

- SUBJECT:** Creating new courts and modifying court procedures
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Leach, Farrar, Y. Davis, Julie Johnson, Krause, Meyer, Neave, Smith, White
- 0 nays
- SENATE VOTE:** On final passage, April 16 — 31-0
- WITNESSES:** *On House companion bill, HB 2120:*
For — David Slayton, Office of Court Administration, Texas Judicial Council; (*Registered, but did not testify:* Tom Sellers, ConocoPhillips; Eric Woomer, Daily Court Review, Daily Commercial Record; John Barton, Justices of the Peace and Constables Association of Texas; George Christian, Texas Civil Justice League; Steve Bresnen, Texas Court Reporters Association; Amy Bresnen, Texas Family Law Foundation; Guy Herman, Travis County Probate Judge, Presiding Statutory Probate Judge of Texas)
- Against — (*Registered, but did not testify:* Idona Griffith)
- DIGEST:** CSSB 891 would create a number of new judicial districts and statutory county courts, allow certain counties to appoint magistrates, and revise the jurisdiction and procedures for certain courts, boards, and judicial officers. The bill would require the Office of Court Administration (OCA) to maintain a website for service by publication, would change some of the duties of OCA, and would create certain court grant programs. It also would modify the regulation of court reporters to provide for an apprenticeship program, the provisional certification for court reporters, and reciprocity agreements with other states.
- Judicial districts.** CSSB 891 would create a number of new judicial districts and alter the procedures for certain courts.

454th Judicial District. The bill would create the 454th Judicial District, to be composed of Medina County, on September 1, 2019. Medina County would be removed from the 38th Judicial District, and the bill would provide procedures for transferring cases from Medina County pending in the 38th District Court to the 454th District Court on the bill's effective date. The district attorney for the 38th Judicial District would be required to represent the state and perform the duties of the district attorney before the 454th Judicial District until January 1, 2021.

455th Judicial District. CSSB 891 would create the 455th Judicial District, to be composed of Travis County, on October 1, 2020. The 455th District Court would give preference to civil and family law matters.

456th Judicial District. The bill would create the 456th Judicial District, to be composed of Guadalupe County, on January 1, 2021. The 456th District Court would give preference to civil cases. The bill would specify that the initial vacancy of the office of judge of the 456th Judicial District would be filled by election in 2020, and that any subsequent vacancies would be filled by the governor.

457th Judicial District. CSSB 891 would create the 457th Judicial District, to be composed of Montgomery County, on September 1, 2019. The district attorney for the 9th Judicial District, elected by the voters of Montgomery County, also would act as the district attorney for the 457th Judicial District.

461st Judicial District. The bill would create the 461st Judicial District, to be composed of Brazoria County, on September 1, 2019. The 461st District Court would give preference to family law matters. Brazoria County would be removed from the 23rd Judicial district, and the bill would provide procedures for transferring cases from Brazoria County pending in the 23rd District Court to the 461st District Court on the bill's effective date.

466th Judicial District. CSSB 891 would create the 466th Judicial District, to be composed of Comal County, on January 1, 2021.

467th Judicial District. The bill would create the 467th Judicial District, to be composed of Denton County, on January 1, 2021.

468th Judicial District and 471st District. CSSB 891 would create the 468th Judicial District and 471st Judicial District, both to be composed of Collin County, on September 1, 2019. The 468th District Court would give preference to family law matters, and the 471st District Court would give preference to civil matters.

4th Judicial District. The bill would change the terms of the 4th District Court from the first Mondays of January, March, May, July, September, and November to the first Mondays of January and July.

Statutory County Courts. CSSB 891 would create a number of statutory county courts and alter the jurisdiction of some existing courts.

Bosque County. The bill would expand the jurisdiction of the county court at law in Bosque County to provide concurrent jurisdiction with the district court in felony cases transferred from the district court to conduct arraignments, pretrial hearings, and motions to adjudicate or revoke and to accept guilty pleas. The bill also would provide guidelines for the exercise of the concurrent jurisdiction of the district court and county court at law in Bosque County. This change in the law would apply only to criminal cases filed on or after the effective date of the bill.

Chambers County. CSSB 891 would create a county court at law in Chambers County on January 1, 2021. The county court at law would have the jurisdiction generally possessed by statutory county courts and concurrent jurisdiction with the district court in arraignments, pleas, and pretrial motions for felony cases and in family law cases and proceedings. The bill would provide guidelines for the exercise of the concurrent jurisdiction of the district court and county court at law in Chambers County.

The judge of the county court at law would be paid out of the county

treasury an annual salary in an amount of at least \$1,000 less than the total annual salary, including supplements, received by the district judge in the county. The bill would set out procedures for the administration of the statutory county court, the selection of jurors, and the terms of the statutory county court.

Comal County. The County Court at Law No. 3 of Comal County would be created September 1, 2019.

Cooke County. CSSB 891 would expand the jurisdiction of a county court at law in Cooke County to have concurrent jurisdiction with the district court in family law cases and proceedings. The district clerk would serve as the clerk of a county court at law in family law cases and proceedings.

Ellis County. The bill would create the County Court at Law No. 3 of Ellis County on January 1, 2021.

Gillespie County. CSSB 891 would create the County Court of Law of Gillespie County on October 1, 2019. The county court at law would have the jurisdiction generally possessed by statutory county courts and concurrent jurisdiction with the district court in family law cases and proceedings and juvenile law cases and proceedings. The bill would set out rules for the administration of the county court at law and the size of juries in a case or proceeding tried before the court.

Hidalgo County. The bill would create County Courts at Law Nos. 9 and 10 of Hidalgo County on September 1, 2019.

Kaufman County. CSSB 891 would repeal a provision limiting the County Court at Law No. 2 of Kaufman County's jurisdiction depending on the amount in controversy. The bill would require that a jury before the statutory county court be composed of 12 members in civil cases in which the amount in controversy was at least \$200,000, family law cases and proceedings, and felony cases. These changes would apply only to a cause of action filed on or after the effective date.

Liberty County. The bill would create the County Court at Law No. 2 of Liberty County on September 1, 2019.

Potter County. CSSB 891 would expand the jurisdiction of the County Court at Law No. 1 of Potter County to have concurrent jurisdiction with the district court in felony cases to conduct arraignments, conduct pretrial hearings, and accept pleas in uncontested matters.

Rockwall County. The bill would create the County Court at Law No. 2 of Rockwall County on September 1, 2019.

Municipal courts. CSSB 891 would exempt the clerk and other personnel of the Lubbock municipal courts from performing their duties under the direction and control of the presiding judge.

Senior district judges. CSSB 891 would eliminate the classification of senior visiting district judges for the first administrative judicial region.

Masters and magistrates. CSSB 891 would allow certain counties to appoint masters or magistrates and would alter some of the provisions regarding these judicial officers.

Bell County. The bill would allow the commissioners court of Bell County to select masters to serve the justice courts in the county having jurisdiction in truancy matters. The bill would provide rules regarding the jurisdiction of these masters, their powers, duties, judicial immunity, and training, and the consequences of failing to comply with a summons or order or committing perjury before a master.

Collin County. CSSB 891 would allow the commissioners court of Collin County to appoint part-time or full-time magistrates. The bill would provide rules regarding the appointment, qualifications, and compensation of magistrates, the proceedings that could be referred to magistrates, the procedures for making referrals, the powers of magistrates, and other administrative matters.

Fort Bend County. The bill would allow the commissioners court of Fort Bend County to appoint part-time or full-time magistrates. The bill also would provide rules regarding the appointment, qualifications, and compensation of magistrates, the proceedings that could be referred to magistrates, the procedures for making referrals, the powers of magistrates, and other administrative matters.

Kerr County. CSSB 891 would allow the commissioners court of Kerr County to authorize the district and statutory county courts in Kerr County to appoint full-time or part-time magistrates. The bill would provide rules regarding the appointment, qualifications, compensation, jurisdiction, responsibilities, powers, and resources available to magistrates.

Magistrates under the Code of Criminal Procedure. The bill would add magistrates appointed by the El Paso Council of Judges, by the Collin County Commissioners Court, and the Fort Bend County Commissioners Court to the list of individuals who were magistrates under the Code of Criminal Procedure. The bill also would specify that magistrates appointed by the El Paso Council of Judges had jurisdiction in criminal actions.

District attorneys. CSSB 891 would change provisions relating to certain district attorneys in the state.

Professional prosecutors. The bill would add the district attorney for the 24th Judicial District, the criminal district attorney for Medina County, and the county attorney performing the duties of a district attorney in Burleson County to the list of professional prosecutors, effective September 1, 2019.

The bill would add the district attorney 293rd Judicial District to the list of professional prosecutors, effective January 1, 2025.

21st Judicial District. CSSB 891 would require the district attorney for the 21st Judicial District to be elected only by the voters of Washington County, and not those of Burleson County as provided under current law.

The district attorney would represent the state in that district court in that county and not in Burleson County and in the 335th District Court in that county and not in Burleson County.

Burleson County. The bill would require the county attorney of Burleson County to perform the duties imposed on and have the powers conferred on district attorneys by general law. The county attorney would be entitled to be compensated by the state in the same manner and amount as the salary paid to a district attorney.

Medina County. CSSB 891 would require the voters of Medina County to elect a criminal district attorney and would abolish the office of county attorney of Medina County as of January 1, 2021. The initial vacancy of the office of criminal district attorney would be filled by election in 2020 for a four-year term in office. The bill would set out the qualifications, powers, duties, privileges, and compensation from the state of the criminal district attorney to be elected by the voters of Medina County.

Medina County would be entitled to an amount equal to the amount provided in the general appropriations act to district attorneys for the payment of staff salaries and office expenses.

Bailiffs. CSSB 891 would allow the judge of the 397th District Court to appoint a bailiff, who would have to be a U.S. citizen and would be entitled to receive from the county a salary set by the judge.

Juvenile Boards. CSSB 891 would alter the procedures of the juvenile boards of certain counties.

Goliad County. The bill would allow the juvenile board of Goliad County and the juvenile boards of any counties adjacent or close to Goliad County to agree to operate together with respect to any matters specified by the juvenile boards. Juvenile boards operating together could appoint one fiscal officer to receive and disburse funds for the boards.

Grimes County. CSSB 891 would add the judge of each county court at

law in Grimes County to the juvenile board of that county.

Victoria County. The bill would require the juvenile board of Victoria County to elect one of its members as chairman of the board. Rules relating to designation of a fiscal officer, duties of juvenile boards, and employment of personnel would apply to juvenile board of Victoria County.

The bill also would allow the juvenile board of Victoria County and the juvenile boards of any counties adjacent or close to Victoria County to agree to operate together with respect to certain matters specified by the juvenile boards. Juvenile boards operating together could appoint one fiscal officer to receive and disburse funds for the boards.

Website for public and legal notices. CSSB 891 would require OCA to establish and maintain a website that would allow for the publication of public or legal notices by June 1, 2020. This website would have to be accessible to the public and easily searchable. The Texas Supreme Court would have to establish procedures for the submission of information to this website by persons required to publish such information by June 1, 2020.

Publication of a required citation or notice on this website and in a newspaper of general circulation in the applicable county would satisfy the requirements of service by publication in many circumstances under the Business Organizations Code, Estates Code, Family Code, and Health and Safety Code. In such situations, however, a person would be allowed to publish a citation or notice only on the website and not in a newspaper of general circulation if:

- the person filed a statement of inability to afford the payment of court costs;
- the total cost of the required publication exceeded the greater of \$200 each week or an amount adjusted for inflation by the Supreme Court; or
- the county in which the publication of citation or notice was

required did not have a newspaper of general circulation.

The bill also would allow district clerks to post an official and legal notice by electronic display instead of posting a physical document in the same manner as county clerks.

The provisions relating to service by publication would take effect June 1, 2020.

Substituted service. If substituted service of citation was authorized under the Texas Rules of Civil Procedure, CSSB 891 would allow courts to prescribe as a method of service electronic communications to defendants through a social media presence. The Supreme Court would be required to adopt rules for such substituted service of citation by December 31, 2020, and this change in the law would apply only to actions commenced on or after the effective date of these rules.

Specialty courts. CSSB 891 would specify that a specialty court could not operate until the judge, magistrate, or coordinator had provided certain specified information to OCA, rather than to the Office of the Governor's Criminal Justice Division (CJD) as required under current law. However, specialty court programs would have to report to both CJD and the judicial council any information required by those bodies regarding their performance.

OCA would have to provide technical assistance to specialty court programs on request, coordinate with entities funded by CJD that provided services to specialty courts, monitor specialty court programs for compliance with best practices, and notify CJD if a specialty court program failed to comply with best practices. OCA also would coordinate with and provide information to CJD on request.

Duties of OCA and the comptroller. CSSB 891 would alter some of the duties of OCA and the comptroller with regard to the state's judicial system.

The bill would shift from OCA to the comptroller the responsibility for paying travel expenses and other incidental costs related to convening a three-judge panel in certain suits involving the state. The comptroller would pay these expenses and costs from funds appropriated to the comptroller's judiciary section. This change would apply only to travel expenses or incidental costs incurred on or after the bill's effective date.

The bill would shift from the comptroller to OCA the responsibility for identifying each law enacted by the Legislature that imposed or changed the amount of court costs or fees at the end of each regular session. OCA would have to publish a list of such costs and fees in the Texas Register by August 1 after the end of the regular session. This change would apply only to a law imposing or changing the amount of a court cost or fee taking effect on or after this bill's effective date.

Permanent Judicial Commission for Children. CSSB 891 would specify that the Permanent Judicial Commission for Children, Youth and Families had to develop and administer a program that provided grants from available funds for initiatives that improved the well-being, safety, and permanency outcomes in child protection cases or that enhanced due process for the parties or increased the timeliness of resolutions in cases involving the welfare of children.

The commission would be allowed to develop a program to provide grants for initiatives to prevent or minimize the involvement of children in the juvenile justice system or promote the rehabilitation of children in that system and any other initiatives identified by the commission or the Supreme Court to improve the administration of justice for children.

Texas Judicial Commission on Mental Health. CSSB 891 would require the Supreme Court to establish the Texas Judicial Commission on Mental Health as soon as practicable after September 1, 2019. This commission could develop and administer a program to provide grants from available funds for initiatives that would improve the administration of justice for individuals with mental health needs or intellectual or developmental disabilities.

Court reporters. CSSB 891 would create an apprenticeship program and provisional certification for court reporters, require the Judicial Branch Certification Commission (JBCC) to pursue reciprocity agreements with other states, and amend certain laws and rules applicable to court reporters and firms.

Certifications for apprentice and provisional court reporters. The bill would allow JBCC to provide for the certification of apprentice court reporters and provisional court reporters.

An apprentice court reporter could engage in court reporting only under direct supervision from a certified court reporter and only for certain types of legal proceedings. Rules adopted by JBCC could allow for the issuance of a full certification to a court reporter who successfully completed an apprenticeship and passed Part A of the court reporter certification examination.

A provisional certification of a court reporter would allow a person to engage in court reporting only in accordance with authorized terms and for the period. JBCC could adopt rules allowing for the issuance of a full certification to a provisional court reporter upon the reporter's completion of the terms of the commission's conditional approval.

The bill also would require JBCC to certify to the Supreme Court the name of each applicant who met the qualifications for certification as an apprentice or provisional court reporter.

Reciprocity. CSSB 891 would permit JBCC to waive any prerequisites required for court reporter certification or shorthand reporting firm registration for applicants if the commission determined that applicants held a certification issued by another jurisdiction that had certification requirements substantially equivalent to those of Texas. JBCC would be required to create a list of such jurisdictions by June 1, 2020, and to periodically update this list.

JBCC would have to certify to the Supreme Court the name of each qualified applicant who:

- held a court reporter certification from a jurisdiction with substantially equivalent requirements to those in Texas;
- before certification in Texas, passed Part B of the examination required for certification; and
- provided proof acceptable to JBCC that the applicant had been actively performing court reporting in another jurisdiction for at least three of the preceding five years.

Any reciprocity agreement approved by the Supreme Court would be required to mandate that an applicant in Texas who held a certification issued by another state:

- had passed Part B of the certification examination;
- had provided proof of actively performing court reporting in another jurisdiction for at least three of the past five years; and
- possessed a certification, registration, or license that JBCC had determined was at least equivalent to the registered professional reporter designation or similar designation.

An applicant who held a certification from a jurisdiction with substantially equivalent requirements to those in Texas would not also be required to have a certification determined to be at least equivalent to the registered professional reporter designation or similar designation.

JBCC could adopt rules requiring the issuance of provisional certifications to the applicants to serve as court reporters for a limited time and under conditions reasonably necessary to protect the public interest.

JBCC would, by January 1, 2020, have to communicate with regulatory officials in each state to inquire whether the state desired to enter into a reciprocity agreement with Texas and then report the results of the inquiry to the Supreme Court by April 1, 2020.

Shorthand reporting firms. The bill would require shorthand reporting firms to pay registration or renewal fees in an amount equal to the fees for court reporter certifications instead of the registration fees required for shorthand reporting firms if certified court reporters of the firm had an ownership interest in the firm of 50 percent or more and maintained actual control of the firm.

Disciplinary actions. CSSB 891 would add repeatedly committing to provide at a specific time and location court reporting services for an attorney in connection with a legal proceeding and unreasonably failing to fulfill the commitment under the terms of that commitment to the list of conduct for which JBCC was required to discipline a shorthand reporting firm. The bill would require JBCC to define the conditions under which the repeated failure of a shorthand reporting firm or its affiliate office to fulfill a commitment to provide court reporting services would be considered unprofessional conduct and grounds for disciplinary action.

The bill would create a class A misdemeanor offense (up to one year in jail and/or a maximum fine of \$4,000) for a person that provided shorthand reporting firm services in violation of firm registration requirements. Each day of the violation would constitute a separate offense.

Continuing education. JBCC by rule would require each court reporter certified by the commission and at least one person who had management responsibility for a shorthand reporting firm registered in Texas to complete continuing professional education.

Other provisions. When developing rules relating to certifications for apprentice and provisional court reporters and to disciplinary action for reporting firms that failed to fulfill commitments to provide court reporting services, JBCC would be required to:

- establish a stakeholder work group to receive input; and
- solicit feedback from the Texas Court Reporters Association, the Texas Deposition Reporters Association, court reporting schools,

and other interested parties.

CSSB 891 would exempt from the Uniform Electronic Transactions Act any document:

- produced by an appointed court reporter, certified court reporter, or a registered reporting firm for use in the state or federal judicial system; or
- governed by the electronic filing system rules established by the Texas Supreme Court.

The bill would require a notice of appeal to be served on each court reporter responsible for preparing the reporter's record. The Supreme Court would be prohibited from adopting rules that would conflict with the notice requirement.

CSSB 891 also would require a court reporter firm to provide the court reporter who reported a deposition with the certification that the reporter had signed or to which the reporter's signature has been applied.

Unsworn declarations. CSSB 891 would allow for a waiver of the issuance or service of citation in suits involving the removal of disabilities of minority or for changing the name of an adult to be executed in conformance with the requirements for an unsworn declaration.

Caseload study. CSSB 891 would require OCA to contract with the National Center for State Courts (NCSC) to conduct a study of the caseloads of the district and statutory county courts in this state that concentrated on the weighted caseload of each court and considered the nature and complexity of the cases heard. NCSC would have to report the results of this study to OCA by December 1, 2020. OCA then would submit a report on those results with the governor, lieutenant governor, House speaker, and relevant legislative committees by January 1, 2021.

Appropriations. OCA would be required to implement a provision of CSSB 891 only if the Legislature appropriated money specifically for that

purpose. If the Legislature did not appropriate money specifically for that purpose the office could, but would not be required to, implement a provision of the bill using other appropriations available for that purpose.

The bill would take effect September 1, 2019, except as otherwise provided.

**SUPPORTERS
SAY:**

CSSB 891 would provide Texas with adequate judicial resources to meet the state's ever-increasing caseloads. The courts added by this bill have been shown to be needed based on workload data submitted by the Office of Court Administration (OCA), including caseloads, case backlogs, substantial population growth, objective workload measure, and county support.

The bill would increase access to justice by requiring OCA to create a free online database for service by publication, which would reduce the costs of litigation for those least able to afford them and would address problems in counties that lacked a newspaper of general circulation.

CSSB 891 also would alleviate the state's court reporter shortage by attracting more court reporters to the industry through an apprentice program and provisional certification program as well as through reciprocity agreements with other states, while also ensuring court reporters maintained high standards by providing an appropriate level of oversight.

Additionally, the bill would allow OCA to contract for a study on judicial workload in order to update a study that is 11 years old and determine the need for new courts. The bill also would ensure efficiency and uniformity in civil processes and procedures.

**OPPONENTS
SAY:**

With regard to court reporters, CSSB 891 could create an apprenticeship program and provisional certification program that would not be clearly defined, would create a vague and unnecessary offense, and could create additional regulatory burdens.

NOTES: According to Legislative Budget Board, the bill would have a negative impact of about \$4.1 million to general revenue related funds through fiscal 2020-21.