

# COURT OF CRIMINAL APPEALS

## Analysis of Activity for the Year Ending August 31, 1991

The Court of Criminal Appeals is the highest State court for criminal appeals and is composed of a Presiding Judge and eight judges. Additionally, pursuant to Section 22.106 of the Texas Government Code, special commissioners may be designated to aid and assist the court as needed.

Until September 1, 1981, the Court of Criminal Appeals received all criminal cases appealed from the district and county-level trial courts of the State. On that date, a constitutional amendment and implementing legislation became effective

which conferred on the 14 Courts of Appeals intermediate appellate jurisdiction in all criminal cases except those in which the death penalty was assessed. Appeal of death penalty cases remains direct to the Court of Criminal Appeals.

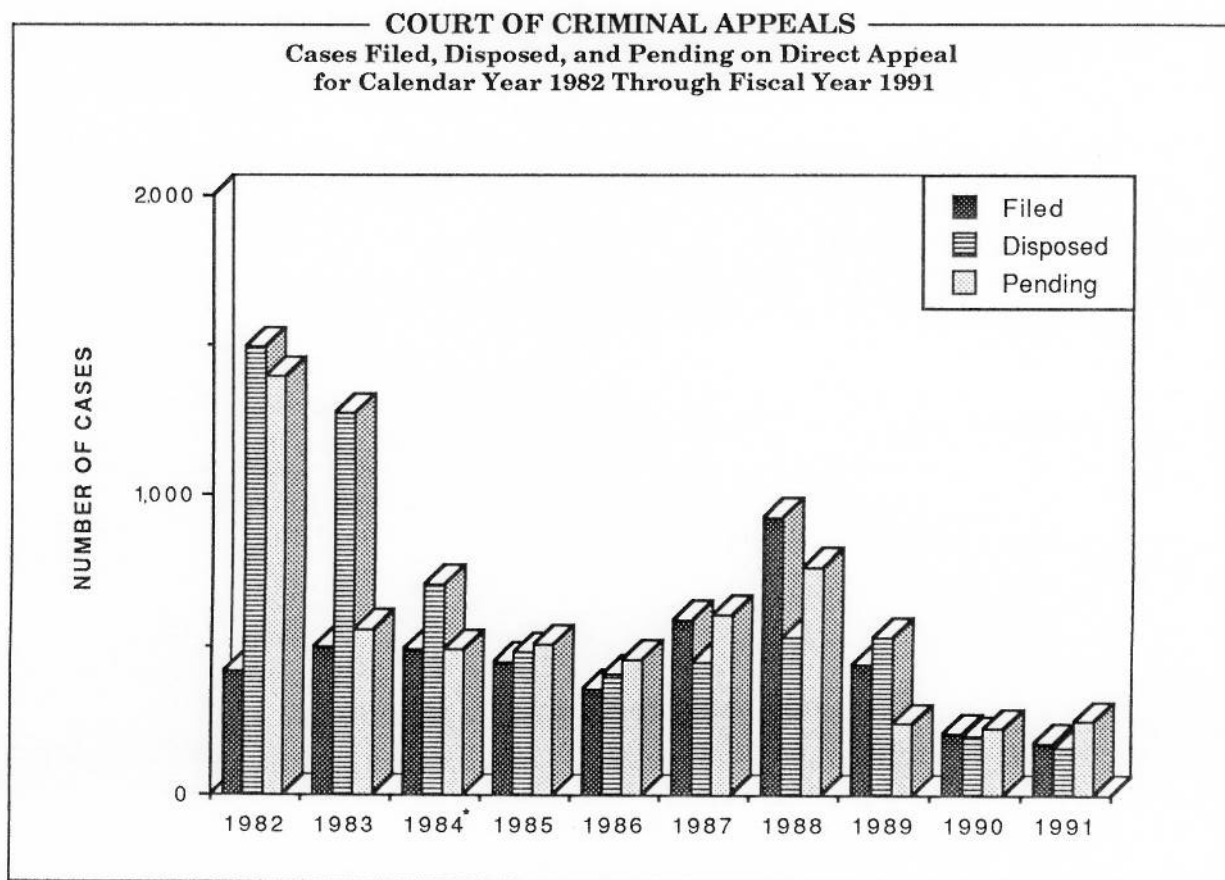
Decisions of the Courts of Appeals in criminal cases may be appealed to the Court of Criminal Appeals by petition for discretionary review, filed either by the State, or the defendant, or both. In addition, the Court may review a decision on its own motion.

### MATTERS ADDED TO THE DOCKET

During the State fiscal year 1991 which ended August 31, 1991, 386 cases were added to the docket of the Court of Criminal Appeals, of which 210 were cases where discretionary review was granted by the Court and 176 were direct appeals, death penalty appeals, writs of habeas corpus granted, and extraordinary writs. Death penalty

appeals in fiscal year 1991 numbered 39, compared to 42 in fiscal year 1990.

The 386 cases added in fiscal year 1991 represent a decrease of 4.7 percent from the 405 cases added during fiscal year 1990.

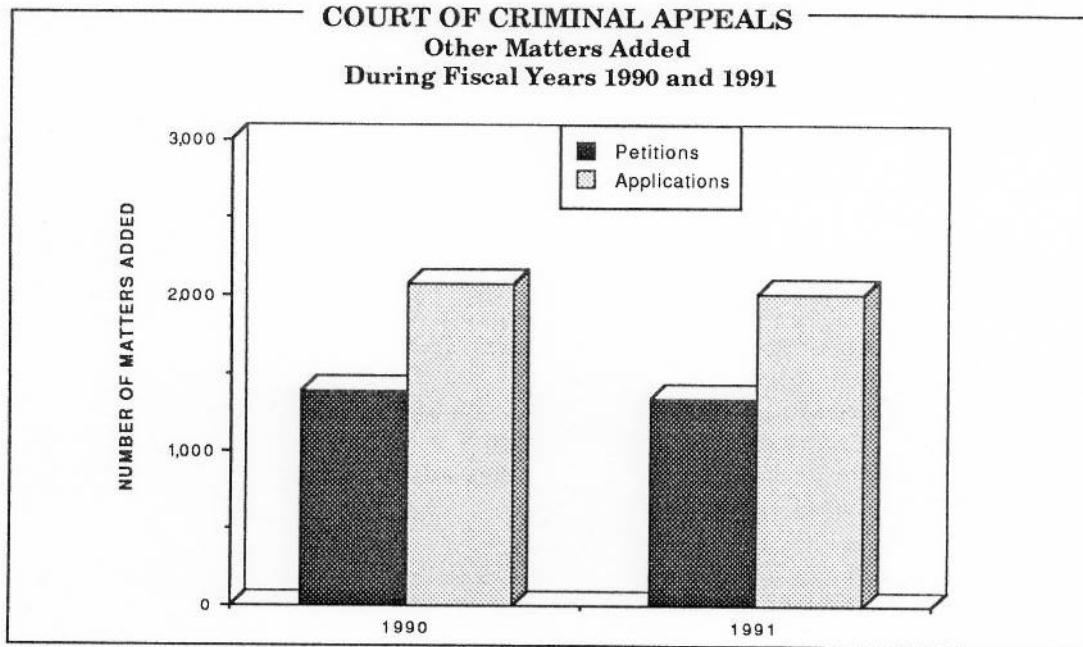


\*1984 and following are fiscal years; all previous are calendar years.

## OTHER MATTERS ADDED

The Court had 1,340 petitions for discretionary review filed during fiscal year 1991, 40 less than the number filed during the previous year. Petitions for discretionary review were received from 137 counties, with 48 percent of them originating from Harris or Dallas Counties.

Applications for writs of habeas corpus filed during the year totalled 2,013, a 3.1 percent decrease from the 2,078 filed in fiscal year 1990. Also, 1,462 other motions or applications were handled by the Court, a 20 percent decrease from the 1,824 considered the previous year.



## RATE OF DISPOSITIONS INCREASES

During fiscal year 1991, the Court disposed of 154 cases on direct appeal, compared to 202 such dispositions in fiscal year 1990. In 1991, those 154 dispositions represented 38.5 percent of all cases on the docket on direct appeal, that is, cases filed during the year or carried over from previous years. In fiscal year 1990, this disposition rate was 48 percent.

In fiscal year 1991, 1,382 petitions for discretionary review were disposed, 210 (or 15 percent) of which were granted. The remainder were refused or dismissed. In fiscal year 1990, 1,382 petitions for discretionary review were disposed, 202 (or 15 percent) of which were granted.

There were 2,119 applications for writs of habeas corpus disposed in fiscal year 1991, compared to 2,285 in 1990, a decrease of 7.3 percent.

Judges of the Court of Criminal Appeals wrote 592 opinions during fiscal year 1991, of which 439 (74 percent) were "deciding" opinions disposing of cases. The remainder were dissents, concurrences, and opinions on rehearings. Of the deciding opinions, 201 were signed and 238 were per curiam. During 1990, members of the Court wrote 561 opinions, 78 percent of which were deciding opinions.

## TOTAL PENDING CASELOAD DECREASES

On August 31, 1991, 1,202 total matters (excluding miscellaneous motions and applications) were pending in the Court of Criminal Appeals. This represented a decrease of 5.9 percent from the 1,278 matters pending on August 31, 1990.

Of these 1,202 matters, 246 were direct appeals, death penalty appeals, granted habeas corpus writs, and extraordinary writs, 279 were granted discretionary review cases, 465 were petitions for discretionary review, and 212 were applications for writs of habeas corpus

# COURT OF CRIMINAL APPEALS

## Activity for the Year Ending August 31, 1991

### SUMMARY OF DOCKET ACTIVITY

**Cases Disposed of During the Year Ending August 31, 1991:**

Direct appeals, death penalty appeals, granted habeas corpus writs, and extraordinary writs disposed of by the Court .....	154
Cases disposed of after granting petitions for discretionary review .....	232
Petitions for discretionary review disposed of by the Court .....	1,387
Applications for writs of habeas corpus, etc., disposed of by the Court .....	<u>2,119</u>
TOTAL CASES DISPOSED OF BY THE COURT .....	3,892

**Motions and Applications Disposed of During  
the Year Ending August 31, 1991:**

Untimely filed petitions for discretionary review .....	15
Applications for extensions of time to file transcriptions of court reporter's notes, bills of exceptions, briefs, and petitions for discretionary review .....	<u>1,462</u>
TOTAL MOTIONS AND APPLICATIONS DISPOSED OF BY THE COURT .....	<u>1,477</u>

GRAND TOTAL OF MATTERS DISPOSED OF BY THE COURT ..... 5,369

**Matters Pending August 31, 1991:**

Direct appeals, death penalty appeals, granted habeas corpus writs, and extraordinary writs .....	246
Cases on granted petitions for discretionary review pending .....	279
Petitions for discretionary review pending .....	465
Applications for writs of habeas corpus, etc., pending .....	<u>212</u>
TOTAL MATTERS PENDING AUGUST 31, 1991 .....	<u><u>1,202</u></u>

**COURT OF CRIMINAL APPEALS**  
**Activity for the Year Ending August 31, 1991**  
*(Continued)*

**On Direct Appeal**

Cases pending September 1, 1990 .....	224
Cases Filed for the year ending August 31, 1991 .....	<u>176</u>
<b>TOTAL ON DOCKET .....</b>	<b>400</b>

Disposition on Direct appeals, death penalty appeals, granted habeas corpus writs, and extraordinary writs:

Affirmed .....	25
Appeals abated .....	4
Appeals dismissed .....	6
Habeas Corpus relief granted in part and denied in part .....	6
Habeas Corpus applications dismissed .....	2
Habeas Corpus relief denied .....	15
Habeas Corpus relief granted .....	48
Habeas Corpus remanded for evidentiary hearing .....	3
Reversed and remanded .....	8
Mandamus relief granted .....	1
Mandamus relief denied .....	2
Out of time appeals granted .....	32
Reversed and acquittal ordered .....	1
Certified state criminal law question answer .....	<u>1</u>
<b>TOTAL CASES DISPOSED .....</b>	<b>154</b>

Cases Pending August 31, 1991:

Direct appeals, death penalty appeals, granted habeas corpus writs, and extraordinary writs:

Under original submission (Rehearings Included) .....	125
Pending on motions for rehearing .....	22
Unsubmitted .....	87
Waiting to become final or a motion for rehearing to be filed .....	9
Cases reinstated on the docket .....	<u>3</u>
<b>TOTAL CASES PENDING .....</b>	<b>246</b>

**On Petitions for Discretionary Review**

Petitions for Discretionary Review Pending September 1, 1990 .....	466
Petitions for Discretionary Review Filed During the year ending August 31, 1991 .....	1,340
Multiple petitions for discretionary review filed .....	<u>46</u>
<b>TOTAL PETITIONS ON DOCKET .....</b>	<b>1,852</b>

Disposition of Petitions for Discretionary Review:

Granted .....	210
Refused .....	1,172
Dismissed .....	<u>5</u>

<b>TOTAL PETITIONS DISPOSED .....</b>	<b><u>1,387</u></b>
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Pending Petitions for Discretionary Review on August 31, 1991 .....	<u>465</u>
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# COURT OF CRIMINAL APPEALS

## Activity for the Year Ending August 31, 1991

(Continued)

### On Granted Petitions for Discretionary Review

Cases disposed on granted petitions for discretionary review for the year ending August 31, 1991:

Court of Appeals affirmed .....	52
Court of Appeals reversed and remanded to the Court of Appeals .....	42
Court of Appeals affirmed and remanded to the trial court .....	1
Court of Appeals and the trial court reversed and remanded to the trial court ....	18
Court of Appeals and trial court affirmed .....	7
Court of Appeals reversed and remanded to the trial court .....	26
Court of Appeals reversed and trial court affirmed .....	13
Court of Appeals vacated, remanded to trial court .....	2
Court of Appeals and trial court reversed, remanded to Court of Appeals .....	1
Court of Appeals reversed and reformed .....	1
Court of Appeals reformed; trial court reinstated .....	1
Habeas Corpus granted, bail set .....	1
Court of Appeals vacated, remanded to Court of Appeals .....	5
Remanded to trial court, out-of-time appeal granted .....	1
Dismissed and refused as improvidently granted .....	44
Dismissed .....	5
Remanded to Court of Appeals .....	11
Reformed and affirmed .....	1
TOTAL CASES DISPOSED .....	232

Cases on granted petitions for discretionary review for year ending August 31, 1991:

Petitions under consideration (rehearings included) .....	110
Petitions unsubmitted .....	81
Petitions awaiting briefs .....	88
TOTAL CASES PENDING .....	279

### Motions for Rehearing on Direct Appeal

Dispositions of Motions for Rehearing on Direct Appeal:

Motions granted with written opinions .....	4
Motions overruled/denied with written opinions .....	1
Motions for rehearing granted .....	2
Motions for rehearing denied .....	34
TOTAL MOTIONS DISPOSED .....	41

### Motions for Rehearing on Petition for Discretionary Review

Dispositions of Motions for Rehearing on Discretionary Review Cases:

Motions for Rehearing granted with written opinions .....	12
Motions for Rehearing denied without written opinions .....	155
Motions for Rehearing granted without written opinions .....	12
TOTAL MOTIONS DISPOSED .....	179

**COURT OF CRIMINAL APPEALS**  
**Activity for the Year Ending August 31, 1991**  
*(Continued)*

**Opinions Written by the Court for Year Ending August 31, 1991 On Direct Appeals and Petitions for Discretionary Review**

Original opinions.....	439
Concurring opinions.....	47
Dissenting opinions.....	82
Opinions concurring in part and dissenting in part.....	7
Opinions granting rehearing.....	16
Opinions denying rehearing.....	<u>1</u>
 TOTAL .....	 592

**Applications for Writ of Habeas Corpus, etc.**

Applications Pending September 1, 1990.....	318
Applications Filed During the Year Ending August 31, 1991.....	<u>2,013</u>
 TOTAL APPLICATIONS ON DOCKET .....	 2,331

**Disposition of Applications for Writ of Habeas Corpus, etc:  
(Motions for Rehearing Included)**

Applications ordered filed and set for submission.....	147
Hearings ordered on applications.....	93
Applications granted with written order.....	7
Applications denied with written order.....	26
Applications denied without written order.....	1,609
Applications dismissed.....	78
Applications marked "no action".....	122
Abuse of the Writ.....	26
Moot.....	<u>11</u>
 TOTAL APPLICATIONS DISPOSED .....	 <u>2,119</u>

Applications for Writ of Habeas Corpus Pending on August 31, 1991 .....	<u>212</u>
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**COURT OF CRIMINAL APPEALS**  
**Activity for the Year Ending August 31, 1991**  
*(Continued)*

**OPINIONS WRITTEN BY JUDGES OF THE  
COURT OF CRIMINAL APPEALS**

JUDGES	DECIDING OPINIONS				Concurring in Part & Dissenting in Part	Opinions Granting Rehearing	Opinions Denying Rehearing	TOTAL
	Per Curiam Opinions	Signed Opinions	Concurring Opinions	Dissenting Opinions				
Michael J. McCormick, Presiding Judge	39	20	2	12	3	0	0	76
<sup>1</sup> W. C. Davis, Judge	7	13	0	0	0	0	0	20
Sam Houston Clinton, Judge	29	10	16	38	0	3	0	96
<sup>2</sup> Marvin O. Teague, Judge	11	6	3	10	1	1	0	32
Chuck Miller, Judge	33	32	8	5	0	6	0	84
Charles F. Campbell, Judge	36	34	2	2	0	0	1	75
Bill White, Judge	28	24	0	4	0	1	0	57
<sup>3</sup> David A. Berchelmann, Judge	0	1	0	1	0	0	0	2
<sup>4</sup> Louis E. Sturns, Judge	5	1	0	0	0	0	0	6
<sup>5</sup> Charles F. (Charlie) Baird Judge	28	20	9	7	3	1	0	68
<sup>6</sup> Morris L. Overstreet Judge	12	24	1	1	0	2	0	40
<sup>7</sup> Frank Maloney Judge	8	10	1	2	0	1	0	22
<sup>8</sup> Fortunato P. Benavides Judge	2	6	5	0	0	1	0	14
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TOTAL	238	201	47	82	7	16	1	592

<sup>1</sup>W. C. Davis retired December 31, 1990.

<sup>2</sup>Marvin O. Teague died February 20, 1991.

<sup>3</sup>David A. Berchelmann left office November 29, 1990.

<sup>4</sup>Louis E. Sturns left office December 31, 1990.

<sup>5</sup>Charles F. (Charlie) Baird took office November 29, 1990.

<sup>6</sup>Morris L. Overstreet took office January 1, 1991.

<sup>7</sup>Frank Maloney took office January 1, 1991.

<sup>8</sup>Fortunato P. Benavides took office April 26, 1991.

**COURT OF CRIMINAL APPEALS**  
**Activity for the Year Ending August 31, 1991**  
*(Continued)*

**COUNTIES FROM WHICH PETITIONS FOR  
DISCRETIONARY REVIEW WERE FILED**

<u>NAME OF COUNTY</u>	<u>NO. OF CASES</u>	<u>NAME OF COUNTY</u>	<u>NO. OF CASES</u>	<u>NAME OF COUNTY</u>	<u>NO. OF CASES</u>	<u>NAME OF COUNTY</u>	<u>NO. OF CASES</u>
Harris	387	Caldwell	4	Chambers	2	Henderson	1
Dallas	277	Calhoun	4	Dallam	2	Hockley	1
Tarrant	88	Freestone	4	Delta	2	Hopkins	1
Bexar	38	Hunt	4	Dimmit	2	Howard	1
Travis	38	Lamar	4	Donley	2	Hutchinson	1
El Paso	30	Midland	4	Erath	2	Jack	1
Lubbock	22	Palo Pinto	4	Falls	2	Jim Hogg	1
Collin	20	Rockwall	4	Floyd	2	Jones	1
McLennan	20	Walker	4	Gonzales	2	Kimble	1
Denton	19	Anderson	3	Hill	2	Kleberg	1
Nueces	16	Carson	3	Houston	2	Liberty	1
Bell	15	Comal	3	Kerr	2	Limestone	1
Cameron	15	Cooke	3	Lavaca	2	Live Oak	1
Galveston	15	Ellis	3	Milam	2	Madison	1
Hidalgo	14	Franklin	3	Rusk	2	Morris	1
Gregg	13	Grayson	3	Sabine	2	Parker	1
Webb	13	Hood	3	Scurry	2	Parmer	1
Brazos	11	Jim Wells	3	Tyler	2	Presidio	1
Ector	11	Johnson	3	Waller	2	Rains	1
Jefferson	11	Karnes	3	Wichita	2	Refugio	1
Potter	11	Mills	3	Wilbarger	2	Robertson	1
Smith	11	Moore	3	Wilson	2	San Saba	1
Fort Bend	9	Nacogdoches	3	Brooks	1	Sutton	1
Frio	9	Navarro	3	Burleson	1	Trinity	1
Montgomery	9	Runnels	3	Cochran	1	Upshur	1
Washington	8	San Patricio	3	Coke	1	Ward	1
Brazoria	7	Stephens	3	Coleman	1	Wharton	1
Hale	7	Uvalde	3	Comanche	1	Wheeler	1
Taylor	7	Val Verde	3	Duval	1	Wise	1
Tom Green	7	Angelina	2	Gillespie	1	Wood	1
Victoria	7	Aransas	2	Goliad	1	Yoakum	1
Williamson	7	Atascosa	2	Guadalupe	1	Young	1
Llano	6	Bastrop	2	Hardin	1		
Orange	6	Bowie	2	Harrison	1		
Bee	5	Burnet	2	Hays	1		

**COURTS OF APPEALS FROM WHICH PETITIONS  
FOR DISCRETIONARY REVIEW WERE FILED**

FIRST, Houston	153	EIGHTH, El Paso	61
SECOND, Fort Worth	120	NINTH, Beaumont	32
THIRD, Austin	95	TENTH, Waco	49
FOURTH, San Antonio	86	ELEVENTH, Eastland	40
FIFTH, Dallas	297	TWELFTH, Tyler	38
SIXTH, Texarkana	42	THIRTEENTH, Corpus Christi	79
SEVENTH, Amarillo	60	FOURTEENTH, Houston	238

**PETITIONING PARTIES TO COURT OF CRIMINAL APPEALS**

Appellant	1,051	State	182
Pro Se	127	State Prosecuting Attorney	26