

2027 EDITION HIGHLIGHTS

What's New in This Edition

This year's edition of the **Texas Rules of Evidence Handbook** has been updated to reflect 2025 and 2026 rule amendments and new developments in case law. We have also revised parts of the commentary to improve clarity and add further explanation. Some of the changes we made this year include the following:

- Throughout the book, we updated the citations to the new tenth edition of the treatise *Handbook of Federal Evidence*.
- We revised our discussion of Texas Rule of Evidence 412 based on the final approval of new Rule 412, effective January 1, 2026. *See* Tex. Sup. Ct. Order, Misc. Docket No. 25-9102 (eff. Jan. 1, 2026). In 2025, the Texas Legislature expressly disapproved of former Rule 412, as its protections did not extend to victims of human trafficking and certain sexual and assaultive offenses. *See* Acts 2025, 89th Leg., R.S., ch. 979, eff. Sept. 1, 2025. The new rule, which was adopted to cure this deficiency, applies to the admissibility of evidence in a criminal proceeding commencing on or after September 1, 2025. Refer to Commentary on Rule 412, *infra*.
- We revised our discussion of juror testimony that is prohibited under Texas Rule of Evidence 606(b) based on **In re Lapuerta**, 732 S.W.3d 548, 554–55 (Tex. 2026) (orig. proceeding). In that case, the plaintiff attached a letter from a juror—which, among other things, described the jury deliberations—to his motion for new trial. *Id.* Refer to Commentary on Rule 606, footnote 202 and accompanying text, *infra*.
- We revised our discussion of face-to-face confrontation based on **Pitts v. Mississippi**, 607 U.S. 1, 4 (2025), and **Smith v. State**, 726 S.W.3d 466, 471 (Tex. Crim. App. 2025). In **Pitts**, the U.S. Supreme Court reaffirmed that state statutes mandating the screening of a child witness from the defendant's view without individualized findings of necessity are unconstitutional under the **Maryland v. Craig** framework. **Pitts**, 607 U.S. at 3–4. In **Smith**, the Texas Court of Criminal Appeals held that the trial court violated the defendant's right to face-to-face confrontation when it required all persons to wear surgical masks throughout the court proceedings, including voir dire and all witness testimony, except when necessary for in-court identification, because the trial court made no individualized findings under **Craig**. **Smith**, 726 S.W.3d at 471. Refer to *Article VIII: Hearsay*, footnote 35 and accompanying text, *infra*.
- We revised our discussion of “criminal proceedings” to which the Sixth Amendment applies based on **Montgomery v. State**, — S.W.3d —, 2026 WL 1899378, *2 (Tex. Crim. App. 2026) (No. PD-0581-22; 7-2-26). In that case, the Texas Court of Criminal Appeals held that a motion to enter adjudication of guilt from a deferred adjudication followed by a motion to revoke probation does not amount to a “criminal prosecution” as understood by the Sixth Amendment; thus, the Confrontation Clause does not apply in these proceedings. *Id.* Refer to *Article VIII: Hearsay*, footnote 69 and accompanying text, *infra*.

Proposed 2026 Federal Rule Amendments

The Judicial Conference Committee on Rules of Practice and Procedure has approved amendments to Federal Rule of Evidence 801(d)(1)(A). The amendments would make all prior inconsistent statements of a testifying witness admissible as substantive evidence, even where the prior statement was not given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition. *See* Fed. R. Evid. 801 advisory committee's note to 2026 amendments, www.uscourts.gov/sites/default/files/document/2026_congressional_package_final.pdf. If the Supreme Court approves the amendments and Congress does not take contrary action, the amendments will take effect December 1, 2026. Refer to Commentary on Rule 801, footnote 315 and accompanying text, *infra*.