TEXAS JUDICIAL COUNCIL

DATA Committee

REPORT
AND
RECOMMENDATIONS

2024

Background

In November 2023, the Texas Judicial Council charged the Data Committee with:

- Continuing to work on guiding the revisions of the court activity reporting requirements to collect case-level statistical data.

- Studying the use of Artificial Intelligence in Texas Courts across the board—management, procedure, evidence, filings, security, etc.—and recommending any necessary reforms. (Joint Charge with Civil Justice Committee)

- Studying ways to improve public access to all court filings, docket entries, and other information comparable to PACER.

- Studying the feasibility of and making recommendations regarding alternative methods for submitting the clerk's record on appeal.

- Studying ways to strengthen communication plans covering the importance of judicial data collection and positive impacts data transparency has on the judiciary and policy.

Cover photo: Bexar County Courthouse, San Antonio, TX.

Members of the Committee are:

Honorable Bill Gravell, Chair

Ms. Sonia Clayton

Senator Brandon Creighton

Honorable Jon Gimble

Honorable Sharon Keller

Honorable Claudia Laird

Honorable Emily Miskel

Ms. Rachel Racz

Senator Judith Zaffirini

The Texas Judicial Council's Data Committee met on April 16, June 27, and September 18, 2024.

Llano County Courthouse, Llano, Texas.

Recommendations in Brief

Artificial Intelligence in Texas Courts

Recommendation 1: The Texas Supreme Court should consider adopting rules requiring local courts to ensure the acceptable use of AI by court staff is included in existing policies.

Recommendation 2: The judicial education training entities should include in their curriculum training on AI the potential benefits and risks of AI use (AI bias, AI deepfakes, AI hallucinations, etc.), and how to identify and operate AI applications in court-based settings.

Recommendation 3: The Office of Court Administration should seek funding to expand the use of robotic process automation across the state to improve the electronic filing process.

Recommendation 4: The Office of Court Administration should conduct an inventory study across the judiciary to see what AI tools are currently in use or planned for use.

Recommendation 5: The Texas Supreme Court should consider studying what changes might be necessary to its rules or to statutes to address the manipulation of evidence through AI.

Public Access to Court Filings

Recommendation 1: Re:SearchTX should be modified and enhanced to improve its usability.

Recommendation 2: The Supreme Court of Texas should consider directing the Supreme Court Advisory Committee to study whether court rules should be changed to ensure that all appropriate documents are being included in re:SearchTX.

Clerk's Record on Appeal

Recommendation: The Texas Supreme Court should consider modifying the Rules of Appellate Procedure to streamline the submission of the clerk's record on appeal.

Judicial Information for the Public

Recommendation: The Office of Court Administration should provide a template or host a standardized, secure court website for local governments lacking dedicated Information Technology support.

Court Activity Reporting

Recommendation: The Office of Court Administration should seek funding from the Legislature to create Regional Data Coordinators that will coincide with the Administrative Judicial Regions. The positions will support accuracy and consistency in judicial data thus improving transparency.
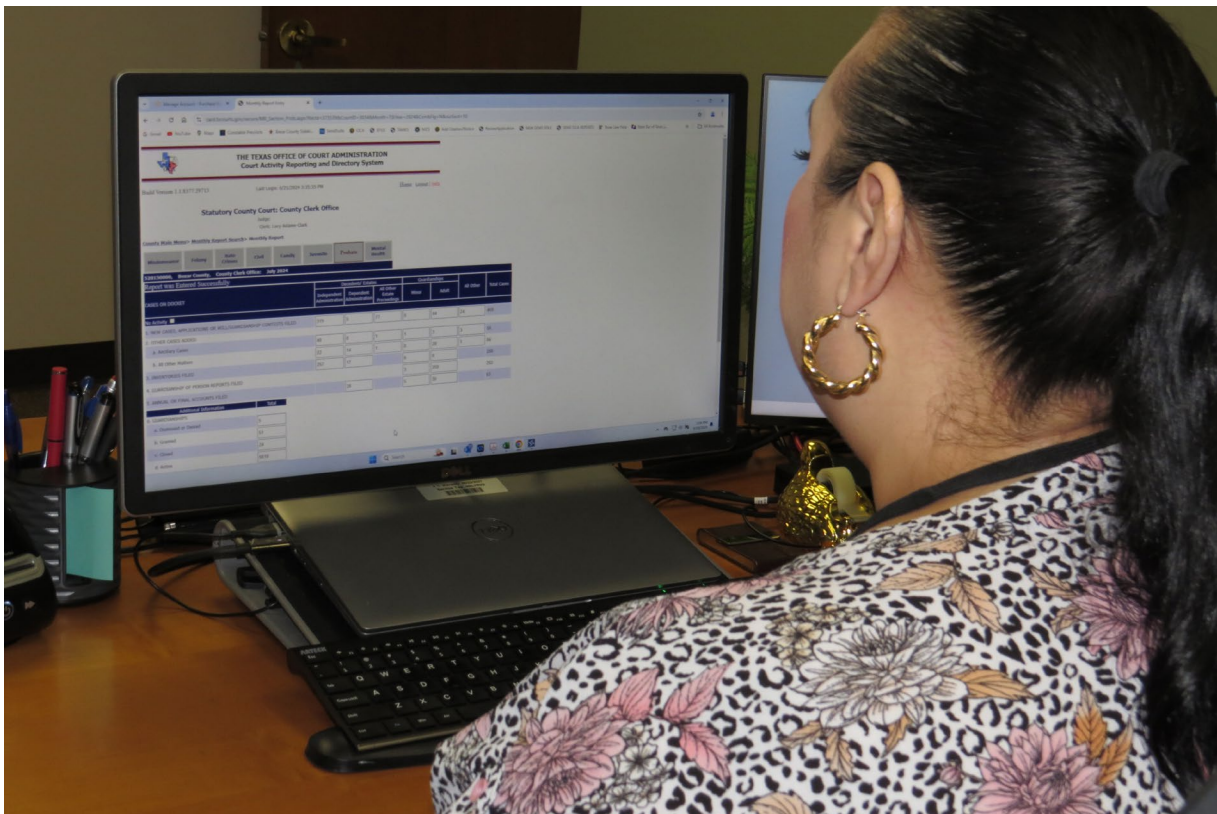
Deputy County Clerk's Office, Bexar County, San Antonio, TX.

Recommendations in Detail

Artificial Intelligence in Texas Courts

Background

Few current topics capture the imagination like artificial intelligence (AI). Today, "AI" is an umbrella term that covers many current and emerging technologies. It can power autonomous vehicles, generate music, produce art, and it is increasingly surfacing in the judiciary through a variety of applications. AI might be applied to caseflow triage, to assist self-represented litigants through the legal process including preparation of legal documents, and to assist judicial officers in research. In Tarrant County, for example, robotic processing automation (RPA) implemented into the eFiling system reviews, processes, verifies, and accepts electronic filings. The RPA reduced manual document review, minimized data entry errors, and flattened the eFile intake period from days to minutes. So effective are the RPA robots that Tarrant County instructed them to take nights and weekends off to give upstream staff a chance to catch up with them. Other applications of AI in the law warrant greater care, particularly in the use of generative AI (GenAI). As the National Center for State Courts' AI Rapid Response Team has highlighted, GenAI has in the past "hallucinated" fictitious legal citations that some lawyers have uncritically accepted and submitted in legal briefs.[1] And to top it off, any bias lurking in the system can be accentuated by GenAI. In short, great opportunities and risks await with AI in Texas courts.

Recommendations

Recommendation 1: The Texas Supreme Court should consider adopting rules requiring local courts to ensure the acceptable use of AI by court staff is included in existing policies.

Recommendation 2: The judicial education training entities should include in their curriculum training on AI the potential benefits and risks of AI use (AI bias, AI deepfakes, AI hallucinations, etc.), and how to identify and operate AI applications in court-based settings.

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1   Nat'l Cnt. For St. Cts., *Artificial Intelligence (AI) Interim Guidance* (Feb. 2024), https://www.ncsc.org/__data/assets/pdf_file/0029/98255/RRT-AI-talking-points-February-2024.pdf.

Recommendation 3: The Office of Court Administration should seek funding to expand the use of robotic process automation across the state to improve the electronic filing process.

In seeking funding to support robotic process automation caseflow triage, the Office of Court Administration should explore and seek funding from all applicable sources, including federal, state, and grant funding.

Recommendation 4: The Office of Court Administration should conduct an inventory study across the judiciary to see what AI tools are currently in use or planned for use.

Recommendation 5: The Texas Supreme Court should consider studying what changes might be necessary to its rules or to statutes to address the manipulation of evidence through AI.

Caldwell County Courthouse, Lockhart, Texas.

Public Access to Court Records

<u>Background</u>

In 2010, the Texas Judicial Committee on Information Technology recommended the development and implementation of a public access system for Texas courts. That recommendation helped spawn a new era of electronic filing with eFileTexas, which in turn set the stage for greater access to court records by both the judiciary and the public. By late 2018, after a tiered rollout to a small user population, a statewide portal for court records named re:SearchTX became operational for role-based security groups (judges, clerks, attorneys, and the public). Re:SearchTX currently contains some 150 million court documents except for criminal case records, with cases dating back to 2016. Re:SearchTX offers users dynamic search tools to find cases, filings, hearings, to track and save cases of interest, and to buy documents. Fees for public access in re:SearchTX are set in statute and the money exchanged for document purchases return to the county of origin. In May 2024, the Texas Supreme Court directed all Texas district and county clerks to integrate their local case management systems with re:SearchTX by no later than November 1, 2025.[2] Integration implementation follows a tiered schedule, with large counties mandated to integrate by October 1, 2024.

<u>Recommendations</u>

Recommendation 1: Re:SearchTX should be modified and enhanced to improve its usability.

Re:SearchTX should be modified and enhanced to improve its usability, making it more like the federal PACER system in the following ways: the incorporation of an advanced fee structure (e.g., firm-based billing as opposed to individual billing, quarterly billing, fee waivers, etc.); the building of constructable links to cases and documents to bypass entering search criteria; the introduction of a "download all" feature (a downloadable bundle of documents), including a linked table of contents; the inclusion of case history linkage (allowing users to move up and down through court levels); and the incorporation of application programming interfacing to allow for automated searching, document retrieval, and hearing data.

Recommendation 2: The Supreme Court of Texas should consider directing the Supreme Court Advisory Committee to study whether court rules should be changed to ensure that all appropriate documents

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2 *Final Approval of Amendments to Texas Rules of Civil Procedure 21, 165a, 239a, 246, 297, 298, 299, 299a, and 306a; Texas Rule of Appellate Procedure 9.2; and Rule 2.7 of the Statewide Rules Governing Electronic Filing in Criminal Cases*, Misc. Docket No. 24-9030 (May 28, 2024), https://www.txcourts.gov/media/1458615/249030.pdf.

are being included in re:SearchTX.

Under Rule 21c of the Texas Rules of Civil Procedure, documents identified as containing sensitive data are not available to the public on re:SearchTX. Although the spirit of the rule is to protect sensitive data, in practice documents are regularly deemed sensitive so as to avoid inclusion for public consumption on re:SearchTX. The Supreme Court should consider directing the Supreme Court Advisory Committee, which assists the Supreme Court in the study, review, and development of court rules, to study whether Texas Rule of Civil Procedure R.21c needs clarification to ensure robust privacy protections for filed documents and full inclusion of documents in re:SearchTX.

Deputy County Clerk's Office, Bexar County, San Antonio, TX.

Submitting the Clerk's Record on Appeal

<u>Background</u>

Under Texas Rule of Appellate Procedure Rule 34.1, the appellate record consists of the clerk's record and, if necessary, the reporter's record. To submit the clerk's record on appeal, counsel designates and pays for the record from the trial court and the trial court clerk creates the index, assembles the record documents, and Bates stamps the combined documents. The trial court clerk then submits the record electronically to the appellate court through the Texas Appeals Management and eFiling System (TAMES) Report Submission Portal, which in turn sends the record to the appellate court's TAMES inbox for inclusion in the case.

<u>Recommendations</u>

Recommendation: The Texas Supreme Court should consider modifying the Rules of Appellate Procedure to streamline the submission of the clerk's record on appeal.

Various alternate submission processes exist. In one alternative process, an attorney can log into re:SearchTX to designate and then pay for the record. Then, re:SearchTX generates the index, assembles the documents, bate stamps the documents, and eFiles the completed record to the appellate court. eFile then sends the records to the appellate court's TAMES inbox. In another alternative process, the attorney cites directly via a constructable link in re:SearchTX to the trial court record and the cites link directly back to the trial court document referenced in re:SearchTX. If the appellate court opinion or order needs a cite, it too goes directly to the trial court document referenced in re:SearchTX. The appellate court clerk could likewise download the trial court documents for retention.

These alternative processes would require re:SearchTX integrations and updated rules, in addition to the creation of constructable links and attorney community training.

Judicial Information for the Public

<u>Background</u>

Few communications tools available to the judiciary match the reach and impact of a website. Today, websites provide an endless array of information about the courts, the judges of those courts, court schedules, court programs, and court data. Unfortunately, the hosting, maintenance, and protection of court websites is neither free nor simple. Web defacement (website vandalism) remains a popular method of cyberattack and can severely curtail a court's ability to communicate with the public. And as was very evident in 2020 — when the Office of Court Administration, the Department of Transportation, and many local governments absorbed cyberattacks — even sophisticated and well-prepared cybersecurity measures can be thwarted by weak links in the system. For many Texas counties and their courts, robust and secure judicial communication via websites remains elusive and unrealized.

<u>Recommendations</u>

Recommendation: The Office of Court Administration should provide a template or host a standardized, secure court website for local governments lacking dedicated Information Technology support.
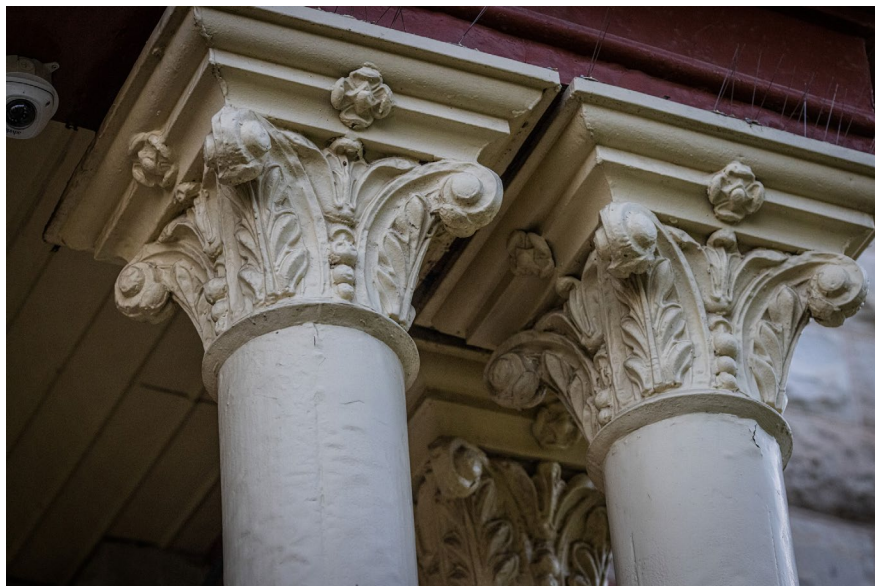
Caldwell County Courthouse, Lockhart, Texas.

Court Activity Reporting

<u>Background</u>

Historically, the Data & Research Division of the Office of Court Administration (OCA) has lacked the resources to provide individual judicial data guidance to each of Texas' 254 counties, resulting in various data entry practices across the state. Moreover, although routine data checks are performed, the checks do not extend to a comprehensive review of data entry processes at the county level. As individual review of reports are made for certain counties (as staff time permits), a common trend identified is the misinterpretation of data fields. To ensure uniformity, then, individual review of county data practices is essential. Timely reporting is also an issue that is constantly being addressed. But with limited resources OCA is unable to assist clerks and courts with their reports so that they can submit past reports and future ones timely. Missing reports lead to incomplete data sets and information requests required to be analyzed for older timeframes where the data is more complete.

<u>Recommendations</u>

Recommendation: The Office of Court Administration should seek funding from the Legislature to create Regional Data Coordinators that will coincide with the Administrative Judicial Regions. The positions will support accuracy and consistency in judicial data thus improving transparency.

The demand for more detailed judicial data has significantly increased, driven by a growing number of data requests and the necessity for precise information to inform policy decisions and recommendations. As data collection expands, data entry accuracy and uniformity will be crucial to maintain the integrity of the new case level data reporting system. Regional data coordinators will focus on assessing and verifying county data collection practices, offering tailored guidance to improve reporting accuracy and training. These coordinators will bridge the gap between routine data checks and the detailed assessment needed to enhance data quality. By implementing these positions, we will significantly improve the state's transparency with judicial data and the ability to provide reliable data that supports informed decision-making and public trust. With improved data, the judiciary at both the local and state level will be able to make better decisions about case management and docket practices.