

BILL ANALYSIS

S.B. 480
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Criminal Jurisprudence
Committee Report (Amended)

BACKGROUND AND PURPOSE

Interested parties observe that appeals from decisions of the two types of municipal courts in Texas, municipal courts and municipal courts of record, are handled by county-level courts. Generally, decisions of the county-level courts concerning appeals from municipal courts can be further appealed to a state court of appeals. However, interested parties observe that a defendant in a municipal court of record who is fined \$100 or less cannot make a further appeal to a state court of appeals unless the issue to be appealed is a challenge to the constitutionality of the statute or ordinance on which the defendant's conviction is based.

S.B. 480 seeks to create consistency between the two types of municipal courts by giving defendants in municipal courts of record who are fined \$100 or less the right to make an appeal to a state court of appeals if the issue to be appealed is a challenge to the constitutionality of the statute or ordinance on which the defendant's conviction is based.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 480 amends the Code of Criminal Procedure to expand the limitation on the appellate jurisdiction of the courts of appeals to include any case which has been appealed from any inferior court to the county court, the county criminal court, or county court at law, in which the fine affirmed by the respective court does not exceed one hundred dollars, unless the sole issue is the constitutionality of the statute or ordinance on which the conviction is based.

S.B. 480 amends the Government Code to grant an appellant, with respect to a judgment in a municipal court of record, the right to appeal to a court of appeals if the sole issue is the constitutionality of the statute or ordinance on which a conviction is based.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

EXPLANATION OF AMENDMENTS

Amendment No. 1

Amendment No. 1 amends the Government Code to authorize a party in a hearing or trial in a municipal court, including a municipal court of record, to file with the clerk of the court a motion stating grounds for the recusal or disqualification of the municipal judge that may include any disability of the judge to preside over the case. The amendment requires a motion for the recusal or disqualification of a municipal judge to be filed at least 10 days before the date of the

hearing or trial, unless the judge is assigned to a case 10 or fewer days before the date set for a trial or hearing, in which case the motion must be filed at the earliest practicable time before the beginning of the trial or hearing. The amendment requires a motion to be verified and to state with particularity the alleged grounds for recusal or disqualification of the judge based on personal knowledge that is supported by admissible evidence or specifically stated grounds for belief of the allegations.

Amendment No. 1 requires a party filing a motion for recusal or disqualification to serve on all other parties or their counsel copies of the motion and notice that the movant expects the motion to be presented to the judge three days after the filing of the motion unless the judge orders otherwise. The amendment authorizes a party to file with the clerk of the court a statement opposing or concurring with a motion for recusal or disqualification at any time before the motion is heard.

Amendment No. 1 requires a judge, before further proceedings in a case in which a motion for the recusal or disqualification of a municipal judge has been filed, to recuse or disqualify himself or herself or to request the regional presiding judge to assign a judge to hear the motion. The amendment requires a municipal judge who with or without a motion recuses or disqualifies himself or herself to enter an order of recusal or disqualification and do one of the following:

- if the municipal judge is not the presiding judge, request the presiding judge to assign any other judge of the municipal court, including the presiding judge, to hear the case;
- if the municipal judge is the presiding judge, request the regional presiding judge to assign another judge of the municipal court to hear the case; or
- if the municipal judge serves in a municipality with only one municipal judge, request the regional presiding judge to assign a judge of another municipal court in the county to hear the case.

The amendment prohibits a municipal judge who with or without a motion recuses or disqualifies himself or herself from taking other action in the case, except if the judge recuses himself or herself for good cause, in which case the judge may take other action as stated in the order in which the action is taken. The amendment requires a municipal judge who does not recuse or disqualify himself or herself to forward, in original form or certified copy, an order of referral, the motion, and all opposing and concurring statement to the regional presiding judge and prohibits the municipal judge from taking other action in the case during the time after the filing of the motion for recusal or disqualification and before a hearing on the motion, except for good cause stated in the order in which the action is taken.

Amendment No. 1 requires a regional presiding judge who receives a request for the assignment of a judge to hear a motion to recuse or disqualify to immediately set a hearing before the regional presiding judge, an active judge, or a judge on the list of retired and former judges who are eligible to serve on assignment, and to cause notice of the hearing to be given to all parties or their counsel and make any other orders, including orders on interim or ancillary relief in the pending cause as justice may require. The amendment authorizes a judge who hears a motion for recusal or disqualification to hear any amended or supplemented motion for recusal or disqualification filed in the case and authorizes a hearing on a motion or any amended or supplemented motion, if none of the parties to an action object, to be conducted by telephone.

Amendment No. 1 requires the judge who heard a motion for recusal or disqualification, if the motion is granted after a hearing is conducted, to enter an order of recusal or disqualification and do one of the following:

- if the judge who was the subject of the motion is not the presiding judge, to request that the presiding judge assign any other judge of the municipality, including the presiding judge, to hear the case;
- if the judge who was the subject of the motion is the presiding judge, request the regional

presiding judge to assign another judge of the municipality to hear the case; or

- if the judge subject to recusal or disqualification is located in a municipality with only one municipal judge, request the regional presiding judge to assign a judge of another municipal court in the county to hear the case.

The amendment requires a presiding judge who is unable to assign a judge of the municipality to hear a case when a municipal judge is recused or disqualified because there are not any other municipal judges in the municipality or because all the municipal judges have been recused or disqualified or are otherwise unavailable to hear the case, to request the regional presiding judge to first assign a municipal judge from another municipality in the country, or, if necessary, assign a municipal judge from a municipality in an adjacent county to hear the case. The amendment authorizes a regional presiding judge who is unable to assign a judge to hear a case when a municipal judge is recused or disqualified because there are not any other municipal judges in the county or because all the municipal judges have been recused or disqualified or are otherwise unavailable to hear the case, to assign a municipal judge from a municipality in an adjacent county to hear the case.

Amendment No. 1 authorizes a party, after a municipal court of record has rendered a final judgment in a case, to appeal an order that denies a motion for recusal or disqualification as an abuse of the court's discretion and prohibits a party from appealing an order that grants a motion for recusal or disqualification.

Amendment No. 1 authorizes a judge hearing a motion for recusal or disqualification of a municipal judge, if a party files a motion to recuse or disqualify and it is determined by the judge, at the hearing and on motion of the opposing party, that the motion to recuse or disqualify is brought solely for the purpose of delay and without sufficient cause, to find, in the interest of justice, the party filing the motion in contempt of court.

Amendment No. 1 establishes that an active judge who is assigned to hear a motion to recuse or disqualify a municipal judge is not entitled to additional compensation other than travel expenses and entitles a judge assigned to hear such a motion who is not an active judge to compensation of \$450 per day of service, prorated for any day for which the judge provides less than a full day of service and travel expenses. The amendment entitles a municipal judge assigned to hear a case on the recusal or disqualification of a municipal judge in a court other than the one in which the assigned judge resides or serves to compensation provided by law for judges in similar cases and travel expenses. The amendment requires the municipality in which a municipal judge recusal or disqualification case is pending to pay the compensation and travel expenses due or incurred under statutory provisions relating to the recusal or disqualification of municipal judges.

Amendment No. 1 requires the secretary of the municipality in a municipality with a municipal court, including a municipal court of record, or the employee responsible for maintaining the records of the municipality's governing body to notify the Texas Judicial Council of the name of each person who is elected or appointed as mayor, municipal court judge, or clerk of a municipal court and each person who vacates any such office. The amendment requires the secretary or employee to notify the council not later than the 30th day after the date of the person's election or appointment to office or vacancy from office.

Amendment No. 1 defines "active judge," "presiding judge," and "regional presiding judge."

Amendment No. 1 repeals Section 29.012, Government Code, relating to the authority of a certain municipal court judge to sit for a disqualified or recused municipal court judge, and Section 22.073(c), Local Government Code, relating to the powers and duties of the secretary of a municipality.