IMPROVE OVERSIGHT OF THE TEXAS COUNTY JUDGE SALARY SUPPLEMENT

Texas has 254 constitutional county judges, one for each county. These judges serve as the presiding officers of the county commissioners courts and as the judges of the constitutional county courts. The position has executive, legislative, and judicial responsibilities. The Seventy-fifth Legislature, 1997, established a state-funded salary supplement of $5,000 for constitutional county judges. The supplement is intended to compensate these judges for dedicating additional workload to judicial duties if at least 40.0 percent of the functions they perform are judicial functions. The Legislature has increased the supplement, and the Eighty-fourth Legislature, 2015, set the supplement at 18.0 percent of the annual compensation provided to a district judge in the General Appropriations Act, which was $25,200 for fiscal year 2018.

Statute does not define judicial functions nor provide requirements conducive to quantifiable measurement and verification. Salary supplements are granted based upon an affidavit submitted by county judges. The State Auditor's Office has authority to audit county judge salary supplements; however, no audits have been performed, and supplements are unlikely to be audited due to the low amount of individual payments. No agency is tasked with verifying or monitoring whether recipients of the supplement perform the functions required in compliance with the law. The Office of Court Administration and the Comptroller of Public Accounts have received questions about judges' performing less than the amount of judicial functions required to obtain the supplement, but neither agency has the authority to audit the salary supplements. As a result, these agencies refer all complaints back to the counties. Without additional oversight, the state risks distributing funds to recipients that do not meet statutory requirements.

FACTS AND FINDINGS

- Judicial duties for a county judge include presiding over certain civil, probate, misdemeanor, juvenile, and mental health cases and performing magistrate duties.
- According to the Comptroller of Public Accounts, Judiciary Section, during fiscal year 2018, 220 of the 254 constitutional county judges received the state salary supplement.
- The county judge salary supplement is supported by a $40 filing fee in civil cases and a $15 criminal court cost collected by the county clerk where the judge is entitled to the supplement. The amounts collected from these charges are remitted to the Comptroller of Public Accounts for deposit in Judicial Fund No. 573 (Other Funds).
- The salary supplement is funded through General Revenue Funds and Other Funds from Judicial Fund No. 573. For the 2018–19 biennium, the county judge salary supplement is estimated to be funded with $4.8 million in Other Funds from Judicial Fund No. 573 and $6.4 million in General Revenue Funds.

CONCERNS

- Statutory language about salary supplement eligibility is not conducive to quantifiable measurement because an objective metric, such as percentage of work time or a specific number of cases, is not provided. Also, judicial functions are not defined in statute or administrative rules. Without an explicit definition, it is difficult to determine compliance with the salary supplement criteria.
- Constitutional county judge salary supplements are granted based solely on a county judge's affidavit. Additionally, limited data is available to help assess judicial function workload, such as case-level data regarding county judges' magistratical and pretrial activities.
- Although the State Auditor's Office has authority to audit county judge salary supplements, supplements are unlikely to be audited due to the low amount of individual payments. No audits have been performed. Moreover, neither the Comptroller of Public Accounts nor the Office of Court Administration has audit authority. Therefore, the state has limited oversight to ensure that are distributed to recipients who meet statutory requirements.
- Constitutional county judges are the only judges in Texas required to meet a 40.0 percent statutory performance measurement to receive a supplement.

Therefore, the statute lacks uniformity with other county-level supplements and salary requirements.

OPTIONS

- **Option 1** has the following three components to help ensure that state-funded salary supplements are distributed to constitutional county judges who meet statutory requirements:
  - **Option 1–A:** Amend statute to clarify that eligibility for the constitutional county judge supplement is based on 40.0 percent of work time addressing judicial functions and to require the Texas Judicial Council to define what qualifies as a judicial function for this purpose. Require the Office of Court Administration to develop a method to verify whether a constitutional county judge has met the eligibility criteria.
  - **Option 1–B:** Amend statute to require additional reporting of magistrate and pretrial activities from constitutional county courts to the Office of Court Administration to support the verification of county judge judicial workload. The statute also would require the Office of Court Administration to prescribe what data should be reported that is relevant to the salary supplement and make the data available online in the Office of Court Administration's Court Activity Reporting and Directory System.
  - **Option 1–C:** Amend statute to require constitutional county courts to report to the Office of Court Administration the number of times per fiscal year a salary supplement is disputed. The statute also would authorize the Office of Court Administration to review documentation and make determinations in cases of disputed salary supplements. Include a contingency rider in the 2020–21 General Appropriations Bill to require the Office of Court Administration to include in its annual report to the Legislature and the Legislative Budget Board the number of times a salary supplement was disputed during the previous fiscal year. The rider also would require the Office of Court Administration to provide a summary report related to its review of disputed salary supplements.
- **Option 2:** Amend statute to remove the performance requirement of 40.0 percent of judicial function, authorizing all 254 constitutional county judges to receive the state supplement.

DISCUSSION

The county judge position in Texas is unique in that it can include executive, legislative, and judicial functions. Judicial functions for a county judge include hearing certain civil, probate, misdemeanor, juvenile, and mental health cases and performing magistrate duties. However, not all county judges perform judicial functions. In urban counties, the county judge typically devotes full attention to the administration of county government. Additionally, county judges are not required to be licensed attorneys, but must be "well-informed in the law of the state," according to the Texas Constitution. According to a 2014 Office of Court Administration (OCA) study, 33 of the 254 county judges in the state are licensed to practice law. County judges are elected to four-year terms and serve as the presiding officers of the county commissioners courts and as judges of the constitutional county courts. Each commissioners court sets the county judge's base salary; therefore, base salaries vary based on county size and budget.

The Texas Constitution establishes one constitutional county court for each of the state's 254 counties. In addition to these, the Legislature has established statutory county courts to aid the constitutional county courts in their judicial functions. Texas has 246 statutory county courts serving 92 counties, and 162 counties do not have statutory courts. In counties without statutory county courts, also known as county courts-at-law, the constitutional county judges are the only judges with jurisdiction of Class A and Class B misdemeanors and probate matters. Without these constitutional courts, this workload would be added to the district courts, which would require statutory change to give district courts misdemeanor jurisdiction. Therefore, constitutional county courts have significant effects on court dockets. In counties with a statutory county court, the constitutional county judges primarily handle uncontested probate and guardianship caseloads. Without the constitutional county judges performing this function, the workload would be added to the statutory county courts. **Figure 1** shows a summary of judicial responsibilities among constitutional county courts and statutory county courts.

FIGURE 1
CONSTITUTIONAL COUNTY JUDGES' JUDICIAL RESPONSIBILITIES AT COUNTY-LEVEL COURTS, 2018

COUNTY-LEVEL COURT	COURTS	COUNTIES SERVED	COUNTIES WITH A STATUTORY COUNTY COURT	COUNTIES WITHOUT A STATUTORY COUNTY COURT
Constitutional County Courts	254	254	• Uncontested probate and guardianship	• civil actions from $200 to $10,000; • uncontested probate and guardianship; • misdemeanors with fines greater than $500 or jail sentence; • juvenile matters; and • certain appeals cases
Statutory County Courts (1)	246	92	• civil cases from $200 to $200,000; • uncontested probate and guardianship (1); • misdemeanors with fines greater than $500 or jail sentence; • juvenile matters; and • certain appeals cases	N/A (162)

NOTE: (1) The actual jurisdiction of each statutory county court varies according to the statute that established it. For example, a few statutory county courts hear felony cases. Some statutory courts may have higher maximum jurisdiction amounts. In a county that has a statutory probate court, it is the only court with probate jurisdiction. A statutory county court does not have the jurisdiction of a statutory probate court granted by the Texas Estates Code. Municipal, justice, and district courts also handle other types of cases.
SOURCE: Office of Court Administration.

OVERVIEW OF THE STATE-FUNDED SALARY SUPPLEMENT FOR CONSTITUTIONAL COUNTY JUDGES

The Seventy-fifth Legislature, 1997, established a state-funded salary supplement for constitutional county judges. The supplement originally was set at $5,000 and was available to county judges if at least 40.0 percent of their performed duties are judicial functions. The supplement amount was increased to $10,000 by the Seventy-sixth Legislature, 1999, and to $15,000 by the Seventy-ninth Legislature, Regular Session, 2005. Senate Bill 1025, Eighty-fourth Legislature, 2015, amended the supplement to 18.0 percent of the annual compensation provided for a district judge in the General Appropriations Act, which was $25,200 for fiscal year 2018.

The salary supplement is supported by a $40 filing fee in civil cases and a $15 criminal court cost in the county court collected by the county clerk where the judge is entitled to the supplement. The amounts collected from these charges are remitted to the Comptroller of Public Accounts for deposit in Judicial Fund No. 573 (Other Funds). Amounts collected in excess of the cost of the supplement are required to be returned to counties proportionally. The supplement is funded through General Revenue Funds and Other Funds (Judicial Fund No. 573). For the 2018–19 biennium, the county judge salary supplement is estimated to be funded with $4.8 million in Other Funds (Judicial Fund No. 573) and $6.4 million in General Revenue Funds.

By statute, most judges in Texas, with the exceptions of justices and municipal court judges, receive state funding for salaries or supplements. For example, the base salary of district judges is paid directly by the state. Several state and local judicial positions have state salaries or salary supplements that are linked statutorily to a district judge's salary. However, only constitutional county judge salary supplements require a set amount of judicial functions to be met.

Figure 2 shows certain state and local judicial positions that receive salary supplements.

Figure 3 shows the amount of state appropriations for certain judicial supplements and salaries for the 2018–19 biennium.

IMPROVE OVERSIGHT OF THE STATE-FUNDED SALARY SUPPLEMENT FOR CONSTITUTIONAL COUNTY JUDGES

To help ensure that state-funded salary supplements are distributed to constitutional county judges who meet statutory requirements, the state should take steps in the following areas to improve oversight: (1) clarify eligibility requirements by basing them on quantifiable measures and defining what qualifies as a judicial function; (2) develop a method to verify whether a judge has met the eligibility criteria; (3) require additional reporting regarding magistrate and pretrial activities from constitutional county courts to OCA to include judicial functions performed outside of the courtroom; and (4) require constitutional county courts to

FIGURE 2
COMPENSATION OF STATE AND LOCAL JUDICIAL POSITIONS, FISCAL YEAR 2018

POSITION	STATE COMPENSATION	LOCAL COMPENSATION	MAXIMUM SALARY
District Judge	$140,000	Up to $18,000	$158,000 (1)
Presiding Judge of the Administrative Judicial Region – Active	$140,000	Up to $33,000	$173,000 (2)
Presiding Judge of Administrative Judicial Region – Retired or Former District Judge or Appellate Judge	N/A	$35,000 to $50,000	$35,000 to $50,000
Constitutional County Judge	$25,200 supplement if claimed	Set by county commissioners court, varies based on county size and budget	N/A
Statutory County Judge	$84,000	At least $55,000	At least $139,000
Statutory Probate Judge	$40,000	At least $100,000 (3)	None

NOTES:
(1) Local administrative judges in counties with more than five judges are eligible to receive a salary supplement of $5,000 annually from the state.
(2) Active district judges who also are presiding judges of administrative judicial regions also may receive the salary supplement available to a district judge, making their maximum salary $191,000.
(3) The commissioners court sets the annual salary of each judge of a statutory probate court at an amount that is at least equal to the total annual salary received by a district judge in the county.
SOURCE: Legislative Budget Board.

report disputed supplements and authorize OCA to review documentation and determine disputed supplements.

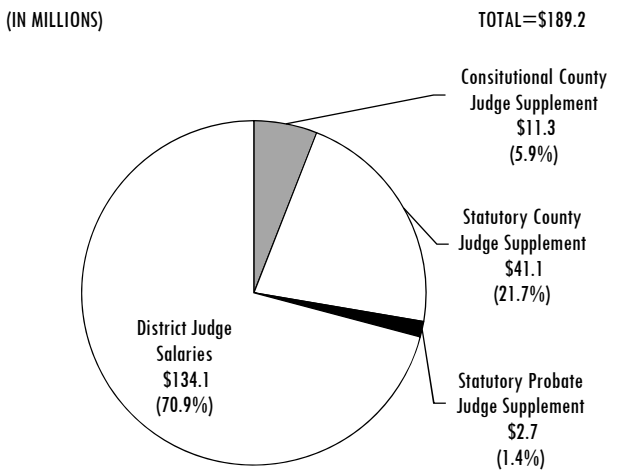
CLARIFY ELIGIBILITY REQUIREMENTS

The Texas Government Code, Section 26.006, requires that at least 40.0 percent of the county judge's functions are judicial functions. The statute requires the judge to file an affidavit to certify that this requirement has been met.

The judicial responsibilities are set in the Texas Constitution, the Texas Administrative Code, and other statutes. However, judicial functions are not defined in any of these laws. Without an explicit definition, it is difficult to establish which activities may qualify a judge to receive the salary supplement.

For example, in 2015, in Austin County, the local auditor refused to disburse the supplement to the constitutional county judge, contending that the performance requirement was not met. The auditor asked the state to clarify the phrase judicial function. The Attorney General Opinion No. KP-0090, 2016, redirected interpretation to the exercise of statutory jurisdiction and did not specify which activities may qualify. The opinion also suggested that, if a county auditor has concerns regarding an improperly requested salary supplement, the auditor should confer with the Comptroller of Public Accounts (CPA) regarding disbursing the supplement.

FIGURE 3
STATE APPROPRIATIONS FOR CERTAIN JUDICIAL SUPPLEMENTS AND SALARIES
2018–19 BIENNIUM



NOTE: Salary and supplements are appropriated from General Revenue Funds and Other Funds (Judicial Fund No. 573) for the 2018–19 biennium.
SOURCE: Legislative Budget Board.

Option 1–A would amend the Texas Government Code, Section 26.006, to clarify that eligibility for the constitutional county judge salary supplement is based on 40.0 percent of work time addressing judicial functions. The amended statute also would require the Office of Court Administration,

Texas Judicial Council, to define what constitutes a judicial function for the purpose of providing the salary supplement.

The Forty-first Legislature, Regular Session, 1929, established the Texas Judicial Council to continuously study and report on the organization and practices of the Texas judicial branch. As the policy-making body for the state judiciary, the Texas Judicial Council studies methods to simplify judicial procedures, expedite court business, and better administer justice. It examines the work accomplished by the courts and submits recommendations for improvement of the system to the Legislature, the Office of the Governor, and the Supreme Court of Texas. The agency receives and considers input from judges, public officials, members of the state bar, and the public. The Texas Judicial Council would be positioned well to define what activities represent judicial functions considering the separation of powers among the legislative, executive, and judicial branches.

DEVELOP A METHOD TO MEASURE JUDICIAL WORKLOAD

Current statutory language makes it difficult to determine compliance with the salary supplement requirement that 40.0 percent of the functions that a constitutional county judge performs are judicial functions. The language is not conducive to quantifiable measurement because a metric, such as time or a set amount of functions, is not provided. The state cannot perform meaningful oversight or monitoring because the provision does not contain quantifiable metrics necessary for observation and review.

Option 1–A also would amend the Texas Government Code, Section 26.006, to require the Office of Court Administration to develop a method to verify whether a constitutional county judge has met the eligibility criteria.

In implementing this option, OCA could enhance its ability to measure the judicial workload of all county judges. It is difficult to monitor statutory compliance with salary supplement requirements due to limited data. However, a general baseline of workload could be established based on of a quantitative workload study. A workload study could be used at state and local levels to inform decisions about the needs of constitutional county courts and other judicial resources. By measuring the current judicial workload of these judges, the state could more effectively assess if judges are meeting the statutory requirement.

The National Center for State Courts published *Measuring Current Judicial Workload in Texas, 2007*, June 2008. The study's charge was to evaluate how many judicial officers, including district judges, associate judges, masters, magistrates, and referees, are needed in Texas to provide the equitable handling of cases in district courts. The researchers calculated the average amount of work time that judicial officers devote to different types of cases. OCA uses those averages to estimate the resources needed in each district court based on case types. OCA could use a similar methodology to study constitutional county courts, assess the adequacy of judicial resources in each jurisdiction, and determine the approximate judicial workload of a county judge.

ENHANCE DATA REPORTING

Salary supplements are granted based on a county judge's affidavit about workload; however, no supporting documentation is required. Individual workload is difficult to verify because county judges also perform judicial duties outside of the courtroom, including magistratical and pretrial activities, and data regarding these activities is not collected or reported regularly.

The Texas Code of Criminal Procedure states magistrates' powers and duties, including issuing a warrant of arrest or a summons, finding probable cause, giving warning, and setting bail. Magistrates also may assess arrestees and recommend release or supervision of individuals released on bond. **Figure 4** shows the categories of case data that OCA collects by docket for constitutional county courts. OCA does not collect magistratical and pretrial activity data; however, this data could be included to support constitutional county judge affidavits.

Option 1–B would amend the Texas Government Code, Section 26.006, to require additional reporting on magistrate and pretrial activities from constitutional county courts to OCA to support the measurement of county judge judicial workload. The statute also would require that OCA prescribes what data should be reported that is relevant to the salary supplement and make the data available online through OCA's Court Activity Reporting and Directory System. This data can be used to assess statewide activity, facilitate analysis of constitutional county judge and court workload to inform decisions about the need for courts and other judicial resources, and promote transparency.

Option 1–B would support the Texas Judicial Council's June 2018 recommendation that, "The Judicial Council should collect case-level data from all courts and should expand the collection of data from magistrates." The Texas Judicial

FIGURE 4
CONSTITUTIONAL COUNTY COURTS CASE CATEGORIES BY DOCKET, FISCAL YEAR 2018

CRIMINAL	CIVIL	JUVENILE	PROBATE AND GUARDIANSHIP	COURT-ORDERED MENTAL HEALTH CASES
Driving While Intoxicated – First Offense	Injury or Damage – Motor Vehicle	Juvenile Cases – Adjudications and Findings of Conduct Indicating Need for Supervision	Independent Administration	Temporary Mental Health Services
Driving While Intoxicated – Second Offense	Other Injury or Damage	Delinquent Conduct Cases	Dependent Administration	Extended Mental Health Services
Theft	Real Property		All Other Estate Proceedings	Modification – Inpatient to Outpatient
Theft by Check	Contract – Consumer or Commercial Debt		Guardianship	Modification – Outpatient to Inpatient
Drug Possession – Marijuana	Contract – Landlord and Tenant		All Other Cases	Orders to Authorize Psychoactive Medications
Drug Possession – Other	Other Contract			
Family Violence Assault	Civil Cases Relating to Criminal Matters			
Assault – Other	All Other Civil Cases			
Traffic	Other Civil Cases			
Driving While License Suspended or Invalid				
Other Misdemeanor Cases				

SOURCE: Office of Court Administration.

Council acknowledges having insufficient information about magistrate and pretrial activities. The agency suggests capturing activities including the following: magistrate warnings, requests for counsel, emergency protection orders, emergency mental health hearings, orders for ignition interlock devices, and activities regarding bail amounts and pretrial release. Information regarding magistratical activities is limited to justices of the peace and municipal judges; however, as previously mentioned, constitutional county judges can perform magistrate duties.

AUTHORIZE OCA TO DETERMINE ELIGIBILITY FOR DISPUTED SALARY SUPPLEMENTS

Pursuant to the Texas Government Code, Chapter 321, the State Auditor's Office (SAO) has general authority to audit the supplements because they are state funds. However, as of fiscal year 2018, no audits have been performed. State audits are unlikely to occur due to the SAO's risk assessment process and the amounts of individual supplements. OCA and CPA each have received questions about judges not performing the amount of judicial functions needed to earn the supplement, but neither agency has the authority to audit the salary supplements. As a result, these agencies refer all complaints back to the counties. Therefore, in the case of the Attorney General opinion suggesting that the county auditor and CPA consult when a judge's eligibility is disputed, CPA is limited in its ability to provide reconciliation. For a disputed supplement, CPA asks the contesting party to work with the county auditor and judge to resolve the matter, or asks the judge to send CPA a written revocation of the current affidavit. Therefore, the state has limited oversight to ensure that state funds are distributed to recipients who meet statutory requirements.

Option 1–C would amend the Texas Government Code, Section 26.006, to require constitutional county courts to report to OCA the number of times per fiscal year a salary supplement is disputed. This data would be used to monitor statewide activity and identify trends to inform performance assessments and promote transparency. The statute also would authorize OCA to review documentation and determine eligibility for disputed salary supplements. Option 1–C also would include a contingency rider in the 2020–21 General Appropriations Bill to require OCA to include in its

annual report to the Legislature and the Legislative Budget Board the number of times a salary supplement was disputed during the previous fiscal year and to provide a summary report related to its review of disputed salary supplements.

REMOVE STATUTORY PERFORMANCE REQUIREMENT

As an alternative approach, the Legislature could remove the statutory performance requirement for constitutional county judges to achieve uniformity and similarity to other county-level supplements and salaries. Option 2 would amend the Texas Government Code, Section 26.006, to remove the requirement for 40.0 percent of judicial functions, authorizing all 254 constitutional county judges to receive the state supplement.

FISCAL IMPACT OF THE OPTIONS

Option 1 would direct state agencies to improve oversight of the county judge salary supplement through the following actions: clarifying eligibility criteria and defining judicial functions; developing a method to verify whether a county judge meets such eligibility requirements; requiring additional reporting regarding magistratical and pretrial activities and the number of disputed supplements; and authorizing the review of disputed salary supplements. This option is intended to help ensure that county judges who receive the supplement meet statutory requirements. It is assumed that Options 1–A, 1–B, and 1–C would have no significant fiscal impact to the state. However, local governments might incur a cost related to additional reporting requirements.

To provide the supplement for judges that do not receive it, Option 2 would result in a cost of $856,800 in General Revenue Funds per fiscal year to the Judiciary Section, Comptroller's Department, based on current judicial compensation levels. If district judge salary increases, this amount would increase because a constitutional county judge's supplement is 18.0 percent of a district judge's salary that is set in the General Appropriations Act. With this increase, the cost of the constitutional county judge supplement would total $13.0 million per biennium in General Revenue Funds and Other Funds.

The introduced 2020–21 General Appropriations Bill does not include any adjustments as a result of these options.