

SUBJECT: Court technology, performance reporting and law clerk recruitment

COMMITTEE: Judicial Affairs— favorable, with amendment

VOTE: 6 ayes — Thompson, Crabb, Garcia, Luna, Shields, Zbranek

0 nays

3 absent — Hartnett, Clark, Solis

SENATE VOTE: On final passage, April 24, local and uncontested calendar — 29-0

WITNESSES: (*On House companion bill, HB 2698*):

For — Patricia Ott, Texas Justice of the Peace and Constable Association; Keely Collier, NAACP; Tris Casteneda, Texas Association of State Judges

Against — Jim Allison and Betty Armstrong, Texas County Judges and Commissioners Association; Bobby Smith, North and East Texas County Judges and Commissioners Association; Donald Lee, Conference of Urban Counties

On — Tom Phillips; Jerry Benedict, Office of Court Administration

BACKGROUND : The Legislature in 1995 established the Texas Commission on Judicial Efficiency to study judicial selection as well as other aspects of the judiciary, such as funding parity, staff diversity and technology resources. The commission established task forces to study each of those areas.

The Funding Parity Task Force recommended that the state take a more active role in funding Texas' court system. The eventual goal would be to entirely fund all appellate and district courts; currently, the state funds the Texas Supreme Court, the Court of Criminal Appeals and the Court of Appeals, Third District, all of which sit in Austin. The task force recommended that judicial salaries be based on salaries for federal judges. The task force also recommended performance standards requiring each court to dispose of the same number of cases that are filed in that court each year.

The Staff Diversity Task Force recommended increasing awareness and mentorship programs among the various law schools in Texas to encourage more qualified minority candidates to apply for judicial clerkships with Texas courts. Their recommendation included creating a statewide judicial clerkship recruitment program and selection process. They also stressed the need to create a fund or relationship with lending institutions so that student loans can be paid or deferred while in a judicial clerkship.

The Information Technology Task Force recommended a permanent judicial committee on information technology be established to design and oversee an information technology and telecommunications infrastructure for the judiciary, access to judicial information from the Internet, and standards for automation and information management systems. The task force recommended that such improvements be funded by additional court fees for all cases and fees for retrieving electronic information.

DIGEST:

SB 1417, as amended, would establish various new programs intended to promote judicial efficiency. The changes proposed would be funded by an additional \$25 fee assessed on any person who convicted of a felony or misdemeanor who wishes to pay a fine, court costs, or restitution over time. Of the fee paid, 50 percent would be sent to the state and deposited in the general revenue fund, and 10 percent would fund the administration of collection and be paid to the office of the county clerk. The remaining 40 percent would be deposited in the county treasury.

SB 1417 would establish a judicial law clerk recruitment program under the Office of Court Administration (OCA). The program would seek to attract law students to clerk for courts and encourage the recruitment of clerks that reflect the gender, racial and ethnic diversity of the state. The OCA would also manage two funds for judicial clerks: the law clerk student loan fund would help law clerks repay student loans while they worked as a clerk and the law clerk employment assistance program would help courts hire additional law clerks. OCA would be required to annually publish a census of attorneys employed by the courts of Texas, including demographic data.

OCA would be required to collect and publish performance information on the clearance rate of courts. The clearance rate would be the result of the number of cases disposed divided by the number of cases added. OCA

would be required to collect additional information from the Texas Supreme Court and the Court of Criminal Appeals including the length of time that it takes cases in those courts to be finally disposed. OCA would establish a court efficiency program to help assist courts in the state to more efficiently maintain and operate the judicial system.

SB 1417 would create a 15-member Judicial Committee on Information Technology appointed by the Chief Justice of the Texas Supreme Court. The membership of the committee would include a non-voting member representing OCA. Members of the committee would not be paid, but would receive reimbursements for expenses. The committee would be responsible for establishing minimum standards for court technology, developing a coordinated statewide judicial computer and communications network, encouraging efficiency and planning coordination in computer and communications acquisitions, developing security guidelines, creating a state judicial system web page, and developing or recommending additional programs to increase the use of technology to improve the efficiency of the judicial system. The committee would be allowed to charge an access fee to receive information over an electronic medium.

**SUPPORTERS
SAY:**

SB 1417 would implement many of the recommendations of the Texas Commission on Judicial Efficiency. The commission examined ways to improve the judiciary through greater accountability, self-governance, cooperation and interdependence. Texas courts are an important branch of government and should be given the tools necessary to carry out their functions.

Among the most important tool is the ability to efficiently and effectively use technology available to improve the operation of the court system. Many parties dealing with the court system from lawyers to law students to average citizens, have the ability to access information electronically over the Internet or similar means. However, the court system has been very slow to provide that information to the public. Those courts that have attempted to provide it have done so in a haphazard and inconsistent manner. By establishing a committee to set standards and provide recommendations for the court system to make a transition into the electronic age, all courts would be able to benefit from the efficiency that technology would bring, and the public would have a greater opportunity to

study and participate in the judicial system. Any fees charged for access to this information through an electronic medium would only be used to cover the cost of establishing and administering the electronic system. Once a majority of the system was devoted to information on such media, the costs of providing that information would drop or be eliminated.

The commission heard testimony from numerous courts, especially, appellate courts, that a great concern of theirs was the ability to recruit qualified law students to serve as law clerks for the courts. The problem encountered by the courts is that the best students are heavily recruited by high-paying law firms. While many such students would enjoy the opportunity of clerking for a court — and indeed many law firms encourage gaining such experience — the financial obligations imposed by student loans and the lack of knowledge of such clerkship programs limits the number of candidates courts may choose from in awarding such clerkships. Additionally, many courts, even courts of appeals, lack the funding to hire at least one clerk per judge, considered the standard amount of help required to function efficiently. In order to remedy these problems, SB 1417 would establish a program recruiting law students to be clerks, allowing their student loans to be paid while they are serving as a clerk, and starting a program to help courts financially to hire additional law clerks.

SB 1417 would also attempt to remedy a lack of diversity among law clerks hired by the courts. Law clerks help to research the law and give their opinions to the judges on the cases. The wider the variation of experiences available when such opinions are made, the better chance of considering all sides of an issue in making a ruling. To that end, courts should be encouraged to seek out a diverse group of law students to serve as clerks. Allowing a census of staff to be performed annually would allow OCA to obtain hard data on the success or need for improvement of the diversity of clerks of Texas courts.

Texas courts are efficient, disposing of almost the same number of cases as are filed each year, even though the number of cases filed each year has steadily increased. This increase in dispositions has been accomplished even though the number of appellate judges has not changed. The problem is that many courts have had difficulty demonstrating their disposition rates to those who examine the efficiency of the courts because of a lack of uniform

standards in reporting such rates. SB 1417 would clearly set out a standard for clearance rates that could be used to judge the efficiency of any court. It would also allow additional performance measures to be reported in the appellate courts to determine the time that it takes for a case to travel through the system. By examining such statistics, it would be easier to determine where additional courts and judges are needed so that judicial resources could be used in the most efficient manner possible.

All of these programs, and many more, would help improve the Texas judicial system; however, such programs come at a cost. SB 1417 would attempt to relieve that cost by imposing a small fee on the time payment of criminal fines, costs and restitution. This fee would be limited to those asking for an extra service from the judicial system, the ability pay over time.

The fees collected would not be dedicated solely for the purposes included in this legislation, for two reasons. First, it has been the budgetary policy of the state in recent years to limit as much as possible the dedication of funds in the general revenue fund. Second, the programs listed in SB 1417 are not exclusive of all programs that could be used to improve the efficiency of the judiciary. If additional programs were developed, they would be able to tap into any surplus generated by this fee.

**OPPONENTS
SAY:**

The fees to be collected to pay for the provisions of the bill would be taken from those convicted of crimes who are paying their fines, court costs or restitution over time. The state should not be placing yet another burden on these, mostly indigent, persons who are simply trying to repay their debt to society as best they can. Most persons who have been convicted are indigent and must use a repayment schedule in order to cover the penalties assessed against them. Adding another fee to pay for judicial efficiency, something that will probably never benefit them, would be unfair.

When persons convicted of crimes are ordered to pay restitution, the money paid goes first to other fees and administrative costs of the judgment order. In many cases, these fees can cover the first several payments made. Adding yet another fee would force restitution money to take even longer to reach the victim.

Courts should be encouraged to hire the best qualified applicant for a position and should not be required to fill quotas concerning the ethnic, racial and gender classifications of their law clerks.

**OTHER
OPPONENTS
SAY:**

The funds collected by counties should not be sent to the general revenue fund but should be dedicated to the purposes of the bill: improving the courts. Just sending these amounts to general revenue would just be another tax, with no guarantee that judicial efficiency would improve.

NOTES:

The committee amendment would specify that the \$25 fee would apply only to county treasuries and not municipalities. It would also set aside 10 percent of the fee for the county clerk as collector and delete a fund to be administered by OCA to repay expenses encountered in collecting and administering the fee.