.C.*, 384 S.W.3d 796, 807 (Tex. 2012) (reciting the *Holley* factors) ; see also TEX. FAM. CODE ANN. § 263.307 (West 2014) (articulating best-interest factors to “be considered by the court and the department in determining whether the child’s parents are willing and able to provide the child with a safe environment”).



**Fourth Court of Appeals  
San Antonio, Texas**

**JUDGMENT**

No. \_\_\_\_ - \_\_\_\_ - \_\_\_\_ -CV

**IN THE INTEREST OF A.B.C. [ and D.E.F.], Child/Children**

From the \_\_\_\_ Judicial District Court, \_\_\_\_ County, Texas  
Trial Court No. \_\_\_\_  
Honorable \_\_\_\_, Judge Presiding

BEFORE JUSTICE \_\_\_\_, JUSTICE \_\_\_\_, AND JUSTICE \_\_\_\_

In accordance with this Court's opinion of this date, the trial court's order terminating \_\_\_\_'s parental rights to A.B.C. [and D.E.F.] is AFFIRMED. Appellant is indigent; no costs are taxed in this appeal.

SIGNED

\_\_\_\_\_  
\_\_\_\_\_, Justice

**Texas Board of Law Examiners**  
**Rules Governing Admission to the Bar of Texas**

**Rule 23**  
**Registration of In-House Counsel**

Pursuant to Texas Government Code Section 81.102(b)(1), this Rule requires attorneys licensed to practice in States other than Texas, who reside in Texas and provide legal services for compensation to Business Organizations in Texas, to register as In-House Counsel. Registered In-House Counsel are permitted to lawfully provide legal services to Business Organizations in Texas without becoming a member of the State Bar of Texas.

§1. Definitions

- (a) “Registered In-House Counsel.” A “Registered In-House Counsel” is a lawyer who:
  - (1) is authorized to practice law in a State other than Texas;
  - (2) is exclusively employed by a Business Organization, as herein defined, and receives or will receive compensation for legal services or representation on behalf of that Business Organization;
  - (3) is residing in Texas or is relocating to Texas for purposes of employment within six months of application for registration;
  - (4) has completed registration as In-House Counsel as required by this Rule and has paid all fees; and
  - (5) has been approved as Registered In-House Counsel by the Supreme Court of Texas.
- (b) “Business Organization.” A “Business Organization” is a corporation, company, partnership, association, or other legal entity, including its respective parents, subsidiaries, and affiliates, that is doing business in Texas, that is not engaged in the practice of law or the provision of legal services outside of the organization, and does not charge or collect a fee for legal representation or advice other than to entities comprising that organization for services of the Registered In-House Counsel.



§2. Activities

- (a) Authorized Activities. Registered In-House Counsel may provide legal services in Texas to a single Business Organization. Registered In-House Counsel are authorized to engage in the following activities:
- (1) giving legal advice to the directors, officers, employees, and agents of the employing Business Organization regarding its business affairs;
  - (2) negotiating and documenting all matters for the employing Business Organization;
  - (3) representing the employing Business Organization in its dealings with any governmental or administrative agency or commission if authorized by the rules of the agency or commission; and
  - (4) participating in the provision of *pro bono* services offered under the auspices of organized legal aid societies or state/local bar association projects or provided under the supervision of an attorney licensed to practice law in Texas who is also working on the *pro bono* representation.
- (b) Unauthorized Activities. Except as provided by subsection (a), Registered In-House Counsel are not authorized to engage in the following activities:
- (1) appearing for the Business Organization in Texas courts, either in person or by signing pleadings;
  - (2) interpreting Texas law or giving any advice concerning Texas law for anyone other than the Business Organization;
  - (3) participating in the Texas representation of any client other than the Business Organization, in any manner;
  - (4) preparing any legal instrument affecting title to real property, including a deed, deed of trust, note, mortgage, or transfer or release of lien, as proscribed by Texas Government Code Section 83.001; or
  - (5) rendering to anyone except the Business Organization any service requiring the use of legal skill or knowledge or performing any other act constituting the practice of law under Texas Government Code Section 81.101.

### §3. Disclosure

Registered In-House counsel shall not represent themselves as members of the State Bar of Texas or that they are licensed to practice law in Texas. In any communication with individuals or organizations other than the employing Business Organization, Registered In-House Counsel must disclose that they are not licensed to practice law in the state of Texas. If the communication is in writing, Registered In-House Counsel must disclose the name of the employing Business Organization, their title or function within the organization, and that they are not licensed to practice law in Texas.

### §4. Registration

- (a) Lawyers seeking registration as In-House Counsel in Texas shall file the following with the Board:
  - (1) a certificate or other documentation from each State or foreign jurisdiction in which the lawyer is authorized to practice law proving that the lawyer is authorized to practice law and is active and in good standing; and, for any jurisdiction in which the lawyer has an inactive status as an attorney, documentation or certification certifying that the lawyer is voluntarily inactive and was not involuntarily placed on inactive status;
  - (2) a statement executed by the lawyer under penalty of perjury that he or she:
    - (A) has read and is familiar with the *Texas Disciplinary Rules of Professional Conduct* and will follow its provisions;
    - (B) submits to the jurisdiction of the Supreme Court of Texas for all purposes as defined in *Texas Disciplinary Rules of Professional Conduct*, the *Rules Governing Admission to the Bar of Texas*;
    - (C) is not subject to a disciplinary proceeding or outstanding order of reprimand, censure, or disbarment, permanent or temporary, for professional misconduct by the bar or courts or duly constituted organization overseeing the profession or granting authority to practice law of any jurisdiction and has not been permanently denied admission to practice law in any jurisdiction based on the lawyer's character or fitness; and

- (D) authorizes notification to the State Bar of Texas of any disciplinary or other adverse action taken against the lawyer before the disciplinary authority overseeing the legal profession in all States and foreign jurisdictions in which the lawyer is licensed or otherwise authorized to practice law.
  - (3) a certificate or other documentation from the employing Business Organization certifying that it meets the definition of a Business Organization as defined in this Rule, that it is aware that the lawyer is not licensed to practice in Texas;
  - (4) an application to register as In-House Counsel as promulgated by the executive director of the Board; and
  - (5) payment of all required fees.
- (b) Review by the Board. The Board will review applications for compliance with this Rule. Application for registration as In-House Counsel constitutes authorization for the Board to conduct an investigation and make a determination of good moral character and fitness pursuant to Rule 10 of the *Rules Governing Admission to the Bar of Texas*.
  - (c) Registration with Supreme Court. The Board will submit the name and address of all lawyers meeting the requirements of this Rule to the clerk of the Supreme Court of Texas with a request that the lawyer be registered as In-House Counsel. Authorization to perform services under this Rule is effective on the date the clerk of the Supreme Court of Texas approves the request for registration. If the registrant is relocating to Texas, the authorization becomes effective on the date of employment in Texas, but in no case later than six months after the date of the application.
  - (d) Annual Renewal. The Registered In-House Counsel shall pay a non-refundable annual fee to the State Bar of Texas equal to the current fee paid by active members of the State Bar of Texas and shall provide any updated or amended information the bar requires.
  - (e) Duty to Report Change in Status. Registered In-House Counsel shall report any change in status or authority to practice in another State or foreign jurisdiction within 30 days of the effective date of the change in status. If a lawyer registered as In-House Counsel elects inactive status in any State or foreign jurisdiction after registration, the Registered In-House Counsel must provide documentation

as required by subsection (a)(1) of this Section. Failure to provide such notice or documentation by the Registered In-House Counsel constitutes a basis for discipline pursuant to the *Texas Disciplinary Rules of Professional Conduct*.

§5. Duration and Termination of Registration

- (a) Authorization to perform legal services as In-House Counsel under this Rule terminates on the earliest of the following events:
  - (1) admission of the Registered In-House Counsel to the general practice of law in Texas;
  - (2) the In-House Counsel ceases to be employed by the Business Organization listed on his or her then-current registration under this Rule; if such Registered In-House Counsel, within 60 days of ceasing to be so employed, becomes employed by another Business Organization and such employment meets all requirements of this Rule, his or her registration shall remain in effect, if within said 60-day period, the In-House Counsel files with the Board:
    - (A) written notification by the lawyer stating the date on which the prior employment terminated, identification of the new employer and the date on which the new employment commenced;
    - (B) certification by the former Business Organization that the termination of the employment was not based on misconduct or lack of fitness or failure to comply with this Rule; and
    - (C) the certification specified in subsection (a)(3) of Section 4, duly executed by the new employer. If the employment of the In-House Counsel ceases with no subsequent employment within 60 days thereafter, the lawyer shall promptly notify the Board in writing of the date of termination of the employment and shall not represent any Business Organization, company, partnership, association, or other non-governmental business entity authorized to transact business in Texas;
  - (3) a request by the Business Organization or the Registered In-House Counsel that the registration be withdrawn;

- (4) relocation of a Registered In-House Counsel outside of Texas for more than 180 days;
  - (5) suspension, other than administrative suspension, or disbarment from the practice of law in any jurisdiction or any court or agency before which the lawyer is admitted; or
  - (6) failure of Registered In-House Counsel to fully comply with any provision of this Rule.
- (b) Notice to the State Bar of Texas by the Registered In-house Counsel. Registered In-House Counsel must file notice of certification as In-House Counsel or issuance of new certification as provided in this Rule with the State Bar of Texas within 60 days of certification.
- (c) Termination of Authorization. The Board will request that the clerk of the Supreme Court of Texas terminate the authorization to perform legal services under this Rule after the Board has received the notice required by subsection (a)(2) of this Section. The Board will mail notice of the termination to the Registered In-House Counsel and to the Business Organization of record employing the Registered In-House Counsel.
- (d) Reapplication. A lawyer previously registered as In-House Counsel may reapply for registration as long as the requirements of this Rule are met.
- (e) Re-registration. Lawyers whose Registered In-House Counsel status was terminated for failure to pay annual fees or to complete continuing legal education requirements may be recertified in the same manner that administratively suspended members of the State Bar of Texas are reinstated.

## §6. Discipline

- (a) Termination of Registration by Court. The Supreme Court of Texas may temporarily or permanently terminate a Registered In-House Counsel's registration for cause at any time, in addition to any other proceeding or discipline that may be imposed by the Supreme Court of Texas.
- (b) Notification to Other States and National Lawyer Regulatory Data Bank. The Board is authorized to notify each state or foreign jurisdiction in which the Registered In-House Counsel is licensed to practice law of any disciplinary action

against the Registered In-House Counsel, and is further authorized to notify the National Lawyer Regulatory Data Bank.

§7. Continuing Legal Education Requirement

In-House Counsel shall comply with all continuing legal education requirements applicable to members of the Bar unless otherwise exempt.

§8. Admission Without Examination

The requirements of active and substantial engagement in the lawful practice of law as required for exemption from taking the Texas Bar Examination, as provided in Rule 13 of the *Rules Governing Admission to the Bar of Texas*, may be met by continuous registration as In-House Counsel in Texas for a period of three of the last five years immediately preceding the filing of an application for admission without examination.

§9. Effective Date

- (a) This Rule requiring registration or licensure of In-House Counsel becomes effective on January 1, 2021.
- (b) Any application for registration as In-House Counsel shall authorize the lawyer to be employed by a Texas Business Organization and shall be effective as of the date of filing with the Board.
- (c) The Board will accept applications for registration as In-House Counsel beginning December 1, 2019.

## Jaclyn Daumerie

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**From:** Ryan Henry <ryan.henry@rshlawfirm.com>  
**Sent:** Monday, March 18, 2019 3:05 PM  
**To:** Jaclyn Daumerie  
**Cc:** Pauline Easley; Erin Barnett; Elizabeth Parra-Cox  
**Subject:** RE: Municipal Court Civil Rules

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Ms. Daumerie

Sorry it has taken me a few weeks to get this to the Court, but I've been trying to figure out how to effectively distill the reason some rules should be passed to help address problems in municipal courts of record. Below is probably more information than you wanted to know, but I believe it properly encapsulates some of the confusion and why a few minor rule changes could be extremely helpful. This is the executive summary version and a slightly more detailed explanation is attached.

**I. Initial Confusion**

The Texas Legislature has granted municipal courts (all municipal courts) a certain level of civil jurisdiction. It has also granted municipal courts of record even greater civil and administrative jurisdiction under Texas Government Code § 30.00005. Essentially, municipal courts of record have concurrent jurisdiction with district courts for certain code enforcement/subject matters. This includes injunctive and declaratory relief along with civil penalties. It is when municipal courts utilize these jurisdictions that judges and parties have difficulty knowing the proper protocol.

**II. Summary of Non-Application**

Texas Rule of Civil Procedure 2 excludes municipal courts from its application. And while a Frankenstein piecemeal of interconnections can provide support for a minimal of procedures, numerous gaps exist causing enforcement and control of the docket to be sacrificed.

**III. Suggestions**

- Add "municipal courts" to the application of Rule 2.
- Create some specialized rules, similar to Rule 500 for JP courts, applicable to municipal courts.
- Create a rule stating, essentially, "When a municipal court of record exercises its concurrent civil jurisdiction pursuant to Texas Government Code § 30.00005, the Texas Rules of Civil Procedure apply in municipal court to the same extent they would apply in district court."
- Areas where the general application will still have problems and need tweaking include: Truancy, dangerous dog cases, dangerous structures under chapter 214 of the Texas Local Government Code, zoning under chapter 211 of the Texas Local Government Code, junked vehicles and sanitation.

I hope this executive summary and the attached legal briefing help explain why some minimal but extremely important additions to the rules would be helpful to municipal judges. I am here to help and will put in the time and effort to assist the Court with analyzing this issue. Please let me know what I can do or if you have any questions. I look forward to hearing from you.

#### IV. Initial Confusion

Most practitioners and many judges think of municipal court as a “traffic” court and, to be fair, traffic violations and Class C misdemeanors make up most of what occurs in municipal court. However, the Texas Legislature has granted municipal courts (all municipal courts) a certain level of civil jurisdiction. It has also granted municipal courts of record even greater civil and administrative jurisdiction. It is when municipal courts utilize these jurisdictions that judges and parties have difficulty knowing the proper protocol.

#### V. Municipal Court Civil Jurisdiction

All municipal courts have specific minor civil jurisdiction – examples:

- i. Dangerous dog determinations under Tex. Health & Safety Code Ann. § 822.047 (West 2017);
- ii. Civil truancy under Tex. Fam. Code § 65.001 *et. seq.*,
- iii. Bond forfeitures under Tex. Gov’t Code §29.003(e) [not civil by default, but must be conducted the same as a civil process],
- iv. Appeals from red light camera determinations under Chapter 707 of the Texas Transportation Code.
- v. Civil enforcement of criminal fines. Tex. Crim. Proc. Code Ann. §45.047 and § 45.203.
- vi. Administrative support. Municipalities may elect to provide for quasi-judicial proceedings in enforcement of health and safety ordinances. Tex. Loc. Gov’t Code Ann. § 54.031.

Further, a municipality court of record has concurrent jurisdiction with a district court or a county court at law under Subchapter B of Chapter 54. Tex. Gov’t Code Ann. § 30.00005 (West 2017). Many municipalities have situations when a property or person who, despite being given numerous criminal citations, fails to come into compliance with the municipality’s ordinances. Since criminal penalties only allow fines the city may be left with little choice but to force compliance through injunctive relief.

The default option for the municipality is to seek enforcement through Tex. Loc. Gov’t Code Ann. § 54.001, *et. seq.* (West 2017). If the City has adopted the proper ordinances, it can seek injunctive relief and civil penalties. Tex. Loc. Gov’t Code Ann. §§ 54.017, 54.018. Penalties can be assessed against the real property as well, depending on the type of ordinance violation existing on the property. Tex. Loc. Gov’t Code Ann. § 54.018(b) (West 2017). Jurisdiction is permitted in district court or the county court at law of the county in which the municipality bringing the action is located. Tex. Loc. Gov’t Code Ann. § 54.013 (West 2017).

Texas Government Code § 30.00005 grants municipal courts of record concurrent jurisdiction over the exact same enforcement actions. This includes injunctive relief, declaratory relief, and civil penalties. However, the Texas Rules of Civil Procedure which aide district and county-courts-at-law are not available to municipal courts in the same context.

Utilizing the plain meaning of a similar statute and the cannons of statutory construction, the Texarkana Court of Appeals, in *Miller v. Gregg County*, 546 S.W.3d 410 (Tex. App.—Texarkana 2018, no pet.), held that the term “concurrent jurisdiction” found in Tex. Gov’t Code §25.0003 meant the county court at law could hear claims brought under the Texas Public Information Act since it has concurrent jurisdiction with district court for all claims under a certain dollar threshold. The same analysis applied to the statutory language in §30.00005 equates to the municipal court of record having full jurisdiction over Chapter 54 suits, including all relief.

A municipality may bring a Chapter 54 civil action:

- for the preservation of public safety, relating to the materials or methods used to construct a building or other structure or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances, or exits;
- for the preservation of public health or to the fire safety of a building or other structure or improvement;
- for zoning violations.
- subdivision regulations including street width and design, lot size, building width or elevation, setback requirements, or utility regulations;
- implementing civil penalties under its general authority for conduct classified by statute as a Class C misdemeanor;



- relating to dangerously damaged or deteriorated structures or improvements;
- relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents;
- relating to the interior configuration, design, illumination, or visibility of certain sexually oriented businesses;
- relating to point source effluent regulations;
- relating to animal care and control;
- relating to floodplain control; and
- relating to water conservation measures.

Tex. Loc. Gov't Code Ann. § 54.012 (West 2017)

Additionally, municipal courts of record have express jurisdiction for certain civil subject matters including:

1. Civil power over junked vehicles. Tex. Gov't Code Ann. § 30.00005; Tex. Transp. Code Chapter 683.
2. Power over dangerous structures. Tex. Gov't Code Ann. § 30.00005; Tex. Loc. Gov't Code Chapter 214.
3. Civil penalties for violations of a city's red-light camera program. Tex. Gov't Code Ann. § 29.003(g); Tex. Transp. Code Chapter 707.
4. Certain Dangerous Dog orders under Tex. Health & Safety Code Ann. § 822.0421(d) or §822.0423 (West 2017).

While not as clearly delineated, the way Chapter 30 of the Government Code works with other statutory authority, the language equates to various additional authorities being conferred upon a municipal court of record.

- A. **Nuisance:** A municipality, by ordinance, may adopt regulations to control nuisances, but must, by either separate ordinance or incorporated within the nuisance ordinance, vest its municipal court with the jurisdiction over enforcement. Tex. Gov't Code Ann. § 30.00005; *In re Pixler*, 2018 WL 3580637, at \*5, reh'g denied (Aug. 23, 2018), reh'g denied (Aug. 23, 2018). Generalized nuisance authority can be found in Chapter 217 of the Texas Local Government Code.
- B. **Zoning:** Section 54.012 does not interconnect the specific statutory references, but does expressly list “zoning” as a regulation subject to enforcement under Chapter 54. *City of Dallas v. TCI W. End, Inc.*, 463 S.W.3d 53, 56 (Tex. 2015)(statutes authorizing municipalities to bring civil actions for violations of ordinances provided City authority to bring action against developer for demolishing a historic building in violation of city zoning ordinances).

Tex. Loc. Gov't Code Chapter 211 controls municipal zoning issues. Specifically, §211.012 authorizes a city to “institute appropriate action” to enforce its zoning ordinances including prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; restrain, correct, or abate a violation; prevent the occupancy of the building, structure, or land; or prevent an authorized use.

- C. **Subdivision Regulations:** Subdivision regulations are primarily controlled by Tex. Loc. Gov't Code Chapter 212. Chapter 54, specifically §54.012(4) authorizes suit to enforce subdivision ordinances. Under §212.018, a municipal attorney may bring a civil action in a “court of competent jurisdiction” to enjoin and enforce the municipalities subdivision ordinances. Tex. Loc. Gov't Code §212.018 (a). Further, §212.003 then provides that the “governing body of a municipality by ordinance may extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances adopted under Section 212.002.” § 212.003(a). This expressly gives all municipalities authority to enforce rules and ordinances within their ETJs. See Tex. Loc. Gov't Code Ann. §§ 212.002 and 212.003(a).

- D. **Sanitation:** A municipality can regulate the sanitation conditions of the city, including refuse, vegetation, and other unsanitary conditions of both commercial and non-commercial properties. The governing body of a municipality may require the inspection of all premises and the regulation of filling, draining, and preventing unwholesome accumulations of stagnant water. Tex. Health & Safety Code Ann. § 342.001 (West 2017). It can impose fines and fees in order to enforce its regulations. *Id.*

The governing body can regulate sewers and privies (Tex. Health & Safety Code Ann. § 342.002); trash, rubbish, filth, carrion, or other impure or unwholesome matter (Tex. Health & Safety Code Ann. § 342.003); weeds, brush, and nuisance level vegetation (Tex. Health & Safety Code Ann. § 342.004). It can adopt criminal (Tex. Health & Safety Code Ann. § 342.005) penalties and can bring a civil suit (potentially in municipal court) to enforce such ordinances. Tex. Loc. Gov't Code §§54.012 & 54.017.

A municipality may adopt rules for regulating solid waste collection, handling, transportation, storage, processing, and disposal as long as such rules are not inconsistent with the Solid Waste Disposal Act found in Chapter 361 of the Health and Safety Code. Tex. Health & Safety Code Ann. § 363.111 (West 2017).

If the owner of property in the municipality does not comply with a municipal ordinance on sanitation, the municipality may abate any sanitation issues and charge the cost of the abatement to the property and the property owner. Tex. Health & Safety Code Ann. § 342.006 (West 2017). The city must follow the procedures set forth in Chapter 342 in order to secure a lien against the property for such costs. Tex. Health & Safety Code Ann. § 342.007.

- E. **Animals:** Animal control is not limited to simply dangerous dogs under Tex. Health & Safety Code Ann. § 822.047. A municipality may regulate any aspects regarding animals which is necessary for the health and safety of the community. Tex. Loc. Gov't Code Ann. § 54.001. It can impose a Class C misdemeanor penalty. Tex. Loc. Gov't Code Ann. § 54.001(b). A city may also bring a civil suit to enforce its general animal care and control ordinances. Tex. Loc. Gov't Code Ann. § 54.012(aa).

## VI. **What Rules Do Not Apply**

Texas Rule of Civil Procedure 2 states “[t]hese rules shall govern the procedure in the justice, county, and district courts of the State of Texas in all actions of a civil nature, with such exceptions as may be hereinafter stated.” Tex. R. Civ. P. 2. This means the basic rules which procedurally assist lawyers in district and county court are not expressly authorized for use when a municipality is bringing a Chapter 54 suit to enforce an ordinance.

This means Rule 11, Rule 13, the rules on service or process, the rules on discovery (somewhat) and the rules designed to assist protecting the due process rights of all parties cannot be enforced by a municipal court judge. I believe to the extent the rules of procedure overlap with a jurisdictional element, the court can utilize the rules for establishing jurisdictional questions. But mere procedural questions are not addressed at all.

The initial answer may be to add the term “municipal court” to the list under Rule 2. And I believe that is the first place to start. However, municipal courts also have specialized areas of practice, similar to JP courts, which require some tweaks for individual subject matters. Different civil subject matters have different statutory deadlines ranging from five days, to seven days, to ten days, to twenty days, etc.

## VII. **What Rules Do Apply**

Pursuant to Texas Government Code § 30.00023, except as modified by Chapter 30, the Code of Criminal Procedure and the Texas Rules of Appellate Procedure govern the trial of cases before the municipal courts of

record. The courts may make and enforce all rules of practice and procedure necessary to expedite the trial of cases before the courts that are not inconsistent with law.

For the criminal matters, this direction is all that is required to assist with criminal trials. However, for civil jurisdiction, it becomes problematic. I've previously interpreted the second sentence stating that courts "may make and enforce all rules of practice and procedure necessary" to include the fact the municipal court can impose the Texas Rules of Civil Procedure when needed. However, unless a municipal judge signs a local standing order or specific municipal ordinances impose the rules for administrative or civil claims, parties do not know if the rules apply or not.

The Texas Code of Criminal Procedure actually incorporates certain civil rules by default. So, the municipal court is not without any direction.

1. The Code of Criminal Procedure requires that "all process" from a municipal court be served by a "policeman or marshal" of the city under the same rules applicable to sheriffs and constables serving JP court. Tex. Crim. Proc. Code art. 45.04 and 45.202. Since JP courts are covered by the TRCP, the rules regarding "process" are also applicable;
2. The Code of Criminal Procedure art. 39.04 states the civil rules applicable to "how" a deposition occurs apply to a criminal case as long as the court has granted permission for the depositions.
3. The Code of Criminal Procedure Chapter 45, specifically articles 45.025 through 45.039 have portions which apply to the set-up of all types of jury trials.
4. The Code of Criminal Procedure Chapter art. 45.047 states that collections on judgments incorporate the TRCP.

However, various gaps exist which can cause blind spots or loopholes. For example, the Texas Code of Criminal Procedure Chapter 27 applies to pleadings initiating a case, but expressly apply only to criminal matters. Pursuant to art. 39.02, depositions can only be taken by filing an application with the court to take such depositions. While that may work for criminal matters, the application of art. 39.02 to a civil case can result in the inability for the parties to conduct discovery the same way had the city initiated suit in county court at law or district court. Now, art. 39.04 does help some by stating "the rules prescribed in civil cases for issuance of commissions, subpoenaing witnesses, taking the depositions of witnesses and all other formalities governing depositions shall, as to the manner and form of taking and returning the same and other formalities to the taking of the same, govern in criminal actions, when not in conflict with this Code." However, the language seems to indicate it is contingent upon art. 39.02 permission to conduct the depositions. Article 39.14 controls criminal discovery, but is inapplicable when trying to conduct civil discovery.

Article 42.01 states a "judgement" is a written declaration of a record showing a conviction or acquittal. Article 45.041 states a judgment and sentence apply in the case of conviction. However, recently, the intermediary courts of appeal have had difficulty explaining the authority to appeal civil matters from a municipal court. In *Wrencher v. State*, 03-15-00438-CV, 2017 WL 2628068, at \*1 (Tex. App.—Austin June 16, 2017, no pet.) and *In re Pool*, 03-18-00299-CV, 2019 WL 287940, at \*3 (Tex. App.—Austin Jan. 23, 2019, no pet. h.) the courts attempted to make sense of the statutory language apply a civil judgment under the dangerous dog jurisdiction and noting references to the word "judgment" applies only to civil judgments, while appeals of "convictions" apply to criminal appeals.

The Code of Criminal Procedure art. 45.011 states the rules of evidence that govern trial so criminal actions in the district court apply to criminal proceedings in justice or municipal court. However, the rules of evidence are not referenced in relation to any civil or administrative matters.

#### **VIII. Type of Corrections**

In the case of *In re Loban*, 243 S.W.3d 827, 829 (Tex. App.—Fort Worth 2008, no pet.), the court struggled with the ability to appeal a dangerous dog determination (under the prior statutory language) when no county court at law with civil jurisdiction existed within the county controlled by the animal control authority.

The Fort Worth Court of Appeals ultimately held the right to appeal a dangerous dog determination did not exist in Tarrant County. The court, in dicta, noted :

This gap in the statutory right of appeal is apparently attributable to the fact that municipal courts previously had only criminal jurisdiction. See *City of Lubbock v. Green*, 312 S.W.2d 279, 282 (Tex.Civ.App.-Amarillo 1958, no writ) (stating that an appeal from municipal court “would lie only if the proceedings constituted a criminal case”); see also 23 David Brooks, *Texas Practice: Municipal Law and Practice* § 15.19 (1999) (same). When municipal courts became capable of exercising limited civil jurisdiction, the statutes authorizing appeals from a municipal court's decision were not correspondingly amended to address appeals generated via this exercise of limited civil jurisdiction. Tex. Gov't Code Ann. § 30.00005(d) (Vernon 2004) (stating that governing body of municipality may provide that municipal court of record may have specified civil jurisdiction); see generally Tex. Att'y Gen. Op. No. GA-0316 (2005) (espousing this conclusion).

*In re Loban*, 243 S.W.3d 827, 831 (Tex. App.—Fort Worth 2008, no pet.).

While the statutory problem in *In re Loban* has been corrected by the Texas Legislature, the underlying premise remains that certain jurisdictional gaps (which can only be corrected by legislative decree) and certain procedural gaps (which can only be corrected by adoption of civil procedures) remain. To the extent the Texas Supreme Court can help alleviate confusion on the procedures and provide municipal judges with the abilities to support their rulings on procedural grounds, I humbly request it attempt to do so.

Corrections can be as simply as adding the term “municipal court” to the application of Rule 2. It can could also be corrected by adopting some specialized rules, such as those found in Rule 500 relating to justice courts. However, those specialized rules would simply need to address the extent of any application to the individual areas of subject matter jurisdiction. A specialized rule which simply stated “When a municipal court of record exercises its concurrent civil jurisdiction pursuant to Texas Government Code § 30.00005, the Texas Rules of Civil Procedure apply in municipal court to the same extent they would apply in district court.”

Please let me know if I can do anything to help.

Very Truly Yours,  
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**From:** Jaclyn Daumerie <[Jaclyn.Daumerie@txcourts.gov](mailto:Jaclyn.Daumerie@txcourts.gov)>

**Sent:** Friday, March 1, 2019 12:15 PM

**To:** Ryan Henry <[ryan.henry@rshlawfirm.com](mailto:ryan.henry@rshlawfirm.com)>

**Cc:** Pauline Easley <[Pauline.Easley@txcourts.gov](mailto:Pauline.Easley@txcourts.gov)>; Erin Barnett <[erin.barnett@rshlawfirm.com](mailto:erin.barnett@rshlawfirm.com)>; Elizabeth Parra-Cox <[elizabeth.parracox@rshlawfirm.com](mailto:elizabeth.parracox@rshlawfirm.com)>

**Subject:** RE: Municipal Court Civil Rules

That works great. Thanks so much for your assistance!

Jackie

---

**From:** Ryan Henry [<mailto:ryan.henry@rshlawfirm.com>]

**Sent:** Friday, March 01, 2019 12:10 PM

**To:** Jaclyn Daumerie <[Jaclyn.Daumerie@txcourts.gov](mailto:Jaclyn.Daumerie@txcourts.gov)>

**Cc:** Pauline Easley <[Pauline.Easley@txcourts.gov](mailto:Pauline.Easley@txcourts.gov)>; Erin Barnett <[erin.barnett@rshlawfirm.com](mailto:erin.barnett@rshlawfirm.com)>; Elizabeth Parra-Cox <[elizabeth.parracox@rshlawfirm.com](mailto:elizabeth.parracox@rshlawfirm.com)>

**Subject:** RE: Municipal Court Civil Rules

Ms. Daumerie,

Thank you for the response. I'm happy to prepare some information to get things rolling. It may take a week or two to put it together in a way which makes sense, but will get working on that right away.

Very Truly Yours,

Ryan Henry

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**From:** Jaclyn Daumerie <[Jaclyn.Daumerie@txcourts.gov](mailto:Jaclyn.Daumerie@txcourts.gov)>

**Sent:** Friday, March 1, 2019 11:59 AM

**To:** Ryan Henry <[ryan.henry@rshlawfirm.com](mailto:ryan.henry@rshlawfirm.com)>

**Cc:** Pauline Easley <[Pauline.Easley@txcourts.gov](mailto:Pauline.Easley@txcourts.gov)>

**Subject:** RE: Municipal Court Civil Rules

Judge Henry,

Thanks for your patience. This week, I talked to Hope Lochridge and Mark Goodner with the Texas Municipal Education Center. They are both in favor of providing more procedural guidance in municipal court civil cases, and we are interested in exploring this issue further. As a starting point, it would be helpful for you to send your general thoughts on why guidance is needed, what guidance is needed (i.e. what topics should be covered by rules), and the complications you see, if any, with providing guidance. We don't need anything too detailed at the moment, we're just looking for a place to get started.

Please feel free to reach out with any questions or concerns.

Best,

**Jackie Daumerie**

Rules Attorney

Supreme Court of Texas

512.463.1353

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**From:** Nathan Hecht

**Sent:** Tuesday, February 19, 2019 4:46 PM

**To:** Ryan Henry <[ryan.henry@rshlawfirm.com](mailto:ryan.henry@rshlawfirm.com)>

**Cc:** Martha Newton <[Martha.Newton@txcourts.gov](mailto:Martha.Newton@txcourts.gov)>; Jaclyn Daumerie <[Jaclyn.Daumerie@txcourts.gov](mailto:Jaclyn.Daumerie@txcourts.gov)>; Pauline Easley <[Pauline.Easley@txcourts.gov](mailto:Pauline.Easley@txcourts.gov)>

**Subject:** RE: Municipal Court Civil Rules

Thanks, Ryan. Please let me discuss the matter with my rules lawyers, and we'll get back to you. It may be next week.

---

**From:** Ryan Henry [<mailto:ryan.henry@rshlawfirm.com>]

**Sent:** Monday, February 18, 2019 11:16 AM

**To:** Nathan Hecht <[Nathan.Hecht@txcourts.gov](mailto:Nathan.Hecht@txcourts.gov)>

**Subject:** Municipal Court Civil Rules

Chief Justice Hecht,

I wanted to thank you again for granting the various State Bar sections the Court's time during the CLE event in Texarkana. I know the sections appreciated it a great deal.

Also, if you remember, you and I had a brief discussion about perhaps adjusting the Rules of Civil Procedure to better help municipal courts. I have a hearing tomorrow where I am sitting and the two parties are arguing over the court's plenary power based on whether a motion for new trial for a civil case is controlled by the rules of civil procedure or some other unidentified rule. So, I believe some guidance from the court is greatly needed to help municipal judge's like myself figure out what it is we are supposed to do when there is an absence of procedure.

You mentioned I should send you an email to get the ball rolling. However, I am unsure what it is you need from me in order to make the proper proposal. Do you need me to explain the need and why, then to leave it up to the Rules Committee, or would it be more helpful for me to propose some Rules as a starting point and the reasons why? What is the most efficient way to get that ball rolling? I'm willing to put in the work to assist with this. I simply need to know what it is the Court needs and the Committee needs and I will comply.

Thank you for your time and assistance. I look forward to hearing from you.

Very Truly Yours,

Ryan Henry

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## Memorandum



**To:** Chief Justice Nathan Hecht

**From:** Justice Tracy Christopher

**Date:** March 29, 2019

**Re:** Proposed revision to TRAP 49.3

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I am asking that the Supreme Court consider an amendment to TRAP 49.3. This request is made on my own behalf and not on behalf of the Fourteenth Court of Appeals.

History: In November 2018, a number of appellate courts across the state lost many of its incumbent justices. As a result, for many of the opinions issued in December of 2018, there was no longer “a majority of the justices who participated in the decision of the case,” at the time a motion for rehearing was filed. Appellate courts then automatically denied the motion pursuant to rule 49.3. Litigants were then forced to try to get relief via an en banc motion. Because the standards for en banc relief are high, most of these motions were rightfully denied.

However, on some occasions, a remaining member of the panel who decided the case might think that the opinion should be revised because of the arguments in the rehearing motion. The only current way to revise the opinion is to ask for en banc review. This puts a burden on the en banc court that could be avoided by a rule change. My proposed rule change would allow a remaining justice—who was in the majority—to rehear the case with two new justices.

Because of the uneven way that some justices on the courts of appeals are elected (i.e. 5 of 9 justices on both the First and Fourteenth court are elected at one time, and 8 of 13 were recently elected on the Fifth court) this problem can re-occur.

According to a Westlaw search, in the past three years, the Fourteenth Court has withdrawn an opinion and issued a new opinion on panel rehearing approximately 28 times. The First Court has done this approximately 47 times and the Fifth Court



has done this 12 times. While this rule change may not affect many cases, I still believe that it is a useful one that the parties and lawyers would support.

Proposed additions to the rule are underlined.

Proposed rule change:

#### 49.3 Decision on Motion

A motion for rehearing may be granted by a majority of the justices who participated in the decision of the case. Otherwise it must be denied.

In the event that a majority of the justices who participated in the decision of the case are no longer on the court and a remaining justice, who authored or joined the majority opinion, believes that the opinion should be revised in light of the motion, then that justice can ask for two new justices to review the motion. The new panel can then decide the motion and revise the opinion if needed.

If rehearing is granted, the court or panel may dispose of the case with or without rebriefing and oral argument.

#### 49.3. Decision on Motion for Rehearing

A motion for rehearing may be granted by a majority of the justices who participated in the decision of the case. Otherwise, it must be denied. **However, if one or more of the justices on the original panel cannot participate in the motion for rehearing, the chief justice will ensure that sufficient additional justices are assigned to the case so that three justices participate in the decision on the motion for rehearing.** If rehearing is granted, the court or panel may dispose of the case with or without rebriefing and oral argument.

**STATE BAR OF TEXAS  
COMMITTEE ON COURT RULES  
PROPOSAL TO CHANGE EXISTING RULE  
TEXAS RULES OF CIVIL PROCEDURE**

. **Exact wording of existing Rule:**

RULE 253. ABSENCE OF COUNSEL AS GROUND FOR CONTINUANCE

Except as provided elsewhere in these rules, absence of counsel will not be good cause for a continuance or postponement of the cause when called for trial, except it be allowed in the discretion of the court, upon cause shown or upon matters within the knowledge or information of the judge to be stated on the record.

. **Proposed Rule:**

RULE 253. PARENTAL LEAVE OR ABSENCE OF COUNSEL AS GROUND FOR CONTINUANCE OF TRIAL

(a) For purposes of this rule, “parental leave continuance” means a continuance of a trial setting in connection with the birth or adoption of a child by an applicant, regardless of the applicant’s gender. Three months is the presumptive maximum length of a parental leave continuance, absent a showing of good cause that a longer time is appropriate. This rule does not apply to cases arising under Chapters 54 or 262 of the Family Code.

(1) Any application made under this rule must be filed within a reasonable time after the later of:

(A) the applicant learning of the basis for the continuance; or

(b) the applicant learning the setting of the proceeding for which the continuance is sought.

(2) Application by Lead Attorney. Except where the attorney was employed within ten days of the date the suit is set for trial, an application for parental leave continuance based on the parental leave of a lead attorney in a case must be granted. In cases where an attorney was employed within ten days of the date the suit is set for trial, the right to continuance based on the parental leave of a lead attorney in a case shall be discretionary.

[Continued on Next]

(3) Application by Attorney Other than Lead Attorney. The court in its discretion may grant an application for parental leave continuance based on the parental leave of an attorney other than the lead attorney in a case if such application is made in accordance with this rule. If the application for parental leave continuance by an attorney other than the lead attorney is challenged by another party that makes a prima facie demonstration of substantial prejudice, the burden shifts to the applicant to demonstrate that the prejudice caused by denying the continuance exceeds the burden that would be caused to the objecting party if the continuance were to be granted. The court must enter a written order setting forth its ruling on the application for parental leave continuance and, if the court denies the requested continuance, the specific grounds for denial shall be set forth in the order.

(b) Except as provided elsewhere in these rules, absence of counsel will not be good cause for a continuance or postponement of the cause when called for trial, except it may be allowed in the discretion of the court, upon cause shown or upon matters within the knowledge or information of the judge to be stated on the record.

**. Brief statement of reasons for requested changes and advantages to be served by the proposed new Rule:**

The Committee is committed to the concept of parental leave for men and women alike and to minimizing dispute and uncertainty surrounding applications for continuance based on the birth or adoption of a child. Under this rule, an application for parental leave continuance of a trial date would be mandatory for lead attorneys on the case, so long as the attorney is employed more than ten days of the trial setting. Further, applications for continuance made by an attorney other than the lead attorney on a case would be discretionary, and may be denied in the sound discretion of the court when, for example, there would be substantial prejudice to another party, when an emergency or time-sensitive matter would be unreasonably delayed as a result of the continuance, when a significant number of continuances have already been granted, or when the substantial rights of the parties may otherwise be adversely affected.

Attorneys would continue to have the ability to request continuances of settings other than trial settings under the existing Rules.

Shortly after the Committee's unanimous approval of this proposed amendment, the ABA House of Delegates approved Resolution 101B, encouraging all states to promulgate a parental leave rule.