

The Texas Constitution: The People, History, and Government of the Lone Star State

Chapter 8 The Texas Judiciary

Chapter 8 discusses the structure of the Texas judiciary and the ways in which the Texas judicial branch differs from the national judiciary. At the conclusion of the chapter, students should be able to identify:

- The unique features of the Texas judicial branch and the ways in which the state judiciary differs from the national judiciary;
- Legal concepts relevant to understanding the structure and powers of Texas state courts;
- The levels of courts that comprise the Texas judiciary and the roles and functions each level plays in the overall functioning of the state judiciary;
- The ways in which the selection of judges in Texas differs from the selection of federal judges.

The third and most complicated branch of Texas government is the judicial branch. While the state and national judiciaries share some common features, they largely stand in sharp contrast to one another especially in terms of their respective high court structures and methods of judicial selection. A brief summary of some of the relevant and important features of the federal judiciary will assist students in understanding the unique features of the Texas judiciary and the ways in which it differs from the national judiciary.

First, the United States judicial branch consists of one high court (the United States Supreme Court) that serves as the court of last and final resort on all matters of law in the country and comprised of eight associate justices and one chief justice; twelve intermediate courts (the United States Courts of Appeals); and ninety-one lower federal courts (the United States District Courts).¹ Second, with the exception of magistrates, all federal judges are nominated by the president, confirmed by the Senate, and hold lifetime tenure except in cases of death, retirement, resignation, or impeachment. Third, **jurisdiction** – the ability of

¹ Additional federal intermediate courts such as the Court of Military Appeals and the Court of Appeals for the Federal Circuit also exist, as well as additional lower courts including the U. S. Court of International Trade, U.S. Tax Court, and the Court of Veterans Appeals.

a court to hear a particular type of case – is important to understanding the operations of both the federal judiciary and the state judiciary. Courts with **original jurisdiction** such as federal district courts hear issues of fact and may empanel a jury of ordinary citizens to hear and decide the outcome of cases. Courts with **appellate jurisdiction** such as the Court of Appeals hear issues of law with judges sitting *en banc* (all together) or in panels of three in review of cases that come before them on appeal from the lower courts. The United States Supreme Court has both original and appellate jurisdiction with its original jurisdiction controlled by the United States Constitution and its appellate jurisdiction controlled by Congress. Another type of jurisdiction concerns the subject matter or types of cases a court is empowered to hear. Courts with **criminal law** jurisdiction hear cases involving violations of one or more state or federal laws designed to prevent one or more persons from causing victimized harm to another (i.e., murder, rape, theft, and assault). Courts with **civil law** jurisdiction hear matters involving disputes between private individuals over non-criminal matters such as child custody and divorce, estate and will probates, personal injuries, and breaches of contract. Generally, federal courts have both criminal law and civil law jurisdiction.

The Texas judicial branch also consists of a high court system, intermediate appellate courts, and lower district courts. Original and appellate jurisdiction is designated to state courts in a way similar to that in the federal court with high courts and intermediate courts generally having appellate jurisdiction and lower state district courts having original jurisdiction. Some Texas courts such as justice courts, county courts, and intermediate appellate courts hold both criminal law and civil law jurisdiction; but, particularly in densely populated areas, state district courts tend to hold specialized jurisdiction over one area of law such as criminal law, civil law, family law, or juvenile justice. Finally, Texas is divided into geographical areas that contain appellate courts and district courts just as the United States is divided into geographical areas containing federal appellate courts and federal district court. As of March 2017, Texas had 14 state courts of appeals (as compared to 12 federal courts of appeals circuits) and 467 state district courts (as compared to 91 federal district courts). Beyond the existence of geographically divided lower court systems containing courts with original and appellate jurisdiction, the similarities between the structure of the United States judiciary and the Texas judiciary largely come to a close.

❖ The Texas Bifurcated High Court System and State Appellate Process

The astute reader of the preceding section will have noticed the term “high court system” rather than “Supreme Court” was used to describe the Texas judiciary – and for very good reason. Texas and Oklahoma are the only two states in the nation that have a **bifurcated high court** system. A bifurcated high court system divides judicial power between two high courts with one court having civil law jurisdiction and the other court having criminal law jurisdiction. In Texas, the bifurcated high court system consists of one state Supreme Court and one state Court of Criminal Appeals (not to be confused with the state courts of appeals, to be discussed later in this chapter). The **Texas Supreme Court** is the highest court in the state over civil matters, and the **Texas Court of Criminal Appeals** is the highest court in the state over criminal matters. Both courts have appellate jurisdiction, and in their respective spheres (civil law and criminal law) are the highest courts of last resort in the state. The types of cases each court is empowered to hear are strictly defined by state constitutional and statutory law.

The concept of jurisdiction as it relates to the Texas judiciary is best explained in terms of a hypothetical state case. Let’s assume, for example, a person enters into a contract with another individual to paint the interior and exterior of her business. The contract explicitly states “interior and exterior painting of commercial property” but contains neither a breakdown of services nor any reference to labor and supplies. The painter enters into the contract in good faith that the contracted amount is for labor only, and the business owner enters into the contract in good faith the amount includes both labor and supplies. Upon completion of the work, the painter hands the business owner a bill reflecting a charge of \$80,000 – an amount \$20,000 over the amount set forth in the contract. Needless to say, words ensue between the business owner and the painter. (The fact that a discussion clarifying the terms of the contract should have been held *before* the parties agreed to the contract is irrelevant.) The business owner sues the painter for breach of contract and, after a long pre-trial period, the case is presented to a jury that ultimately delivers a judgment in favor of the business owner. But, during the trial the painter’s attorney submitted into evidence a Texas statute that could be used to assist individuals and jurors in interpreting ambiguous contracts. The business owner’s attorney in turn moved to strike the statute from the trial and the judge granted the attorney’s request – meaning, the

statute could not be presented to the jury for consideration during trial. The painter may not appeal the jury's final judgment simply because he lost the case or believes the jurors did not understand the facts of the case. Rather, his appeal must be based on an issue of law such as the trial court judge's decision to not allow the jury to consider the statute based on her interpretation of the Texas Code of Civil Procedure.

At this point in our hypothetical case the reader can easily surmise that issues of law are highly technical and require a great deal of legal training and expertise. For this reason, judges – not juries consisting of ordinary people – determine the outcome of appellate court cases. Assuming our case reaches the highest court in the state over civil matters – the Texas Supreme Court – the justices serving on the Court would consider relevant rules of civil procedure and evidence; the wording of the statute in question; the trial court judge's reasoning behind granting the request to strike evidence; and, other matters of law relevant to the case before them. Should the Court determine the trial court judge's decision was consistent with the letter and spirit of state law and rules of civil procedure, the jury's decision at the trial court level would stand and the business owner prevail. But, if the Court determined the judge's decision was not consistent with state rules and procedure, the case would be remanded back to the lower courts for a new trial that would include jury consideration of the evidence omitted in the original trial. While state and federal rules of criminal procedure differ in important and substantial ways from those of civil procedure, the basic concept of appeals outlined in our hypothetical case applies equally to both. A person hoping to appeal a conviction for possession of cocaine in violation of state drug laws, for example, must present her appeal on an issue of law, not on an issue of fact. And, should the case reach the highest level of criminal law appeal in the state, the Texas Court of Criminal Appeals would hear and determine the outcome of the appeal. The Texas Supreme Court would have no jurisdictional standing since the case does not involve a matter of civil law.

❖ **Judicial Decision Making in Federal and State Appellate Courts**

Many readers will recall from their studies of American government that American law is based on British common law. A fundamental feature of all common law systems is the doctrine of *stare decisis* – or “let the decision stand” – commonly referred to as “precedent.” When the United States Supreme Court delivers a ruling that is applicable to

the states, state courts are required to follow the Court's decision and render decisions and opinions in state cases that are consistent with precedent Supreme Court cases.

Furthermore, since the United States Constitution is "the supreme law of the land" (*United States Constitution*, Article VI), and the Supreme Court is the final interpreter of the law (*United States Constitution*, Article III), state laws deemed to be inconsistent with or repugnant to the United States Constitution are invalid (*Fletcher v. Peck*, 1810). Two United States Supreme Court cases, *Furman v. Georgia* (1972) and *Gregg v. Georgia* (1976), provide excellent examples of how Supreme Court precedent and the United States Constitution impact state court decision making. In *Furman*, the Court held that imposition of the death penalty violated the Eighth Amendment's ban against cruel and unusual punishment and the Fourteenth Amendment's right to due process. Four years later, in *Gregg*, the Court abandoned *stare decisis*, reversed its previous decision in *Furman*, and reinstated the death penalty.

The *Furman* and *Gregg* decisions serve to highlight state court decision making in three ways. First, states may not deny their citizens the rights guaranteed them by the United States Constitution; but, states may, in their respective state constitutions, grant their citizens more rights as citizens of the state than those provided in the United States Constitution. Many state constitutions contain rights that are not contained in the United States Constitution as it is currently interpreted by the Supreme Court including the right to an efficient educational system (Texas), the right to physician-assisted suicide (Oregon), and the right against state criminal prosecution of patients prescribed and using medicinal marijuana (Colorado). When the Supreme Court handed down its decision in *Gregg*, pro-death penalty states were permitted to adopt statutes that allowed sentences of death; but, anti-death penalty states were not required to adopt similar statutes. Several state constitutions including Minnesota, West Virginia, and New York, contain protections against cruel and unusual punishment,² and their state courts have ruled that imposition of the death penalty violates the state constitutional rights of their citizens. For this reason, 19 states currently do not have death as a punishment option. Conversely, when the Supreme

² "States with and without the death penalty," November 9, 2016, Death Penalty Information Center, <https://deathpenaltyinfo.org/states-and-without-death-penalty>.

Court issued its decision in *Furman*, all states including strong pro-death penalty states such as Texas were required to suspend and discontinue their practice of imposing death upon criminal defendants – regardless of existing state laws, rulings by state courts, or the sentiments of state voters and legislators. The national constitutional right against cruel and unusual punishment trumped any state interest in punishing people by death, and state courts and juries were bound to the *Furman* precedent – period.

Second, after the *Gregg* decision pro-capital punishment states were allowed to write or rewrite their death penalty statutes on the condition their laws conformed to guidelines set forth in the *Gregg* opinion. One requirement outlined in *Gregg* was that all sentences of death must be automatically reviewed by the highest court in the state. Between 1977 (the year following the *Gregg* decision) and 2016, Texas juries imposed a sentence of death on 975 criminal defendants,³ and as of May 15, 2017, a total of 542 of those sentences had been carried out by the state.⁴ The total number of death sentences imposed by Texas juries may or may not reflect the actual number of automatic death sentence appeals reviewed by Texas Court of Criminal Appeals. Some individuals died on death row before their appeal reached the Court, and others were released from death row and their sentences converted to life imprisonment after post-*Gregg* United States Supreme Court decisions restricted the ability of states to carry out executions or impose death sentences in certain circumstances. Circumstances in which the Supreme Court has denied states the ability to execute prisoners include imposing death upon persons who do not understand the reason for or reality of their punishment (*Ford v. Wainwright*, 1986), are diagnosed with mental retardation (*Atkins v. Virginia*, 2002), or are under the age of 18 (*Roper v. Simmons*, 2005). After post-*Gregg* Supreme Court rulings, Texas, regardless of the sentiments and preferences of its legislators, voters, judges, or juries, could not execute or sentence to death any person who qualified for federal constitutional protection due to mental illness, mental retardation, or age.

³ “Death Sentences in the United States from 1977 by State and Year,” Death Penalty Information Center, <https://deathpenaltyinfo.org/death-sentences-united-states-1977-present>.

⁴ “Number of Executions by State and Region Since 1976,” Death Penalty Information Center, <https://deathpenaltyinfo.org/number-executions-state-and-region-1976>.

The sway of public opinion is the third way in which the *Furman* and *Gregg* decisions illuminate the processes of state court decision making. Texas is historically among the top three states with the highest number of death sentences imposed by juries but it is also among the lowest in terms of successful appeals in death penalty cases.⁵ The state's high rate of execution and low rate of successful appeal may well be attributed to the fact that Texas voters have historically been staunch proponents of the death penalty.⁶ A 2012 survey conducted by the University of Texas at Austin and the *Texas Tribune* (UT/TT) revealed an overwhelming 73% of Texans were in favor of the death penalty compared to 21% of Texans opposed to the punishment.⁷ The importance of Texas public opinion to understanding judicial decision making in the state is that, unlike judges serving in the federal judiciary, almost every Texas judge is elected by the voters of the state in partisan elections including all nine members of the Texas Court of Criminal Appeals and all nine members of the Texas Supreme Court. State high court judges do not hold life tenure as do federal judges; rather, they are elected by the voters in statewide partisan elections to six-year staggered terms, after which they are subject to reelection or defeat at the polls.

Lifetime appointment of federal judges was not an afterthought of the framers of the United States Constitution. The framers sought to remove federal judges as far as possible from the politics and political pressures of American life in order for them to have expanded opportunities to interpret law through the lens of reason, sound judgment, and objectivity. Legal scholars disagree on the degree to which public opinion influences United States Supreme Court decision making. But, history does demonstrate that the Court sometimes leads public opinion such as in the area of race equality and the famous 1954 decision, *Brown v. Board of Education* that desegregated American public schools, and sometimes lags behind public opinion such as in the area of gender equality and the Court's 1971 decision in *Reed v. Reed*, which finally deemed women "persons" under the Fourteenth Amendment – seven years after women were granted statutory equal rights by

⁵ See Walpin, Ned, "Why is Texas #1 in Executions?" Houston Public Media, PBS, Frontline, <http://www.pbs.org/wgbh/pages/frontline/shows/execution/readings/texas.html>.

⁶ Walpin, Ned, "Why is Texas #1 in Executions?" Houston Public Media, PBS, Frontline, <http://www.pbs.org/wgbh/pages/frontline/shows/execution/readings/texas.html>.

⁷ Ramsey, Ross, "UT/TT Poll: Texans Stand behind Death Penalty," May 24, 2012, *The Texas Tribune*, <https://www.texastribune.org/2012/05/24/uttt-poll-life-and-death/>.

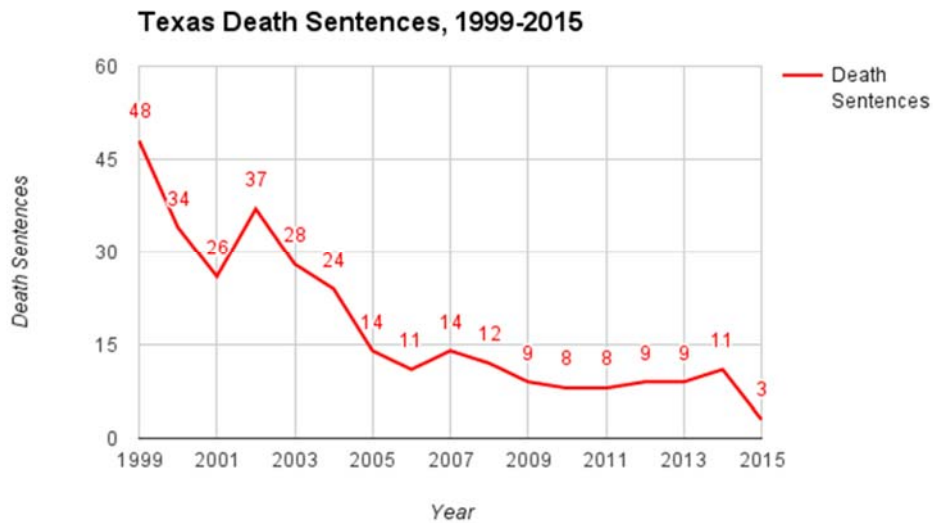
Congress in the Civil Rights Act of 1964. Regardless of the relative distance federal judges as a whole or individually have from public opinion, there is little doubt that the overall distance is astronomical when compared to state judges that are elected on partisan ballots by voters to six-year terms and subject to reelection and removal by statewide voting constituencies.

Understanding the correlation between public opinion and judicial decision making in Texas also offers insight into state politics and policy that might otherwise be hidden from immediate view. The 2012 UT/TT survey cited above, for example, revealed that 73% of Texans support the state's death penalty. However, since the Texas legislature passed a law in 2005 allowing juries the option to choose life in prison without parole in capital murder cases, the state's juries have been increasingly more reluctant to impose sentences of death in capital murder cases. Only three death penalty punishments were delivered by Texas juries in 2015 – down from a high of 48 in 1999 and the lowest annual number of death penalty sentences issued in the state since the *Gregg v. Georgia* decision took effect in 1977.⁸ At the same time, the number of life without parole sentences rose from four in 2006, to 102 in 2014.⁹ The simultaneous decrease in Texas death penalty sentences and rise in sentences of life without parole may indicate Texas voters are not staunchly pro-death penalty *per se* but rather desire to keep open to juries the option of choosing death as a punishment in cases that involve, for example, particularly heinous acts by the defendant or defendants that lack remorse and minimal chances of rehabilitation. The decline in death penalty sentences also means a reduction in Texas Court of Criminal Appeals caseload since life without parole sentences do not currently carry the requirement of automatic appeal as do death penalty sentences.

Figure 8.1

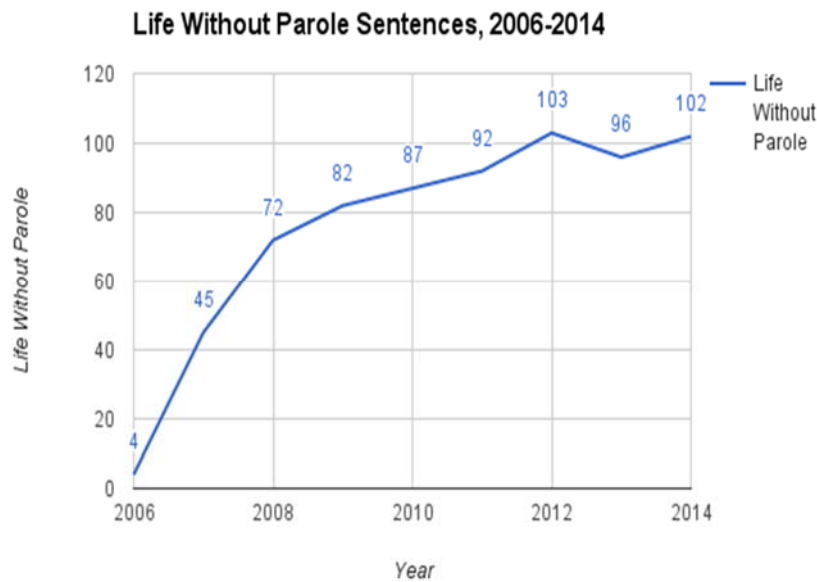
⁸ Nicolson, Eric, "Texas Falls out of Love with the Death Penalty, Embraces Life without Parole," December 17, 2015, *Dallas Observer*, <http://www.dallasobserver.com/news/texas-falls-out-of-love-with-the-death-penalty-embraces-life-without-parole-7860819>.

⁹ Nicolson, Eric, "Texas Falls out of Love with the Death Penalty, Embraces Life without Parole," December 17, 2015, *Dallas Observer*, <http://www.dallasobserver.com/news/texas-falls-out-of-love-with-the-death-penalty-embraces-life-without-parole-7860819>.



Source: Nicolson, Eric, "Texas Falls out of Love with the Death Penalty, Embraces Life without Parole," December 17, 2015, *Dallas Observer*, <http://www.dallasobserver.com/news/texas-falls-out-of-love-with-the-death-penalty-embraces-life-without-parole-7860819>.

Figure 8.2



Source: Nicolson, Eric, "Texas Falls out of Love with the Death Penalty, Embraces Life without Parole," December 17, 2015, *Dallas Observer*, <http://www.dallasobserver.com/news/texas-falls-out-of-love-with-the-death-penalty-embraces-life-without-parole-7860819>.

❖ Texas Intermediate Courts of Appeals and Lower State District Courts

Below the bifurcated high court system in Texas are the state **courts of appeals** and the state **district courts**. The Texas Legislature has divided the state geographically into fourteen courts of appeals districts. Each district serves a number of Texas counties and contains one appellate court comprised of at least three justices — one chief justice and two justices. Today, a total of 80 justices serve on the fourteen state courts of appeals. State courts of appeals have appellate jurisdiction over both civil law and criminal law cases that come to them from the district or county courts.¹⁰

State district courts are trial courts of original jurisdiction. There are currently 467 state district courts in Texas. All courts of appeals and state district judges in Texas are elected in partisan elections by the voters in their respective districts. Courts of appeals judges are elected to six-year terms, and district court judges are elected to four-year terms.

❖ **Texas Constitutional and Statutory County Courts**

The structure of the county court system in Texas is perhaps the most difficult level of the state judiciary to understand because it contains the division upon division of power discussed at length in previous chapters of this textbook. At the time the current Texas Constitution was written and ratified in 1876, county governments had perhaps the greatest potential for corruption and harm to citizens since they were the governments located closest to the people. The Texas Constitution therefore established a strong system of checks and balances by creating independent elective offices in each county.¹¹ Originally, the state Constitution provided for one county court in each of the state's 254 counties consisting of elected "commissioners"¹² presided over by a county judge. The terms of office for members of the county commissioners' court including the county judge were

¹⁰ "About Texas Courts," Texas Judicial Branch, <http://www.txcourts.gov/about-texas-courts/courts-of-appeals.aspx>.

¹¹ "Texas County Officials," Texas Association of Counties, <https://www.county.org/texas-county-government/texas-county-officials/Pages/default.aspx>.

¹² "Texas County Officials," Texas Association of Counties, <https://www.county.org/texas-county-government/texas-county-officials/Pages/default.aspx>.

only two years; but, in 1954, Texas voters ratified a state constitutional amendment increasing the terms of county court officials to four years.¹³

All Texas counties are divided into four precincts¹⁴ with one county commissioner elected from the voters of each precinct and a county judge elected at-large by the voters of the entire county. The county commissioners and the county judge serve together on the **county commissioners' court**, with the **county judge** presiding over the constitutional county court. County commissioners' courts in Texas have some judicial power as outlined in Figure 3 below; but, since the state of Texas allows county governments a large degree of discretion over the duties and responsibilities their county governments hold and well as the ability to delegate power among county offices, the scope of judicial authority held by county commissioners' courts and county judges ranges considerably from county to county. In more rural counties, for example, the commissioners' court and county judge continue to exercise a wide range of constitutional and statutory judicial authority; however, in more populous Texas counties, constitutional county courts and the county judge devote the vast majority of their time to running the day-to-day business of county government. At least 74 Texas counties have delegated, in whole or in part, the judicial duties of the county commissioners' court and county judge to statutory county courts in order to allow the constitutional courts time to perform the executive and legislative functions of the county.¹⁵ The main responsibilities of the county judges in these counties are to preside over the commissioners' court and serve as the county's chief administrator, and the primary tasks of the county commissioners' courts are to oversee the construction and maintenance of county roads and bridges and set the county budget and tax rate.¹⁶ If we consider the most popular form of city government in Texas – the council-manager form, outlined in Chapter 4 – we can deduce that in many Texas counties the executive and

¹³ Womack, Paul, "Judiciary," Texas State Historical Association, *Handbook of Texas Online*, <https://tshaonline.org/handbook/online/articles/jzj01>.

¹⁴ "Texas County Commissioner," Texas Association of Counties, <https://www.county.org/texas-county-government/texas-county-officials/Pages/County-Commissioner.aspx>.

¹⁵ Womack, Paul, "Judiciary," Texas State Historical Association, *Handbook of Texas Online*, <https://tshaonline.org/handbook/online/articles/jzj01>.

¹⁶ "Texas County Commissioner," Texas Association of Counties, <https://www.county.org/texas-county-government/texas-county-officials/Pages/County-Commissioner.aspx>.

"Texas County Commissioner," Texas Association of Counties, <https://www.county.org/texas-county-government/texas-county-officials/Pages/County-Commissioner.aspx>.

legislative roles of the constitutional county commissioners' court are similar to those performed by the city council for the city, and the role of the county judge as presiding officer over the county commissioners' courts is similar to that of the mayor presiding over the city council.

The Texas Constitution limits each county to a single constitutional county court.¹⁷ Since constitutional county courts in the state's more populous counties now perform the executive and administrative functions of the county, the Texas Legislature has created statutory **county courts at-law** to aid counties in their judicial functions. The creation and jurisdiction of every county court at-law is controlled by state statute; therefore, the respective jurisdiction of each county court at-law varies considerably from county to county.¹⁸ As of 2017, the Texas legislature has created 243 statutory county courts at-law serving 88 Texas counties (Figure 3). In general, county courts at-law handle all civil and criminal cases that would otherwise be handled by the constitutional county courts and have concurrent original jurisdiction with state district courts over civil matters involving possible judgments ranging from \$200 to \$200,000 (Figure 3). County courts at-law also have appellate jurisdiction over cases appealed from municipal and justice of the peace courts.¹⁹

❖ **Municipal Courts and Justice of the Peace Courts**

The Texas legislature has created at least one **municipal court** for every incorporated city in Texas, and larger cities have more than one depending on the city's population and need.²⁰ Municipal courts have original jurisdiction over cases concerning city laws and ordinances relating to fire safety, zoning, public health, sanitation, and city traffic laws. Most Texas municipal court judges are selected by the city council rather than elected by the city's voters. Municipal court judges may issue search or arrest warrants but generally do not have civil law jurisdiction except in cases concerning owners of dangerous dogs.²¹ **Justice of the peace courts** have original jurisdiction over minor misdemeanor criminal

¹⁷ "About Texas Courts," The Texas Judicial Branch, <http://www.txcourts.gov/about-texas-courts/trial-courts/>.

¹⁸ "About Texas Courts," The Texas Judicial Branch, <http://www.txcourts.gov/about-texas-courts/trial-courts/>.

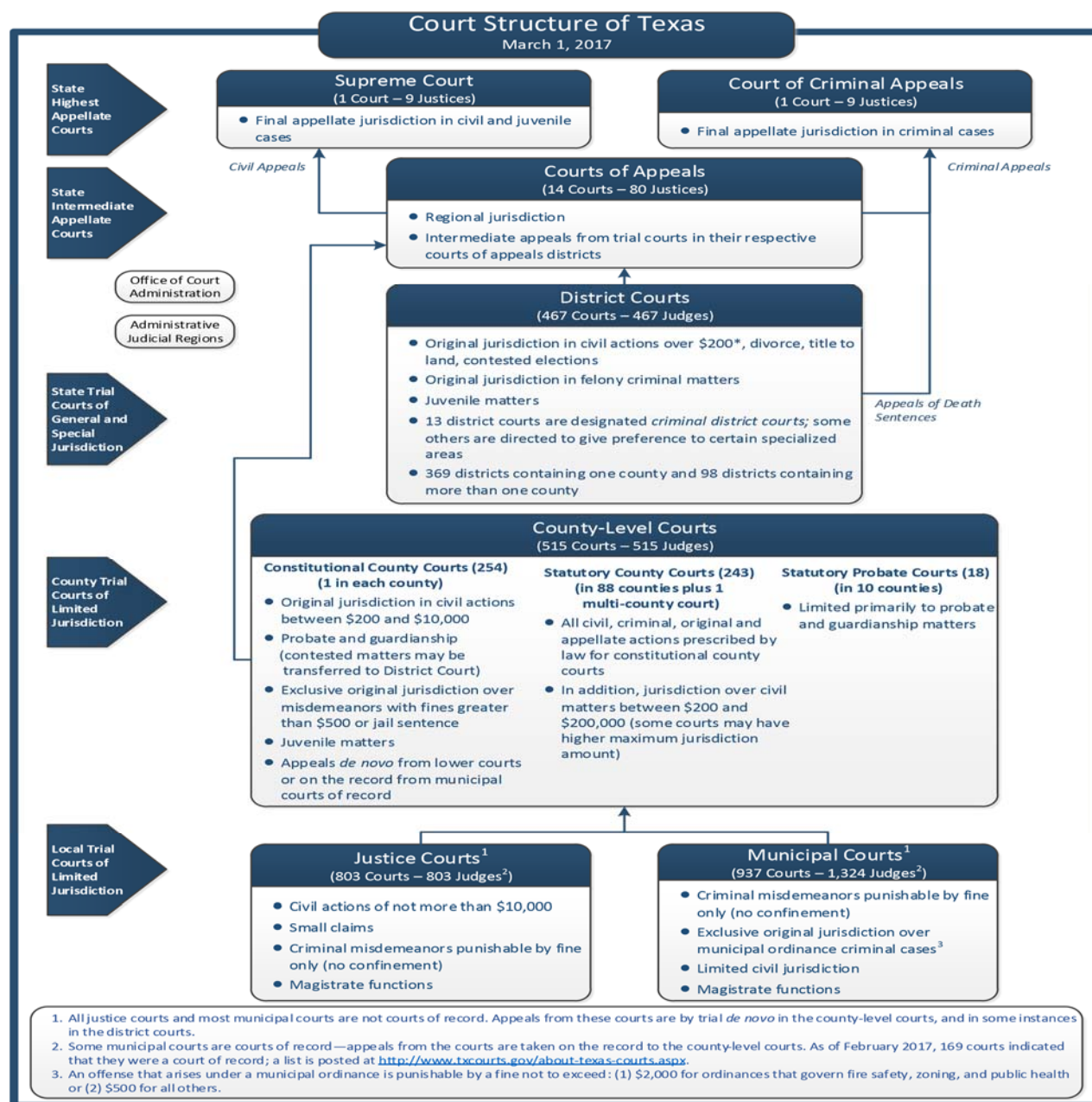
¹⁹ "About Texas Courts," The Texas Judicial Branch, <http://www.txcourts.gov/about-texas-courts/trial-courts/>.

²⁰ "About Texas Courts," The Texas Judicial Branch, <http://www.txcourts.gov/about-texas-courts/trial-courts/>.

²¹ "About Texas Courts," The Texas Judicial Branch, <http://www.txcourts.gov/about-texas-courts/trial-courts/>.

offenses and minor civil matters including small claims; may issue search or arrest warrants; and may serve as the coroner in counties where there is no provision for a medical examiner. The Texas Constitution requires each county in Texas to establish between one and eight justice of the peace precincts depending upon the population of the county.²²

Figure 8.3



Source: State of Texas, Texas Judicial Branch, <http://www.txcourts.gov/about-texas-courts.aspx>.

²² "About Texas Courts," The Texas Judicial Branch, <http://www.txcourts.gov/about-texas-courts/trial-courts/>.

Conclusion

The structure of the Texas judiciary is widely considered one of the most complex judicial structures in the world. Multiple divisions of judicial power that include a bifurcated high court system and county judicial structure divided between constitutional courts and statutory courts are exacerbated by constitutional requirements that almost all state judges – ranging from those serving on the two high courts to the 803 Texas justice of the peace courts – be elected in partisan elections by Texas voters.

Key Terms

jurisdiction
criminal law
Texas Supreme Court
stare decisis
Gregg v. Georgia
county commissioners' courts
statutory county courts
justice of the peace courts

original jurisdiction
civil law
Texas Court of Criminal Appeals
Fletcher v. Peck
state courts of appeals
constitutional county courts
county courts at-law

appellate jurisdiction
bifurcated high court
en banc
Furman v. Georgia
state district courts
county judges
municipal courts