

BILL ANALYSIS

S.B. 1612
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Last session, the legislature passed H.B. 3774, which was greeted with enthusiasm from county and district clerks. The bill standardized the process for transferring civil and family cases from one court to another. The same legislature also passed S.B. 41, which provided for more uniformity regarding court fees for such cases. S.B. 1612 seeks to bring the same standardization and uniformity to probate and guardianship cases, resolve certain uncertainties that have arisen since the successful implementation of S.B. 41, and revise certain motion fees and copy costs.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 1612 revises provisions relating to standardization of court administration procedures, costs, and certain filing fees.

Transfer of Probate and Guardianship Proceedings

S.B. 1612 amends the Estates Code to establish the following with respect to the transfer of probate and guardianship proceeding records:

- the clerk of the transferring court must send to the clerk of the court to which the proceeding is transferred using the electronic filing system established by the Texas Supreme Court for the filing of documents in Texas courts the following documents:
 - a transfer certificate and index of transferred documents;
 - a copy of each final order;
 - a copy of the order of transfer signed by the transferring court;
 - a copy of the original papers filed in the transferring court, including a copy of any will if applicable;
 - a copy of the transfer certificate and index of transferred documents from each previous transfer; and
 - a bill of any costs accrued in the transferring court;
- the clerk of the transferring court must use the standardized transfer certificate and index of transferred documents form developed by the Office of Court Administration of the Texas Judicial System (OCA) when transferring a proceeding;
- the clerk of the transferring court must keep a copy of the transferred documents;

- the clerk of the court to which the proceeding is transferred must accept the transferred documents, docket the proceeding, and notify, using the electronic filing system, all parties to the proceeding, the clerk of the transferring court, and, if appropriate, notify the transferring court's local registry that the proceeding has been docketed; and
- the clerk of the transferee court must physically or electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance but may not physically or electronically mark or stamp any other transferred document.

The bill authorizes the clerks of both the transferee and transferring courts to each produce certified or uncertified copies of the transferred probate or guardianship documents, as applicable, but the clerks must include a copy of the transfer certificate and index of transferred documents with each document produced. The bill establishes that Government Code provisions relating to the delivery of notice or document do not apply to the transfer of those proceeding documents.

S.B. 1612 revises provisions relating to the transfer of a guardianship proceeding as follows:

- sets at not later than the 10th working day after the date an order of transfer is signed the deadline by which the clerk must record any unrecorded papers of the guardianship required to be recorded;
- removes the following from the documents required to be transferred:
 - the case file of the guardianship proceedings; and
 - a certified copy of the index of the guardianship records;
- requires the clerk of the transferring court to send a certified copy of the order directing payments to:
 - any party affected by the order and, if appropriate, to the local registry of the transferee court using the electronic filing system; and
 - an employer affected by the order electronically or by first class mail; and
- clarifies that the transfer of a guardianship does not take effect until the clerk of the court to which the proceeding is transferred accepts and docketed the case according to the bill's provisions.

S.B. 1612 repeals an Estates Code provision that authorizes the transmittal of a probate proceeding's original file and the certified copy of the index to be in electronic or paper form, except for an original will which must be delivered to the court to which the proceeding is transferred.

S.B. 1612 amends the Government Code to require OCA, as soon as practicable after January 1, 2024, to develop and make available a standardized transfer certificate and an index of transferred documents form to be used for the transfer of probate and guardianship proceedings.

S.B. 1612 provisions relating to probate and guardianship proceedings take effect September 1, 2023.

Transfer of Cases From District and County Courts

S.B. 1612 revises statutory provisions as follows relating to the transfer of cases from a district court or from a county court, as applicable:

- specifies that the electronic filing system requirements for a transfer from a district court to a county court are also applicable to a transfer from a district court to a constitutional or statutory county court or another district court;
- specifies that electronic system filing requirements for a transfer from a county court to a district court are also applicable to a transfer from a court to a statutory county court or a county court of another county;
- authorizes the clerks of both the transferee and transferring courts to produce certified or uncertified copies of transferred documents;

- requires the clerks of both the transferee and transferring courts to include a copy of the transfer certificate and index of transferred documents with each document produced; and
- makes provisions regarding these transfers applicable regardless of whether the transferee court and the transferring court are in the same or different counties.

These bill provisions relating to the transfer of cases take effect September 1, 2023.

S.B. 1612 repeals the Code of Criminal Procedure provision that establishes that a county that pays for a juvenile's counsel and the juvenile has been transferred to a criminal court has a cause of action against a parent or other person who is financially able to employ counsel for the juvenile but refuses to do so. The repeal of this provision applies to such a case transferred to a criminal court under the juvenile justice code on or after September 1, 2023.

Court Clerk Fees

S.B. 1612 sets the following fees for certain services performed by a district court clerk:

- for a certified copy of a record, judgment, order, pleading, or paper on file or of record in the district clerk's office for each page or part of a page:
 - printed on paper, \$1;
 - that is a paper document converted to electronic format, \$1; or
 - that is an electronic copy of an electronic document:
 - for a document up to 10 pages in length, \$1; and
 - for each page or part of a page over 10 pages, \$0.10; and
- for preparation of the clerk's record of transfer of applicable documents for probate proceedings, guardianship proceedings, and certain suits affecting the parent-child relationship:
 - for the clerk's transfer certificate and index, \$5;
 - for each page or part of a page of a case record up to 10 pages in length, \$1; and
 - for each page or part of a page of a case record over 10 pages, \$0.10.

S.B. 1612 amends the Local Government Code to require a county clerk to collect the following non-court fees for services related to certified and noncertified papers rendered to any person:

- printed on paper, plus a fee for each page or part of a page, \$1;
- that is a paper document converted to electronic format, for each page or part of a page, \$1; and
- that is an electronic copy of an electronic document:
 - for each document up to 10 pages in length, \$1; and
 - for each page or part of a page of a document over 10 pages, \$0.10.

S.B. 1612 requires each clerk of a county court to collect the following fees for services rendered to any person:

- preparation of the clerk's record of probate and guardianship proceeding transfers, transfer of court files, and transfer of cases from applicable courts:
 - for the clerk's transfer certificate and index, \$5;
 - for each page or part of a page of a case record up to 10 pages in length, \$1.00; and
 - for each page or part of a page of a case record over 10 pages, \$0.10; and
- other fees with respect to certified papers:
 - printed on paper, plus a fee per page or part of a page, \$1;
 - that is a paper document converted to electronic format, for each page or part of a page, \$1; and
 - that is an electronic copy of an electronic document for each document up to 10 pages in length, \$1, and for each page or part of a page of a document over 10 pages, \$0.10.

The bill clarifies that the services for which the commissioners court of a county may set reasonable fees are for service of process, including service of writs, by the offices of the sheriff and constables.

S.B. 1612 revises the following with respect to the state consolidated civil fee on filing a civil case:

- replaces the action of an appeal with a motion to reinstate for which the clerk of a district court, statutory county court, statutory probate court, or county court must collect a \$45 fee; and
- includes the filing of a motion to reinstate in the actions for which the clerk of a justice court must collect a \$21 fee.

S.B. 1612, effective January 1, 2024, repeals a Local Government Code provision that requires the county and district clerks to collect a fee of \$1 for filing any document not subject to a filing for certain fees, establishes the county is not liable for the costs, and requires the county or district clerk, as appropriate, to collect that fee.

S.B. 1612 changes the entity authorized to use money collected from certain criminal and civil fees allocated to the records management and preservation fund from the applicable county to the clerk of the court who collects the fee, upon commissioners court approval, as applicable with respect to civil fees. The bill includes a motion to reinstate among the actions for which a person must pay a local consolidated filing fee of \$35 for certain civil cases in a district court, statutory county court, or county court or a fee of \$33 for certain civil cases in a justice court.

S.B. 1612 amends the Family Code to revise court fees relating to certain suits affecting the parent-child relationship as follows:

- raises from \$15 to \$80 the fee that a court clerk may collect for the filing of such a suit for an applicable action;
- removes a motion to transfer as an action for which the clerk may collect that filing fee;
- raises from \$45 to \$80 the filing fee for a transferred case that is payable to the court clerk to which the case is transferred; and
- establishes that the fees are to be remitted and allocated as provided by statutory provisions relating to civil fees payable to a local government, and as applicable, as provided by provisions relating to fees payable to the comptroller of public accounts.

Juvenile Justice Code

S.B. 1612 does the following, effective September 1, 2023:

- makes the sending county in a transfer between counties of a child's probation supervision financially responsible for any special treatment program or placement that the juvenile court of the sending county requires as a condition of probation, regardless of whether the child's family is financially unable to pay for the program or placement; and
- removes from the applicability of statutory provisions regarding the rights and responsibilities of parents and other eligible persons a proceeding to enter a juvenile court order requiring the parent or other eligible person to reimburse the county for payments the county has made to an attorney appointed to represent the child in a juvenile proceeding.

These provisions apply to the authority of a juvenile court to impose a fee or cost on or after September 1, 2023, regardless of whether the underlying action commenced before, on, or after September 1, 2023.

Repealed Provisions

S.B. 1612 repeals Family Code provisions that do the following:

- authorize a juvenile court to enforce, by certain methods, an order requiring a child's parent or other person responsible for support of the child to employ an attorney to represent the child;
- authorize a court to order the parent or other person responsible for support of the child to pay fees and reimburse the county for payments the county made to counsel appointed to represent the child;
- prohibit the court from ordering payments that exceed the financial ability of the parent or other person responsible for support of the child to meet the payment schedule ordered by the court;
- authorize the juvenile board to adopt a fee schedule for deferred prosecution services and rules for the waiver of a fee for financial hardship;
- require a court to require the child or the child's parent or other person responsible for the child's support to pay the cost of attending an applicable educational program; and
- require the court to order the child, parent, or other person responsible for the child's support to pay a court fee during the period that the child continues on probation.

The repeal of these provisions applies to the authority of a juvenile court to impose a fee or cost on or after September 1, 2023, regardless of whether the underlying action commenced before, on, or after September 1, 2023.

S.B. 1612 repeals the requirement in the Family Code for the court, at any stage of the proceeding and when a child has been placed outside the child's home and the parent is obligated to pay child support, to order that the person entitled to receive the support assign the person's right to support for the child to the local juvenile probation department. The repeal applies only to an order for assignment of child support rendered on or after September 1, 2023.

S.B. 1612 repeals the authorization in the Family Code for the court to order the child, the child's parent, or other person responsible for support of the child to pay the child's costs of appeal, including the costs of representation by an attorney, unless the court determines the person to be ordered to pay the costs is indigent.

S.B. 1612 repeals the following provisions:

- effective September 1, 2023:
 - Article 26.057, Code of Criminal Procedure;
 - Section 33.103(c), Estates Code;
 - Sections 51.10(e), (k), and (l), Family Code;
 - Section 53.03(d), Family Code;
 - Section 54.0404(b), Family Code;
 - Section 54.06, Family Code;
 - Section 54.061, Family Code; and
 - Section 56.01(l), Family Code; and
- effective January 1, 2024, Section 291.008, Local Government Code.

EFFECTIVE DATE

Except as otherwise provided, January 1, 2024.