### **Table of Contents**

# CHAPTER 1. DRIVING WHILE INTOXICATED OFFENSES

§ 1:1	Driving while intoxicated pursuant to the Texas Penal Code—Elements of offense generally
§ 1:2	—First element: intoxication
§ 1:3	—Second element: operates a vehicle
§ 1:4	—Third element: in a public place
§ 1:5	—No culpable mental state
§ 1:6	—Defenses
§ 1:7	Driving while intoxicated with a child passenger
§ 1:8	Flying while intoxicated
§ 1:9	Boating while intoxicated
§ 1:10	Boating while intoxicated with a child passenger
§ 1:11	Assembling or operating an amusement ride while intoxicated
§ 1:12	Enhanced offenses and penalties for DWI convictions
§ 1:13	—Prior intoxication offenses
§ 1:14	—Certain victims increase offense level
§ 1:15	Driving or operating a watercraft under influence of alcohol

# CHAPTER 2. SERIOUS DRIVING OFFENSES RELATED TO DWI

§ 2:1 Intoxication assault

by minor

- § 2:2 —Serious bodily injury
- § 2:3 —Intoxication must cause serious injury
- § 2:4 Intoxication manslaughter
- § 2:5 —Death of victim caused by intoxication of defendant
- § 2:6 —Double jeopardy

# CHAPTER 3. RELATED NON SERIOUS TRAFFIC OFFENSES

- § 3:1 Introduction
- § 3:2 Speeding
- § 3:3 Racing on highway/Excessive acceleration
- § 3:4 Driving too slow
- § 3:5 Reckless driving
- § 3:6 Following too closely
- § 3:7 Crossing the center line

§ 3:8	Improper passing	
§ 3:9	Improper use of passing lane	
§ 3:10	Improper lane change/Failure to maintain single lane	
§ 3:11	Use of turn signal	
§ 3:12	Turning in an unsafe manner	
§ 3:13	Open container violation	
§ 3:14	Defective equipment	
§ 3:15	Failure to wear a seat belt	
§ 3:16	Fleeing or attempting to elude police	
CHAPTER 4. IMPLIED CONSENT		
§ 4:1		
§ 4:1 § 4:2	Generally Constitutional realidity	
§ 4.2 § 4:3	Constitutional validity Search warrants for blood specimen	
§ 4.5 § 4:4	Advisement of implied consent rights	
§ 4.4 § 4:5	—Advisement in writing	
§ 4.5 § 4:6	—Commercial drivers	
§ 4.0 § 4:7	Number of specimens permitted	
§ 4.7 § 4:8	—Circumstances where specimens are required	
§ 4.0 § 4:9	Arrest	
§ 4.3 § 4:10		
	Independent test	
§ 4:11	Refusal	
§ 4.12 § 4:13		
§ 4:14	The civil nature of administrative determinations of implied	
3 1.11	consent	
CHAPTER 5. STATE-ADMINISTERED TESTS		
§ 5:1	Blood Alcohol Concentration: "BAC"	
§ 5.1 § 5:2	Breath tests	
§ 5.2 § 5:3	—Certification of instrument	
§ 5:4	—Intoxilyzer	
§ 5:5	—Approval of reference sample devices	
§ 5:6	—Approval of testing techniques, methods, and programs	
§ 5:7	—Operator certification	
§ 5:8	—Effect of failure to comply with regulations	
§ 5:9	—Partition ratio	
§ 5:10	—Breath temperature	
§ 5:11	Special challenges to breath tests in accident cases	
§ 5:12	Blood tests	
§ 5.12 § 5:13	Gas chromatography	
§ 5.13 § 5:14	—Validation of the method	
§ 5.14 § 5:15	Headspace Gas Chromatography (HSCG)	
-		
§ 5:16	—Preparing the sample	

#### Table of Contents

- § 5:17 —Extracting the sample
  § 5:18 —Traveling through the column
  § 5:19 —Qualitative and quantitative analysis
  § 5:20 Blood tests—Persons qualified
- § 5:21 —Testing environment
- $\S~5:22$  Retrograde extrapolation
- § 5:23 Urine tests
- § 5:24 Admissibility of specimen analysis at criminal proceedings

#### CHAPTER 6. FIELD SOBRIETY EVALUATIONS

- § 6:1 Generally
- § 6:2 Fifth Amendment challenge: does *Miranda* apply?
- § 6:3 —Video tape evidence
- § 6:4 Horizontal gaze nystagmus
- § 6:5 —Administering the test
- § 6:6 —Admissibility of test results
- § 6:7 —Scope of HGN expert testimony
- § 6:8 Portable breath testers
- § 6:9 Walk and turn test
- § 6:10 One leg stand

#### CHAPTER 7. SEARCH AND SEIZURE

- § 7:1 Search and seizure—Generally
- § 7:2 —Circumstances surrounding the encounter
- § 7:3 —Reasonableness of encounter
- § 7:4 Investigative detention
- § 7:5 —Tips from citizen informants
- § 7:6 —Information from other officers
- § 7:7 —Suspicious place
- § 7:8 —Suspicion of intoxication
- § 7:9 Community-caretaking function
- § 7:10 Traffic offenses
- § 7:11 —Failure to maintain single lane
- § 7:12 —Driving on an improved shoulder
- § 7:13 —Speeding or travelling too slow
- § 7:14 —Turn signals
- § 7:15 Roadblocks or sobriety checkpoints
- § 7:16 —Stops near roadblocks
- § 7:17 Arrest
- § 7:18 —When a traffic stop is an arrest
- § 7:19 —Probable cause
- § 7:20 Automobile searches
- § 7:21 —Plain view
- § 7:22 —Consent

§ 7:23 —Incident to arrest § 7:24 —Inventory search § 7:25 —Automobile exception

### CHAPTER 8. CONFESSIONS AND ADMISSIONS

- § 8:1 Confessions and admissions—Generally
- § 8:2 When Miranda warnings are required
- § 8:3 —Suspect in custody
- § 8:4 —Suspect is being interrogated
- § 8:5 Effect of invoking Miranda rights
- § 8:6 When Miranda warnings are not required
- § 8:7 Spontaneous statements
- § 8:8 Remedy for *Miranda* violations

#### CHAPTER 9. CLIENT INTAKE

- § 9:1 Information to obtain from the client, generally
- § 9:2 Personal history
- § 9:3 Medical history
- § 9:4 Criminal history
- § 9:5 Circumstances of stop
- § 9:6 Events of the day of arrest
- § 9:7 Route driven before the arrest
- § 9:8 Roadblocks
- § 9:9 Automobile driven
- § 9:10 Police pursuit lights
- § 9:11 Initial questioning by officer
- § 9:12 Conversations before or after arrest
- § 9:13 Field sobriety tests
- § 9:14 Arrest
- § 9:15 Implied consent
- § 9:16 *Miranda* warnings and requests for an attorney
- § 9:17 Actions after arrest
- § 9:18 Other people present
- § 9:19 Car removal
- § 9:20 Testing facility
- § 9:21 Breath tests
- § 9:22 Blood or urine tests

## CHAPTER 10. ADMINISTRATIVE LICENSE SUSPENSION

- § 10:1 License suspensions, generally
- § 10:2 Suspensions for refusal to allow taking of specimen
- § 10:3 —Contents of refusal report

#### Table of Contents

§ 10:4	—Contents of notice of suspension or denial of license
§ 10:5	—Effective date and term of suspension
§ 10:6	—Hearing
§ 10:7	——Issues at hearing
§ 10:8	——Probable cause to stop or arrest
§ 10:9	— —Evidence
§ 10:10	——Evidence of refusal to submit specimen
§ 10:11	——Findings
§ 10:12	— — Waiver of right to hearing
§ 10:13	—Reinstatement of license after suspension
§ 10:14	—Relationship between administrative and criminal proceedings
§ 10:15	Suspension for failure to pass test—Reinstatement of license after suspension
§ 10:16	Suspension for failure to pass test or where DUI is by a minor
§ 10:17	—Suspension by Department of Public Safety
§ 10:18	—Circumstances in which license suspension is prohibited
§ 10:19	—Notice of Department's determination
§ 10:20	—Effective date and term of suspension
§ 10:21	——Offenses by minors
§ 10:22	—Suspension under other laws
§ 10:23	—Request for administrative hearing
§ 10:24	——Rescheduling and continuance
§ 10:25	—Discovery
§ 10:26	—Hearing
§ 10:27	——Participation in hearing by telephone or videoconference
§ 10:28	— Proof regarding instruments and analysis used
§ 10:29	— — — Appearance of technician or breath test operator at hearing
§ 10:30	——Request for subpoenas
§ 10:31	——Notice to Department
§ 10:32	—Appeal of decision
§ 10:33	——Review and evidence
§ 10:34	——Stay of suspension
§ 10:35	Defenses to suspension
§ 10:36	Constitutional challenges

# CHAPTER 11. DISCOVERY TOOLS AND ACCESS TO THE STATE'S EVIDENCE

- $\S~11:1~$  Discovery, generally
- § 11:2 Discovery and due process
- § 11:3 Discovery statutes—Code of Criminal Procedure

- § 11:4 —Implied consent statutes § 11:5 —Open Records Act
- § 11:6 Witness statements
- § 11:7 Writing used to refresh a witness's recollection
- § 11:8 Statements by defendant
- § 11:9 Videotape depicting field sobriety tests

### CHAPTER 12. VENUE AND JURISDICTION

- § 12:1 Venue
- § 12:2 —Application for change of venue
- § 12:3 —Change of venue on court's own motion
- § 12:4 Jurisdiction
- § 12:5 —District courts
- § 12:6 —Criminal district courts
- § 12:7 —County courts
- § 12:8 ——Concurrent jurisdiction with justice courts
- § 12:9 —Municipal courts
- § 12:10 Statute of limitations

## CHAPTER 13. PROCEEDINGS BEFORE TRIAL AND MOTION PRACTICE

- § 13:1 The charging document
- § 13:2 —Requisites of complaint in municipal or justice court
- § 13:3 —Motion to quash
- § 13:4 Speedy trial
- § 13:5 —Length of the delay
- § 13:6 —Reason for delay
- § 13:7 —Defendant's assertion of right to speedy trial
- § 13:8 —Prejudice to the defendant from delay
- § 13:9 Arraignment
- § 13:10 Entry of plea
- § 13:11 —Mentally competent
- § 13:12 —Freely and voluntarily
- § 13:13 —Effect of guilty plea
- § 13:14 —Effect of plea of nolo contendere
- § 13:15 Plea agreements
- § 13:16 Pretrial motions
- § 13:17 —Motion in limine
- § 13:18 —Motion to suppress
- § 13:19 Posttrial motions
- § 13:20 —Motion for new trial
- § 13:21 ——Hearing
- § 13:22 ——Ruling
- § 13:23 —Motion to arrest judgment

#### CHAPTER 14. TRIAL

- § 14:1 Right to counsel
- § 14:2 —Waiver
- § 14:3 Burden of proof—Beyond a reasonable doubt
- § 14:4 Right to trial by jury
- § 14:5 Voir dire
- § 14:6 Reading of the information or indictment
- § 14:7 Opening statement
- § 14:8 Evidence
- § 14:9 —Direct evidence
- § 14:10 —Circumstantial evidence
- § 14:11 Motion for directed verdict of acquittal
- § 14:12 Closing arguments
- § 14:13 Jury instructions
- § 14:14 —Defenses
- § 14:15 Mistrial

#### CHAPTER 15. SENTENCING

- § 15:1 First conviction
- § 15:2 Subsequent convictions
- § 15:3 Ignition interlock
- § 15:4 Automatic license suspension on conviction
- § 15:5 Evidence to enhance punishment
- § 15:6 Consecutive and concurrent sentencing in intoxication assault and intoxication manslaughter cases
- § 15:7 Collateral attacks on prior conviction
- § 15:8 Community Supervision
- § 15:9 —Educational program
- § 15:10 —Defendants under 18
- § 15:11 —Residential treatment facility
- § 15:12 —Ignition interlock system
- § 15:13 —Educational program for repeat offenders
- § 15:14 —Restitution
- § 15:15 —Revocation of community supervision
- § 15:16 —Defendant under 21 years old
- § 15:17 —Operation of vehicle during suspension
- § 15:18 Habitual offenders
- § 15:19 —Statutory wording
- § 15:20 —The State's burden of proof
- § 15:21 —Comparison with DWI enhancements
- § 15:22 —Notice required
- § 15:23 Nondisclosure
- § 15:24 —Available for Only Certain Driving While Intoxicated Convictions

#### DWI LAW AND PRACTICE

- $\$  15:25 —Available for Only Certain Eligible Defendants
- § 15:26 —Date of eligibility
- § 15:27 Additional fines for intoxicated driver offenses

### CHAPTER 16. APPEALS

- § 16:1 Appeals, generally
- § 16:2 Appeals from district courts and county courts
- § 16:3 Appeals from justice courts or municipal courts
- § 16:4 Appeals from pleas of guilty or nolo contendere
- § 16:5 Perfecting the appeal
- § 16:6 Administrative appeals
- § 16:7 —Stay pending appeal
- § 16:8 —Review
- § 16:9 Habeas corpus

#### **Table of Laws and Rules**

**Table of Cases** 

Index