

HOUSE JOURNAL

EIGHTY-SIXTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

THIRTEENTH DAY — WEDNESDAY, FEBRUARY 6, 2019

The house met at 9:01 a.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 28).

Present — Mr. Speaker(C); Allen; Allison; Anchia; Anderson; Ashby; Bailes; Beckley; Bell, C.; Bell, K.; Bernal; Biedermann; Blanco; Bohac; Bonnen; Bowers; Buckley; Bucy; Burns; Burrows; Button; Cain; Calanni; Canales; Capriglione; Clardy; Cole; Coleman; Collier; Cortez; Craddick; Cyrier; Darby; Davis, S.; Davis, Y.; Dean; Deshotel; Dominguez; Farrar; Flynn; Frank; Frullo; Geren; Gervin-Hawkins; Goldman; González, J.; González, M.; Goodwin; Guerra; Guillen; Gutierrez; Harless; Harris; Hefner; Hernandez; Herrero; Hinojosa; Holland; Howard; Huberty; Hunter; Israel; Johnson, E.; Johnson, J.D.; Johnson, J.E.; Kacal; King, K.; King, P.; King, T.; Klick; Krause; Kuempel; Lambert; Landgraf; Lang; Larson; Leach; Leman; Longoria; Lozano; Lucio; Martinez; Martinez Fischer; Metcalf; Meyer; Meza; Middleton; Miller; Minjarez; Moody; Morrison; Muñoz; Murphy; Murr; Neave; Nevárez; Noble; Oliverson; Ortega; Pacheco; Paddie; Parker; Patterson; Paul; Perez; Phelan; Price; Ramos; Raney; Raymond; Reynolds; Rodriguez; Romero; Rose; Rosenthal; Sanford; Schaefer; Shaheen; Sheffield; Sherman; Shine; Smith; Smithee; Springer; Stephenson; Stucky; Swanson; Talarico; Thierry; Thompson, E.; Thompson, S.; Tinderholt; Toth; Turner, C.; Turner, J.; VanDeaver; Vo; Walle; White; Wilson; Wray; Wu; Zedler; Zerwas; Zwiener.

Absent — Dutton; Stickland.

The invocation was offered by Dr. Bobby Herrell, pastor, Cornerstone Baptist Church, Fort Worth.

The chair recognized Representative Goodwin who led the house in the pledges of allegiance to the United States and Texas flags.

CAPITOL PHYSICIAN

The chair recognized Representative K. Bell who presented Dr. Doug Curran of Athens as the "Doctor for the Day."

The house welcomed Dr. Curran and thanked him for his participation in the Physician of the Day Program sponsored by the Texas Academy of Family Physicians.

**MESSAGES FROM THE GOVERNOR
OF THE STATE OF TEXAS**

The chair laid before the house and had read the following special messages by the governor:

TO THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE EIGHTY-SIXTH LEGISLATURE, REGULAR SESSION:

I, GREG ABBOTT, Governor of the State of Texas, pursuant to Article III, Section 5, of the Texas Constitution and by this special message, do hereby submit the following emergency matter for immediate consideration to the Senate and House of Representatives of the 86th Legislature, now convened:

Legislation or resolutions relating to comprehensive school finance reform as recommended by the Texas Commission on Public School Finance, and increased teacher pay.

Respectfully submitted,
Greg Abbott
Governor

Austin, Texas
February 5, 2019

TO THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE EIGHTY-SIXTH LEGISLATURE, REGULAR SESSION:

I, GREG ABBOTT, Governor of the State of Texas, pursuant to Article III, Section 5, of the Texas Constitution and by this special message, do hereby submit the following emergency matter for immediate consideration to the Senate and House of Representatives of the 86th Legislature, now convened:

Legislation relating to reform of the property tax system by requiring voter approval to exceed a 2.5% rollback rate, by improving accountability in the selection of a chief appraiser, and by increasing transparency.

Respectfully submitted,
Greg Abbott
Governor

Austin, Texas
February 5, 2019

TO THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE EIGHTY-SIXTH LEGISLATURE, REGULAR SESSION:

I, GREG ABBOTT, Governor of the State of Texas, pursuant to Article III, Section 5, of the Texas Constitution and by this special message, do hereby submit the following emergency matter for immediate consideration to the Senate and House of Representatives of the 86th Legislature, now convened:

Legislation relating to safety in elementary and secondary schools and in public junior colleges.

Respectfully submitted,
Greg Abbott
Governor

Austin, Texas
February 5, 2019

TO THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE
EIGHTY-SIXTH LEGISLATURE, REGULAR SESSION:

I, GREG ABBOTT, Governor of the State of Texas, pursuant to Article III, Section 5, of the Texas Constitution and by this special message, do hereby submit the following emergency matter for immediate consideration to the Senate and House of Representatives of the 86th Legislature, now convened:

Legislation relating to emergency preparedness, response, and recovery.

Respectfully submitted,
Greg Abbott
Governor

Austin, Texas
February 5, 2019

TO THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE
EIGHTY-SIXTH LEGISLATURE, REGULAR SESSION:

I, GREG ABBOTT, Governor of the State of Texas, pursuant to Article III, Section 5, of the Texas Constitution and by this special message, do hereby submit the following emergency matter for immediate consideration to the Senate and House of Representatives of the 86th Legislature, now convened:

Legislation relating to the creation of the Texas Mental Health Care Consortium.

Respectfully submitted,
Greg Abbott
Governor

Austin, Texas
February 5, 2019

**HR 211 - ADOPTED
(by Price)**

Representative Price moved to suspend all necessary rules to take up and consider at this time **HR 211**.

The motion prevailed.

The following resolution was laid before the house:

HR 211, Recognizing February 6, 2019, as Mental Illness Awareness Day at the State Capitol.

HR 211 was adopted.

On motion of Representative Moody, the names of all the members of the house were added to **HR 211** as signers thereof.

(Stickland now present)

HR 149 - ADOPTED
(by Springer)

Representative Springer moved to suspend all necessary rules to take up and consider at this time **HR 149**.

The motion prevailed.

The following resolution was laid before the house:

HR 149, Welcoming members of the Knox-Haskell Rural Leadership Program to the State Capitol.

HR 149 was adopted.

HR 162 - ADOPTED
(by Shaheen)

Representative Shaheen moved to suspend all necessary rules to take up and consider at this time **HR 162**.

The motion prevailed.

The following resolution was laid before the house:

HR 162, Honoring the BAPS charitable organization on the occasion of its visit to the State Capitol for the Celebration of Indian American Culture in Texas.

HR 162 was adopted.

On motion of Representative Capriglione, the names of all the members of the house were added to **HR 162** as signers thereof.

INTRODUCTION OF GUESTS

The chair recognized Representative Shaheen who introduced representatives of BAPS Charities.

HR 160 - ADOPTED
(by Morrison)

Representative Morrison moved to suspend all necessary rules to take up and consider at this time **HR 160**.

The motion prevailed.

The following resolution was laid before the house:

HR 160, Congratulating the Cuero High School football team on winning the 2018 UIL 4A Division 2 state championship.

HR 160 was read and was adopted.

On motion of Representative Smith, the names of all the members of the house were added to **HR 160** as signers thereof.

(Dutton now present)

INTRODUCTION OF GUESTS

The chair recognized Representative Morrison who introduced players of the Cuero High School football team.

HR 175 - ADOPTED

(by K. Bell)

Representative K. Bell moved to suspend all necessary rules to take up and consider at this time **HR 175**.

The motion prevailed.

The following resolution was laid before the house:

HR 175, Recognizing February 6, 2019, as Athens Day at the State Capitol.

HR 175 was adopted.

HR 99 - ADOPTED

(by T. King)

Representative T. King moved to suspend all necessary rules to take up and consider at this time **HR 99**.

The motion prevailed.

The following resolution was laid before the house:

HR 99, Recognizing February 6, 2019, as Uvalde County Day at the State Capitol.

HR 99 was adopted.

INTRODUCTION OF GUESTS

The chair recognized Representative T. King who introduced a delegation from Uvalde County.

HR 147 - ADOPTED

(by Israel)

Representative Israel moved to suspend all necessary rules to take up and consider at this time **HR 147**.

The motion prevailed.

The following resolution was laid before the house:

HR 147, Recognizing February 6, 2019, as Transit Day at the State Capitol.

HR 147 was adopted.

INTRODUCTION OF GUESTS

The chair recognized Representative Israel who introduced representatives of the Texas Transit Association.

(Speaker pro tempore in the chair)

HR 213 - ADOPTED
(by Kacal)

Representative Kacal moved to suspend all necessary rules to take up and consider at this time **HR 213**.

The motion prevailed.

The following resolution was laid before the house:

HR 213, Congratulating Dr. Roland Goertz on his retirement from Waco Family Health Center.

HR 213 was adopted.

INTRODUCTION OF GUESTS

The chair recognized Representative Nevárez who introduced delegations from Hudspeth County and Jeff Davis County.

HR 205 - ADOPTED
(by Nevárez)

Representative Nevárez moved to suspend all necessary rules to take up and consider at this time **HR 205**.

The motion prevailed.

The following resolution was laid before the house:

HR 205, Recognizing Hudspeth County Day at the State Capitol.

HR 205 was adopted.

HR 204 - ADOPTED
(by Nevárez)

Representative Nevárez moved to suspend all necessary rules to take up and consider at this time **HR 204**.

The motion prevailed.

The following resolution was laid before the house:

HR 204, Recognizing Culberson County Day at the State Capitol.

HR 204 was adopted.

HR 206 - ADOPTED
(by Nevárez)

Representative Nevárez moved to suspend all necessary rules to take up and consider at this time **HR 206**.

The motion prevailed.

The following resolution was laid before the house:

HR 206, Recognizing Jeff Davis County Day at the State Capitol.

HR 206 was adopted.

(Speaker in the chair)

HOUSE AT EASE

At 10:21 a.m., the chair announced that the house would stand at ease.

(Speaker pro tempore in the chair)

The chair called the house to order at 10:55 a.m.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 1).

HOUSE AT EASE

At 10:56 a.m., the chair announced that the house would stand at ease pending the arrival of guests.

(Speaker in the chair)

The chair called the house to order at 11:02 a.m.

ADDRESS BY THE HONORABLE NATHAN L. HECHT (The House of Representatives and the Senate in Joint Session)

In accordance with the provisions of **HCR 39**, providing for a joint session of the senate and house of representatives for the purpose of hearing an address by the Honorable Nathan L. Hecht, chief justice of the Supreme Court of Texas, the Honorable Dan Patrick, lieutenant governor of the State of Texas, and the honorable senators were announced at the door of the house and were admitted.

The Honorable Nathan L. Hecht, chief justice of the Supreme Court of Texas, was announced at the door of the house and, being admitted, was escorted by Senators Whitmire, Buckingham, Creighton, Hancock, and Huffman, committee on the part of the senate; and Representatives Leach, Collier, Dutton, Neave, and Smith, committee on the part of the house.

The Honorable Dan Patrick, president of the senate, called the senate to order at 11:07 a.m. and stated that a quorum of the senate was present.

The Honorable Dennis Bonnen, speaker of the house, called the house to order at 11:07 a.m. and stated that a quorum of the house of representatives was present.

Speaker Bonnen stated that the two houses were in joint session pursuant to **HCR 39** for the purpose of hearing an address by the Honorable Nathan L. Hecht, chief justice of the Supreme Court of Texas.

Speaker Bonnen recognized members of the Supreme Court of Texas, members of the Court of Criminal Appeals of Texas, members of the Courts of Appeals of Texas, and other administrative judges.

INTERPRETER FOR THE DEAF

The interpretation of the proceedings of the house was provided today by Alan Sessions and Shannon Whitley.

Lieutenant Governor Patrick introduced Chief Justice Hecht who addressed the joint session, speaking as follows:

Lieutenant Governor Patrick, Speaker Bonnen, members of the 86th Legislature, members of the judiciary, distinguished guests, ladies and gentlemen, as chief justice of the Supreme Court of Texas and its longest-serving member in Texas history, this is my third occasion to report to you on the state of the Texas judiciary. On a Friday afternoon, Pam Heard, Aransas County district clerk for more than 16 years, worked feverishly with her seven deputies to cover their computers with plastic as Hurricane Harvey bore down on Rockport. That evening, August 25, 2017, when the eye of the storm made landfall five miles away, Harvey was a Category 4 storm with 132-mph winds driving rains of two feet a day. Anticipating the worst, Judge Janna Whatley, who serves Aransas and four other counties, had worked with other judges to designate essential personnel, but the storm knocked out communications, including most cellular service. On Sunday, when Harvey had moved east, Judge Whatley crept through streets littered with downed trees and power lines to see firsthand what she feared the worst, that the courthouse, like much of the town, was gone. And then it was Houston's turn. Sunday night, the downpour began flooding Justice of the Peace Lincoln Goodwin's northwest Harris County courthouse. At 6'5", Judge Goodwin could keep his head above water even in five feet of rain, and he soldiered out into the neighborhood with Constable Mark Herman's deputies and others to rescue seniors and families from assisted living centers and homes. The photos you have on your desks show some of what Judge Goodwin saw. Monday and Tuesday, the deluge continued. The 20-story Harris County criminal courts building flooded, causing sewage pipes to burst. Susan Brown, presiding judge for the criminal district courts, began doubling up criminal and civil courts in shared courtrooms. By Tuesday, judges were leaving their families behind in flooded homes and navigating streets under water to reach reassigned courtrooms and continue handling criminal cases that couldn't wait. The judiciary was back to work.

Justice of the Peace Goodwin handles over 130,000 cases a year, over 500 a day. By number of filings, his is the busiest court in Texas, maybe in the United States. Judge Goodwin and his 40 clerks, including Emma Lopez and Luz Hernandez—court family, he calls them—returned to work immediately, though some of their homes had flooded. He and his staff rescued court files and had them dried and restored, saving Harris County thousands of dollars for use in other ways. I could not have been prouder of our court team, he says. His building too damaged to use, he sought an emergency order from the Supreme Court and the Court of Criminal Appeals to share a courtroom in a neighboring precinct. The high courts also authorized Judge Whatley to hold court in nearby San Patricio County, which had escaped the worst of the storm. With hard work and determination, she and her colleagues have managed to dig out of their backlogs. District Clerk Pam Heard and her staff fled inland but returned to work at once. With their plastic-wrapped computers buried in the rubble of Rockport, the Office of Court Administration here in Austin rushed laptops to her. She and her deputies, six of whose homes had flooded, set up shop in a damaged building,

sitting on the floor to process cases. Her chief deputy, Stephanie Abbott, who had lost everything, worked side by side with them. Because of electronic filing supported by the legislature and ordered by the Supreme Court and the Court of Criminal Appeals, Aransas County lost none of its court records.

Harvey's toll in lives and money ranks it among the costliest natural disasters in history. Many Texans were hit hard. Many are still struggling. The Texas justice system took a staggering blow. Beaten but unbowed, Texas judges, clerks, administrators, and staff carried on throughout the storm and since in makeshift space—many at great personal sacrifice. We haven't fully recovered, but we're getting there. In my 38 years on the bench, I have never been prouder of the Texas judiciary. Harvey made a mess, but it also made many heroes like those in my story. Aransas County District Clerk Pam Heard and her chief deputy, Stephanie Abbott, are here. So are Houston Justice of the Peace Lincoln Goodwin and two of his clerks, Emma Lopez and Luz Hernandez, as well as District Judge Janna Whatley and regional Presiding Judge Susan Brown. Please stand, if you would, and receive our appreciation for going above and beyond to serve the courts.

In 2009, following Hurricane Ike, the legislature gave the Supreme Court authority to modify or suspend court procedures in a disaster. In Hurricane Harvey, the Supreme Court, together with the Court of Criminal Appeals, used that authority, even suspending statutes of limitations in civil cases. The court also authorized judges to sit outside their statutorily designated jurisdictions. We've learned that court administration in a disaster requires even more flexibility, and the Texas Judicial Council recommends legislation to provide it, which Senator Judith Zaffirini has sponsored. Give us more tools for the next Harvey. Please pass **SB 40**. For millions of Texans living on the brink with nothing to spare, a catastrophe like Harvey threatens livelihood, housing, survival itself. In Harvey's wake, hundreds of civil, legal aid, and pro bono lawyers rushed to the frontlines. They assisted thousands of families with FEMA and insurance claims to obtain promised benefits. They worked with tenants and landlords alike, who were all struggling, to minimize housing disruptions. They helped workers who lost everything keep their jobs. They got relatives the right to care for their displaced families' children and enroll them in school. They sought protection for victims of domestic violence brought on by the stress. A young lawyer volunteer assisting Harvey evacuees in Houston overheard a lawyer with Lone Star Legal Aid lamenting that its downtown offices had burned in an electrical fire caused by the storm. She asked her senior partner, could the firm offer its extra space to Lone Star? Yes, and other law firms also offered free space. The Supreme Court, with the State Bar's support, allowed lawyers not licensed in Texas to represent storm victims through bar associations and legal aid providers. With technology, a New York lawyer sitting at the computer in her Manhattan office could counsel disaster victims in Houston.

The Supreme Court and the legal profession are deeply committed to ensuring access to justice, in disasters and every day. But 5.5 million of our fellow Texans qualify for legal aid. For a decade now, the legislature has provided critical funding for basic civil legal services. Last year, providers helped

150,000 families, and every year, lawyers donate millions of dollars plus two million hours in free legal services. And yet with all that—with all that—estimates are still that less than 10 percent of the need is met. The Texas Legal Aid for Survivors of Sexual Assault legal aid program, called LASSA for short, is financed by the legislature's dedicated sexual assault program fund. In two years, it cleared some 11,000 cases. I urge you to restore last session's four percent across-the-board cut of that funding. Last session the legislature continued funding civil legal services for veterans, appropriating \$3 million. Nearly 800 veterans' clinics served some 15,000 veterans in a little over two years. The person most responsible for that funding is Lieutenant Governor Dan Patrick. Governor Patrick, on behalf of 15,000 Texas veterans, thank you very much. Both the house and senate budget bills continue the \$3 million appropriation, but Governor Abbott's "Front of the Line" veterans policy calls for an additional \$3 million. I urge you, respond to that call. You heard in this house yesterday how important all of our efforts are for veterans returning home to the freedoms that they risked their lives to protect. They can be met with financial, employment, housing, and family problems. Texas' civil justice system must not leave one behind—not even one. In providing access to justice, we will leave no one behind.

Historic as was the blow Hurricane Harvey dealt the Texas judiciary, so was the blow from the November election. Of the 80 intermediate appellate justices, 28—35 percent—are new. A third of the 254 constitutional county judges are new and a fourth of trial judges, district, county, and justices of the peace. In all, I'm told, 443 Texas judges are new to their jobs. On the appellate and district courts alone, the Texas judiciary in the last election lost seven centuries of judicial experience at a single stroke. Now, no method of judicial selection is perfect. Federal judicial confirmation hearings, as we've recently seen, are regarded as a national disgrace by the senators themselves. States have tried every imaginable alternative. Still, partisan election is among the very worst methods of judicial selection. Voters understandably want accountability, and they should have it. But knowing almost nothing about judicial candidates, they end up throwing out very good judges who happen to be on the wrong side of races higher on the ballot. Merit selection followed by nonpartisan retention elections would be better. At a minimum, judicial qualifications should be raised as the Judicial Council recommends. I urge you, at least, to pass **SB 561** and **SJR 35** to raise those qualifications. Now, don't get me wrong, I certainly do not disparage our new judges. I welcome them. I've been in their shoes. It was a long time ago, but I was there. My point is that qualifications did not drive their election, partisan politics did. Partisan sweeps—they've gone both ways over the years—whichever way they went, I protested. Partisan sweeps are demoralizing to judges, disruptive to the legal system, and degrading to the administration of justice. And even worse, when partisan politics is the driving force and the political climate is as harsh as ours has become, judicial elections make judges more political, and judicial independence is the casualty. Make no mistake, a judicial selection system that continues to sow the political wind will reap the whirlwind.

I was appointed to the district court in 1981 when federal district judges were paid five percent more—\$2,500—than Dallas County district judges. In the next 20 years, Texas judges received 11 raises; in the past 18 years, two. Now, a federal district judge is paid \$50,000, almost a third, more than a Texas district judge. Texas high court salaries rank 29th in the nation, a third less than our counterparts in other large states. Judicial service, public service, is just that—service. Judges know that going in. It involves personal sacrifice. But public service should not be public servitude. The people of Texas can be proud that when improvement in the justice system is needed, we're working on it hard. Texas has not compensated her judges fairly. Adjusting for inflation, Texas judges are paid less than they were in 1991, 28 years ago. Experienced judges are just not encouraged to stay. The Judicial Compensation Commission has recommended that judicial compensation be increased 15 percent. **HB 1** includes a 10 percent increase, which would be very helpful. But Senator Joan Huffman's **SB 387** proposes a different approach that encourages retention of judges. Its essential feature is that a judge's compensation will increase every four years the judge serves, up to 12 years—basically two terms for an appellate judge and three for trial judges. The plan thus rewards experience and recognizes the value of continued service. Like most private sector employees, judges who work hard and do well, under Senator Huffman's bill, would make more over time. And raising beginning salaries remains an option. **SB 387** is the best solution I have seen to the problems associated with increasing judicial compensation. I urge you to support it.

The judiciary's single most important need is better technology. Texas has 3,210 judges, more than any other state, plus associate judges and senior judges. They are very busy. Though Supreme Court filings are increasing, the court still decides all argued cases by the end of June each year. The Court of Criminal Appeals is the busiest appellate court in the nation. In fiscal year 2018, district judges resolved on average roughly 1,900 cases per judge; statutory county judges, nearly 2,100 per judge; justices of the peace, over 2,800 per judge; and municipal judges, over 3,600 cases per judge. In all, Texas judges handled 8.6 million cases last year. To put that figure in perspective, it's 23 times the number of cases handled by all the federal courts in the country. Sprawling across 254 counties—some bigger than states, a few very urban, most very rural—Texas courts desperately need better data on cases and dockets to operate efficiently and plan for the future. Case types shift over time. Civil cases are increasing just now—11 percent in justice of the peace courts. Debt claims are up 141 percent over the last five years; motor vehicle accident cases up 44 percent; and family cases, four percent. On the criminal side, felony cases have remained steady and misdemeanors have fallen to the lowest level since 1993. Forty percent of new criminal cases involve drugs or alcohol. Knowing how courts are operating requires better case management systems in all 254 counties. The technology is readily available. Urban counties have used it for years. But many counties need a strong system. The courts are not the only beneficiaries. Governor Abbott's "School and Firearm Safety Action Plan" calls for a statewide court case management system to provide magistrates immediate access to critical

information and to speed reporting of court records for federal background checks, all to better secure our schools. So for all these reasons, I urge you to fully fund the Office of Court Administration's technology requests for the judiciary.

Electronic filing has made Texas courts more accessible. It is required in district and county courts in civil cases and in criminal cases in most counties. In November, a new online court records public access initiative was launched called re:SearchTX. With a few clicks, users can see electronic filings in any Texas court and download them for a small charge. Sensitive, personal identity information is protected by requiring lawyers to redact it before filing, implementing automatic redaction software, and restricting access to registered users. Re:SearchTX gives Texas courts greater transparency. And in civil courts, technology can be used to screen cases by complexity when they're filed, improving efficiency. Also, online dispute resolution—ODR for short—allows plaintiffs and defendants to file and respond to claims online and negotiate settlements assisted by a mediator when needed. Parties need not take off work, drive to the courthouse, and wait in line with other cases to see a judge. Access to justice is faster, less expensive, and more predictable. The Office of Court Administration is planning pilot projects in a few Texas jurisdictions to explore civil justice reform and ODR.

But the greatest need for technology in the justice system is criminal pretrial release reform—bail. Twenty-five years ago, a third of the jail population was awaiting trial. Now the percentage is three-fourths—three-fourths of the jail population is awaiting trial. Most of those detained are nonviolent, unlikely to re-offend, and posing no risk of flight. Some are held because they're too poor to make bail. Though presumed innocent, no risk to public safety, they remain in jail, losing jobs and families and emerge more likely to offend. The toll on them personally also burdens communities. And on top of that, taxpayers must foot the bill—a staggering almost \$1 billion per year—to jail those who should be released. And besides the cost, detaining someone solely because he's poor is against the law. It violates fundamental constitutional rights, and in 21st-century Texas it ought to be unthinkable. So why does it happen? Because judges are denied a readily available tool to make a more informed decision. Historically, bail is set by a predetermined schedule based on one thing—the nature of the offense. Validated risk assessment computer programs using a few pieces of demographic information can predict with superior accuracy whether a defendant poses a risk of flight, violence, or recidivism. The program is called "validated" because it's been tested and proven to work. One program, the Public Safety Assessment, is being used in Harris County and will soon be used in other Texas counties.

Not only are people held who should be released, people are released who should be held. Damon Allen was born in Kentucky and moved to Texas with his family when he was eight. He played football at Mexia High School. And after graduation, he chose public service, working at the Mexia State School and then for the Texas Department of Criminal Justice. But Damon's heart was set on law enforcement. So he applied to the Texas Department of Public Safety, and in

2002, Damon became a state trooper. Along the way, he married Kasey, and together they had four children. Damon loved his family. He loved his job. He was a good husband, a good father, a good trooper, a good man. Trooper Damon Allen did not celebrate Thanksgiving Day 2017 with his family as most of us did with ours. He was on patrol, keeping us safe. At 3:45 p.m., he stopped a 2012 Chevrolet Malibu for speeding. After speaking with the driver, Trooper Allen returned to his cruiser to check the driver's license. The driver stepped out of his car with a rifle, walked back to where Damon was sitting in the cruiser, and shot him again and again and again. Trooper Damon Allen died on the scene, his service weapon in his holster. He was 41. The shooter was free that day on money bail. Four months earlier, he had led officers on a 105-mph chase, during which he intentionally rammed a deputy sheriff's vehicle, seriously injuring the deputy. He was charged with evading arrest, aggravated assault of a public servant, and reckless driving. Bail was set at \$15,500. He paid 10 percent—\$1,550—and was released. The judge setting bail had no way of knowing that he had previously been convicted of assault for violently beating a deputy sheriff. And the killing of Damon Allen was not a fluke. A Judicial Council study shows that individuals released on money bond based on schedules are nine times more likely to commit felonies or other weapons offenses. Every day that this continues, public safety is compromised unnecessarily.

Last summer, Governor Abbott called for bail reform, and Kasey Allen was at his side. This week, Senator John Whitmire and Representative Andy Murr have introduced the Damon Allen Act—**HB 1323** and **SB 628**. The Act is not soft on crime—it protects public safety. The Act does not eliminate cash bail—it gives judges more information and more flexibility. Let me be very clear, money bail has its place. But blindly following a one-size-fits-all schedule of offenses and amounts, setting \$15,500 bail for Damon Allen's shooter after he assaulted a deputy sheriff and led officers on a 105-mph chase—setting that bail is not informed decision making. And the judge says that if he knew the shooter's background, he would not have set the bail where he did. The Damon Allen Act broadens judges' discretion. It would give judges setting bail more information and most importantly, more reliable information about a defendant's criminal history, previous offenses involving peace officers, family violence, and other risk factors, and judges then would be required to consider that information in setting bail. Accompanying the Act is a proposed constitutional amendment giving judges authority consistent with full due process to deny bail altogether for offenders who are too great a risk to public safety, something judges cannot do in many cases today. It's time—it's actually past time—to ensure that defendants who pose no risk to the public are not jailed and those who do, are. I urge you to pass the Damon Allen Act and so does Kasey. Damon, she says, would want this for his fellow officers. This change, she says, will make it safer and better for them while they are making society safer and better for us—well said. Kasey will do all she can to ensure that her husband's death was not in vain. But change takes courage, even when the status quo is irrational, even when it's unlawful.

Change takes showing up. So Kasey is here with her daughter Madison and her son, Cameron. Kasey, Madison, and Cameron, please stand and receive our gratitude for your courage. Thank you, Kasey. Thanks, it means a lot.

In my last address, I reported that hundreds of thousands of defendants ticketed for traffic, parking, and other minor offenses were being jailed for not paying fines and fees often because they were just too poor. Legislation passed last session on Judicial Council recommendations gives judges more discretion to determine what a defendant can pay and to offer a plan, refer them to community service, or waive some or all of the fines or costs. The council predicted that judges working with the defendants would increase compliance and reduce jail time, and the council was right. Judges are issuing fewer warrants, imposing more community service, waiving fines and fees for the indigent, and jailing fewer. That alone has saved taxpayers at least \$2.4 million. The Judicial Council was wrong about one thing—it predicted revenue would stay the same, worried that revenue would decrease. In fact, state and local revenue per case has increased four percent with all of these changes. The laws passed last session have benefitted defendants and taxpayers alike. The Texas model is drawing national attention, and we're working to improve it further. The Judicial Council recommends this session that court costs and filing fee structures be simplified to ensure that they are constitutionally applied and that collections are directed to a legitimate purpose. Senators Judith Zaffirini and Joan Huffman have filed **SB 346** to do just that, and I urge its passage.

Every day, children enter the juvenile delinquency system and Child Protective Services but often at the same time. Nevertheless, they get different judges. The Judicial Council recommends the same judge handle both cases, and the Supreme Court Children's Commission proposes to train the judges in increased collaboration. I urge you to support these efforts with legislation and funding. And here's another thing that's hard to believe: Children who commit Class C misdemeanors are in the criminal system, not the juvenile system. So here's an example. A 12-year-old steals a car from a neighbor, and he is adjudicated as a juvenile in the civil justice system. The civil rules apply, civil procedures apply, there's no criminal penalty, and no criminal record—for stealing a car. But a 12-year-old who steals a \$10 die-cast metal car from a general store is prosecuted in the criminal system for theft, for a Class C misdemeanor. It makes no sense to prosecute the smaller offense as a crime and to treat the larger offense in the juvenile system. A child who breaks the law must certainly face the consequences, but the reason for the juvenile justice system is to keep children from being treated as criminals. The Judicial Council has worked with representatives of the justice and municipal courts, juvenile prosecutors, and defense attorneys to propose statutory changes that will continue to divert children from the criminal justice system while keeping them accountable for their actions. I urge you to consider those recommendations.

The Supreme Court and the Court of Criminal Appeals have grown increasingly concerned about mental health issues in the courts. We talked some about that yesterday again in this chamber. A year ago, the two high courts convened together for the first time in history and formed the Judicial

Commission on Mental Health. Its purpose, modeled on the highly successful Children's Commission, is to convene outstanding judges, legislators, health care providers, prosecutors, defense lawyers, law enforcement, academics, and other experienced leaders to develop through collaboration, solutions to the challenges courts face with persons with mental health issues or intellectual or developmental disabilities. A commission-sponsored summit last fall drew more than 300 attendees. The commission has already produced a bench book to help educate and train judges. These are big steps forward. They're a long time in coming, and they're only the beginning. I urge the legislature to continue to support and fund the commission's efforts. Legislation last session increased mental health assessments at the jail. Rarely done before, more than 21,000 assessments were made last year, and that's progress. But the Judicial Council recommends changes in the civil commitment process to facilitate care outside the criminal system. Senator Joan Huffman's **SB 362** contains the council's proposals, and I urge you to support passage.

Texas leads the way in improving guardianship proceedings and alternatives to guardianship, as well it should. Texas courts have 51,000 open guardianship cases involving \$5 billion, and those numbers will increase as the population ages. By 2030, the number of Texans over 65 will double to six million. Courts lack resources to monitor these cases to ensure compliance with statutory protections, leading to neglect, abuse, and exploitation of the wards. Wards like Maria, a woman with a sizeable estate who was placed in guardianship. Two weeks later, the guardian absconded with \$100,000 from her account, savings that should have been reserved for her care. I saved a chair for her this morning so you could meet her, but Maria's missing, and the guardianship system can't find her. Others could take her place. There's Edna—her guardian, her child, appears to have stolen \$1 million from her estate. Or Georgina—her guardian, her sister, spent \$25,000 on personal clothing. Or there's Teddy, who for a while had no means to obtain needed medicine because his guardian failed to pay Medicare premiums. I made up those names; I didn't make up the cases. Wards can be forgotten in guardianship proceedings, and they become as invisible as Maria in this empty chair. The cases I have mentioned were found only because the Office of Court Administration initiated its guardianship compliance program and began auditing those cases in our courts. The Judicial Council recommends expanding the program to monitor guardianship cases in all Texas counties, and that's what **SB 31** will do, coauthored by Senators Judith Zaffirini, Eddie Lucio, Jane Nelson, Joan Huffman, Brian Birdwell, Brandon Creighton, Charles Perry, and Bryan Hughes. It already has a lot of support. And Representative John Smither has filed its companion, **HB 1286**. The bill will call the program by its real name—the guardianship abuse, fraud, and exploitation deterrence program—and I urge its passage. If it does, then Texas will continue to lead the way in monitoring these very important cases that affect the lives of our elderly and incapacitated in Texas.

In all, the third branch is working hard to serve the people of Texas. The Texas judiciary is committed to upholding the law; to getting every case right; to operating efficiently; to searching out and adopting improvements and reforms; to

operating no matter what the challenge, no matter what the disaster; to making all of our processes advance the precious cause of justice. In that spirit, we ask your help with judicial qualifications and compensation, better use of technology and guardianship monitoring, and your continued help with access to justice for the poor and the middle class and our veterans. We pledge to work with you to reform the bail system, court treatment of those with mental illness, and juvenile justice. The framers of the Constitution mistrusted the power of government, so they divided it among three branches, intending them to be competitive. They succeeded. But in Texas, we have proved that the branches, each in its own sphere, can work together for the people's good. In my 38 years as a Texas judge, the relationship between the branches has never been better than it is today. Speaking for the third branch, we will do all we can to see that that relationship remains strong. And that is the state of the Texas judiciary. God bless you. God bless Texas.

SENATE ADJOURNMENT

At 11:55 a.m., Lieutenant Governor Patrick stated that the purpose for which the joint session was convened had been completed and that the senate would, in accordance with a previous motion, stand recessed until 2 p.m. tomorrow.

HOUSE AT EASE

At 11:55 a.m., the chair announced that the house would stand at ease pending the departure of guests.

The chair called the house to order at 12:06 p.m.

ADJOURNMENT

Representative Meyer moved that the house adjourn until 4 p.m. Monday, February 11.

The motion prevailed.

The house accordingly, at 12:06 p.m., adjourned until 4 p.m. Monday, February 11.

ADDENDUM

MESSAGES FROM THE SENATE

The following messages from the senate were today received by the house:

Message No. 1

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Wednesday, February 6, 2019

The Honorable Speaker of the House

House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HCR 44 Craddick SPONSOR: Seliger
Recognizing February 4-6, 2019, as Midland-Odessa Days at the State Capitol.

HCR 45 Craddick SPONSOR: Seliger
Congratulating Frank Salvato on his retirement as assistant city manager of Midland.

HCR 52 Moody SPONSOR: Whitmire
Granting the legislature permission to adjourn for more than three days during the period beginning on Wednesday, February 6, 2019, and ending on Monday, February 11, 2019.

Respectfully,
Patsy Spaw
Secretary of the Senate

APPENDIX

SENT TO THE SECRETARY OF THE STATE

February 5 - HCR 38, HCR 39

