

Some would eliminate state's other high court

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The Court of Criminal Appeals is housed in the Oklahoma Judicial Center in Oklahoma City. (Photo by Emmy Verdin)

OKLAHOMA CITY – As Oklahomans continue contemplating changes to the judicial system, some would-be reformers are eyeing the Court of Criminal Appeals.

Oklahoma is one of two states that have a different final arbiter for civil cases than they do for criminal ones. Civil cases can go up through the Court of Civil Appeals and then onto the Oklahoma Supreme Court. However, criminal cases can be appealed only up until the Court of Criminal Appeals. Critics said that has created some confusion over jurisdiction, particularly in death penalty lawsuits.

State Rep. Cory Williams, D-Stillwater, filed a bill during this year's legislative session that would have let the voters decide whether the Oklahoma Supreme Court should have the final say. He's an attorney who represents criminal clients among others. Under the policy he pitched, the Supreme Court would absorb the Court of Criminal Appeals. House Joint Resolution 1051 passed out of committee in the House, but it never got a floor hearing. Because 2018 was the second year of the two-year legislative period, the bill is dead.

There are several issues with the current system, he said, including high affirmation rates and questions about jurisdiction in major death penalty cases.

"Whenever you've got somebody's life hanging in the balance, those are not necessarily good questions to have," he said.

Adam Doverspike, a shareholder at GableGotwals in Tulsa, said he doesn't have a position on the policy, but that there has been some confusion over high-profile death penalty cases, particularly the civil rights lawsuit filed after Clayton Lockett's botched execution. The lawsuit was directly related to punishment for a crime, but the case focused on policy, procedure and Eighth Amendment issues, which could be understood as a civil issue.

"Who gets final say wasn't necessarily clear," he said.

Doverspike also noted that Oklahoma and Texas are the only two states with a court of criminal appeals separate from the state supreme court, and it holds five justices. Oklahoma is also among a small number with nine supreme court justices instead of five or seven. So this state often has nine more justices doing the same kind of work. Doverspike said reducing the number of justices in any way could increase the amount of resources for remaining justices.

"Maybe it would elevate how well they're known in the legal community," he said. "We could pay them better, we could give them more clerks."

Jari Askins, the administrative director for the Supreme Court, said that it is no secret Oklahoma is one of only two states using the system, but implementing the change within the measure's time frame would be difficult in terms of logistics, and that the courts' history together doesn't show a dire need for jurisdiction clarification.

HJR 1051 would have, if passed, required the courts to consolidate within one year. That would cut into terms of sitting justices.

"Their terms are six years, and so it would have been difficult to eliminate their positions while they were holding their office," Askins said.

She was the interim director over the Pardon and Parole Board around the time of the execution lawsuits, she said. Although there was some confusion at first, it got settled because officials within the Court of Criminal Appeals and the Supreme Court worked together to clear it up. Even then, those kinds of disputes are rare.

"That was always a very difficult time, but those arguments don't come up very often," she said.

"Historically, the two courts have usually seemed to be able to resolve who has the jurisdiction pretty well

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