

A STATISTICAL ANALYSIS OF TEXAS  
INTERMEDIATE COURTS OF APPEAL  
CRIMINAL CASES  
2018-2019

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## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	METHODOLOGY .....	1
	A. Data Collection .....	1
	B. Sampling .....	2
	C. Limitations .....	2
	D. Data Analysis .....	3
III.	BASIC PARAMETERS .....	3
	A. Time Period .....	3
	B. Limited Interlocutory Matters .....	3
	C. <i>Pro se</i> Litigation .....	4
	D. <i>Anders</i> Briefs .....	4
	E. State Appeals .....	4
IV.	DATA COLLECTED .....	4
	A. Docket Information .....	4
	B. <i>Pro se</i> Proceedings .....	4
	C. Offense Types .....	4
	D. Type of Trial .....	5
	E. Result at Court of Appeals .....	5
	F. Further Review .....	5
V.	ISSUES RAISED .....	6
VI	RESULTS .....	7
VII.	SURPRISES .....	8
VIII.	CONCLUSIONS .....	8

Appendix A - Courts of Appeal Cases by County of Conviction

Appendix B - Results by Court of Appeal

## I. INTRODUCTION

In early 2020, the third review of Texas Courts of Appeal opinions in civil cases was published. Kent Rutter and Natasha Breau, *Reasons for Reversal in the Texas Courts of Appeals*, 57 Hous. L. Rev. 671 (2020). That paper, like the two which preceded it looked at the opinions issued by the fourteen Texas Courts of Appeal over a one year period. The paper included an analysis to determine how often and why judgments were reversed; and whether or not the type of proceeding could be used to provide appellate practitioners any factual input based on data to properly advise their clients.

A similar survey has been published for the Texas Court of Criminal Appeals. Hon. Elsa Alcala, *Court of Criminal Appeals "Top Ten"* State Bar of Texas Prof. Dev. Program, Advanced Criminal Law Course 39 (2013).

The author is not aware of a similar survey being accomplished for the criminal appellate opinions issued by the Texas Courts of Appeal. When this idea was discussed with the experienced criminal appellate law practitioners, there was a strong desire for this type of analysis, which would provide similar, but qualitatively different data than the Office of Court Administration Annual Reports.

The author is indebted to the contributions, encouragement, and assistance provided by the Honorable Justice Diane DeVasto and Deborah Race. Both are experienced appellate attorneys who have practiced in Tyler my entire career.

Finally, I would like to thank Ms. Gabby Jones and Mr. Stephen Koehn for their tireless efforts regarding this massive endeavor. I am extremely fortunate to have Ms. Jones as my legal assistant, especially with the statistical analysis for this project. Ms. Jones was responsible for selecting the statistical software, coordinating the research assignments, and the preparation of the statistical information in this paper. Mr. Koehn is a J.D. candidate at New England Law | Boston. Each of them read hundreds and hundreds of the cases.

## II METHODOLOGY

This quantitative study will examine the criminal appellate opinions within the Texas Courts of Criminal Appeals, with a compare and contrast between the fourteen courts. This study will use a spreadsheet that will include different aspects of each case that was heard by one of the fourteen courts. The goal of this study is to understand the difference, if any, in judgements produced by the courts and to determine if any patterns exists within the data that could be used to provide appellate practitioners with factual input to properly advise clients.

### A. Data Collection

For this study, the target population are the criminal appellate practitioners in the state of Texas. The data of the study was chosen in an effort to include a mass amount of cases among the fourteen courts. Because the case study examined cases over one

judicial fiscal year, the cases were chosen from September 1, 2018 through August 31, 2019. Cases were sorted by the date the opinion was issued, a criminal cause number, and was decided on by one of the fourteen courts. This study used both the Texas Judicial Branch website and Westlaw to gain the initial list of cases, and to view the opinion issued by the courts. This study also used both to additional information on the cases including, but not limited to, Petition for Discretionary Review and case history.

Once the initial list of cases for each court has been compiled, the study can then enter in all case information needed into the spreadsheet which will be used later to analyze the data across columns within a singular court, and across sheets between multiple courts. The process of this study will take an estimate of four to six months to gather and analyze the data. Gathering the data will take the majority of time with the sheer number of cases totaling an estimated four thousand (4,000).

## **B. Sampling**

The unit of analysis for this study are the courts, because the study is focused on the compare and contrast between cases. Therefore, the findings of the research will apply to this specific type of case: criminal post-conviction. This study will use a probability sampling method approach, meaning cases were selected from a complete list and none were excluded. This type of sampling ensures that all cases within the parameters of the study were chosen to gain a higher generalizability. This type of sampling was chosen due to

time constraints and convenience. The study uses a type of purposive sampling in which the sample is chosen because of a specific characteristic that is relevant to the research. Due to the characteristic aspect of purposive sampling, some eligible subjects may not be chosen.

## **C. Limitations**

There are limitations to this study, just as with every research study. The research is limited by the sampling methodology, and the threat to internal validity. The fact that this study uses purposive nonprobability sampling excludes the random sample selection Rennison, C. M., & Hart, T. C. *Research methods in criminal justice and criminology*. Los Angeles, CA: Sage. (2019). This study chooses a very specific type of cases: criminal matters and reviewed by the Texas intermediate Courts of Appeal. Purposive sampling involves the segregating of a part of the population and then confining the sample of the study to that part through control means (Snedecor, 1939). This confinement or segregation creates a sample bias in the study. Purposive sampling involves the segregating of a part of the population and then confining the sample of the study to that part through control means. Snedecor, G. W. *Design of sampling experiments in the social sciences*. *Journal of Farm Economics*, 21(4), 846-855. <https://doi.org/10.2307/1231789> (1939). This confinement or segregation creates a sample bias in the study. The internal validity limitation is recognized through the number of researchers working on the study and the lack of

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