
THE STATE OF THE JUDICIARY IN TEXAS

REMARKS OF CHIEF JUSTICE NATHAN L. HECHT

As Prepared for Delivery to the People of Texas

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My fellow Texans:

As chief justice of the Supreme Court of Texas, I am required by law at the commencement of each regular legislative session to deliver a message on the state of the Texas judiciary, evaluating the courts' accessibility, future directions, and needs. This is my fourth occasion to do so. Ordinarily, the State of the Judiciary address is delivered before a joint session of the Legislature in the House chamber. This year, the continued COVID-19 pandemic prevents that. I am pleased to have this opportunity to speak to you through video from my chambers in Austin.

COURTS MUST REMAIN OPEN

Texas' first reported case of COVID-19 was on March 4 of last year in Fort Bend County. Just nine days later, a state of emergency was declared by President Trump for the nation and by Gov. Abbott for the state. No one knew then the historic challenges that lay ahead, how they would test us, or what we would do to meet them. In the judiciary, we knew this: justice cannot sit out a crisis. Family friction doesn't disappear in a crisis; sadly, it mounts. Crime doesn't stop in a crisis. Housing and job needs, care for children and the elderly, veterans' appeals for benefits, basic civil legal needs of the poor—all the things courts handle every day in good times are even more critical in a crisis. Closing the courts was not an option. We could limit operations to emergencies for only a few days. Courts, like everyone else, had to adapt.

The first step was to give courts flexibility. The Texas Supreme Court and Court of Criminal Appeals immediately issued their first emergency order, invoking authority enacted by the Legislature in 2009 following Hurricane Ike and expanded last session based on what we learned from Hurricane Harvey. That order authorized courts to change deadlines and procedures, allow those involved in a proceeding to participate remotely, and conduct proceedings in different locations. Courts could adjust routine processes to continue to function in the new reality.

At the same time, courts needed guidance. The emergency order also required courts to use their flexibility to avoid exposing court staff, parties, attorneys, jurors, and the public to COVID-19. Texas has 3,220 judges in 1,192 court locations, visited every

day by some 325,000 people—1% of the population—most of whom don't come by choice. Courts are the busiest convener in the government. Courts should not force people seeking justice to risk their health to get it. In a pandemic of historic ferocity, courts sought the expertise of health officials, state and local, to develop protocols for conducting court proceedings safely.

REMOTE PROCEEDINGS

And courts needed new tools. Just before the disaster declaration, the Office of Court Administration had the foresight to begin acquiring Zoom licenses for all Texas judges. I had never used Zoom; I doubt many judges had. I thought "zoom" meant to hurry. But remote videoconferencing, which started statewide one year ago today, allowed courts to continue to process cases with some efficiency while minimizing health risks to participants.

It's one thing to have a Zoom license; it's another to know how to use it, as the "I am not a cat" hearing in District Judge Roy Ferguson's court showed. Training programs and webinars developed by judges and court staff offered solutions for setting dockets and conducting hearings. Last May, Collin County District Judge Emily Miskel oversaw the first completely virtual jury trial in the country—actually, in the world, as far as we know—for which Chief Justice John Roberts presented her the Rehnquist Award for judicial excellence. Since then, Texas courts have conducted 35 virtual jury trials. Texas has been a national leader in utilizing remote proceedings, with more than 3.5 million participants so far. Last month, Johnson County Court at Law Judge Robert Mayfield conducted the one-millionth Zoom hearing in a Texas court.

Remote proceedings achieve important efficiencies. They save time and money, sparing lawyers, parties, and witnesses from having to go to the courthouse for every hearing. And here's a benefit we didn't expect. Lots of people involved in court proceedings often find it impossible to attend: They can't afford to miss work, arrange for childcare, and get transportation to go downtown and sit at the courthouse waiting for hours to be heard. So they just don't go; they default. But with remote proceedings, "going to court" is as easy as clicking on a link or dialing a number on a smartphone. We've watched participation rates in high-volume dockets like child custody and traffic cases flip from

80% no-shows to 80% appearances. Judges report that few parties are kept from participating by a lack of access to technology—the so-called digital divide. And Texas courts are working to close that divide by providing court participants better access to technology, like iPads to jurors. And there’s another plus. You can watch remote proceedings on YouTube, giving the public a ringside seat in every courtroom, increasing transparency and accountability.

We must bring lessons learned in this crisis to the “new normal.” Not all court proceedings can be conducted remotely, but many can be, and must continue to be. The Supreme Court has convened a working group to identify best practices for remote proceedings going forward. Sen. Zaffirini’s SB 690 and Chairman Leach’s HB 3611 will ensure that scores of statutes on the books, written without technology in mind, will not impede improved access and efficiency in the justice system.

JURY TRIALS

We’ve shown that jury trials can be virtual in many cases—like traffic offenses, other simple misdemeanors, and civil cases with few witnesses and issues. Those cases accounted for some 40% of all jury trials in 2019. For parties waiting to be reached for an in-person jury trial, a virtual jury trial offers them their day in court. Virtual trials will continue to play a role in the “new normal” as a more cost-effective and convenient way for parties to present their case to a jury of their peers.

Jury trials in felonies and other serious criminal cases, as well as more complex civil cases, will still be in person. In 2019, Texas courts tried roughly 9,000 cases to verdict; in the past year of the pandemic, we tried 239. We’ve gone from some 186 jury trials per week to four. This is not for want of effort by courts. Courtrooms aren’t built for social distancing, which requires lots of space to qualify and question scores of potential jurors in each case, and modifications to spread everyone out. Judges have worked very hard to convene juries safely. Participants in state court proceedings have only occasionally tested positive, and there have been no reports of spreading. But the danger is still there. In one federal jury trial in Texas last fall, at least 15 participants became infected, including jurors, attorneys, and court staff. We are working hard to resume in-person jury trials, but we must also work safely.

You can choose for yourself whether to risk greater exposure to COVID-19, but courts cannot thrust that increased risk on jurors and others who have no choice about appearing in court and would stay away if they could. As vaccinations increase, so will the number of jury trials, and soon.

BACKLOGS

The future beckons. Except for jury trials, Texas courts have mostly kept current. Fewer civil cases, small claims, and traffic cases are pending today than before the pandemic. Backlogs have increased somewhat in criminal cases and family cases, but all courts are working hard to reduce them. More backlogs will come, with jury trials that courts must work through, and an expected

surge in new case filings held off during the pandemic. With only current resources, we estimate it may take three years to completely catch up. This is unacceptable, and I have asked the Legislature for increased funding for retired and former judges to help us move more quickly.

ACCESS TO JUSTICE

Some 5.2 million of our poorest Texans qualify for basic civil legal services—help with things like housing, jobs, children’s welfare, guardianships, domestic violence, and sexual assault. The pandemic has only sharpened these needs. Last fall, Gov. Abbott designated \$4 million in federal relief funds for legal aid. For the next biennium, the Supreme Court’s budget funds basic civil legal services at the same level as in past years and includes \$10 million from dedicated funds for sexual assault victims, as well as \$6 million for legal aid for veterans. The Supreme Court has asked for an additional \$4 million per year, \$1 million per year of which will be designated for veterans’ legal aid. We estimate the extra appropriation will help more than 7,000 additional people obtain essential legal services, including some 1,800 veterans. We cannot allow access to justice for the very poor to falter just when they need it most. And we can expect that as criminal jury trials resume, the need for funding indigent criminal defense required by the Constitution will also increase. I urge the Legislature to fully fund all these needs.

BAIL REFORM

We have a bail crisis in Texas. Gov. Abbott has declared reform an emergency. In many Texas courts, a criminal defendant too poor to afford cash bail remains in jail, even if charged with a minor, non-violent offense and no threat to the public. The vast majority of people in jail are awaiting trial and have not been found guilty. In the past 27 years, the percentage of the Texas county jail population awaiting trial has more than doubled, from around 32% to over 83%. Who pays to keep these defendants in jail? Taxpayers.

At the same time, a criminal defendant who can afford cash bail can buy his release, even if he is charged with a serious, violent offense and has several priors, without regard to whether he is a danger to the public. And when he re-offends while on release, who pays? Victims, society, all of us.

Haywire? Yes. But worse, it’s wrong to lock up people only because they’re poor. It offends basic notions of liberty and humanity. And it’s dangerous to release defendants only because they can afford to make bail. There is a straightforward fix. First, give courts validated, pretrial, risk-assessment information for all defendants so judges can make better-informed decisions about bail. Second, ask voters to amend the Texas Constitution to allow judges to hold high-risk, potentially violent defendants without bail. Third, provide pretrial supervision for those released. And fourth, collect data to verify that the system is working as it should. I continue to urge the Legislature to reform the criminal pretrial release system following these four principles.

EVICTION DIVERSION

The inability to pay rent hurts tenants and landlords alike. Twenty percent of Texas' renting households report being behind on rent; 1.5 million of them doubt they can pay next month's rent. Gov. Abbott's Eviction Diversion Program, operated through the Texas Department of Housing and Community Affairs, is using \$1.2 billion in federal stimulus money to provide Texans rent relief. About 25% has been spent, benefiting landlords, tenants, and whole communities, as well as reducing the burdens on the court system. You can learn about the program and apply for benefits at this website: texasrentrelief.com. The Supreme Court will continue to provide procedures to encourage landlords and tenants to take advantage of the program and to facilitate distribution of the funds.

GARNISHMENT

The Texas Constitution of 1876 exempted basic wages paid by cash or check from seizure by creditors to safeguard their use for basic living expenses. Today, because payments are often by direct deposit, they do not have the protection our state's founders believed was important. Threatened seizures of federal stimulus funds paid to cover basic living expenses during the pandemic only called attention to the need to modernize wage protections. The Judicial Council has proposed an update to the basic constitutional exemption. I urge the Legislature to enact HB 3613 by Chairman Leach and SB 644 by Sen. Zaffirini to provide this needed modernization.

MENTAL HEALTH

For years, the Judicial Council and the Legislature have worked together for meaningful reforms in our mental health system. With legislative support, the Judicial Commission on Mental Health has collaborated with stakeholders statewide, including Sen. Joan Huffman and Rep. Joe Moody, to make further recommendations for ensuring that those with mental health conditions in our justice and municipal courts are mentally competent, that our successful jail competency restoration programs continue to work well, and that those with mental health conditions are placed in the least restrictive facilities to safely receive treatment. Those recommendations are contained in HB 4212 by Rep. Moody and SB 1739 by Sen. Zaffirini. The commission has also made recommendations for improving the use of emergency detention in mental health crises. I urge the Legislature to pass these important bills.

JUVENILE JUSTICE

Children who commit Class C misdemeanors are in the criminal system, not the juvenile system. If a 12 year old steals a real car, he is adjudicated as a juvenile in the civil justice system and faces no criminal penalty. But if he steals a \$10 toy car from a general store, he is prosecuted in the criminal system for a Class C misdemeanor. This makes no sense. The juvenile justice system provides judges, prosecutors, and law enforcement many tools to set a child on the right path that the adult criminal justice system

does not. A child who breaks the law must certainly face the consequences, but the reason for the juvenile justice system is to keep children from being treated as criminals. The Judicial Council has worked with representatives of the justice and municipal courts, juvenile prosecutors, and defense attorneys to propose statutory changes that will help keep children from spiraling deeper into the criminal justice system while holding them accountable for their actions. Sen. Perry has filed SB 512, and Rep. White HB 3660, to enact these recommendations. I urge the Legislature to consider them.

RACIAL PREJUDICE

Amidst the pandemic, we have been reminded, again, that the justice system faces a far worse disease than COVID-19, a disease that is not novel but all too chronic and familiar: the disease of racial prejudice. Outcries last summer charged that the justice system is not fair, and just as importantly, not perceived to be fair. The charges cannot be ignored. They demand self-examination and response from all who serve justice. Texas courts are taking a hard, clear look at themselves, and we will keep doing so. We will gather data to determine how the justice system is working in fact. We will encourage better training of judges. We will work to improve the public trust and confidence in the courts that is absolutely essential to the administration of justice.

CHALLENGES MET

I am in my 40th year of judicial service, president of the national Conference of Chief Justices, and chair of the National Center for State Courts. Every day I work with judges across the country to ensure the justice system is working. I will tell you this: The people of Texas can take deep pride in their judges—municipal judges, justices of the peace, county judges, district judges, the courts of appeals, and my colleagues on the high courts. They have stood to the historic challenges of the COVID-19 pandemic. The courts are open and dispensing justice.

Judges and court staff have served at personal sacrifice. Many have contracted COVID-19 themselves. At least four of my colleagues have died: Lubbock County District Judge Ruben Reyes, Wise County Court at Law Judge Melton Cude, Falls County Justice of the Peace Jack Smith, and Jasper Justice of the Peace Jimmy Miller. All were just and fair jurists, highly regarded in their communities. In addition, several court clerks, court staff, and constables have also succumbed to COVID-19. For them, and for others for whom COVID-19 has been more than a risk, has been a tragic reality, I ask that we observe a moment of silence.

CONCLUSION

We will defeat the pandemic. We will return to normal. For the judiciary, it will be a new normal, one with even greater promises of justice for all. My fellow Texans: The state of the judiciary is strong, resilient, moving ahead, and committed to the innovations a fair, efficient system of justice for all demands.

God bless you, and may God bless Texas. **TBJ**