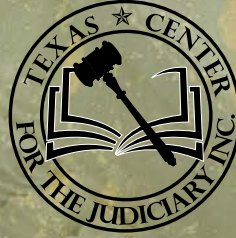


**FALL 2021**



**in**

# **chambers**

**THE OFFICIAL PUBLICATION OF THE TEXAS CENTER FOR THE JUDICIARY**

**How the 2021  
Legislative  
Changes will  
Affect the  
Judiciary**

**Pandemic  
Judging 101**

**Victim Impact  
Statements**

**Of Note:  
Awards and Honors**

**Letter from the CEO**

**Meet the New  
Board Members!**



# CONTRIBUTORS



**Judge Mark D. Atkinson** took the bench in 1987 and served 24 years as a judge in a Harris County criminal court. After six terms, he retired and was named Judicial Resource Liaison under the Texas Center for the Judiciary's Texas Department of Transportation Traffic Safety Grant Program. He served two years in that capacity before being named Executive Director (now CEO) of the Texas Center. He has been active in state and national judicial leadership and education, serving as Chair of the Texas Center as well as the Judicial Section of the State Bar. Judge Atkinson was first licensed to practice law in 1980, and for seven years developed a practice focused on criminal, family, and civil trial law. He earned his BA from the University of Texas at Austin and his law degree from South Texas College of Law Houston. Judge Atkinson has been awarded the National Association of Probation Executives George M. Keiser Excellence in Leadership Award, the Texas Center for the Judiciary's Judicial Excellence in Education Award, the Texas Center for the Judiciary Chair's Award of Excellence, the Houston Police Officers Association's Judge of the Year Award, the Houston Council on Alcoholism and Drug Abuse Award, the Mexican-American Bar Association of Houston's Amicus Award and the League of United Latin American Citizens' Certificate of Recognition. He also was elected to serve as the president of the Texas Association of County Court at Law Judges. Judge Atkinson and his wife, Vicki, have raised four sons together.



**Alfonso Charles** has served as judge of the 124<sup>th</sup> District Court in Gregg County since December 4, 2009. Prior to that, he served as the first judge of the County Court at Law #2 of Gregg County, Texas for almost 7 years. He was appointed as the first Presiding Judge of 10th Administrative Judicial Region by Governor Abbott on February 14, 2018. Judge Charles graduated from Austin College in Sherman, Texas in 1987 with a double major in business administration and political science. He received his law degree from Baylor University School of Law in Waco in 1990. He worked as an assistant district attorney in El Paso County for one year and in Gregg County for over 11 years prior to being elected to the bench. He has served as the Chair of the State Bar Judicial Section Legislative Committee since 2014. He was a member of the State Bar Judicial Section

Board of Directors from 2010 to 2014. He served as Chair of the Judicial Section for 2012-2013. He served on the Texas Center for the Judiciary Board from 2007-2009. He is a former member of the Judicial Council and the Task Force on Indigent Defense. He is board certified in Criminal Law by the Texas Board of Legal Specialization. He is a member of the University of Texas at Tyler Longview University Center Development Board and the See-Saw Children's Place Board of Directors. He also serves as the golf coach for Longview Christian School. He is a past president of the Gregg County Bar Association and past president of the Texas Association of County Court at Law Judges.



**Julie Jespersion** serves as the Manager of the Programs Section at the Victim Services Division of the Texas Department of Criminal Justice (TDCJ). Prior to her current role, she previously worked in the Texas Crime Victim's Clearinghouse and in the Victim Offender Mediation Dialogue program, working directly with victims. She has been working with victims of crime for over 20 years, initially as a volunteer then as a TDCJ staff member since 2015. Mrs. Jespersion has a BA degree from Southwestern University.



**Lisa Benge Michalk** is the judge of the 221<sup>st</sup> District Court in Montgomery County, Texas. Judge Michalk grew up in the Houston area and received a BA in Political Science from Texas A&M University then went to law school at Texas Tech School of Law where she received her JD. Judge Michalk was both a former prosecutor and a former defense attorney prior to being elected as a judge. Judge Michalk is Vice-Chair of the Criminal Justice Section of the State Bar of Texas and has been a frequent speaker at CLE events and numerous community organizations. She helped start both the mental health diversion court and the veteran's court in Montgomery County. Judge Michalk and her family are members of The Woodlands United Methodist Church. She currently resides in The Woodlands with her husband Dan of 27 years and is the mother of three big guys. (Tyler, age 28, Hunter, age 23 and Sam, age 19) Her hobbies include hiking, reading thrillers, and traveling.

## STAFF

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Judge Laura Weiser

# IN THIS ISSUE

## IN CHAMBERS

The official publication of the Texas Center for the Judiciary

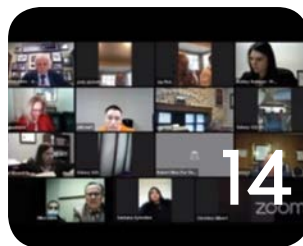
# FEATURES

## FALL 2021

This is the the official publication of Texas Center for the Judiciary. The magazine is funded in part by a grant from the Texas Court of Criminal Appeals. *In Chambers* strives to provide the most current information about national and local judicial educational issues and course opportunities available for Texas judges. We keep the Texas Center’s mission of “Judicial Excellence Through Education” as our guiding premise. Readers are encouraged to write letters and submit questions, comments, or story ideas for *In Chambers*. To do so, please contact Christie Dotolo via email at [christied@yourhonor.com](mailto:christied@yourhonor.com). Articles subject to editing for clarity or space availability. Layout and design by Christie Dotolo. The Texas Center for the Judiciary is located at 1210 San Antonio Street, Suite 800, Austin, TX 78701.



**HISTORY AND PURPOSE OF THE VICTIM IMPACT STATEMENT**  
by Julie Jespersion



**PANDEMIC JUDGING 101**  
by Hon. Lisa Michalk



**LEGISLATIVE UPDATE**  
by Hon. Alfonso Charles



**INCOMPETENT, IRREVELANT AND IMMATERIAL!**  
by Hon. Mark D. Atkinson, CEO

## EDITORIAL COMMITTEE

- Hon. Lee Gabriel
- Hon. Cliff Brown
- Hon. Judy Parker
- Hon. Robert Ramirez
- Hon. Ben Woodward

# THIS AND THAT

LETTER FROM THE CEO.....	4	CONTRIBUTORS .....	27
NEW JUDGES.....	5	OF NOTE .....	29
MEET YOUR NEW BOARD .....	10	UPCOMING CONFERENCES.....	30
LETTER FROM TCRA.....	13	IN MEMORIUM.....	31

*The content and opinions included in the articles submitted for our publication are the work and opinions of the author(s) and do not necessarily reflect the position or opinions of the Texas Center for the Judiciary, Inc.*



# LETTER FROM THE CEO

The past year and a half have proved challenging for us at the Texas Center for the Judiciary, but the challenges have not been insurmountable, and have even provided opportunities for expanding our capabilities.

**Conferences** – We have had to go back and forth some between in-person and virtual conferences and presentations. Our staff went from conducting virtual conferences for our judges, to a “hybrid” magistrates training, to a week of a large and successful in-person court personnel education conference – and back – to canceling our Annual Conference on the advice of health experts, as the Delta variant surged. Now, we’re planning to give in-person conferences our best efforts again.

**Online Learning** – As we make our transition back to in-person again, however, we’ll now have more arrows in our quiver. We have added a new staff position dedicated to developing online products and posting them on Brightspace, the learning management system (LMS) that we began to use for our online education programs. We will have fresh, newly recorded presentations available to our constituents, while continuing our traditional in-person education. That, at least, is the plan. The Court of Criminal Appeals graciously allowed Texas Center to both purchase the LMS and fill the new staff position.

**Court Personnel Education** – Over the past two years, TCJ’s Board of Directors and Curriculum Committee have given a new look to court personnel education. The results have been the development of two new annual conferences. The College

for New Court Professionals is like TCJ’s College for New Judges in concept, focusing on topics that new court personnel will find useful as they begin their positions and is designed for court personnel that have had no previous training. The annual Court Professionals Conference will deliver 16 hours of education each year and is designed to meet the needs of court personnel of all experience levels and jurisdictions. This conference will also satisfy the yearly continuing education requirement in Rule 6 of the Rules of Judicial Education. Both conferences are open to all court coordinators, administrators, and managers.

**Magistrates Education** – We conducted our first conference focusing on magistration in criminal cases, aimed at magistrates who deal solely with the front end of cases – setting and modifying bond, looking for any mental health issues, etc. and will continue to provide such education, annually.

As with every other institution over the period, the pandemic threw TCJ for a loop. But, out of this will come new opportunities with new models of educating our judges and court personnel. Our constituents have been patient, supportive, and understanding as our excellent staff has learned new things and expanded TCJ’s horizons. Our staff never sits still and always is looking for the next best thing. We will continue our pursuit of TCJ’s mission; to promote judicial excellence by providing the highest quality judicial education to the judges of the State of Texas.



# NEW JUDGES

AS OF 9/30/21

**Hon. Lisa Gonzalez**  
268<sup>th</sup> District Court  
Associate Judge

**Hon. Stephani Logue**  
North Texas Child Protection Court  
Associate Judge

**Hon. Amy Luhrs**  
Court #34  
Associate Judge

**Hon. Ryan Luna**  
McLennan County Court at Law No. 3  
Judge

**Hon. Daniel O'Brien**  
Hays County Court at Law No. 3  
Judge

**Hon. Jerod Pingelton**  
Moore County Court at Law  
Judge

**Hon. Lauri Ragland**  
Denton County Criminal Court No. 1  
Judge

**Hon. Jack Riley**  
Montgomery County Court at Law No. 3  
Associate Judge

**Hon. Carmen Samaniego**  
Bexar County Probate Court No. 2  
Associate Judge

**Hon. Sara Simmonds**  
Court #42  
Associate Judge

**Hon. Cari Starritt-Burnett**  
169<sup>th</sup> District Court  
Judge

# feature



## HISTORY AND PURPOSE OF THE VICTIM IMPACT STATEMENT

*By Julie Jespersion, Programs Manager, Texas Department of Criminal Justice Victim Services Division*

**T**he Victim Impact Statement remains the most effective way for a victim's voice to be heard throughout the criminal justice system. A long history of milestones contributed to the establishment of the rights for victims of crime in Texas and ultimately to the creation and ascribed uses of the Victim Impact Statement. In this article, I will share some of the milestones that contributed significantly to the creation and development of the Victim Impact Statement; the purposes of the statement as described by statute and the role of the Judiciary in ensuring victims of crime are afforded the rights enumerated by statutes in the Texas Constitution, the Texas Code of Criminal Procedure, and the Texas Penal Code.

### Milestones that Contributed to the Creation of the Victim Impact Statement

Prior to the late 1970s, victims in the United States did not have rights in the criminal justice system. In 1982, President Reagan appointed the Task Force on Victims of Crime, which held public hearings in six cities across the nation to create a greatly needed national focus on the needs of crime victims. The Task Force's *Final Report* offered recommendations that became the framework for the advancement of new programs and policies. Several of the recommendations relate to Victim Impact Statements, to include the recommendation that states pass legislation mandating the creation of Victim Impact Statements and that the statement be considered



before sentencing. There are also several recommendations specific to the judiciary related to the importance of listening to input by victims before sentencing, stating, "just as offenders are allowed an opportunity to speak, the victims should be no less entitled to have their views heard."

In 1983, The Texas Crime Victim Clearinghouse (TxCVC) formed and was initially housed within the Texas Governor's Office. The TxCVC later moved from the Governor's Office to the TDCJ Victim Services Division, where it lives today. In 1985, the 69<sup>th</sup> Texas Legislature passed House Bill 235 which created Chapter 56 of the Code of Criminal Procedure and codified in statute detailed crime victims' rights, defined a statutory victim, and established the creation and detailed the uses of the written Victim Impact Statement.

It is the responsibility of the TxCVC, with the participation of the Texas Board of Pardons and Paroles and the TDCJ Community Justice Assistance Division, to develop the Victim Impact Statement form (art. 56A.151). House Bill 235 provided victims of crime the right to complete a Victim Impact Statement and have it considered at various stages of the criminal justice process, described the development and revision of the Victim Impact Statement form, described the required elements of the Victim Impact Statement, and its intended purposes.

In 1989, the 71<sup>st</sup> Texas Legislature passed House Joint Resolution 19 which proposed the Texas Crime Victims' Bill of Rights be added to the Texas Constitution. The resolution was ratified by voters in November of the same year, thus adding Section 30 to the [Texas Constitution](#). These rights have had a positive impact on all victim populations and provided tools for advocates in community- and government-based agencies and organizations to support, assist, and advocate for victims of crime.

## Purpose of the Victim Impact Statement

[Code of Criminal Procedure Article 56A.151](#) outlines the main purposes of the Victim Impact Statement. The first is to record the impact of an offense on the victim. The document serves as a mechanism by which those most affected by crime can express in their own words how their lives have been impacted. Unlike an oral allocution, the written Victim Impact Statement will follow the offender throughout the criminal justice system. It is included in the



I personally feel that it is a miscarriage of justice to sentence a defendant who has been convicted of committing a crime against another person without first hearing from the victim and taking into account the effects the crime had on the victim's life."

- Judge Reggie Wilson  
*The President's Task Force  
on Crime Victims in 1982*

penitentiary packet sent to the TDCJ upon the conviction of the inmate, placed in the inmate's permanent file and follows them throughout the criminal justice system.

The document is intended to serve as a valuable tool for key decision makers within the criminal justice system to enable them to consider the harm caused by the crime. These key decision makers include, but are not limited to:

- The attorney representing the state is required to consider the Victim Impact Statement before a plea bargain agreement is accepted.

- The judge is required to consider the Victim Impact Statement before a plea bargain agreement is accepted and before sentencing.
- The Board of Pardons and Paroles is required to review the Victim Impact Statement before voting whether to release an offender to parole supervision or deny the offender's release to parole or mandatory supervision.
- by an appellate court of the court's decisions, after the decisions are entered but before the decisions are made public;
- by the entity that has custody of the offender when the offender completes the sentence and is released, dies, or escapes from a correctional facility; and
- by the TDCJ when the offender enters the parole review process, is released to parole or mandatory supervision, or discharges their sentence.

Additionally, the Victim Impact Statement is required to provide victims information about crime victims' rights and how the Victim Impact Statement is used in the criminal justice system, to obtain contact information to be used by criminal justice agencies, and to document the victim's notification preferences. Crime victims have a right to request notifications at various stages of the criminal justice system. Notifications include, but are not limited to, the right to be informed:

- by the attorney representing the state of relevant court proceedings, including appellate proceedings, and to be informed if those proceedings have been canceled or rescheduled before the event;

## Role of the Judiciary

Below is a summary of key statutes regarding the Victim Impact Statement as judiciary responsibilities.

From the Code of Criminal Procedure:

### **Art. 26.13(e).** Plea of Guilty.

Before accepting a plea of guilty or a plea of *nolo contendere*, the court shall, as applicable in the case, inquire as to whether a victim impact statement has been returned to the attorney representing the state and ask for a copy of the statement.





The court shall also inquire as to whether the victim was given notice of the existence and terms of any plea bargain agreement.

**Art. 56A.155.** Discovery of Statement.

A Victim Impact Statement is subject to discovery under Article 39.14 before the testimony of the victim is taken only if the court determines that the statement contains exculpatory material.

**Art. 56A.156.** Inspection of Statement by Court; Disclosure of Contents.

The court may not inspect a victim impact statement until after a finding of guilt or until deferred adjudication community supervision is ordered and the contents of the statement may not be disclosed to any person unless:

1. the defendant pleads guilty or *nolo contendere* or is convicted of the offense
2. the defendant authorizes the court in writing to inspect the statement.

**Art. 56A.157.** Consideration Of Statement by Court.

- a. Before imposing a sentence, a court shall, as applicable, inquire as to whether a victim impact statement has been returned to the attorney representing the state and, if a statement has been returned to the attorney, consider the information provided in the statement.
- b. On inquiry by the sentencing court, the attorney representing the state shall make a copy of the statement available for consideration by the court.

**Art. 56A.158.** Defendant Response to Statement.

Before sentencing a defendant, a court shall permit the defendant or the defendant's attorney a reasonable period to:

1. read the victim impact statement, excluding the victim's name, address, and telephone number
2. comment on the statement, and
3. with the approval of the court, introduce testimony or other information alleging a factual inaccuracy in the statement.

**Art. 56A.159.** Transfer of Statement after Sentencing.

- a. If a court sentences a defendant to a period of community supervision, the attorney representing the state shall forward any victim impact statement received in the case to the community supervision and corrections department supervising the defendant.
- b. If a court sentences a defendant to imprisonment in the department, the court shall attach to the commitment papers the copy of the victim impact statement provided to the court under Article 56A.157(b).

### For more information

The TxCVC is available to provide Victim Impact Statement trainings. To request training in your area, please submit the request via the online portal at <https://ivss.tdcj.texas.gov/training-request/>. For more information about Victim Impact Statements, please contact the TxCVC via email at [tdcj.clearinghouse@tdcj.texas.gov](mailto:tdcj.clearinghouse@tdcj.texas.gov) or telephone at 512-406-5931.

(Endnotes)

1. Office for Victims of Crime website, [www.ncjrs.gov/ovc\\_archives/ncvrw/2005/pg4b.html](http://www.ncjrs.gov/ovc_archives/ncvrw/2005/pg4b.html), accessed 4/05/2021
2. 1982. *Presidential Executive Order 12360*. President Ronald Regan, pp.18 and 36, <https://www.presidency.ucsb.edu/documents/executive-order-12360-presidents-task-force-victims-crime>. Accessed 9/8/2021
3. 1982. *Presidential Executive Order 12360*. President Ronald Regan, pp. 76, <https://www.presidency.ucsb.edu/documents/executive-order-12360-presidents-task-force-victims-crime>

# WELCOME NEW TEXAS CENTER BOARD MEMBERS!

The following new members of the Texas Center Board were presented as a slate at the Annual Business Meeting on September 22, and were elected by acclamation. The Texas Center is grateful for their service!

## Chair-Elect Hon. Hazel Jones 174th District Court



Judge Hazel B. Jones is a native Houstonian. She received her undergraduate degree from the University of Texas at Austin. In 1993, she attended Howard University Law School in Washington, DC where she worked in the criminal justice clinic representing citizens charged with misdemeanor offenses, and representing prisoners confined to maximum security prisons charged with disciplinary infractions. In fact, Jones won her first case in a maximum-security prison disciplinary hearing.

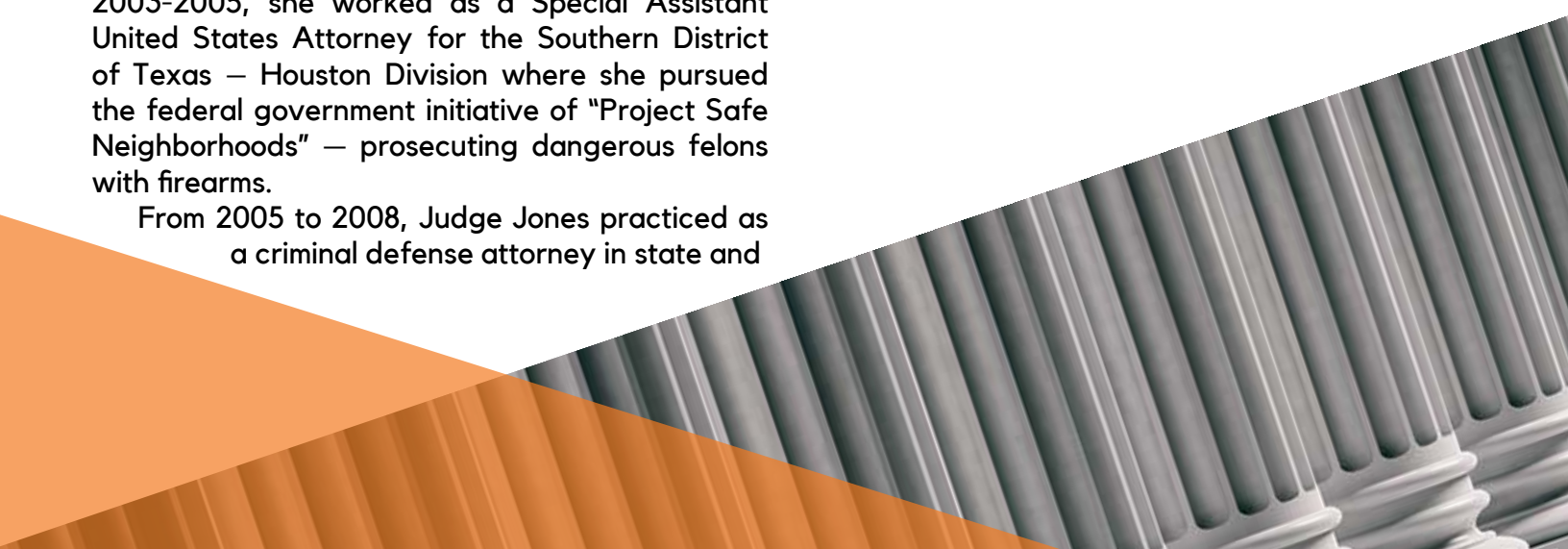
In 1996, she graduated from Howard University Law School with her JD. After graduating law school, Jones worked as an Assistant District Attorney for Harris County from 1996-2003. From 2003-2005, she worked as a Special Assistant United States Attorney for the Southern District of Texas – Houston Division where she pursued the federal government initiative of "Project Safe Neighborhoods" – prosecuting dangerous felons with firearms.

From 2005 to 2008, Judge Jones practiced as a criminal defense attorney in state and

federal courts in the Houston and surrounding areas before being elected to the bench. In 2008, she served a four-year term as judge of the 338<sup>th</sup> Criminal District Court where she presided over felony cases. After her four-year term, she worked in private practice in the areas of civil and criminal law, and as a visiting Justice of the Peace.

Judge Jones has also represented region four as a member of the board of directors for the Texas Center for the Judiciary. Currently, Judge Jones is the presiding judge of the 174<sup>th</sup> Criminal District Court of Harris County where she has presided for two terms; in addition, she also volunteers as a Star Drug Court Judge working to help probationers successfully complete probation to live a life of sobriety and recovery for the betterment of themselves and the community.

Jones has 25 years of experience as a licensed attorney including three terms as a state district judge. She is grateful to be able to serve the community of Harris County and the judiciary as a member of the board of directors for the Texas Center for the Judiciary.





**Place 2**  
**Hon. Darlene Byrne**  
**Third Court of Appeals**



Honorable Darlene Byrne is Chief Justice of the Third Court of Appeals of Texas since January 2021. Prior to that she served for 20 years as the presiding judge of the 126<sup>th</sup> Judicial District Court in Travis County. Prior to her election in 2000, she practiced 13 years in the areas

of employment, commercial and governmental entity litigation.

She is a Commissioner on the Texas Children's Commission. She is a past President of the National Council for Juvenile and Family Court Judges and a past Judge of the Year of National CASA, Texas CASA and CASA of Travis County. She is a past recipient of many local, statewide, and national awards due to her work around child welfare.

She currently serves as co-chair of the Judicial Council for National CASA, is an Advisory Council member for TexProtects, Partnerships for Children, Carrying Hope, and the Seedling Foundation, is the Chair of the Texas Statewide Collaborative for Trauma Informed Care, on the Editorial Review Board for NCJFCJ's *Juvenile and Family Court Journal*, and on the Advisory Committee for the #WeToo Project for Courts. She serves as a Council member of the State Bar of Texas' Administrative and Public Law Section.

Judge Byrne is the founding judge of the Travis County Family Drug Treatment Court, the Travis County Model Court of Children, Youth and Families and the Travis County Dual Status Youth Court. She has served on many boards, committees, and speaking panels related to law and child welfare.

**Place 4**  
**Hon. Angela Tucker**  
**199th District Court**



Judge Angela Tucker received her undergraduate degree from The University of Texas at Austin and attended law school at Southern Methodist University in Dallas. She is the presiding Judge of the 199<sup>th</sup> District Court in Collin County which is a general jurisdiction

court hearing civil, criminal, family, and CPS cases. She also created and manages a Family Preservation CPS Drug Court.

Judge Tucker was elected to the position of state district judge on May 29, 2012 in an historic election. She is the first African American judge to serve in the 170-year history of Collin County. Prior to taking the bench, Judge Tucker worked as an assistant district attorney and in private practice for 16 years. Her vast legal knowledge and experience in the areas of civil, criminal, family, juvenile, and CPS cases prepared her for the bench and has earned her notable awards and positions.

In 2014, she was appointed to the Judicial Advisory Council by the Chief Justice of the Texas Supreme Court. In 2015, she was selected to be a member of the Children's Justice Act Task Force. In 2016, Judge Tucker became the first woman to hold the position of Local Administrative Judge (LAJ) for the Districts Courts in Collin County. In 2018, she was appointed to the Specialty Courts Advisory Committee through the Governor's Office. She has earned the "Masters" level in the Curt B. Henderson Inns of Court, and is involved in numerous political and civic organizations in the community. Judge Tucker believes in faith and family first. She is a member of Friendship Baptist Church of the Colony, currently serving on the Usher Ministry, the Scholarship Committee, and as a Youth Church Leader. Most of Judge Tucker's free time is spent being a devoted wife to James and mother to their two children – Erica and Marshall.

**Place 5**  
**Hon. Velia Meza**  
**226th District Court**



Judge Velia J. Meza presides over the 226<sup>th</sup> District Court of Bexar County. Prior to being elected to the bench in 2018, Judge Meza worked as a Criminal Defense Attorney throughout the State of Texas for 17 years. In 2020

when the pandemic shut down in-person court proceedings, Judge Meza was very active in training and helping attorneys and their clients (including inmates) make the transition to virtual proceedings on Zoom. She developed and presented CLE opportunities for Bexar County Attorneys on the Ethical Considerations of the Zoom Plea Process (2020) and Courtroom Technology (2021).

Judge Meza also developed an alternative to incarceration program in 2020 when the pandemic shut down the work release jail program. In collaboration with the Bexar County Sheriff's Office, Judge Meza developed the "Bexar County Gives Back program" allowing non-violent offenders (State Jail Felony, 12.44, misdemeanor reductions) to perform community service hours at the Sheriff's Office in lieu of a jail sentence/sanction. The cost savings to the county in not housing an inmate range in the hundreds of thousands of dollars. The program is in full swing today and has incorporated probationers who need to satisfy community service hours. Additionally, Judge Meza has actively worked to map out a process and developed forms to use in firearm transfers (from arrest to disposition) as the Co-Chair of the Firearms Transfer Subcommittee for the City of San Antonio's Collaborative Commission on Domestic Violence. Judge Meza is married to Cesar Canizalez and they have three boys. Judge Meza enjoys going on vacation with her boys and sharing in outdoor activities.

**Place 7**  
**Hon. Lee Ann Breathing**  
**462nd District Court**



Judge Lee Ann Breathing was appointed to the new 462<sup>nd</sup> Judicial District Court in Denton County by Governor Greg Abbott. Judge Breathing began hearing civil and family cases in January 2019 that were transferred from the other district courts. In February

2020 criminal cases from the Children's Advocacy Center were transferred to her court and in January 2021 her court became the first district court in Denton County to hear only criminal cases.

Judge Breathing is Board Certified in Criminal Law by the Texas Board of Legal Specialization. Prior to taking the bench Judge Breathing was a criminal defense attorney and a solo practitioner for 12 years. Judge Breathing began her legal career as an Assistant District Attorney in Dallas County for seven years and then worked in the Denton County District Attorney's Office for 16 years, most of which was as the First Assistant. She has served on various boards and committees during her legal career including the North Central Texas Council of Governments Criminal Justice Policy Development Committee (twice), the Texas District & County Attorneys Association Board of Directors, the State Bar of Texas Criminal Justice Section Council and the Children's Advocacy Center for Denton County Board of Directors.





PO Box 2379, Athens, TX 75751 – P: (903) 675-1806  
[www.tcra-online.com](http://www.tcra-online.com)

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In the court reporting profession, Texas continues to be a leader with over 2,200 certified shorthand reporters. The Texas Court Reporters Association (TCRA) has been instrumental in opening four new schools in the last few years, and in 2019, launched MyTexasCSR.com, an online website hosted by TCRA at no cost to our judiciary and members of the State Bar of Texas to assist in locating Texas court reporters across the state to cover legal proceedings.

In response to the pandemic, the TCRA Board of Directors approved online testing for court reporting candidates. Through July 2021, this has allowed close to 40 new reporters to enter the field to help meet the demand for court reporters. Additionally, in November 2020, we saw our first qualified candidates for the Apprentice Court Reporter (ACR) license apply and begin working. The ACR license allows for apprentice reporters, under the supervision of a Texas certified shorthand reporter, to report certain types of witnesses in the deposition field. MyTexasCSR.com has been a valuable tool in finding a Texas CSR to report proceedings in an emergency in courtrooms also.

TCRA led the way when we were faced with stay-at-home orders. We immediately held training on Zoom for our member reporters. In turn, reporters were able to train staff members and members of the Texas Bar on how to operate Zoom. We were at the forefront to keep our legal system moving.

TCRA has a very ambitious recruitment plan to bring in more students to our schools. We have been very fortunate that our members have been able to address college boards of trustees about court reporting programs. Those discussions have been met with favorable response. We continue to attend career fairs to promote the profession. The latest available statistics from Spring Semester 2021 show that there were over 1,000 students enrolled in Texas court reporting programs.

It is truly our honor to host the Judicial Silent Auction each year. TCRA members gladly donate to this special yearly event. Upon learning that the Judicial Conference was being cancelled this year, our Judicial Silent Auction liaison, Melinda Garriga, quickly suggested that the silent auction be moved to a virtual platform. The TCRA Board of Directors voted as quickly as possible to have that happen. We are proud to have been able to raise \$12,620 for the Texas Center for the Judiciary Education Fund this year. Overall, TCRA has raised close to \$250,000 for our judiciary in the past 20-plus years.

Since March of 2020, the words “we’re all in this together” have taken on an even stronger meaning. Indeed, the relationship between judges and court reporters is one of hard work, trust, understanding, and commitment. The integrity of the record is something every Texas certified shorthand reporter takes very seriously. Thank you, Judges, for continuing to recognize the importance of having a Texas certified shorthand reporter in your courtrooms. We’re all in this together.

Our website is [www.tcra-online.com](http://www.tcra-online.com). We do have a Job Bank section where we list jobs we are contacted about. Brooke Ingram is our Executive Director and is available to assist any of you with questions. I may also be contacted personally at [soniatcraboard@gmail.com](mailto:soniatcraboard@gmail.com).

Respectfully,

Sonia G. Trevino, CSR  
President  
Texas Court Reporters Association

# feature



## PANDEMIC JUDGING 101

By Hon. Lisa Michalk

**T**he Pandemic or Covid-19 or, as I have called it, Corona-palooza, began about 18 months ago. It has been difficult to do our jobs, to navigate the changing rules, to be mindful of attorneys who are afraid to appear and those who are not, and to figure out how to be effective in this difficult time.

I think we all know people who have been affected by this terrible virus and many of us have lost loved ones. However, in order to lighten the mood of the judiciary, I have decided to address a few funny moments that have been brought to my attention.

I will start by saying I now know how important it is to have good lighting and a lamp or a window, so you do not look like you are in a dungeon in *Lord of the Rings*. It is important to yell at, ummmmm I mean, **discuss** with your kids that you are on a Zoom call in a docket and to stay out of the room. There is no need to wear a skirt when shorts will do as long as you have pearls, a black jacket and your

hair up in a pony tail that looks official. But, never stand up. The fake background really makes it look like you are in a regal courtroom instead of lurking around in your bedroom folding laundry.

Zoom and the like have been helpful to be able to continue to do pleas, minor prove-ups, etc. However, it has provided enough material that it could probably even save boring *Saturday Night Live*. I have seen defendants in pajamas, towels, and other inappropriate clothing. I have heard barking dogs, crying babies, people passing gas, and squawking birds. A good friend of mine works for a company in The Woodlands and has a very serious boss. In a meeting with their team, his cat, unbeknownst to him, crawled up the back of the couch and apparently was upset that he was not being given appropriate attention. The cat, in front of this whole section, jumped on the supervisor's head and he had to fight him off in front of his co-workers and for some reason they cannot view him in the same light as they did before. How could we



forget the Zoom call where the attorney was portrayed as a cat in the 394<sup>th</sup> District Court? "I am not a cat" rang around the world on Twitter.

I have had a defendant say cuss words at me during a docket and on the record and I was told to shut up. This endeared the defendant to me and really enhanced the whole process. In fact, I was just told that Judge Kitchens in an adjacent county had a defendant basically go on a tirade during one recent Zoom docket. A good friend of mine had an attorney that did not realize the camera was on and he stepped out of his shower (who attends a docket naked you ask?). Thank goodness all you could see was from the waist up. I had an attorney use the restroom as he did not realize his phone would pick up EVERYTHING.

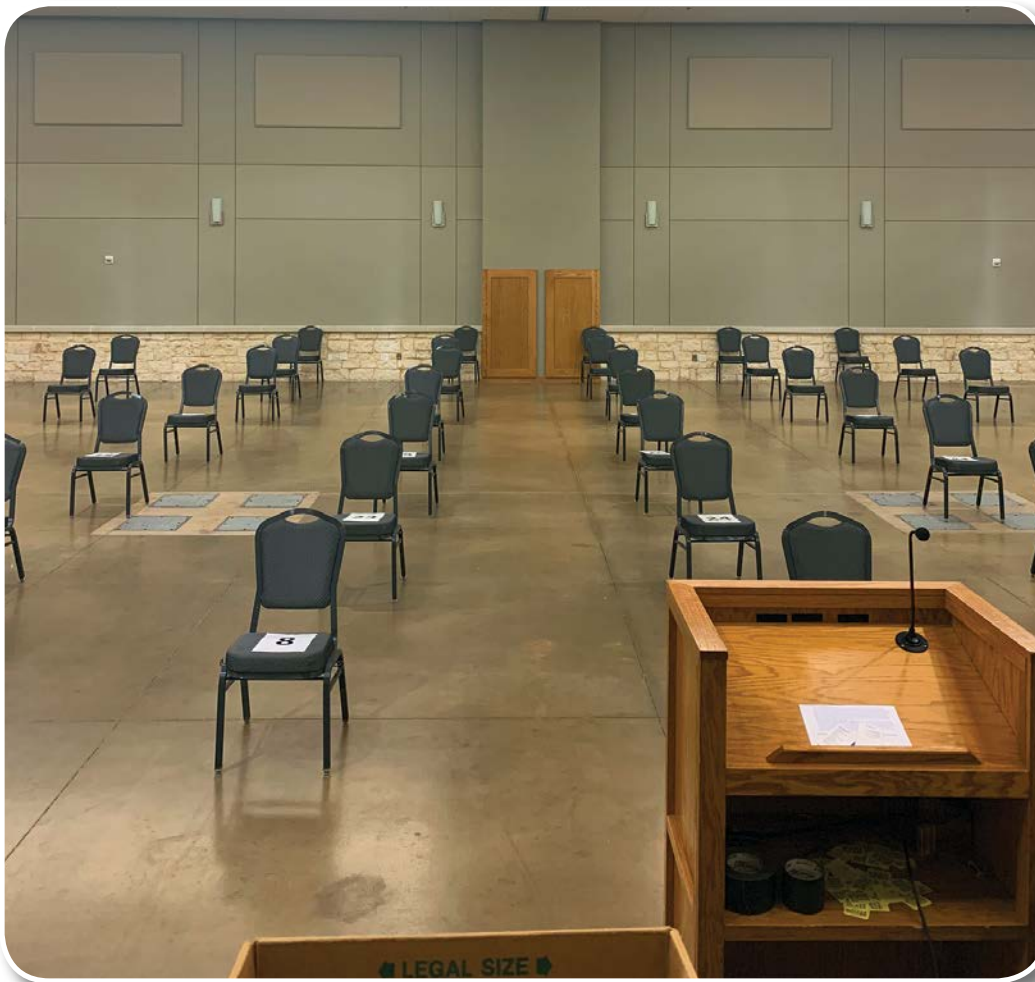
At the start of the pandemic when I was conducting jail dockets at home with sketchy Wi-Fi, I had a senior in high school and a senior at Baylor University. Baylor would basically state you were cheating if there was any noise at all. I was downstairs, in my study with all the doors shut but my jail docket got rowdy, and my son almost failed a

test. He had to explain to his professor that there were a bunch of loud felons causing trouble at the jail and that he was not, in fact, cheating. He then explained how inept I am at using technology and that even if I wanted to assist him in a computer science class that it was a statistical impossibility. My other son taught himself the end of Calculus AP and Biology AP and had to take the tests at home. We had no graduations, no prom, no final good-byes. No wonder we all gained weight and had to join AA.

In the last month, we have been able to move back into our courtroom to select juries. Oh, Happy Day. We are no longer out at the airport at the convention center trying to yell loudly during *voir dire* since no one could hear. I was in trial this week and just completed my 11th jury trial. We are all trying to catch up and allow the oldest cases to be heard (especially if they are in custody). Most of the cases that need to be tried involve serious felonies and habitual offenders, for instance. I have been selecting two alternates in the event someone feels sick or has a health issue. I checked on

the alternates in order to give them food since it was lunchtime, and they asked for whiskey or a margarita to go with their pizza since this case has been so horrific. I told them that unfortunately they would only be getting pizza.

I am grateful to all the probation officers, staff members, police officers, prosecutors, attorneys and maintenance workers who have worn masks, worn gloves, washed their hands 50 times and worked so diligently to enable us to continue to serve our communities. Thank you also to all of you who have kept things going in a time of uncertainty. I am so proud of our judiciary in the great State of Texas.



Jury selection in the age of COVID.

# feature



## LEGISLATIVE UPDATE

### HOW THE CHANGES THE 2021 LEGISLATIVE SESSIONS MADE WILL AFFECT THE JUDICIARY

By Hon. Alfonso Charles

**W**hen the 87<sup>th</sup> Legislature gavelled in on January 12 of this year, it was expected to be an interesting session. The legislators were facing several weighty issues, including COVID-19 issues, budget issues, and redistricting. While a special session was not surprising, the fact that we have had three special sessions and number four may be in the works surprised some. During these four sessions, the Texas legislature passed over 3,000 bills. Many have a significant impact on the Texas Judiciary.



In the field of family law, the most significant changes were in the area of cases initiated by the Department of Family and Protective Services (the department). [HB 567](#) repeals the “non-emergency” removals provision under section 262.113 of the Texas Family Code (Family Code). The bill requires the department and court, when child is removed, to attempt to keep child with a relative or a managing or possessory conservator rather than foster care. In addition, the bill amends section 261.001 of the Family Code and provides a new definition of neglect. “Neglect” means an act or failure to act by a person responsible for a child’s care, custody, or welfare evidencing the person’s blatant disregard for the consequences of the act or failure to act that results in harm to the child or that creates an immediate danger to the child’s physical health or safety and includes:

FAMILY LAW BILLS



the leaving, placing, or failure to remove a child in a situation where the child would be exposed to an immediate danger of physical or mental harm. The bill replaces the term "substantial risk" with "immediate danger".

The bill also restricts when the department can remove a child from the parents. The removal of a child cannot be based on allegations that the parent allowed the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities or culture. In addition, the removal cannot be based on the parent testing positive for marijuana, unless the department has evidence that the parent's use of marijuana has caused significant impairment to the child's physical or mental health or emotional development.

The act also makes significant changes to the required participation services under section 264.203 of the Family Code. The changes include requiring the department to file a suit requesting the court to order the participation in services. It further requires the petition be accompanied with a sworn affidavit that alleges a significant risk to the child or children in the home. In addition the court must appoint an ad litem for the child or children. Further, the court must inform the parents of their right to be represented by counsel at the hearing and appoint counsel for the parent if they are indigent.

The bill clarifies that the court cannot terminate parental rights based solely on evidence that the parent homeschooled the child; the parent is economically disadvantaged; or the parent has been charged with a nonviolent misdemeanor offense.

This act further makes changes the permanency hearing requirements under section 263.002 of the Family Code. The court is now required, at the end of each permanency hearing, to order that the child be returned to the parents unless the court finds there is a continuing danger to the physical health and safety of the child and that returning the child to the parents would be contrary to the welfare of the child. After the final hearing, the court is required to render a final order with 90 days of final hearing.

**HB 2926** is another dramatic change in CPS law. This bill allows for the reinstatement of parental rights. The new legislation allows for former parent to petition for reinstatement of parental rights

if; 1) the termination resulted from a CPS case; 2) at least 2 years have passed since the termination; 3) the child has not been adopted; 4) the child is not subject of an adoption agreement; and 5) the petitioner provides notice as required. In addition the petition must include a summary of the grounds that resulted in the termination, a summary of why petitioner believes parental rights should be reinstated, and a statement of consent by child if over 12 years of age.

The Court is required to have a hearing in 60 days. The burden of proof is on the petitioner and they must prove their case by a preponderance of the evidence. The petitioner must prove that the reinstatement is in the child's best interest. After the hearing the court will have three options. The court can grant the motion, deny the motion, or defer the decision for six months and grant temporary orders.

**HB 3041** establishes the Family Preservation Services. It creates a pilot program in different regions of the state to encourage the Courts and Department to find ways to keep the child in the home instead of Foster Care.

**HB 868** amends section 105.002(c) of the Family Code and clarifies that a jury may decide the issue of a geographic restriction if a party is appointed sole managing conservator or joint managing conservators. The previous statute only applied to geographic restrictions concerning joint managing conservators. It applies to suits filed on or after September 1, 2021.

**SB 904** requires that attorney ad-litem receive "Trauma Informed Care Education" in order to be appointed or to be on the list of attorneys qualified in CPS cases. While the bill took effect September 1, 2021, the attorneys have until September 1, 2022 to complete the education.

**HB 3774** requires the date of the marriage be included in the divorce decree. However, the bill does not apply to an informal marriage under 2.401 of the Family Code.



**HB 867** allows the court to modify and raise spousal maintenance that was previously modified downward. However the court can only modify the maintenance amount up to the originally ordered amount. The Court cannot raise the amount above what the court originally set. The bill also aligns state law with federal law on qualified domestic relations orders (QDROs). Further, the bill would allow for QDROs to be used to pay child support and spousal support.

**SB 286** requires a court in a suit for dissolution of a marriage to order the payment of maintenance to the state disbursement unit if an obligor is ordered to pay an obligee maintenance and child support. Further it requires a court to render separate cumulative judgments for child support, medical support, and dental support arrears in an enforcement action.

## CIVIL BILLS

**HB 19** by Rep. Leach makes significant changes to commercial motor vehicle liability cases. The bill amends the Civil Practice and Remedies Code (CPRC) for cases involving mainly commercial motor vehicles. The new law requires bifurcated trials when a party timely requests. In addition, the law limits the evidence of the defendant's failure to comply with federal or state regulations or standards during the liability phase of the trial. The bill does allow the plaintiff to introduce evidence of those violations if the evidence tends to prove that the failure to comply was a proximate cause of the incident or the violation of the regulation is an element of an applicable duty.

Actions against employer will be based on respondent superior if employer stipulates that the person operating the vehicle was the defendant's employee, and acting in the course and scope of his employment.

The law clarifies that expert testimony is not required to introduce photographs or videos of the vehicle or object involved in the accident. If the photograph or video complies with the Rules of Evidence, it is presumed to be admissible.

**HB 2064** modifies how hospital liens are calculated. The liens can be calculated as follows:

1. Charges for first 100 days of treatment less pro rata share of attorney fees;
2. 50% of all amounts recovered by the injured individual through a cause of action, judgment, or settlement less the pro rata share of attorney's fees; or
3. the amount awarded by the trier of fact for the services provided to the injured individual by the hospital less the pro rata share of attorney's fees.

**SB 232** makes changes to healthcare liability expert reports under Section 74 of the CPRC. The bill allows a court to make a preliminary determination if a claim is a "healthcare liability claim". The claimant has 30 days to make the request after the defendant's original answer is filed. If the court determines that the claim is a healthcare liability claim, the expert report must be filed no later than 120 days after the all defendant's have filed their original answers; 60 days after the court issues its decision that the case is a healthcare liability claim; or an agreed upon date.



**Bail Reform. SB 6 (Damon Allen Act)** Amends Article 1.07 and article 17 of the Texas Code of Criminal Procedure (CCP). Any person shall be eligible for bail unless denial of bail is expressly permitted by the Texas Constitution or by other law. The Constitutional Amendment to this bill failed in both the second and third special sessions. It remains to be seen if it will be the subject of a future special session.

The Damon Allen Act requires the magistrate setting the bond to consider the "Public Safety Report System." This risk assessment is required under article 17.021 of the CCP. The report must include the following items:

1. the defendant's name;
2. eligibility for personal bond;
3. discretionary bond conditions; and
4. criminal history including crimes of violence and or crimes against peace officers.
5. previous failures of the defendant to appear in court following release on bail.

The Public Safety Report System cannot set a score or be the only item the judge relies on to set bond. Further, the magistrate must also consider the accused's citizenship status when setting bond. The report must be provided to the magistrate setting bail no later than 48 hours from the defendant's arrest. The magistrate, may not, without the consent of the sheriff, order the sheriff or sheriff's department personnel to prepare the public safety report.

The Damon Allen Act set out what magistrates can set bail. The act applies only to defendants charged with offenses that are punishable as a felony or a misdemeanor punishable by confinement. The magistrate who sets the bail must be a resident of the state of Texas, a justice of the peace or a judge serving under Chapter 74 of the Government Code. Chapter 74 of the Government Code applies to county judges, statutory county judges, district judges, court of appeals justices, and judges and justices of the Court of

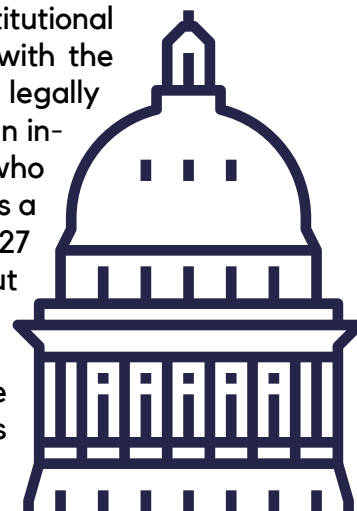
Criminal Appeals and the Supreme Court. It does not appear that the bill applies to municipal court judges.

In addition to these requirements, before a magistrate can set bail, the magistrate must meet certain educational requirements. The magistrates that can set bail have to complete an initial eight hour course on setting bail and then complete an additional two hours each biennium thereafter. In addition, the magistrate must demonstrate "competency" in the course to set bonds.

The act amends also article 17.03 of the CCP and limits the offenses that a magistrate may grant a personal bond on. The amended article forbids a magistrate from granting personal bonds in most violent felonies and sexual offenses.

The bill applies only to a person arrested on or after the respective effective dates of the statute. The changes made to article 17.15 of the CCP takes effect only if a constitutional amendment is passed by the legislature and approved by the voters. Otherwise, that change will have no effect. The changes to articles 17.021 and 17.024 of the CCP and sections 4, 17, 19, 20, and 21 of the act take effect 91 days following the end of the second called session. The second called session ended on September 2, 2021 so these sections would take effect on December 2, 2021. The remainder of the bill, including the Public Safety report will take effect on January 1, 2022.

**HB 1927** makes Texas a Constitutional carry state. The bill does away with the handgun license requirement to legally carry a handgun. The bill allows an individual who is 21 years of age, who is otherwise legally able to possess a firearm, to carry a firearm. HB 1927 creates some new offenses, but will reduce many the Unlawful Carrying a Weapon (UCW) cases that are currently filed. One of the new offenses created by the bill is UCW while intoxicated.





**HB 4293** is an effort to try to reduce the number of defendants who fail to appear for court. The bill requires the Office of Court Administration (OCA) to develop a court reminder program to notify criminal defendants of hearings and court appearances via text message. So in the future, a defendant will receive a text message that reads something like, "Reminder; You have a Court hearing tomorrow at 3:00 p.m." At this point the new law only applies to criminal cases.

**HB 1256** provides an avenue to grant additional funding for specialty courts. The bill provides funding for specialty courts, such as Drug Courts, DWI Courts, Mental Health Court, and others, from mixed beverages gross receipts. The new law sets aside .1% of sales tax for funding that may be used for distribution to the specialty court program. It is estimated about \$10 million per year will be generated by this bill.

**SB 112** amended article 18B.202 of the CCP concerning Mobile Tracking Devices. The amendment requires an affidavit from the peace officer include probable cause to believe that criminal activity is, has been, or is likely to be committed. Prior law only required "reasonable suspicion".

**SB 181** reduces the automatic 180 day driver's license suspension for a drug conviction down to

90 days. It permits the judge to waive the suspension in a misdemeanor drug case if the defendant has not had a previous drug conviction in the preceding 36 months. So, when does this bill take effect? According to the statute, this change takes effect 91 days after the Office of Attorney General (OAG) publishes findings in the Texas Register that the legislature has adopted a resolution expressing the legislature's opposition to a law meeting the requirements of 23 U.S.C. Section 159 in suspending, revoking, or denying the driver's license of a person convicted of a drug offense for a period of six months; and that the governor has submitted to the United States Secretary of Transportation a written certification of the governor's opposition to the enactment or enforcement of a law required under 23 U.S.C. Section 15991.

Morton law changes were also addressed in the regular session. **SB 111** amends Article 2.1397 of the CCP to require law enforcement agencies to submit a written statement to the prosecution that confirms that the agency has provided all the documents, items, and information in its possession regarding the case. The bill further requires the agency to "promptly disclose" any new information it obtains to the prosecutor's office. This prompt disclosure applies not just to Brady or exculpatory evidence, but to ALL evidence and information.

**SB 41** standardizes civil filing fees and consolidates the fees into one filing fee. Starting January 1, 2022, the fees would be the same across the state, for example, filings in district, CCLs and Constitutional courts would be \$350.00 for new filings and \$80.00 for additional filings. The new system would be simpler for local officials to administer, the State to audit, and litigants to navigate and would cure current constitutional issues.



**HB 2950** makes changes to the Multi-District Litigation Panel (MDL). This bill changes the MDL panel makeup. The panel will consist of five members appointed by the Texas Supreme Court. The members must be active, former, or retired courts of appeals justices or active administrative region presiding judges. Effective Date: June 16, 2021

**HB 1071** broadens the use of Therapy Dogs in court. The bill amends the Government Code section 21.012 and would al-

**BILLS AFFECTING THE JUDICIARY**

low qualified facility or therapy dogs to accompany a witness to court. Parties may petition the court to allow the use of a therapy dog for the witness. The bill is not limited to any particular type of case or age of the witness. The bill does allow the Court to set restrictions on the use of the dog.

[SJR 47](#) by Sen. Huffman was the only law passed that dealt with judicial qualifications from the State Commission on Judicial Selection. The proposed Constitutional amendment sets new qualifications to be a justice on the Supreme Court (also for the Court of Criminal Appeals and the intermediate Courts of Appeals). In order to be elected or appointed as a justice, the candidate must be a resi-

dent of Texas; be at least 35 years of age; practiced law for ten years, and never had their law license revoked, suspended, or subject to a probated suspension.

In order to be a candidate for a district judge, the individual must be a resident of the state and have lived in the district for two years. In addition, the candidate must have practiced law for eight years; and never had their law license revoked, suspended, or subject to a probated suspension.

If passed by voters, the constitutional amendment would be effective January 1, 2022 and apply to judges or justices who are elected or appointed for a term beginning on or after January 1, 2025.

## WHAT DID NOT PASS

Obviously, not every bill that is filed passes. Some of these bills that did not pass this session will probably return in future sessions.

**Business Courts and Business Courts of Appeals:** The bill passed out of the Judiciary and Civil Jurisprudence Committee but did not get voted on by the house. This bill has the support of many business organizations and it is expected that some version of this bill will be filed again in 2023.

There were several bills that dealt with the courts' ability to utilize remote hearings following the pandemic. Most of these bills got hearings and one of the bills passed the house. However, the bill was not able to get voted out of committee in the Senate. As long as the Supreme Court continues to issue Emergency orders, judges can continue to use remote hearings. However, it is expected that the legislature may attempt to codify remote court proceedings next session.

Following the 2019 legislative session, the judiciary was optimistic that the legislature would further address judicial compensation in 2021. However, the COVID pandemic and the crisis created by that realistically took that option off the table for the legislature. However, Rep. Scho-

field filed two bills to create a modified pay formula for judicial salaries. [HB 1876](#) and [1880](#) would have created a formula for pay increases for the judiciary based on the Consumer Price Index. It was similar to a bill he filed in the 2017 session. The bills got hearings in March and then did not get voted on. We remain hopeful on passing a pay bill next session.

[HB 228](#) by Rep. Murr would have allowed District Courts, with agreement of Commissioners Court to utilize a court recorder system. The problem was the wording in the bill would have allowed Commissioners Court to dictate the use of that system to the statutory County Courts. These concerns were brought to Rep. Murr's attention and he withdrew the bill for the session in order to work with the judiciary during the interim.

The jurisdiction and make-up of the intermediate courts



of appeals was a subject of concern and interest for many in the judiciary. [SB 1529](#) by Sen. Huffman would have created the Texas Court of Appeals for civil cases brought by or against a state agency. The bill passed the Senate but never got a hearing in the House. [SB 11](#) would have reorganized the 14 Courts of Appeals to seven. The stated goal of the

bill was to equalize caseloads among the courts of appeals. The bill was voted out of Senate Jurisprudence committee on 3-2 vote. A few days later, Sen. Huffman sent a letter to all the stakeholders stating there was not enough time this session to pass this bill. The bill was not refiled in any of the special sessions.

## SPECIAL SESSIONS

The second called special session brought the passage of the Election Integrity bill and the Damon Allen Act. However the legislature failed to pass the Constitutional amendment to allow for denial of bail in certain cases. Gov. Abbott added that to the third called session and that amendment failed to pass the house again. It remains to be seen if there is a fourth called session and if further bail reform will be part of the call.

Redistricting was the main focus of the third called session. The question all the judges and justices up for re-election in 2022 are asking, "When is the primary going to be?" [SB 13](#) that passed in the second special session set out the timelines for the date of the primary election and the filing deadlines. If the redistricting plan becomes law by November 15, the filing timeline is from November 29 to December 13 with primary on March 1, 2022. If the redistricting plan becomes law after November 15 but by December 28, 2021, then the filing period is from January 10 to January 24, 2022. The primary is April 4, 2022. If the redistricting plan becomes law after December 28 but by February 7, 2022, then the filing period is from February 21 to March 7, 2022 and the primary is May 24, 2022.

In the recently completed third special session, the legislature did pass the redistricting bills for the US House of Representatives, Texas Senate, Texas House of Representatives, and the State Board of Education. The bills need to be signed by the governor to take effect. If the governor signs and approves the redistricting bills by the November 15 deadline, then the primary elections will be scheduled for March 1, 2022.

Even if the governor signs the bills, it is still possible that lawsuits and the courts may delay the filing deadlines and the primary dates. In 2012, the election cycle following the redistricting battle of 2011, the primary election was delayed from March to May 29 of that year. On October 19, the first lawsuit attacking the redrawn districts was filed in federal court in El Paso.

As with any legislative session, there were several laws passed that will affect the manner and nature of how the courts operate. These bills are some of the biggest changes that the judiciary will have to address. It will be important for the judiciary to provide feedback on how these legislative changes affect the judiciary.



# INCOMPETENT, IRRELEVANT, AND IMMATERIAL!

By Hon. Mark D. Atkinson



**T**elevision courtroom shows don't get any better than the 1950s-60s Perry Mason series. It's on TV every morning in our kitchen. My wife is hooked on it. It really is smart stuff and I often wonder if today's audiences could comprehend it, with all the complex legal deals gone bad, swindling, coupled with illicit romantic fooling around that as often as not results in a fire poker to the head. My parents sat down to watch it every week and sometimes had other couples over to join them.

The courtroom scenes are almost always what we know as examining trials, just looking to determine cause to bind over for jury trial. When I first got on the bench, it was not unusual for the prosecutor, on voir dire, to tell the jury panel not to expect the trial to be like Perry Mason, where someone blurts out that they did it. This finally faded away when the mention of Perry Mason caused the younger

panelists to just look at each other and shrug.

There's one thing about the show that drives me crazy, though: Perry Mason and the prosecutor, Hamilton Burger, are forever standing and loudly objecting that a question of a witness is "Incompetent, irrelevant, and immaterial!" I can't count the times that I have exclaimed, while buttering my toast, "There's no such objection!" My poor wife.

Throughout a thousand jury trials over 24 years, I never heard that objection. So disturbing did I find this that I finally did an internet search, entering the words "incompetent irrelevant immaterial Perry Mason." There, I found discussions about this, and most agreed with me, which was reassuring. So, to our trial lawyers, I beg you, say it's irrelevant. Say it's immaterial, but please, don't pop up and yell, "Incompetent, irrelevant, and immaterial!"

As an aside, my wife has begun recording these episodes for more private viewing.

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**In recent years**, we've witnessed an explosion in daytime reality court TV shows. Unfortunately, too often, we see judges yelling, finger-pointing, and delivering sarcastic remarks to litigants. Most of us have had school kids ask us if court is like Judge X or Y, on television. We tell them that our courts are not run like those depictions, as we're aware that some of those judges' demeanors might get us buried under the Commission on Judicial Conduct. However, I met one who did not behave in that manner. He did have fun, though.

While reviewing juror information forms during voir dire one day, one caught my eye. A jury panelist listed his occupation as actor and his employer as an actors' guild. This raised my curiosity and, when the jury had been selected and the panel dismissed, and the actor not selected, I asked him to come to the bench. I asked what he did in the acting world.

He said that he acted in TV movies, particularly westerns, for a particular network. He added that in between working on movies, he played an audience member for reality court shows, at a network's studios in our city. This studio had a courtroom set-up larger than most others in the country and TV judges from other cities traveled to record and produce their shows there. I said that I thought that was interesting and he asked if I'd like to come witness the making of one of these shows. I said that I would like that and that the studio was very near my home. We shook hands and he departed.

A week later, I received a letter from the actors' guild notifying me that I was to be at the studio at

a certain date and time. On the designated day I worked through my docket, and having no jury trial, headed to the TV studio at noon. Inside the network's studios, and adjacent to a large courtroom stage setting, was a large crowd, gathered around some carts carrying coffee, pizza, and pastries. These were the folks who would fill in as audience members of the reality court show. They appeared to be actors, who were, as my jury panelist had described, in between other projects. I learned that they got paid \$25 for each one-hour taping of cases throughout the day. I had walked into their lunchtime, and it seemed to be a high point of their day.

A friend of mine, who works in theater from time to time, had told me that actors often develop their own personal costumes, as she put it, which they wore with both pride and flair. This group fit that description, sporting colorful outfits, capped off by bright scarves, caps, and berets. One fel-



**While reviewing juror information forms during voir dire one day, one caught my eye. A jury panelist listed his occupation as actor and his employer as the actors' guild.**

“The first case I observed involved two former lovers from Philadelphia. The claim was that the boyfriend had borrowed the girlfriend’s car and returned it with fender damage – after staying out all night.

low wore a bright orange and blue top hat, with a feather sticking out of the band. This crowd would serve as audience members for the afternoon’s tapings, and they certainly looked different from the audiences I saw every day in my courtroom. All things considered, I thought they’d fit right in at the Renaissance Festival.

A man carrying a clipboard asked me my name and directed me to move into the audience seating area. I said that I was not there to be in the audience, but only to observe taping. He insisted that I was expected to serve, and I responded that in that event, I should be seated behind some large person, so that I could stay off camera. He complied with my wish and once I was seated, slunk low in my chair behind a very large man. The room filled up and I noticed the man with the orange and blue top hat, with feather, sitting a few seats down the row.

Soon, a bailiff emerged onto the stage in front of the judge’s bench, and I recognized him from our courthouse; he was working an extra job, as were all of deputies there that day. He had us all rise as Judge Tom, I’ll call him, entered, and took the bench.

This, I would learn, is how it worked. Small claims

cases were brought from courthouses around the country. Litigants with pending cases would be asked if they would like to have their cases heard on national TV. Their travel expenses and meals would be covered. However, they had to agree that they would abide by the TV judge’s rulings and verdict.

The first case I observed involved two former lovers from Philadelphia. The claim was that the boyfriend had borrowed the girlfriend’s car and returned it with fender damage – after staying out all night. The boyfriend claimed the damage was pre-existing. The judge, however, drew out more of the story than that, as the boyfriend’s whereabouts that night, at another lady’s home it turned out, provided the audience entertainment. The car’s owner was not, however, amused.

The judge dragged it out for an hour, with the audience enjoying the juicy parts of the story the most. The taping would later be edited down to about 20 minutes, with time for commercials. In this case, the girlfriend lost, thereafter storming out through a hallway exit, cursing anyone in her way, a bailiff close behind.

A break was declared before the next case and I asked a bailiff if I could visit Judge Tom. I was tak-



en to his dressing room, and we chatted. He told me that he had left the bench of his East Coast court to take this gig and flew to this studio on alternate weeks for three straight days of ten cases per days' taping. He said that he would only last as long as his ratings stayed up, but that when it was over, he most likely would not be able to serve as a judge again.

I stayed for one more case before departing, this one involving some salacious activities in Cleveland, resulting in claims of monetary and emotional damages. This episode, too, was quite entertaining.

A week later a letter arrived containing a check as payment for my service. I did not cash it, and still have it. I'll remember that day as the closest to show business I would ever get. Now, every time I watch Perry Mason and see the landlady or butler's wife or whoever wearing those hats and berets on the witness stand, I think of those in-between-movie-filming actors down at the TV studio. The hats pull those things together for me. And I don't know about you, but I'm heading over to the hat store.



## CONTRIBUTIONS IN HONOR

*In Honor of TCJ Staff*  
Hon. Stephen Ables

*In Honor of Judge Charles Sherrill*  
Hon. Stephen Ables

*In Honor of Judge Joe Carroll. Thank you for your service to Bell and Lampasas Counties.*  
Hon. John Gauntt

*In Honor of Mark Atkinson and Staff of TCJ. Each and every member of the staff of the Texas Center for the Judiciary has gone above and beyond to provide the highest quality judicial education over the past 18 months. Even under the most difficult of circumstances, their work has excelled and inspired. Because of their tireless service, these dedicated men and women have fulfilled TCJ's mission of judicial excellence through education. Kudos to all of you!*  
Hon. Dean Rucker

## CONTRIBUTIONS IN MEMORY

In Memory of Judge Gladys Oakley. A superb Judge and a wonderful person!  
*Hon. Gary Harger*

In Memory of Judge Sarah Garrahan. A great judge and wonderful friend  
*Hon. Tim Johnson*

In Memory of Judge Robert G. Dohoney, Sr 66th District Court  
*Hon. F. Bob McGregor*

In Memory of Judge James Simmonds  
*Hon. Mickey Pennington*

In Memory of Judge Spencer W. Brown  
*Hon. Mickey Pennington*

In Memory of Judge Bruce Wettman  
*Hon. Thomas Stansbury*

In Memory of Judge Tommy Culver  
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In Memory of Judge Vann Culp. Thank you for your service and mentorship  
*Hon. Charles Stephens*

In Memory of Judge Fred Edwards  
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## TARRANT COUNTY MENTAL HEALTH DIVERSION PROGRAM RECOGNIZED

The Tarrant County Mental Health Diversion Program (MHDP) received the Judge Ruben G. Reyes Outstanding Specialty Court Team Award at The Texas Association of Specialty Court Conference in Galveston on April 21. This award was established in 2017 and presented by the Texas Association of Specialty Courts to recognize an outstanding specialty court team who epitomizes the idea that good intentions are not good enough, and reflects Judge Reyes' examples of passion and expertise.

The Tarrant County MHDP started in 2003 and is a pre-trial, post-booking specialty court program for participants in the criminal justice system that have a previous mental health history. The mission of the program is to provide participants the resources and support they need to attain emotional well-being and a foundation for long-term success. The program has a long-term track record of success as evidenced by the 691 admissions and 574 successful graduates. The MHDP, which has both misdemeanor and felony-related offenses, has a successful completion rate of 89%, a 1-year recidivism rate of 12.02%, and a 2-year recidivism rate of 15.19%. These numbers far

exceed the national averages for clients with mental health disorders that are involved in the criminal justice system.

The MHDP recently had a program evaluation conducted by Dr. Clete Snell, University of Houston, as part of a grant awarded by the Judicial Commission on Mental Health (JCMH). Dr. Snell said it best, "The Tarrant County Mental Health Diversion Program is a pioneer in the mental health court movement. Program recidivism statistics suggest the program has been a success from the start. The Tarrant County MHDP should serve as a model for other pretrial diversion programs in the state and the nation."



*Pictured from Left to Right: Assistant Criminal District Attorney Lucas Allan, MHDP Case Manager Pam Leary, TCAT Clinical Specialist Aaron Calvin, County Criminal Court No. 9 and MHDP Presiding Judge Brent A. Carr, MHDP Administrative Assistant Rachel Calderon, Defense Attorney Brad Clark, MHDP Program Manager Rane Wallace, and Judicial Staff Counsel and Mental Health Magistrate Judge Nelda Cacciotti. Not Pictured: Assistant Criminal District Attorney Mary Butler, TCOOMMI Services TCAT Program Manager Sam Jones, TCAT Clinical Specialist Edward Kellough, and TCAT Clinical Specialist Rosalyn Mackey.*

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Family Justice Conference  
January 2022

College for New Court  
Professionals  
January 2022

Criminal Justice Conference  
February 2022

DWI Court Team Basic Training  
and Advanced Conference  
February 2022

Regional A Conference  
Regions 2,5,6,7,9 and 11  
March 2022

Regional B Conference  
Regions 1,3,4,8 and 10  
April 2022

Court Professionals Conference  
June 2022

Mental Health and Forensic  
Science Issues for Trial Judges  
July 2022

Annual Judicial Education  
Conference  
September 2022

Child Welfare Judges  
Conference  
October 2022

College for New Judges  
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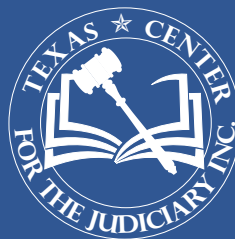


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