TEXAS JUDICIAL COUNCIL

2022

PUBLIC TRUST AND CONFIDENCE COMMITTEE

REPORT
AND
RECOMMENDATIONS

Background

In August 2021, the Texas Judicial Council charged the Public Trust and Confidence Committee with:

- Studying ways to improve racial justice, equity, and inclusion in the justice system.
- Monitoring the court case backlog due to the COVID-19 Pandemic, develop best practices and recommend any necessary reforms.
- Continuing to monitor public trust and confidence in the Texas Judiciary and recommend any necessary reforms to increase public support and respect.

Members of the Committee are:

Honorable Ed Spillane, Chair	Honorable Sherry Radack
Ms. Zina Bash	Honorable Maggie Sawyer
Ms. Jenn Caughey	Representative Reggie Smith
Honorable Missy Medary	Honorable Ken Wise
Honorable Valencia Nash	Senator Judith Zaffirini
Honorable Kathleen Person	

The Texas Judicial Council's Public Trust and Confidence Committee met on April 7, 2022 and September 22, 2022.

Recommendations in Brief

Clean Slate Reform

Recommendation 1: The Texas Legislature should automate the record sealing process for people with first-time, non-serious misdemeanors who the Legislature has already deemed entitled to presumptive relief.

Recommendation 2: The Texas Legislature should expand eligibility for petition-based record sealing.

Civics Education

Recommendation 1: The Legislature should amend state law to require comprehensive civics education that emphasizes on the judiciary, its design, and how the state and local court systems operate.

Recommendation 2: The Texas Judicial Council should work with the Judiciary and Office of Court Administration to establish a Judicial Civics Education Center.

Recommendation 3: The Texas Judicial Council should take advantage of judicial days in the Legislature during the 88th Legislative Session, including the State of the Judiciary and Woman Judges Day, to advance civics education related to the Judiciary.

Case Backlog

Recommendation: The Texas Judicial Council should continue to monitor court case backlogs and work with the Office of Court Administration to provide resources and training to address backlogs.

Judicial Centers of Excellence

Recommendation: The Texas Judicial Council and the Office of Court Administration should continue to work to revitalize the Judicial Centers of Excellence Program to encourage judges to participate.

Recommendations in Detail

Clean Slate Reform

Background

According to the Texas Department of Public Safety, over 9 million Texans have some sort of criminal record. Although many individuals became eligible for an order of nondisclosure of criminal history record information under the 84th Legislature's SB 1902, many Texans continue to face criminal records relief barriers. During the 87th Legislative Session, HB 3601 – which provided for automatic orders of nondisclosure of criminal history record information for eligible persons – passed by the House but died in the Senate. Records can create barriers to employment, housing, and education, and in a market experiencing a labor shortage, records can exacerbate that shortage. Beyond workforce benefits, records sealing helps justice-involved persons reintegrate into their communities, lessening the likelihood of future criminal activity.

Recommendations

Recommendation 1: The Texas Legislature should automate the record sealing process for people with first-time, non-serious misdemeanors who the Legislature has already deemed entitled to presumptive relief.

Right now, an overly complex and costly court process lessens the likelihood people will access the relief available to them under current law, and, as a result, people with first-time, nonserious misdemeanor records face a lifetime of discrimination. When Texas Government Code Section 411.072 became law in 2015 (SB 1902), the Legislature intended to streamline the procedure for granting an order of nondisclosure for those who received a dismissal of a nonviolent misdemeanor after deferred adjudication. Section 411.072 requires the court to grant the relief if eligibility requirements are met, and crucially, the person would not need to file a petition for relief. Despite the intent to streamline the process, though, people seeking relief under this provision of the law continue to face barriers to access as they still must provide evidence to the court proving their eligibility (which can be difficult to do without legal assistance) and pay a fee. Given that the benefits of record sealing are so great but the process so complex, a growing number of states have passed laws to automate the process of record sealing for people with certain conviction records.

These "Clean Slate" laws allow eligible individuals to have their records sealed without going through the traditional petition process in court. Instead, state agencies utilize technology so that people automatically have their records sealed once the records become eligible, without filing a petition.

Recommendation 2: The Texas Legislature should expand eligibility for petition-based record sealing.

Eligibility to have one's record sealed in Texas is extremely limited. With few exceptions, only people who successfully completed deferred adjudication or who were convicted of a single first-time misdemeanor are eligible for an order of nondisclosure. The Legislature should expand access to the record sealing remedy to maximize workforce and safety benefits for all Texans. Expanding eligibility will not guarantee a person is granted relief — unlike the category of offenses entitled to presumptive relief under Government Code Section 411.072, record sealing for these cases would continue to be determined on a case-by-case basis at the sole discretion of a judge. To expand access to petition-based sealing, the Legislature should consider the following:

- Reducing the period of time a person must wait to petition for relief after completion of a sentence;
- Allowing a person to petition to seal more than one misdemeanor conviction;
- Extending relief eligibility to people with more serious misdemeanors who did not receive probation; and
- Allowing a person with a state jail felony conviction to petition for relief.

Civics Education

Background

> "The practice of democracy is not transferred through the gene pool. It must be taught and learned anew by each generation of citizens." – Sandra Day O'Connor, Justice (ret.), Supreme Court of the United States

For many years, the Judicial Council has supported public trust and confidence initiatives that promote civic engagement and education. In December 2016, the Supreme Court of Texas and the Texas Court of Criminal Appeals hosted *Beyond the Bench: Law, Justice, and Communities Summit* at Paul Quinn College in Dallas. The Summit brought together Texas judges, law-enforcement officers, and national, state, and community leaders to strengthen trust and confidence in the justice system. In 2018, the Council recommended expanding the wildly successful program *Access to Justice: Class in the Courtroom.* The program, developed by Senator Judith Zaffirini, Ph.D., performed monthly mock trials in Laredo based on beloved fairytale characters. Placing "Gold E. Locks" and "East R. Bunny" on trial continues to transform how children perceive the court and legal system. And in May 2021, the Office of Court Administration, with the Judicial Council's support, hosted the first *Texas Judiciary "Together We Dine"* event facilitated by Project Unity. The event brought together Texas judges and community members to encourage courageous and safe conversations about race and diversity to build relationships and trust between the Judiciary and the communities it serves.

Still, more work remains to be done in civics education. According to the Annenberg Public Policy Center's 2022 Annenberg Constitution Day Civic Survey, less than half of US adults can name all three branches of government. A staggering 25% cannot name a single branch of government. And although both of these numbers have improved since the survey launched in 2006, both backslid in 2022.[1] To address judicial civics illiteracy, the Judiciary considered establishing a Judicial Civics and Education Center in

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1 Annenberg Public Policy Center, *Americans' Civic Knowledge Drops on First Amendment and Branches of Government* (Sept. 13, 2022), available at: https://www.annenbergpublicpolicycenter.org/americans-civics-knowledge-drops-on-first-amendment-and-branches-of-government/.

the Tom C. Clark Building in 2015. The Center would have served as an educational destination on the typical Capitol complex tour, teaching visitors about the Texas Judicial Branch, Texas legal history, and the importance of an independent judiciary, helping to deepen visitors' understanding of the Judicial Branch and the role it plays in a free government. Despite making it through the design phase, though, the project did not receive the necessary funding to move forward to the construction phase.

The 87th Legislature considered several civics education bills, including one that contained the Judicial Council's 2020 civics education recommendations. The major civics education bill passed by the Legislature, however, did not incorporate all of the Council's recommendations. Even though the Third Branch outpaces its sister branches in public confidence surveys, confidence in the state and federal court systems continues to deteriorate[2] — deterioration that can in part be traced to a declining understanding of and appreciation for the justice system. The Committee believes that the public must be further educated on the differences between the Judiciary and its sister branches, on how the judicial system was designed, and on how courts operate differently from the political branches.

<u>Recommendations</u>

Recommendation 1: The Legislature should amend state law to require comprehensive civics education that includes an emphasis on the judiciary, its design, and how the state and local court systems operate.

Recommendation 2: The Texas Judicial Council should work with the Judiciary and Office of Court Administration to establish a Judicial Civics Education Center.

Recommendation 3: The Texas Judicial Council should take advantage of judicial days in the Legislature during the 88th Legislative Session, including the State of the Judiciary and Woman Judges Day, to advance civics education related to the judiciary.

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2   NAT'L CNT. FOR ST. CTS, STATE OF THE STATE COURTS 2021 POLL, available at: https://www.ncsc.org/consulting-and-research/areas-of-expertise/court-leadership/state-of-the-state-courts.

Case Backlog

<u>Background</u>

Generally speaking, court backlogs occur when cases filed and added to a docket outpace a court's ability to dispose of cases from the docket. When a court disposes of the same number of cases as were added to its docket in a given timeframe, the court's "clearance rate" is 100%. Courts can suffer from case backlogs for a variety of reasons, and the challenges posed by court backlogs pre-date the pandemic, but COVID-19-fueled constraints on court operations throttled both court case filings and case disposals.

Prior to the pandemic, the number of pending cases in Texas district courts increased an average of 5% per year between 2015 and 2019. From March 2020 through the end of July 2022, the number of active pending civil cases grew by 9%, the number of pending family cases by 16%, and the number of criminal cases by 33%. During this period, the overall statewide district court clearance rate (civil, family, juvenile, and criminal combined) was approximately 90%, with civil case clearance rates at 91%, family case clearance rates at 90%, and criminal case clearance rates at 86%. From March 2022 to the end of July 2022, however, when courts started reopening at a large scale to in-person proceedings, the overall clearance rate jumped to 102%, with the civil case clearance rate at 108%, the family case clearance rate at 98%, and the criminal case clearance rate at 101%.
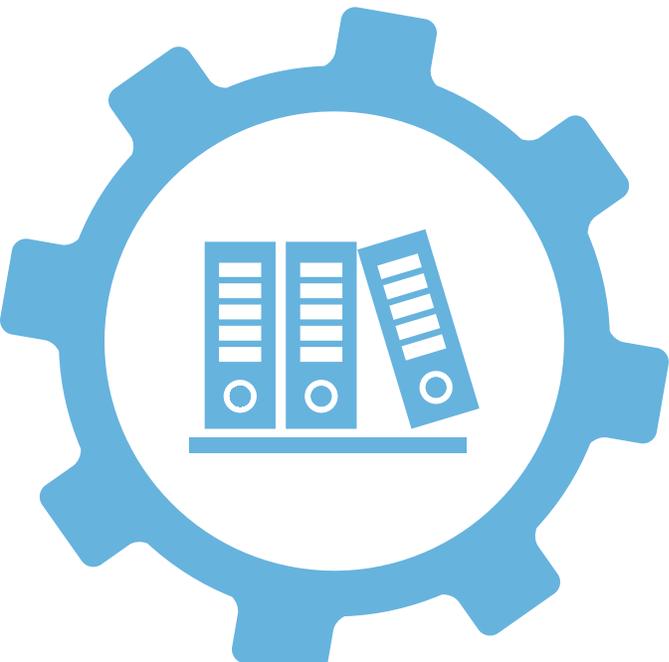
In county courts statewide, pre-pandemic the number of pending cases in the county courts had grown due to significant increases in the number of civil cases filed in 2018 & 2019. While there was a large decrease in filings during the pandemic, dispositions exceeded filings in 2020. From March 2020 through the end of June, the number of active pending civil cases declined by 9%, the number of active pending family cases increased by 6%, and the number of active pending cases increased by 11%. During this period, clearance rates were 102% for civil case, 91% for family cases, and 95% for criminal cases. From March 2022, when the courts started reopening at a large scale to in-person proceedings, the clearance rate for civil cases was 107% through the end of June 2022; the clearance rate for family cases was 97% and the clearance rate for criminal cases was 117%.

Despite the uptick in clearance rates in county and district courts, case backlogs remain across the state. The Texas Judiciary has moved to address these backlogs from multiple directions. Following the

Third Called Special Session of the 87th Legislature, the Texas Judiciary was appropriated Federal American Rescue Plan Act (ARPA) funds to assist courts with the court backlog caused by the COVID-19 pandemic. Part of this funding was used by the Office of Court Administration (OCA) to host a "backlog reduction summit" on September 14 and 15, 2022, on effective case management to help Texas counties address case backlogs. The summit, presented by the National Center for State Courts, welcomed local government officials from across the state to learn best practices on managing court dockets with an eye toward backlog reduction. A portion of ARPA funds is also being used to help counties with COVID-19 court backlogs, with a focus on reducing felony case backlogs and family violence case backlogs. In addition to financial resources, OCA is also working to make available caseflow management training for jurisdictions across the state. OCA has also developed a best practices document for counties to use in addressing case backlogs.

Recommendations

Recommendation: The Texas Judicial Council should continue to monitor court case backlogs and work with the Office of Court Administration to provide resources and training to address backlogs.

Judicial Centers of Excellence

<u>Background</u>

The Judicial Centers of Excellence Program is a Judicial Branch initiative, implemented by the Judicial Council, to identify, support, and promote courts doing exceptional work in judicial administration for the State of Texas. The Judicial Centers of Excellence Program seeks to find those courts with a commitment to excellence in serving their communities, supporting their counties, and representing the judiciary in an outstanding manner. The program presents courts with an opportunity to evaluate, refine, and update judicial administration practices. The program is centered around four key performance areas and five statutory compliance areas:

- Performance Areas
    - o Governance
    - o Access and Fairness
    - o Data-Driven Caseflow Management
    - o Court Operations
- Compliance Areas
    - o Judicial Reporting
    - o Court Security
    - o Court Collection
    - o Indigent Defense
    - o Guardianship Fraud and Abuse Prevention

All levels and jurisdictions of courts are eligible to participate in the Centers of Excellence Program. There are no minimum requirements to begin. However, courts are encouraged to be ready to implement significant change and take a deep look at court processes. The Office of Court Administration (OCA) will need to review court processes, view internal documents and reports, and conduct an onsite visit before

a court is nominated for Centers of Excellence Status. At present, there are four recognized Centers of Excellence in Texas:

- 347th District Court, Nueces County, Judge Missy Medary;

- 214th District Court, Nueces County, Judge Inna Klein;

- Webb County Court at Law II, Judge Victor Villarreal; and

- Montgomery County Court at Law II, Judge Claudia Laird.

In March 2020, the unfolding COVID-19 pandemic paused the Judicial Centers of Excellence Program. Currently, the program is undergoing an update with revisions to the evaluations and reviews that more accurately reflect the work of courts in a post-pandemic world. Seven courts are currently awaiting initial reviews to begin the process of being recognized as a Judicial Center of Excellence.

Recommendations

Recommendation: The Texas Judicial Council and the Office of Court Administration should continue to work to revitalize the Judicial Centers of Excellence Program to encourage judges to participate.