

Table of Contents

CHAPTER 1. SOURCES OF TEXAS CRIMINAL PROCEDURE LAW

A. INTRODUCTION

§ 1:3 Judicial authority to develop procedural rules or requirements by case law

B. RULEMAKING AND TEXAS CRIMINAL PROCEDURE LAW

§ 1:7 Prohibition against modifying “substantive rights” by rulemaking

C. LIMITS ON JUDICIAL AUTHORITY TO DEVELOP CRIMINAL PROCEDURE LAW BY DECISIONAL LAW

§ 1:10 Rulemaking authority as limit on decisional law

§ 1:11 Legislative adoption of “common law”

CHAPTER 2. INTERPRETING AND APPLYING TEXAS CRIMINAL PROCEDURE STATUTES, THE TEXAS CONSTITUTION, AND TEXAS CASE LAW

B. TEXAS COURT OF CRIMINAL APPEALS AND CRIMINAL PROCEDURE LAW AND POLICY

§ 2:4 Court of criminal appeals’s “supervisory” authority

C. DETERMINING THE LAW FROM TEXAS APPELLATE JUDICIAL OPINIONS

2. DETERMINING THE AUTHORITY OF OPINIONS

§ 2:7 Determining authority of opinions—In general

§ 2:8 Opinions “of the court” and plurality opinions

§ 2:10 Memorandum opinions

§ 2:11 Unpublished opinions of the courts of appeals

§ 2:12 Unpublished opinions of the Court of Criminal Appeals

3. DETERMINING THE AUTHORITY OF

LANGUAGE IN OPINIONS

- § 2:14 Holdings and dicta—In general
- § 2:15 Effect of decision on contentions not urged

4. PRECEDENT AND STARE DECISIS

- § 2:18 Authoritativeness of precedent—The policy of stare decisis
- § 2:19 Reconsideration of “holdings”
- § 2:21 Significance of the deciding court
- § 2:23 Court of appeals’s authority to overrule its holdings
- § 2:24 Authoritativeness of decisions of the federal courts

D. CONSTRUING STATUTES AND COURT RULES

- § 2:25 Construing statutes and court rules—In general
- § 2:28 Construing statutes relating to criminal litigation—Court of criminal appeals’s general approach
- § 2:29 Construing statutes relating to criminal litigation—Plain language leading to absurd consequences
- § 2:30 Construing statutes relating to criminal litigation—Ambiguous language and technical terms [*Retitled*]
- § 2:32 Construing statutes relating to criminal litigation—Use of extratextual legislative history when appropriate
- § 2:34.50 Construing statutes related to criminal litigation—Statute overruling rule of the common law [*New*]
- § 2:35 Construing court rules—In general
- § 2:36 Construing court rules—Federal case law as a model

E. INTERPRETING THE TEXAS CONSTITUTION

- § 2:38 The evolution of Texas criminal “independence” jurisprudence
- § 2:45 Considerations suggesting a Texas provision has a more expansive content—Appropriate balance of competing considerations

CHAPTER 3. CATEGORIZING CRIMINAL PROCEDURE RIGHTS AND REQUIREMENTS—THE *MARIN* ANALYSES

- § 3:1 *Marin v. State* and the *Marin* analyses
- § 3:3 Implications of *Marin* analyses for preservation of error
- § 3:4 Other implications of the *Marin* analysis
- § 3:5 Categorizing rights under *Marin*
- § 3:6 Identifying absolute rights
- § 3:7 Identifying waivable-only rights
- § 3:9 Identifying forfeitable rights—The case law
- § 3:11 Waiver of waivable rights
- § 3:13 Estoppel and absolute or waivable-only rights

CHAPTER 4. JURISDICTION

A. INTRODUCTION—SUBJECT-MATTER JURISDICTION, TERRITORIAL AND CONSTITUTIONAL LIMITATIONS

- § 4:1 In general
- § 4:2 Subject-matter jurisdiction—Constitutional limitations on power to create crimes
- § 4:3 Constitutional limitations on power to create crimes—Substantive due process and right to privacy
- § 4:4 Constitutional limitations on power to create crimes—First Amendment
- § 4:5 Constitutional limitations on power to create crimes—Fifth Amendment
- § 4:6 Other constitutional limitations on power to create crimes
- § 4:7 Federal preemption limiting state power to create crimes
- § 4:10 Territorial jurisdiction—Conduct element
- § 4:13 Waiver of subject-matter jurisdiction claim by failure to object

B. SUBJECT-MATTER JURISDICTION OF DISTRICT-LEVEL COURTS

- § 4:19 General laws
- § 4:20 Felonies
- § 4:25 Included misdemeanor—Election to proceed
- § 4:26 Misdemeanors involving official misconduct—In general
- § 4:27 Misdemeanors involving official misconduct—Rationale
- § 4:28 Misdemeanors involving official misconduct—Eligible officials
- § 4:29 Misdemeanors involving official misconduct—Eligible conduct
- § 4:30 Misdemeanors involving official misconduct—Concurrent jurisdiction with county court
- § 4:31 Reduction from third-degree or State Jail Felony to misdemeanor
- § 4:34 Local statutes—Criminal district courts

C. COUNTY-LEVEL COURTS

- § 4:37 In general
- § 4:41 Statutory county courts
- § 4:44 Appellate jurisdiction of county courts—De novo or on the record
- § 4:46 Appellate jurisdiction of county courts—Perfecting appeal

D. JUSTICE COURTS

- § 4:49 Punishable by fine only

E. MUNICIPAL COURT

- § 4:51 In general
- § 4:52 Ordinance violations
- § 4:53 Violations of state law

CHAPTER 5. VENUE**A. INTRODUCTION**

§ 5:4 Venue and jurisdiction distinguished

§ 5:6 Special venue statutes

B. CHOICE OF VENUE FOR PARTICULAR OFFENSES

§ 5:8 In general

§ 5:9 Forgery—In general

§ 5:10 Forgery—Means of committing

§ 5:11 Forgery—Presenting instrument in different county

§ 5:12 Forgery—Land titles

§ 5:13 Perjury and aggravated perjury

§ 5:14 Stolen property—In general

§ 5:15 Stolen property—The removal rule

§ 5:16 Stolen property—Eligible offenses

§ 5:17 Unlawful disposition of secured property

§ 5:18 False imprisonment, kidnapping, smuggling of persons and trafficking of persons *[Retitled]*

§ 5:19 Conspiracy

§ 5:20 Bigamy

§ 5:21 Sexual assault—In general

§ 5:22 Sexual assault—Trial venue

§ 5:24 Sexual assault—Change of venue

§ 5:25 Criminal nonsupport

§ 5:26 Organized criminal activity

§ 5:27 Unauthorized use of a vehicle

§ 5:28 Illegal recruitment of athletes

§ 5:29 Computer crimes

§ 5:30 Telecommunications crimes

§ 5:31 Simulating legal process

§ 5:32 Escape or unauthorized absence

§ 5:33 Fraudulent use or possession of identifying information

§ 5:33.25 Injury to children offenses *[New]*

§ 5:33.50 Mortgage fraud *[New]*

§ 5:33.75 Unauthorized acquisition or transfer of financial information *[New]*

§ 5:33.90 Money laundering *[New]*

§ 5:33.95 Miscellaneous venue provisions *[New]*

§ 5:33.97 Obstruction or retaliation *[New]*

§ 5:33.98 False report to induce emergency response *[New]*

§ 5:33.99 Venue in offenses related to sex offenders *[New]*

C. VENUE IN THE COUNTY WHERE THE OFFENSE WAS COMMITTED

§ 5:34 In general

§ 5:37 Elements of the offense—Split between counties

§ 5:38 Accomplices

TABLE OF CONTENTS

- § 5:39 When venue cannot be determined
- § 5:40 Offenses committed on the boundaries of counties
- § 5:41 Homicide cases

D. JURISDICTION AND VENUE IN INTERSTATE CASES

- § 5:42 In general
- § 5:43 Venue—County where offender found or element occurs

E. VENUE OF MUNICIPAL AND JUSTICE COURTS

- § 5:46 Justice court venue—Basic rule
- § 5:49 Adjudication on plea of guilty in county where arrested
- § 5:51 Municipal court venue

F. ALLEGING VENUE IN CHARGING INSTRUMENTS

- § 5:55 Alleging venue in the county of prosecution
- § 5:57 Pleading venue in municipal and justice courts

G. PROVING VENUE

- § 5:58 In general
- § 5:59 Not an element of the offense
- § 5:60 Consequences of not proving venue
- § 5:67 Judicial notice—Judicial districts

H. APPELLATE REVIEW OF VENUE ISSUES

- § 5:72 The nature of the presumption

CHAPTER 6. LIMITATIONS

A. INTRODUCTION

- § 6:1 In general
- § 6:3 Amendments to limitation provisions—Retroactivity and ex post facto limitations
- § 6:5 Limitations and lesser included offenses

B. DETERMINING WHAT LIMITATION PERIOD APPLIES

- § 6:6 In general
- § 6:7 Felonies
- § 6:8 Felonies with no limitation—Murder and manslaughter
- § 6:9 Felonies with no limitation—Leaving scene of accident in which death occurred [*Retitled*]
- § 6:10 Felonies with no limitation—Sexual assault of child and indecency with child

- § 6:11 Felonies with no limitation—Sexual assault with DNA evidence
- § 6:11.50 Felonies with no limitation—Trafficking offenses and compelling prostitution *[New]*
- § 6:11.52 Felonies with no limitation—Tampering with physical evidence *[New]*
- § 6:11.53 Felonies with no limitation—Interference with child custody *[New]*
- § 6:11.54 Felonies with no limitation—Certain burglary offenses *[New]*
- § 6:12 Felonies with 20-year statute of limitations from victim's 18th birthday
- § 6:12.50 Felonies with 10-year statute of limitation from victim's 18th birthday *[New]*
- § 6:12.51 Felonies with 10-year statute of limitation from date offense discovered *[New]*
- § 6:15 Felonies with 10-year limitations—First-degree felony injury to an elderly individual, or disabled individual; Sexual assault *[Retitled]*
- § 6:16.50 Felonies with 10-year statute of limitation—Certain human trafficking offenses and compelled prostitution of adults *[Retitled]*
- § 6:17 Felonies with seven-year limitations—Certain fraud offenses *[Retitled]*
- § 6:18 *[Reserved]*
- § 6:19 Felonies with five-year limitations—Theft, burglary, and robbery
- § 6:20 Felonies with five-year limitations—Kidnapping
- § 6:21 Felonies with five-year limitations—Injury to an elderly individual, or disabled individual not prosecuted as first-degree felony *[Retitled]*
- § 6:22 Felonies with five-year limitations—Abandoning or endangering an elderly or disabled individual *[Retitled]*
- § 6:22.30 Felonies with five-year limitations—Insurance fraud *[New]*
- § 6:22.50 Felonies with five-year limitations—Family violence and certain assault offenses *[New]*
- § 6:22.70 Felonies with two-year limitations periods *[New]*
- § 6:22.80 Felony racketeering and unlawful debt collection *[New]*
- § 6:23 *[Reserved]*
- § 6:24 Misdemeanors
- § 6:29 Special rules—Aggravated offenses
- § 6:30 Limitation periods outside the code of criminal procedure

D. CALCULATING THE RUNNING OF THE LIMITATION PERIOD

- § 6:38 In general
- § 6:40 Date of commission of the offense
- § 6:41 When a charging instrument is presented
- § 6:43 Excluded period—Pendency of charging instrument
- § 6:45 Excluded period—Void, voidable, and valid charging instruments

E. PLEADING REQUIREMENTS

- § 6:49 Alleging the date of the offense

TABLE OF CONTENTS

- § 6:50 Alleging a date within the limitations period
- § 6:52 Pleading “on or about” a date
- § 6:52.50 Subsequent indictments *[New]*

G. METHODS OF CHALLENGING LIMITATIONS DEFECTS

- § 6:63 1985 amendments require limitations objection at trial
- § 6:64 Raising limitations claims in pretrial habeas corpus

CHAPTER 7. EXCLUSION OF ILLEGALLY OBTAINED EVIDENCE

B. GENERAL MATTERS

- § 7:3 Federal law exclusionary requirements
- § 7:4 Future of Fourth Amendment exclusionary requirement—In general
- § 7:10 Exclusionary requirements imposed by Texas law—Article 38.23
- § 7:11.10 Exclusionary requirements imposed by Texas law—Statements obtained by investigative hypnosis *[New]*
- § 7:11.20 Exclusionary requirements imposed by Texas law—Certain evidence from forensic medical examination performed on victim of sexual assault *[New]*
- § 7:11.50 Exclusionary requirements imposed by Texas law—Noncompliance with statutory requirements for electronic issuance of search warrant *[New]*
- § 7:12 Exclusionary requirements imposed by Texas law—Other statutory requirements

D. ILLEGALITY INVOKING THE EXCLUSIONARY SANCTION

- § 7:23 Evidence obtained in violation of “laws” of the United States
- § 7:25 Evidence obtained in violation of “laws” of Texas—“Laws” invoking the exclusionary sanction
- § 7:26 Evidence obtained in violation of “laws” of Texas—Legislative intention to preclude exclusionary remedy

E. APPLICATION OF THE EXCLUSIONARY SANCTION

- § 7:29 Requirement of “standing”—In general
- § 7:30 Requirement of “standing”—Mere legitimate presence on premises not sufficient
- § 7:31 Requirement of “standing”—Searches related to automobiles
- § 7:32 Defendants’ need to show harm or prejudice from violation of law
- § 7:44 Evidence wrongfully obtained by private person—Private person’s actions to be evaluated as if person was peace officer

F. SCOPE OF REQUIRED EXCLUSION

§ 7:51 Evidence with “independent source”

G. EXCEPTIONS TO THE REQUIREMENT OF EXCLUSION

1. INTRODUCTION

§ 7:54 Exceptions—In general

2. ATTENUATION OF TAINT

§ 7:58 Application of the rule

§ 7:58.50 Application of the rule—Discovery of arrest warrant during illegal detention *[New]*

§ 7:59 Intervening criminal conduct by defendant

3. GOOD FAITH

§ 7:61 “Good faith”—In general

§ 7:62.50 “Good faith”—Action taken on judicial decisions later overruled *[New]*

§ 7:64 Article 38.23(a)’s requirement of issued warrant

§ 7:66 Warrant issued on factual misrepresentations

§ 7:68 Need for subjective reliance on the warrant

§ 7:69 Requirement that possible reliance be objectively reasonable

§ 7:70 Warrant obtained on information illegally acquired

§ 7:70.50 Warrant obtained on information acquired illegally but in good faith *[New]*

4. INEVITABLE DISCOVERY

§ 7:71 Inevitable discovery—In general

CHAPTER 8. GENERAL PRINCIPLES OF SEARCH, SEIZURE, AND RELATED LAW

A. INTRODUCTION

§ 8:3 “Probable cause” and other criterion for evidentiary support

§ 8:4.50 “Probable cause” and other criteria for evidentiary support—Specific support for officers’ claimed expertise *[New]*

§ 8:4.75 “Probable cause” and other criteria for evidentiary support—Officer’s mistake as to the law *[New]*

§ 8:5 Role of subjective “intent” in search and seizure analysis—General preference for “objective” standards

§ 8:10 Role of subjective “intent” in search and seizure analysis—Prohibition against “racial profiling”—In general

§ 8:11 Role of subjective “intent” in search and seizure analysis—Prohibition against “racial profiling”—Required reports on specific stops and use of video equipment—In general

TABLE OF CONTENTS

- § 8:12 Role of subjective “intent” in search and seizure analysis—
Prohibition against “racial profiling”—Required reports on
specific stops and use of video equipment—Exception where
recording equipment is provided and used or beyond budget
- § 8:13 Role of subjective “intent” in search and seizure analysis—
Prohibition against “racial profiling”—Effect on evidence
admissibility
- § 8:14 “Collective information” of multiple officers considered in
assessing reasonableness
- § 8:17 Excessive force or destruction of property, reasonableness of
searches and seizures, and admissibility of evidence

B. PRINCIPLES OF “SEARCH” LAW

- § 8:24 What constitutes a “search”—In general
- § 8:25.50 What constitutes a “search”—Law enforcement action
duplicating private invasions of privacy *[New]*
- § 8:30 Entry onto “open fields” as trespass triggering Texas
exclusionary rule
- § 8:30.50 Knock and talk/look/sniff *[New]*
- § 8:31 “Reasonableness” of a search—Fourth Amendment law
- § 8:34.50 Cellular telephone searches *[New]*

C. PRINCIPLES OF “SEIZURE” LAW

- § 8:40 “Plain view” seizures—Item must be in “plain view”

D. SEARCHES OF “CONTAINERS”

- § 8:47 Searches of properly seized “containers”

CHAPTER 9. SEARCH WARRANTS AND THEIR EXECUTION

A. INTRODUCTION

- § 9:1.50 Search and arrest warrants distinguished *[New]*

B. GENERAL MATTERS

- § 9:5.50 Requirement of statutory authority for search warrants—
Electronic customer data held in electronic storage *[New]*
- § 9:11 “Mere evidence” and “evidentiary” search warrants—
Identifying “evidentiary” search warrants—Warrants
issuing for mere evidence and other items
- § 9:13 Prohibition against multiple evidentiary search warrants
- § 9:17.50 Search warrants for cellular telephones and other wireless
communications devices *[New]*

C. “FOUR CORNERS” RULE—SUPPORTING AND CHALLENGING SEARCH WARRANT AFFIDAVITS

- § 9:28 Defendant’s right to prevail on *Franks* attack—Determining materiality and State’s right to “reform” affidavit

D. APPLICATION AND ISSUANCE

- § 9:32.50 Application for and issuance of search warrants—“Telephonic” issuance of search warrants under pre-2015 law *[New]*
- § 9:32.75 Application for and issuance of search warrants—Issuance of search warrants via electronic means *[New]*
- § 9:34 Persons authorized to issue search warrants—Geographical scope of magistrate’s warrant-issuing authority
- § 9:35 Persons authorized to issue search warrants—Evidentiary warrants
- § 9:39 Required showing of probable cause—In general
- § 9:42 Required showing of probable cause—Informer’s tip—Texas constitutional standard
- § 9:42.50 Required showing of probable cause—Informer’s tip—First time informer *[New]*
- § 9:42.75 Required showing of probable cause—Participants in controlled purchase *[New]*
- § 9:43 Required showing of probable cause—Staleness
- § 9:46 Required showing of probable cause—Evidentiary search warrants
- § 9:46.50 Search warrant affidavit becomes public information *[New]*

E. FACIAL REQUIREMENTS

- § 9:51 Description of place to be searched—Adequate specificity “as applied”
- § 9:52 Description of place to be searched—Adequate specificity “as applied”—Personal knowledge of officers
- § 9:55 Signature of magistrate
- § 9:56 Endorsement of time warrant issued

F. EXECUTION OF THE WARRANT

- § 9:59 Time within which warrant must be executed—Days allowed for warrant to run—In general *[Retitled]*
- § 9:60 Time within which warrant must be executed—Applying the time period requirement *[Retitled]*
- § 9:61 Time within which warrant must be executed—Execution “without delay”
- § 9:62 Time within which warrant must be executed—Specific provisions in particular warrants
- § 9:63.50 Time within which warrant must be executed—Warrant for data in device *[New]*
- § 9:65 “Serving” or “presenting” the search warrant
- § 9:87.50 Detention of persons near premises *[New]*
- § 9:97 Return on warrant

TABLE OF CONTENTS

- § 9:98 Inventory and return requirements—Exclusion of evidence
- § 9:99 Removal of seized evidence from county

**CHAPTER 10. ARRESTS AND DETENTIONS
OF SUSPECTS**

A. INTRODUCTION

- § 10:0.50 Inquiry as to nationality or immigration status of victim or witness [*New*]

**C. IDENTIFYING AND CHARACTERIZING
DETENTIONS**

- § 10:6 Identifying and characterizing detentions—In general
- § 10:7 Identifying detentions—“Seizures”—In general
- § 10:11 Identifying detentions—“Seizures”—Seizure by show of authority—Show of authority required
- § 10:12 Identifying detentions—“Seizures”—Seizure by show of authority—Submission
- § 10:13 Identifying detentions—“Seizures”—Stationary suspect
- § 10:17 Identifying detentions—“Seizures”—Application of the criteria—Relevant factors
- § 10:20 Characterizing detentions—“Arrests” distinguished from other detentions
- § 10:25 Expanded authority for use of citations

**D. BASIC LEGAL REQUIREMENTS APPLICABLE
TO DETENTIONS**

- § 10:30 Fourth Amendment requirements—Probable cause needed for arrest
- § 10:30.50 Fourth Amendment requirements—Probable cause needed for arrest—Information contradicting innocent explanations [*New*]
- § 10:35 Fourth Amendment requirements—Warrant required for arrest in private premises—“Hot pursuit” exception to warrant requirement
- § 10:37 State law requirement of arrest warrant—In general
- § 10:39 Use of force

**CHAPTER 11. ARREST WARRANTS AND
THEIR EXECUTION**

B. GENERAL CONSIDERATIONS

- § 11:5 Capias distinguished from arrest warrant
- § 11:6 Capias pro fine

C. APPLICATION FOR AND ISSUANCE OF ARREST WARRANTS

- § 11:13 The complaint—The showing of probable cause—
Nonappearance and traffic offense warrants—
Nonappearance warrants
- § 11:13.50 The complaint—The showing of probable cause—Nonap-
pearance and traffic offense warrants—Nonappearance
warrants supported by magistrate’s personal
observations *[New]*
- § 11:14 The “four-corners” rule and arrest warrants
- § 11:14.50 Application for arrest warrant by electronic broadcast
system *[New]*
- § 11:15 Requirement of a judicial determination of probable cause
- § 11:15.50 Warrants for nonappearance in justice and municipal
courts *[New]*

E. EXECUTION OF ARREST WARRANTS

- § 11:27.50 Need for arresting officer to be aware of warrant *[New]*
- § 11:30 Use of force to make arrest

CHAPTER 12. WARRANTLESS ARRESTS

B. GENERAL CONSIDERATIONS

- § 12:3 Authority of officers acting outside their employing
jurisdiction—In general
- § 12:4 Authority of officers acting outside their employing
jurisdiction—“Special officers”
- § 12:4.50 Authority of officers acting outside their employing
jurisdiction—“Special officers”—Federal officers as “special
investigators” *[New]*
- § 12:6 Authority of officers acting outside their employing
jurisdiction—Municipal police officers—Traditional
definition of officers’ authority
- § 12:7 Authority of officers acting outside their employing
jurisdiction—Municipal police officers—Authority to arrest
for offenses committed within presence or view
- § 12:8 Authority of officers acting outside their employing
jurisdiction—Power to arrest for offense against the public
peace

C. AUTHORIZED WARRANTLESS ARRESTS

1. INTRODUCTION

- § 12:12 Permissible warrantless arrests

2. FELONY SUSPECTS “ABOUT TO ESCAPE”

- § 12:13 Felony arrests when suspect is “about to escape”—In general

3. OFFENSES COMMITTED IN PRESENCE OR

TABLE OF CONTENTS

VIEW

§ 12:18 Offense committed in presence or within view—In general

4. PERSON FOUND IN A “SUSPICIOUS PLACE”

§ 12:25 Definition of “suspicious place”

§ 12:26 Determining if a place is “suspicious” *[Retitled]*

6. OTHER PERMISSIBLE WARRANTLESS ARRESTS

§ 12:31 Suspect committing offense involving family violence

§ 12:33 Interference with emergency telephone call

D. EFFECTUATING WARRANTLESS ARRESTS

§ 12:34 Use of force to make warrantless arrests

CHAPTER 13. NONARREST DETENTIONS

A. INTRODUCTION

§ 13:2 Texas “failure to identify” statute

§ 13:3.50 Development of grounds for arrest during unreasonable nonarrest detention *[New]*

B. TRAFFIC STOPS AND RELATED DETENTIONS

§ 13:5 Traffic stops—State law basis

§ 13:7 Traffic stops—Distinguishing traffic stops and investigatory or *Terry* stops

§ 13:10 Federal constitutional considerations—Requirement of probable cause or reasonable suspicion

§ 13:12 Statutory framework for arrest and citation—Need for reasonable suspicion or probable cause—In general

§ 13:14 Statutory framework for arrest and citation—Need for probable cause—Traffic stop not rendered reasonable by officer’s misunderstanding of the law

§ 13:18 Defining traffic offenses—Improper lane change

§ 13:21 Defining traffic offenses—Improper use of passing lane

§ 13:24.50 Defining traffic offenses—Driving on an improved shoulder or over/on the “fog line” *[New]*

§ 13:26 Identifying the end of a traffic stop—In general

§ 13:27 Identifying the end of a traffic stop—Continued detention as an investigatory stop

§ 13:36 Actions and investigation permitted during traffic stop—Weapons “frisk” search and other self-protective action

§ 13:37 Actions and investigation permitted during traffic stop—Dog “sniff”

§ 13:37.50 Actions and investigations permitted during traffic stop—Body cavity searches *[New]*

§ 13:38 Actions and investigation permitted during traffic stop—Questioning regarding traffic-related matters

- § 13:39 Actions and investigation permitted during traffic stop—
Questioning regarding drugs and other nontraffic matters
- § 13:40 Permissible duration of traffic stop—In general
- § 13:42 Permissible duration of traffic stop—Reasonable time to
complete legitimate traffic-related purpose of the stop
- § 13:44 Permissible duration of traffic stop—Extending stop to
pursue nontraffic concerns—Warrant and criminal
history check
- § 13:45 Permissible duration of traffic stop—Extending stop to
pursue nontraffic concerns—Securing presence of drug
dog
- § 13:46 Permissible duration of traffic stop—Extending stop to
pursue nontraffic concerns—Questioning and other
investigation concerning nontraffic offense
- § 13:48 Detention and/or investigation of passenger during traffic
stop

C. INVESTIGATORY OR *TERRY* STOPS

- § 13:53 Investigatory stops—Officers' authority to make stops
- § 13:56 Requirement of "reasonable suspicion"—In general
- § 13:57 Requirement of "reasonable suspicion"—Ongoing, past, and
future offenses
- § 13:60 Requirement of "reasonable suspicion"—Tips and
information from others
- § 13:64 Requirement of "reasonable suspicion"—Flight and other
suspicious responses to officers
- § 13:65 Requirement of "reasonable suspicion"—Nervousness in
response to police attention
- § 13:66 Requirement of "reasonable suspicion"—Suspicious
situations encountered during patrol
- § 13:66.50 Requirement of "reasonable suspicion"—Refusal to
cooperate [*New*]
- § 13:71 Requirement of "reasonable suspicion"—Required specificity
of testimony
- § 13:73 Length of detention

D. COMMUNITY CARETAKING STOPS

- § 13:78 Officer's motivation
- § 13:79 Objective basis required

CHAPTER 14. SEARCHES ASSOCIATED WITH DETENTIONS

A. INTRODUCTION

- § 14:2 Admissible fruits of a search—"Plain view" and "plain feel"

B. SEARCHES INCIDENT TO ARREST

- § 14:11 Scope of search—Items "immediately associated" with the
person of the arrestee

TABLE OF CONTENTS

- § 14:12 Scope of search—Items not “immediately associated” with the person of the arrestee but within reach
- § 14:14 Scope of search—Time controlling in defining permissible scope of search
- § 14:15 Scope of search—Search of premises for dangerous persons
- § 14:17 Scope of search—Examination of personal effects taken incident to arrest
- § 14:17.50 Scope of search—Cellular telephones *[New]*
- § 14:18.50 Scope of search—Taking DNA sample *[New]*

C. STATIONHOUSE SEARCHES

- § 14:21 Stationhouse searches

D. WEAPONS SEARCHES

- § 14:22 Weapons searches—In general
- § 14:25 Reasonable fear for safety—Need for officer to subjectively be in fear
- § 14:26 Reasonable fear for safety—Objective justification
- § 14:33 Scope of weapons searches—Searches of items in suspect’s possession
- § 14:35 Retrieval of seizable items identified during weapons search

E. IMPLIED CONSENT AND BREATH, BLOOD, AND URINE SPECIMENS

1. INTRODUCTION

- § 14:36 The implied consent statute—Overview
- § 14:38 Constitutional considerations
- § 14:38.25 Constitutional considerations—Breath tests permissible incident to arrest *[New]*
- § 14:38.50 Constitutional considerations—Blood tests *[New]*

2. DETERMINING WHETHER IMPLIED CONSENT STATUTE APPLIES

- § 14:45 Specimens taken for treatment reasons

4. TAKING OF SPECIMEN WHERE IMPLIED CONSENT STATUTE APPLIES

- § 14:57 Taking a specimen with consent—Admonishment requirements—In general
- § 14:61 Taking a specimen with consent—Voluntary consent—In general
- § 14:62 Taking a specimen with consent—Voluntary consent—Consent influenced by admonitions regarding nonstatutory consequences of refusal
- § 14:64 Taking a specimen without consent—In general
- § 14:64.50 Taking a specimen without consent—Constitutional issues *[New]*

- § 14:65 Taking a specimen without consent—Persons incapable of refusing consent
- § 14:65.50 Taking a specimen without consent—Repeat offender situations *[New]*
- § 14:66 Taking a specimen without consent—Injury accident situations—In general
- § 14:74 Requirements for taking of blood specimens

CHAPTER 15. WARRANTLESS SEARCHES

B. EXIGENT CIRCUMSTANCES SEARCHES

- § 15:4 Exigent circumstances searches in general—The “emergency” doctrine
- § 15:6 Exigent circumstances searches in general—Need for officers to be subjectively motivated by the emergency
- § 15:7 Required exigencies—In general
- § 15:8 Required exigencies—Destruction or removal of evidence
- § 15:11.25 Required exigencies—Warrantless blood test in driving while intoxicated situations *[New]*
- § 15:11.50 Required exigencies—Exigencies caused by law enforcement *[New]*
- § 15:11.75 Required exigencies—Cellular telephone searches *[New]*
- § 15:12 Requirement of probable cause

C. CONSENT SEARCHES

- § 15:19 Words or actions constituting consent—In general
- § 15:21 Requirement that consent be “voluntary”—In general
- § 15:21.50 Requirement that consent be “voluntary”—Subjective voluntariness may not be required *[New]*
- § 15:24 Requirement that consent be “voluntary”—Acquiescence in apparently inevitable search
- § 15:25.50 Consent can be revoked *[New]*
- § 15:26 Third-party consents—In general
- § 15:27 Third-party consents—Defendant present and refusing consent
- § 15:28 Third-party consents—“Actual” authority to consent
- § 15:28.50 Third party consents—Actual authority to consent—Cell site location information *[New]*
- § 15:29 Third-party consents—“Apparent” authority to consent
- § 15:29.50 Consent given by children *[New]*
- § 15:30 Scope of consent—In general

D. AUTOMOBILE SEARCHES

- § 15:34 “Automobile” or “vehicle” exception to warrant requirement—In general
- § 15:34.50 “Automobile” or “vehicle” exception to warrant requirement—Necessary probable cause based on alert of drug-sniffing dog *[New]*
- § 15:34.75 “Automobile” or “vehicle” exception to warrant requirement—Probable cause based on “furtive movements” *[New]*

TABLE OF CONTENTS

§ 15:35	“Automobile” or “vehicle” exception to warrant requirement—Exigent circumstances not required
§ 15:40	Search of vehicle located on private property
§ 15:42	Search of vehicle incident to arrest of occupant—Reason to believe evidence relevant to arrest will be found
§ 15:44	Search of vehicle incident to arrest of occupant—Duration of the right to search

Table of Contents

CHAPTER 16. CONFESSIONS, STATEMENTS, AND ADMISSIONS

A. INTRODUCTION

§ 16:13 Defendants' right at trial to challenge the credibility of
confession evidence—Expert testimony

C. TRIGGERING MAJOR CONFESSION LAW DOCTRINES: “CUSTODY” AND “INTERROGATION”

§ 16:25 Custody—In general

§ 16:26 Custody—Already incarcerated suspect

§ 16:27.50 Custody—Traffic stops *[New]*

§ 16:30 Official interrogation—Requirement that interrogation be
“official”

H. THE TEXAS “CONFESSION STATUTE”— EXCEPTIONS TO THE ORAL-STATEMENT RULE

4. ELECTRONICALLY RECORDED STATEMENTS

§ 16:95 Requirement of warnings during the recording

§ 16:96 Requirement of waiver during the recording

§ 16:98 Identification of voices

§ 16:99.50 Capability of recording device to make accurate recording
[New]

§ 16:100 Necessary completeness of recording

§ 16:101 Accuracy and alterations of recordings

§ 16:101.50 Audibility of recording *[New]*

H-1. REQUIREMENT THAT INTERROGATION BE RECORDED *[New]*

§ 16:102.10 Required recording of interrogation—In general *[New]*

§ 16:102.20 When must recording be made *[New]*

§ 16:102.30 Recording required *[New]*

§ 16:102.40 “Good cause” exceptions to recording requirement—In
general *[New]*

- § 16:102.50 “Good cause” exceptions to recording requirement—Belief that interrogation did not trigger recording requirement [New]
- § 16:102.60 “Good cause” exceptions to recording requirement—Suspect refused recording [New]
- § 16:102.70 “Good cause” exceptions to recording requirement—Equipment failure [New]
- § 16:102.75 “Good cause” exceptions to recording requirement—Exigent public safety concerns [New]
- § 16:102.80 Effect of recordings on admissibility of statements [New]

I. VOLUNTARINESS

- § 16:107 Need for official misconduct—14th Amendment due process
- § 16:108.50 Need for official misconduct—Validity of waivers in custodial interrogation situations [New]
- § 16:110 Voluntariness analysis—The “totality of the circumstances”

J. FIFTH AMENDMENT REQUIREMENTS—MIRANDA

2. EXCEPTIONS TO MIRANDA REQUIREMENTS

- § 16:137 Routine and noninvestigatory questioning

4. MIRANDA REQUIREMENTS—WARNINGS

- § 16:141 The right to effective warnings and “question first, warn later”—*Missouri v. Seibert*
- § 16:142 The right to effective warnings and “question first, warn later”—Texas adoption of Justice Kennedy’s *Seibert* analysis

5. MIRANDA REQUIREMENTS—NO INTERROGATION IF RIGHT TO COUNSEL INVOKED

- § 16:144 Invoking the right to counsel and the *Edwards* Rule—In general
- § 16:145 Invoking the right to counsel and the *Edwards* Rule—Need for unambiguous statement
- § 16:146 Prospective invocations of the right to counsel

6. INVOKING THE RIGHT TO SILENCE AND ITS EFFECT

- § 16:150 Invoking the right to remain silent—In general
- § 16:151 Invoking the right to remain silent—Need for an unambiguous invocation

TABLE OF CONTENTS

- § 16:154 Invoking the right to remain silent—Reapproaching the suspect

7. WAIVERS AND THEIR VALIDITY

- § 16:164 Effectiveness of waivers—Voluntariness
§ 16:165 Effectiveness of waivers—Intelligence

K. SIXTH AMENDMENT RIGHT TO COUNSEL REQUIREMENTS

- § 16:168 Triggering the right—Adversary judicial proceedings
§ 16:170 Undercover situations
§ 16:177 *Edwards* Rule and the Sixth Amendment—*Montejo*'s clarification of the rule
§ 16:178 Offense-specific nature of the Sixth Amendment right and interrogation regarding different offenses—In general
§ 16:179 Offense-specific nature of the Sixth Amendment right and interrogation regarding different offenses—Intertwined offenses

M. SUSPECTS' SILENCE AS "CONFESSIONS"

- § 16:189 Federal constitutional limits on use of silence
§ 16:190 Texas law limits on use of silence—In general

N. STATEMENTS MADE BY SUSPECTS SUBJECT TO THE FAMILY CODE'S JUVENILE PROVISIONS

1. INTRODUCTION

- § 16:193 Family Code requirements and admissibility of statements in criminal prosecutions—Flexibility in applying exclusionary rule

2. FAMILY CODE REQUIREMENTS FOR PROCESSING DETAINED CHILD

- § 16:202 "Without first taking the child to any place other than a juvenile processing office"
§ 16:205 "Causal connection" and dissipation of the taint

3. STATEMENTS MADE IN CUSTODY AND IN RESPONSE TO INTERROGATION

- § 16:209 Recorded statements
§ 16:212 Warnings required

CHAPTER 17. LINEUPS, SHOWUPS, PHOTO SHOWINGS

A. INTRODUCTION

§ 17:3 Testimony as to previous identifications

C. RIGHT TO COUNSEL

§ 17:12 Testimony as to identification at tainted proceeding

D. IMPERMISSIBLE SUGGESTIVENESS

§ 17:14 Due process standard—In general

§ 17:15 Due process standard—Need for governmental action

§ 17:16 Burden of proof

§ 17:18 Impermissible suggestiveness—Suggestiveness

§ 17:21 Substantial likelihood of misidentification—The criteria applied

E. NONEXCLUSIONARY RESPONSES TO RELIABILITY CONCERNS

§ 17:25 Expert testimony—Relevancy under Rule 702

§ 17:28 Expert testimony—Application of the *Jordan* analysis

§ 17:29 Cautionary instructions—In general

F. 2011 PHOTOGRAPH AND LIVE LINEUP IDENTIFICATION PROCEDURE LEGISLATION [New]

§ 17:31 Introduction [New]

§ 17:32 Model Policy [New]

§ 17:33 Requirement of local policies [New]

§ 17:34 Requirement of immediate inquiry into witness confidence
[New]

§ 17:35 Effect on admissibility of evidence—In general [New]

§ 17:36 Effect on admissibility of evidence—Requirement of proof
regarding other identifications [New]

§ 17:37 Effect on cautionary instructions [New]

CHAPTER 18. MOTIONS TO SUPPRESS ON EXCLUSIONARY RULE AND CONFESSION LAW GROUNDS

A. INTRODUCTION

§ 18:2 Applicability of Article 38.22, sections 6 and 7 procedure

§ 18:2.50 Applicability of Article 38.22, sections 6 and 7 procedure—
Meaning of voluntariness [New]

§ 18:4 Defendants' right to definitive ruling by judge

TABLE OF CONTENTS

B. MOTIONS TO SUPPRESS

§ 18:8.50 Need for motion to specify all issues to be addressed at hearing *[New]*

C. DEFENDANTS' RIGHT TO DETERMINATION OF "VOLUNTARINESS" OF STATEMENT

§ 18:9 Determining the voluntariness of a statement

§ 18:12 Defendants' right to trial court ruling and findings

§ 18:14 Appellate remedy for violation of hearing and finding requirements

E. BURDENS OF PROCEEDING AND PROOF

2. EXCLUSIONARY RULE MATTERS

§ 18:19 Nature of the burdens

§ 18:20 Placement of the burdens

§ 18:20.50 Burdens when exclusion sought on statutory grounds *[New]*

§ 18:24 "Standing"

F. RESOLVING SUPPRESSION ISSUES

§ 18:42 Relitigation at hearing on motion to suppress of matters resolved earlier in another proceeding

§ 18:43.50 Reopening of suppression issue after ruling *[New]*

G. HEARINGS ON SUPPRESSION CLAIMS

5. CONDUCTING THE HEARING

§ 18:55 Evidentiary rules in hearings on motions to suppress—In general

§ 18:56 Evidentiary rules in hearings on motions to suppress—Appropriate or required practice under *Granados*

6. SUFFICIENCY AND SPECIFICITY OF EVIDENCE REQUIRED

§ 18:59.50 Reliance on video recording *[New]*

7. FINDINGS AND CONCLUSIONS

§ 18:60 Findings of fact and conclusions of law

H. APPELLATE REVIEW

1. INTRODUCTION

§ 18:62.50 Requested findings of fact inadequate *[New]*

2. STANDARD OF REVIEW

§ 18:66 Trial judges' findings of historical fact—In general

- § 18:67.50 Trial judges' findings of historical facts—Officers' awareness of, and inferences from, historical facts *[New]*
- § 18:73 De novo review in "application of law to fact questions" or "mixed questions of law and fact"—In general
- § 18:76 Review of voluntariness determinations

3. CONSIDERATION OF TRIAL EVIDENCE

- § 18:78.50 Evidence taken at reopened proceeding on suppression ruling *[New]*

CHAPTER 19. DOUBLE JEOPARDY

A. INTRODUCTION. PREREQUISITES, ATTACHMENT OF JEOPARDY, RAISING CLAIMS

- § 19:1 Introduction
- § 19:3 Attachment of jeopardy
- § 19:4 The requirement of jurisdiction for jeopardy attachment
- § 19:6 Raising double jeopardy claims

B. DEFINING THE SAME AND DIFFERENT OFFENSES

- § 19:7 Defining the same offense: acts and statutory offenses
- § 19:8 Defining the same offense: the *Blockburger* rule
- § 19:9 The same offense under the former carving doctrine and the continuing importance of the number of acts
- § 19:9.50 The dual-sovereignty doctrine *[New]*
- § 19:11 The preeminence of legislative intent in determining the same offense
- § 19:12 Determining legislative intent with regard to the same or different offenses
- § 19:13 The importance of the offense charged to determining the same offense
- § 19:14 The scope of double jeopardy protection and lesser included offenses
- § 19:15 Multiple punishments for the "same offense" at one trial
- § 19:16 Choosing the offense to vacate when multiple punishments applied to same offense in one trial
- § 19:18 The federal definition of same offense in multiple trials
- § 19:19 The definition of same offense in multiple trials under the Texas Constitution

C. COLLATERAL ESTOPPEL

- § 19:21 Collateral estoppel in general
- § 19:23 Applicability of collateral estoppel to civil proceedings and collateral criminal hearings
- § 19:24 Collateral estoppel and the ambiguity of jury verdicts
- § 19:25 Collateral estoppel inapplicable within single criminal trial

TABLE OF CONTENTS

D. PRIOR ACQUITTAL

- § 19:26 Double jeopardy protections after jury acquittal
- § 19:27 Acquittals by the judge

E. PRIOR CONVICTION

- § 19:30 Insufficient evidence exception
- § 19:33 Exceptions to typical rules with regard to lesser included offenses

F. MISTRIALS AND DISMISSALS

- § 19:34 Double jeopardy and mistrials at the request or with the consent of defendant
- § 19:35 Mistrials intentionally provoked by the prosecution
- § 19:36 Manifest necessity for mistrial

**CHAPTER 20. PROMPT PRESENTATION
BEFORE THE MAGISTRATE**

- § 20:2 Requirement of prompt presentation
- § 20:7 Prompt presentation and arrestee's right to probable cause determination—Texas Fair Defense Act of 2001—State law right to probable cause determination
- § 20:8.50 Prompt presentation and arrestee's right to probable cause determination—Texas Fair Defense Act of 2001—Temporary 2011 exception for Harris County misdemeanors *[New]*
- § 20:10 Duties of the magistrate at the appearance
- § 20:21 Authority to issue order for emergency protection in family violence cases

**CHAPTER 21. RELEASE PENDING COURT
APPEARANCE**

B. GENERAL CONSIDERATIONS

- § 21:3.50 Federal constitutional considerations—Harris County and Dallas County federal misdemeanor bail litigation *[Retitled]*

**C. ROLE OF PROFESSIONAL BONDSMEN IN
PRETRIAL RELEASE**

- § 21:13 Surety's ability to get "off the risk"

**D. PRETRIAL RELEASE OF BAILABLE
DEFENDANTS**

2. TYPES OF RELEASE AND TERMINOLOGY

- § 21:17 Bail bond—In general

- § 21:17.50 Bail bond—Defendant charged with felony committed while on bail *[New]*
- § 21:17.60 Bail bond—Bail decision *[New]*
- § 21:19 Personal bond—In general
- § 21:20.50 Personal Bond—Justice and municipal courts *[New]*

3. REASONABLE OR APPROPRIATE BAIL

- § 21:23 Reasonable or appropriate bail—In general
- § 21:25 Assurance that defendant will comply with appearance undertakings
- § 21:31 Strength or weakness of State's case

E. PROCEDURE IN BAILABLE CASES

1. INTRODUCTION

- § 21:43 Taking and setting bail by peace officer
- § 21:43.50 Taking or setting of bail by jailer *[New]*

2. INITIAL SETTING OF BAIL

- § 21:46 Delayed release in family violence cases

3. MODIFYING BAIL PREVIOUSLY SET

- § 21:48 Modifying bail previously set—Notice and hearing
- § 21:51 Motion filed in court where case is pending

4. DEFENDANTS' CHALLENGES TO BAIL PROCEDURE OR AMOUNT

- § 21:58 Appeal from denial of relief by habeas judge

F. RELEASE BY REDUCTION OF BAIL WHEN STATE IS NOT "READY"

- § 21:60 Constitutional validity of the statute
- § 21:62 Time periods
- § 21:66 Exceptions to the right to release

G. REVOCATION OF BAIL

- § 21:71.50 Possible additional constitutional requirements *[New]*

J. DENIAL OF BAIL—NONCAPITAL CASES

3. SHOWING REQUIRED FOR DENIAL OF BAIL IN NONCAPITAL CASES

- § 21:91 Evidence substantially showing guilt

TABLE OF CONTENTS

**M. DENIAL OF BAIL AFTER REVOCATION IN
CHILD VICTIM CASES [New]**

§ 21:100 Postrevocation denial of bail in child victim cases [New]

CHAPTER 22. EXAMINING TRIALS

A. INTRODUCTION

§ 22:3 Formal functions of the examining trial

§ 22:5 Relationship between examining trials and habeas corpus

B. RIGHT TO EXAMINING TRIAL

§ 22:6 Felony defendants' right to examining trials

F. MISDEMEANOR PROSECUTIONS

§ 22:30 Habeas corpus as vehicle for challenging probable cause in
misdemeanor cases

**CHAPTER 23. DEVELOPING THE FORMAL
CHARGE—THE GRAND JURY**

A. INTRODUCTION

§ 23:5 Defendants' ability to raise issues arising from the grand jury
process

§ 23:6 Competency of grand jurors as witnesses in attacks on
indictments

§ 23:8 Policy of grand jury secrecy—In general

§ 23:9 Policy of grand jury secrecy—Information about grand jurors

§ 23:10 Grand jury "venue"—Geographical scope of grand jury's
authority and concern

§ 23:11 Need to present indictment in impaneling district court

§ 23:12 Reindictment of previously indicted defendant

**B. PROCEDURAL CHALLENGES TO GRAND JURY
PROCEEDINGS, PROSECUTIONS, AND
CONVICTIONS BASED ON GRAND JURY
MATTERS**

§ 23:14 Challenges during grand jury formation—In general

§ 23:15 Challenges during grand jury formation—Challenge to the
array

§ 23:16 Challenges during grand jury formation—Challenge to a
particular grand juror

§ 23:17 Challenges to prosecutions based on grand jury formation—In
general

§ 23:19 Motions to set aside—Discrimination in selection of the grand
jury

§ 23:20 Motions to set aside—Disqualified grand juror

- § 23:22 Grand jury must function during term in which it was authorized to act

C. FORMATION OF THE GRAND JURY

- § 23:23 Formation of the grand jury—In general
 § 23:23.50 Formation of the grand jury—2015 statutory changes *[New]*
 § 23:24 Number of grand jurors
 § 23:25 Indictments returned during extension of grand jury term
 § 23:25.50 Referral to grand jury in sexual assault cases *[New]*

D. PROCEEDINGS BEFORE THE GRAND JURY

1. INTRODUCTION

- § 23:26 Grand jury proceedings—In general

2. SUBPOENA AND ATTACHMENT POWER

- § 23:27 Grand jury's subpoena and attachment power—In general
 § 23:28 Penalty for refusal to testify
 § 23:29 Refusal to testify can be punished only if question is "proper"
 § 23:32.25 Need for subpoena to issue for existing or prospective grand jury investigation *[New]*
 § 23:32.50 Use of subpoena power to prepare for trial *[New]*
 § 23:32.75 Subpoena permitting compliance by providing material to prosecutor *[New]*
 § 23:32.85 Use of subpoena as a subterfuge to obtain investigatory of-fice interview *[New]*
 § 23:33 Subpoena to be secret

3. PARTICIPATION BY THE PROSECUTOR, THE ACCUSED, AND DEFENSE COUNSEL

- § 23:34 Role of the prosecutor
 § 23:35 Participation by the accused and defense counsel—In general
 § 23:36 Participation by the accused and defense counsel—Informal submissions to grand jurors
 § 23:37 Testimony or other appearance by the suspect

4. CALLING AND QUESTIONING SUSPECT WITNESSES AND OTHER WITNESSES

- § 23:40 Texas law rights of suspect witness—In general
 § 23:42 Questioning suspect witnesses—Definition of person "accused or suspected"
 § 23:43 Questioning suspect witnesses—Requirements when witness appears voluntarily
 § 23:44 Questioning suspect witnesses—Requirements when suspect is subpoenaed
 § 23:46 Questioning suspect witnesses—Recording requirement
 § 23:47 Questioning nonsuspect witness

TABLE OF CONTENTS

§ 23:47.50 Police officer testimony by video teleconferencing [*New*]

5. PRESENCE OF UNAUTHORIZED PERSONS

§ 23:48 Presence of unauthorized persons while grand jury is deliberating or voting—In general

§ 23:49 Unauthorized persons during taking of evidence

§ 23:50 Defining “deliberating”

§ 23:51 1995 statutory provision

6. PROSECUTORIAL MISCONDUCT AND RELATED MATTERS

§ 23:52 Prosecution misconduct and interference with grand jury independence—In general

7. DEVELOPMENT AND PRESENTMENT OF THE CRIMINAL CHARGE

§ 23:57 Development and presentment of the charge—In general

§ 23:61 Service of the indictment

CHAPTER 24. COMPLAINTS AND CHARGING INSTRUMENTS

A. INTRODUCTION

§ 24:1 Complaints in Texas Criminal Procedure

C. REQUIREMENTS OF COMPLAINTS

§ 24:5 Requirements of complaints—In general

D. DEFECTS IN COMPLAINTS

§ 24:14 Jurat problems—In general

§ 24:15 Jurat problems—Jurat date before date of offense charged

Table of Contents

CHAPTER 25. REQUIREMENTS OF CHARGING INSTRUMENTS

A. INTRODUCTION

- § 25:1 Charging instruments in general
- § 25:3 Charging instrument not waivable

C. CHARACTERIZING CHARGING INSTRUMENT DEFECTS

2. FUNDAMENTAL DEFECTS AND DEFECTS OF SUBSTANCE

- § 25:18 “Fundamental” versus “nonfundamental” defects

3. DEFECTS PREVENTING INSTRUMENT FROM BEING INDICTMENT OR INFORMATION

- § 25:21 Failure to charge a person

D. FORMAL PARTS OF CHARGING INSTRUMENTS

- § 25:24 Caption
- § 25:26 Naming or identifying the accused—In general
- § 25:34 Information must appear to be presented by proper officer
- § 25:35 Description of indicting grand jury in indictments
- § 25:40 Allegation of venue—Allegations under special venue provisions

E. CHARGING THE OFFENSE

1. INTRODUCTION

- § 25:46 Requirement that charging instrument charge the offense—In general
- § 25:48 Charging an offense within the jurisdiction of the trial court—Not “jurisdictional”

2. GENERAL RULES FOR CHARGING AN OFFENSE

- § 25:50 Charging instrument must allege all elements

- § 25:60 Need to go beyond statutory language to charge the offense—
In general

3. EXCEPTIONS, DEFENSES, AND RELATED MATTERS

- § 25:69 Exceptions to offenses in non-Penal Code statutes—In general
§ 25:71 Exceptions to offenses in non-Penal Code statutes—Non-penal
offenses enacted after Penal Code
§ 25:72 Exceptions to offenses in non-Penal Code statutes—Non-penal
offenses enacted before Penal Code

4. ALLEGING THE CULPABLE MENTAL STATES

- § 25:83 Defining a required culpable mental state

5. IDENTIFYING VICTIMS AND PARTICIPANTS

- § 25:91 Identification of the victim or “complaining witness”

6. ALLEGING RECKLESSNESS AND NEGLIGENCE

- § 25:97 Alleging acts constituting recklessness or negligence—In
general
§ 25:98 Effect of pleadings on trial
§ 25:99 Avoiding the requirement by pleading intent or knowledge

7. SPECIFICS OF MANNER AND MEANS

- § 25:100 Specification of “manner and means”—In general

8. SPECIFIC PROBLEMS IN CHARGING OFFENSES

- § 25:105 Charging attempt

F. SPECIFICITY REQUIREMENTS BEYOND CHARGING AN OFFENSE—NOTICE AND RELATED DEMANDS

2. SOURCES OF SPECIFICITY DEMANDS

- § 25:109 Trial preparation notice

3. SPECIFICITY STANDARDS

- § 25:112 Specificity standards—In general
§ 25:114.50 Providing notice by means other than the charging
instrument—Bill of particulars or similar “informal”
pleading *[New]*
§ 25:117 Statutory terminology not completely descriptive of
offense

TABLE OF CONTENTS

5. PARTICULAR SPECIFICITY DEMANDS—IN GENERAL

§ 25:130 Pleading recklessness or negligence

7. PARTICULAR SPECIFICITY DEMANDS—MANNER AND MEANS

§ 25:142 Specificity required by traditional case law

8. PARTICULAR SPECIFICITY DEMANDS—STATUTORY ALTERNATIVE MANNER AND MEANS

§ 25:146 Specifying among statutory alternatives—In general

§ 25:147 Theft and the *Thomas-Gorman* rule requiring specification

§ 25:150 Required specificity regarding matters beyond the act or omission

J. “ALTERNATIVE” PLEADING

§ 25:193 Alternative offenses in one “transaction”—Effect of the “criminal episode” rule

§ 25:194 Use of conjunctive and disjunctive—In general

L. “FORMAT” REQUIREMENTS—COUNTS AND PARAGRAPHS

§ 25:205 Definitions—Counts, paragraphs, and other units of the charge

CHAPTER 26. CHALLENGES TO AND AMENDMENT OF CHARGING INSTRUMENTS

A. INTRODUCTION

§ 26:5 Evidence sufficiency requirements not waived

C. MAKING TRIAL COURT CHALLENGES

§ 26:16 Challenge cannot extend to evidence admissibility or sufficiency

§ 26:30.50 Challenges to validity of law on which prosecution is based
[New]

D. AMENDMENT OF CHARGING INSTRUMENTS—IN GENERAL

§ 26:39 Defining “amendment”—Abandonment of surplusage distinguished

- § 26:49 Amendment errors as “harmless error”—Application of harmless error analysis to amendment errors under the 1985 pleading revisions

**E. AMENDMENT OF CHARGING INSTRUMENTS—
AMENDMENT BEFORE DAY OF TRIAL**

- § 26:57 Prohibition against amendment causing instrument to charge “additional” or “different” offense—Definition of “offense”

**H. AMENDMENT OF CHARGING INSTRUMENTS—
PROCEDURE FOR AMENDMENT**

- § 26:73 Hearing
§ 26:74 Amending the charging instrument itself—In general

**CHAPTER 27. DISCOVERY AND
DISCLOSURE**

A. INTRODUCTION

- § 27:3 State’s access to mandamus relief

B. STATE’S RIGHT TO “DISCOVERY”

- § 27:10 Nature of the work-product doctrine

**C. OBLIGATION TO DISCLOSE EXCULPATORY
EVIDENCE**

- § 27:14.50 Duty to disclose—Statutory protection irrelevant [*New*]
§ 27:15 Admissibility of nondisclosed information or evidence
§ 27:18 Undisclosed evidence must be “material”—General definition of materiality
§ 27:19 Undisclosed evidence must be “material”—Impeaching evidence can be material
§ 27:22 Defendant’s awareness of exculpatory evidence
§ 27:29 Procedure—Timing of required disclosure—Need for defendant to seek delay when tardy disclosure made
§ 27:31 Procedure—Need to raise nondisclosure in the trial court

**D. DUE PROCESS PROHIBITION AGAINST USE
OF PERJURED TESTIMONY**

- § 27:36 Prohibition against State’s use of perjured testimony—In general
§ 27:37 State must have “used” testimony
§ 27:38 Testimony must have been “false”
§ 27:38.50 Testimony must have been “false”—New evidence “the essence” of which was heard and rejected by trial jury [*New*]
§ 27:40 Materiality
§ 27:41 Showing of harm required in postconviction proceeding

TABLE OF CONTENTS

§ 27:42.50 Unknowing use of false (but not necessarily perjured) testimony *[New]*

E. CONSTITUTIONAL IMPLICATIONS OF DESTRUCTION OR NONPRESERVATION OF EXCULPATORY EVIDENCE

§ 27:50 Destruction or nonpreservation of potentially exculpatory evidence—Potential Texas due course of law requirement

G. PRODUCTION AND INSPECTION UNDER ARTICLE 39.14

1. INTRODUCTION

§ 27:54 Analysis under Article 39.14(a)

§ 27:55 Time for disclosure

§ 27:58 Relationship between Article 39.14(a) and the constitutional *Brady* rule

2. DEFENDANT’S MOTION

§ 27:61 Timeliness

§ 27:62 Provision for details of production and inspection

§ 27:63 Making the necessary “showing[s]”

§ 27:64 Notice to other parties

3. “SHOWING” REQUIRED

§ 27:65 Showing no longer required *[Retitled]*

§ 27:66 Tangible things constituting or containing evidence

§ 27:67 Materiality of evidence need no longer be shown *[Retitled]*

§ 27:68 Possession of the state

§ 27:69 Good cause no longer need be shown *[Retitled]*

4. MATTERS EXEMPT FROM DISCOVERY

§ 27:71 Work product—In general

§ 27:73 Police reports and reports of state experts

§ 27:74 Statements of witnesses

§ 27:75 Privileged items

5. DISCLOSURE AND PRODUCTION

§ 27:76 Production and inspection required *[Retitled]*

§ 27:76.50 Order for state to copy *[New]*

§ 27:77 Trial court’s pre-2014 discretion—In general *[Retitled]*

§ 27:78 Trial court’s pre-2014 discretion—Evidence indispensable to the State’s case *[Retitled]*

§ 27:79 2014 Change—Disclosure made mandatory upon request by defendant *[Retitled]*

§ 27:80 An order to produce is no longer required *[Retitled]*

§ 27:82 Enforcement of the order—In general

§ 27:83 Enforcement of the order—Willfulness

G-1. PRODUCTION AND INSPECTION UNDER ARTICLE 39.14 AFTER 2013 AMENDMENTS

- § 27:89.10 2013 Changes to Article 39.14 *[New]*
- § 27:89.20 Production, inspection and copying upon defense request *[New]*
- § 27:89.30 Material subject to production, inspection and copying—In general *[New]*
- § 27:89.35 Material subject to production, inspection and copying—Items constituting or containing evidence material to any matter involved in the action *[New]*
- § 27:89.40 Exculpatory material *[New]*
- § 27:89.45 Exculpatory material *[New]*
- § 27:89.50 Work product protection *[New]*
- § 27:89.60 Procedure *[New]*
- § 27:89.70 In-court acknowledgment required *[New]*
- § 27:89.80 Limits on further disclosure and dissemination of produced material—In general *[New]*
- § 27:89.90 Limits on further disclosure and dissemination of produced material—Defense use of produced material *[New]*
- § 27:89.95 Pro se defendants *[New]*

G-2. NOTICE REGARDING JAILHOUSE INFORMANTS *[New]*

- § 27:89.96 Disclosure concerning jailhouse informants to be called to testify to jailhouse admissions *[New]*

H. PRODUCTION OF GRAND JURY TESTIMONY AND INFORMATION

- § 27:91 Defendants' access to grand jury information—Statutory provision for limited access

I. WITNESS LISTS

1. INTRODUCTION

- § 27:97.50 List of expert witnesses—2015 revision *[New]*
- § 27:98 List of expert witnesses—Consequences of failure to disclose

J. DEPOSITIONS

- § 27:106 Depositions—In general
- § 27:108 Application and supporting affidavit
- § 27:111 Good reason—In general

TABLE OF CONTENTS

**J-1. RIGHT TO RECORDING OF CERTAIN
DETENTIONS**

§ 27:117.50 Right to recording of detention for intoxication offenses
[New]

K. NOTICE REQUIREMENTS

**2. DEFENDANT’S RIGHT TO NOTICE OF
EXTRANEOUS OFFENSE EVIDENCE**

§ 27:121 No notice required for use of extraneous offenses in rebuttal

**CHAPTER 28. SPEEDY TRIAL AND
RELATED MATTERS**

B. TEXAS “SPEEDY TRIAL” ACT

§ 28:2 Background of the Speedy Trial Act

D. SIXTH AMENDMENT RIGHT TO SPEEDY TRIAL

§ 28:6 Sixth Amendment right to speedy trial—In general

§ 28:7 Remedy—Bar to prosecution

§ 28:9 Balancing test—In general

§ 28:10 Balancing test—Calculating the relevant period of delay

§ 28:11 Balancing test—Need for “triggering period” of presumptively
prejudicial delay

§ 28:12 Balancing test—Length of delay

§ 28:13 Balancing test—Reasons for delay—In general

§ 28:16 Balancing test—Reasons for delay—Defense counsel

§ 28:17 Balancing test—Defendant’s assertion of right to speedy trial

§ 28:18 Balancing test—Prejudice to defendant—In general

§ 28:19 Balancing test—Prejudice to defendant—Anxiety

§ 28:21 Balancing test—Prejudice to defendant—“Particularized” or
“specifically demonstrable” prejudice

§ 28:22 Balancing test—Prejudice to defendant—“Presumptive
prejudice”

§ 28:24 Balancing test—Balancing the relevant factors

§ 28:25 Raising speedy trial claims in the trial court

§ 28:26 Effect of plea of guilty on speedy trial claims

**E. PREACCUSATION DELAY: CONSTITUTIONAL
CONSIDERATIONS**

§ 28:34 Due process prohibition against excessive pre-arrest/charge
delay—In general

§ 28:37 Due process prohibition against excessive prearrest/charge
delay—Need to show intent to gain tactical advantage

F. PREACCUSATION DELAY: ACCUSED'S RIGHT TO BE FORMALLY CHARGED AT NEXT TERM OF COURT

§ 28:39 Article 32.01—In general

G. DELAY AFTER TRIAL

§ 28:55 Delay in sentencing

§ 28:57 Appellate proceedings—Due process prohibition against excessive delay

CHAPTER 29. RIGHT TO COUNSEL

A. RIGHTS OF REPRESENTATION BY COUNSEL

§ 29:4 Texas statutory right to counsel

§ 29:5 Right to counsel lost only by effective waiver

B. RIGHT OF SELF-REPRESENTATION

§ 29:10 Defendant incompetent to stand trial without representation

§ 29:11 Evaluating a defendant's choice of self-representation—In general

§ 29:13 Evaluating a defendant's choice of self-representation—“Knowing and intelligent” choice

§ 29:21 Withdrawing the election to represent oneself

§ 29:22 “Hybrid” representation

C. RETAINED COUNSEL/CLIENT RELATIONSHIP

§ 29:28.50 Right to access of money to retain counsel [*New*]

D. APPOINTMENT OF COUNSEL—TRIAL

§ 29:33 Public defenders

§ 29:34 Time when defendant is entitled to appointed counsel

§ 29:37 Time when defendant is entitled to appointed counsel—Texas Fair Defense Act of 2001

§ 29:46 Financial eligibility—State's right to recoupment of expenditures on representation—Enforcement of an order for reimbursement

§ 29:50 Appointed counsel's personal responsibility to provide representation

§ 29:63 Investigatory and other assistance for appointed counsel—Due process right to expert assistance—Defendant is entitled to defense expert

§ 29:69 Investigatory and other assistance for appointed counsel—Expert assistance in implementing discovery

E. EFFECTIVE REPRESENTATION IN THE TRIAL COURT

§ 29:71 Standard for effective representation—In general

TABLE OF CONTENTS

- § 29:74 Effective representation—In general
- § 29:75 Effective representation—Counsel’s decision beyond the bounds of acceptable strategy
- § 29:75.50 Effective representation—Counsel’s decision beyond the bounds of acceptable strategy—Objective standard *[New]*
- § 29:76 Effective representation—Need to establish actual basis for challenged decisions of counsel
- § 29:78 Prejudice required for relief—The general standard
- § 29:78.50 Demonstrating prejudice—Deficient performance resulting in structural error *[New]*
- § 29:79 Demonstrating prejudice—Inadequate performance at trial generally
- § 29:80 Demonstrating prejudice—Failure to challenge admissibility of evidence
- § 29:81 Effective representation in specific contexts—Plea negotiations—In general
- § 29:82 Effective representation in specific contexts—Plea negotiations—Adequacy of counsel’s performance
- § 29:83 Effective representation in specific contexts—Plea negotiations—Prejudice
- § 29:83.50 Effective representation in specific contexts—Plea negotiation—Remedy *[New]*
- § 29:85 Effective representation in specific contexts—Investigation and preparation—In general
- § 29:87 Effective representation in specific contexts—Trial performance
- § 29:88 Effective representation in specific contexts—Consultation with defendant on critical decisions
- § 29:90 Effective representation in specific contexts—Erroneous advice on waiver of jury trial
- § 29:92.50 Effective representation in specific contexts—Failure to preserve error for appellate review *[New]*
- § 29:94 Representation in noncapital sentencing—Effectiveness of representation
- § 29:99 Raising ineffective assistance on direct appeal—Risk of precluding more effective litigation of the matter in habeas

G. PROCEDURAL INCIDENTS OF THE RIGHT TO COUNSEL

- § 29:109 Procedural incidents—In general
- § 29:111 Right to have counsel participate in jury voir dire

H. RIGHT TO COUNSEL IN THE APPELLATE PROCESS

- § 29:117 Right to appellate counsel—Motion for new trial in the trial court
- § 29:118 Responsibility of trial counsel for appeal
- § 29:129.50 The Texas *Anders* procedure—Providing defendant with access to record *[New]*

CHAPTER 30. CHANGE OF VENUE

A. INTRODUCTION

§ 30:2 Movement of court distinguished from change of venue

B. CONSTITUTIONAL CONSIDERATIONS

§ 30:4 Defendants' federal constitutional right to change of venue—
"Inherent prejudice"

§ 30:8 Defendants' potential federal constitutional right to trial where
crime was committed

C. CHANGE OF VENUE ON DEFENDANT'S MOTION

§ 30:10 Statutory grounds—In general

§ 30:11 Statutory grounds—Dangerous combination

§ 30:13 Defendant's motion—In general

§ 30:15 Defendant's motion—Defendant's supporting affidavit

§ 30:16 Defendant's motion—Supporting affidavits of two "credible
persons"

§ 30:17 Controversion by State's affidavits

§ 30:25 Resolution of defendants' motions—Matters at issue in the
hearing

§ 30:26 Ability to obtain a fair trial—In general

§ 30:28 Ability to obtain a fair trial—Extent and nature of publicity or
community sentiment

§ 30:30 Ability to obtain a fair trial—Potential and actual jurors'
knowledge of the case or impression of defendant's guilt

§ 30:31 Ability to obtain a fair trial—Jurors' assertions that they can
and will be "fair"

§ 30:33 Appellate review of refusal to change venue

D. CHANGE OF VENUE ON STATE'S MOTION

§ 30:34 Statutory grounds

§ 30:35 State's motion—In general

§ 30:36 State's motion—Timeliness

§ 30:37 Procedure on state's motion

E. CHANGE OF VENUE ON COURT'S OWN MOTION

§ 30:39 Grounds for change of venue on court's motion

§ 30:41 Procedure—Notice

§ 30:42 Procedure—Hearing

F. CHANGE OF VENUE BY CONSENT

§ 30:47 Guilty plea cases

§ 30:48 Transfer by agreement for convenience

TABLE OF CONTENTS

H. PROCEDURE ON CHANGE OF VENUE

- § 30:53 Place to which venue is changed—State’s motion
- § 30:54 Place to which venue is changed—Defendant’s motion
- § 30:55 Place to which venue is changed—Court’s motion
- § 30:56 Place to which venue is changed—Preserving error
- § 30:57 Procedure in general
- § 30:58 Transmission of papers in the case
- § 30:59 Witnesses summoned
- § 30:61 Defendant’s custody and bond status—Defendant in custody
- § 30:63 Posttrial procedures

Table of Contents

CHAPTER 31. COMPETENCY TO STAND TRIAL

A. INTRODUCTION

- § 31:1 Competency to stand trial—In general
- § 31:3.50 Proceedings permissible despite incompetency or a duty to inquire as to competency; delays *[Retitled]*
- § 31:4.50 Competency and absence from trial *[New]*

B. CRITERIA FOR DETERMINING COMPETENCY

- § 31:5 Criteria for determining competency—In general
- § 31:10.50 Ability to assist in preparation and execution of defense *[New]*
- § 31:12 Amnesia as incompetency

C. GENERAL PROCEDURAL CONCERNS

- § 31:18 Jury trial on competency—In general

D. RAISING AND DETERMINING COMPETENCY

- § 31:21 Raising and resolving competency concerns—In general
- § 31:24 Timing of the trial on competency
- § 31:25 Inquiry into competency over defendant's objection
- § 31:29 Multiple inquiries into competency

E. THE INFORMAL INQUIRY INTO COMPETENCY

- § 31:31 Informal inquiry necessary upon suggestion that the defendant may be incompetent
- § 31:33.50 Legislative rejection of the “bone fide doubt” standard *[New]*
- § 31:34 Trial court's decision to not conduct informal inquiry entitled to deference
- § 31:35 Procedural aspects of the informal inquiry

F. EXAMINATION OF THE DEFENDANT

- § 31:43 Examination to determine mental illness or intellectual disability on sheriff's application to magistrate *[Retitled]*
- § 31:44 Qualifications of appointed examiner
- § 31:47 Mechanics of the examination
- § 31:50.50 Refusal to communicate with examiner *[New]*

G. THE “TRIAL” ON COMPETENCY

- § 31:53 Need for a trial—Evidence supporting a finding of incompetency
- § 31:55 Procedure at a jury trial on competency
- § 31:56.50 Qualifications of expert witnesses *[New]*

H. PROCEDURE UPON FINDING OF INCOMPETENCY

- § 31:64.50 “Jail-based” restoration of competency programs *[New]*

J. IMPAIRMENT DEVELOPING AFTER SENTENCING

- § 31:77 Incompetency to be executed

K. APPELLATE PROCEDURES

- § 31:78 Appellate remedies—In general
- § 31:79 Appellate remedies—2003 and 2005 revisions *[Retitled]*
- § 31:81 Retrospective competency determinations

CHAPTER 32. SECURING ATTENDANCE OF WITNESSES

D. IN-COUNTY WITNESSES—THE ATTACHMENT

- § 32:20 Requirements for an attachment of in-county witness—In general
- § 32:23 No subpoena necessary for attachment of witness reasonably believed about to move out of county
- § 32:24 Application for and issuance of attachment

G. OTHER SITUATIONS

- § 32:37 Imprisoned witnesses—Testimony by electronic means

H. SPECIAL PROBLEMS

- § 32:45.50 Defendant’s right to inquiry concerning witness’s invocation of self-incrimination rights *[New]*

CHAPTER 33. CONTINUANCES AND POSTPONEMENTS

C. DELAY BECAUSE OF RELIGIOUS HOLIDAY

- § 33:11 Court proceeding scheduled on religious day observed by defendant or counsel

TABLE OF CONTENTS

**C-1. DELAY BECAUSE OF INSUFFICIENT NOTICE
OF TRIAL OR HEARING *[New]***

§ 33:12.50 Right to delay if three days notice of setting of trial or hearing not provided *[New]*

E. PRETRIAL DELAY

§ 33:17 Pretrial delay to secure defense witnesses

G. PROCEDURE

§ 33:32 No due process exception to requirements that motion be written and under oath

§ 33:43 Defendant's pretrial motions for delay to secure witness—
Stating expectations of securing witness's attendance

§ 33:52 Resolving motions to secure witnesses—Likelihood of securing missing witness

**CHAPTER 34. HABEAS CORPUS
PROCEDURE—IN GENERAL**

A. INTRODUCTION

§ 34:2 Terminology—"Applicant" and "petition"

§ 34:4 Prerequisite of "restraint"

§ 34:5.50 Mootness *[New]*

**B. JURISDICTION AND AUTHORITY TO ISSUE
THE WRIT AND GRANT RELIEF**

§ 34:7 District courts

§ 34:8 County courts

§ 34:11 Courts of appeals

C. PROCEDURE IN HABEAS CORPUS MATTERS

§ 34:15 Procedure in general

§ 34:16 No filing fee

§ 34:17 Application for writ of habeas corpus *[Retitled]*

§ 34:18 Decision whether to issue the writ

§ 34:20 Substantive return on the writ by person restraining applicant

§ 34:25 Appellate review—Appeal by unsuccessful petitioner

CHAPTER 35. PRETRIAL HABEAS CORPUS

**B. PRETRIAL USE OF HABEAS CORPUS—
PROCEDURAL ASPECTS**

§ 35:2 Pretrial use of habeas corpus—In general

§ 35:4 Prerequisite of "restraint"

§ 35:8 Denial of pretrial habeas relief as error on appeal from conviction

- § 35:12 Forum for application and resolution of contentions—Felony cases
- § 35:13 Forum for application and resolution of contentions—Misdemeanor cases

C. BARS TO PROSECUTION OR CONVICTION RAISABLE BY HABEAS CORPUS

- § 35:16 Use of habeas corpus to raise bars to prosecution or conviction—In general
- § 35:17 Validity of penal law under which prosecution is brought—Facial validity
- § 35:17.50 Validity of penal law under which prosecution is brought—Freestanding anti-defensive issues *[New]*
- § 35:18 Validity of penal law under which prosecution is brought—Validity as applied
- § 35:19.50 Prosecution penalizing public official’s exercise of authority protected by separation of powers *[New]*
- § 35:23 Facial validity of charging instrument
- § 35:24 Limitation matters
- § 35:25 Defects in grand jury procedure
- § 35:29 Failure to hold examining trial after juvenile court waiver

CHAPTER 36. PRETRIAL HEARINGS

A. INTRODUCTION

- § 36:3.50 No jurisdiction to address issues not “ripe” for pretrial resolution *[New]*

B. THE “PRETRIAL STATUTE—ARTICLE 28.01

- § 36:4.25 Article 28.01 applies only to settings for before trial setting date *[New]*
- § 36:4.50 Trial court’s discretion as to whether to hold evidentiary hearing *[New]*
- § 36:5.50 Parties’ right to notice—In general *[New]*
- § 36:5.75 New statutory right to three days notice and continuance if this notice is not provided *[New]*
- § 36:6 Defendants’ right to notice of pretrial hearing
- § 36:6.50 State’s right to notice of pretrial hearing *[New]*

C. DUTY TO RAISE MATTERS BEFORE OR AT SCHEDULED PRETRIAL HEARING

- § 36:10 Defendants’ duty to raise pretrial matters before or at pretrial hearing—In general
- § 36:14 Settings that trigger duty

G. PRETRIAL DNA TESTING IN CAPITAL CASES *[New]*

- § 36:33 Pretrial DNA Testing in Capital Cases—In general *[New]*
- § 36:34 Required Testing *[New]*

TABLE OF CONTENTS

- § 36:35 Procedure *[New]*
- § 36:37 Additional testing on behalf of the defendant *[New]*
- § 36:38 Remedy and exclusion of other remedies *[New]*

CHAPTER 37. DISMISSALS

A. INTRODUCTION

- § 37:8 Jeopardy bar to reprosecution following dismissal after jeopardy attaches

C. DISMISSALS ON MOTIONS OF DEFENDANTS

- § 37:28 Dismissal as of constitutional right—In general
- § 37:32 Dismissal for prosecutorial misbehavior
- § 37:35 Dismissal during community supervision
- § 37:36 Dismissal on defendant's motion—With or without prejudice

E. EFFECT OF DISMISSALS

- § 37:38 Discharge of the accused upon dismissal

CHAPTER 38. JOINDER, CONSOLIDATION, AND SEVERANCE OF CHARGES

A. INTRODUCTION

- § 38:3 Alleging alternate theories distinguished from joinder
- § 38:7 Statutory framework—Charging instruments

C. CONSOLIDATION OF SEPARATE CHARGING INSTRUMENTS

- § 38:23 Consolidation—Written notice
- § 38:24 Consolidation—Single criminal action
- § 38:25 Consolidation—Defendant's options
- § 38:28 Common-law consolidation—In general

D. CONSEQUENCES OF JOINDER OR CONSOLIDATION

- § 38:33 Concurrent sentences—In general
- § 38:35 Concurrent sentences—Sex offenses against children
- § 38:36.50 Concurrent sentences—Trafficking and compelling prostitution; injury to a child, elderly or disabled person *[New]*
- § 38:36.51 Concurrent sentences—Combination of offenses under section 3.03 *[New]*
- § 38:38 Concurrent sentences—Community supervision

E. SEVERANCE OF JOINED OR CONSOLIDATED CHARGES

- § 38:43 Severance—In general

§ 38:45 Appellate remedy for severance denial

CHAPTER 39. JOINDER AND SEVERANCE OF DEFENDANTS

D. GROUND FOR MANDATORY SEVERANCE

§ 39:15 Admissible at penalty stage *[Retitled]*

E. GROUNDS FOR DISCRETIONARY SEVERANCE

§ 39:22 Codefendant's confession implicates defendant

CHAPTER 40. THE GUILTY PLEA PROCESS

A. INTRODUCTION

§ 40:2 Pleas of guilty and nolo contendere distinguished

B. WAIVER OF RIGHT TO TRIAL BY JURY

§ 40:5 Waiver by defendant—In general

§ 40:6 Waiver by defendant—The in-writing requirement and harmless error

§ 40:7 Waiver by defendant—In person

§ 40:8 Waiver by defendant—In open court

§ 40:9 Waiver by defendant—Rescinding prior waiver

§ 40:12 Consent and approval by prosecutor

C. JUDICIAL ADMONITIONS

§ 40:14 Texas Code of Criminal Procedure

§ 40:15 Admonitions—Judicial responsibility

§ 40:17 Admonitions—Pleading guilty by videoconference *[Retitled]*

§ 40:19 Admonitions—Range of punishment

§ 40:22 Admonitions—Range of punishment—Incorrect range stated—Punishment greater than stated maximum

§ 40:26 Admonitions—Range of punishment—Fines

§ 40:27 Admonitions—Range of punishment—Community supervision eligibility—No duty to admonish

§ 40:29 Admonitions—Range of punishment—Community supervision eligibility—Duty not to mislead defendant

§ 40:30 Admonitions—Consequences of deferred adjudication

§ 40:33 Admonitions—Immigration consequences—In general

§ 40:34 Admonitions—Immigration consequences—Harm

§ 40:35 Admonitions—Immigration consequences—Constitutional considerations *[Retitled]*

D. VOLUNTARINESS OF PLEAS

§ 40:38 Voluntariness of plea—Federal requirement

§ 40:40 Voluntariness of plea—Mental competence

§ 40:41 Voluntariness of plea—Free and voluntary—In general

TABLE OF CONTENTS

- § 40:42 Voluntariness of plea—Free and voluntary—Coercion
- § 40:43 Voluntariness of plea—Free and voluntary—Misinformation
- § 40:45 Voluntariness of plea—Conditional pleas

G. PLEA BARGAINING

- § 40:63 Statutory regulation of plea bargaining—In general
- § 40:65 Statutory regulation of plea bargaining—Ambiguous agreements
- § 40:66 Statutory regulation of plea bargaining—Judicial acceptance of deal
- § 40:68 Judicial participation in plea bargaining
- § 40:70 Negotiating the agreement—Deadlines, counteroffers, and withdrawals
- § 40:71 Negotiating the agreement—Defense counsel’s responsibilities
- § 40:72 Negotiating with a pro se defendant
- § 40:73 Waiving appeal as a plea agreement term
- § 40:74 Erroneous advice of counsel
- § 40:80 Remedies for broken or impossible promises
- § 40:81 Inadmissibility of plea discussions *[New]*

CHAPTER 41. SELECTION OF THE JURY

B. ASSEMBLING THE TRIAL PANEL

- § 41:2 Sources of jurors—In general
- § 41:4 Sources of jurors—The fair cross-section requirement
- § 41:5 Assembling the general jury panel
- § 41:6 Qualifying members of the general jury panel—In general
- § 41:8 Raising challenges to the process of summoning juror
- § 41:9 The jury shuffle—In general
- § 41:14 The shuffle—*Batson* inquiry

C. PROCEDURAL ASPECTS OF VOIR DIRE OF THE TRIAL PANEL

- § 41:15 In general
- § 41:16 Right of the Defendant and the public to be present *[Retitled]*
- § 41:17 Time restrictions
- § 41:18 Questions that may be asked—In general
- § 41:23 Questions that may be asked—Relevancy to peremptory challenges—Defenses
- § 41:24 Questions that may be asked—Relevancy to peremptory challenges—Definitions of legal terms
- § 41:25 Questions that may be asked—Relevancy to peremptory challenges—Punishment
- § 41:27 Questions that may be asked—Duplication
- § 41:28 Questions that may be asked—Seeking commitment
- § 41:29 Questions that may be asked—Harm
- § 41:30 Juror information forms

D. CHALLENGES FOR CAUSE

- § 41:33 In general

- § 41:35 Absolute disqualification—In general
- § 41:36 Absolute disqualification—Convicted of felony or theft
- § 41:37 Absolute disqualification—Charged with felony or theft
- § 41:41 Ground for challenge—Not a qualified voter
- § 41:50 Ground for challenge—Served as panelist or juror—Recent panel service
- § 41:52 Ground for challenge—Bias or prejudice in favor of or against defendant—In general
- § 41:61 Ground for challenge—Conclusion as to guilt or innocence—Evidence to prove innocence
- § 41:62 Ground for challenge—Conclusion as to guilt or innocence—Right to question regarding publicity
- § 41:64 Ground for challenge—Cannot read or write
- § 41:65 Ground for challenge—Bias or prejudice against the law—In general
- § 41:66 Ground for challenge—Bias or prejudice against the law—Proof beyond a reasonable doubt
- § 41:76 Ground for challenge—Bias or prejudice against the law—Punishment—Death penalty
- § 41:79 Ground for challenge—Bias or prejudice against the law—Punishment—Community supervision
- § 41:80 Ground for challenge—Harm
- § 41:81 Appellate review of challenges for cause

E. PEREMPTORY CHALLENGES (INCLUDING BATSON)

- § 41:85 Supreme Court framework—Defendant’s race
- § 41:94 Procedural requirements for making a *Batson* claim—Timing of objection
- § 41:103 Explanations for strikes—Prior criminal record
- § 41:106 Explanations for strikes—Demeanor and body language
- § 41:114 Challenging explanations for strikes—Comparative analysis—Appellate record

F. ALLOWING LESS THAN THE USUAL NUMBER OF JURORS

- § 41:117 Waiver of full jury
- § 41:118 Replacement of disabled jurors

CHAPTER 42. ELECTION AMONG ACTS SHOWN BY THE EVIDENCE

A. INTRODUCTION

- § 42:2 Election and abandonment—In general

B. ELECTION GENERALLY

- § 42:6 Rationale for election requirement

TABLE OF CONTENTS

C. SITUATIONS REQUIRING ELECTION

§ 42:8 Situations requiring election—In general

D. PROCEDURE FOR ELECTION

§ 42:14 Defendant’s duty to seek election—In general

§ 42:19 When in the proceeding the State must be required to elect—
In general

§ 42:22 The election—Jury submission following election

§ 42:23 Error in failing to require election as constitutional error

§ 42:24 Harm analysis when election error is constitutional

CHAPTER 43. JURY INSTRUCTIONS

A. INTRODUCTION

§ 43:1 In general

§ 43:3 Objections and fundamental error

B. ELEMENTS OF THE OFFENSE CHARGED

§ 43:5 In general

§ 43:6 Culpable mental state—Basic requirement

§ 43:7 Culpable mental state—Specified result offenses

§ 43:10 Culpable mental state—Showing egregious harm

§ 43:11 Law of parties—In general

§ 43:13 Law of parties—Requirement of a full application paragraph

§ 43:14 Law of parties—Insufficient evidence defendant was primary
actor

§ 43:17 Law of transferred intent—In general

§ 43:19 Law of transferred intent—Insufficient evidence

§ 43:20 Multiple theories of liability—Jury agreement on a single
theory not required

§ 43:21 Multiple theories of liability and the requirement of jury
unanimity

C. BURDEN OF PROOF

§ 43:27 Comment on the weight of the evidence—Reason for the
prohibition

D. DEFENSES AND AFFIRMATIVE DEFENSES

§ 43:30 In general

§ 43:31 Instructions on all defensive theories

§ 43:33 Misidentification and alibi

§ 43:34 Accident

§ 43:36 Mistake of fact

§ 43:37 Necessity and duress

§ 43:38 Self-defense and defense of others

§ 43:40 Special relationship use of force

§ 43:44 Insanity

E. LESSER INCLUDED OFFENSE JURY INSTRUCTIONS

- § 43:47 Lesser included offenses—Request for instruction
- § 43:48 Lesser included offense definition
- § 43:49 Lesser included offense—Evidentiary support
- § 43:50 Lesser included offense—Harmless error
- § 43:51 Lesser included offense—Effect on appellate evidence sufficiency claims

F. PENALTY PHASE INSTRUCTIONS

- § 43:53 Range of punishment—In general
- § 43:56 Range of punishment—Erroneous minimum sentence
- § 43:60 Community supervision
- § 43:62 Parole and good conduct—The original jury instruction
- § 43:66 Parole and good conduct—Mandatory release
- § 43:69 Penalty phase mitigation of murder for reasonably provoked defendant

CHAPTER 44. JURY SUBMISSION OF LEGALITY OF OBTAINING EVIDENCE AND CONFESSION MATTERS

A. INTRODUCTION

- § 44:5 Failure to submit issues as fundamental error—Legality of obtaining evidence under Article 38.23(a)
- § 44:6 Failure to submit issues as fundamental error—Article 38.22, section 6

B. SUBMISSION OF CONFESSION ISSUES UNDER ARTICLE 38.22

2. ISSUES ON WHICH SUBMISSION MAY BE REQUIRED

- § 44:12 Warnings under Article 38.22, section 7

3. RAISING THE ISSUE FOR JURY SUBMISSION

- § 44:19 Warnings and related matters under Article 38.22, section 7

D. SUBMISSION OF LEGALITY OF OBTAINING EVIDENCE UNDER ARTICLE 38.23

2. ISSUES ON WHICH SUBMISSION MAY BE REQUIRED

TABLE OF CONTENTS

§ 44:40 Scope of issues subject to jury determination—“Application”
issues contrasted with issues of historical fact

**3. RAISING THE ISSUE FOR JURY
SUBMISSION**

§ 44:41 Raising a right to jury submission

CHAPTER 45. CLOSING ARGUMENT

A. INTRODUCTION

§ 45:2 Constitutional right to argue

B. PROCEDURES FOR CLOSING ARGUMENT

§ 45:4 In general

C. ARGUING OUTSIDE THE RECORD

§ 45:16 Community messages and expectations

**D. COMMENT ON FAILURE OF DEFENDANT TO
TESTIFY**

§ 45:21 Resolve ambiguities in favor of state

§ 45:25 Penalty stage comments

§ 45:28 Harmless error

E. ARGUING CONTRARY TO THE LAW

§ 45:32 “Golden Rule” arguments asking the jurors to put themselves
in the shoes of the victim

Table of Contents

CHAPTER 46. PENALTY PHASE OF THE TRIAL

B. BIFURCATION AND JURY PUNISHMENT

- § 46:3 In general
- § 46:6 Bifurcation—Statutory structure
- § 46:9 When jury punishment must be elected
- § 46:10 Election when there is a pretrial hearing
- § 46:11 Election when there was no pretrial hearing
- § 46:12 Changing the election of punishment
- § 46:13 When the jury fails to agree on punishment
- § 46:14 When there is punishment error
- § 46:15 Waiver of punishment phase claims by defendant's admission of guilt

C. CHARACTER EVIDENCE

- § 46:16 In general

D. PRIOR CRIMINAL RECORD

- § 46:30 Deferred adjudication
- § 46:31 Juvenile adjudications

E. UNADJUDICATED OFFENSES

- § 46:33 Before the 1989 amendment
- § 46:41 Balancing probative value with prejudicial effect
- § 46:42 Proof beyond a reasonable doubt—In general
- § 46:43 Proof beyond a reasonable doubt—Admissibility or sufficiency?
- § 46:44 Proof beyond a reasonable doubt—Instruction requiring

F. AGGRAVATING AND MITIGATING EVIDENCE

- § 46:48 In general
- § 46:49 Opinion regarding proper punishment
- § 46:50 Victim impact written statement
- § 46:52 Victim impact evidence
- § 46:54 Gang membership

G. DEADLY-WEAPON FINDINGS

- § 46:57 In general
- § 46:61 Notice of intent—In indictment

- § 46:64 Three steps
- § 46:66 Proof—Party liability
- § 46:68 Proof—What can be a deadly weapon?
- § 46:69 Proof—Relation of weapon to felony
- § 46:70 Affirmative finding—In general
- § 46:71 Affirmative finding—Who makes?
- § 46:72 Affirmative finding—When offense already is 3g
- § 46:76 Entry of affirmative finding in judgment—Community supervision

H. ENHANCEMENT OF PUNISHMENT AND HABITUAL OFFENDER TREATMENT

- § 46:78 In general
- § 46:79 Enhancement under the Controlled Substances Act
- § 46:80 DWI enhancement provisions—In general
- § 46:82 DWI enhancement provisions—Prior community supervision
- § 46:86 Family violence enhancement to felony
- § 46:88 Sex offender mandatory life provision
- § 46:89 Enhancement under hate crimes legislation
- § 46:90 Enhancement for offenses committed in disaster area
- § 46:91 Finality of prior conviction—Community supervision
- § 46:93 Finality of prior conviction—Sister state community supervision
- § 46:94 Finality of prior conviction—Appeal
- § 46:101 Habitual offender—Proof of sequence
- § 46:102 Habitual offender—State jail felony
- § 46:105 Pleading requirements—Sequence allegations
- § 46:110 Defenses—Void convictions based on charging instrument defects
- § 46:111 Defenses—Other void convictions

I. PRESENTENCE INVESTIGATION AND REPORT TO COURT

- § 46:112 In general
- § 46:114 Hearsay
- § 46:115 Contents of the report—In general
- § 46:116 Contents of the report—Alcohol or drug abuse evaluation
- § 46:117 Contents of the report—Mental impairment evaluation in felony cases
- § 46:118 Contents of the report—Arrests and unadjudicated offenses
- § 46:119 Contents of the report—Juvenile record
- § 46:120 Presentence investigation interview of defendant—Privilege against self-incrimination considerations
- § 46:121 Presentence investigation interview of defendant—Right to counsel considerations
- § 46:122 Disclosure of the presentence report
- § 46:123 Admitting the report into evidence
- § 46:124 Jury sentencing
- § 46:125 Considering the presentence report before conviction
- § 46:126 Use for deferred adjudication

TABLE OF CONTENTS

- § 46:127 Use of presentence report to assess punishment
- § 46:128 Mandatory presentence investigations—Felonies
- § 46:129 Mandatory presentence investigations—Misdemeanors

J. RESTITUTION

- § 46:130 In general
- § 46:132 Imprisonment for debt
- § 46:134 Ability to pay
- § 46:135 Requirement of a factual basis for restitution order
- § 46:136 What losses can be considered
- § 46:137 No criminal responsibility for injury
- § 46:139 Victims not named in the indictment
- § 46:140 Multiple defendants
- § 46:143 Restitution as a condition of parole
- § 46:144 Restitution liens
- § 46:145 Mandatory restitution

K. CONCURRENT AND CONSECUTIVE SENTENCES

- § 46:146 In general
- § 46:150 When concurrent sentences are mandatory
- § 46:152 Specificity in the cumulation order
- § 46:158 Release under consecutive sentences

L. CONSTITUTIONAL LIMITATIONS ON THE POWER TO SENTENCE

- § 46:160 Constitutional limitations on the power to sentence—In general
- § 46:161 Constitutional limitation—Due process protections against judicial vindictiveness
- § 46:162 Eighth Amendment Cruel and Unusual Punishment Clause
- § 46:163 Right to jury and proof beyond a reasonable doubt
- § 46:164 Ex Post Facto Clause

CHAPTER 47. COMMUNITY SUPERVISION— ELIGIBILITY AND CONDITIONS

A. INTRODUCTION

- § 47:1 In general

B. TYPES OF COMMUNITY SUPERVISION

- § 47:3 In general
- § 47:4 Basic differences
- § 47:5 Regular community supervision
- § 47:7 Shock community supervision
- § 47:8 State jail felony community supervision
- § 47:9 Different eligibility requirements

C. REGULAR COMMUNITY SUPERVISION FROM JURY

- § 47:11 Felony community supervision from jury—10-year rule
- § 47:12 Felony community supervision from jury—Prior felony conviction—In general
- § 47:13 Felony community supervision from jury—Prior felony conviction—Regular community supervision
- § 47:14 Felony community supervision from jury—Prior felony conviction—Deferred adjudication
- § 47:16 Felony community supervision from jury—Proving no prior felony conviction
- § 47:17 Felony community supervision from jury—Sworn motion—In general
- § 47:18 Felony community supervision from jury—Sworn motion—Timely filed
- § 47:19 Felony community supervision from jury—Sworn motion—Contents
- § 47:20 Felony community supervision from jury—Excluded offenses
- § 47:21 Misdemeanor community supervision from jury—In general
- § 47:22 Misdemeanor community supervision from jury—Prior felony conviction
- § 47:23 Misdemeanor community supervision from jury—Sworn statement

D. REGULAR COMMUNITY SUPERVISION FROM JUDGE

- § 47:24 Regular felony community supervision from judge—In general
- § 47:25 Regular felony community supervision from judge—10-year rule
- § 47:26 Regular felony community supervision from judge—Excluded offenses
- § 47:27 Regular felony community supervision from judge—Deadly weapon—In general
- § 47:28 Regular felony community supervision from judge—Deadly weapon—Three steps
- § 47:29 Regular misdemeanor community supervision from judge

E. DEFERRED ADJUDICATION COMMUNITY SUPERVISION

- § 47:30 Deferred adjudication community supervision—In general
- § 47:31 Deferred adjudication community supervision—Finding of guilt
- § 47:32 Deferred adjudication community supervision—Judge only
- § 47:33 Deferred adjudication community supervision—Guilty or nolo plea only
- § 47:34 Deferred adjudication community supervision—Excluded offenses
- § 47:35 Deferred adjudication community supervision—Sex offense requirements

TABLE OF CONTENTS

F. SHOCK COMMUNITY SUPERVISION

- § 47:36 Shock community supervision—In general
- § 47:37 Shock community supervision—Felony—In general
- § 47:38 Shock community supervision—Felony—Eligible for judge-ordered community supervision
- § 47:39 Shock community supervision—Felony—Prior penitentiary experience
- § 47:40 Shock community supervision—Felony—Time restrictions—In general
- § 47:41 Shock community supervision—Felony—Time restrictions—When sentence begins
- § 47:42 Shock community supervision—Felony—Time restrictions—Noncompliance
- § 47:43 Shock community supervision—Felony—Time restrictions—Parole
- § 47:44 Shock community supervision—Felony—From jail
- § 47:45 Shock community supervision—Misdemeanor
- § 47:46 Shock community supervision—Felony—“Boot camp”

G. STATE JAIL FELONY COMMUNITY SUPERVISION

- § 47:47 State jail felony community supervision—In general
- § 47:48 State jail felony community supervision—Regular
- § 47:49 State jail felony community supervision—Shock
- § 47:50 State jail felony community supervision—Deferred adjudication

H. COMMUNITY SUPERVISION CONDITIONS

- § 47:51 In general
- § 47:55 Must be related to treatment and protection
- § 47:56 Must not violate a constitutional or statutory right
- § 47:58 Must not delegate authority to others
- § 47:59 Commit no offense
- § 47:60 Avoid injurious or vicious habits
- § 47:61 Avoid disreputable or harmful places
- § 47:62 Avoid disreputable or harmful persons
- § 47:63 Report to community supervision officer
- § 47:64 Permit community supervision officer to visit
- § 47:65 Work faithfully at suitable employment
- § 47:66 Remain within a specified place
- § 47:67 Support dependents
- § 47:68 Confinement in jail, prison, or community corrections facility
- § 47:69 Monetary conditions of community supervision
- § 47:70 Installation of ignition interlock device *[Retitled]*
- § 47:71 Submit a DNA sample to DPS
- § 47:72 Provide public notice of the offense
- § 47:73 Alcohol or drug testing and counseling
- § 47:74 Attain educational skills
- § 47:75 Mental illness or retardation treatment *[Retitled]*

- § 47:76 Sex offender registration
- § 47:77 No contact with victim
- § 47:78 Pet owner course *[New]*
- § 47:78.50 Leaving the scene of a motor vehicle accident resulting in the death of a person *[New]*
- § 47:78.75 Certain prostitution offenses *[New]*
- § 47:79 Mandatory consequences of transmitting visual electronic material course *[New]*
- § 47:80 Community service option *[New]*
- § 47:81 Veterans reemployment program *[New]*

CHAPTER 48. COMMUNITY SUPERVISION— REVOCATION AND DISCHARGE

A. INTRODUCTION

- § 48:1 In general

B. INITIATING THE PROCEEDINGS

- § 48:3 In general
- § 48:4 Taking a defendant into custody for a violation
- § 48:5 Community supervision “hold”
- § 48:6 Probable cause
- § 48:7 Bail—Felony community supervision
- § 48:8 Bail—Misdemeanor community supervision
- § 48:9 The 20-day rule—In general

C. MOTION TO REVOKE OR TO PROCEED TO JUDGMENT

- § 48:21 The requirement of a written motion
- § 48:22 Deadline for filing motion
- § 48:24 Amendments—Misdemeanors
- § 48:25 Amendments—Felonies
- § 48:30 Pleading—Place of violation
- § 48:36 Defendant’s pleas to the motion

D. THE REVOCATION OR PROCEED TO JUDGMENT HEARING—PROCEDURES

- § 48:38 Jurisdiction to conduct hearing
- § 48:41 Hearing after community supervision expires—Capias issued
- § 48:42 Hearing after community supervision expires—Prompt hearing
- § 48:43 Hearing delay—Due diligence
- § 48:44 Hearing after community supervision expires—Deferred adjudication
- § 48:47 Legislative modification of due diligence
- § 48:48 Jury trial
- § 48:49 Right to counsel
- § 48:50 Evidentiary restrictions—In general

TABLE OF CONTENTS

- § 48:51 Evidentiary restrictions—Fourth and Fifth Amendment violations
- § 48:52 Evidentiary restrictions—Confessions
- § 48:53 Evidentiary restrictions—Hearsay
- § 48:56 Appeal from revocation order

E. THE REVOCATION HEARING—PROOF

- § 48:57 Burden of persuasion—In general
- § 48:59 Burden of persuasion—Nonpayment of monies
- § 48:60 Proving notice of community supervision conditions
- § 48:62 Proving criminal conduct—In general
- § 48:65 Proving criminal conduct—Direct proof in revocation hearing—Collateral estoppel

F. DEFENSES

- § 48:70 No evidence to support conviction
- § 48:71 Competency to stand trial
- § 48:72 Validity of proceedings leading to community supervision
- § 48:73 Defect in charging instrument
- § 48:75 Defendant was not eligible for community supervision

G. SENTENCING FOLLOWING REVOCATION OR ENTRY OF JUDGMENT OF GUILT

- § 48:77 In general
- § 48:79 Sentencing discretion—Regular community supervision
- § 48:80 Sentencing discretion—Deferred adjudication community supervision
- § 48:81 Sentencing discretion—Shock community supervision
- § 48:83 Sentencing discretion—Refusal to consider mitigating circumstances
- § 48:84 Credit on the sentence

H. THE COMMUNITY SUPERVISION TERM

- § 48:85 In general
- § 48:86 Stacking community supervision terms
- § 48:88 Relationship between community supervision term and punishment assessed
- § 48:90 Ending the community supervision term
- § 48:91 Extending the community supervision term
- § 48:92 Extending the community supervision term for sex offenders

I. EARLY DISCHARGE FROM COMMUNITY SUPERVISION AND DISMISSAL OF THE ACCUSATION

- § 48:93 In general
- § 48:94 Early discharge—Regular or shock
- § 48:95 Early discharge—Deferred adjudication

- § 48:96 Dismissal of accusation—Regular or shock community supervision
- § 48:97 Dismissal of accusation—Deferred adjudication
- § 48:98 Dismissal of accusation—Consequences for defendant

CHAPTER 49. PENALTY PHASE OF CAPITAL CASES

A. INTRODUCTION: *FURMAN* AND THE CONSTITUTIONALIZATION OF THE DEATH PENALTY IN AMERICA

- § 49:1 Scope of this chapter

B. THE TEXAS LEGISLATIVE RESPONSE TO *FURMAN* AND THE 1976 CASES

- § 49:10 Capital murder in Texas, legislative narrowing at the first stage of trial
- § 49:13 Lingering doubts about the Texas special issues and the tension between guided discretion and full consideration of mitigating evidence

C. THE DECLINE OF STRUCTURED DISCRETION AND THE RISE OF THE IMPORTANCE OF MITIGATING EVIDENCE CULMINATING IN *PENRY*

- § 49:17 The rise of required individualization and the tension with the goal of consistency
- § 49:19 The sentencer must be willing to consider mitigating evidence: *Eddings* and *Skipper*
- § 49:20 The jury must be able to give meaningful consideration to mitigating evidence: *Penry*

D. THE TEXAS RESPONSE TO *PENRY*

- § 49:22 The Texas response to challenges by death-row inmates convicted before *Penry*: procedural default
- § 49:23 The Texas response to challenges by death-row inmates convicted before *Penry*: *Franklin* or *Penry*?
- § 49:24 Procedural responses to cases tried after *Penry* but before the legislative revision of the Texas death penalty statutes
- § 49:26 The legislative response to *Penry*. Offenses committed after September 1, 1999
- § 49:27 Evaluating the legislative response to *Penry*
- § 49:28 Legislative expansion of the substantive scope of the offense of capital murder

E. CATEGORICAL EXCLUSIONS FROM THE DEATH PENALTY

- § 49:33 Revival of categorical exclusions from the death penalty

TABLE OF CONTENTS

- § 49:34 Atkins and the categorical exclusion of the mentally impaired
[Retitled]
- § 49:35 Implementing *Atkins*
- § 49:36 Categorical exclusion of juveniles from the death penalty

F. PROCEDURAL ISSUES IN CAPITAL CASES

- § 49:37 Procedural issues at the penalty stage of a capital case: double jeopardy
- § 49:38 Procedural issues at the penalty stage of a capital case: burden of proof
- § 49:44 Procedural issues at the penalty stage of a capital case: closing argument and jury instructions
- § 49:47 Procedural issues after trial. *Ford v. Wainwright* and incompetency to be executed
- § 49:48 Implementing *Ford*

CHAPTER 50. MOTION FOR NEW TRIAL PRACTICE

A. INTRODUCTION

- § 50:1 In general

B. GROUNDS FOR NEW TRIAL

- § 50:4 In general
- § 50:5 Grounds stated in rule not exhaustive list
- § 50:6 Limited grant of new punishment hearing

D. PROCEDURAL REQUIREMENTS

- § 50:13 Filing requirements—Time limits
- § 50:14 Filing requirements—Exceptions to time limits
- § 50:16 Presentation requirement
- § 50:17 Possible hearing on new trial motion
- § 50:20 Ruling on the motion—Rescinding the ruling

E. NEWLY DISCOVERED EVIDENCE

- § 50:22 The basic requirements
- § 50:23 Unknown to movant before trial

F. JURY DELIBERATIONS

- § 50:27 In general
- § 50:28 Rule 606(b)
- § 50:29 Receipt of other evidence
- § 50:31 Talking to unauthorized persons about case
- § 50:31.10 “Outside influence” and Article 36.22 [New]
- § 50:34 Discussion of parole

CHAPTER 51. EVIDENCE SUFFICIENCY

A. INTRODUCTION

§ 51:2 Rules for evidence sufficiency review versus rules for trier of fact application

B. PROCEDURE FOR EVIDENCE SUFFICIENCY REVIEW

1. INTRODUCTION

§ 51:12 Evidence considered in conducting review

2. TRIAL REVIEW—MOTION FOR INSTRUCTED VERDICT

§ 51:17 Procedure for triggering trial court's review of evidence
[Retitled]

3. POSTVERDICT REVIEW BY TRIAL COURT

§ 51:22 Conducting postverdict review of the evidence

C. BASIS FOR EVIDENCE REVIEW— HYPOTHETICALLY CORRECT JURY CHARGE

§ 51:26 Adoption of the hypothetically correct jury charge for evidence sufficiency review

§ 51:26.50 State law versus federal constitutional review *[New]*

§ 51:27 Application of the hypothetically correct jury charge analysis—In general

E. CRITERIA FOR EVIDENCE SUFFICIENCY—IN GENERAL

1. INTRODUCTION

§ 51:37 Criteria for review of evidence—In general

§ 51:38 Evidence sufficiency review when alternative theories are submitted to jury

§ 51:41 Evidence of “sudden passion” in murder and manslaughter prosecutions

§ 51:45 Evidence supporting culpable mental state

§ 51:46.50 Prohibited “divide and conquer” approach and need to consider all the evidence *[New]*

§ 51:49 Need for corroboration in “offer to sell” drug delivery cases

2. “LEGAL” SUFFICIENCY REVIEW

§ 51:51 Development of the basic criterion

§ 51:52 Application of the basic criterion

§ 51:53 Consideration of only evidence supporting guilt

TABLE OF CONTENTS

- § 51:54 Viewing evidence in light most favorable to verdict
- § 51:56 Evidence supporting rejection of defenses
- § 51:57 Evidence supporting rejection of affirmative defenses
- § 51:57.50 No generally-applicable corpus delicti rule *[New]*
- § 51:59 Legal sufficiency of evidence in circumstantial evidence cases—In general
- § 51:60 Legal sufficiency of evidence in circumstantial evidence cases—Lack of reasonable hypotheses consistent with innocence under general sufficiency analysis
- § 51:61 Legal sufficiency of evidence in circumstantial evidence cases—“Affirmative link” in drug cases

3. “FACTUAL SUFFICIENCY” REVIEW

- § 51:63 Rejection of the factual sufficiency of review power
- § 51:64 Factual sufficiency of review on defenses and affirmative defenses
- § 51:64.50 Factual sufficiency review on matters provable on less than proof beyond a reasonable doubt *[New]*

F. ACCOMPLICE WITNESS RULE

3. DEFINITION OF ACCOMPLICE WITNESS

- § 51:75 Definition of accomplice witness—In general

4. JURY SUBMISSION

- § 51:87 Jury submission—In general
- § 51:88 Submission of witness’s status to jury versus instructing jury that witness is accomplice “as a matter of law”—In general

5. EVIDENCE SUFFICIENCY REVIEW

- § 51:96 Jury instructed to determine whether witness is accomplice

6. SUFFICIENCY OF CORROBORATION

- § 51:99 Sufficiency of corroboration—Relationship to criteria for evidence sufficiency review
- § 51:101 Motive, opportunity, or presence and other “suspicious” circumstances—Cumulative circumstantial evidence
- § 51:106 Testimony of informer whose testimony must be corroborated
- § 51:107 Out-of-court statements of accomplice

G. CORROBORATION OF CONFESSIONS

- § 51:111 Corroboration requirement—In general
- § 51:112.50 Corroboration requirement—Traditional rule reaffirmed *[New]*
- § 51:113 Definition of extrajudicial confessions to which rule applies
- § 51:115 Corroboration required—Independent proof of the corpus delicti

§ 51:117.50 Required corroboration—Closely related crimes *[New]*

H. VICTIM TESTIMONY IN SEXUAL ASSAULT PROSECUTIONS

§ 51:120 Offenses to which requirement is applicable

CHAPTER 52. VARIANCE BETWEEN CHARGING INSTRUMENT AND THE PROOF

A. INTRODUCTION

§ 52:2 Definition of a variance

B. TRADITIONAL VARIANCE LAW

§ 52:14 Retrial after acquittal on variance grounds—Limit on and questionable status of traditional rule

C. VARIANCE ANALYSIS UNDER *GOLLIHAR V. STATE*

§ 52:16 *Gollihar's* revision of surplusage and variance law

§ 52:18 Materiality of variances—In general

§ 52:19 Materiality of variances—Applying the materiality standard

§ 52:19.25 Materiality of variances—State's responsibility for nonmaterial variance *[New]*

§ 52:19.50 Materiality of variances—Variances of no significance whether material or not *[New]*

§ 52:19.75 Materiality of variances—Variances concerning descriptions related to the unit of prosecution *[New]*

§ 52:20 Variances regarding pleaded statutory alternative elements and other required allegations

§ 52:20.50 Complete failure to prove pleaded matter distinguished from variance *[New]*

§ 52:23 "Lack of notice" claims not tied to evidence sufficiency

F. SPELLING VARIANCES AND IDEM SONANS

§ 52:32 Spelling variances and idem sonans after *Gollihar*

G. VARIANCE AND OTHER PROBLEMS CREATED BY PLEADING MATTERS "UNKNOWN"

§ 52:34 Traditional "unknown" law

§ 52:34.50 *Sanchez* withdrawn *[New]*

§ 52:37 Pretrial challenge to propriety of unknown allegation

§ 52:38 Post-evidence trial challenge to propriety of unknown allegation

§ 52:39 Jury submission of known, unknown and unknowable matters

TABLE OF CONTENTS

- § 52:40 Remedy for error in the procedure
- § 52:41 Evidence sufficiency challenges

H. OTHER PROBLEMS IN VARIANCE ANALYSIS

- § 52:42 State not bound to date alleged
- § 52:49 Variances regarding offenses used for enhancement

CHAPTER 53. PRESERVING ERROR FOR APPEAL

B. CONCEPTUAL CONSIDERATIONS RELATING TO TRIAL COURT ERROR AND PRESERVATION OF SUCH ERROR

- § 53:7 Conceptualizing, identifying, and formulating claims of error
- § 53:13 Preservation of error and the *Marin v. State* analyses
- § 53:14.50 Jury-charge error [*New*]

C. ESTOPPEL AND INVITED ERROR

- § 53:15 Estoppel, invited error, and preservation of error
- § 53:16 Invited error—In general
- § 53:21 Estoppel by trial court action

D. GENERAL PRESERVATION CONSIDERATIONS

- § 53:24 Duty of State to preserve error when State appeals
- § 53:27 Raising nonpreservation of error

E. MOTIONS FOR NEW TRIAL AND PRESERVATION OF ERROR

- § 53:31 Motion may be appropriate vehicle for preserving error
- § 53:31.50 Motion for new trial never required to preserve error even if motion is only method of raising issue in trial court [*New*]
- § 53:32 Motion for new trial cannot be used to cure earlier failure to preserve error

F. RAISING COMPLAINTS IN THE TRIAL COURT

1. INTRODUCTION

- § 53:37 General requirement of presentation to trial court by request, objection, or motion
- § 53:39 Pretrial and other “anticipatory” rulings as sufficient to preserve error—In general

2. GENERAL CONSIDERATIONS

§ 53:42 Exceptions and other “objections” to adverse rulings—In general

3. TIMELINESS OF REQUEST, OBJECTION, OR MOTION

§ 53:53 Timeliness of request, objection, or motion—In general

§ 53:55.50 Timeliness of request, objection, or motion—Need to raise matter during taking of evidence on motion *[New]*

§ 53:57 Timely objection to testimony by witness

4. NO OPPORTUNITY TO OBJECT

§ 53:63 Objection unnecessary where no opportunity to object presented—In general

§ 53:64.50 Claims of error arising after end of trial *[New]*

5. SPECIFICITY OF TRIAL REQUEST, OBJECTION, OR MOTION

§ 53:65 Specificity of trial request, objection, or motion—In general

§ 53:65.50 Specificity of trial request, objection, or motion—Motion for mistrial as objection *[New]*

§ 53:66 Identifying the event on which request, objection, or motion is based

§ 53:68 Legal basis for relief sought

§ 53:68.50 Legal basis for relief sought—Constitutional basis *[New]*

§ 53:72 Legal basis for relief sought—State law as different than federal counterpart

6. NEED TO SEEK RELIEF “EACH TIME”

§ 53:80 Need to object “each time”—In general

7. NEED TO REQUEST ALL RELIEF

§ 53:85 General rule requiring request for all possibly appropriate relief—Objection, motion for instruction to disregard, and motion for mistrial

8. TRIAL COURT RULING

§ 53:88 Need to obtain trial court ruling—In general

§ 53:89 What constitutes a ruling

§ 53:89.50 What constitutes a ruling—Admitting challenged evidence without explicitly overruling objection *[New]*

G. MOTIONS IN LIMINE AND RELATED MATTERS

§ 53:102.50 Motion in limine understood to be motion to exclude *[New]*

TABLE OF CONTENTS

J. APPELLEE’S BURDEN TO RAISE ISSUES IN THE TRIAL COURT

- § 53:111 *Callaway* rule—Trial court decision to be upheld on any theory of law applicable to the case
- § 53:113 *Callaway* rule inapplicable—In general
- § 53:114 *Callaway* rule inapplicable—Trial court did not exercise discretion
- § 53:115 *Callaway* rule inapplicable—Appellant deprived of opportunity to meet theory
- § 53:115.50 Forfeiture by appellant of ability to rely on *Callaway* rule [New]

L. PRESERVING ERROR—OFFERED EVIDENCE EXCLUDED

- § 53:124 The offer of proof—Specifying the legal basis for admissibility

M. FUNDAMENTAL ERRORS

- § 53:135 Conceptual basis for and rationale of fundamental error
- § 53:137 Unconstitutionality of statute upon which conviction is based—Traditional rule permitting “facial” challenges
- § 53:138 Unconstitutionality of statute upon which conviction is based—Even facial challenges cannot be raised for first time on appeal
- § 53:140 Former jeopardy
- § 53:148 Unauthorized sentence

N. LOSS OF PRESERVED ERROR BY EXPLICIT WAIVER, ABANDONMENT, OR ACQUIESCENCE

- § 53:150 The “no objection” rule
- § 53:152 Acquiescence in trial court ruling

O. LOSS OF PRESERVED ERROR—THE HARMLESS ERROR/WAIVER DOCTRINE PREVIOUSLY KNOWN AS “CURATIVE ADMISSIBILITY”

- § 53:155 Curative admissibility terminology abandoned

P. THE FORMER *DEGARMO* DOCTRINE

- § 53:165.50 Abandonment of the *DeGarmo* doctrine [New]

Table of Contents

CHAPTER 54. APPELLATE REVIEW OF CLAIMS OF ERROR IN THE JURY CHARGE

A. INTRODUCTION

§ 54:2 Relevant legal requirements—Fundamental, systemic, absolute matters

B. PRESERVING ERROR IN THE JURY CHARGE

§ 54:4 Objections

C. FUNDAMENTAL ERROR IN THE JURY CHARGE—THE *ALMANZA* DOCTRINE

- § 54:10 “Fundamental” errors in jury charges—In general
- § 54:13 Invited error in the charge, estoppel, and waiver of jury charge error
- § 54:16 When *Almanza* applies—Failure to instruct on defensive matters
- § 54:17 When *Almanza* applies—Failure to accurately instruct on defensive matters
- § 54:17.50 When *Almanza* applies—Failure to instruct on all elements of offense [*New*]

E. HARMLESS ERROR WHERE STATE LAW ERROR IS PRESERVED

- § 54:25 Preserved error in jury charges—*Almanza*’s harmless error standard
- § 54:27 Preserved error in jury charges—Failure to instruct on defensive theory
- § 54:29 Failure to submit lesser included offenses—Lesser included offenses of lesser included offenses

F. HARMLESS ERROR WHERE STATE LAW ERROR IS UNPRESERVED AND THUS FUNDAMENTAL

- § 54:31 *Almanza*’s “egregious harm” standard
- § 54:31.50 No deference affording trial court conclusions [*New*]
- § 54:32 Burden of persuasion
- § 54:33 Likelihood of conviction on untainted reasoning and evidence

- § 54:34 Stress on the tainted matter
- § 54:36 Other considerations in assessing harm

CHAPTER 55. DIRECT APPEAL—THE MECHANICS

B. GENERAL CONSIDERATIONS

- § 55:6 Need for written order

C. PERFECTING APPEALS

1. INTRODUCTION

- § 55:15 Timeliness of notice of appeal—Calculating timeliness
- § 55:19 Timeliness of notice of appeal—Prematurely filed notice of appeal
- § 55:23 Amendment of notice of appeal

2. DEFENDANT’S APPEAL

- § 55:25 Timeliness of notice—Appeals from conviction and sentence
- § 55:25.50 Perfecting an appeal by the defendant—Perfecting an appeal from an order independent of the conviction and sentence *[New]*
- § 55:26.50 Timeliness of notice—Order granting motion for new trial rescinded *[New]*
- § 55:28 Required form and contents of a defendant’s notice of appeal—In general

3. DEFENDANT’S APPEAL—CERTIFICATION OF RIGHT TO APPEAL

- § 55:29 Certification of the defendant’s right of appeal—In general
- § 55:31.50 Procedure when certification lacking *[New]*
- § 55:33 Challenging the trial court’s certification
- § 55:33.50 State’s obligation to challenge certification of defendant’s right to appeal *[New]*

4. STATE APPEAL

- § 55:36 Perfecting an appeal by the State—Cross-appeals
- § 55:37 Timeliness of State’s notice of appeal—In general
- § 55:41 Appeal from suppression orders—State’s certification

D. RECORD ON APPEAL

1. INTRODUCTION

- § 55:43 Trial court record—Appellants’ obligation to assure trial court record is made
- § 55:48 Appellate record—Limited to trial court record
- § 55:50 Appellants’ duty to provide sufficient record

TABLE OF CONTENTS

§ 55:51 Trial court lacks power to act after appellate record filed

3. ADDING TO AND CORRECTING THE RECORD

§ 55:64.50 Supplementation of the record—Bill of costs *[New]*

§ 55:68 Correction of the record—The reporter’s record

4. SPECIAL PROBLEMS CONCERNING CONTENTS OF THE RECORD

§ 55:74 Counsel’s unsworn statement made “for the record”—
Nonverbal behavior of trial participants

§ 55:74.50 Counsel’s unsworn statement made “for the record”—Need
for first-hand knowledge *[New]*

§ 55:74.75 Unsworn assertions made in the trial court *[New]*

§ 55:80 Conflict between written portions of the record and trial
court’s oral pronouncements

5. RECORD NECESSARY FOR APPELLATE REVIEW

§ 55:83 Burden of providing appellate record—In general

6. BILLS OF EXCEPTION

§ 55:89 Formal bills of exception

7. LOST OR DESTROYED MATERIAL

§ 55:99 Lost or destroyed material related to the reporter’s record—
Necessary to resolution of the appeal

§ 55:99.50 Lost or destroyed material related to the reporter’s record—
Necessary to the resolution of the appeal—Reliance on
trial judge’s memory *[New]*

E. FORMULATING AND PRESENTING CLAIMS OF ERROR

§ 55:102 Presenting claims of error and arguments—In general

§ 55:103 References to record

§ 55:104 Need for authority and argument

§ 55:107 Multifarious points of error—Complaining of several reasons
why single action was erroneous

§ 55:109 Matters first raised in supplemental brief or motion for
rehearing—In general

§ 55:116 Unassigned error—In general

H. RECONSIDERATION ON PETITION FOR DISCRETIONARY REVIEW

§ 55:134 Court of appeals’s authority to act in response to petition for
discretionary review

I. BAIL ON APPEAL

1. INTRODUCTION

§ 55:137 Commencement of conditions of community supervision when defendant appeals

2. APPEAL TAKEN BY DEFENDANT

§ 55:140 Defendants ineligible for bail pending appeal—Certain convictions

CHAPTER 56. SUBSTANTIVE LAW OF DIRECT APPEAL

B. AVAILABILITY OF APPEAL—DEFENDANTS

1. INTRODUCTION

§ 56:3 Defendants' appeals—In general

§ 56:4.50 Defendants' appeals—Bills of costs *[New]*

2. WAIVERS OF APPEAL

§ 56:8 Explicit waivers of right to appeal—In general

§ 56:8.50 Explicit waivers of right to appeal—Appeal based on error supporting judgment *[New]*

§ 56:10 Waivers must be knowing and intelligent

3. INTERLOCUTORY APPEALS BY DEFENDANTS

§ 56:14.50 Nonappealable order “intertwined” with appealable order *[New]*

4. CONVICTIONS IN JUSTICE AND NONRECORD MUNICIPAL COURTS

§ 56:23 Appeal on record after conviction in county court

7. NONCAPITAL CONVICTIONS AFTER PLEA OF GUILTY OR NOLO CONTENDERE

c. Appeals from Convictions Based on Negotiated Pleas

§ 56:50 The negotiated plea rule—Basis and overview

§ 56:53 Applicability of the negotiated plea rule—Bargain covering punishment—“Charge” bargains

§ 56:63.50 Permissible appeals in negotiated plea situations—Appeals from pretrial rulings—Agreement that one ruling will be “dispositive” *[New]*

TABLE OF CONTENTS

8. NONCAPITAL CONVICTIONS—COMMUNITY SUPERVISION

a. Appeals After Conviction

- § 56:71 Appeal from conviction
- § 56:73 Appeal from “shock probation”

b. Appeals After Community Supervision Revoked

- § 56:74 Appeal when community supervision is revoked—In general
- § 56:75 Issues related to original conviction—In general
- § 56:78.50 Challenges to original sentence *[New]*

9. NONCAPITAL CONVICTIONS—DEFERRED ADJUDICATION

b. Appeals from Orders Deferring Adjudication

- § 56:81 Appeals from orders deferring adjudication—In general
- § 56:82 Defendant’s option to move for adjudication

c. Appeals After Guilt Adjudicated

- § 56:84 Appeals from decisions to proceed with adjudication
- § 56:85 Appeals from conviction and sentence after adjudication—In general
- § 56:86 Issues relating to the original plea proceeding
- § 56:88 Issues relating to adjudication of guilt

C. AVAILABILITY OF APPEAL—STATE

1. INTRODUCTION

- § 56:97 State’s duty to raise contentions in the trial court

2. PRETRIAL RULINGS

- § 56:102 Appeals from dismissals of charging instruments—In general
- § 56:106 Appeals from orders suppressing evidence—In general
- § 56:108 Appeals from orders suppressing evidence—Requirement that jeopardy has not attached
- § 56:109 Appeals from orders suppressing evidence—Certification required
- § 56:109.50 Appeals from orders suppressing evidence—Record need not reflect evidence suppressed *[New]*

3. RULINGS DURING TRIAL

- § 56:111 Identifying appealable dismissals made during trial

4. POSTTRIAL RULINGS

§ 56:114 Appeals from orders arresting or modifying judgments

5. CROSS-APPEAL

§ 56:119 State's right to "cross-appeal" when convicted defendant appeals—State's responsive arguments distinguished from cross appeal

§ 56:121 State must be able to implement a decision in its favor

D. STANDARDS OF REVIEW

§ 56:123 Standard of review—In general

§ 56:124 Questions of law

§ 56:125 Determinations of historical fact

§ 56:129 Mixed questions of law and fact—Mixed questions not turning on evaluations of credibility and demeanor—In general

§ 56:132 Mixed questions of law and fact—Mixed questions not turning on evaluations of credibility and demeanor—Reconsideration of the *Guzman* distinctions

E. APPELLATE REVIEW OF EVIDENCE SUFFICIENCY

§ 56:139 Preserving evidence sufficiency for appellate review—Elements of the crime—In general

§ 56:143.50 Distinguishing evidence sufficiency issues from trial error issues—Evidence sufficiency claims based on ineffective efforts to amend charging instrument [*New*]

§ 56:148 Appellate evidence sufficiency review in light of trial errors—Appellate court to consider even improperly admitted evidence

F. THE "LAW OF THE CASE"

§ 56:155 Requirement that both appeals involve the same "case"

§ 56:157.50 Appeals must involve same question of law [*New*]

G. HARMLESS ERROR

§ 56:167 Federal constitutional considerations—Errors constituting structural defects in the trial mechanism as not subject to harmless-error analysis

§ 56:170 Development of Texas harmless-error law—Case law under prior rule

§ 56:173 Distinguishing between constitutional and other error—In general

§ 56:182 Nonconstitutional error—Immunity from harmless-error analysis—In general

§ 56:191 Nonconstitutional error—Need to discourage errors of the sort at issue

§ 56:192 Evaluating the impact of an error on the outcome of the case—In general

TABLE OF CONTENTS

- § 56:192.50 Evaluating the impact of error on the outcome of the case—Deference due any trial court determination *[New]*
- § 56:193 Evaluating the impact of error on the outcome of the case—Entire record to be considered
- § 56:194 Evaluating the impact of an error on the outcome of the case—Untainted evidence indicating guilt
- § 56:198 Evaluating the impact of an error on the outcome of the case—Prosecution reliance on its erroneous advantage

H. RESOLVING APPEALS

1. INTRODUCTION

- § 56:203 Confessions of error and concessions by parties

2. DISMISSAL

- § 56:208 Death of defendant—Abatement or dismissal of appeals
- § 56:209.50 Dismissal for failure to timely file brief or other procedural defaults *[New]*

5. REFORMATION TO CONVICTION OF LESSER INCLUDED OFFENSE

- § 56:213 Reformation to conviction of lesser included offense—In general
- § 56:213.25 Reformation to conviction of lesser include offense—Necessary jury findings *[New]*
- § 56:213.50 Reformation to conviction of lesser included offense—Necessary findings in bench trial *[New]*
- § 56:213.75 Reformation to conviction of lesser included offense—Reversible procedural error affecting only offense of conviction *[New]*
- § 56:214 Jury not instructed on lesser included offense

6. OTHER REFORMATION OR MODIFICATION OF JUDGMENT

- § 56:218 Reformation concerning finding of use of deadly weapon

7. ABATEMENT AND REMAND

- § 56:223 Abatement and remand to clarify trial court’s “intention”
- § 56:227.50 Abatement and remand for limited further proceedings—Remand for creation of trial court record *[New]*
- § 56:232 Abatement and remand for limited further proceedings—Findings and conclusions regarding motions to suppress evidence

8. ERRORS AFFECTING ONLY PUNISHMENT

- § 56:242 Noncapital cases—Restitution found unsupported by record

I. REQUIREMENT OF COMPREHENSIVE OPINION

§ 56:246 Appellate court must address all issues in written opinion

J. RETROACTIVITY

§ 56:249 Judicial decisions announcing “new rules” of Texas law

§ 56:250 “New” rules

§ 56:251 Criterion for new rule situations

§ 56:252 Time of application for new rule of limited prospectivity

CHAPTER 57. DISCRETIONARY REVIEW BY COURT OF CRIMINAL APPEALS

A. INTRODUCTION

§ 57:2 Review available only in “criminal cases”

§ 57:3 Roles of local prosecutor and state prosecuting attorney

C. RIPENESS OF ISSUES FOR DISCRETIONARY REVIEW

§ 57:11.50 Need for issue to have been decided by court of appeals—
Exceptional situations [*New*]

§ 57:11.75 Need for issue to have been decided by court of appeals—
Ability of party prevailing in court of appeals to seek
discretionary review [*New*]

§ 57:14 Claims not presented to court of appeals—In general

§ 57:16 Claims not presented to court of appeals—State’s duty to
raise in court of appeals appellant’s procedural default—
Inadequate opportunity to raise matter in court of
appeals

§ 57:18 Claims not presented to court of appeals—Preservation of
error

§ 57:19 Claims not presented to court of appeals—Claims or
arguments supporting trial court judgment not raised in
court of appeals

§ 57:21 Need for “final” decision by court of appeals

D. THE DECISION TO GRANT DISCRETIONARY REVIEW

§ 57:31 Disagreement among justices of court of appeals

E. MATTERS BEFORE COURT OF CRIMINAL APPEALS WHEN REVIEW GRANTED

§ 57:37 Review of grounds supporting decision of court of appeals but
rejected by court of appeals

§ 57:39 Claim raised for first time on discretionary review

F. MECHANICS OF DISCRETIONARY REVIEW

§ 57:40 Mechanics of seeking discretionary review

TABLE OF CONTENTS

- § 57:41 Defendants' right to an opportunity to seek discretionary review
- § 57:43 Cross-petitions
- § 57:45 Rehearing after denial of review
- § 57:50 Disposition by Court of Criminal Appeals—Disposition upon finding error subject to harmless error analysis

CHAPTER 58. POSTCONVICTION HABEAS CORPUS PROCEDURE

A. INTRODUCTION

- § 58:3 Use of Article 11.07 for purposes other than challenges to conviction or punishment
- § 58:5 Habeas applicants' right to appointed counsel
- § 58:5.50 Counsel appointed for initial application and subsequent applications *[New]*
- § 58:5.75 Pro se representation *[New]*
- § 58:6 Habeas applicants' right to effective counsel
- § 58:7.50 Habeas applicants' availability as witnesses at hearings *[New]*
- § 58:9 Waiver of the right to seek post conviction relief
- § 58:9.50 State's concession not binding *[New]*

B. TIMING OF POSTCONVICTION ATTACKS

- § 58:12 Laches
- § 58:12.50 Laches—Sua sponte consideration *[New]*
- § 58:12.75 Laches—Need not be raised in trial court *[New]*
- § 58:12.85 Laches—Applying the standard *[New]*

C. FRAMEWORK FOR POSTCONVICTION ATTACKS

1. INTRODUCTION

- § 58:16.50 Civil rules not applicable to habeas corpus *[New]*
- § 58:19.50 No need to address all issues raised in application *[New]*

2. REQUIREMENTS FOR APPLICABILITY OF ARTICLE 11.07

- § 58:22 Article 11.07 requirement of “confinement”—Statutory definition of “confinement”
- § 58:23 Article 11.07 requirement of a “final” felony conviction

3. NON-ARTICLE 11.07 SITUATIONS—GENERALLY

- § 58:27 Situations not within Article 11.07—Convictions of misdemeanors

4. NON-ARTICLE 11.07 SITUATIONS—

COMMUNITY SUPERVISION

- § 58:31 Statutory procedure in community supervision cases—In general
- § 58:33 Filing and procedure

D. MULTIPLE APPLICATIONS FOR POSTCONVICTION RELIEF

- § 58:38 Multiple applications for postconviction habeas relief—1995 legislative provisions—Applicability of the bar to subsequent applications
- § 58:40 Multiple applications for postconviction habeas relief—1995 legislative provisions—Exceptions generally
- § 58:42 Multiple applications for postconviction habeas relief—1995 legislative provisions—Exception for claims not previously available—Legal basis unavailable
- § 58:44 Multiple applications for postconviction habeas relief—1995 legislative provisions—Exception for claims accompanied by assertion of innocence

E. PROCEDURE FOR POSTCONVICTION ATTACKS UNDER ARTICLE 11.07

- § 58:45 Application for the writ—In general
- § 58:45.50 Access to records of prosecution *[New]*
- § 58:47 Applications for the writ—Factual allegations required—Exceptions to bars to subsequent writ applications
- § 58:48.50 Amendment of the application *[New]*
- § 58:48.75 Voluntary dismissal of the application *[New]*
- § 58:50 Notice to State and State’s answer
- § 58:50.50 Attachments to pleadings *[New]*
- § 58:53 Procedure when issues of fact exist—In general
- § 58:56 Consideration by Court of Criminal Appeals—In general
- § 58:57 Consideration by Court of Criminal Appeals—Material that may be considered
- § 58:58 Consideration by Court of Criminal Appeals—Significance of trial judge’s findings and conclusions
- § 58:59.50 Withdrawal of attorney for applicant *[New]*
- § 58:62 Rehearings before Court of Criminal Appeals

F. PROCEDURE FOR POSTCONVICTION ATTACKS—DEATH PENALTY CASES

- § 58:72 Subsequent applications for the writ

CHAPTER 59. COLLATERAL ATTACKS ON CONVICTIONS

B. REACHING MERITS OF COLLATERAL CHALLENGES

- § 59:4 Retroactivity of rights—State law retroactivity of federal rights not enforceable in federal habeas corpus
- § 59:5 “Harm” or “prejudice” and habeas corpus relief
- § 59:6.50 Issues for which factual basis not previously available *[New]*
- § 59:7 Failure to “preserve” issue at trial—In general
- § 59:8 Failure to “preserve” issue at trial—Habeas proceeding barred by reliance on matters beyond trial court record in original prosecution
- § 59:9 Failure to raise issue by direct appeal—In general
- § 59:10 Failure to raise issue by direct appeal—“Exceptional” claims not lost by nonassertion on appeal
- § 59:12 Excusing failure to raise issues—The “right not recognized” rule

C. ISSUES COGNIZABLE ON COLLATERAL ATTACK

- § 59:16 General approach towards “cognizability”
- § 59:20 Violations of state constitutional rights—In general
- § 59:21 Violations of state procedural requirements—In general
- § 59:21.50 Violations of state procedural requirements—Statutory parole proceedings requirements *[New]*
- § 59:22 Prosecution or conviction barred by double jeopardy
- § 59:23 Invalidity of penal law under which prosecution brought
- § 59:25.50 Lack of effective assistance of counsel *[New]*
- § 59:28 Evidence insufficiency—“No evidence”
- § 59:29 Improper admission of evidence—In general
- § 59:30.50 Error in failing to reach issue on direct appeal *[New]*
- § 59:31 Newly discovered evidence, newly available evidence, and claims of innocence—In general
- § 59:31.50 Newly discovered evidence, newly available evidence, and claims of innocence—Conviction under constitutional statute *[New]*
- § 59:31.75 Newly discovered evidence, newly-available evidence, and claims of innocence—Guilty only of a lesser-included offense or ineligible for sentence assessed *[New]*
- § 59:32 Newly discovered evidence, newly available evidence, and claims of innocence—Distinguishing claims of innocence related to procedural violations (*Schlup*-type claims)
- § 59:34 Newly discovered evidence, newly available evidence, and claims of innocence—Reformulation of the criterion
- § 59:34.50 Newly discovered evidence, newly available evidence, and claims of innocence—Recantation of complaining witness *[New]*
- § 59:35 Newly discovered evidence, newly available evidence, and claims of innocence—Applying the criterion

- § 59:35.50 Newly discovered evidence, newly available evidence, and claims of innocence—Favorable polygraph results *[New]*
- § 59:36 Newly discovered evidence, newly available evidence, and claims of innocence—Requirement that evidence of innocence be “new”
- § 59:38.25 Use of false evidence *[New]*
- § 59:38.50 Conviction based on unreliable scientific evidence *[New]*
- § 59:38.70 Innocence based on newly-available scientific evidence *[New]*
- § 59:45 Age of accused—Defects related to waivers of juvenile court jurisdiction
- § 59:50 Guilty pleas—Involuntariness
- § 59:55 Challenges to convictions used for enhancement and related purposes—Need for trial objection when offense offered for enhancement
- § 59:57 Unauthorized punishment
- § 59:57.50 Unauthorized punishment—Improper cumulation or “stacking” of sentences *[New]*

CHAPTER 60. POSTCONVICTION DNA TESTING

A. INTRODUCTION

- § 60:2 Federal constitutional considerations
- § 60:5.50 Relationship to mandatory pretrial testing in capital cases *[New]*

B. PRESERVATION OF EVIDENCE

- § 60:6 Preservation of evidence—In general
- § 60:7 Evidence that must be preserved
- § 60:8 Preservation required

C. RIGHT TO TESTING

- § 60:11 Right to forensic DNA testing—In general
- § 60:12 Existence of testable evidence
- § 60:12.50 Chain of custody establishing evidence not substituted, tampered with, replaced, or altered *[New]*
- § 60:13 Identity in issue—In general
- § 60:14 Identity in issue—Pleas of guilty or nolo contendere
- § 60:15 Defendant would not have been convicted—Generally
- § 60:16 Defendant would not have been convicted—Posttrial evidence
- § 60:18 Analysis of effect of prior testing or lack of testing—Generally
- § 60:21 No prior DNA testing through no fault of defendant
- § 60:22 No prior DNA testing because adequate techniques not available
- § 60:23 Motion not made for delay
- § 60:23.50 Right to forensic DNA testing—Evidence previously tested at subsequently-closed laboratory *[New]*

TABLE OF CONTENTS

D. PROCEDURE

- § 60:24 Motion
- § 60:24.50 Subsequent motions and “law of the case” *[New]*
- § 60:25.50 Information that can be considered *[New]*
- § 60:26 Procedure upon completion of forensic DNA testing
- § 60:28 Appeal
- § 60:28.50 Appeal by convicted person not receiving notice of order *[New]*
- § 60:29 Right to representation

CHAPTER 61. MANDAMUS AND PROHIBITION

A. INTRODUCTION

- § 61:5 Role of extraordinary writs in Texas Criminal Procedure

B. JURISDICTION

- § 61:7 Court of criminal appeals—In general
- § 61:7.50 Court of criminal appeals—Pretrial DNA testing in capital cases *[New]*
- § 61:8 Court of criminal appeals—Limitation to criminal law matters
- § 61:8.50 Court of criminal appeals—Article 11.07 matters *[New]*
- § 61:9 Courts of appeals
- § 61:10 District courts

D. REQUIREMENTS FOR RELIEF

1. INTRODUCTION

- § 61:16 Requirements for relief—In general

2. ABSENCE OF AN ADEQUATE REMEDY “AT LAW”

- § 61:21 Only adequate and effective remedy at law will bar writ relief
- § 61:26 State’s ability to appeal as adequate remedy at law
- § 61:27 Ministerial duty or clear right to relief—In general
- § 61:28.50 Ministerial duty or clear right to relief—Signing written order *[New]*
- § 61:29 Action taken without jurisdiction or authority
- § 61:32 Disputed law as barring writ relief
- § 61:32.50 Disputed law as barring writ relief—Contrary version of law entitled to deference *[New]*

E. PROCEDURE

- § 61:36 Writ procedure—Writ relief against successor judge
- § 61:37 Choice of forum

CRIMINAL PRACTICE AND PROCEDURE

- § 61:39.50 Other documents treated as applications for mandamus relief [*New*]
- § 61:45 Replies and further submissions by relator
- § 61:49 Review of writ decisions by court of appeals—In general

Table of Laws and Rules

Table of Cases

Index