

BILL ANALYSIS

C.S.H.B. 3774
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been the tradition for the chairs of the committees with jurisdiction over the judiciary to file legislation that encompasses new courts, changes to judicial administration, and changes to jurisdiction in a single omnibus bill. Ensuring that we have adequate judicial resources available to address the workload is critical to ensuring the proper administration of our judiciary. Instead of going about this process based upon subjective desires, each new court in this bill is justified based on need and supported by workload data provided by the Office of Court Administration. Some of the factors that were considered include caseloads, case backlogs, substantial population growth, objective workload measures, and county support.

C.S.H.B. 3774 sets out changes relating to district courts, statutory county courts, justice and municipal courts, certain magistrate courts, juvenile justice and family courts, duties of the capital and forensic writs committee, standardization of the court case transfer process between clerks, habeas corpus, regulation of forensic examinations, specialty court programs, and protective orders.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Office of Court Administration of the Texas Judicial System in SECTION 7.04 of this bill and to the Texas Forensic Science Commission in SECTION 10.02 of this bill.

ANALYSIS

C.S.H.B. 3774 relates to the operation and administration of and practice and procedure related to proceedings in the judicial branch of state government.

District Courts

C.S.H.B. 3774 amends the Government Code to create the following judicial districts on September 1, 2021, unless otherwise specified:

- the 478th Judicial District, composed of Bell County;
- the 480th Judicial District, composed of Williamson County, on October 1, 2022;
- the 481st Judicial District, composed of Denton County;
- the 482nd Judicial District, composed of Harris County;
- the 484th Judicial District, composed of Cameron County; and
- the 474th Judicial District, composed of McLennan County.

C.S.H.B. 3774 establishes that the terms of the 478th District Court begin on the first Mondays in January, April, July, and October, grants the court concurrent jurisdiction in Bell County, and makes provisions relating to the 27th District Court applicable to the 478th District Court.

C.S.H.B. 3774 requires the 484th District Court to give preference to juvenile justice matters under the Juvenile Justice Code.

C.S.H.B. 3774 grants the 474th District Court concurrent jurisdiction in McLennan County.

C.S.H.B. 3774 creates the Criminal Judicial District No. 5 of Tarrant County on September 1, 2021, and makes provisions relating to the Tarrant County Criminal District Court No. 1 applicable to Criminal Judicial District No. 5.

Statutory County Courts

C.S.H.B. 3774 changes the amount that the state compensates counties that collect filing fees in statutory probate courts from \$40,000 for each statutory probate court judge in the county to 60 percent of the annual base salary the state pays to a district judge for each statutory probate court judge.

C.S.H.B. 3774 removes provisions making the appointment of a deputy clerk of County Court at Law No. 2 or 3 or of a statutory probate court in Bexar County effective on the written confirmation of the judge of the court to which the deputy clerk is assigned. The bill removes the provision establishing that the deputy clerk of County Court at Law No. 2 or 3 serves at the pleasure of the judge of the court to which the clerk is assigned.

C.S.H.B. 3774 creates Probate Court Number 2 of Denton County on September 1, 2021. The bill grants the County Court at Law No. 2 of Denton County concurrent jurisdiction with the district court over applicable eminent domain cases and jurisdiction over direct and inverse condemnation cases, regardless of the amount in controversy sought in any of those cases.

C.S.H.B. 3774 creates the following statutory county courts on September 1, 2021, unless otherwise specified:

- the County Court at Law No. 3 of McLennan County;
- the County Court at Law No. 6 of Montgomery County;
- the County Court at Law No. 2 of San Patricio County, on January 1, 2023;
- the County Criminal Court No. 6 of Tarrant County; and
- the County Court at Law No. 5 of Williamson County.

C.S.H.B. 3774 expands the concurrent jurisdiction that the statutory county court in Reeves County has with the district court in certain family proceedings to include all family law cases and proceedings.

C.S.H.B. 3774 requires the County Criminal Court No. 6 of Tarrant County to give preference to offenses against the person involving family violence, stalking offenses, and violations or repeated violations of certain court orders or bond conditions in a family violence, child abuse or neglect, sexual assault or abuse, indecent assault, stalking, or trafficking case.

C.S.H.B. 3774 removes provisions that grant a statutory county court in San Patricio County concurrent jurisdiction with the district court in matters involving juvenile and state child welfare law and removes provisions that specify the minimum salary for the judge of such a county court. In addition, the bill, does the following:

- establishes that a statutory county court in San Patricio County does not have jurisdiction of felony criminal matters or civil cases in which the matter in controversy exceeds \$250,000;

- establishes that the clerk of a statutory county court in San Patricio County serves as clerk of the court except in family law cases and that in family law cases the district clerk serves as the clerk of the statutory county court;
- requires the district clerk to establish a separate family law docket for each statutory county court;
- requires the county commissioners court to provide the deputy clerks, bailiffs, and other personnel necessary to operate the statutory county courts; and
- includes all district judges and the statutory county court judges in San Patricio County among the parties that design the plan for governing the administration of the statutory county courts in the county.

Justice and Municipal Courts

C.S.H.B. 3774 amends the Code of Criminal Procedure to prohibit a justice or judge from accepting a plea of guilty or a plea of nolo contendere in a criminal proceeding in a justice or municipal court unless it appears to the justice or judge that the defendant is mentally competent and the plea is free and voluntary.

Juvenile Justice and Family Courts

C.S.H.B. 3774 amends the Family Code to define "dual status child" as a child who has been referred to the juvenile justice system and is:

- in the temporary or permanent managing conservatorship of the Department of Family and Protective Services (DFPS);
- the subject of a case for which family-based safety services have been offered or provided by DFPS;
- an alleged victim of abuse or neglect in an open child protective investigation; or
- a victim in a case in which, after an investigation, DFPS concluded there was reason to believe the child was abused or neglected.

The bill specifies that provisions authorizing the referral of a child protection suit to an applicable associate judge and the transfer of case from a juvenile court to a district court or statutory county court with jurisdiction over child protection suits apply to suits and cases involving a dual status child.

C.S.H.B. 3774 applies the duty of an attorney ad litem to meet before each court hearing with the child or an applicable individual if the child is younger than four years of age to an attorney ad litem appointed for a child in a child welfare proceeding. The bill removes the condition that triggers the requirement for an attorney ad litem appointed for a child in certain proceedings to file a written statement with the court stating that the attorney met with the child or applicable adult and requires the attorney instead to report to the court whether the attorney met with the child or applicable adult or whether the attorney ad litem requests that the court find good cause for noncompliance because compliance was not feasible or in the best interest of the child.

Magistrates and Magistrate Courts

C.S.H.B. 3774 amends the Code of Criminal Procedure to grant the following magistrates jurisdiction in criminal actions:

- the magistrates appointed by the Collin County Commissioners Court; and
- the magistrates appointed by the Brazoria County Commissioners Court or the local administrative judge for Brazoria County.

C.S.H.B. 3774 amends the Government Code to create the Brazoria County Criminal Law Magistrate Court on September 1, 2021. The bill authorizes the county commissioners court to appoint one or more full-time or part-time judges to preside over the criminal law magistrate court for the term determined by the commissioners court and requires the local administrative judge to appoint one or more full-time or part-time judges to preside over the criminal law

magistrate court if the commissioners court is prohibited by law from appointing a judge. The bill sets out provisions relating to the following:

- judicial salaries and immunity;
- the jurisdiction and powers and duties of the court;
- the transfer and assignment of cases and the referral of proceedings to the court; and
- the duties of the court clerk and the county sheriff and the conduct of witnesses.

C.S.H.B. 3774 repeals Section 54.653(b), Government Code, which caps the salary of a full-time criminal law magistrate in Tarrant County.

Capital and Forensic Writs Committee

C.S.H.B. 3774 requires the capital and forensic writs committee to provide oversight and strategic guidance to the office of capital and forensic writs, including setting policy and developing a budget proposal for the office. The bill prohibits the committee from accessing privileged or confidential information. The bill revises the composition of the committee as follows:

- by increasing the number of committee members from five to seven;
- by removing the requirement for two members to be district judges;
- by subjecting all members to the following requirements or prohibitions:
 - a member must be a licensed attorney;
 - a member must have significant experience in capital defense or indigent criminal defense policy or practice; and
 - a member may not be a prosecutor, a law enforcement official, a judge of a court that presides over criminal offenses, or an employee of the office; and
- by changing the appointing authorities to the following persons:
 - the executive director of the Texas Indigent Defense Commission, who appoints three members;
 - the president of the State Bar of Texas, who appoints two members; and
 - the deans of the public law schools in Texas, a majority of whom appoints two members.

The bill sets out provisions relating to member terms, reappointment, and member vacancies and removes provisions establishing that members serve at the pleasure of the president of the State Bar of Texas.

Transfer of Cases

C.S.H.B. 3774 amends the Government Code to require the Office of Court Administration of the Texas Judicial System (OCA) to adopt rules prescribing the documents to be transferred between courts with regard to a transfer of a case between a district court and a county court or of proceedings in a suit affecting the parent-child relationship. The bill provides the following requirements:

- OCA must develop and make available a standardized transfer certificate and index of transferred documents form to be used for such transfers;
- OCA must consult with representatives of county and district clerks in adopting the rules; and
- OCA must adopt such rules and develop and make available all such forms and materials as soon as practicable after the bill's effective date.

C.S.H.B. 3774 changes the authorization for the clerk of a district court and changes the requirement for the clerk of a county court, if a case is transferred to a county court or to a district court, to send certain documents to the respective clerk in electronic or paper form. Instead, both clerks must send the following applicable documents using the electronic filing system established by the Texas Supreme Court:

- a transfer certificate and index of transferred documents;
- a copy of the order of transfer signed by the transferring court;

- a copy of the original papers filed in the transferring court;
- a copy of each final order;
- a copy of the transfer certificate and index of transferred documents from each previous transfer; and
- a bill of any costs that have accrued in the transferring court.

C.S.H.B. 3774 requires the clerk of the applicable transferring court to use the standardized transfer certificate and index of transferred documents form created by OCA when transferring a case to the applicable court. The clerk of the applicable transferee court:

- must accept the transferred documents and docket the case;
- must physically or electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance; and
- may not physically or electronically mark or stamp any other transferred document.

The bill replaces the method by which the clerk of a county court of which civil or criminal jurisdiction is transferred to a district court must send a certified copy of judgments that remain unsatisfied to the applicable district clerk with the electronic filing system. The bill establishes that statutory provisions authorizing a notice or document to be sent by mail or electronic mail do not apply to the transfer of a case between a district court and a county court.

C.S.H.B. 3774 amends the Family Code to change the requirement for the clerk of the court transferring a proceeding in a suit affecting the parent-child relationship to send certain documents to the proper court in the county to which transfer is being made as follows:

- to require the clerk to use the electronic filing system established by the supreme court;
- to require the clerk to send the following documents:
 - a transfer certificate and index of transferred documents;
 - a copy of the order of transfer signed by the transferring court;
 - a copy of the original papers filed in the transferring court;
 - a copy of each final order;
 - a copy of the transfer certificate and index of transferred documents from each previous transfer; and
 - a bill of any costs that have accrued in the transferring court; and
- to require the clerk to use the standardized transfer certificate and index of transferred documents form created by OCA.

The clerk of the transferee court must accept such documents. The bill removes the requirement for the clerk to notify the judge of the transferee court and the requirement for the clerk of a transferring court that retains jurisdiction of another child who was the subject of the suit to keep the original pleadings and other requested documents but, as follows, the clerk:

- must notify all parties, the clerk of the transferring court, and, if appropriate, the transferring court's local registry that the suit has been docketed using the electronic filing system;
- must physically or electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance; and
- may not physically or electronically mark or stamp any other transferred document.

C.S.H.B. 3774 requires the clerk of the transferring court to send a certified copy of the order directing payments to the transferee court using the electronic filing system and to an employer affected by the order electronically or by first class mail.

C.S.H.B. 3774 clarifies that the clerks of both the transferee and transferring courts may each produce certified or uncertified copies of documents filed in a case transferred but that the clerks must include a copy of the transfer certificate and index of transferred documents with each document produced.

C.S.H.B. 3774 establishes that statutory provisions authorizing a notice or document to be sent by mail or electronic mail do not apply to the transfer of documents for a proceeding in a suit affecting the parent-child relationship.

Habeas Corpus

C.S.H.B. 3774 amends the Code of Criminal Procedure to give an applicant for a writ of habeas corpus the option of serving a copy of the person's application on the state's attorney by the secure email the attorney has on file with the electronic filing system established by the supreme court as required by law or another form of secure electronic transmission.

Publication of Citation for Receivership

C.S.H.B. 3774 amends the Civil Practice and Remedies Code to require a citation for receivership for certain missing persons to be posted on the OCA public information website.

Evidence

C.S.H.B. 3774 amends the Code of Criminal Procedure to require the Texas Forensic Science Commission to adopt and publish a code of professional responsibility to regulate the conduct of persons, laboratories, facilities, and other entities regulated by the commission. The bill requires the commission to adopt rules establishing sanctions for code violations and to update the code as necessary to reflect changes in science, technology, or other factors affecting the persons, laboratories, facilities, and other entities regulated by the commission.

C.S.H.B. 3774 requires the commission to investigate, in a timely manner, any allegation of professional negligence or professional misconduct that would substantially affect the integrity of the following:

- an examination or test that is conducted by a crime laboratory and that is a forensic examination or test not subject to accreditation, which is defined by the bill; or
- testimony related to such an examination or test or a forensic analysis.

The bill authorizes the commission to delegate the following duties to any person the commission determines to be qualified:

- the establishment of an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings and related duties; and
- the entrance and inspection of premises and auditing of records, reports, procedures, or other quality assurance matters of a crime laboratory that is accredited or seeking accreditation.

The bill authorizes the commission by rule to establish voluntary licensing programs for forensic examinations or tests not subject to accreditation. The bill authorizes the commission to use appropriated funds for the training and education of forensic analysts.

C.S.H.B. 3774 amends the Government Code to include forensic science services and services provided in connection with the professional employment or practice of a licensed or registered forensic analyst or forensic science expert in the definition of professional services for purposes of the Professional Services Procurement Act.

Jury Service

C.S.H.B. 3774 gives a person who reports for jury service the option to donate all or a specific amount of the person's daily reimbursement for their jury service to a veterans county service office. The bill removes the \$3 per meal cap on the amount of money that may be spent out of applicable county funds on meals for jurors in a civil case in certain district courts. The bill authorizes the judge instead to spend a reasonable amount per meal, as determined by the judge.

Specialty Court Programs

C.S.H.B. 3774 authorizes a judge or magistrate of a district court or statutory county court who is authorized by law to hear criminal cases to be appointed to preside over a regional specialty court program under the following conditions:

- the local administrative district and statutory county court judges of each county participating in the program approve the appointment by majority vote or another approval method selected by the judges; and
- the presiding judges of each of the administrative judicial regions in which the participating counties are located sign an order granting the appointment.

The bill authorizes a judge, a magistrate, or a visiting judge who is appointed to preside over a regional specialty court program to do the following with regard to a misdemeanor or felony case properly transferred to the program by an originating trial court participating in the program:

- hear the case and enter orders, judgments, and decrees for the case;
- sign orders of detention, order community service, or impose other reasonable and necessary sanctions;
- send recommendations for dismissal and expunction to the originating trial court for a defendant who successfully completes the program; and
- return the case and documentation, as required, to the originating trial court for final disposition on a defendant's successful completion of or removal from the program.

C.S.H.B. 3774 provides an option for certain defendants to participate in a veterans treatment court program in a county adjacent to the county where the defendant works or resides by doing the following:

- authorizing a veterans treatment court program that accepts placement of a defendant to transfer responsibility for supervising the defendant's participation in the program to another veterans treatment court program located in such an adjacent county; and
- authorizing the placement of an eligible defendant in a veterans treatment court program located in such an adjacent county if the county in which the defendant is charged does not operate a veterans treatment court program.

Protective Orders

C.S.H.B. 3774 expands the applicability of statutory provisions relating to the protective order registry maintained by OCA to include a protective order for victims of sexual assault or abuse, stalking, or trafficking and to an application for such a protective order. The bill prohibits OCA from allowing a member of the public to access through the registry any information related to a temporary ex parte order for such protection or a protective order that was vacated.

C.S.H.B. 3774 requires the clerk of the applicable court to ensure that a record of a vacated order is not accessible by the public. The bill requires the clerk to notify OCA of any protective order that is vacated as the result of an appeal or bill of review from a district or county court not later than the end of the next business day after the date the protective order was vacated. The bill requires OCA, starting as soon as practicable after the bill's effective date, to remove those records from the registry not later than the third business day after the date the notice from the clerk is received and to ensure that the records of vacated orders, other than orders vacated as the result of an appeal or bill or review, are not accessible by the public.

Transition

C.S.H.B. 3774 establishes that a state agency subject to the bill is required to implement a provision of the bill only if the legislature appropriates money specifically for that purpose and that, if the legislature does not make such an appropriation, the state agency is authorized but not required to implement the provision using other appropriations available for that purpose.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3774 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute creates the following courts, on September 1, 2021, unless otherwise specified, which were not created by the original:

- the 482nd Judicial District, composed of Harris County;
- the 484th Judicial District, composed of Cameron County, which must give preference to juvenile matters;
- the 474th Judicial District, composed of McLennan County;
- the County Court at Law No. 3 of McLennan County;
- the County Court at Law No. 6 of Montgomery County;
- the County Court at Law No. 2 of San Patricio County, on January 1, 2023; and
- the County Criminal Court No. 6 of Tarrant County, which must give preference to certain Penal Code and Family Code cases.

The substitute changes the dates from the original on which the following courts are created:

- for the 478th District Court, from January 1, 2022, to September 1, 2021; and
- for the 480th Judicial District Court, from September 1, 2021, to October 1, 2022.

The substitute includes provisions that were not in the original that do the following:

- establish the terms and jurisdiction of the 478th District Court; and
- expand the concurrent jurisdiction that the statutory county court in Reeves County has with the district court in certain family proceedings to include all family law cases and proceedings.

The substitute includes the following provisions relating to a county court at law in San Patricio County that did not appear in the original:

- a provision excluding the following from the jurisdiction of such a county court at law:
 - felony criminal matters;
 - civil cases in which the matter in controversy exceeds \$250,000; and
 - matters involving state juvenile and child welfare law;
- a provision establishing the duties of county and district clerks and the county commissioners court;
- a provision removing the minimum salary for the judge of a statutory county court; and
- a provision expanding the parties that design the plan for governing the administration of the county courts at law.

The substitute includes provisions that did not appear in the original granting jurisdiction in criminal actions to magistrates appointed by the Collin County Commissioners Court and magistrates appointed by the Brazoria County Commissioners Court or the local administrative judge for Brazoria County.

The substitute creates the Brazoria County Criminal Law Magistrate Court on September 1, 2021, which was not created in the original, and sets out related provisions.

The substitute includes provisions that were not in the original that do the following:

- change the amount the state compensates counties that collect filing fees in statutory probate courts for certain cases;
- define "dual status child" for purposes of provisions authorizing the referral of a child protection suit to an applicable associate judge and the transfer of case from a juvenile

court to a district court or statutory county court with jurisdiction over child protection suits;

- revise the duties of an attorney ad litem before each court hearing relating to meeting with a child or an applicable individual if the child is younger than four years of age in certain proceedings and apply those duties to an attorney ad litem appointed for a child in a child welfare proceeding; and
- change the amount that a district judge may draw from an appropriate fund to cover the costs of providing meals to the jury in a civil case.

The substitute repeals a Government Code provision that caps the salary of a full-time criminal law magistrate in Tarrant County and the original does not do this.

The substitute includes provisions that were not in the original relating to the capital and forensic writs committee that set out duties and revise the composition of the committee.

The substitute removes the following statutory provisions that were not removed by the original:

- a provision making the appointment of a deputy clerk of County Court at Law No. 2 or 3 or of a statutory probate court in Bexar County effective on the written confirmation of the judge of the court to which the deputy clerk is assigned; and
- a provision establishing that the deputy clerk of County Court at Law No. 2 or 3 serves at the pleasure of the judge of the court to which the clerk is assigned.

The substitute includes the following provisions not in the original:

- a requirement for the clerk to ensure that a record of a vacated order is not accessible by the public;
- a specification that the orders required to be excluded from the protective order registry are orders that are vacated as the result of an appeal or bill of review from a district or county court; and
- a requirement for the clerk to notify OCA of any protective order that is vacated as the result of an appeal or bill of review not later than the end of the next business day after the date the protective order was vacated.