Senate Committee on Jurisprudence

Interim Report

Report to the 79th Legislature

December, 2004

Senate Jurisprudence Committee

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SENATOR MARIO GALLEGOS
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December 14, 2004

The Honorable David Dewhurst
Lieutenant Governor
Capitol, Room 2E.13
Austin, Texas 78701

Dear Governor Dewhurst:

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

Respectfully submitted,

Jeff Wentworth, Chairman

Mario Gallegos, Vice Chairman

Kip Averitt

Robert Duncan

Chris Harris

Eddie Lucio

Royce West

ROBERT DUNCAN
STATE SENATOR
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COMMITTEES:
STATE AFFAIRS, CHAIR
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JURISPRUDENCE
NATURAL RESOURCES

December 13, 2004

The Honorable Jeff Wentworth
Chairman
Senate Committee on Jurisprudence
P.O. Box 12068
Austin, Texas 78711

Dear Mr. Chairman:

I would like to express my thanks to you and your staff for your hard work on the Senate Committee on Jurisprudence and its interim report. Although I agree in principal with significant portions of the report, I must express my concern with two of the recommendations regarding Charge One:

First, with reference to the study to be conducted by the Texas Judicial Council regarding the jurisdiction of the statutory county courts at law, I would encourage the Texas Judicial Council to complete the study expeditiously with the hopes that the Legislature could address this issue during the 79th Legislative Session, instead of waiting until 2006.

Second, I do not agree with the recommendation that the Office of Court Administration should contract to do a weighted caseload study. Historically, courts have been created in Texas on an ad hoc basis. Because political considerations and geographic concerns have played such a major role in that process, I believe a better approach would be to implement statutory standards for creating future courts.

Again, I appreciate your hard work as the Chairman of the Jurisprudence Committee.

Yours very truly,

Robert Duncan

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The Senate of The State of Texas

Senator Eddie Lucio, Jr.

December 3, 2004

The Honorable Jeff Wentworth
Chair, Senate Committee on Jurisprudence
Texas State Capitol, Room 1E.9
Austin, TX 78701

Dear Chairman Wentworth:

Let me extend my appreciation for the diligent work and efforts of the Senate Jurisprudence Committee members and staff on the Interim Report to the 79th Legislature. Overall, I am pleased with the Committee's recommendations and intend to put my name on the report, however, I have deep concerns relating to the recommendations under Charge 1 relating to the jurisdiction of county courts at law.

Specifically, while I support a study of all local civil and criminal courts, I am very concerned about recommendation No. 2 that the "Legislature not approve any jurisdictional changes to the enabling statutes of existing county courts."

As you may know, last session I sponsored HB 3568 by Representative Jim Solis, which would have increased the concurrent jurisdiction in civil cases of a county court at law and a district court in Cameron County from $1 million to $10 million. Although, HB 3568 passed the House of Representatives unanimously on the Local, Consent and Resolutions Calendar, it was left pending in the Senate Committee on Jurisprudence largely on the argument that the committee needed to study the jurisdiction of state and local courts. Now, the Interim Report is recommending that the Legislature wait until the 80th Legislature before any jurisdictional changes should be made to county courts at law.

I am also sure that you are aware that currently there are numerous county courts at law that have unlimited concurrent jurisdiction with district courts and that many of these courts are in counties with a smaller backlog of pending cases and a lower population. Cameron County is one of the fastest growing areas of Texas and the nation, and I believe to further delay action on this matter would be an injustice to the citizens of the region.

Currently, the case loads referred to the district courts in Cameron County are growing rapidly. An increase of the civil jurisdiction of the county courts would reduce the number of cases filed in district court. The Cameron County courts at law are prepared to handle the additional caseload.

Committee Membership: Chairman, International Relations and Trade ★ Business and Commerce ★ Jurisprudence ★ Natural Resources ★ Subcommittee on Agriculture ★ Sunset Advisory Commission
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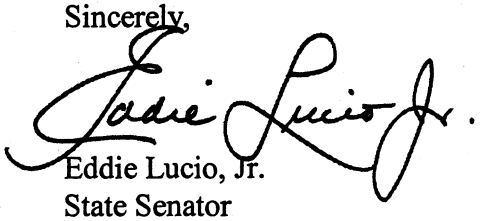
I strongly believe that it is not in the best interest of the citizens of Texas to put a blanket "freeze" on changes to the jurisdiction of statutory county courts before we have the results of the proposed study. Nor do I believe that we should make such a strong recommendation without considering the position of the citizens of Cameron County. As a result, I cannot support recommendation No. 2 under Charge 1 of the Interim Report.

As always it has been wonderful working with you, the Committee, and staff to address these important issues. I greatly appreciate your leadership and hope that we can continue to work on these issues during the upcoming session.

Sincerely,



Eddie Lucio, Jr.
State Senator

cc: The Honorable David Dewhurst, Lt. Governor
Members, Senate Committee on Jurisprudence
The Honorable Jim Solis

EL/ir

The Senate of The State of Texas

Senator Royce West
District 23

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November 30, 2004

The Honorable Jeff Wentworth
State Senator
Capitol Building, Room 1E.9
Austin, Texas 78701

Dear Senator Wentworth:

I would like to express my thanks to you and your committee staff for your hard work on the Jurisprudence Committee Interim Report. Although I agree in principal with many of the Committee's recommendations, I must express my concern about the recommendations dealing with mandatory arbitration.

As you know, I introduced several bills last session to require the collection and reporting of certain data on mandatory arbitration. Specifically, the legislation would have required:

- arbitrators or arbitration service providers to report information to the Office of Court Administration to be used by the Legislature in the evaluation of the arbitration system in the state. The reported information would include the names of parties, the name of the arbitrator or service provider, a general statement of dispute and relief requested, the arbitrator's decision, and the relevant dates of the arbitration.
- certain information related to pre-dispute arbitration agreements to be made public, unless a court determines that an important public policy favors sealing of the record,
- anyone providing arbitration or arbitration services to register annually with the Secretary of State.

The purpose of these bills was to: (1) ensure a transparent mandatory arbitration system to benefit consumers and (2) provide the Legislature with sufficient reliable data to evaluate the mandatory arbitration system. Although the Committee's report may provide some data collection and reporting, I do not feel the recommendations go far enough in requiring the needed data to ensure consumers and legislators can make informed decisions.

Again, I thank you for your hard work in addressing this difficult issue and look forward to continuing working with you through the process.

Sincerely,

Royce West

RW/cc

cc: The Honorable David Dewhurst, Lieutenant Governor
Members, Senate Jurisprudence Committee

Interim Charges

The Senate Jurisprudence Committee is charged with conducting a thorough and detailed study of the following issues, including state and federal requirements, and preparing recommendations to address problems or issues that are identified.

1. Study the jurisdiction of all local and state courts, including civil and criminal justice courts. Make recommendations for changes to any court's jurisdiction to improve the efficiency or effectiveness of the judicial system. Review and make recommendations relating to concurrent jurisdiction of county courts at law and district courts over eminent domain proceedings.
2. Study judicial salaries, supplements, retirement, and benefit issues for sitting, visiting and retired judges.
3. Study arbitration statutes and the role of the American Arbitration Association. Specifically, the Committee shall make recommendations to improve and ensure the efficiency, effectiveness, and fairness of arbitrators and arbitrations.
4. Study insanity defense laws, specifically evaluating the impact of changing the defense of "not guilty by reason of insanity" to "guilty, but insane."

Reports

The Committee shall submit copies of its final report no later than December 1, 2004. The printing of reports should be coordinated through the Secretary of the Senate. Copies of the final report should be sent to the Lieutenant Governor (5 copies), Secretary of the Senate, Senate Research, Legislative Budget Board, Legislative Council, and Legislative Reference Library.

The final report should include recommended statutory or agency rulemaking changes, if applicable. Such recommendations must be approved by a majority of the voting members of the Committee. Recommendations should also include state and local fiscal cost estimates, where feasible. The Legislative Budget Board is available to assist in this regard.

Budget and Staff

Travel costs shall be paid from the operating budgets of Senate members. All other costs shall be borne by the Senate Jurisprudence Committee's interim budget, as approved by the Senate Administration Committee. Due to overall budget constraints, it is recommended each interim committee budget include only critical expenditures and, where possible, reductions from previous spending levels.

The Committee should also seek the assistance of legislative and executive branch agencies where appropriate.

Interim Appointments

Pursuant to Section 301.041, Government Code, it may be necessary to change the membership of a committee if a member is not returning to the Legislature in 2005. This will ensure that the work of interim committees is carried forward into the 79th Legislative Session.

Hearings by the Senate Committee on Jurisprudence

Date	Location	Charge
March 29, 2004	Austin Senate Chamber	Charge 2
May 6, 2004	Austin Capitol Extension E1.016	Charge 4
August 25, 2004	Austin Capitol Extension E1.012	Charges 1 & 3

Executive Summary of Recommendations

Executive Summary of Recommendations

Charge 1

Study the jurisdiction of all local and state courts, including civil and criminal justice courts. Make recommendations for changes to any court's jurisdiction to improve the efficiency or effectiveness of the judicial system. Review and make recommendations relating to concurrent jurisdiction of county courts at law and district courts over eminent domain proceedings.

1. The Legislature should require the Texas Judicial Council to conduct a study of the issue of statutory county court jurisdiction. This study shall focus on the goal of making the jurisdiction of all statutory county courts uniform and the potential effect of any jurisdictional changes on the caseload of district courts and statutory county courts. The Council shall complete its study and report back to the Legislature by December 1, 2006.

2. Pending the study of statutory county court jurisdiction, the Committee recommends that the Legislature not approve any jurisdictional changes to the enabling statutes of existing statutory county courts. If any new statutory county courts are created by the 79th Legislature, the jurisdiction of the newly created courts should be identical to that of other existing courts in that county.

3. The Legislature should enact legislation that specifies the amount in controversy minimum for district courts at $500.

4. The Legislature should require the Office of Court Administration to contract with an independent, non-profit organization that specializes in providing technical assistance and consulting services to courts, such as the National Center for State Courts, to conduct a weighted caseload study of the district courts in Texas.

Charge 2

Study judicial salaries, supplements, retirement and benefit issues for sitting, visiting and retired judges.

1. The Legislature should substantially improve state judicial salaries by increasing the salaries of the justices of the Texas Supreme Court and the Court of Criminal Appeals to an amount ranging from $150,000 to $160,000; the salaries of the justices of the courts of appeals to an amount ranging from $145,000 to $150,000; and the salaries of district court judges to an amount ranging from $135,000 to $140,000. The Committee believes this judicial pay raise should be a priority for the 79th Legislature.

2. The Legislature should enact legislation to provide for a judicial salary structure that ensures that the justices of the Texas Supreme Court and the Court of Criminal Appeals are the highest paid judges in the state.

Charge 3

Study arbitration statutes and the role of the American Arbitration Association. Specifically, the Committee shall make recommendations to improve and ensure the efficiency, effectiveness, and fairness of arbitrators and arbitrations.

1. The Legislature should enact legislation requiring any business that includes a mandatory pre-dispute arbitration clause in their contracts to provide their consumers with certain upfront information. The information provided to the consumer shall specify which rights are being waived, who will arbitrate the dispute, who will cover the costs of arbitration, whether rules of discovery will be followed, what laws are applicable, what information will be public, and what recourse is available after an award is issued.

2. The Legislature should enact legislation to require the State Bar of Texas to produce an informational pamphlet that will be distributed to businesses that require consumers to sign binding arbitration agreements.

3. The Legislature should enact legislation regarding reporting requirements for arbitrators participating in business/consumer arbitrations. These requirements should outline the type of information to be reported and to whom it should be submitted. At a minimum, arbitrators in cases involving a business/consumer dispute

shall be required to report the nature of the dispute and the final decision issued.

4. If reporting requirements are adopted, the Legislature should enact legislation requiring any business that includes a mandatory pre-dispute arbitration clause in their contracts to inform its consumers of the availability and location of the reported information.

Charge 4

Study insanity defense laws, specifically evaluating the impact of changing the defense of "not guilty by reason of insanity" to "guilty, but insane."

1. The Legislature should enact legislation to require the Department of State Health Services, formerly the Texas Department of Mental Health and Mental Retardation, to improve the collection of the commitment records of persons found Not Guilty By Reason of Insanity (NGRI).

2. The Legislature should enact legislation to conform the standards for experts used in an insanity case to the standards for experts used to determine the competency of a defendant to stand trial.

3. The Legislature should rewrite Article 46.03 of the Code of Criminal Procedure to make the language more concise and easier for attorneys, judges, and mental health professionals to follow. Specifically, the provisions concerning release standards and post-release monitoring should be made explicit.

4. The Committee recommends no change in the current defense of "not guilty by reason of insanity."

Charge One

Charge 1: ***Study the jurisdiction of all local and state courts, including civil and criminal justice courts. Make recommendations for changes to any court's jurisdiction to improve the efficiency or effectiveness of the judicial system. Review and make recommendations relating to concurrent jurisdiction of county courts at law and district courts over eminent domain proceedings.***

Recommendations

1. **The Legislature should require the Texas Judicial Council to conduct a study of the issue of statutory county court jurisdiction. This study shall focus on the goal of making the jurisdiction of all statutory county courts uniform and the potential effect of any jurisdictional changes on the caseload of district courts and statutory county courts. The Council shall complete its study and report back to the Legislature by December 1, 2006.**

2. **Pending the study of statutory county court jurisdiction, the Committee recommends that the Legislature not approve any jurisdictional changes to the enabling statutes of existing statutory county courts. If any new statutory county courts are created by the 79th Legislature, the jurisdiction of the newly created courts should be identical to that of other existing courts in that county.**

3. **The Legislature should enact legislation that specifies the amount in controversy minimum for district courts at $500.**

4. **The Legislature should require the Office of Court Administration to contract with an independent, non-profit organization that specializes in providing technical assistance and consulting services to courts, such as the National Center for State Courts, to conduct a weighted caseload study of the district courts in Texas.**

Background

In their 1990 study of Texas courts, the Texas Research League made the statement that "[i]nevitable as change is, in Texas its movements are inclined to be inexorably tedious and protracted."[1] The theme of "if it ain't

broke, don't fix it" resonates throughout the judiciary in Texas every time changes to the structure of the court system are suggested.

The origin of Texas courts dates back to the time when Texas was a Republic. In the Texas Constitution of 1836, a system of district courts was established along with a supreme court. By 1876, the court system included a supreme court for civil appeals, a court of appeals for criminal appeals, district courts, county courts and justice courts. In 1891, the Constitution was amended to provide for intermediate civil appellate courts. The basic structure of the Texas court system has not changed since that time.

In 1990, the Texas Research League concluded that "[b]ecause the courts are so decentralized and because individually they are quite independent, it is difficult to call the Texas judiciary a system."[2] A later study by the Citizens' Commission on the Texas Judicial System found that Texas has no uniform judicial framework to guarantee the just, prompt and efficient disposition of a litigant's complaint.[3]

The current Texas court system includes two courts of last resort, 14 intermediate appellate courts geographically distributed across the state, 424 district courts, 254 county courts, 211 statutory county courts, 17 statutory probate courts, 827 justice courts and 894 municipal courts.[4]

The jurisdiction of the various courts in Texas is established by constitutional provision and statute. To determine the jurisdiction of any one particular court, a person must examine the following sources in order:

1. the Texas Constitution;
2. the general statutes establishing jurisdiction for that level of court;
3. the specific statute authorizing the creation of the particular court in question;
4. the statutes creating other courts in the same county; and
5. the statutes dealing with specific subject matters.[5]

Courts of Last Resort

Only Texas and Oklahoma have two courts of last resort, one for civil cases and one for criminal cases. Several studies have discussed the possibility of combining the Texas Supreme Court and the Court of Criminal Appeals into one tribunal.[6] The difficulty with an integrated court would be the large caseload. The number of discretionary reviews of cases by a

combined court would have to be reduced in order for such a court to issue a decision in a timely manner.

The Committee heard testimony on the difficulties that would result from combining the two highest courts, primarily the large caseload. Currently, the Court of Criminal Appeals considers around 6000 post-conviction writs of habeas corpus. The Committee also heard testimony regarding a suggestion to allow trial courts to rule on the merits of writs involving time credits in order to reduce the caseload of the Court of Criminal Appeals.

The Committee was advised of the fact that in Oklahoma, the only other state with two courts of last resort, the Oklahoma Supreme Court determines which of the courts of last resort has jurisdiction over a matter if a conflict arises. The Oklahoma Supreme Court is also the final arbiter on interpretations of the Oklahoma Constitution. If Texas continues to have two courts of last resort, the legislature should clarify the jurisdictional boundaries more clearly.

Intermediate Courts of Appeals

The system of intermediate courts of appeals was created in 1891 to help ease the Texas Supreme Court's civil docket. In 1981, the Constitution was again amended to give these appellate courts criminal jurisdiction, except for death penalty cases. The courts of appeals have appellate jurisdiction co-extensive with the limits of their respective districts over all cases of which the district or county courts have original or appellate jurisdiction when the amount in controversy or judgment rendered exceeds $100, exclusive of interest and costs.[7]

Each of the 14 intermediate appellate courts has jurisdiction over a geographic area of the state, but there are numerous overlaps. The First and the Fourteenth Courts of Appeals districts cover the same 14 counties. There are additional counties that lie in more than one appellate district. These overlaps lead to uncertainty in case flow and forum shopping which often results in conflicting decisions governing a single trial district.

The Committee heard testimony regarding the difficulties presented by these conflicts for litigants. One suggestion was to reduce the number of appellate courts in Texas by putting the existing courts into districts,

combining their administrative overhead and allowing the judges to meet in panels.

The Committee also heard testimony regarding a proposal by the chief justices of the 14 courts of appeals to eliminate most of the overlap in appellate districts. This proposal, presented to the House Committee on Redistricting in April of 2004, also includes suggestions for increasing the staff of certain courts in order to eliminate the need for transfer of cases.[8]

The primary issues regarding overlapping jurisdictions are forum shopping and conflicts of law. Random assignment of cases is currently used by the First and Fourteenth Courts of Appeals to eliminate forum shopping and could be used in other overlapping jurisdictions.

The House Committee on Redistricting is currently conducting an interim study regarding the development of a plan to redistrict the intermediate courts of appeals and will issue its report prior to the 79th Legislative Session.

Trial Courts

Texas has six types of trial courts: district courts, statutory county courts, statutory probate courts, constitutional county courts, justice courts, and municipal courts.

District Courts

As of September 1, 2004, there were 424 district courts.[9] The geographical area served by each district court is set by statute, and each district court has one judge.

The jurisdiction of district courts was originally set by the Texas Constitution, but an amendment in 1985 provided the Legislature with the authority to change a court's jurisdiction through statute.[11] Many district courts are now directed to give preference to certain types of cases. For example, some district courts are designated as criminal district courts.

A majority of judicial districts overlap one another. As previous studies have noted, the justification for this overlap is the fact that some

counties in Texas lack sufficient population, case filings, eligible candidates and lawyers, and financial resources to support their own district court.[12]

Currently, the legislature considers requests for additional district courts each legislative session. No objective framework has been established to evaluate these requests. These new courts add to the problems already inherent in a system of judicial districts which have not been reapportioned since 1876.

The 77th Legislature attached a rider to the General Appropriations Act to require the Texas Judicial Council to study the efficiency of the current district courts and identify appropriate criteria to evaluate future requests for district courts. The Council created a Committee on District Courts and issued a report in October, 2002.[13]

The report recommended that the legislature make an appropriation for the implementation of a weighted caseload study for Texas' trial courts. A weighted caseload model translates a court's caseload into a figure indicating the number of hours it should reasonably take the court to dispose of the cases on the court's docket. At least 25 states have implemented the weighted caseload methodology to assess the need for judicial resources.[15] The Office of Court Administration received a proposal from the National Center for State Courts in May of 2002 estimating that the cost of a weighted caseload study for the district courts in Texas would be $250,000.[16]

The Committee recommends that the 79th Legislature appropriate funds to the Office of Court Administration to be used for a weighted caseload study of the district courts. This type of comprehensive data is essential in order to determine the need for additional district courts.

In 1985, amendments to the Texas Constitution and the Texas Government Code resulted in the deletion of a reference to a $500 jurisdictional amount in controversy lower limit for district courts. The Texas Supreme Court has referenced this issue in footnotes but has not had the occasion to decide this issue.[18] The Committee believes Texas law should be clear regarding the jurisdictional amount in controversy lower limit for a district court.

County Level Courts

I. Statutory County Courts/ Statutory Probate Courts

Chapter 25 of the Texas Government Code sets out both general and specific jurisdictional provisions for statutory county courts and statutory probate courts. Section 25.0003 states that in addition to concurrent jurisdiction with constitutional county courts, a statutory county court has concurrent jurisdiction with district courts in civil cases where the amount in controversy is between $500.01 and $100,000 and in appeals of final decisions of the Texas Workers' Compensation Commission, regardless of the amount in controversy. A statutory county court has concurrent probate jurisdiction with a constitutional county court except in counties that have a statutory probate court. There are 211 statutory county courts.[19]

Section 25.0021 sets forth the general jurisdiction of a statutory probate court as jurisdiction over probate, guardianship, mental health, or eminent domain proceedings. These general provisions can be and are often trumped by a specific court's enabling statute. There are 17 statutory probate courts located in 10 counties.[20]

The jurisdictional limits of statutory county courts vary widely across the state. There is no uniformity and there is currently no procedure in place for these jurisdictional limits to be reexamined on a regular basis. The Committee believes there should be more oversight of these courts by the Texas Supreme Court.

The Committee believes it is necessary to have the Texas Judicial Council take a comprehensive look at the issue of statutory county court jurisdiction, with the goal of making the jurisdiction of all statutory county courts uniform. Since any change in jurisdiction would result in the expansion of some courts' jurisdiction and the reduction of others, the study must also focus on the potential effect of any jurisdictional changes on the caseload of district courts and statutory county courts.

One suggestion of a method to clearly define the jurisdictional boundaries of Texas trials courts is to combine district courts, statutory county courts, and statutory probate courts into one level of general jurisdiction trial courts.[21] This type of reform would have to be done gradually and would have to garner some degree of support from current

members of the judiciary. The development of a uniform jurisdictional level for statutory county courts is a good starting point for judicial reform and is a less disruptive means of taking a fragmented system and making it easier to understand for litigants and practitioners alike.

II. Constitutional County Courts

The current Texas Constitution provides for a county court in each of the 254 counties in Texas. These courts are often referred to as constitutional county courts to distinguish them from county courts which have been created by statute. The jurisdiction of constitutional county courts, formerly set by the Constitution, is now detailed in Subchapters D and E of Chapter 26 of the Texas Government Code.

Generally, these courts have concurrent jurisdiction with justice courts in civil cases where the amount in controversy is between $200.01 and $5,000; concurrent jurisdiction with district courts in civil cases where the amount in controversy is between $500.01 and $5,000; juvenile jurisdiction; probate jurisdiction; and exclusive jurisdiction over misdemeanors where the fine exceeds $500 or when a jail sentence may be imposed.

Constitutional county courts have appellate jurisdiction in civil cases over which justice and municipal courts have original jurisdiction. A county judge is required to be "well informed in the law of the state" but is not required to be a licensed attorney.[22]

In populous areas of the state, the county judge devotes all of his attention to the administration of county government. In those areas, the statutory county courts handle the judicial functions of the county court. In some cases, statutory provisions either divest the court of certain subject matter jurisdiction or grant additional jurisdiction.

Justice Courts

The Texas Constitution authorizes between one and eight justice precincts in each county. Each precinct may elect one or more justices of the peace. Justice courts generally have original jurisdiction in misdemeanor cases punishable by a fine of less than $500 and in civil matters when the amount in controversy is $200 or less, and concurrent jurisdiction with the county and district courts in civil matters in which the amount in controversy

is between $200.01 and $5,000.[23] These courts also have jurisdiction over forcible entry and detainer cases and serve as small claims courts. There are approximately 827 justice courts in operation today.[24]

The justice of the peace serves as a committing magistrate, with the authority to issue warrants for the apprehension and arrest of persons charged with a crime, whether felony or misdemeanor. The justice of the peace also serves as coroner in counties with no medical examiner, serves as an ex officio notary public and may perform marriage ceremonies.

The justice of the peace also sits as the judge of the small claims court which has similar jurisdiction to the justice court. Justice court rules of procedure follow those in county and district courts. Small claims court rules are more informal.

The Committee heard testimony from a sitting justice of the peace who recommended that any increase in the upper jurisdictional limits for justice courts should be done incrementally so that the increased workload could be absorbed gradually.

Municipal Courts

The Texas Legislature, under its constitutional authority to "… establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof," has created municipal courts in each incorporated city in Texas. Metropolitan cities generally have multiple municipal courts. Currently there are municipal courts in approximately 894 cities.[25]

Municipal courts hear cases involving traffic offenses, alcohol offenses involving minors, and a few other penal code offenses. These courts have no civil jurisdiction but the same criminal jurisdiction as justice courts. The Committee heard testimony from a municipal judge who stated that the appeal process is different in cases of municipal courts of record. In courts of record, appeals are based on the record made at trial, but for municipal courts created by general statute, appeals are trial *de novo* in the constitutional county court, statutory county court, or district court.

Most of the magistration process for jails is performed by municipal courts or justice courts. The Committee heard testimony that more

consistency is needed in the magistration process in order to prevent delays in the arraignment process.

Jurisdiction of Eminent Domain Proceedings

Eminent domain is the power to take private property for public use by the state, municipalities, or other governmental entities. Condemnation is the process of taking private property for public use through the exercise of the power of eminent domain. The terms are often used interchangeably.

Section 21.001 of the Texas Property Code states that district and county courts at law have concurrent jurisdiction in eminent domain proceedings. There are, however, several instances where the enabling statute for a particular statutory county court specifies the court's jurisdiction over eminent domain cases.[26]

When two statutes address the same subject matter, they are to be read in a way as to give meaning to both.[27] If it is impossible to reconcile conflicting statutes, a special or local provision should be interpreted as an exception to the general law, unless the general law was the later enactment and there is evidence that the legislature intended that the general law prevail.[28]

As discussed above, there is currently no "standard" jurisdiction for statutory county courts in Texas. Through the passage of local bills during each legislative session, the jurisdictional limits of these courts vary widely across the state. There are important policy reasons for having more standard jurisdictional boundaries for statutory county courts.

In terms of jurisdiction of eminent domain cases, the Code Construction Act and Texas case law support the proposition that a specific provision controls over a general law. Therefore, specific provisions dealing with certain statutory county courts can vest jurisdiction of eminent domain cases in those courts. Until a comprehensive plan is developed for limiting or expanding the jurisdiction of all statutory county courts in the state, the Committee does not see the wisdom in enacting a specific provision governing eminent domain cases only.

Conclusion

The Committee agrees with a statement made by former Chief Justice Phillips during the August 25, 2004, committee meeting. Justice Phillips commented that the judicial system is not in a state of crisis but it is in a state of benign neglect. The Committee believes its recommendations would be the first steps toward creating a solid judicial system in Texas.

Charge Two

Charge 2: ***Study judicial salaries, supplements, retirement and benefit issues for sitting, visiting and retired judges.***

Recommendations

1. **The Legislature should substantially improve state judicial salaries by increasing the salaries of the justices of the Texas Supreme Court and the Court of Criminal Appeals to an amount ranging from $150,000 to $160,000; the salaries of the justices of the courts of appeals to an amount ranging from $145,000 to $150,000; and the salaries of district court judges to an amount ranging from $135,000 to $140,000. This Committee believes this judicial pay raise should be a priority for the 79th Legislature.**

2. **The Legislature should enact legislation to provide for a judicial salary structure that ensures that the justices of the Texas Supreme Court and the Court of Criminal Appeals are the highest paid judges in the state.**

Salaries and Supplements

In Texas, the salaries of judges serving on the Texas Supreme Court, Court of Criminal Appeals, the intermediate courts of appeals, and the district courts are paid by the state. Section 659.012 of the Texas Government Code establishes a formula for determining judicial salaries based on the salary set by the legislature for a justice on the Texas Supreme Court.

In addition to salary, the state pays retirement benefits to these judges. The salaries and retirement benefits of judges serving in constitutional county courts, statutory county courts, statutory probate courts, justice courts and municipal courts are paid by the counties or municipality served by that court.

A factor that has influenced judicial compensation in the past is the statutory link between the salary of a district judge and the legislative retirement plan. It has been said that the legislature has been reluctant to grant a judicial pay raise because of the appearance of giving themselves a boost in retirement benefits. According to an American Bar Association

report, tension between state legislatures and the judiciary over the appropriate level of judicial compensation is common across the country.[29]

Currently, 21 states have permanent compensation commissions that evaluate and recommend salaries for state judges.[30] The idea of creating an independent commission in Texas to review judicial salaries has been met with mixed reviews. In 1996, the Texas Commission on Judicial Efficiency recommended the establishment of such a commission.[31]

During the 76th Legislative Session, the legislature passed a joint resolution to create a nine-member Judicial Compensation Commission. This Commission would have submitted recommendations to the legislature on salaries for members of the judiciary. Although the legislature passed the resolution and it was placed on the ballot in November of 1999, the voters of Texas defeated the proposed constitutional amendment.

A declining salary discourages potential candidates from seeking election or appointment to the bench. Experienced lawyers in private practice who are earning substantial salaries are less likely to leave such a practice to serve on the bench. The recent trend has been for young lawyers to serve as a judge for several years and then leave the bench for private practice. Adequate compensation is needed to attract and retain the best-qualified people to serve on the bench.

The state currently pays an annual salary of $113,000 to the justices of the Texas Supreme Court and judges of the Court of Criminal Appeals; $107,350 to the intermediate appellate justices; and $101,700 to district court judges. Appellate justices may receive a supplement from the counties in their appellate district in an amount not to exceed $15,000 a year, providing that the total salary must be $1,000 less than that received by a justice on the Texas Supreme Court.[32]

Counties may pay their district judges a county supplement. Unless a specific exception is granted by statute, Section 659.012 of the Texas Government Code limits the total annual salary for a district judge to a combined amount of state and county sources of $2,000 less than the state salary for a justice of the Texas Supreme Court. Currently, Collin, Ellis, Harris, Hill, Tarrant, Travis and Williamson counties have no restriction on the amount of supplement they pay district judges, but on September 1, 2007, these counties will also be capped in their ability to pay a supplement.

Because of these county supplements, there are 104 district court judges in the state who receive a higher salary than the justices on the Texas Supreme Court.[33]

Based on the National Center for State Courts' most recent *Survey of Judicial Salaries*, among the 50 states, Texas ranks 39th for judicial pay in the highest court, 34th for judicial pay in the intermediate appellate courts, and 27th for judicial pay in the general trial courts.[34] The median judicial salary for the highest court in the five largest states is $153,750. The current salary of a federal district judge is $157,000.

The last time judges serving on state courts received a pay raise was in 1997. A proposal to increase judicial salaries was included in the General Appropriations Act for the 2002-2003 biennium. The salary increases proposed for the first year of the biennium were, however, vetoed by the governor. The proposed increases for the second year of the biennium were not certified as available by the comptroller.

In 1996, the Texas Commission on Judicial Efficiency found that Texas judges are underpaid compared to their counterparts in most states and many federal judges. Based on their study, the Commission recommended that the salaries of the justices of the Texas Supreme Court and the judges of the Court of Criminal Appeals should not be lower than the salary of the lowest paid federal judicial officer.[35] The Commission also suggested that the salary of the lowest paid federal judicial officer should be used as the reference point for determining the salaries of the judges on the courts of appeals and district courts.

On August 27, 2004, the Texas Judicial Council adopted a resolution recommending several changes to the current system of judicial compensation.[36] The recommendations include substantially improving judicial salaries, a review by a joint legislative committee of the system used for compensating judges and alterations to the current use of county supplements. The Council recommends that a guideline for judicial pay in Texas be based on objective criteria such as judicial salaries from comparable states or federal district court judges and include an automatic adjustment for changes in the cost of living.

It is unacceptable and not in the public interest for young lawyers in their first year of law practice as associates in large law firms to make more

money than state district judges who have many years of experience. The fact is that all too often both opposing attorneys, as well as the court reporter, make more money in the courtroom than the district judge presiding over it; this is an untenable situation that cries out for rectification.

Retirement Benefits

There are two judicial retirement systems for state judges. Judicial Retirement System Plan I (JRS I) covers judges, justices, and commissioners of the Texas Supreme Court, Court of Criminal Appeals, Court of Appeals, District Court or specified commissions to a court employed prior to August 31, 1985.

Members of JRS I become eligible to receive retirement benefits in three ways: at age 65 with ten years of service if currently holding a judicial office; at age 65 with 12 years of service; or at any age with 20 years of service. The monthly annuity amounts to fifty percent of the state salary being paid to a judge of a court of the same classification as the court on which the member last served. This amount is increased by ten percent if the member is holding office at the time of retirement or has served as a visiting judge within 12 months of retirement.

There are currently 26 contributing members, 31 non-contributing members, and 505 annuitants through service retirement.[37] JRS I has a $1.9 million monthly annuity payroll and is dependent on general revenue legislative appropriations since it is not a pre-funded retirement plan.

Judicial Retirement System Plan II (JRS II) covers judges, justices, and commissioners of the Texas Supreme Court, Court of Criminal Appeals, Court of Appeals, District Court or specified commissions to a court employed after August 31, 1985.

Members of JRS II become eligible to receive retirement benefits in four ways: at age 65 with ten years of service if currently holding a judicial office; at age 65 with 12 years of service; at age 55 with 20 years of service; or after having served two full terms on an appellate court and the sum of the member's age and amount of service equals or exceeds 70. The monthly annuity amounts to fifty percent of the member's final salary. This amount is increased by ten percent of the final salary if the member is holding office

at the time of retirement or has served as a visiting judge within 12 months of retirement.

There are currently 477 contributing members, 14 non-contributing members, and 57 annuitants through service retirement.[38] JRS I has a $0.2 million monthly annuity payroll. The plan operates like a pre-paid pension fund and has no provision for automatic cost of living increases.

Once a member of JRS I or JRS II accrues 20 years of service, the member ceases to make contributions to their retirement plan because 20 years of credit represents the maximum amount of benefit at retirement. If a member retires and then resumes elected or appointed judicial service, other than service as a visiting judge, that member's annuity payment is suspended until the member leaves office.

JRS I contains an automatic cost-of-living adjustment in that a member's retirement benefit is tied to the current salary of the last position held by that member. In contrast, retirees in JRS II and other state employee retirement systems receive cost-of-living adjustments on an ad-hoc basis through legislative appropriations.

As judicial salaries stagnate, retirement benefits may be an area where the state can improve the benefits package for the judiciary. As Texas struggles to retain an experienced judiciary, a retirement system that rewards tenure and longevity may better meet the needs of the state.

Conclusion

The Committee believes that the judiciary in Texas should be adequately compensated at a level that keeps qualified people interested in remaining on the bench. The Committee understands that the 79th Legislature will have to balance competing funding needs but feels that increasing the state's share of judicial compensation should be a top priority.

Charge Three

Charge 3: ***Study arbitration statutes and the role of the American Arbitration Association. Specifically, the Committee shall make recommendations to improve and ensure the efficiency, effectiveness, and fairness of arbitrators and arbitrations.***

Recommendations

1. **The Legislature should enact legislation requiring any business that includes a mandatory pre-dispute arbitration clause in their contracts to provide their consumers with certain upfront information. The information provided to the consumer shall specify which rights are being waived, who will arbitrate the dispute, who will cover the costs of arbitration, whether rules of discovery will be followed, what laws are applicable, what information will be public, and what recourse is available after an award is issued.**

2. **The Legislature should enact legislation to require the State Bar of Texas to produce an informational pamphlet that will be distributed to businesses that require consumers to sign binding arbitration agreements.**

3. **The Legislature should enact legislation regarding reporting requirements for arbitrators participating in business/consumer arbitrations. These requirements should outline the type of information to be reported and to whom it should be submitted. At a minimum, arbitrators in cases involving a business/consumer dispute shall be required to report the nature of the dispute and the final decision issued.**

4. **If reporting requirements are adopted, the Legislature should enact legislation requiring any business that includes a mandatory pre-dispute arbitration clause in their contracts to inform its consumers of the availability and location of the reported information.**

Background

Arbitration is defined as a method of dispute resolution involving one or more neutral third parties who are usually agreed to by disputing parties and whose decision is binding.[39]

This alternative dispute resolution method is designed to allow parties to work through legal disputes in a timely and cost-effective manner. The proceeding is administered by a neutral third party who hears the arguments and evidence and then issues a decision.

Today, arbitration is the favored avenue by courts and parties to resolve disputes in many areas of the law. The use of mandatory pre-dispute arbitration clauses can, however, present serious problems for consumers who are often in the weaker bargaining position and may be unknowingly forced into arbitration. In addition, appeals of arbitration awards are governed by a very high legal standard.

Federal Arbitration Act

The United States Congress enacted the Federal Arbitration Act (FAA) in 1925 to ensure the validity and enforcement of arbitration agreements.[40] The FAA was originally intended to resolve disputes pertaining to maritime and interstate commerce agreements. The Act was an attempt by Congress to encourage the use of arbitration as an alternative to legal action and was primarily utilized in business to business claims.

Federal courts have held that the FAA requires arbitration agreements to be treated the same as any other contract. In 1984, the United States Supreme Court held that the FAA preempts most state law.[41] The Court's rationale was that Congress would not have wanted state and federal courts to reach different outcomes about the validity of an arbitration agreement.[42]

In 1995, the United States Supreme Court recognized that arbitration, because of its rules of procedure, provided a process that was less expensive and more flexible in scheduling.[43] The Court broadly interpreted the FAA's provisions for contracts "involving commerce" to mean that Congress intended to exercise its authority under the Commerce Clause.[44] The Court did note, however, that states may regulate contracts for arbitration under general contract principles.[45]

Texas General Arbitration Act

Texas has a long tradition favoring arbitration dating back to the ratification of the Texas Constitution. In 1965, the Texas Legislature formally enacted the Texas General Arbitration Act (TGAA) which governs arbitration awards in Texas that are not subject to federal preemption.[46]

The TGAA contains a few limitations on the applicability of an arbitration agreement that are not found in the FAA. An important limitation is Section 171.022 which provides that a court may not enforce an arbitration agreement if the court finds that the agreement was unconscionable when made.[47]

The Arbitrators

Pre-dispute arbitration agreements usually specify which arbitration entity will be used in any disagreement. Most arbitration cases are handled through an arbitration association. The three largest associations are: The American Arbitration Association; The National Arbitration Forum; and The Judicial Arbitration and Mediations Services. These associations, as well as many others like the Better Business Bureau, provide procedural rules governing the arbitration process as well as a code of ethical conduct governing the actions of their arbitrators. Texas does not require the training or licensing of arbitrators.

The American Arbitration Association (AAA)

The American Arbitration Association is a non-profit institution founded in 1926, with currently over 8,000 arbitrators and mediators and has offices located in 34 offices in the United States and Europe and 59 cooperative agreements with arbitral institutions in 41 countries.[48] Industry and professional leaders nominate "neutrals" to the National Roster of Arbitrators and Mediators of the AAA. A joint committee of the AAA and the American Bar Association prepared a code of ethics for members to follow. The association also provides training and education for their members involved in dispute resolution.

The Committee heard testimony from a representative of the AAA who described the disclosure requirements of the association as an important

public issue. The AAA disclosure form requires an arbitrator to disclose any past or present relationship of any kind with anyone involved in the dispute. The goal is to avoid a presumption of bias that could jeopardize the arbitrator's ruling.

The National Arbitration Forum

The National Arbitration Forum is a private company founded in 1986 and describes itself as "an unbiased administrator of ADR services, the Forum's only mission is to provide superior dispute resolution services to parties seeking an alternative to litigation."[49] Arbitrators for the NAF are former judges, law professors and lawyers and are required to have had a minimum of 15 years legal experience arbitrating commercial, business and financial disputes.[50]

The Judicial Arbitration and Mediation Foundation

Founded in 1979, JAMS is a for-profit service owned and operated by neutrals whose goal is to be "The Resolution Experts."[51] With 24 offices in the United States, JAMS provides neutrals who are either attorneys or judges.

It should be noted that while many contracts that include arbitration clauses may call for a specific association to administer a dispute, that association may not necessarily arbitrate the dispute. Many organizations like the AAA simply provide administrative support including rules and procedures to follow during the proceedings.

Arbitrators are not required to follow applicable law when deciding cases, unless state law requires them to do so. Texas does not have a law that expressly requires arbitrators to follow its laws. The Committee heard testimony from a representative of the AAA who pointed out that the Texas General Arbitration Act has a provision that states that an arbitrator is not necessarily limited to awarding the same kinds of relief that can be obtained in the courthouse. Members of the committee aptly pointed out that this assumes both parties have equal bargaining power in terms of entering into an arbitration agreement. Arbitrators do have some leeway in crafting awards when dealing with a suit on a contract, but when a statutory remedy exists it is not appropriate for an arbitrator to stray from the rule of law.

There is a judicially created standard of review that allows for an arbitrator's ruling to be vacated if it is in manifest disregard of the law.[52] The Courts have set the standard for "manifest disregard of the law," but in almost all cases they have not found it to exist. The legislature could consider statutorily creating a standard for "manifest disregard for the law."

Binding Arbitration

The Committee held a public meeting on the issue of arbitration on August 25, 2004. While many of the witnesses who testified addressed issues specific to home construction contracts, the Committee heard testimony regarding all aspects of the arbitration process. The most glaring problem the Committee faced was the lack of available statistical data.

It is clear that mandatory pre-dispute arbitration agreements will be suspect if there is no public review of the validity and fairness of a given arbitration finding. While it is not necessary that the actual award be made public, the arbitrator, the issues and the decision should be. The 78th Legislature attempted to address a small portion of this issue by enacting Chapter 437 of the Texas Property Code relating to the filing of arbitration awards in residential construction arbitrations.

Section 437.001, Property Code, sets out the information to be filed with the Texas Residential Construction Commission. In certain cases, the filing is mandatory, but the information may always be filed on a voluntary basis by any interested party. A representative of the TRCC testified that to date, there have been no filings with the TRCC. The lack of filings underscores the necessity that arbitrators be required to disclose these facts and rulings. At a minimum, members of the public need to be educated about the current statutory provisions that allow voluntary filing of award summaries.

Past interim studies have pointed to the need to obtain reliable data on arbitration cost, time, and outcome of consumer arbitration cases. The House Committee on Civil Practices stated in their 2002 Interim Report, "if we are to concede, as the courts have held, that any binding arbitration clause entered into is 'conscionable' and enforceable, then consumers should have available to them some reference on which to voluntarily decide to enter into such an agreement."[53]

Currently, no public records exist on arbitrators, and typically no records are made available after an award is issued. In fact, most arbitration clauses require total confidentiality, and consumers do not have the opportunity to weigh the impartiality of a chosen arbitrator. This results in a situation where consumers are unaware of the decisions issued by arbitrators while a commercial entity who can refer to stored records can choose an arbitrator with a history of ruling in their favor.

The Committee finds that in order to protect unknowing participants from potentially biased arbitrators, Texas should move towards requiring more disclosure. The AAA requires its roster of neutrals to complete a 14 question disclosure form to be submitted to each party in the dispute to prove the impartiality of its arbitrators. California law contains disclosure guidelines where each neutral has to disclose, in writing, to the parties in a case all matters for the previous five years that could lead to doubt regarding the impartiality of the arbitrator.[54]

While the arbitration associations often hold their arbitrators to a very high standard, there are those that do not. Although most arbitration associations have fairly vigorous training and retraining, there are no statutory requirements requiring licensing or any ethical obligations of arbitrators. Therefore, in addition to the disclosure recommended above, the legislature should consider creating ethical standards for all arbitrators practicing in Texas.

Although arbitration is not appropriate for every dispute, arbitration agreements do provide some obvious benefit to parties who are worried about the costs associated with jury trials. As businesses continue to expand the use of mandatory pre-dispute arbitration clauses, it is important for consumers to have a minimum level of understanding of the process and be fully aware of the rights they waive by signing any agreement containing such a clause. The State Bar of Texas should produce an informational pamphlet that can be provided to businesses that require consumers to sign contracts that include mandatory pre-dispute arbitration clauses.

Conclusion

Businesses are increasingly electing arbitration over what can be a costly and time consuming court trial. With this rapid growth, there is a need to provide information to the general public to ensure that a minimal

level of understanding of the arbitration process exists. To make arbitration a fair and attractive alternative to litigation, consumers must be completely aware of the agreement they are entering into and should be allowed to select potential arbitrators, should be assured of fair distribution of arbitration costs, and should be fully aware of any rights being waived by entering into this type of agreement.

Charge Four

Charge 4: ***Study insanity defense laws, specifically evaluating the impact of changing the defense of "not guilty by reason of insanity" to "guilty, but insane."***

Recommendations

1. **The Legislature should enact legislation to require the Department of State Health Services, formerly the Texas Department of Mental Health and Mental Retardation, to improve the collection of the commitment records of persons found Not Guilty By Reason of Insanity (NGRI).**

2. **The Legislature should enact legislation to conform the standards for experts used in an insanity case to the standards for experts used to determine the competency of a defendant to stand trial.**

3. **The Legislature should rewrite Article 46.03 of the Code of Criminal Procedure to make the language more concise and easier for attorneys, judges, and mental health professionals to follow. Specifically, the provisions concerning release standards and post-release monitoring should be made explicit.**

4. **The Committee recommends no change in the current defense of "not guilty by reason of insanity."**

Background

The popularly held conception of the insanity defense has been that of constant overuse and abuse. The public pays little attention until a mentally ill person is charged with committing a heinous crime. The American public grew impatient with the insanity defense after the 1982 acquittal of John Hinckley. Hinckley was acquitted by reason of insanity for the attempted assassination of President Ronald Reagan. Americans' dissatisfaction with the Hinckley verdict became the impetus for change of the insanity defense.

After the acquittal, public outcry demanded the closure of this "perceived…loophole in the justice system."[55] In response, over thirty states amended and tightened their insanity defense statutes. Five states (Idaho, Kansas, Montana, Nevada, and Utah) abolished the insanity defense altogether.[56]

Statistics show that the insanity defense is used in only one percent of all felony cases.[57] As rarely as the defense is employed, it is seldom successful. In fact, only twenty-six percent of those using the defense are found not guilty by reason of insanity (NGRI).[58]

Insanity is a legal term used to decipher that degree of mental illness at which one's legal responsibility or capacity is voided.[59] Each state determines its own standard for insanity.

Once the legal condition is determined, a test must be conducted to see if the accused fits the definition. One-half of the states use some form of the M'Naghten standard which determines if the defendant had the capacity to distinguish the difference between right and wrong at the time of the crime.[60]

In 1843, Daniel M'Naghten, a British woodworker, mistakenly shot and killed a secretary in an attempt to ambush the British Prime Minister Robert Peel. During the trial, psychiatrists found that M'Naghten was suffering from what presently would be described as "delusions of persecution symptomatic of paranoid schizophrenia."[61] M'Naghten was found not guilty by reason of insanity and was not held criminally responsible for the offense. The decision spawned overwhelming outrage from both the public and Queen Victoria, leading the House of Lords to draft new insanity standards.[62] This standard is known today as the M'Naghten standard.

Under the M'Naghten or right/wrong standard, as it is also known, if the individual was laboring with such mental defect that he did not know the "nature or the quality of the act" that he was committing was wrong, the courts shall be allowed to find in his favor.[63]

The M'Naghten standard centers principally on the cognitive ability of the accused.[64] The rigidity of determining sanity using only a right or wrong rule ultimately fell out of favor. In the early 1960s, the American Law Institute (ALI) Model Penal Code emerged and added a volitional prong to the cognitive element found in the M'Naghten standard.[65] This broader, more nuanced method incorporates the "irresistible impulse" test which focuses on the inability to control or resist one's impulses. While the M'Naghten standard centers on the individual's knowledge of right and

wrong and the understanding of the conduct, the ALI rule includes the assessment of the individual's capacity to appreciate the wrongfulness of the conduct and the capability to control those actions.[66]

The Insanity Defense in Texas

Texas currently follows the strict M'Naghten standard made popular during the early 1980s. Between 1973 and 1983, the Texas Legislature departed from the M'Naghten standard by adopting the ALI Model Penal Code. The Texas ALI test broadened the standard by adding a volitional component but retaining the "did not know" language in place of the regular ALI "appreciate the wrongfulness" verbiage.[67] The broader insanity defense standard drew criticism after the Hinckley verdict, and Texas reformulated the defense in 1983.[68] The volitional prong was removed and the scope was narrowed to the "right-wrong" M'Naghten standard used today. The Texas Penal Code provides that:

> [Insanity] is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of severe mental disease or defect, did not know that the conduct was wrong. The term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.[69]

To be found NGRI of a crime in Texas, the defendant must prove that he was insane at the time of the crime. The defendant cannot be found guilty if he did not have the capacity to understand that he was committing a crime. If mental capacity prevents the individual from understanding that the act was wrong, then he cannot he held responsible for those actions.

Other States

Currently, twenty-five states employ some variant of the M'Naghten standard, nineteen use the ALI method, one has no rule promulgated, and five have abolished the insanity defense altogether.[70] However, this exclusion is not always permanent. The Nevada Supreme Court found abolition of the insanity defense statutes unconstitutional. In Nevada, the defendant has the choice of pleading not guilty, guilty, or guilty but mentally ill.[71]

In addition, states such as Utah and Kansas, that have jettisoned the insanity defense, still allow for mental impairment to negate the mental state of the defendant.[72] This mens rea approach can excuse the defendant from the crime if he can establish a mental incapacity to formulate crime.[73] Therefore, if the defendant lacked the intent to commit the crime paired with a mental disease or defect, then he has grounds for acquittal.

Data Collection

In Texas, the Department of State Health Services, formerly the Texas Department of Mental Health and Mental Retardation, accumulates the records of individuals found NGRI. The Committee is disturbed by the lack of data regarding the NGRI population. The data is inconclusive and spotty at best.

Simply entering and updating pertinent information, such as a patient's location and crime committed, would keep the data up to date and make tracking possible. The identification and tracking of a NGRI patient should be a simple process. Impeccable tracking of the NGRIs should lead to fewer aberrations and fewer early releases of unstable and potentially dangerous individuals.

Possible Alternatives

The continued use "not guilty by reason of insanity" in Texas has been debated in light of recent cases. The high-profile murder trials of Andrea Yates and Deanna Laney brought the subject of the insanity defense to the forefront. Yates, a woman whose mental illness had been long documented, systematically drowned her five children in the bathtub of the family's suburban home. While in a fit of psychosis, Yates apparently believed that murdering her children would "save" them from some overwhelming evil.[74] She was declared "grossly psychotic" by one psychiatrist, and another professional identified Yates as one of the sickest people she had ever treated.[75] But Andrea Yates' plea of insanity was rejected by a Houston jury.

Deanna Laney, who stoned two of her sons to death and permanently injured another son, was found not guilty by reason of insanity. A team of psychiatrists deemed Laney, who had no history of mental illness, unable to decipher the difference between right and wrong at the time she killed her

children.[76] The disparity in verdicts rendered for the similar crimes of Yates and Laney prompted some public confusion concerning the insanity defense.

Although the Committee heard no testimony advocating the change of the defense to "guilty but insane," one group, National Alliance for the Mentally Ill (NAMI), suggests a change in the plea to "guilty except for mental illness." This plea would be similar to the guilty but mentally ill plea offered in a few other states. The guilty except mental illness (GEMI) plea is similar to the current law in Oregon in which the mentally ill defendant, who carries the burden of proof, would be sent to a forensic state hospital to serve the term.

In the jurisdictions where the GBMI finding is an additional option, it does not appear to reduce insanity acquittals.[77] Using this defense, the jury has only one choice to find the defendant innocent and two which will find the defendant guilty.[78] In addition, the individual found guilty but mentally ill may not receive the caliber of mental health care expected, as few get the same level of treatment they would outside of prison. Treatment for GBMI offenders has not been assured beyond what is generally available to all other prisoners. Another issue with the plea of GBMI is the fixed sentence. The individual will serve the whole sentence even if psychiatrically stabilized, or alternatively, eligible for release while still unstable.[79]

Texas Code of Criminal Procedure

The examination and disposition of individuals found NGRI is dictated by Article 46.03 of the Texas Code of Criminal Procedure. Article 46.03 is confusing and difficult to understand. The Committee believes that this statute should be as clear and concise as possible so that all those involved in cases involving an insanity defense are aware of the implications of such a plea.

Specifically, the Committee recommends that Article 46.03 be amended to provide that the experts employed in the examination of a defendant using the insanity defense meet the qualifications of experts used in competency hearings under Article 46B.022 of the Texas Code of Criminal Procedure. Experts used in these cases must be either a state-licensed physician or a psychologist with a doctoral degree and must have experience or certification in forensic psychiatry or psychology.[80] These

qualifications should result in fewer disputes regarding the testimony of experts at trial.

In addition to streamlining Article 46.03, the Committee recommends that the release standards for NGRI patients be tightened. The Committee heard testimony from several witnesses who agreed that the provisions dealing with the conditional release and out-patient supervision need to be clarified. Explicit release standards will lead to less confusion for all parties involved. By clarifying a judge's authority with regard to ordering out-patient supervision, individuals found NGRI will be able to be monitored, when necessary, and will hopefully be less likely to commit additional crimes.

Truth in Sentencing

The Committee heard testimony concerning juries and the insanity plea. Currently, juries are prohibited from receiving any information about the consequences of a NGRI verdict. Texas Code of Criminal Procedure Article 46.03 (1e) provides that:

> The court, the attorney for the state, or the attorney for the defense may not inform a juror or a prospective juror of the consequences to the defendant if a verdict of not guilty by reason of insanity is returned.

The Committee believes the Legislature should examine the pros and cons of revealing to juries knowledge of consequences and procedures following the verdict of NGRI.

Conclusion

The Committee recommends that Texas keep the "not guilty by reason of insanity" defense with changes to the release standards, expert qualifications, and collection of records. These recommendations should modernize the defense, while keeping the fundamental nature of the plea intact.

Endnotes

Endnotes

[1] *Texas Courts: Report 1, The Texas Judiciary: A Structural-Functional* Overview, Texas Research League, 1990, at 66.
[2] *Id*. at xiii.
[3] *Report and Recommendations Into The Twenty-First Century*, Citizens' Commission on the Texas Judicial System, 1993, at 3.
[4] See Appendix A, Court Structure of Texas, September 1, 2004, Office of Court Administration.
[5] *Annual Report of the Texas Judicial System*, *Fiscal Year 2003*, Office of Court Administration, at 37.
[6] *Id.* at 9-10; *Texas Courts: Report 1, The Texas Judiciary: A Structural-Functional* Overview, Texas Research League, 1990, at 68-69.
[7] Tex. Const. art. V, §6(a); TEX. GOV'T CODE §22.220.
[8] See Appendix B, Proposal of chief justices of appellate courts regarding appellate redistricting.
[9] See Appendix A.
[11] Tex. Const. art. V, §8 (amended 1985).
[12] *Assessing Judicial Workload in Texas' District Courts*, Texas Judicial Council (2002), at 3.
[13] *Assessing Judicial Workload in Texas' District Courts*, Texas Judicial Council (2002).
[15] *Id.* at 15.
[16] *Id.* at 18.
[18] See *Peek v. Equipment Serv. Co.*, 779 S.W.2d 802, 803-804 n. 4 (Tex. 1989); *Smith v. Clary Corp.*, 917 S.W.2d 796, 799 n. 3 (Tex. 1996).
[19] See Appendix A
[20] See Appendix A.
[21] *Report and Recommendations Into The Twenty-First Century*, Citizens' Commission on the Texas Judicial System, 1993, at 19.
[22] Tex. Const. art. V, §15.
[23] Tex. Const. art. V, §§18, 19.
[24] *Annual Report of the Texas Judicial System*, *Fiscal Year 2003*, Office of Court Administration, at 51-52.
[25] *Id.* at 52.
[26] See TEX. GOV'T CODE, §§ 25.0173 (Bexar County); 25.0222 (Brazoria County); 25.0635 (Denton County); 25.0812 (Fort Bend County); 25.1032 (Harris County); and 25.2293 (Travis County).

[27] See TEX. GOV'T CODE §311.026; *J. &.J. Beverage Co. v. Texas Alcoholic Beverage Commission*, 810 S.W.2d 859,860 (Tex.App - Dallas 1991).
[28] *Id.*
[29] American Bar Association Report of Standing Committee on Judicial Independence to House of Delegates regarding Judicial Compensation, August, 2003.
[30] According to the National Center for State Courts, the following states have compensation commissions: Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Iowa, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, New Jersey, Oregon, Rhode island, Utah and Washington.
[31] *Governance of the Texas Judiciary: Independence and Accountability, Volume 1*, Report of the Texas Commission on Judicial Efficiency, November 7, 1996, at 10.
[32] See Appendix C, Description of Annual Supplemental Compensation for Justices of the Courts of Appeals and District Judges, *Annual Report of the Texas Judicial System*, *Fiscal Year 2003*, Office of Court Administration, at 78-80.
[33] *Id.*
[34] *Survey of Judicial Salaries*, National Center for State Courts, October, 2003.
[35] *Governance of the Texas Judiciary: Independence and Accountability, Volume 1*, Report of the Texas Commission on Judicial Efficiency, November 7, 1996, at 10.
[36] See Appendix D, Resolution adopted by Texas Judicial Council in August, 2004.
[37] See Appendix E, Written Testimony submitted by William Nail, Deputy Executive Director, Employees Retirement System of Texas, to Senate Jurisprudence Committee on March 29, 2004.
[38] *Id.*
[39] Black's Law Dictionary 100 (7th ed., West 1999).
[40] Federal Arbitration Act, 9 U.S.C. §§1 *et seq.*
[41] *Southland Corp. v. Keating*, 465 U.S. 1 (1984).
[42] *Id.*
[43] *Allied-Bruce Terminix Cos. v. Dopson*, 513 U.S. 265 (1995).
[44] *Id.*
[45] *Id.*

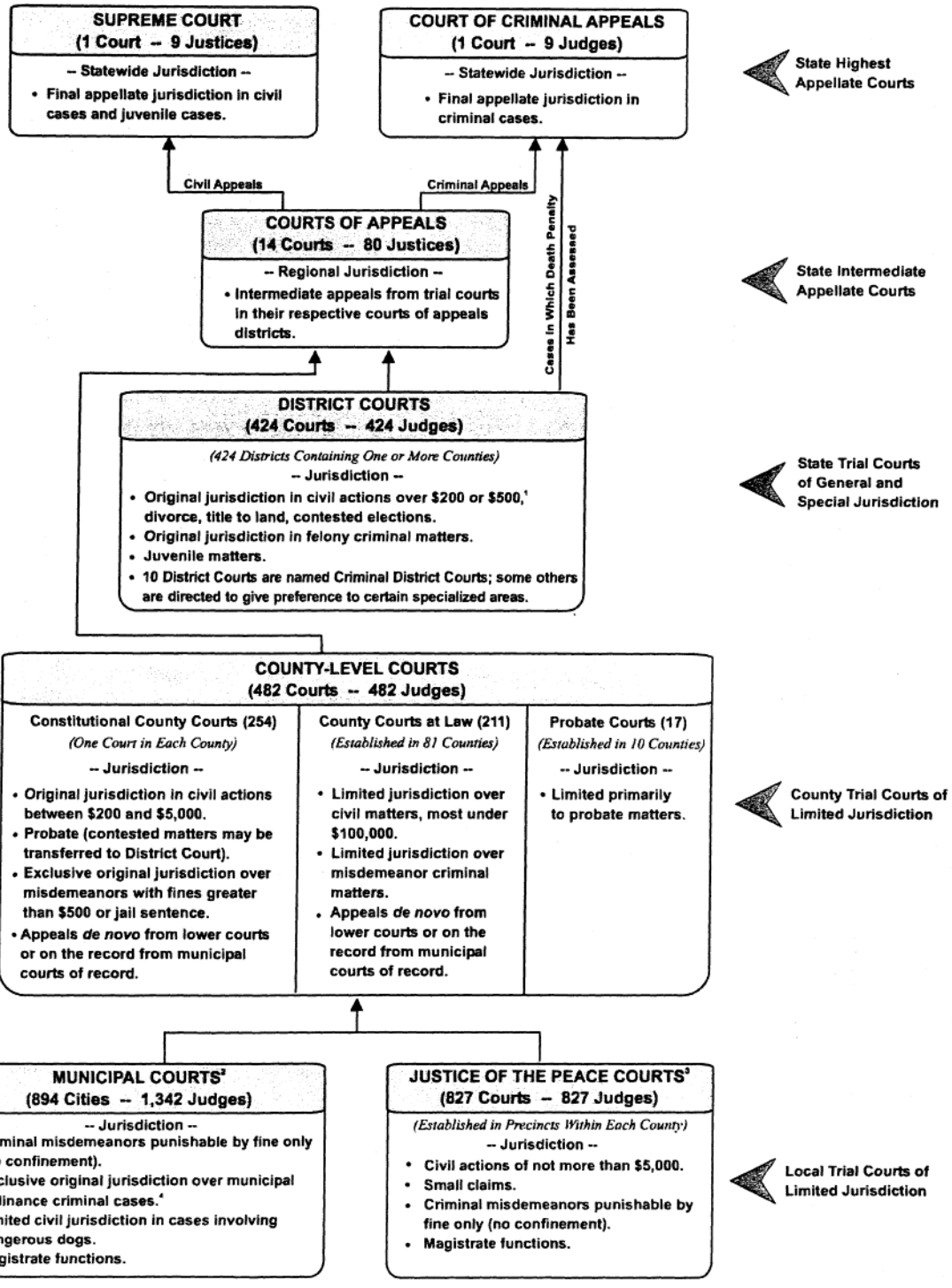
[46] Texas General Arbitration Act, TEX. CIV. PRAC. & REM. CODE, Chapter 171.
[47] *Id.* at Sec. 171.022.
[48] The American Arbitration Association, (Aug. 30, 2004) available at http://www.adr.org.
[49] National Arbitration Forum, (Aug. 30, 2004) available at http://www.arb-forum.com.
[50] *Id.*
[51] Judicial Arbitration and Mediation Association, *Partners in Resolution*, (Sep. 3, 2004) available at http://www.jamsadr.com.
[52] This standard is referenced in TEX. PROP. CODE, §438.001, allowing a court to vacate an arbitration award in a residential construction arbitration on a showing of manifest disregard for Texas law.
[53] *Interim Report* 2002, House Committee on Civil Practices, at 33.
[54] CA. CODE CIV. PROC. §1281.9 (2002).
[55] Public Broadcasting System Frontline, *A Crime of Insanity*, (June 10, 2004) available at http://www.pbs.org/wgbh/pages/frontline/shows/crime/trial/history.html.
[56] See Appendix F, Texas Legislative Council, *The Insanity Defense: A State by State Comparison of Standard - Memorandum*, Apr. 5, 2004 at i.
[57] Mental Health Association in Texas, *Revision of Texas' Insanity Defense*, (June 10, 2004) available at http://www.mhatexas.org/InsanityDefense.
[58] Lisa A. Callahan et al., *The Volume and Characteristics of Insanity Defense Pleas: An Eight-State Study*. Bulletin of the American Academy of Psychiatry and Law vol. 19, no. 4, 1991.
[59] Black's Law Dictionary 794 (7th ed., West 1999).
[60] Zonana, Howard V. *Review of the Insanity Statutes in the United States and Introduction to the Practice Guidelines for the Forensic Evaluation of Defendants Raising the Insanity Defense.* Feb. 7, 2003, Austin.
[61] Bonnie, Richard J. et al. *A Case Study in the Insanity Defense: The Trial of John Hinckley.* 10 (2d ed., 2000).
[62] Shannon, Brian D. *Expanding the Current Texas Insanity Defense to Include a Volitional Standard: Going Back to the Future.* Proc of The Affirmative Defense of Insanity in Texas. Feb. 7, 2003, Austin.
[63] *Reshaping the Insanity Defense.* House Study Group, 1984.
[64] Texas Legislative Council, supra note 2 at ii.
[65] Slobogin, Christopher. *M'Naghten and Its Variations.* Proc of The Affirmative Defense of Insanity in Texas. Feb 7, 2003, Austin.
[66] *Id.*

[67] Shannon, Brian D. *Expanding the Current Texas Insanity Defense to Include a Volitional Standard: Going Back to the Future.* 2/7/2003. Proc. of The Affirmative Defense of Insanity in Texas. Feb. 7, 2003, Austin.
[68] *Id*.
[69] TEX. PEN. CODE § 8.01.
[70] *Id*.
[71] *Id*.
[72] *Subcommittee on the Insanity Defense Interim Report,*, House Criminal Justice Committee, 1996.
[73] Zonana, Howard V. *Review of the Insanity Statutes in the United States and Introduction to the Practice*
Guidelines for the Forensic Evaluation of Defendants Raising the Insanity Defense. Proc. of The Affirmative Defense of Insanity in Texas. Feb. 7, 2003, Austin.
[74] Shannon, Brian D. *Expanding the Current Texas Insanity Defense to Include a Volitional Standard: Going Back to the Future.* Proc. of The Affirmative Defense of Insanity in Texas. Feb. 7, 2003, Austin.
[75] *Id.*
[76] "A Tale of Two Crimes that End Differently." Editorial. San Antonio Express-News: Apr. 9, 2004.
[77] Borum, Randy and Solomon Fulero. *Empirical Research on the Insanity Defense and Attempted Reforms: Evidence Toward Informed Policy.* Law and Human Behavior. 1999, 23, 117-135.
[78] Hooper, James L. and Alix M. McLearen. *Does the Insanity Defense Have a Legitimate Role.* Psychiatric Times, Vol 19, Issue 4, April 2002.
[79] Steadman, Henry, et al. *Before and After Hinckley: Evaluating Insanity Defense Reform.* New York: Guilford Press, 1993.
[80] TEX. CODE CRIM. PRO. Art. 46.03.

Appendix A

COURT STRUCTURE OF TEXAS

SEPTEMBER 1, 2004



[1] The dollar amount is currently unclear. See district courts section of Subject Matter Jurisdiction of the Courts.
[2] Some Municipal Courts are courts of record -- appeals from those courts are taken on the record to the county-level courts.
[3] All Justice of the Peace Courts and most Municipal Courts are not courts of record. Appeals from these courts are by trial *de novo* in the county-level courts, and in some instances in the district courts.
[4] An offense that arises under a municipal ordinance is punishable by a fine not to exceed: (1) $2000 for ordinances that govern fire safety, zoning, and public health or (2) $500 for all others.

OFFICE OF COURT ADMINISTRATION
POST OFFICE BOX 12066
AUSTIN, TEXAS 78711-2066

Appendix B

OFFICE OF COURT ADMINISTRATION

ALICIA G. KEY
Administrative Director

April 26, 2004

BY HAND DELIVERY

The Honorable Joe Crabb
Chairman, House Redistricting Committee
Texas Capitol, Room 1N.07
Austin, Texas

Dear Representative Crabb:

Enclosed are sixteen copies each of the following:

map of the current Courts of Appeals Districts, September 2003
proposed redistricting of the Courts of Appeals Districts, April 2004
materials to accompany testimony of the Chief Justices of the Courts of Appeals

These materials are being sent to you at the request of the Council of Chief Justices.

If you have any questions, please contact me.

Sincerely,

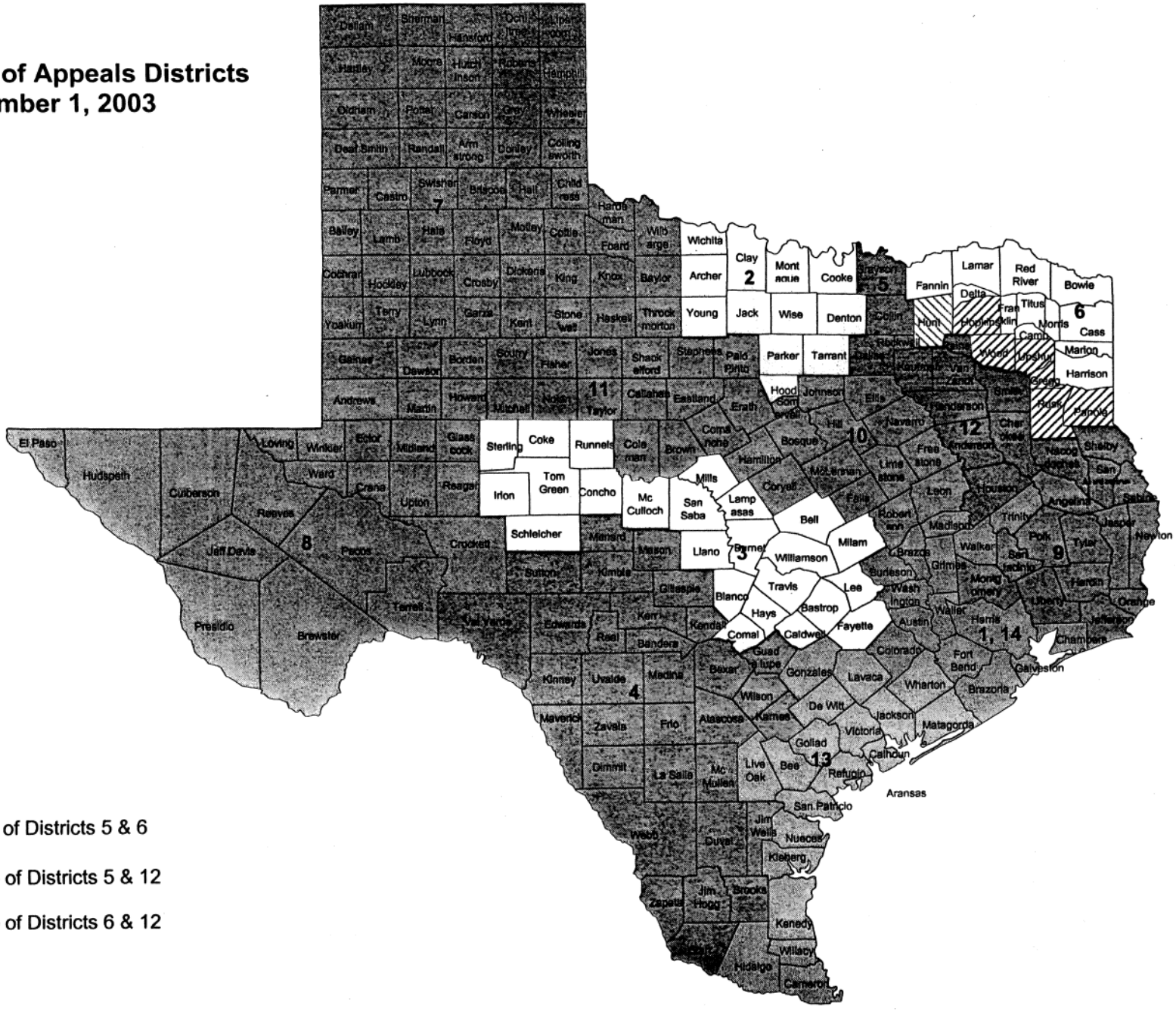
Alicia G. Key

Alicia G. Key
Administrative Director

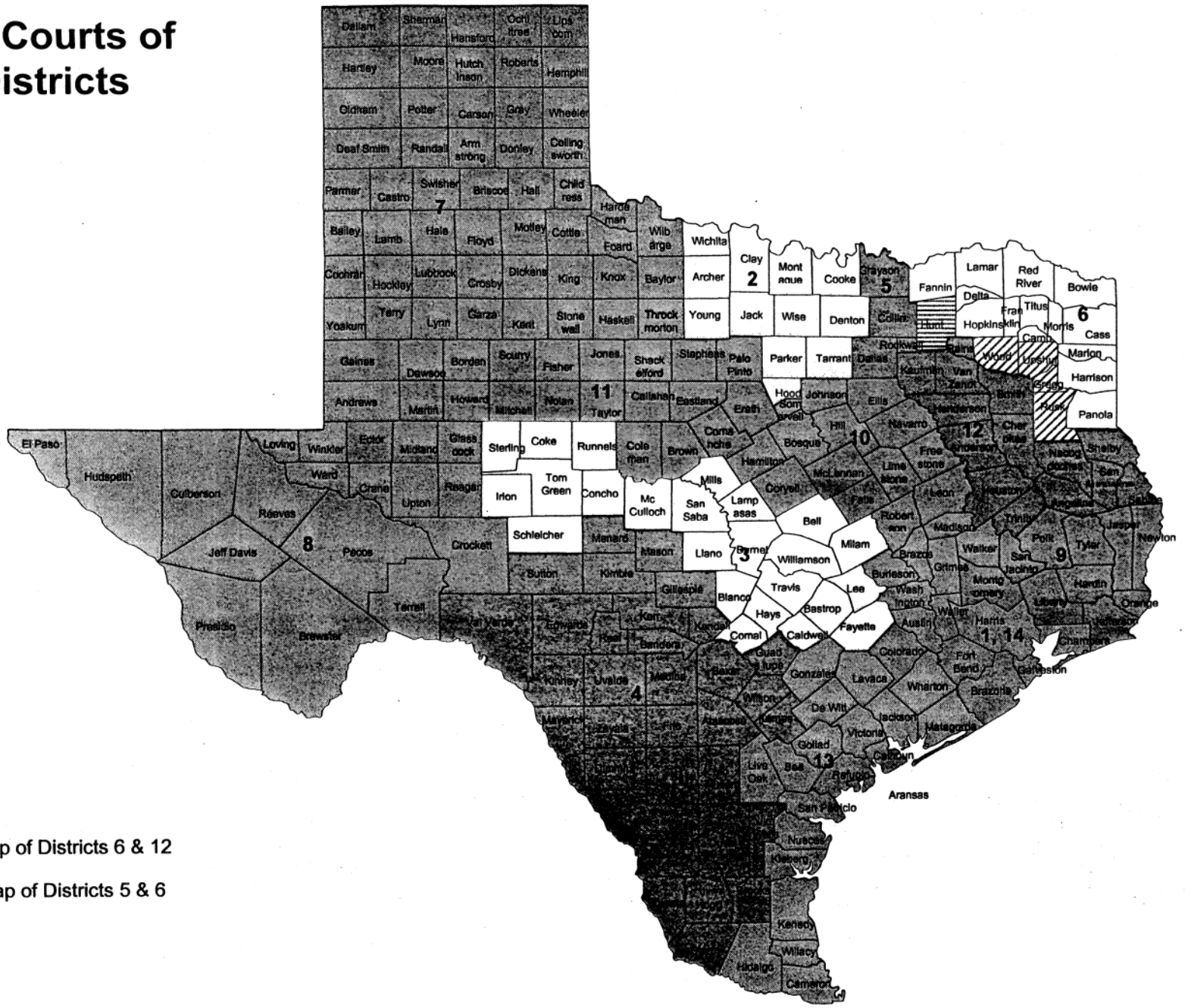
AGK:lmo

enclosures

Current Courts of Appeals Districts
Effective September 1, 2003



Proposed Courts of Appeals Districts April 2004



Overlap of Districts 6 & 12

Overlap of Districts 5 & 6

MATERIALS TO ACCOMPANY
TESTIMONY OF CHIEF JUSTICES
OF THE COURTS OF APPEALS
TO THE
REDISTRICTING COMMITTEE of the
TEXAS HOUSE OF REPRESENTATIVES
APRIL, 2004

A. BACKGROUND

During the regular session of the 78th Legislature in 2003, the House Redistricting Committee ("the Committee") held hearings concerning possible redistricting of the fourteen intermediate appellate courts of Texas. During the hearings, the Chief Justices of the Courts of Appeals agreed to work with the Committee between sessions, if requested to do so, in regard to whether redistricting of the Courts of Appeals should take place, and if so, how.

Following consultation with members of the Committee in regard to the Committee's interim charge, and in an effort to assist the Committee, the Council of Chief Justices of the Courts of Appeals ("the Council") formed a committee of its members to consider the issue of redistricting the appellate courts. Discussions during meetings of the committee made it clear that, for various reasons, a majority of the committee would not support recommending a statewide, complete redistricting of all the appellate districts.

Accordingly, the Council's committee undertook to identify areas relating to appellate districts in which improvement of appellate system operations might be accomplished without complete redistricting. Two major areas were identified:

1) counties with overlapping/concurrent jurisdictions ; that is, counties which lie in more than one appellate district; and

2) transfers of appeals from one court of appeals to a different court of appeals for purposes of equalizing dockets of the courts.

B. COUNTIES WITHIN OVERLAPPING/CONCURRENT APPELLATE COURT JURISDICTIONS

Two primary issues were identified as to counties with overlapping jurisdictions.

1. Forum shopping. One issue was the potential for "forum shopping" by appellants. Such potential existed in some, but not all, counties with overlapping jurisdictions because an appellant was able to choose which appellate court in which the appeal would be filed.

Forum shopping has not been a concern in counties which lie in the coterminous districts of the Houston 1st and 14th Courts. Trial court clerks of counties in the concurrent jurisdictions of 1st and 14th Courts are mandated by law to randomly assign appeals to one or the other of the courts, thus removing the potential for forum shopping.

2. Conflicts of law. The second issue involved the rare instance in which the intermediate appellate courts with concurrent/overlapping jurisdiction of a county had conflicting decisions on an issue which would determine the outcome of the case. If an issue arose on which the overlapping appellate courts had conflicting decisions and the conflict had not been resolved by the Supreme Court or Court of Criminal Appeals, the trial judge and litigants did not know in which appellate court an appeal might eventually be filed, and thus the judge and litigants were placed in doubt about which intermediate appellate court decision to follow.

C. TRANSFERS OF APPEALS FOR DOCKET EQUALIZATION

Until 1978, the Texas Constitution provided for intermediate courts of appeals to have a Chief Justice and two associate Justices. After its amendment in 1978, the Constitution provided for each court of appeals district to have a Chief Justice and "two or more other Justices". By 1983 the Legislature had added sufficient justices to the various courts of appeals to increase the total number of justices to 80. After 1983, no further justices have been added, and the total number of appeals court justices remains at 80.

Although the number of justices has remained constant, the number of appeals filed has not. For FY 1983, a total of slightly over 7,000 new appeals were filed in the courts of appeals statewide. In FY 2003, the total was over 10,500 new appeals. The growth in the number of appeals has varied by district, causing different workloads per justice in different courts. Since the mid-1990s the Legislature has added riders to its appropriations acts directing the Supreme Court to transfer cases among the courts of appeals in order to equalize the dockets of the courts.

The Council identified two primary issues posed by such transfers.

1. Elected judges. One issue related to Texas' system for choosing judges: transferred appeals were not heard by judges elected in the jurisdiction from which the case arose.

2. Conflicts of law. Another issue was that a matter might be decided by the trial judge based on case law from the appellate court in whose jurisdiction the trial county lay, but if the appeal was transferred, the transferee court might have case law conflicting with that of the transferring court.

D. SUMMARY OF PROPOSALS OF THE COUNCIL OF CHIEF JUSTICES

The Council recommends the following to the House Redistricting Committee as to the issues noted:

1. Overlapping/concurrent jurisdiction

    a. Houston/1st and 14th Courts retain coterminous concurrent jurisdictions.
    b. Hopkins County be transferred from concurrent jurisdiction in Tyler/12th and Texarkana/6th to sole jurisdiction in Texarkana/6th.
    c. Panola County be transferred from concurrent jurisdiction in Tyler/12th and Texarkana/6th to Texarkana/6th.
    d. Kaufman County be transferred from concurrent jurisdiction in Tyler/12th and Dallas/5th to Dallas/5th.
    e. Van Zandt County be transferred from concurrent jurisdiction in Tyler/12th and Dallas/5th to Tyler/12th.
    f. Tyler/12th and Texarkana/6th will retain concurrent jurisdiction in Gregg, Rusk, Upshur and Wood Counties.
    g. Dallas/5th and Texarkana/6th will retain concurrent jurisdiction in Hunt County.
    h. Appeals filed from the five East Texas counties remaining with concurrent appellate jurisdiction (Wood, Upshur, Gregg, Rusk and Hunt) be assigned to an appellate court via a procedure like that specified for the Houston 1st and 14th Courts in Texas Government Code 22.202(f).

2. Transfers of appeals for docket equalization

    a. The following counties be moved from the Houston 1st and 14th as

follows: Burleson to Waco/10th; Walker to Waco/10th; Trinity to Tyler/12th.

b. Angelina County be transferred from Beaumont/9th to Tyler/12th.

c. In addition to ordinary budget funding, extra funds be allocated to Dallas/5th and Houston/1st and 14th Courts in the amount of $870,000 per year to retain additional staff to work on newly-filed appeals which exceed the statewide average per justice for newly-filed appeals. It is recommended that $435,000 of such funds be allocated to Dallas/5th and $217,500 per court be allocated to Houston/1st and Houston/14th. If the recommended funding is authorized, then no cases will be transferred from the 5th, 1st or 14th courts for docket equalization purposes.

d. If the recommended funding referenced above is authorized, then no mandatory docket equalization statute or appropriations rider be enacted.

e. In the rare instance that an appeal is transferred from one court to another, the Supreme Court shall determine which law is to be applied in addressing potential conflicts between outcome-determinative precedent in the transferring and transferee courts, and include such determination in the transferring order. It is proposed that the precedent to be used be that of the transferring court/jurisdiction.

Appendix C

Annual Supplemental Compensation

Courts of Appeals Justices

Chapter 31 of the Texas Government Code authorizes the counties in each Court of Appeals district to pay each justice of the Court of Appeals for that district a sum not to exceed $15,000 per year for judicial and administrative services rendered. This compensation is in addition to the salary paid by the State. Section 659.012, Government Code, limits the total salary for a justice of a Court of Appeals to a combined sum from state and county sources of $1,000 less than the state salary paid to a justice of the Supreme Court. This same provision limits the chief justices of the Courts of Appeals to receive a combined salary of $500 less than the state salary paid to justices of the Supreme Court. As of September 1, 2003, the annual state salary paid to a justice of the Supreme Court was $113,000.

District Court Judges

Various sections of Chapter 32, Government Code, authorize the state salaries of some district court judges to be supplemented from county funds. Section 659.012, Government Code, limits, unless otherwise provided by law, the total annual salary for a district judge to a combined sum from state and county sources of $2,000 less than the state salary provided for a justice of the Supreme Court. The 78th Legislature, during its regular session and third special session, amended certain sections of Chapter 32, Government Code to allow Collin, Ellis, Harris, Hill, Tarrant, Travis, and Williamson counties to pay the annual supplemental salary to district judges without restriction.

The following supplemental compensation information was obtained from affidavits on file with the State Comptroller of Public Accounts.

Annual Supplemental Compensation
Justices of the Courts of Appeals

Supplements for the year beginning September 1, 2003 paid by the counties in addition to the basic state salary of $107,850 for Chief Justices and $107,350 for Justices.

Court of Appeals	Court Location	Chief Justice	Justices
1st	Houston	$4,650	$4,650
2nd	Fort Worth	4,650	4,650
3rd	Austin	4,650	4,650
4th	San Antonio	4,650	4,650
5th	Dallas	4,650	4,650
6th	Texarkana	4,650	4,650
7th	Amarillo	3,734	3,734
8th	El Paso	4,450	4,450
9th	Beaumont	4,650	4,650
10th	Waco	4,650	4,650
11th	Eastland	4,650	4,650
12th	Tyler	3,551	3,551
13th	Corpus Christi	4,650	4,150
14th	Houston	4,650	4,650

Annual Supplemental Compensation
District Judges

Supplements paid by counties in addition to the basic state salary of $101,700 for the fiscal year beginning September 1, 2003.

Amount	County	District Court
$23,300	Harris	11, 55, 61, 80, 113, 125, 127, 129, 133, 151, 152, 157, 164, 165, 174, 176, 177, 178, 179, 180, 182, 183, 184, 185, 190, 208, 209, 215, 228, 230, 232, 234, 245, 246, 247, 248, 257, 262, 263, 269, 270, 280, 281, 295, 308, 309, 310, 311, 312, 313, 314, 315, 333, 337, 338, 339, 351
$21,518	Travis	201, 403
$21,318	Collin	219, 296, 380
$21,300	Collin	199, 366, 401
$20,918	Travis	261
$20,300	Travis	147
$19,889	Travis	167
$19,300	Travis	53, 98, 126, 200, 250, 299, 331, 345, 353, 390
$12,630	Tarrant	48, 67, 141, 348, 352, 360, 396, Criminal 3, 4
$11,603	Tarrant	17, 96, 153, 213, 231, 233, 236, 297, 322, 323, 324, 325, 342, 371, 372, Criminal 1, 2
$10,908	Hardin, Tyler	88
$10,300	El Paso	120
$10,240	Crosby, Lubbock	72
	Lubbock	99, 137, 140, 237, 364
$10,008	Hardin	356
$9,695	Hansford, Hutchinson, Ochiltree	84
$9,640	Potter, Randall	181
$9,564	Armstrong, Potter, Randall	47
$9,316	Montgomery	359
$9,315	Montgomery	410
$9,300	Anderson, Henderson, Houston	3
	Andrews, Crane, Winkler	109
	Angelina	159, 217
	Aransas, Bee, Live Oak, McMullen, San Patricio	36, 156, 343
	Atascosa, Frio, Karnes, La Salle, Wilson	81
	Bastrop, Burleson, Lee, Washington	21
	Bell	146, 169, 264
	Bell, Lampasas	27
	Bexar	37, 45, 57, 73, 131, 144, 150, 166, 175, 186, 187, 224, 225, 226, 227, 285, 289, 290, 379, 386, 399, 407, 408
	Brazoria	149, 239, 300
	Brazoria, Matagorda, Wharton	23
$9,300 (cont.)	Brazos	85, 272, 361
	Caldwell, Comal, Hays	207
	Calhoun, De Witt, Goliad, Jackson, Refugio, Victoria	24, 135, 267
	Cameron, Willacy	103, 107, 138, 197, 357, 404
	Chambers	344
	Colorado, Gonzales, Guadalupe, Lavaca	25, 2nd 25th
	Comal, Guadalupe, Hays	274
	Cooke	235
	Coryell	52
	Culberson, El Paso, Hudspeth	205
	Dallas	14, 44, 68, 95, 101, 116, 134, 160, 162, 191, 194, 195, 203, 204, 254, 255, 256, 265, 282, 283, 291, 292, 298, 301, 302, 303, 304, 305, 330, 363; Criminal 1, 2, 3, 4, 5
	Denton	16, 158, 211, 362, 367, 393
	Dimmit, Maverick, Zavala	365
	El Paso	34, 65, 168, 171, 210, 243, 327, 346, 383, 384, 388, 409
	Erath	266
	Falls, Robertson	82
	Fisher, Mitchell, Nolan	32
	Foard, Hardeman, Wilbarger	46
	Fort Bend	268, 328, 400
	Galveston	10, 122, 212, 306, 405
	Gregg	124, 188, 307
	Harrison	71
	Henderson	173
	Hidalgo	139, 206, 275, 332, 370, 389, 398
	Hunt	196
	Hunt, Rains	354
	Jefferson	58, 60, 136, 172, 252, 279, 317, Criminal Court
	Johnson, Somervell	18, 249
	Kaufman	86
	Kenedy, Kleberg, Nueces	105
	Loving, Reeves, Ward	143
	Marion, Upshur	115
	McLennan	19, 54, 170
	Medina, Real, Uvalde	38
	Montgomery	221, 284
	Montgomery, Waller	9
	Navarro	13

District Judges Annual Supplemental Compensation

(Continued)

Amount	County	District Court
$9,300 (cont.)	Nueces	28, 94, 148, 214, 319, 347
	Orange	128, 163, 260
	Smith	7, 114, 321
	Victoria	377
	Webb	111, 341, 406
	Webb, Zapata	49
	Wharton	329
	Williamson	26, 277, 368, 395
$9,287	Coke, Irion, Schleicher, Sterling, Tom Green	51
$9,277	Tom Green	340, 391
$9,256	Bowie	202
	Bowie, Cass	5
	Bowie, Red River	102
$9,235	Concho, Runnels, Tom Green	119
$9,234	Crockett, Pecos, Reagan, Sutton, Upton	112
$9,211	Ellis	378
$9,210	Ellis	40
$9,200	Rusk	4
$9,144	Anderson, Cherokee	369
$9,051	Parker	43
$9,000	Henderson	392
	Hood	355
	Nueces	117
$8,997	Nacogdoches	145
$8,971	Gray, Hemphill, Lipscomb, Roberts, Wheeler	31
$8,950	Glasscock, Howard, Martin	118
$8,900	Dawson, Gaines, Garza, Lynn	106
	Polk, San Jacinto, Trinity	258, 411
$8,883	Jasper, Newton, Sabine, San Augustine	1
$8,796	Carson, Childress, Collingsworth, Donley, Hall	100
$8,736	Anderson, Freestone, Leon, Limestone	87
$8,448	Potter	108, 320
$8,300	Brewster, Culberson, Hudspeth, Jeff Davis, Presidio	394
$8,263	Pecos, Terrell, Val Verde	83
$8,040	Bandera, Gillespie, Kendall, Kerr	216
$7,847	Matagorda	130
$7,622	Hutchinson	316
$7,465	Cochran, Hockley	286
$7,400	Castro, Hale, Swisher	242
$7,317	Jasper, Newton, Tyler	1A
$7,200	Camp, Morris, Titus	76
	Duval, Jim Hogg, Starr	229
	Grayson	15, 59

Amount	County	District Court
$7,200 (cont.)	Grimes, Leon, Madison, Walker	278
	Milam	20
	Palo Pinto	29
$7,193	Freestone, Limestone	77
$7,170	Edwards, Kinney, Terrell, Val Verde	63
$7,103	Callahan, Coleman, Taylor	42
	Taylor	104, 326, 350
$7,088	Ector	70, 161, 244, 358
$7,000	Midland	238, 318
$6,503	Grimes, Leon, Madison, Walker	12
$6,359	Johnson	413
$6,240	Kerr, Kimble, Mason, McCulloch, Menard	198
$6,144	Cherokee	2
$6,105	Delta, Franklin, Hopkins, Lamar	62
	Fannin, Lamar, Red River	6
$6,046	Caldwell, Comal, Hays	22
$6,000	Anderson, Houston	349
	Liberty	75
$5,400	Borden, Scurry	132
	Castro, Hale, Swisher	64
$5,026	Bosque, Comanche, Hamilton	220
$4,800	Baylor, Cottle, King, Knox	50
	Fannin, Grayson	336
$3,600	Austin, Fayette, Waller	155
	Blanco, Burnet, Llano, San Saba	33
	Gray	223
	Jones, Shackelford	259
	Sabine, San Augustine, Shelby	273
	Wichita	30, 89
	Wood	402
$3,000	Bastrop, Burleson, Lee, Washington	335
$2,880	Haskell, Kent, Stonewall, Throckmorton	39
$2,052	Starr	381
$1,200	Hill	66
$480	Deaf Smith, Oldham	222
$0	Archer, Clay, Montague	97
	Briscoe, Dickens, Floyd, Motley	110
	Brown, Mills	35
	Dallam, Hartley, Moore, Sherman	69
	Eastland	91
	Rockwall	382
	Stephens, Young	90
	Van Zandt	294

Appendix D

STATE OF TEXAS RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Whereas, to maintain the high quality of our judicial system, it is important that judicial compensation be set sufficiently high to attract the most able attorneys to the bench and to retain experienced judges;

Whereas, the Judicial Section of the State Bar of Texas has studied judicial compensation. It compared Texas salaries with salaries paid to judges in other populous states and with federal district judges. It also examined salaries of lawyers in Texas who meet the minimum constitutional requirements for judicial service, and studied inflationary trends over the past twenty years;

Whereas, the State of Texas currently pays the Justices of the Texas Supreme Court $113,000, appellate justices $107,350, and district court judges $101,700;

Whereas, in review of state judicial pay nationwide. Texas now ranks 39th for judicial pay in the highest court, 34th for judicial pay in the intermediate appellate courts, and 39th for judicial pay in the general trial courts;

Whereas, many statutory county courts and probate courts currently make more than district or appellate judges;

Whereas, current salaries are far below those paid to those with similar training in positions of comparable responsibility;

Whereas, fair and competitive pay must be given to attract and retain quality judges for the people of Texas;

Now, therefore, be it resolved, that the undersigned members of the Texas Judicial Council support the attached study and the conclusions articulated therein regarding higher judicial pay.

Honorable Thomas R. Phillips
Chief Justice, Supreme Court of Texas
Chair, Texas Judicial Council

August 27, 2004

Judicial Compensation

To maintain the high quality of our judicial system, it is important that judicial compensation be set sufficiently high to attract the most able attorneys to the bench and to retain experienced judges. In 2000, the average salary for attorneys licensed ten years was $190,277. The State of Texas currently pays the Justices of the Texas Supreme Court $113,000, appellate justices $107,350, and district court judges $101,700. Counties may pay a salary supplement. However, except in Collin, Ellis, Harris, Hill, Tarrant, Travis and Williamson Counties, these supplements may not effectively exceed $4,650 for justices of courts of appeals, and $9300 for district court judges. On September 1, 2007 these counties will also be capped in their ability to pay supplements to district courts. Statutory county courts and probate courts do not have a cap on their pay and, therefore, counties are currently paying many of these judges more than members of the Supreme Court.

Recommendations

1. **Substantially improve judicial salaries.** If the judicial compensation paid by other states or the federal district judges is used as a guideline, it would increase the salaries not less than:

Justices of the Texas Supreme Court and The Court of Criminal Appeals	$155,451
Justices of the Court of Appeals (95% as under current law)	$147,638
District Court Judges (90% as under current law)	$139,906

The Committee on Court Funding, while recognizing the budgetary impact of this proposal, recommended these judicial salaries as a priority on May 5, 2004.

2. **Review the system used for compensating judges.** A joint House Senate committee, over the next two legislative sessions, should make an interim report on judicial salaries before the 2007 session. The committee should consider adopting a new guideline for compensation that sets the salary of the Chief Justice of the Texas Supreme Court based on either (a) the average salary of the five most comparable states to Texas, or (b) the salary of federal district judges. It is recommended that the new guideline establish goals for budgeting judicial salaries sufficient to attract the most able attorneys to the bench. The compensation increase should also be designed to retain experienced judges.

3. **Raise or remove the cap for county supplements.** This will allow counties, where county commissioners courts believe cost of living adjustments may be necessary, to increase their supplements for the district judges and appellate judges. These salaries should not exceed the salaries of the Justices of the Supreme Court or Federal District Judges, which ever is higher.

Conclusion

In 1999, both the Commission on Judicial Efficiency and the 76th Legislature recognized that the judicial branch must be provided regular pay raises to attract and retain quality judges, and to keep up with cost of living increases. At the conclusion of the 76th Legislative Session, judicial pay in Texas' highest courts was ranked at 23rd, judicial pay in Texas' intermediate appellate courts was ranked at 18th, and judicial pay in Texas' general trial courts was ranked as 22nd. Since the 76th Legislative Session state funded judicial salaries have fallen from 23rd to 39th for judicial pay in the highest court, 18th to 34th for judicial pay in the intermediate appellate courts, and 22nd to 39th for judicial pay in the general trial courts.

The lack of a comprehensive judicial compensation system in Texas has resulted in a loss of good judges who cannot afford to serve. The Judiciary appreciates the past efforts of the Legislature, and recognizes that the lack of increases in compensation is not solely within the control of the Legislature: a lack of appropriate public effort, to authorize an improved judicial compensation system through a judicial compensation commission, lead to the defeat of the 1999 referendum; the funds appropriated in 2001 for judicial salary increases were either vetoed by the Governor or not certified by the Comptroller of Public Accounts; and in 2003, because of the state of the economy, lack of available funds prevented even a consideration of an increase in judicial compensation. The judiciary does not want to be perceived as repeatedly seeking its own self-interest through pay raises. The lack of a comprehensive judicial compensation system in Texas has resulted in recurring debates every legislative session, and inequities to both the Legislature and the Judiciary. In summary, the primary guideline for judicial pay in Texas should be based on objective criteria either from judicial salaries in comparable states or to federal district court judges, and should include an automatic adjustment to account for changes in the cost of living.

RANKING OF JUDICIAL SALARIES FOR 5 LARGEST STATES *

States by Rank	Highest Court	Rank	Intermediate Appellate Court	Rank	General Trial Court	Rank
1. California	175,575	1	164,604	1	143,838	2
2. Texas		39		34		39/27 R
3. New York	151,200	9	144,000	7	136,700	6
4. Florida	153,750	6	141,963	8	133,250	8
5. Illinois	158,103	5	148,803	6	136,546	7
Mean	159,657		149,843		137,584	
Median	153,750		144,000		136,546	
Range	151,200 to 175,575		141,963 to 164,604		133,250 to 143,838	

RANKING OF JUDICIAL SALARIES FOR 10 LARGEST STATES *

States by Rank	Highest Court	Rank	Intermediate Appellate Court	Rank	General Trial Court	Rank
1. California	175,575	1	164,604	1	143,838	2
2. Texas		39		34		39/27 R
3. New York	151,200	9	144,000	7	136,700	6
4. Florida	153,750	6	141,963	8	133,250	8
5. Illinois	158,103	5	148,803	6	136,546	7
6. Pennsylvania	139,585	12	135,213	9	121,225	14
7. Ohio	125,500	22	117,000	23	107,600	31
8. Michigan	164,610	2	151,441	3	139,919	5
9. New Jersey	158,500	4	150,000	5	141,000	3
10. Georgia	153,086	7	152,139	2	121,938	13 T
Mean	153,323		145,018		131,335	
Median	153,750		148,803		136,546	
Range	125,000 to 175,575		117,000 to 164,604		107,600 to 143,838	

* Source of data is Survey of Judicial Salaries by National Center for State Courts, October 1, 2003.

T Median Salary. If more than half the salaries are the same minimum or the maximum then the median is either the minimum or maximum salary.

R Range based on state salary alone and maximum supplements.

JUDICIAL SALARY COMPARISONS

	Recommended Judicial Salaries Over 2 Biennia	Federal Judicial Current Salaries	Largest 5 States Average Judicial Salaries without Texas	Largest 10 States Average Judicial Salaries without Texas	1980 Salaries Adjusted for COL with Maximum Supplement	Proposed Salaries, 98-99 Biennium Report of the Tx. Comm. On Judicial Efficiency Adjusted for COL Without County Supplement	10 Year Attorney Average Salary State Bar Survey	Highest Current Judicial Salaries With Maximum County Supplements
Justice of Supreme Court	$ 155,451	$193,000.00	$159,657.00	$153,323.00	$143,537.64	$134,856.04	$190,277	$ 113,000.00
Justice Court of Appeals	$ 147,638	$165,500.00	$149,843.00	$145,018.00	$120,753.88	$128,113.16	$190,277	$ 112,000.00
District Judges	$ 139,906	$157,000.00	$137,584.00	$131,335.00	$140,752.95	$121,371.25	$190,277	$ 128,750.00
Statutory, Constitutional County Court Judges and Probate Judges	No Recommendation	No Comparable Figures Available	No Comparable Figures Available	No Comparable Figures Available	No Comparable Figures Available	No Comparable Figures Available	$190,277	$ 127,750.00 Highest

Appendix E

Employees Retirement System of Texas

Summary of Judicial Retirement System

Plans I & II

Based on August 31, 2003 Actuarial Valuation

Presented to

Senate Jurisprudence Committee

March 29, 2004

William S. Nail
Deputy Executive Director

JUDICIAL RETIREMENT SYSTEM PLAN I (JRS I)

JRS I Members:

- Judges, Justices and Commissioners of the Texas Supreme Court, Court of Criminal Appeals, Court of Appeals, District Courts and specified commissions to a court employed prior to August 31, 1985
- 26 contributing members
- 31 non-contributing members
- 505 annuitants through service retirement
- $1.9 million monthly annuity payroll

JUDICIAL RETIREMENT SYSTEM PLAN I (JRS I)

JRS I Retirement Benefits:

- Age 65 and 10 years of service if currently holding judicial office, or
- Age 65 and 12 years of service, or
- 20 years of service, regardless of age

Annuity:

- Monthly annuity payable for life equal to 50% of final salary, increased by 10% of final salary if holding office at retirement or has served as a visiting judge within 12 months of retirement
- Annuity increases if salary of sitting judge increases

JUDICIAL RETIREMENT SYSTEM PLAN I (JRS I)

Funded Status:

- Actuarial Accrued Liability $262,766,208
- Unfunded Actuarial Accrued Liability $262,766,208

Since JRS I is not a pre-funded retirement plan, the funding issues that are applicable to the other retirement plans do not apply. JRS I is entirely dependent upon general revenue legislative appropriations

JUDICIAL RETIREMENT SYSTEM PLAN II (JRS II)

JRS II Members:

- Judges, Justices and Commissioners of the Texas Supreme Court, Court of Criminal Appeals, Court of Appeals, District Courts and specified commissions to a court employed after August 31, 1985
- 477 contributing members
- 14 non-contributing members
- 57 annuitants through service retirement
- $0.2 million monthly annuity payroll

JUDICIAL RETIREMENT SYSTEM PLAN II (JRS II)

JRS II Retirement Benefits:

- Age 65 and 10 years of service if currently holding judicial office, or
- Age 65 and 12 years of service, or
- Age 55 and 20 years of service, or
- Rule of 70 with at least two full terms on an appellate court

Annuity:

- Monthly annuity payable for life equal to 50% of final salary, increased by 10% of final salary if holding office at retirement or has served as a visiting judge within 12 months of retirement

JUDICIAL RETIREMENT SYSTEM PLAN II (JRS II)

Funded Status:

• Current Contribution Rate	22.83%
• Normal Cost (Percent of Payroll)	19.58%
• Actuarial Value of Assets	$129,425,907
• Actuarial Accrued Liability	$111,115,600
• Net Asset Balance	$18,310,307
• Funded Ratio	116.5%
• Amortization Period	0.0

JUDICIAL RETIREMENT SYSTEM PLAN II (JRS II)

Factors Effecting Current Funded Status of JRS II:

- Slight actuarial gain in fund status due to salary increases less than assumed rate which offset actuarial losses from investment returns and demographic experience

Appendix F

TEXAS LEGISLATIVE COUNCIL

P.O. Box 12128, Capitol Station
Austin, Texas 78711-2128
Telephone: 512/463-1151

DAVID DEWHURST
Lieutenant Governor
Joint Chair

TOM CRADDICK
Speaker of the House
Joint Chair

MEMORANDUM

TO: M. L. Calcote
Committee Director
Senate Committee on Jurisprudence

FROM: Tammy Edgerly
Carey Eskridge
Research Specialists

DATE: April 5, 2004

SUBJECT: Standards for the Insanity Defense

In response to your request for information relating to a state-by-state comparison of the legal standard for the insanity defense, this memorandum provides a summary of our findings and background information explaining the standards used in American jurisprudence to determine insanity. Included with this memo is a table entitled: "The Insanity Defense: A State-by-State Comparison of Standards."

SUMMARY

Five states have abolished the insanity defense (Idaho, Kansas, Montana, Nevada, and Utah). In the 45 states that have the insanity defense, the M'Naghten rule and the American Law Institute (ALI) standard are the two primary bases used for determining the mental state of the accused.

- **Ten** states use the **strict M'Naghten** standard (California, Florida, Iowa, Minnesota, Nebraska, New Jersey, North Carolina, Oklahoma, Pennsylvania, and Washington);

- **Fifteen** states use a **variant of the M'Naghten** standard (Alabama, Alaska, Arizona, Colorado, Georgia, Louisiana, Mississippi, Missouri, New Mexico, Ohio, South Carolina, South Dakota, Tennessee, Texas, and Virginia);

- **Ten** states use the **strict ALI** standard (Connecticut, Hawaii, Kentucky, Maryland, Massachusetts, Michigan, Oregon, Rhode Island, West Virginia, and Wisconsin);

- **Nine** states use a **variant of the ALI** standard (Arkansas, Delaware, Illinois, Indiana, Maine, New York, North Dakota, Vermont, and Wyoming);

- **One** state has **no standard enunciated** in statute or case law (New Hampshire).

BACKGROUND

In general, the insanity defense is based on defining the extent to which a person accused of a crime may be held accountable or relieved of criminal responsibility for an act because of impaired mental state.

Although present in earlier legal treatises of England, guidelines for evaluating criminal responsibility were codified in the murder case against Daniel M'Naghten[1] in England in the mid-1800s.[2] The standard derived from the M'Naghten case ("right/wrong" test) is summarized as follows: "Under the M'Naghten test or rule, an accused is not criminally responsible if, at the time of committing the act, he was laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it that he did not know he was doing what was wrong." [3]

The M'Naghten standard focuses primarily on the cognitive ability of the accused. As the study of social sciences, particularly psychology, advanced, understanding of the volitional elements of action developed, and the rigidity of the strict application of the M'Naghten rule fell out of favor. As a result, insanity standards that encompassed both the cognitive and volitional elements of action emerged.[4]

Drafted in the early 1960s, the ALI Model Penal Code included a broader, more nuanced test for insanity that encompassed the principles of both the "right/wrong" test of M'Naghten and what came to be called the "irresistible impulse" test based on the role of volition in human action. Whereas the M'Naghten standard centers on a person's absolute knowledge of right and wrong and the understanding of the person's conduct, the ALI standard includes an assessment of the person's capacity to appreciate the difference between right and wrong and the ability to control the person's actions. The ALI standard states that a person will not be held criminally responsible if at the time of the behavior in question "as a result of a mental disease or defect, he lacks substantial capacity

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[1] 8 Eng.Rep. 718 (1843)
[2] *A Crime of Insanity:* http://www.pbs.org/wgbh/pages/frontline/shows/crime/trial/history.html (accessed: March 25, 2004). *Evolution of the Insanity Plea:* http://www.law.umkc.edu/faculty/projects/ftrials/hinckley/EVOL.HTM (accessed: March 25, 2004)
[3] Black's Law Dictionary: Sixth Edition, page 1003
[4] *A Crime of Insanity:* http://www.pbs.org/wgbh/pages/frontline/shows/crime/trial/history.html (accessed: March 25, 2004). *Evolution of the Insanity Plea:* http://www.law.umkc.edu/faculty/projects/ftrials/hinckley/EVOL.HTM (accessed: March 25, 2004)

either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law."[5]

As stated earlier, either the M'Naghten standard, the ALI standard, or a modified form of these standards has been adopted by most of the states.

The table entitled "The Insanity Defense: A State-by-State Comparison of Standards" includes state-by-state information on the legal source for the state's insanity defense, the standard's language, whether the standard is M'Naghten or ALI (strict or modified), and whether the state has abolished the insanity defense. Included with this memorandum and table are referenced statutes and case law.

There are additional elements to a trial involving an insanity defense that differ from state to state, including the standards of proof in a pretrial disposition hearing, the insanity verdict, mandatory or discretionary treatment for the accused, and post-conviction release authority. If you have any questions regarding these procedural issues or need further assistance, please contact Tammy Edgerly or Carey Eskridge at 463-1143.

04Y205

Attachments

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[5] *Evolution of the Insanity Plea:* http://www.law.umkc.edu/faculty/projects/ftrials/hinckley/EVOL.HTM (accessed: March 25, 2004)

The Insanity Defense: A State-by-State Comparison of Standards

State	Source of Law	Standard	Test for Insanity	Abolished Defense
Alabama	Alabama Statutes (1988) Title 13A. Criminal Code Chapter 3. Defenses Section 13A-3-1. Mental disease or defect	Affirmative defense if the defendant as a result of severe mental disease or defect, was unable to appreciate the nature and quality or wrongfulness of his acts	M'Naghten (Variant)	
Alaska	Alaska Statutes (1982) Title 12. Code of Criminal Procedure Section 12.47.010. Insanity as Affirmative Defense	Affirmative defense that defendant was unable, as a result of a mental disease or defect, to appreciate the nature and quality of that conduct	M'Naghten (Variant)	
Arizona	Arizona Revised Statutes (1993) Title 13. Criminal Code Section 13-502. Insanity test; burden of proof; guilty except insane verdict	Person "guilty except insane" if afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong (not a "guilty but mentally ill" verdict)	M'Naghten (Variant)	
Arkansas	Arkansas Code (1975) Title 5. Criminal Offenses Section 5-2-312. Lack of capacity - Affirmative defense	Affirmative defense that defendant lacked capacity, as a result of mental disease or defect, to conform his conduct to the requirements of the law or to appreciate the criminality of his or her conduct	ALI (Variant)	

Sources: *The Journal of the American Academy of Psychiatry and the Law* 30, no. 2, 2000 supplement (updated and modified by TLC staff)
State statutes and case law

State	Source of Law	Standard	Test for Insanity	Abolished Defense
California	California Penal Code (1982) Title 1. Of Persons Liable to Punishment for Crime Sections 25 and 25.5	Not guilty by reason of insanity only if accused was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense	M'Naghten (Strict)	
Colorado	Colorado Revised Statutes (1995) Title 16. Criminal Proceedings Section 16-8-101.5. Insanity defined-offenses committed on and after July 1, 1995	A person who is so diseased or defective in mind at the time of the commission of the act as to be incapable of distinguishing right from wrong with respect to that act is not accountable. . . . A person who suffered from a condition of mind caused by mental disease or defect that prevented the person from forming a culpable mental state that is an essential element of the crime charged is not accountable	M'Naghten (Variant)	
Connecticut	Connecticut General Statutes Annotated Title 53a. Penal Code Section 53a-13. Lack of capacity due to mental disease or defect as affirmative defense	Affirmative defense that the defendant . . . lacked substantial capacity, as a result of mental disease or defect, either to appreciate the wrongfulness of his conduct or to control his conduct within the requirements of the law	ALI (Strict)	

Sources: *The Journal of the American Academy of Psychiatry and the Law* 30, no. 2, 2000 supplement (updated and modified by TLC staff)
State statutes and case law

State	Source of Law	Standard	Test for Insanity	Abolished Defense
Delaware	Delaware Code (1982) Title 11. Crimes and Criminal Procedure Section 401(a). Mental illness or psychiatric disorder	It is an affirmative defense that as a result of mental illness or defect, the accused lacked substantial capacity to appreciate the wrongfulness of the accused's conduct	ALI (Variant)	
Florida	Case Law Davis v. State (32 So. 822) (Fla. 1902)	Not criminally responsible if the defendant, by reason of a mental disease or defect, (1) does not know of the nature or consequences of his or her act; (2) is unable to distinguish right from wrong	M'Naghten (Strict)	
Georgia	Georgia Code (1968) Title 16. Criminal Code Sections 16-3-2 and 16-3-3	Not guilty when the person did not have mental capacity to distinguish between right and wrong in relation to such act, or when the person, because of mental disease, injury, or congenital deficiency, acted as he did because of a delusional compulsion as to such act which overmastered his will to resist committing the crime	M'Naghten (Variant)	
Hawaii	Hawaii Revised Statutes (1972) Chapter 704. Penal Responsibility and Fitness to Proceed Section 704-400. Physical or mental disease, disorder, or defect excluding penal responsibility	Not responsible if as a result of physical or mental disease, disorder, or defect the person lacks substantial capacity either to appreciate the wrongfulness of the person's conduct or to conform the person's conduct to the requirements of the law	ALI (Strict)	

Sources: *The Journal of the American Academy of Psychiatry and the Law* 30, no. 2, 2000 supplement (updated and modified by TLC staff)
State statutes and case law

State	Source of Law	Standard	Test for Insanity	Abolished Defense
Idaho	Idaho Statutes (1982) Title 18. Crimes and Punishments Section 18-207. Mental Condition not a Defense - Provision for Treatment During Incarceration - Reception of Evidence - Notice and Appointment of Expert	Mental condition not a defense to any charge of criminal conduct	Not Applicable	Yes
Illinois	Illinois Compiled Statutes (1995) Criminal Code of 1961 Chapter 720. Criminal Offenses Section 6-2. Insanity	Not criminally responsible if as a result of mental disease or defect, he lacks substantial capacity to appreciate the criminality of his conduct	ALI (Variant)	
Indiana	Indiana Code (1984) Title 35. Criminal Law and Procedure IC 35-41-3-6. Mental disease or defect	Not criminally responsible if as a result of mental disease or defect, he was unable to appreciate the wrongfulness of the conduct	ALI (Variant)	
Iowa	Iowa Code (1984) Title XVI. Criminal Law and Procedure Section 701.4. Insanity	No conviction if the person suffers from such a diseased or deranged condition of the mind as to render the person incapable of knowing the nature and quality of the act the person is committing or incapable of distinguishing between right and wrong in relation to that act	M'Naghten (Strict)	

Sources: *The Journal of the American Academy of Psychiatry and the Law* 30, no. 2, 2000 supplement (updated and modified by TLC staff)
State statutes and case law

State	Source of Law	Standard	Test for Insanity	Abolished Defense
Kansas	Kansas Statutes Annotated (1995) Chapter 22. Criminal Procedure Section 22-3220. Defense of lack of mental state	It is a defense to prosecution that the actor because of a mental disease or defect lacked the mental state required as element of offense	Not Applicable	Yes
Kentucky	Kentucky Revised Statutes (1988) Title L. Kentucky Penal Code Section 504.020. Mental illness or retardation	Not responsible if as a result of mental illness or retardation, [actor] lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law	ALI (Strict)	
Louisiana	Louisiana Revised Statutes (1942) Title 14. Criminal Law Section 14. Insanity	Exempt from criminal responsibility if because of a mental disease or mental defect the offender was incapable of distinguishing right from wrong with reference to the conduct in question	M'Naghten (Variant)	
Maine	Maine Revised Statutes (1985) Title 17-A. Maine Criminal Code Chapter 2. Criminal Liability; Elements of Crimes Section 39. Insanity	Not criminally responsible if as a result of mental disease or defect, [actor] lacked substantial capacity to appreciate the wrongfulness of his conduct	ALI (Variant)	

Sources: *The Journal of the American Academy of Psychiatry and the Law* 30, no. 2, 2000 supplement (updated and modified by TLC staff)
State statutes and case law

State	Source of Law	Standard	Test for Insanity	Abolished Defense
Maryland	Maryland Code (1984) Criminal Procedure Title 3. Incompetency and Criminal Responsibility in Criminal Cases Section 3-109. Test for criminal responsibility	Not criminally responsible if the defendant because of a mental disorder or mental retardation, lacks substantial capacity: (1) To appreciate the criminality of that conduct; or (2) To conform that conduct to the requirements of the law	ALI (Strict)	
Massachusetts	Case Law Commonwealth v. James N. McHoul, Jr. (226 N.E.2d 556) (Mass. 1967)	Not responsible if as a result of mental disease or defect the accused lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law	ALI (Strict)	
Michigan	Michigan Compiled Laws The Code of Criminal Procedure Section 768.21a(1). Persons deemed legally insane; burden of proof	Affirmative defense if as a result of mental illness . . . or . . . being mentally retarded . . . that person lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law	ALI (Strict)	
Minnesota	Minnesota Statutes (1971) Chapter 611. Rights of Accused Section. 611.026. Criminal responsibility of mentally ill or deficient	Excused from criminal liability if the person was laboring under such a defect of reason, from mental illness or mental deficiency, as not to know the nature of the act, or that it was wrong	M'Naghten (Strict)	

Sources: *The Journal of the American Academy of Psychiatry and the Law* 30, no. 2, 2000 supplement (updated and modified by TLC staff)
State statutes and case law

State	Source of Law	Standard	Test for Insanity	Abolished Defense
Mississippi	Case Law Laney v. State (421 So.2d 1216) (Miss. 1982)	Test is ability of the accused to realize and appreciate the nature and quality of his deeds when committed and the ability to distinguish between right and wrong	M'Naghten (Variant)	
Missouri	Missouri Revised Statutes (1994) Title XXXVII. Criminal Procedure Chapter 552. Criminal Proceedings Involving Mental Illness Section 552.030. Mental disease or defect, not guilty plea based on, pretrial investigation--evidence--notice of defense--examination, reports confidential--statements not admissible, exception--presumption of competency--verdict contents--order of commitment to department	Not responsible for criminal conduct if as a result of mental disease or defect such person was incapable of knowing and appreciating the nature, quality, or wrongfulness of such person's conduct	M'Naghten (Variant)	

Sources: *The Journal of the American Academy of Psychiatry and the Law* 30, no. 2, 2000 supplement (updated and modified by TLC staff)
State statutes and case law

State	Source of Law	Standard	Test for Insanity	Abolished Defense
Montana	Montana Code Annotated (1979) Title 46. Criminal Procedure Section 46-14-102. Evidence of mental disease or defect or developmental disability admissible to prove state of mind	Evidence of mental disease or defect admissible only to prove that defendant did not have state of mind that is element of offense	Not Applicable	Yes
Nebraska	Case Law State v. Hurst (592 N.W.2d 303) (Neb. 1999)	Elements of insanity defense are that defendant had mental disease and did not understand the nature and consequences of his actions or did not know the difference between right and wrong with respect to what he was doing	M'Naghten (Strict)	
Nevada	Nevada Revised Statutes (1995) Chapter 174. Arraignment and Preparation for Trial Section 174.035. Types of pleas; procedure for entering plea	A defendant may plead not guilty, guilty but mentally ill, or with the consent of the court, *nolo contendere*	Not Applicable	Yes uncons titutional NVSC
New Hampshire	Case Law Abbott v. Cunningham (959 F.2d 1) (766 F. Supp. 1218) (D.N.H. 1991)	No definition of insanity; jury decides whether defendant was insane. Whether the defendant was insane and whether the crimes were the product of such insanity are questions of fact for you (the jury) to decide	No standard enunciated	

Sources: *The Journal of the American Academy of Psychiatry and the Law* 30, no. 2, 2000 supplement (updated and modified by TLC staff)
State statutes and case law

State	Source of Law	Standard	Test for Insanity	Abolished Defense
New Jersey	New Jersey Permanent Statutes (1979) Title 2C New Jersey Code of Criminal Justice Section 2C:4-1 Insanity Defense	Not criminally responsible if laboring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know, that he did not know what he was doing was wrong	M'Naghten (Strict)	
New Mexico	Case Law State v. White (270 P.2d 727) (N.M. 1954)	No criminal responsibility if as a result of disease of the mind [the defendant] (a) did not know the nature and quality of the act or (b) did not know that it was wrong or (c) was incapable of preventing himself from committing it	M'Naghten (Variant)	
New York	New York State Consolidated Laws (1984) Penal Article 40. Other Defenses Involving Lack of Culpability Sec. 40.15. Mental disease or defect	No criminal responsibility if as a result of disease or defect, he lacked substantial capacity to know or appreciate either (1) the nature and consequences of such conduct or (2) that such conduct was wrong	ALI (Variant)	

Sources: *The Journal of the American Academy of Psychiatry and the Law* 30, no. 2, 2000 supplement (updated and modified by TLC staff)
State statutes and case law

State	Source of Law	Standard	Test for Insanity	Abolished Defense
North Carolina	Case Law State v. Bonney (405 S.E.2d 145) (N.C. 1991)	Not criminally responsible if laboring under such a defect of reason, from disease or deficiency of mind as to be incapable of knowing the nature and quality of his act, or if he did know this, of distinguishing between right and wrong in relation to such act	M'Naghten (Strict)	
North Dakota	North Dakota Century Code (1985) Criminal Responsibility and Post-Trial Responsibility Act Sec. 12.1-04.1-01. Standard for lack of criminal responsibility	Not criminally responsible if as a result of mental disease or defect . . . [t]he individual lacks substantial capacity to comprehend the harmful nature or consequences of the conduct, or the conduct is the result of a loss or serious distortion of the individual's capacity to recognize reality; and it is an essential element of the crime that the individual act willfully	ALI (Variant) (Substantially different from M'Naghten and ALI but broadly encompasses their elements and includes the *mens rea* element)	
Ohio	Ohio Revised Code (1990) Title XXIX. Crimes-Procedure Sec. 2901.01(A)(14). Definitions	Not guilty only if the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person's acts	M'Naghten (Variant)	

Sources: *The Journal of the American Academy of Psychiatry and the Law* 30, no. 2, 2000 supplement (updated and modified by TLC staff)
State statutes and case law

State	Source of Law	Standard	Test for Insanity	Abolished Defense
Oklahoma	Oklahoma Statutes Annotated Title 21. Crimes and Punishments Sec. 21-152. Persons Capable of Committing Crimes-Exceptions	All are capable of committing crimes, except . . . [m]entally ill persons, and all persons of unsound mind upon proof that they were incapable of knowing the act's wrongfulness	M'Naghten (Strict)	
Oregon	Oregon Revised Statutes (1971) Chapter 161. General Provisions Section 161.295. Effect of mental disease or defect; guilty except for insanity	Guilty except for insanity if as a result of mental disease or defect . . . [t]he person lacks substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of the law	ALI (Strict)	
Pennsylvania	Pennsylvania Consolidated Statutes Annotated (1982) Title 18. Crimes and Offenses Sec. 315. Insanity	Insane if laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or, if the actor did know the quality of the act, that he did not know that what he was doing was wrong	M'Naghten (Strict)	
Rhode Island	Case Law State v. Johnson (399 A.2d 469) (R.I. 1979)	Not responsible if as a result of mental disease or defect, his capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law is so substantially impaired that he cannot justly be held responsible	ALI (Strict)	

Sources: *The Journal of the American Academy of Psychiatry and the Law* 30, no. 2, 2000 supplement (updated and modified by TLC staff)
State statutes and case law

State	Source of Law	Standard	Test for Insanity	Abolished Defense
South Carolina	South Carolina Code of Laws (1984) Title 17. Criminal Procedures Section 17-24-10. Affirmative defense and Section 17-24-20. Guilty but mentally ill - general requirement for verdict	Affirmative defense if the defendant as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong	M'Naghten (Variant)	
South Dakota	South Dakota Codified Laws Title 22. Crimes Sec. 22-1-2(20). Definition of terms	Insanity is the condition of a person temporarily or partially deprived of reason, upon proof that . . . he was incapable of knowing the wrongfulness of his act	M'Naghten (Variant)	
Tennessee	Tennessee Code (1995) Title 39. Criminal Offenses Sec. 39-11-501. Insanity	Affirmative defense that the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature or wrongfulness of such defendant's acts	M'Naghten (Variant)	
Texas	Texas Penal Code (1983) Chapter 8. General Principles of Criminal Responsibility Sec. 8.01. Insanity	Affirmative defense that the actor, as a result of mental disease or defect, did not know that his conduct was wrong	M'Naghten (Variant)	

Sources: *The Journal of the American Academy of Psychiatry and the Law* 30, no. 2, 2000 supplement (updated and modified by TLC staff)
State statutes and case law

State	Source of Law	Standard	Test for Insanity	Abolished Defense
Utah	Utah Code Annotated (1983) Title 76, Utah Criminal Code Chapter 2. Principles of Criminal Responsibility Sec. 76-2-305. Mental illness--Use as a defense--Influence of alcohol or other substance voluntarily consumed--Definition	Defense that defendant as a result of mental illness, lacked the mental state required as an element of the offense charged; mental illness is not otherwise a defense	Not Applicable	Yes
Vermont	Vermont Statutes (1957) Title 13. Crimes and Criminal Procedure Chapter 157. Insanity as a Defense Sec. 4801. Test of insanity in criminal cases	Not responsible for criminal conduct if as a result of mental disease or defect [the actor] lacks adequate capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law	ALI (Variant)	
Virginia	Case Law Bennett v. Commonwealth (511 S.E.2d 439) (Va.1999)	Insane if the accused's mind has become so impaired by disease that he is totally deprived of the mental power to control or restrain his act or he or she did not understand the nature, character, and consequences of his or her act, or was unable to distinguish right from wrong	M'Naghten (Variant)	

Sources: *The Journal of the American Academy of Psychiatry and the Law* 30, no. 2, 2000 supplement (updated and modified by TLC staff)
State statutes and case law

State	Source of Law	Standard	Test for Insanity	Abolished Defense
Washington	Revised Code of Washington. Title 9A. Washington Criminal Code Sec. 9A.12.010. Insanity	Defense of insanity is established if as a result of mental disease or defect, the mind of the actor was affected to such an extent that: (a) he was unable to perceive the nature and quality of the act with which he is charged; or (b) he was unable to tell right from wrong with reference to the particular act charged	M'Naghten (Strict)	
West Virginia	Case Law State v. Grimm (195 S.E.2d 637) (W.Va. 1973)	Not held criminally responsible if, because of a mental disorder, the defendant lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law	ALI (Strict)	
Wisconsin	Wisconsin Statutes (1969) Chapter 971. Criminal Procedure Proceedings Before and at Trial Sec. 971.15. Mental responsibility of defendant	Not responsible for criminal conduct if as a result of mental disease or defect the person lacked substantial capacity either to appreciate the wrongfulness of his or her conduct or conform his or her conduct to the requirements of the law	ALI (Strict)	

Sources: *The Journal of the American Academy of Psychiatry and the Law* 30, no. 2, 2000 supplement (updated and modified by TLC staff)
State statutes and case law

State	Source of Law	Standard	Test for Insanity	Abolished Defense
Wyoming	Wyoming Statutes (1975) Title 7. Criminal Procedure. Chapter 11. Trial and Matters Incident Thereto Article 3. Mental Illness or Deficiency Sec. 7-11-304. Responsibility for criminal conduct; plea; examination; commitment; use of statements by defendant	Defense if defendant as a result of mental illness or deficiency . . . lacked capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law	ALI (Variant)	

Sources: *The Journal of the American Academy of Psychiatry and the Law* 30, no. 2, 2000 supplement (updated and modified by TLC staff)
State statutes and case law