

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 19, 2021

TO: Honorable Joan Huffman, Chair, Senate Committee on Jurisprudence

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3774 by Leach (Relating to the operation and administration of and practice and procedure related to proceedings in the judicial branch of state government.), As Engrossed

Estimated Two-year Net Impact to General Revenue Related Funds for HB3774, As Engrossed : a negative impact of (\$5,632,000) through the biennium ending August 31, 2023.

A state agency subject to this Act is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the agency may, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	<i>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</i>
2022	(\$2,544,000)
2023	(\$3,088,000)
2024	(\$3,179,000)
2025	(\$3,179,000)
2026	(\$3,179,000)

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	<i>Probable Savings/(Cost) from General Revenue Fund 1</i>	<i>Probable Savings/(Cost) from Judicial Fund 573</i>	<i>Change in Number of State Employees from FY 2021</i>
2022	(\$2,544,000)	(\$848,000)	7.0
2023	(\$3,088,000)	(\$1,029,000)	9.6
2024	(\$3,179,000)	(\$1,060,000)	10.0
2025	(\$3,179,000)	(\$1,060,000)	10.0
2026	(\$3,179,000)	(\$1,060,000)	10.0

Fiscal Analysis

The bill would amend the Government Code to create the 478th Judicial District of Bell County; 480th Judicial District of Williamson County; 481st Judicial District of Denton County; 482nd Judicial District of Harris County, which would be required to give preference to criminal cases; 483rd Judicial District of Hays County; 484th Judicial District of Cameron County, which would be required to give preference to juvenile matters; 474th Judicial District of McLennan County; 475th Judicial District of Smith County; 476th Judicial District of Hidalgo County; and the Criminal Judicial District No. 5 of Tarrant County.

The bill would amend the Government Code to increase the amount the state reimburses counties with statutory probate judges from \$40,000 annually to an annual amount equal to 60 percent of the annual base salary of a district judge as set in the General Appropriations Act (\$84,000). The bill would repeal the requirement that deputy clerks in certain courts serve at the pleasure of the judge of the court to which the deputy is assigned.

The bill would amend the Government Code to create the Probate Court Number 2 of Denton County on September 1, 2021. The bill would give County Court at Law 2 of Denton County jurisdiction over all civil causes and proceedings, regardless of amount in controversy for eminent domain and direct and inverse condemnation cases. The bill would also create the Kendall County Court at Law on October 1, 2022, and would establish the court's jurisdiction and set the salary to be paid to the court's judge.

The bill would also create County Court at Law No. 3 of McLennan County and County Court at Law No. 6 in Montgomery County on the bill's effective date and County Court at Law No. 2 of San Patricio County on January 1, 2023. The bill would add provisions for the clerk in the San Patricio County Courts at Law, and modify the jurisdiction of the San Patricio County Courts at Law to be consistent with general law for county courts at law. The bill would modify the Reeves County Court at Law to provide that the court has jurisdiction in family law cases and proceedings.

The bill would provide that the Tarrant County Criminal Court No. 6 is to give preference to certain cases and would create County Court at Law No. 5 of Williamson County on October 1, 2022.

The bill would modify the requirements for a constitutional county judge to receive an annual salary supplement from the state provide that a judge is eligible for the supplement if 18% of the judge's total hours worked are judicial functions.

The bill would amend the Code of Criminal Procedure to prohibit a judge or justice from accepting a plea of guilty or nolo contendere unless the defendant appears mentally competent, and the plea is free and voluntary.

The bill would provide that the clerk of a municipal court may collect money payable to the municipal court under Code of Criminal Procedure Title 2. The bill would expand the scope of Article 103.0081 to cover uncollectible fines.

The bill would amend the Family Code to define "dual status child" and clarify provisions applicable to dual status children. The bill would also amend the Family Code to require attorneys ad litem to report certain items to the court at certain hearings or request that the court find that noncompliance was for good cause in certain instances.

The bill would amend the Code of Criminal Procedure to allow a habeas corpus applicant to serve a copy of the application for writ of habeas corpus to the state attorney by secure electronic mail the attorney has on file with the electronic filing system or another form of secure electronic transmission.

The bill would amend the Government Code to create the Brazoria County Criminal Magistrate Court. Under the bill's provisions, the commissioners court of Brazoria County, upon recommendation of the local administrative district judge, could appoint one or more full or part time criminal magistrate judges to preside over the court for a term designated by the commissioners court. The bill would also authorize the local administrative district judge to make the appointment if the commissioners court is prohibited by law from doing so. The bill would set out the qualifications, powers and duties, and salary of the judges, as well as operating procedures.

The bill would amend the Code of Criminal Procedure to permit any person authorized to administer oaths to do so for purposes of obtaining a warrant of arrest or a summons. Current law only permits magistrates to administer the oath in these instances.

The bill would amend the Government Code to modify the composition and duties of the Capital and Forensic Writs Committee.

The bill would amend the Family Code to modify various duties of clerks related to the transferring of certain court files using the electronic filing system established under Government Code Section 72.031. The bill would amend the Government Code to require the Office of Court Administration (OCA) to adopt rules prescribing the documents to be transferred between courts when a transfer of a case or proceeding is ordered under certain Family Code Sections.

The bill would amend the Government Code to allow OCA to allow public access to view information or documents in the state court document database and to charge a reasonable fee for additional optional features in the database.

The bill would amend the Code of Criminal Procedure to allow a habeas corpus applicant to serve a copy of the application for writ of habeas corpus to the state attorney by the secure electronic mail the attorney has on file with the electronic filing system or another form of secure electronic transmission.

The bill would amend the Civil Practice and Remedies Code to remove the requirement that an affidavit be provided by OCA for proof of citation being published on the public information internet website maintained by OCA and instead requires a statement.

The bill would amend the Code of Criminal Procedure to require the Forensic Science Commission to adopt a code of professional responsibility to regulate the conduct of certain persons, laboratories, facilities, and other entities. The bill would expand what allegations the Commission must investigate related to professional negligence or misconduct. Then bill would also permit the Commission to use appropriated funds for training and education of forensic analysts.

The bill would amend the Government Code to give jurors an option to donate a specified amount of a person's daily jury reimbursement to a veterans county service office. The bill would place certain limitations on how the donations may be spent. The bill would also modify the amount a judge may spend on jury meals from \$3 per meal to a reasonable amount.

The bill would amend the Government Code to permit a judge or magistrate of a district court or statutory county court authorized to hear criminal cases to be appointed to preside over a regional specialty court program in certain circumstances. The bill would also amend the Government Code to allow a veterans treatment court program to transfer responsibility for supervising the defendant's participation in the program to an adjacent county where the defendant works or resides and allows a court to place the defendant in a veterans treatment court program located in a county adjacent to the county where the defendant works or resides, if the county where the defendant is charged does not operate a veterans treatment court program.

The bill would amend the Government Code to clarify and add protective orders that must be included in the protective order registry maintained by OCA to include those issued by a court under Subchapter A, Chapter 7B, Code of Criminal Procedure. The bill would also require OCA to remove certain records of protective orders that have been vacated as detailed by the bill.

The bill would amend the Government Code to provides that the Ector County District Attorney is responsible for representing the state in all criminal matters, juvenile matters, and child termination suits involving CPS in Ector County.

The bill would amend the Government Code to require the Supreme Court of Texas to adopt rules regarding exemptions from seizure of property by judgment creditors.

The bill would amend Code the Criminal Procedure to require a sheriff or municipal jailer to provide certain written or electronic notice to the magistrate within a certain number of hours regarding credible information

that may establish reasonable cause to believe a defendant has a mental illness or is a person with an intellectual disability, without regard to the offense category level. Current law only requires this for Class B offenses or above.

The bill would amend the Code of Criminal Procedure to repeal the prohibition of a magistrate releasing an accused person on bond if the accused person has previously been convicted of a felony or a misdemeanor other than a fine-only misdemeanor. The bill would provide that if before the expiration of a 48-hour period following the setting of bail a defendant remains in custody for a misdemeanor punishable by fine only and does not give a required bail bond, a justice or judge must reconsider certain bail bond requirements and presume the defendant does not have sufficient resources or income to give bond and may require the defendant to give a personal bond.

The bill would permit a judge hearing a fine-only offense involving family violence to order a law enforcement officer to take the fingerprints of a defendant where the law requires the taking of a fingerprint.

The bill would amend the Code of Criminal Procedure to include court reporters as an officer who may take certain depositions and specifies conditions when a court reporter can administer an oath to a witness who is outside of the state. The bill would provide that a court reporter may comply with Texas Rules of Appellate Procedure Rule 13.6 by electronically filing with the trial court clerk, within a certain amount of time, the untranscribed notes created by the court reporter using computer-aided software. The bill would also provide that a certified shorthand reporter may be appointed by more than one judge of a court of record to serve more than one court. The bill would provide that an official court reporter may remotely serve any court to which the reporter is appointed and may remotely service any other court of record with certain approval and agreement.

The bill would require OCA to coordinate the development of a model interlocal agreement that may be used by counties or courts to share the compensation and expenses of an official court reporter or deputy court reporter who serves more than one court of record.

The bill would amend the Government Code to require the Office of Court Administration to develop one or more databases of official court reporters and deputy court reporters willing and authorized to serve as a reporter in a court other than the court to which the reporter is appointed in certain circumstances. The bill would also expand the scope of where a shorthand reporter may administer oaths to witnesses.

The bill would amend the Election Code to provide that the home address of a state judge listed on an application may only be made available to the public for in-person review in certain places and that before a person reviews an address the person's name and other information must be recorded and provided to the judge not later than the 2nd day after review.

The bill would amend the Government Code to provide that a court in Texas, as the court determines appropriate, on the court's own motion or on the motion of any party, may conduct a hearing or other proceeding as a remote proceeding and allow or require a judge, party, attorney, witness, court reporter, juror, or another individual to participate in a remote proceeding, including a deposition, hearing, trial, or other proceeding. The bill would require the court that elects to conduct a remote proceeding to follow certain procedures and the bill outlines how the court can hear certain remote proceedings. The bill would repeal Civil Practice and Remedies Code Section 30.012(b) and Family Code Section 54.012(b). The bill would require the Supreme Court of Texas to adopt rules necessary to implement the changes in the law relating to remote proceedings.

The bill would require the Texas Legislative Council, with the assistance of OCA, to prepare for consideration by the 88th Legislature a non-substantive revision of the statutes as necessary to reflect the changes in law.

The bill would take effect September 1, 2021. The 480th Judicial District would be created on October 1, 2022. The 483rd Judicial District of Hays County would be created on September 1, 2022. The 475th Judicial District of Smith County would be created January 1, 2023. The Kendall County Court at Law would be created October 1, 2022. The County Court of Law No. 2 of San Patricio County would be created January 1, 2023. The County Court at Law No. 5 of Williamson County would be created October 1, 2022.

Methodology

Costs reflected in the tables above are based on analysis provided by OCA, the Comptroller of Public Accounts, and the Office of Capital and Forensic Writs (OCFW).

Biennial costs for the bill include salaries for ten district judges and related benefit costs, salary reimbursement for the statutory probate court judge, salary reimbursement for a statutory county court judge, as well as costs associated for ten visiting judges for the newly created district courts.

Personnel costs for the judicial districts created by the bill are based on the current base salary for a district judge (\$140,000) as set forth in the General Appropriations Act, Article IV. The bill would create seven new district courts as of the effective date; one as of September 1, 2022; one as of October 1, 2022; and one as of January 1, 2023. Salary costs for these positions would total \$980,000 in fiscal year 2022; \$1,342,600 in fiscal year 2023; and \$1,400,000 in subsequent years. Operating and payroll related benefit costs for these positions would total \$410,004 in fiscal year 2022; \$561,705 in fiscal year 2023; and \$585,720 in subsequent years.

The state currently contributes \$40,000 per year for each statutory probate court. Under the bill's provisions, that amount would increase to \$84,000 per year. There are currently 19 statutory probate courts that would receive the \$44,000 increase in addition to Probate Court Number 2 of Denton County, which is created by the bill and would receive the full \$84,000. Costs for the state's contributions to statutory probate courts under the bill's provisions would total \$876,000 each year.

The state also contributes 60 percent of a district judge's base pay of \$140,000 (\$84,000) for a county court at law judge. The bill would create two county courts at law as of the effective date of the bill; two as of October 1, 2022; and one as of January 1, 2023. State costs for these positions would total \$168,000 in fiscal year 2022; \$378,840 in fiscal year 2023; and \$420,000 in subsequent years.

Under current law, a county judge is entitled to an annual salary supplement of from the state in an amount equal to \$25,200 if 40 percent of the judge's functions are judicial. The bill would lower the threshold to 18 percent. This analysis assumes all 38 county judges that currently do not receive a state salary supplement could become eligible under the reduced threshold.

Based on information provided by OCA and OCFW, this analysis assumes that the remaining duties and responsibilities assigned to OCA, OCFW, and the Forensic Science Commission to implement the provisions of the bill could be accomplished utilizing existing resources.

Local Government Impact

According to OCA, local governments pay operating costs associated with district courts and CCLs, such as office space, computer equipment, furniture, and court staff. The appointment of the Brazoria County Criminal Law Magistrates is discretionary with the commissioners court, and OCA assumes that the county will only do so if sufficient resources are available.

According to Tom Green County, the bill's provisions pertaining to Tom Green County is expected to have a moderate positive fiscal impact. The only anticipated costs will be the magistrate's salary and expenses. The bill's provisions will allow expedited processing of the Courts' dockets, potentially reduced jail time for defendants pre-indictment from faster processing.

Hidalgo County anticipates a fiscal impact of \$719,113 in fiscal year 2022, \$702,569 in FY 23, \$737,697 in FY 24, \$774,582 in FY 25, and \$813,311 in FY 26. These costs are not anticipated to be significant after the first fiscal year.

Source Agencies: 212 Office of Court Admin, 215 Ofc of Capital and Forensic Writs, 304 Comptroller of Public Accounts

LBB Staff: JMc, SLE, MW, BH, AF