

SUBJECT: Allowing certified questions of law between the two highest Texas courts

COMMITTEE: Judicial Affairs— favorable, without amendment

VOTE: 8 ayes — Thompson, Hartnett, Clark, Crabb, Garcia, Luna, Shields, Solis
0 nays
1 absent — Zbranek

WITNESSES: None

BACKGROUND : The Texas court system has two highest appellate courts of equal authority. The Supreme Court decides civil matters, and the Court of Criminal Appeals decides criminal matters. Only Texas and Oklahoma have such a system.

In 1985 the Texas Constitution was amended to allow the Supreme Court and the Court of Criminal Appeals to answer questions of state law that were certified from federal courts.

DIGEST: HJR 24 would allow the Supreme Court to certify questions of criminal law to the Court of Criminal Appeals and the Court of Criminal Appeals to certify questions of law other than criminal law to the Supreme Court.

The proposal would be presented to voters at an election on November 4, 1997. The ballot proposal would read: “The constitutional amendment granting the supreme court jurisdiction to answer questions of law certified from the court of criminal appeals and granting the court of criminal appeals jurisdiction to answer questions of law certified from the supreme court.”

If approved by voters, the amendment would take effect January 1, 1998.

SUPPORTERS SAY: The Texas judicial system, with its two highest courts of equal authority, can create an unusual situation when one court must have a question from the other court answered in order to decide a case before that court. This constitutional change would allow the two highest courts to obtain definitive interpretations of the law in the other court's jurisdiction without the need for a case or controversy to be brought before the other court. Short of

merging the two courts, this change would facilitate communication between the courts and promote consistency in the law.

While a legal split between the two highest courts has not occurred for several years, there is no reason to wait for another when this constitutional clarification could prevent such a conflict. During the most recent legislative session, a number of bills were enacted that contain cross-jurisdictional issues, such as the stalking law that contained both criminal and civil penalties.

**OPPONENTS
SAY:**

It is not clear that this authorization is needed. The Supreme Court and the Court of Criminal Appeals have occasionally disagreed when deciding similar issues, but such conflicts are rare. Both courts should concentrate on genuine cases or controversies rather than take up each other's time with advisory opinions.

NOTES:

An identical proposal, HJR 90 by Thompson, was adopted by the House during the 74th regular session in 1995 but died in the Senate.