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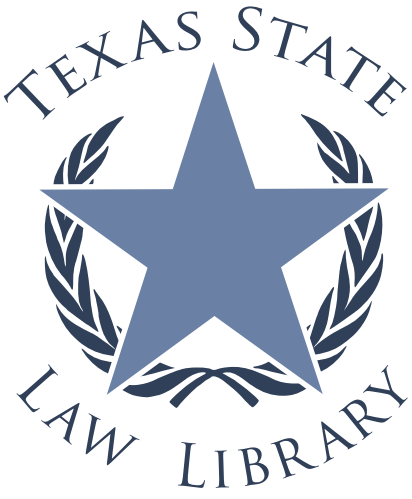
Texas Code of Criminal Procedure 1984



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Texas Code of Criminal Procedure

WITH TABLES
AND INDEX

As Amended through the 1983 Regular and First Called Sessions of the 68th Legislature

WEST PUBLISHING CO.
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Texas Code of Criminal Procedure, Tenth Edition

PREFACE

This Pamphlet contains the text of the Code of Criminal Procedure, enacted by Acts 1965, 59th Leg., ch. 722, effective January 1, 1966, as amended through the 1983 Regular and First Called Sessions of the 68th Legislature.

Article 54.02 of the Code repealed all laws relating to criminal procedure that were not incorporated in the Code and that were not enacted at the 1965 Regular Session, but excepted from repeal certain enumerated articles of the 1925 Code of Criminal Procedure. Some of these articles saved from repeal were reallocated to the Civil Statutes; the remainder appear herein as Part II, Miscellaneous Provisions.

A Cross Reference Table is provided to show where the subject matter of articles in the 1925 Code of Criminal Procedure is covered in the 1965 Code and the Civil Statutes, as amended through the 1983 Regular and First Called Sessions.

A detailed descriptive word Index at the end of the Code is furnished to facilitate the search for specific textual provisions.

Comprehensive coverage of the judicial constructions and interpretations of the Code, together with cross references, references to law review commentaries discussing particular provisions, and other editorial features, is provided in the volumes of Vernon's Texas Statutes and Codes Annotated.

THE PUBLISHER

July, 1984

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EFFECTIVE DATES

The following table shows the date of adjournment and the effective date of ninety day bills enacted at sessions of the legislature beginning with the year 1945:

Year	Leg.	Session	Adjournment Date	Effective Date
1945	49	Regular	June 5, 1945	September 4, 1945
1947	50	Regular	June 6, 1947	September 5, 1947
1949	51	Regular	June 6, 1949	September 5, 1949
1951	52	Regular	June 8, 1951	September 7, 1951
1953	53	Regular	May 27, 1953	August 26, 1953
1954	53	1st C.S.	May 13, 1954	August 12, 1954
1955	54	Regular	June 7, 1955	September 6, 1955
1957	55	Regular	May 23, 1957	August 22, 1957
1957	55	1st C.S.	November 12, 1957	February 11, 1958
1957	55	2nd C.S.	December 3, 1957	March 4, 1958
1959	56	Regular	May 12, 1959	August 11, 1959
1959	56	1st C.S.	June 16, 1959	September 15, 1959
1959	56	2nd C.S.	July 16, 1959	October 15, 1959
1959	56	3rd C.S.	August 6, 1959	November 5, 1959
1961	57	Regular	May 29, 1961	August 28, 1961
1961	57	1st C.S.	August 8, 1961	November 7, 1961
1961	57	2nd C.S.	August 14, 1961	November 13, 1961
1962	57	3rd C.S.	February 1, 1962	May 3, 1962
1963	58	Regular	May 24, 1963	August 23, 1963
1965	59	Regular	May 31, 1965	August 30, 1965
1966	59	1st C.S.	February 23, 1966	*
1967	60	Regular	May 29, 1967	August 28, 1967
1968	60	1st C.S.	July 3, 1968	*
1969	61	Regular	June 2, 1969	September 1, 1969
1969	61	1st C.S.	August 26, 1969	*
1969	61	2nd C.S.	September 9, 1969	December 9, 1969
1971	62	Regular	May 31, 1971	August 30, 1971
1971	62	1st C.S.	June 4, 1971	September 3, 1971
1972	62	2nd C.S.	March 30, 1972	June 29, 1972
1972	62	3rd C.S.	July 7, 1972	*
1972	62	4th C.S.	October 17, 1972	January 16, 1973
1973	63	Regular	May 28, 1973	August 27, 1973
1973	63	1st C.S.	December 20, 1973	*
1975	64	Regular	June 2, 1975	September 1, 1975
1977	65	Regular	May 30, 1977	August 29, 1977
1977	65	1st C.S.	July 21, 1977	*
1978	65	2nd C.S.	August 8, 1978	November 7, 1978
1979	66	Regular	May 28, 1979	August 27, 1979
1981	67	Regular	June 1, 1981	August 31, 1981
1981	67	1st C.S.	August 11, 1981	November 10, 1981
1982	67	2nd C.S.	May 28, 1982	*
1982	67	3rd C.S.	September 9, 1982	*
1983	68	Regular	May 30, 1983	August 29, 1983
1983	68	1st C.S.	June 25, 1983	September 23, 1983

* No legislation for which the ninety day effective date is applicable.

CROSS REFERENCE TABLE

Listing in Column 1 all articles in the Texas Code of Criminal Procedure of 1925, as amended and supplemented through the 1965 Regular Session of the Texas Legislature.

Showing in Column 2 where the subject matter of articles listed in Column 1 is incorporated in Vernon's Texas Code of Criminal Procedure or in Vernon's Texas Civil Statutes, as amended through the 1983 Regular and First Called Sessions of the 68th Legislature.

References in Column 2 are to 1965 C.C.P. Articles unless otherwise indicated.

1925 C.C.P. Article	1965 C.C.P. Article
1	1.03
2	1.04
3	1.05
4	1.06
4a, 4b	Repealed 1929
5	1.07
6	1.08
7	1.09
8	1.10
9	1.11
10	1.12
10a	1.13
11	1.14
12	1.15
13	1.16
14	1.17
15	1.18
16	1.19
17	1.20
18	1.21
19	1.22
20	1.23
21	1.24
22	1.25
23	1.26
24	1.27
25	2.01
26	2.02
27	2.03
28	2.04
29	2.05
30	2.06
31	2.07
32	2.08
33	2.09
34	2.10
35	2.11
36	2.12
37	2.13
38	2.14
39	2.15
40	2.16
41	2.17
42	2.18
43	2.19
44	2.20
45	2.21
46	2.22
47	2.23
48	3.01
49	3.02
50	3.03
51	4.01
52	Civ.St. 1926—1
52—1 to 52—7	Civ.St. 1926—11
52—8 to 52—11	Civ.St. 1926—13
52—12	Civ.St. 1926—12
52—13	Civ.St. 1926—13
52—14	Civ.St. 1926—13
52—15	See Civ.St. 199 (14th and 86th Dists.)
52—16 to 52—22	Civ.St. 1926—21
52—23	Civ.St. 1926—26
52—24	Civ.St. 1926—27
52—24a	Civ.St. 1926—22
52—24b	Civ.St. 1926—16
52—24c	Civ.St. 1926—14
52—24d	Civ.St. 1926—15
52—25 to 52—48	Civ.St. 199 (174th Dist.)
52—49 to 52—61	Civ.St. 1926—51
52—61a	Civ.St. 199 (147th Dist.)

CROSS REFERENCE TABLE

1925 C.C.P. Article	1965 C.C.P. Article
52—62	See Civ.St. 199 (28th and 107th Dists.)
52—63	Civ.St. 1926—41
52—64	Civ.St. 1926—42
52—65 to 52—80	Civ.St. 1926—41
52—81 to 52—87	Civ.St. 1926—42
52—87a1 to 52—87a10a	Civ.St. 1926—43
52—87b	Civ.St. 1926—44
52—88	Civ.St. 1960—1
52—89	Civ.St. 1960—2
52—90	Civ.St. 1960—3
52—91	Civ.St. 1960—4
52—92 to 52—104	See. Civ.St. 1970—1 to 1970—14
52—105 to 52—117	Civ.St. 1970—301g
52—118 to 52—124	See Civ.St. 1970—76 et seq.
52—125 to 52—140	See Civ.St. 1970—95 et seq.
52—141 to 52—144	See Civ.St. 1970—111 et seq.
52—145 to 52—156	Repealed 1933
52—157	Civ.St. 2455—1
52—158	Civ.St. 199 (176th Dist.)
52—158a	Civ.St. 199 (177th Dist.)
52—158b	Civ.St. 199 (178th and 179th Dists.)
52—158c	Civ.St. 199 (180th Dist.)
52—159	Civ.St. 1970—31.10
52—159a	Civ.St. 1970—31.11
52—159b	Civ.St. 1970—31.12
52—159c	Civ.St. 1970—31.20
52—160	Civ.St. 1926—61
52—160a	Civ.St. 1926—62
52—160b	Civ.St. 1926—63
52—161	See Civ.St. 199 (37th Dist.)
53	4.03
53a	4.04
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59	4.10
60	4.11
60a	4.12
60a—1	—
60a—2	—
61	4.13
62	4.14
63	4.15
64	4.16
65 to 71	5.01 to 5.07 (repealed)
72	6.01
73	6.02
74	6.03
75	6.04
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78	6.07
79	7.01
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83	7.06
84	7.07
85	7.08
86	7.09
87	7.10
88	7.11 (repealed)
89	7.12 (repealed)
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179	12.01
180	12.01
181	12.02
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220	15.03
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262	16.18
263	16.19
264	16.20
265	16.21
266	—
267	17.01
268	—
269	17.02
270	17.05
271	—
271a	17.06
271b	17.07
272	—
273	17.08
274	17.38
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275a	17.09
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315	18.04
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320	18.08
321	—
322	18.09
323	—
324	18.10
325	18.16
326	—
327	18.11
328	18.12
329	18.13
330	—
331	18.14
332	18.15
332a	18.17
333	19.01
334	19.02
335	19.03
336	19.04
337	19.05
338	19.06
338a	19.07
338b	Expired 1952
339	19.08
340	19.09
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351	19.20
352	19.21
353	19.22
354	19.23
355	19.24
356	19.25
357	19.26
358	19.27
359	19.28
360	19.29
361	19.30
362	19.31
363	19.32
364	19.33
365	19.34
366	19.35
367	—
367a	—
367b	19.36
367c	—
367c—1	—
367d	Civ.St. 2292b
367e	Civ.St. 2292c
367f	Civ.St. 2292d
367g	Civ.St. 2292e
367h	Civ.St. 2292f
367*i*	Civ.St. 2292g
367j	Civ.St. 2292h
367k	Civ.St. 2292*i*
368	19.37
369	19.38
370	19.39
371	19.40
372	19.41
373	20.01
374	20.02
375	20.03
376	20.04
377	20.05
378	20.06
379	20.07
380	20.08
381	20.09
382	20.10
383	20.11
384	20.12
385	20.13
386	20.14
387	20.15
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390	20.18
391	20.19
392	20.20
393	20.21
394	20.22
395	21.01
396	21.02
397	21.03
398	21.04
399	21.05
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401	21.07
402	21.08
403	21.09
404	21.10
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408	21.14
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421	21.28
422	21.29
423	21.30
424	22.01
425	22.02
426	22.03
427	22.04
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429	22.06
430	22.07
431	22.08
432	22.09
433	22.10
434	22.11
435	22.12
436	22.13
437	22.14
438	22.15
439	22.16
440	22.17 (repealed)
441	23.01
442	23.02
445	23.05
446	23.06
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449	23.09
450	23.10
451	23.11
452	23.12
453	23.13
454	23.14
455	23.15
456	23.16
457	23.17
458	—
459	—
460	23.18
461	24.01
462	24.02
463	24.03
464	24.04
465	24.05
466	24.06
467	24.07
468	24.08
469	24.09
470	24.10
471	24.11
472	24.12
473	24.14
474	24.15
475	24.16
476	24.17
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479	24.20
480	24.21
481	24.22
482	24.23
483	24.24
484	24.25
485	24.26
486	24.27
486a	24.28
487	25.01
488	25.02
489	25.03
490	25.04
491	26.01
492	26.02
493	26.03
494	26.04
494a	26.05
494b	26.06
495	26.07
496	26.08
497	26.09
498	26.10
499	26.11

1925 C.C.P. Article	1965 C.C.P. Article
500	26.12
501	26.13
502	26.14
503	26.15
504	27.01
505	27.02
506	27.03
507	27.04
508	27.05
509	27.06
510	27.07
511	27.08
512	27.09
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514	27.11
515	27.12
516	—
517	27.13
518	27.14
519	27.15
520	27.16
521	27.17
522	28.01
523	—
524	28.02
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526	28.03
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528	28.05
529	28.06
530	28.07
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538	29.01
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559	30.08
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561	31.02
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567	31.04
568	Repealed 1926
569	—
570	31.05
571, 572	—
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575	31.07
576	32.01
577	32.02
578	33.01
579	33.02
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581	33.04
582	33.05
583	33.06
584	33.07
585	33.08
586	33.08
587	34.01
588 to 590	—
591	33.09
592 to 595	—
596	34.02
597	34.01
598 to 600	—
601	34.04
601a	34.01
602	35.01
603	35.02
604	35.03
605	35.04
606	35.05
607	35.06
608	35.07
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1925 C.C.P. Article	1965 C.C.P. Article
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622	35.22
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626	33.09
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635	35.15
636	35.25
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650	36.09
651	—
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655	36.11
656	36.12
657	36.13
658	36.14
659	36.15
660	36.16
661	36.17
662	Repealed 1953
663	Repealed 1953
664	—
665	36.18
666	36.19
667	36.20
668, 669	—
670	36.21
671	36.22
672	36.23
673	36.24
674	36.25
675	36.26
676	36.27
677	—
678	36.28
679	—
680	—
681	36.30
682	36.31
683	36.32
684	36.33
685	—

CROSS REFERENCE TABLE

1925 C.C.P. Article	1965 C.C.P. Article
686	37.01
687	—
688	37.02
689	37.03
690	37.04
691	37.05
692	37.06
693	37.07
694	37.08
695	37.09
696	37.10
697	37.11
698	37.12
699, 700	—
701	37.13
702	37.14
703	38.01
704	38.02
705	38.03
706	38.04
707	38.05
708	38.06
709	38.07
710	38.08
711	—
712	38.09
713	38.10
714	38.11
715	38.12
716	—
717	38.13
718	38.14
719	—
720	38.15
721	38.16
722	38.17
723	38.18
724	38.19
725	38.20
726	38.21
727	38.22
727a	38.23
728	38.24
729	38.25
730	38.26
731	38.27
732	38.28
732a	38.29
733	38.30
733a	38.31
734	39.01
735	39.02
736	39.03
737	39.09
738	39.09
739	39.04
740	39.05
741	—
742	39.06
743	39.07
744	39.08
745 to 747	—
748	39.10
749	39.12
750	—
751	40.01
752	40.02
753	40.03
754	40.04
755	40.05
756	—
757	40.06
758	40.07
759	40.08
759a	—
760	Repealed 1951 as "originally enacted"
760a	—
760b	—
760c	40.10
760d	—
760e	—
761	41.01
762	41.02
763	41.03
764	41.04
765	41.05
766	42.01
767	42.02
768	42.03
769	42.04
770, 771	—
772	42.06
773	42.07
774	42.08
775	42.09
775a	Repealed 1957
776 to 781	—
781a	42.10
781b	Repealed 1957
781b—1	Civ.St. 2292—1
781b—2	Civ.St. 2292—2
781c	42.11
781d	42.12
782	42.14
783	42.15
784	42.16
784a	—
785	43.01
786	43.02

CROSS REFERENCE TABLE

1925 C.C.P. Article	1965 C.C.P. Article
787	43.03
788	43.04
789	43.05
790	43.06
791	43.07
792	43.08
793	43.09
793a	Unconstitutional 1939
794	43.10
794a	Unconstitutional 1939
794b	Unconstitutional 1939
794c	Unconstitutional 1939
794d	Unconstitutional 1939
795	43.11
796	43.12
797	43.13
798	43.14
799	43.15
800	43.16
801	43.17
802	43.18
803	43.19
804	43.20
805	43.21
806	43.22
807	43.23
808	43.24
809	43.25
810	—
811	43.26
812	44.01
813	44.02
814	44.03
815 to 818	44.04
819	44.05
820	44.06
821	44.07
822	44.08
823	—
824	44.09
825	44.10
826	—
827	44.08
828	44.11
829 to 831	—
832	44.12
833	44.13
834	44.14
835	44.15
836	44.16
837	44.17
838	44.18
839	44.19

1925 C.C.P. Article	1965 C.C.P. Article
840	44.20
841 to 843	—
844	44.21
845	44.22
846	44.23
847	44.24
848	44.25
849	44.26
850	44.27
851	44.28
852	44.29
853	44.30
854	44.31
855	44.32
856	44.33
857	44.34
857a	44.35
858	44.36
859	44.37
860	44.38
861	44.39
862	44.40
863	44.41
864	44.42
865	44.43
866	44.44
867	45.01
868	45.02
869	45.03
870	45.04
871	45.05
872	45.06
873	45.07
874	45.08
875	45.09
876	45.10
877	45.11
878	45.12
879	45.13
880	45.14
881	45.15
882	45.16
883	45.17
884	45.18
885	45.19
886, 887	—
888	45.20
889	45.21
889a	45.22
890	45.23
891	45.24
892	45.25
893	45.26
894	45.27
895	45.28

CROSS REFERENCE TABLE

1925 C.C.P. Article	1965 C.C.P. Article
896	45.29
897	45.30
898	45.31
899	45.32
900	45.33
901	45.34
902	45.35
903	45.36
904	45.37
905	45.38
906	45.39
907	45.40
908	45.41
909	45.42
910	45.43
911	45.44
912	45.45
913	45.46
914	45.47
915	45.48
916	45.49
917	45.50
918	45.51
919	45.52
920	45.53
921 to 932	Repealed 1957
932—1	46.01
932—2	—
932a	Repealed 1957
932b	46.02
933	47.01
934	47.02
935	47.03
936	47.04
937	47.05
938	47.06
939	47.07
940	47.08
941	47.09
942	47.10
943	47.11
944	1001
945	1002
946	1003
947	1004
948	1005
949	1006
950	1007
951	1008
952	48.01
953	—
954	48.04
955, 956	—

1925 C.C.P. Article	1965 C.C.P. Article
957	48.02
958	48.03
959 to 966	Repealed 1957
967	48.05
968	49.01
969	49.02
970	49.03
970a	49.04
970b	49.05
971	49.06
972	49.07
973	49.08
974	49.09
975	49.10
976	49.11
977	49.12
978	49.13
979	49.14
980	49.15
981	49.16
982	49.17
983	49.18
984	49.19
985	49.20
986	49.21
987	49.22
988	49.23
989	49.24
989a	49.25
990	50.01
991	50.02
992	50.03
993	50.04
994	50.05
995	50.06
996	50.07
997	51.01
998	51.02
999	51.03
1000	51.04
1001	51.05
1002	51.06
1003	51.07
1004	51.08
1005	51.09
1006	51.10
1007	51.11
1008	51.12
1008a	51.13
1009	1009
1010	1010
1010a	1010a
1011	1011

CROSS REFERENCE TABLE

1925 C.C.P. Article	1965 C.C.P. Article
1012	1012
1013	1013
1014	1014
1015	1015
1016	1016
1017	1017
1018	1018
1019	1019
1019a	1019a
1020	1020
1021	1021
1022	1022
1023	1023
1024	1024
1025	1025
1026	1026
1027	1027
1028	1028
1029	1029
1030	1030
1030a	1030a
1031	1031
1032	1032
1033	1033
1034	1034
1035	1035
1036	35.27
1037	1037
1038	1038
1039	1039
1040	1040
1041	1041
1041a	1041a
1042	1042
1043	1043
1044	1044
1045	1045
1046	1046
1047	1047
1048	1048
1049	1049
1050	1050
1051	1051
1052	1052
1053	1053
1054	1054
1055	1055
1056	See Civ.St. 2122
1057	Repealed 1945
1058	1058
1058a	1058a
1059	1059
1060	1060
1061	1061
1062	1062
1063	1063
1064	1064
1065	53.01
1066	Repealed 1929
1067	53.02
1068	53.03
1069 to 1071	—
1072	53.04
1073	53.05
1074	53.06
1075	1075
1076	1076
1077	1077
1078	1078
1079	1079
1080	1080
1081	1081
1082	1082
1083 to 1093	Repealed 1937, 1943

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CODE OF CRIMINAL PROCEDURE

PART I. CODE OF CRIMINAL PROCEDURE OF 1965

INTRODUCTORY

CHAPTER ONE. GENERAL PROVISIONS

Art.
1.01. Short Title.
1.02. Effective Date.
1.03. Objects of This Code.
1.04. Due Course of Law.
1.05. Rights of Accused.
1.06. Searches and Seizures.
1.07. Right to Bail.
1.08. Habeas Corpus.
1.09. Cruelty Forbidden.
1.10. Jeopardy.
1.11. Acquittal a Bar.
1.12. Right to Jury.
1.13. Waiver of Trial by Jury.
1.14. Waiver of Rights.
1.141. Waiver of Indictment for Noncapital Felony.
1.15. Jury in Felony.
1.16. Liberty of Speech and Press.
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1.18. Outlawry and Transportation.
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1.20. Conviction of Treason.
1.21. Privilege of Legislators.
1.22. Privilege of Voters.
1.23. Dignity of State.
1.24. Public Trial.
1.25. Confronted by Witnesses.
1.26. Construction of This Code.
1.27. Common Law Governs.

Art. 1.01. Short Title

This Act shall be known, and may be cited, as the "Code of Criminal Procedure".

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.02. Effective Date

This Code shall take effect and be in force on and after January 1, 1966. The procedure herein prescribed shall govern all criminal proceedings instituted after the effective date of this Act and all proceedings pending upon the effective date hereof insofar as are applicable.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.03. Objects of This Code

This Code is intended to embrace rules applicable to the prevention and prosecution of offenses against the laws of this State, and to make the rules of procedure in respect to the prevention and punishment of offenses intelligible to the officers who are to act under them, and to all persons whose rights are to be affected by them. It seeks:

1. To adopt measures for preventing the commission of crime;

2. To exclude the offender from all hope of escape;

3. To insure a trial with as little delay as is consistent with the ends of justice;

4. To bring to the investigation of each offense on the trial all the evidence tending to produce conviction or acquittal;

5. To insure a fair and impartial trial; and

6. The certain execution of the sentence of the law when declared.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.04. Due Course of Law

No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.05. Rights of Accused

In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself, or counsel, or both; shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. No person shall be held to answer for a felony unless on indictment of a grand jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.06. Searches and Seizures

The people shall be secure in their persons, houses, papers and possessions from all unreasonable seizures or searches. No warrant to search any place or to seize any person or thing shall issue without describing them as near as may be, nor without probable cause supported by oath or affirmation.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.07. Right to Bail

All prisoners shall be bailable unless for capital offenses when the proof is evident. This provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.08. Habeas Corpus

The writ of habeas corpus is a writ of right and shall never be suspended.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.09. Cruelty Forbidden

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.10. Jeopardy

No person for the same offense shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.11. Acquittal a Bar

An acquittal of the defendant exempts him from a second trial or a second prosecution for the same offense, however irregular the proceedings may have been; but if the defendant shall have been acquitted upon trial in a court having no jurisdiction of the offense, he may be prosecuted again in a court having jurisdiction.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.12. Right to Jury

The right of trial by jury shall remain inviolate.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.13. Waiver of Trial by Jury

The defendant in a criminal prosecution for any offense classified as a felony less than capital shall have the right, upon entering a plea, to waive the right of trial by jury, conditioned, however, that such waiver must be made in person by the defendant in writing in open court with the consent and approval of the court, and the attorney representing the State. The consent and approval by the court shall be entered of record on the minutes of the court, and the consent and approval of the attorney representing the State shall be in writing, signed by him, and filed in the papers of the cause before the defendant enters his plea. Before a defendant who has no attorney can agree to waive the jury, the court must appoint an attorney to represent him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.14. Waiver of Rights

The defendant in a criminal prosecution for any offense may waive any rights secured him by law except the right of trial by jury in a capital felony case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1733, ch. 959, § 1, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1127, ch. 426, art. 3, § 5, eff. June 14, 1973.]

Acts 1967, 60th Leg., p. 1752, ch. 659 amended various articles of the Code of Criminal Procedure, 1965, and repealed Penal Code, Art. 82; sections 41 and 42 of the 1967 act provided:

"Sec. 41. **Saving Clause.** Any confession admissible at the time it was made shall be admissible at any trial subsequent to the effective date of this Act. The provisions of this Act shall not affect the admissibility of confessions made prior to the effective date of the Act.

"Sec. 42. **Severability Clause.** If any provision, section or clause of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision, section or clause, and to this end the provisions of this Act are declared to be severable."

Art. 1.141. Waiver of Indictment for Noncapital Felony

A person represented by legal counsel may in open court or by written instrument voluntarily waive the right to be accused by indictment of any offense other than a capital felony. On waiver as provided in this article, the accused shall be charged by information.

[Acts 1971, 62nd Leg., p. 1148, ch. 260, § 1, eff. May 19, 1971.]

Art. 1.15. Jury in Felony

No person can be convicted of a felony except upon the verdict of a jury duly rendered and recorded, unless in felony cases less than capital, the defendant, upon entering a plea, has in open court in person waived his right of trial by jury in writing in accordance with Articles 1.13 and 1.14; provided,

however, that it shall be necessary for the state to introduce evidence into the record showing the guilt of the defendant and said evidence shall be accepted by the court as the basis for its judgment and in no event shall a person charged be convicted upon his plea without sufficient evidence to support the same. The evidence may be stipulated if the defendant in such case consents in writing, in open court, to waive the appearance, confrontation, and cross-examination of witnesses, and further consents either to an oral stipulation of the evidence and testimony or to the introduction of testimony by affidavits, written statements of witnesses, and any other documentary evidence in support of the judgment of the court. Such waiver and consent must be approved by the court in writing, and be filed in the file of the papers of the cause.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1733, ch. 659, § 2, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 3028, ch. 996, § 1, eff. June 15, 1971; Acts 1973, 63rd Leg., p. 1127, ch. 426, art. 3, § 5, eff. June 14, 1973.]

Art. 1.16. Liberty of Speech and Press

Every person shall be at liberty to speak, write or publish his opinion on any subject, being liable for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers investigating the conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. In all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.17. Religious Belief

No person shall be disqualified to give evidence in any court of this State on account of his religious opinions, or for the want of any religious belief; but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.18. Outlawry and Transportation

No citizen shall be outlawed, nor shall any person be transported out of the State for any offense committed within the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.19. Corruption of Blood, etc.

No conviction shall work corruption of blood or forfeiture of estate.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.20. Conviction of Treason

No person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.21. Privilege of Legislators

Senators and Representatives shall, except in cases of treason, felony or breach of the peace, be privileged from arrest during the session of the Legislature, and in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the Legislature is convened.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.22. Privilege of Voters

Voters shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.23. Dignity of State

All justices of the Supreme Court, judges of the Court of Criminal Appeals, justices of the Courts of Appeals and judges of the District Courts, shall, by virtue of their offices, be conservators of the peace throughout the State. The style of all writs and process shall be "The State of Texas". All prosecutions shall be carried on "in the name and by authority of The State of Texas", and conclude, "against the peace and dignity of the State".

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 801, ch. 291, § 97, eff. Sept. 1, 1981.]

Art. 1.24. Public Trial

The proceedings and trials in all courts shall be public.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.25. Confronted by Witnesses

The defendant, upon a trial, shall be confronted with the witnesses, except in certain cases provided for in this Code where depositions have been taken.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.26. Construction of This Code

The provisions of this Code shall be liberally construed, so as to attain the objects intended by the Legislature: The prevention, suppression and punishment of crime.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 1.27. Common Law Governs

If this Code fails to provide a rule of procedure in any particular state of case which may arise, the rules of the common law shall be applied and govern.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER TWO. GENERAL DUTIES OF OFFICERS

Art.
2.01. Duties of District Attorneys.
2.02. Duties of County Attorneys.
2.03. Neglect of Duty.
2.04. Shall Draw Complaints.
2.05. When Complaint is Made.
2.06. May Administer Oaths.
2.07. Attorney Pro Tem.
2.08. Disqualified.
2.09. Who are Magistrates.
2.10. Duty of Magistrates.
2.11. Examining Court.
2.12. Who are Peace Officers.
2.13. Duties and Powers.
2.14. May Summon Aid.
2.15. Person Refusing to Aid.
2.16. Neglecting to Execute Process.
2.17. Conservator of the Peace.
2.18. Custody of Prisoners.
2.19. Report as to Prisoners.
2.20. Deputy.
2.21. Duty of Clerks.
2.22. Power of Deputy Clerks.
2.23. Report to Attorney General.
2.24. Repealed.

Art. 2.01. Duties of District Attorneys

Each district attorney shall represent the State in all criminal cases in the district courts of his district and in appeals therefrom, except in cases where he has been, before his election, employed adversely. When any criminal proceeding is had before an examining court in his district or before a judge upon habeas corpus, and he is notified of the same, and is at the time within his district, he shall represent the State therein, unless prevented by other official duties. It shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done. They shall not suppress facts or secrete witnesses capable of establishing the innocence of the accused.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 801, ch. 291, § 98, eff. Sept. 1, 1981.]

Art. 2.02. Duties of County Attorneys

The county attorney shall attend the terms of court in his county below the grade of district court, and shall represent the State in all criminal cases under examination or prosecution in said county; and in the absence of the district attorney he shall represent the State alone and, when requested, shall aid the district attorney in the prosecution of any case in behalf of the State in the district court. He shall represent the State in cases he has prosecuted which are appealed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 801, ch. 291, § 99, eff. Sept. 1, 1981.]

Art. 2.03. Neglect of Duty

(a) It shall be the duty of the attorney representing the State to present by information to the court having jurisdiction, any officer for neglect or failure of any duty enjoined upon such officer, when such neglect or failure can be presented by information, whenever it shall come to the knowledge of said attorney that there has been a neglect or failure of duty upon the part of said officer; and he shall bring to the notice of the grand jury any act of violation of law or neglect or failure of duty upon the part of any officer, when such violation, neglect or failure is not presented by information, and whenever the same may come to his knowledge.

(b) It is the duty of the trial court, the attorney representing the accused, the attorney representing the state and all peace officers to so conduct themselves as to insure a fair trial for both the state and the defendant, not impair the presumption of innocence, and at the same time afford the public the benefits of a free press.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1733, ch. 659, § 3, eff. Aug. 28, 1967.]

Art. 2.04. Shall Draw Complaints

Upon complaint being made before a district or county attorney that an offense has been committed in his district or county, he shall reduce the complaint to writing and cause the same to be signed and sworn to by the complainant, and it shall be duly attested by said attorney.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 2.05. When Complaint is Made

If the offense be a misdemeanor, the attorney shall forthwith prepare an information based upon

such complaint and file the same in the court having jurisdiction; provided, that in counties having no county attorney, misdemeanor cases may be tried upon complaint alone, without an information, provided, however, in counties having one or more criminal district courts an information must be filed in each misdemeanor case. If the offense be a felony, he shall forthwith file the complaint with a magistrate of the county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 2.06. May Administer Oaths

For the purpose mentioned in the two preceding Articles, district and county attorneys are authorized to administer oaths.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 2.07. Attorney Pro Tem

(a) Whenever an attorney for the state is disqualified to act in any case or proceeding, is absent from the county or district, or is otherwise unable to perform the duties of his office, or in any instance where there is no attorney for the state, the judge of the court in which he represents the state may appoint any competent attorney to perform the duties of the office during the absence or disqualification of the attorney for the state.

(b) If the appointed attorney is also an attorney for the state, the duties of the appointed office are additional duties of his present office, and he is not entitled to additional compensation.

(c) If the appointed attorney is not an attorney for the state, he is qualified to perform the duties of the office for the period of absence or disqualification of the attorney for the state on filing an oath with the clerk of the court. He shall receive compensation in the same amount and manner as an attorney appointed to represent an indigent person.

(d) In this article, "attorney for the state" means a county attorney, a district attorney, or a criminal district attorney.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1733, ch. 659, § 4, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 356, ch. 154, § 1, eff. May 23, 1973.]

Art. 2.08. Disqualified

District and county attorneys shall not be of counsel adversely to the State in any case, in any court, nor shall they, after they cease to be such officers, be of counsel adversely to the State in any case in which they have been of counsel for the State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 2.09. Who are Magistrates

Each of the following officers is a magistrate within the meaning of this Code: The justices of the Supreme Court, the judges of the Court of Criminal Appeals, the justices of the Courts of Appeals, the judges of the District Court, the magistrates appointed by the judges of the district courts of Dallas County that give preference to criminal cases and the judges of the criminal district courts of Dallas County, the county judges, the judges of the county courts at law, judges of the county criminal courts, the justices of the peace, the mayors and recorders and the judges of the municipal courts of incorporated cities or towns.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 801, ch. 291, § 100, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 883, ch. 204, § 1, eff. Aug. 29, 1983.]

Art. 2.10. Duty of Magistrates

It is the duty of every magistrate to preserve the peace within his jurisdiction by the use of all lawful means; to issue all process intended to aid in preventing and suppressing crime; to cause the arrest of offenders by the use of lawful means in order that they may be brought to punishment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 2.11. Examining Court

When the magistrate sits for the purpose of inquiring into a criminal accusation against any person, this is called an examining court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 2.12. Who are Peace Officers

The following are peace officers:

(1) sheriffs and their deputies;

(2) constables and deputy constables;

(3) marshals or police officers of an incorporated city, town, or village;

(4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;

(5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;

(6) law enforcement agents of the Alcoholic Beverage Commission;

(7) each member of an arson investigating unit of a city, county or the state;

(8) any private person specially appointed to execute criminal process;

(9) officers commissioned by the governing board of any state institution of higher education, public junior college or the Texas State Technical Institute;

(10) officers commissioned by the State Purchasing and General Services Commission;

(11) law enforcement officers commissioned by the Parks and Wildlife Commission;

(12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state that operates an airport served by a Civil Aeronautics Board certificated air carrier;

(13) municipal park and recreational patrolmen and security officers;

(14) security officers commissioned as peace officers by the State Treasurer; and

Text of (15) as added by Acts 1983, 68th Leg., p. 545, ch. 114, § 1

(15) officers commissioned by a water control and improvement district under Section 51.132, Water Code.

Text of (15) as added by Acts 1983, 68th Leg., p. 4901, ch. 867, § 2

(15) officers commissioned by a board of trustees under Chapter 341, Acts of the 57th Legislature, Regular Session, 1961 (Article 1187f, Vernon's Texas Civil Statutes).

Text of (15) as added by Acts 1983, 68th Leg., p. 5303, ch. 974, § 11

(15) investigators commissioned by the Texas State Board of Medical Examiners.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1734, ch. 659, § 5, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 1116, ch. 246, § 3, eff. May 17, 1971; Acts 1973, 63rd Leg., p. 9, ch. 7, § 2, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1259, ch. 459, § 1, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 480, ch. 204, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 618, ch. 227, § 2, eff. May 24, 1977; Acts 1977, 65th Leg., p. 1082, ch. 396, § 1, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 545, ch. 114, § 1, eff. May 17, 1983; Acts 1983, 68th Leg., p. 4358, ch. 699, § 1, eff. May 19, 1983; Acts 1983, 68th Leg., p. 4901, ch. 867, § 2, eff. June 19, 1983; Acts 1983, 68th Leg., p. 5303, ch. 974, § 1, eff. Aug. 29, 1983.]

Sections 4 and 5 of the amendatory Act of 1971 provided:

"Sec. 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 5. All laws or parts of laws in conflict with this Act are hereby repealed to the extent of such conflict only."

Sections 2 and 3 of Acts 1973, 63rd Leg., p. 1259, ch. 459, provided:

"Sec. 2. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 3. All laws or parts of laws in conflict with this Act are hereby repealed to the extent of such conflict only."

Section 2 of Acts 1977, 65th Leg., p. 1082, ch. 396, provided:

"The following named criminal investigators of the United States shall not be deemed peace officers, but shall have the powers of arrest, search and seizure as to felony offenses only under the laws of the State of Texas:

"Special Agents of the Federal Bureau of Investigation,

"Special Agents of the Secret Service,

"Special Agents of United States Customs, excluding border patrolmen and custom inspectors,

"Special Agents of Alcohol, Tobacco and Firearms, and

"Special Agents of Federal Drug Enforcement Agency."

Art. 2.13. Duties and Powers

It is the duty of every peace officer to preserve the peace within his jurisdiction. To effect this purpose, he shall use all lawful means. He shall in every case where he is authorized by the provisions of this Code, interfere without warrant to prevent or suppress crime. He shall execute all lawful process issued to him by any magistrate or court. He shall give notice to some magistrate of all offenses committed within his jurisdiction, where he has good reason to believe there has been a violation of the penal law. He shall arrest offenders without warrant in every case where he is authorized by law, in order that they may be taken before the proper magistrate or court and be tried.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 2.14. May Summon Aid

Whenever a peace officer meets with resistance in discharging any duty imposed upon him by law, he shall summon a sufficient number of citizens of his county to overcome the resistance; and all persons summoned are bound to obey.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 2.15. Person Refusing to Aid

The peace officer who has summoned any person to assist him in performing any duty shall report such person, if he refuse to obey, to the proper district or county attorney, in order that he may be prosecuted for the offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 2.16. Neglecting to Execute Process

If any sheriff or other officer shall wilfully refuse or fail from neglect to execute any summons, subpoena or attachment for a witness, or any other legal process which it is made his duty by law to execute, he shall be liable to a fine for contempt not less than ten nor more than two hundred dollars, at the discretion of the court. The payment of such fine shall be enforced in the same manner as fines for contempt in civil cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 2.17. Conservator of the Peace

Each sheriff shall be a conservator of the peace in his county, and shall arrest all offenders against the laws of the State, in his view or hearing, and take them before the proper court for examination or trial. He shall quell and suppress all assaults and batteries, affrays, insurrections and unlawful assemblies. He shall apprehend and commit to jail all offenders, until an examination or trial can be had.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 2.18. Custody of Prisoners

When a prisoner is committed to jail by warrant from a magistrate or court, he shall be placed in jail by the sheriff. It is a violation of duty on the part of any sheriff to permit a defendant so committed to remain out of jail, except that he may, when a defendant is committed for want of bail, or when he arrests in a bailable case, give the person arrested a reasonable time to procure bail; but he shall so guard the accused as to prevent escape.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 2.19. Report as to Prisoners

On the first day of each month, the sheriff shall give notice, in writing, to the district or county attorney, where there be one, as to all prisoners in his custody, naming them, and of the authority under which he detains them.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 2.20. Deputy

Wherever a duty is imposed by this Code upon the sheriff, the same duty may lawfully be performed by his deputy. When there is no sheriff in a county, the duties of that office, as to all proceedings under the criminal law, devolve upon the officer who, under the law, is empowered to discharge the duties of sheriff, in case of vacancy in the office.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 2.21. Duty of Clerks

(a) Each clerk of the district or county court shall receive and file all papers and exhibits in respect to criminal proceedings, issue all process in such cases, and perform all other duties imposed upon them by law.

(b) Any firearm or contraband received by a clerk as an exhibit in any criminal proceeding may be placed by the clerk in the hands of the sheriff for safekeeping at any time during the pendency of such proceeding or thereafter.

(c) The sheriff shall receive and hold such exhibits and release them only to the person or persons authorized by the court in which such exhibits have been received.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 212, ch. 119, § 1, eff. Aug. 27, 1979.]

Art. 2.22. Power of Deputy Clerks

Whenever a duty is imposed upon the clerk of the district or county court, the same may be lawfully performed by his deputy.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 2.23. Report to Attorney General

The clerks of the district and county courts shall, when required by the Attorney General, report to him at such times, and in accordance with such forms as he may direct, such information in relation to criminal matters as may be shown by their records.

When any district clerk has failed, neglected or refused to make any such report after being requested in writing by the Attorney General to make such report, the Attorney General shall notify in writing the Comptroller of Public Accounts of such failure, neglect or refusal, and said Comptroller shall not thereafter draw any warrant in favor of said clerk until said report has been filed with the Attorney General.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 2.24. Authenticating Officer

Text of article as added by Acts 1983, 68th Leg., p. 4289, ch. 684, § 1

(a) The governor may appoint an authenticating officer, in accordance with Subsection (b) of this article, and delegate to that officer the power to sign for the governor or to use the governor's facsimile signature for signing any document that does not have legal effect under this code unless it is signed by the governor.

(b) To appoint an authenticating officer under this article, the governor shall file with the secretary of state a document that contains:

(1) the name of the person to be appointed as authenticating officer and a copy of the person's signature;

(2) the types of documents the authenticating officer is authorized to sign for the governor; and

(3) the types of documents on which the authenticating officer is authorized to use the governor's facsimile signature.

(c) The governor may revoke an appointment made under this article by filing with the secretary of state a document that expressly revokes the appointment of the authenticating agent.

(d) If an authenticating officer signs a document described in Subsection (a) of this article, the officer shall sign in the following manner: "_____; Authenticating Officer for Governor _____."

(e) If a provision of this code requires the governor's signature on a document before that document has legal effect, the authorized signature of the authenticating officer or an authorized facsimile signature of the governor gives the document the same legal effect as if it had been signed manually by the governor.

[Acts 1983, 68th Leg., p. 4289, ch. 684, § 1, eff. June 19, 1983.]

For text of article as added by Acts 1983, 68th Leg., p. 4537, ch. 749, § 1, see article 2.24, post.

Art. 2.24. Form of Record

Text of article as added by Acts 1983, 68th Leg., p. 4537, ch. 749, § 1

Sec. 1. If a county officer is required to keep a record by a provision of this code or the Code of Criminal Procedure, 1925, the commissioners court of the county may authorize the photographic, microphotographic, mechanical, or electronic entry, storage, and retrieval of the record in lieu of any other manner required or permitted by law.

Sec. 2. If an officer is authorized by the commissioners court to keep records by photographic, microphotographic, mechanical, or electronic means, the officer shall provide for:

(1) the reasonable security of the records and the facilities for entry, storage, and retrieval of the records; and

(2) reasonable public access to the records if public access is required by law.

[Acts 1983, 68th Leg., p. 4537, ch. 749, § 1, eff. Aug. 29, 1983.]

For text of article as added by Acts 1983, 68th Leg., p. 4289, ch. 684, § 1, see article 2.24, ante.

Former Art. 2.24, relating to the identification of witnesses, was repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3b.

CHAPTER THREE. DEFINITIONS

Art.
3.01. Words and Phrases.
3.02. Criminal Action.
3.03. Officers.

Art. 3.01. Words and Phrases

All words, phrases and terms used in this Code are to be taken and understood in their usual acceptation in common language, except where specially defined.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1975, 64th Leg., p. 909, ch. 341, § 1, eff. June 19, 1975.]

Saving provisions. Section 7 of the 1975 Act provided:

"(a) Except as provided in Subsections (b) and (c) of this section, this Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose, as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date."

"(b) Conduct constituting an offense under existing law that is repealed by this Act and that does not constitute an offense under this Act may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that was an offense under the laws repealed by this Act and that does not constitute an offense under this Act, the action is dismissed on the effective date of this Act. However, a conviction existing on the effective date of this Act for conduct constituting an offense under laws repealed by this Act is valid and unaffected by this Act. For purposes of this section, "conviction" means a finding of guilt in a court of competent jurisdiction, and it is of no consequence that the conviction is not final."

"(c) In a criminal action pending on or commenced on or after the effective date of this Act, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court before the sentencing hearing begins."

Art. 3.02. Criminal Action

A criminal action is prosecuted in the name of the State of Texas against the accused, and is conducted by some person acting under the authority of the State, in accordance with its laws.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 3.03. Officers

The general term "officers" includes both magistrates and peace officers.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

COURTS AND CRIMINAL JURISDICTION

CHAPTER FOUR. COURTS AND CRIMINAL JURISDICTION

Art.
4.01. What Courts Have Criminal Jurisdiction.
4.02. Existing Courts Continued.
4.03. Courts of Appeals.
4.04. Court of Criminal Appeals.
4.05. Jurisdiction of District Courts.
4.06. When Felony Includes Misdemeanor.
4.07. Jurisdiction of County Courts.
4.08. Appellate Jurisdiction of County Courts.
4.09. Appeals From Inferior Court.
4.10. To Forfeit Bail Bonds.
4.11. Jurisdiction of Justice Courts.
4.12. Misdemeanor Cases; Precinct in Which Defendant to be Tried in Justice Court.
4.13. Justice May Forfeit Bond.

Art.
4.14. Municipal Court.
4.15. May Sit at Any Time.
4.16. Concurrent Jurisdiction.
4.17. Transfer of Driving While Intoxicated Cases.

Art. 4.01. What Courts Have Criminal Jurisdiction

The following courts have jurisdiction in criminal actions:

1. The Court of Criminal Appeals;
2. Courts of appeals;
3. The district courts;
4. The criminal district courts;
5. The magistrates appointed by the judges of the district courts of Dallas County that give preference to criminal cases and the judges of the criminal district courts of Dallas County as set out in Chapter 678, Acts of the 67th Legislature, Regular Session, 1981 (Article 1918c, Vernon's Texas Civil Statutes);
6. The county courts;
7. All county courts at law with criminal jurisdiction;
8. County criminal courts;
9. Justice courts; and
10. Municipal courts.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 801, ch. 291, § 101, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 883, ch. 204, § 2, eff. Aug. 29, 1983.]

Art. 4.02. Existing Courts Continued

No existing courts shall be abolished by this Code and shall continue with the jurisdiction, organization, terms and powers currently existing unless otherwise provided by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 4.03. Courts of Appeals

The Courts of Appeals shall have appellate jurisdiction coextensive with the limits of their respective districts in all criminal cases except those in which the death penalty has been assessed. This Article shall not be so construed as to embrace any case which has been appealed from any inferior court to the county court, the county criminal court, or county court at law, in which the fine imposed by the county court, the county criminal court or county court at law does not exceed one hundred dollars, unless the sole issue is the constitutionality of the statute or ordinance on which the conviction is based.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 802, ch. 291, § 102, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction. At least 1,800 appeals including death penalty appeals pending in the Court of Criminal Appeals prior to September 1, 1981, shall be retained by that court for disposition in accordance with laws in effect prior to the effective date of this Act, and for that purpose, all laws repealed or amended by this Act shall remain in force and effect for those appeals pending in the Court of Criminal Appeals. The remaining appeals pending in the Court of Criminal appeals shall be transferred to the various courts of appeals on which the number of judges is increased by the 67th Session of the legislature; provided, no more than 75 nondeath penalty appeals shall be transferred for each newly created judgeship and such a transfer shall not be made until such justice assumes office."

Art. 4.04. Court of Criminal Appeals

Sec. 1. The Court of Criminal Appeals and each judge thereof shall have, and is hereby given, the power and authority to grant and issue and cause the issuance of writs of habeas corpus, and, in criminal law matters, the writs of mandamus, procedendo, prohibition, and certiorari. The court and each judge thereof shall have, and is hereby given, the power and authority to grant and issue and cause the issuance of such other writs as may be necessary to protect its jurisdiction or enforce its judgments.

Sec. 2. The Court of Criminal Appeals shall have, and is hereby given, final appellate and review jurisdiction in criminal cases coextensive with the limits of the state, and its determinations shall be final. The appeal of all cases in which the death penalty has been assessed shall be to the Court of Criminal Appeals. In addition, the Court of Criminal Appeals may, on its own motion, with or without a petition for such discretionary review being filed by one of the parties, review any decision of a court of appeals in a criminal case. Discretionary review by the Court of Criminal Appeals is not a matter of right, but of sound judicial discretion.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1971, 62nd Leg., p. 2536, ch. 831, § 6, eff. Aug. 30, 1971; Acts 1981, 67th Leg., p. 802, ch. 291, § 103, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction. At least 1,800 appeals including death penalty appeals pending in the Court of Criminal Appeals prior to September 1, 1981, shall be retained by that court for disposition in accordance with laws in effect prior to the effective date of this Act, and for that purpose, all laws repealed or amended by this Act shall remain in force and effect for those appeals pending in the Court of Criminal Appeals. The remaining appeals pending in the Court of Criminal Appeals shall be transferred to the various courts of appeals on which the number of judges is increased by the 67th Session of the legislature; provided, no more than 75 nondeath penalty appeals shall be transferred for each newly created judgeship and such a transfer shall not be made until such justice assumes office."

Art. 4.05. Jurisdiction of District Courts

District courts and criminal district courts shall have original jurisdiction in criminal cases of the grade of felony, of all misdemeanors involving offi-

cial misconduct, and of misdemeanor cases transferred to the district court under Article 4.17 of this code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1983, 68th Leg., p. 1585, ch. 303, § 5, eff. Jan. 1, 1984.]

Section 28(c) of the 1983 amendatory act provides:

"An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

Art. 4.06. When Felony Includes Misdemeanor

Upon the trial of a felony case, the court shall hear and determine the case as to any grade of offense included in the indictment, whether the proof shows a felony or a misdemeanor.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 4.07. Jurisdiction of County Courts

The county courts shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the justice court, and when the fine to be imposed shall exceed two hundred dollars.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 4.08. Appellate Jurisdiction of County Courts

The county courts shall have appellate jurisdiction in criminal cases of which justice courts and other inferior courts have original jurisdiction.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 4.09. Appeals From Inferior Court

If the jurisdiction of any county court has been transferred to the district court or to a county court at law, then an appeal from a justice or other inferior court will lie to the court to which such appellate jurisdiction has been transferred.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 4.10. To Forfeit Bail Bonds

County courts and county courts at law shall have jurisdiction in the forfeiture and final judgment of all bail bonds and personal bonds taken in criminal cases of which said courts have jurisdiction.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 4.11. Jurisdiction of Justice Courts

Justices of the peace shall have jurisdiction in criminal cases where the fine to be imposed by law may not exceed two hundred dollars.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 4.12. Misdemeanor Cases; Precinct in Which Defendant to be Tried in Justice Court

A misdemeanor case to be tried in justice court shall be tried in the precinct in which the offense was committed, or in which the defendant or any of the defendants reside, or, with the written consent of the State and each defendant or his attorney, in any other precinct within the county; provided that in any misdemeanor case in which the offense was committed in a precinct where there is no qualified justice precinct court, then trial shall be had in the next adjacent precinct in the same county which may have a duly qualified justice precinct court, or in the precinct in which the defendant may reside; provided that in any such misdemeanor case, upon disqualification for any reason of all justices of the peace in the precinct where the offense was committed, such case may be tried in the next adjoining precinct in the same county, having a duly qualified justice of the peace.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 4.13. Justice May Forfeit Bond

A justice of the peace shall have the power to take forfeitures of all bonds given for the appearance of any party at his court, regardless of the amount.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 4.14. Municipal Court

The municipal court in each incorporated city, town or village of this State shall have exclusive original jurisdiction within the corporate limits in all criminal cases in which punishment is by fine only and where the maximum of such fine does not exceed $1,000 in all cases arising under the ordinances of such city, town or village that govern fire safety, zoning and public health and sanitation other than vegetation and litter violations and where the maximum of such fine does not exceed $200 in all other cases arising under the ordinances of such city, town or village, and shall have concurrent jurisdiction with any justice of the peace in any precinct in which the city, town or village is situated in all criminal cases arising under the criminal laws of this State, in which punishment is by fine only, and where the maximum of such fine may not

exceed $200, and arising within such corporate limits.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1983, 68th Leg., p. 3840, ch. 601, § 3, eff. Sept. 1, 1983.]

Art. 4.15. May Sit at Any Time

Justice courts and corporation courts may sit at any time to try criminal cases over which they have jurisdiction. Any case in which a fine may be assessed shall be tried in accordance with the rules of evidence and this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 4.16. Concurrent Jurisdiction

When two or more courts have concurrent jurisdiction of any criminal offense, the court in which an indictment or a complaint shall first be filed shall retain jurisdiction except as provided in Article 4.12.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 4.17. Transfer of Driving While Intoxicated Cases

On a plea of not guilty to a misdemeanor offense under Article 67011-1, Revised Statutes, entered in a county court of a judge who is not a licensed attorney, on the motion of the state or the defendant, the judge may transfer the case to a district court having jurisdiction in the county or to a county court at law in the county presided over by a judge who is a licensed attorney. The judge may make the transfer on his own motion.

[Acts 1983, 68th Leg., p. 1586, ch. 303, § 6, eff. Jan. 1, 1984.]

Section 28(c) of the 1983 Act provides:

"An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

PREVENTION AND SUPPRESSION OF OFFENSES

CHAPTER FIVE. PREVENTING OFFENSES BY THE ACT OF A PRIVATE PERSON [REPEALED]

Arts. 5.01 to 5.07. Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3(c), eff. Jan. 1, 1974

CHAPTER SIX. PREVENTING OFFENSES BY THE ACT OF MAGISTRATES AND OTHER OFFICERS

Art.
6.01. When Magistrate Hears Threat.
6.02. Threat to Take Life.
6.03. On Attempt to Injure.
6.04. May Compel Offender to Give Security.
6.05. Duty of Peace Officer as to Threats.
6.06. Peace Officer to Prevent Injury.
6.07. Conduct of Peace Officer.

Art. 6.01. When Magistrate Hears Threat

It is the duty of every magistrate, when he may have heard, in any manner, that a threat has been made by one person to do some injury to himself or the person or property of another, including the person or property of his spouse, immediately to give notice to some peace officer, in order that such peace officer may use lawful means to prevent the injury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 366, ch. 164, § 1, eff. Sept. 1, 1979.]

Art. 6.02. Threat to Take Life

If, within the hearing of a magistrate, one person shall threaten to take the life of another, including that of his spouse, or himself, the magistrate shall issue a warrant for the arrest of the person making the threat, or in case of emergency, he may himself immediately arrest such person.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 366, ch. 164, § 1, eff. Sept. 1, 1979.]

Art. 6.03. On Attempt to Injure

Whenever, in the presence or within the observation of a magistrate, an attempt is made by one person to inflict an injury upon himself or to the person or property of another, including the person or property of his spouse, it is his duty to use all lawful means to prevent the injury. This may be done, either by verbal order to a peace officer to interfere and prevent the injury, or by the issuance of an order of arrest against the offender, or by arresting the offender; for which purpose he may call upon all persons present to assist in making the arrest.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 366, ch. 164, § 1, eff. Sept. 1, 1979.]

Art. 6.04. May Compel Offender to Give Security

When the person making such threat is brought before a magistrate, he may compel him to give security to keep the peace, or commit him to custody.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 6.05. Duty of Peace Officer as to Threats

It is the duty of every peace officer, when he may have been informed in any manner that a threat has been made by one person to do some injury to himself or to the person or property of another, including the person or property of his spouse, to

prevent the threatened injury, if within his power; and, in order to do this, he may call in aid any number of citizens in his county. He may take such measures as the person about to be injured might for the prevention of the offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 366, ch. 164, § 1, eff. Sept. 1, 1979.]

Art. 6.06. Peace Officer to Prevent Injury

Whenever, in the presence of a peace officer, or within his view, one person is about to commit an offense against the person or property of another, including the person or property of his spouse, or injure himself, it is his duty to prevent it; and, for this purpose the peace officer may summon any number of the citizens of his county to his aid. The peace officer must use the amount of force necessary to prevent the commission of the offense, and no greater.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 366, ch. 164, § 1, eff. Sept. 1, 1979.]

Art. 6.07. Conduct of Peace Officer

The conduct of peace officers, in preventing offenses about to be committed in their presence, or within their view, is to be regulated by the same rules as are prescribed to the action of the person about to be injured. They may use all force necessary to repel the aggression.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER SEVEN. PROCEEDINGS BEFORE MAGISTRATES TO PREVENT OFFENSES

Art.
7.01. Shall Issue Warrant.
7.02. Appearance Bond Pending Peace Bond Hearing.
7.03. Accused Brought Before Magistrate.
7.04. Form of Peace Bond.
7.05. Oath of Surety; Bond Filed.
7.06. Amount of Bail.
7.07. Surety May Exonerate Himself.
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7.10. May Discharge Defendant.
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7.13. When the Defendant Has Committed a Crime.
7.14. Costs.
7.15. May Order Protection.
7.16. Suit on Bond.
7.17. Limitation and Procedure.

Art. 7.01. Shall Issue Warrant

Whenever a magistrate is informed upon oath that an offense is about to be committed against the person or property of the informant, or of another, or that any person has threatened to commit an offense, the magistrate shall immediately issue a warrant for the arrest of the accused; that he may be brought before such magistrate or before some other named in the warrant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 7.02. Appearance Bond Pending Peace Bond Hearing

In proceedings under this Chapter, the accused shall have the right to make an appearance bond; such bond shall be conditioned as appearance bonds in other cases, and shall be further conditioned that the accused, pending the hearing, will not commit such offense and that he will keep the peace toward the person threatened or about to be injured, and toward all others, pending the hearing. Should the accused enter into such appearance bond, such fact shall not constitute any evidence of the accusation brought against him at the hearing on the merits before the magistrate.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 7.03. Accused Brought Before Magistrate

When the accused has been brought before the magistrate, he shall hear proof as to the accusation, and if he be satisfied that there is just reason to apprehend that the offense was intended to be committed, or that the threat was seriously made, he shall make an order that the accused enter into bond in such sum as he may in his discretion require, conditioned that he will not commit such offense, and that he will keep the peace toward the person threatened or about to be injured, and toward all others named in the bond for any period of time, not to exceed one year from the date of the bond.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 7.04. Form of Peace Bond

Such bond shall be sufficient if it be payable to the State of Texas, conditioned as required in said order of the magistrate, be for some certain sum, and be signed by the defendant and his surety or sureties and dated, and the provisions of Article 17.02 permitting the deposit of current United States money in lieu of sureties is applicable to this bond. No error of form shall vitiate such bond, and no error in the proceedings prior to the execution of the bond shall be a defense in a suit thereon.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 7.05. Oath of Surety; Bond Filed

The officer taking such bond shall require the sureties of the accused to make oath as to the value of their property as pointed out with regard to bail bonds. Such officer shall forthwith deposit such

bond and oaths in the office of the clerk of the county where such bond is taken.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 7.06. Amount of Bail

The magistrate, in fixing the amount of such bonds, shall be governed by the pecuniary circumstances of the accused and the nature of the offense threatened or about to be committed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 7.07. Surety May Exonerate Himself

A surety upon any such bond may, at any time before a breach thereof, exonerate himself from the obligations of the same by delivering to any magistrate of the county where such bond was taken, the person of the defendant; and such magistrate shall in that case again require of the defendant bond, with other security in the same amount as the first bond; and the same proceeding shall be had as in the first instance, but the one year's time shall commence to run from the date of the first order.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 7.08. Failure to Give Bond

If the defendant fail to give bond, he shall be committed to jail for one year from the date of the first order requiring such bond.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 7.09. Discharge of Defendant

A defendant committed for failing to give bond shall be discharged by the officer having him in custody, upon giving the required bond, or at the expiration of the time for which he has been committed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 7.10. May Discharge Defendant

If the magistrate believes from the evidence that there is no good reason to apprehend that the offense was intended or will be committed, or that no serious threat was made by the defendant, he shall discharge the accused, and may, in his discretion, tax the cost of the proceeding against the party making the complaint.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Arts. 7.11, 7.12. Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3(b), eff. Jan. 1, 1974

Art. 7.13. When the Defendant Has Committed a Crime

If it appears from the evidence before the magistrate that the defendant has committed a criminal offense, the same proceedings shall be had as in other cases where parties are charged with crime.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 7.14. Costs

If the accused is found subject to the charge and required to give bond, the costs of the proceedings shall be adjudged against him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 7.15. May Order Protection

When, from the nature of the case and the proof offered to the magistrate, it may appear necessary and proper, he shall have a right to order any peace officer to protect the person or property of any individual threatened; and such peace officer shall have the right to summon aid by requiring any number of citizens of his county to assist in giving the protection.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 7.16. Suit on Bond

A suit to forfeit any bond taken under the provisions of this Chapter shall be brought in the name of the State by the district or county attorney in the county where the bond was taken.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 7.17. Limitation and Procedure

Suits upon such bonds shall be commenced within two years from the breach of the same, and not thereafter, and shall be governed by the same rules as civil actions, except that the sureties may be sued without joining the principal. To entitle the State to recover, it shall only be necessary to prove that the accused violated any condition of said bond. The full amount of such bond may be recovered of the accused and the sureties.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER EIGHT. SUPPRESSION OF RIOTS AND OTHER DISTURBANCES

Art.
8.01. Officer May Require Aid.
8.02. Military Aid in Executing Process.
8.03. Military Aid in Suppressing Riots.

Art.
8.04. Dispersing Riot.
8.05. Officer May Call Aid.
8.06. Means Adopted to Suppress.
8.07. Unlawful Assembly.
8.08. Suppression at Election.
8.09. Power of Special Constable.

Art. 8.01. Officer May Require Aid

When any officer authorized to execute process is resisted, or when he has sufficient reason to believe that he will meet with resistance in executing the same, he may command as many of the citizens of his county as he may think proper; and the sheriff may call any military company in the county to aid him in overcoming the resistance, and if necessary, in seizing and arresting the persons engaged in such resistance.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 8.02. Military Aid in Executing Process

If it be represented to the Governor in such manner as to satisfy him that the power of the county is not sufficient to enable the sheriff to execute process, he may, on application, order any military company of volunteers or militia company from another county to aid in overcoming such resistance.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 8.03. Military Aid in Suppressing Riots

Whenever, for the purpose of suppressing riots or unlawful assemblies, the aid of military or militia companies is called, they shall obey the orders of the civil officer who is engaged in suppressing the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 8.04. Dispersing Riot

Whenever a number of persons are assembled together in such a manner as to constitute a riot, according to the penal law of the State, it is the duty of every magistrate or peace officer to cause such persons to disperse. This may either be done by commanding them to disperse or by arresting the persons engaged, if necessary, either with or without warrant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 8.05. Officer May Call Aid

In order to enable the officer to disperse a riot, he may call to his aid the power of the county in the same manner as is provided where it is necessary for the execution of process.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 8.06. Means Adopted to Suppress

The officer engaged in suppressing a riot, and those who aid him are authorized and justified in adopting such measures as are necessary to suppress the riot, but are not authorized to use any greater degree of force than is requisite to accomplish that object.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 8.07. Unlawful Assembly

The Articles of this Chapter relating to the suppression of riots apply equally to an unlawful assembly and other unlawful disturbances, as defined by the Penal Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 8.08. Suppression at Election

To suppress riots, unlawful assemblies and other disturbances at elections, any magistrate may appoint a sufficient number of special constables. Such appointments shall be made to each special constable, shall be in writing, dated and signed by the magistrate, and shall recite the purposes for which such appointment is made, and the length of time it is to continue. Before the same is delivered to such special constable, he shall take an oath before the magistrate to suppress, by lawful means, all riots, unlawful assemblies and breaches of the peace of which he may receive information, and to act impartially between all parties and persons interested in the result of the election.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 8.09. Power of Special Constable

Special constables so appointed shall, during the time for which they are appointed, exercise the powers and perform the duties properly belonging to peace officers.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER NINE. OFFENSES INJURIOUS TO PUBLIC HEALTH

Art.
9.01. Trade Injurious to Health.
9.02. Refusal to Give Bond.
9.03. Requisites of Bond.
9.04. Suit Upon Bond.
9.05. Proof.
9.06. Unwholesome Food.

Art. 9.01. Trade Injurious to Health

After an indictment or information has been presented against any person for carrying on a trade, business or occupation injurious to the health of those in the neighborhood, the court shall have power, on the application of anyone interested, and after hearing proof both for and against the accused, to restrain the defendant, in such penalty as may be deemed proper, from carrying on such trade, business or occupation, or may make such order respecting the manner and place of carrying on the same as may be deemed advisable; and if upon trial, the defendant be convicted, the restraint shall be made perpetual, and the party shall be required to enter into bond, with security, not to continue such trade, business or occupation to the detriment of the health of such neighborhood, or of any other neighborhood within the county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 9.02. Refusal to Give Bond

If the party refuses to give bond when required under the provisions of the preceding Article, the court may either commit him to jail, or make an order requiring the sheriff to seize upon the implements of such trade, business or occupation, or the goods and property used in conducting such trade, business or occupation, and destroy the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 9.03. Requisites of Bond

Such bond shall be payable to the State of Texas, in a reasonable amount to be fixed by the court, conditioned that the defendant will not carry on such trade, business or occupation, naming the same, at such place, naming the place, or at any other place in the county, to the detriment of the health of the neighborhood. The bond shall be signed by the defendant and his sureties and dated, and shall be approved by the court taking the same, and filed in such court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 9.04. Suit Upon Bond

Any such bond, upon the breach thereof, may be sued upon by the district or county attorney, in the name of the State of Texas, within two years after such breach, and not afterwards; and such suits shall be governed by the same rules as civil actions.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 9.05. Proof

It shall be sufficient proof of the breach of any such bond to show that the party continued after executing the same, to carry on the trade, business or occupation which he bound himself to discontinue; and the full amount of such bond may be recovered of the defendant and his sureties.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 9.06. Unwholesome Food

After conviction for selling unwholesome food or adulterated medicine, the court shall enter and issue an order to the sheriff or other proper officer to seize and destroy such as remains in the hands of the defendant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER TEN. OBSTRUCTIONS OF PUBLIC HIGHWAYS

Art.
10.01. Order to Remove.
10.02. Bond of Applicant.
10.03. Removal.

Art. 10.01. Order to Remove

After prosecution begun against any person for obstructing any highway, any one, in behalf of the public, may apply to the county judge of the county in which such highway is situated; and upon hearing proof, such judge, either in term time or in vacation, may issue his written order to the sheriff or other proper officer of the county, directing him to remove the obstruction. Before the issuance of such order, the applicant therefor shall give bond with security in an amount to be fixed by the judge, to indemnify the accused, in case of his acquittal, for the loss he sustains. Such bond shall be approved by the county judge and filed with the papers in the cause.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 10.02. Bond of Applicant

If the defendant be acquitted after a trial upon the merits of the case, he may maintain a civil action against the applicant and his sureties upon such bond, and may recover the full amount of the bond, or such damages, less than the full amount thereof, as may be assessed by a court or jury; provided, he shows on the trial that the place was not in fact, at the time he placed the obstruction or impediment thereupon, a public highway established by proper authority, but was in fact his own property or in his lawful possession.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 10.03. Removal

Upon the conviction of a defendant for obstructing a public highway, if such obstruction still exists, the court shall order the sheriff or other proper

officer to forthwith remove the same at the cost of the defendant, to be taxed and collected as other costs in the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

HABEAS CORPUS

CHAPTER ELEVEN. HABEAS CORPUS

Art.
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11.06. Returnable to Any County.
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Art. 11.01. What Writ Is

The writ of habeas corpus is the remedy to be used when any person is restrained in his liberty. It is an order issued by a court or judge of competent jurisdiction, directed to any one having a person in his custody, or under his restraint, commanding him to produce such person, at a time and place named in the writ, and show why he is held in custody or under restraint.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.02. To Whom Directed

The writ runs in the name of "The State of Texas". It is addressed to a person having another under restraint, or in his custody, describing, as near as may be, the name of the office, if any, of the person to whom it is directed, and the name of the person said to be detained. It shall fix the time and place of return, and be signed by the judge, or by the clerk with his seal, where issued by a court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.03. Want of Form

The writ of habeas corpus is not invalid, nor shall it be disobeyed for any want of form, if it substantially appear that it is issued by competent authority, and the writ sufficiently show the object of its issuance.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.04. Construction

Every provision relating to the writ of habeas corpus shall be most favorably construed in order to give effect to the remedy, and protect the rights of the person seeking relief under it.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.05. By Whom Writ May Be Granted

The Court of Criminal Appeals, the District Courts, the County Courts, or any Judge of said Courts, have power to issue the writ of habeas corpus; and it is their duty, upon proper motion, to grant the writ under the rules prescribed by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.06. Returnable to Any County

Before indictment found, the writ may be made returnable to any county in the State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.07. Return to Certain County; Procedure After Conviction

Sec. 1. After indictment found in any felony case, and before conviction, the writ must be made returnable in the county where the offense has been committed.

Sec. 2. (a) After final conviction in any felony case, the writ must be made returnable to the Court of Criminal Appeals of Texas at Austin, Texas.

(b) Whenever a petition for writ of habeas corpus is filed after final conviction in a felony case, the clerk shall transfer or assign it to the court in which the conviction being challenged was obtained. When the petition is received by that court, a writ of habeas corpus, returnable to the Court of Criminal Appeals, shall issue by operation of law. The clerk of that court shall make appropriate notation thereof, assign to the case a file number (ancillary to that of the conviction being challenged), and send a copy of the petition by certified mail, return receipt requested, to the attorney representing the state in that court, who shall have 15 days in which it may answer the petition. Matters alleged in the petition not admitted by the state are deemed denied.

(c) Within 20 days of the expiration of the time in which the state is allowed to answer, it shall be the duty of the convicting court to decide whether there are controverted, previously unresolved facts material to the legality of the applicant's confinement. If the convicting court decides that there are no such issues, the clerk shall immediately transmit to the Court of Criminal Appeals a copy of the petition, any answers filed, and a certificate reciting the date upon which that finding was made. Failure of the court to act within the allowed 20 days shall constitute such a finding.

(d) If the convicting court decides that there are controverted, previously unresolved facts which are material to the legality of the applicant's confinement, it shall enter an order within 20 days of the expiration of the time allowed for the state to reply, designating the issues of fact to be resolved. To resolve those issues the court may order affidavits, depositions, interrogatories, and hearings, as well as using personal recollection. Also, the convicting court may appoint an attorney or a magistrate to hold a hearing and make findings of fact. An attorney so appointed shall be compensated as provided in Article 26.05 of this code. It shall be the duty of the reporter who is designated to transcribe a hearing held pursuant to this article to prepare a transcript within 15 days of its conclusion. After the convicting court makes findings of fact or approves the findings of the person designated to make them, the clerk of the convicting court shall immediately transmit to the Court of Criminal Appeals, under one cover, the petition, any answers filed, any motions filed, transcripts of all depositions and hearings, any affidavits, and any other matters such as official records used by the court in resolving issues of fact.

Sec. 3. The Court of Criminal Appeals may deny relief upon the findings and conclusions of the hearing judge without docketing the cause, or may direct that the cause be docketed and heard as though originally presented to said court or as an appeal. Upon reviewing the record the court shall enter its judgment remanding the petitioner to custody or ordering his release, as the law and facts may justify. The mandate of the court shall issue to the court issuing the writ, as in other criminal cases. After conviction the procedure outlined in this Act shall be exclusive and any other proceeding shall be void and of no force and effect in discharging the prisoner.

Sec. 4. Upon any hearing by a district judge by virtue of this Act, the attorney for petitioner, and the state, shall be given at least three full days' notice before such hearing is held.

Sec. 5. When the attorney for the state files an answer, motion, or other pleading relating to a petition for a writ of habeas corpus or the court issues an order relating to a petition for a writ of habeas corpus, the clerk of the court shall mail or deliver to the petitioner a copy of the answer, motion, pleading, or order.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1734, ch. 659, § 7, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1271, ch. 465, § 2, eff. June 14, 1973; Acts 1977, 65th Leg., p. 1974, ch. 789, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1017, ch. 451, § 1, eff. Sept. 1, 1979.]

Art. 11.08. Applicant Charged With Felony

If a person is confined after indictment on a charge of felony, he may apply to the judge of the court in which he is indicted; or if there be no judge within the district, then to the judge of any district whose residence is nearest to the court house of the county in which the applicant is held in custody.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.09. Applicant Charged With Misdemeanor

If a person is confined on a charge of misdemeanor, he may apply to the county judge of the county in which the misdemeanor is charged to have been committed, or if there be no county judge in said county, then to the county judge whose residence is

nearest to the courthouse of the county in which the applicant is held in custody.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.10. Proceedings Under the Writ

When motion has been made to a judge under the circumstances set forth in the two preceding Articles, he shall appoint a time when he will examine the cause of the applicant, and issue the writ returnable at that time, in the county where the offense is charged in the indictment or information to have been committed. He shall also specify some place in the county where he will hear the motion.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.11. Early Hearing

The time so appointed shall be the earliest day which the judge can devote to hearing the cause of the applicant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.12. Who May Present Petition

Either the party for whose relief the writ is intended, or any person for him, may present a petition to the proper authority for the purpose of obtaining relief.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.13. Applicant

The word applicant, as used in this Chapter, refers to the person for whose relief the writ is asked, though the petition may be signed and presented by any other person.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.14. Requisites of Petition

The petition must state substantially:

1. That the person for whose benefit the application is made is illegally restrained in his liberty, and by whom, naming both parties, if their names are known, or if unknown, designating and describing them;

2. When the party is confined or restrained by virtue of any writ, order or process, or under color of either, a copy shall be annexed to the petition, or it shall be stated that a copy cannot be obtained;

3. When the confinement or restraint is not by virtue of any writ, order or process, the petition may state only that the party is illegally confined or restrained in his liberty;

4. There must be a prayer in the petition for the writ of habeas corpus; and

5. Oath must be made that the allegations of the petition are true, according to the belief of the petitioner.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.15. Writ Granted Without Delay

The writ of habeas corpus shall be granted without delay by the judge or court receiving the petition, unless it be manifest from the petition itself, or some documents annexed to it, that the party is entitled to no relief whatever.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.16. Writ May Issue Without Motion

A judge of the district or county court who has knowledge that any person is illegally confined or restrained in his liberty within his district or county may, if the case be one within his jurisdiction, issue the writ of habeas corpus, without any motion being made for the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.17. Judge May Issue Warrant of Arrest

Whenever it appears by satisfactory evidence to any judge authorized to issue such writ that any one is held in illegal confinement or custody, and there is good reason to believe that he will be carried out of the State, or suffer some irreparable injury before he can obtain relief in the usual course of law, or whenever the writ of habeas corpus has been issued and disregarded, the said judge may issue a warrant to any peace officer, or to any person specially named by said judge, directing him to take and bring such person before such judge, to be dealt with according to law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.18. May Arrest Detainer

Where it appears by the proof offered, under circumstances mentioned in the preceding Article, that the person charged with having illegal custody of the prisoner is, by such act, guilty of an offense against the law, the judge may, in the warrant, order that he be arrested and brought before him; and upon examination, he may be committed, discharged, or held to bail, as the law and the nature of the case may require.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.19. Proceedings Under the Warrant

The officer charged with the execution of the warrant shall bring the persons therein mentioned before the judge or court issuing the same, who shall inquire into the cause of the imprisonment or

restraint, and make an order thereon, as in cases of habeas corpus, either remanding into custody, discharging or admitting to bail the party so imprisoned or restrained.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.20. Officer Executing Warrant

The same power may be exercised by the officer executing the warrant in cases arising under the foregoing Articles as is exercised in the execution of warrants of arrest.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.21. Constructive Custody

The words "confined", "imprisoned", "in custody", "confinement", "imprisonment", refer not only to the actual, corporeal and forcible detention of a person, but likewise to any coercive measures by threats, menaces or the fear of injury, whereby one person exercises a control over the person of another, and detains him within certain limits.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.22. Restraint

By "restraint" is meant the kind of control which one person exercises over another, not to confine him within certain limits, but to subject him to the general authority and power of the person claiming such right.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.23. Scope of Writ

The writ of habeas corpus is intended to be applicable to all such cases of confinement and restraint, where there is no lawful right in the person exercising the power, or where, though the power in fact exists, it is exercised in a manner or degree not sanctioned by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.24. One Committed in Default of Bail

Where a person has been committed to custody for failing to enter into bond, he is entitled to the writ of habeas corpus, if it be stated in the petition that there was no sufficient cause for requiring bail, or that the bail required is excessive. If the proof sustains the petition, it will entitle the party to be discharged, or have the bail reduced.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.25. Person Afflicted With Disease

When a judge or court authorized to grant writs of habeas corpus shall be satisfied, upon investigation, that a person in legal custody is afflicted with a disease which will render a removal necessary for the preservation of life, an order may be made for the removal of the prisoner to some other place where his health will not be likely to suffer; or he may be admitted to bail when it appears that any species of confinement will endanger his life.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.26. Who May Serve Writ

The service of the writ may be made by any person competent to testify.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.27. How Writ May Be Served and Returned

The writ may be served by delivering a copy of the original to the person who is charged with having the party under restraint or in custody, and exhibiting the original, if demanded; if he refuse to receive it, he shall be informed verbally of the purport of the writ. If he refuses admittance to the person wishing to make the service, or conceals himself, a copy of the writ may be fixed upon some conspicuous part of the house where such person resides or conceals himself, or of the place where the prisoner is confined; and the person serving the writ of habeas corpus shall, in all cases, state fully, in his return, the manner and the time of the service of the writ.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.28. Return Under Oath

The return of a writ of habeas corpus, under the provisions of the preceding Article, if made by any person other than an officer, shall be under oath.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.29. Must Make Return

The person on whom the writ of habeas corpus is served shall immediately obey the same, and make the return required by law upon the copy of the original writ served on him, and this, whether the writ be directed to him or not.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.30. How Return is Made

The return is made by stating in plain language upon the copy of the writ or some paper connected with it:

1. Whether it is true or not, according to the statement of the petition, that he has in his custody, or under his restraint, the person named or described in such petition;

2. By virtue of what authority, or for what cause, he took and detains such person;

3. If he had such person in his custody or under restraint at any time before the service of the writ, and has transferred him to the custody of another, he shall state particularly to whom, at what time, for what reason or by what authority he made such transfer;

4. He shall annex to his return the writ or warrant, if any, by virtue of which he holds the person in custody; and

5. The return must be signed and sworn to by the person making it.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.31. Applicant Brought Before Judge

The person on whom the writ is served shall bring before the judge the person in his custody, or under his restraint, unless it be made to appear that by reason of sickness he cannot be removed; in which case, another day may be appointed by the judge or court for hearing the cause, and for the production of the person confined; or the application may be heard and decided without the production of the person detained, by the consent of his counsel.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.32. Custody Pending Examination

When the return of the writ has been made, and the applicant brought before the court, he is no longer detained on the original warrant or process, but under the authority of the habeas corpus. The safekeeping of the prisoner, pending the examination or hearing, is entirely under the direction and authority of the judge or court issuing the writ, or to which the return is made. He may be bailed from day to day, or be remanded to the same jail whence he came, or to any other place of safekeeping under the control of the judge or court, till the case is finally determined.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.33. Court Shall Allow Time

The court or judge granting the writ of habeas corpus shall allow reasonable time for the production of the person detained in custody.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.34. Disobeying Writ

When service has been made upon a person charged with the illegal custody of another, if he refuses to obey the writ and make the return required by law, or, if he refuses to receive the writ, or conceals himself, the court or judge issuing the writ shall issue a warrant directed to any officer or other suitable person willing to execute the same, commanding him to arrest the person charged with the illegal custody or detention of another, and bring him before such court or judge. When such person has been arrested and brought before the court or judge, if he still refuses to return the writ, or does not produce the person in his custody, he shall be committed to jail and remain there until he is willing to obey the writ of habeas corpus, and until he pays all the costs of the proceeding.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.35. Further Penalty for Disobeying Writ

Any person disobeying the writ of habeas corpus shall also be liable to a civil action at the suit of the party detained, and shall pay in such suit fifty dollars for each day of illegal detention and restraint, after service of the writ. It shall be deemed that a person has disobeyed the writ who detains a prisoner a longer time than three days after service thereof, unless where further time is allowed in the writ for making the return thereto.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.36. Applicant May Be Brought Before Court

In case of disobedience of the writ of habeas corpus, the person for whose relief it is intended may also be brought before the court or judge having competent authority, by an order for that purpose, issued to any peace officer or other proper person specially named.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.37. Death, etc., Sufficient Return of Writ

It is a sufficient return of the writ of habeas corpus that the person, once detained, has died or escaped, or that by some superior force he has been taken from the custody of the person making the return; but where any such cause shall be assigned, the court or judge shall proceed to hear testimony; and the facts stated in the return shall be proved by satisfactory evidence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.38. When a Prisoner Dies

When a prisoner confined in jail, or who is in legal custody, shall die, the officer having charge of him shall forthwith report the same to a justice of the peace of the county, who shall hold an inquest to ascertain the cause of his death. All the proceed-

ings had in such cases shall be reduced to writing, certified and returned as in other cases of inquest; a certified copy of which shall be sufficient proof of the death of the prisoner at the hearing of a motion under habeas corpus.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.39. Who Shall Represent the State

If neither the county nor the district attorney be present, the judge may appoint some qualified practicing attorney to represent the State, who shall be paid the same fee allowed district attorneys for like services.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.40. Prisoner Discharged

The judge or court before whom a person is brought by writ of habeas corpus shall examine the writ and the papers attached to it; and if no legal cause be shown for the imprisonment or restraint, or if it appear that the imprisonment or restraint, though at first legal, cannot for any cause be lawfully prolonged, the applicant shall be discharged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.41. Where Party is Indicted for Capital Offense

If it appears by the return and papers attached that the party stands indicted for a capital offense, the judge or court having jurisdiction of the case shall, nevertheless, proceed to hear such testimony as may be offered on the part of the State and the applicant, and may either remand or admit him to bail, as the law and the facts may justify.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.42. If Court Has No Jurisdiction

If it appear by the return and papers attached that the judge or court has no jurisdiction, such court or judge shall at once remand the applicant to the person from whose custody he has been taken.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.43. Presumption of Innocence

No presumption of guilt arises from the mere fact that a criminal accusation has been made before a competent authority.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.44. Action of Court Upon Examination

The judge or court, after having examined the return and all documents attached, and heard the testimony offered on both sides, shall, according to the facts and circumstances of the case, proceed either to remand the party into custody, admit him to bail or discharge him; provided, that no defendant shall be discharged after indictment without bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.45. Void or Informal

If it appears that the applicant is detained or held under a warrant of commitment which is informal, or void; yet, if from the document on which the warrant was based, or from the proof on the hearing of the habeas corpus, it appears that there is probable cause to believe that an offense has been committed by the prisoner, he shall not be discharged, but shall be committed or held to bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.46. If Proof Shows Offense

Where, upon an examination under habeas corpus, it appears to the court or judge that there is probable cause to believe that an offense has been committed by the prisoner, he shall not be discharged, but shall be committed or admitted to bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.47. May Summon Magistrate

To ascertain the grounds on which an informal or void warrant has been issued, the judge or court may cause to be summoned the magistrate who issued the warrant, and may, by an order, require him to bring with him all the papers and proceedings touching the matter. The attendance of such magistrate and the production of such papers may be enforced by warrant of arrest.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.48. Written Issue Not Necessary

It shall not be necessary, on the trial of any cause arising under habeas corpus, to make up a written issue, though it may be done by the applicant for the writ. He may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in avoidance. If written denial on his part be not made, it shall be considered, for the purpose of investigation, that the statements of said return are contested by a denial of the same; and the proof shall be heard accordingly, both for and against the applicant for relief.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.49. Order of Argument

The applicant shall have the right by himself or counsel to open and conclude the argument upon the trial under habeas corpus.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.50. Costs

The judge trying the cause under habeas corpus may make such order as is deemed right concerning the cost of bringing the defendant before him, and all other costs of the proceeding, awarding the same either against the person to whom the writ was directed, the person seeking relief, or may award no costs at all.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.51. Record of Proceedings

If a writ of habeas corpus be made returnable before a court in session, all the proceedings had shall be entered of record by the clerk thereof, as in any other case in such court. When the motion is heard out of the county where the offense was committed, or in the Court of Criminal Appeals, the clerk shall transmit a certified copy of all the proceedings upon the motion to the clerk of the court which has jurisdiction of the offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.52. Proceedings Had in Vacation

If the return is made and the proceedings had before a judge of a court in vacation, he shall cause all of the proceedings to be written, shall certify to the same, and cause them to be filed with the clerk of the court which has jurisdiction of the offense, who shall keep them safely.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.53. Construing the Two Preceding Articles

The two preceding Articles refer only to cases where an applicant is held under accusation for some offense; in all other cases the proceedings had before the judge shall be filed and kept by the clerk of the court hearing the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.54. Court May Grant Necessary Orders

The court or judge granting a writ of habeas corpus may grant all necessary orders to bring before him the testimony taken before the examining court, and may issue process to enforce the attendance of witnesses.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.55. Meaning of "Return"

The word "return", as used in this Chapter, means the report made by the officer or person charged with serving the writ of habeas corpus, and also the answer made by the person served with such writ.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.56. Effect of Discharge Before Indictment

Where a person, before indictment found against him, has been discharged or held to bail on habeas corpus by order of a court or judge of competent jurisdiction, he shall not be again imprisoned or detained in custody on an accusation for the same offense, until after he shall have been indicted, unless surrendered by his bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.57. Writ After Indictment

Where a person once discharged or admitted to bail is afterward indicted for the same offense for which he has been once arrested, he may be committed on the indictment, but shall be again entitled to the writ of habeas corpus, and may be admitted to bail, if the facts of the case render it proper; but in cases where, after indictment is found, the cause of the defendant has been investigated on habeas corpus, and an order made, either remanding him to custody, or admitting him to bail, he shall neither be subject to be again placed in custody, unless when surrendered by his bail, nor shall he be again entitled to the writ of habeas corpus, except in the special cases mentioned in this Chapter.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.58. Person Committed for a Capital Offense

If the accusation against the defendant for a capital offense has been heard on habeas corpus before indictment found, and he shall have been committed after such examination, he shall not be entitled to the writ, unless in the special cases mentioned in Articles 11.25 and 11.59.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.59. Obtaining Writ a Second Time

A party may obtain the writ of habeas corpus a second time by stating in a motion therefor that since the hearing of his first motion important testi-

mony has been obtained which it was not in his power to produce at the former hearing. He shall also set forth the testimony so newly discovered; and if it be that of a witness, the affidavit of the witness shall also accompany such motion.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.60. Refusing to Execute Writ

Any officer to whom a writ of habeas corpus, or other writ, warrant or process authorized by this Chapter shall be directed, delivered or tendered, who refuses to execute the same according to his directions, or who wantonly delays the service or execution of the same, shall be liable to fine as for contempt of court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.61. Refusal to Obey Writ

Any one having another in his custody, or under his power, control or restraint who refuses to obey a writ of habeas corpus, or who evades the service of the same, or places the person illegally detained under the control of another, removes him, or in any other manner attempts to evade the operation of the writ, shall be dealt with as provided in Article 11.34 of this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.62. Refusal to Give Copy of Process

Any jailer, sheriff or other officer who has a prisoner in his custody and refuses, upon demand, to furnish a copy of the process under which he holds the person, is guilty of an offense, and shall be dealt with as provided in Article 11.34 of this Code for refusal to return the writ therein required.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.63. Held Under Federal Authority

No person shall be discharged under the writ of habeas corpus who is in custody by virtue of a commitment for any offense exclusively cognizable by the courts of the United States, or by order or process issuing out of such courts in cases where they have jurisdiction, or who is held by virtue of any legal engagement or enlistment in the army, or who, being rightfully subject to the rules and articles of war, is confined by any one legally acting under the authority thereof, or who is held as a prisoner of war under the authority of the United States.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 11.64. Application of Chapter

This Chapter applies to all cases of habeas corpus for the enlargement of persons illegally held in custody or in any manner restrained in their personal liberty, for the admission of prisoners to bail, and for the discharge of prisoners before indictment upon a hearing of the testimony. Instead of a writ of habeas corpus in other cases heretofore used, a simple order shall be substituted.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

LIMITATION AND VENUE

CHAPTER TWELVE. LIMITATION

Art.
12.01. Felonies.
12.02. Misdemeanors.
12.03. Aggravated Offenses, Attempt, Conspiracy, Solicitation.
12.04. Computation.
12.05. Absence From State and Time of Pendency of Indictment, etc., Not Computed.
12.06. An Indictment is "Presented," When.
12.07. An Information is "Presented," When.

Art. 12.01. Felonies

Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

(1) no limitation: murder and manslaughter;

(2) ten years from the date of the commission of the offense:

(A) theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;

(B) theft by a public servant of government property over which he exercises control in his official capacity;

(C) forgery or the uttering, using or passing of forged instruments;

(3) five years from the date of the commission of the offense:

(A) theft, burglary, robbery;

(B) arson;

Text of (C) as added by Acts 1983, 68th Leg., p. 413, ch. 85, § 1

(C) rape, aggravated rape, sexual abuse, aggravated sexual abuse, rape of a child, sexual abuse of a child;

Text of (C) as added by Acts 1983, 68th Leg., p. 5317, ch. 977, § 7

(C) sexual assault;

(4) three years from the date of the commission of the offense: all other felonies.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 975, ch. 399, § 2(B), eff. Jan. 1, 1974; Acts 1975, 64th Leg., p. 478, ch. 203, § 5, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 413, ch. 85, § 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5317, ch. 977, § 7, eff. Sept. 1, 1983.]

Subsection 7(c) of the 1975 amendatory act provided:

"Section 5 of this Act applies to the prosecution of criminal offenses committed not more than one year before the effective date of this Act."

Section 2(b) of Acts 1983, 68th Leg., p. 414, ch. 85, provides:

"This Act does not apply to an offense, the prosecution of which became barred by limitations on or before August 31, 1983. The prosecution of such an offense remains barred, as though this Act had not taken effect."

Art. 12.02. Misdemeanors

An indictment or information for any misdemeanor may be presented within two years from the date of the commission of the offense, and not afterward.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 975, ch. 399, § 2(B), eff. Jan. 1, 1974.]

Art. 12.03. Aggravated Offenses, Attempt, Conspiracy, Solicitation

(a) The limitation period for criminal attempt is the same as that of the offense attempted.

(b) The limitation period for criminal conspiracy is the same as that of the most serious offense that is the object of the conspiracy.

(c) The limitation period for criminal solicitation is the same as that of the felony solicited.

(d) Any offense that bears the title "aggravated" shall carry the same limitation period as the primary crime.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 975, ch. 399, § 2(B), eff. Jan. 1, 1974.]

Art. 12.04. Computation

The day on which the offense was committed and the day on which the indictment or information is presented shall be excluded from the computation of time.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 976, ch. 399, § 2(B), eff. Jan. 1, 1974.]

Art. 12.05. Absence From State and Time of Pendency of Indictment, etc., Not Computed

(a) The time during which the accused is absent from the state shall not be computed in the period of limitation.

(b) The time during the pendency of an indictment, information, or complaint shall not be computed in the period of limitation.

(c) The term "during the pendency," as used herein, means that period of time beginning with the day the indictment, information, or complaint is filed in a court of competent jurisdiction, and ending with the day such accusation is, by an order of a trial court having jurisdiction thereof, determined to be invalid for any reason.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 976, ch. 399, § 2(B), eff. Jan. 1, 1974.]

Art. 12.06. An Indictment is "Presented," When

An indictment is considered as "presented" when it has been duly acted upon by the grand jury and received by the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 976, ch. 399, § 2(B), eff. Jan. 1, 1974.]

Art. 12.07. An Information is "Presented," When

An information is considered as "presented," when it has been filed by the proper officer in the proper court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 976, ch. 399, § 2(B), eff. Jan. 1, 1974.]

CHAPTER THIRTEEN. VENUE

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13.20. Venue by Consent.
13.21. Organized Criminal Activity.
13.22. Possession and Delivery of Marihuana.

Art. 13.01. Offenses Committed Outside this State

Offenses committed wholly or in part outside this State, under circumstances that give this State jurisdiction to prosecute the offender, may be prosecuted in any county in which the offender is found

or in any county in which an element of the offense occurs.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 976, ch. 399, § 2(C), eff. Jan. 1, 1974.]

Art. 13.02. Forgery

Forgery may be prosecuted in any county where the writing was forged, or where the same was used or passed, or attempted to be used or passed, or deposited or placed with another person, firm, association, or corporation either for collection or credit for the account of any person, firm, association or corporation. In addition, a forging and uttering, using or passing of forged instruments in writing which concern or affect the title to land in this State may be prosecuted in the county in which such land, or any part thereof, is situated.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 976, ch. 399, § 2(C), eff. Jan. 1, 1974.]

Art. 13.03. Perjury

Perjury and aggravated perjury may be prosecuted in the county where committed, or in the county where the false statement is used or attempted to be used.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 976, ch. 399, § 2(C), eff. Jan. 1, 1974.]

Art. 13.04. On the Boundaries of Counties

An offense committed on the boundaries of two or more counties, or within four hundred yards thereof, may be prosecuted and punished in any one of such counties and any offense committed on the premises of any airport operated jointly by two municipalities and situated in two counties may be prosecuted and punished in either county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 977, ch. 399, § 2(C), eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1251, ch. 454, art. 2, § 1, eff. Jan. 1, 1974; Acts 1981, 67th Leg., p. 2239, ch. 534, § 1, eff. Aug. 31, 1981.]

Art. 13.05. Criminal Homicide Committed Outside this State

The offense of criminal homicide committed wholly or in part outside this State, under circumstances that give this State jurisdiction to prosecute the offender, may be prosecuted in the county where the injury was inflicted, or in the county where the offender was located when he inflicted the injury, or in the county where the victim died or the body was found.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 977, ch. 399, § 2(C), eff. Jan. 1, 1974.]

Art. 13.06. Committed on a Boundary Stream

If an offense be committed upon any river or stream, the boundary of this State, it may be prosecuted in the county the boundary of which is upon such stream or river, and the county seat of which is nearest the place where the offense was committed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 977, ch. 399, § 2(C), eff. Jan. 1, 1974.]

Art. 13.07. Injured in One County and Dying in Another

If a person receives an injury in one county and dies in another by reason of such injury, the offender may be prosecuted in the county where the injury was received or where the death occurred, or in the county where the dead body is found.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 977, ch. 399, § 2(C), eff. Jan. 1, 1974.]

Art. 13.08. Theft

Where property is stolen in one county and removed by the offender to another county, the offender may be prosecuted either in the county where he took the property or in any other county through or into which he may have removed the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 977, ch. 399, § 2(C), eff. Jan. 1, 1974.]

Art. 13.09. Hindering Secured Creditors

If secured property is taken from one county and unlawfully disposed of in another county or state, the offender may be prosecuted either in the county in which such property was disposed of, or in the county from which it was removed, or in the county in which the security agreement is filed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 977, ch. 399, § 2(C), eff. Jan. 1, 1974.]

Art. 13.10. Persons Acting Under Authority of this State

An offense committed outside this State by any officer acting under the authority of this State, under circumstances that give this state jurisdiction to prosecute the offender, may be prosecuted in the county of his residence or, if a nonresident of this State, in Travis County.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 977, ch. 399, § 2(C), eff. Jan. 1, 1974.]

Art. 13.11. On Vessels

An offense committed on board a vessel which is at the time upon any navigable water within the

boundaries of this State, may be prosecuted in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage commences or terminates.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 977, ch. 399, § 2(C), eff. Jan. 1, 1974.]

Art. 13.12. False Imprisonment and Kidnapping

Venue for false imprisonment and kidnapping is in either the county in which the offense was committed, or in any county through, into or out of which the person falsely imprisoned or kidnapped may have been taken.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 977, ch. 399, § 2(C), eff. Jan. 1, 1974.]

Art. 13.13. Conspiracy

Criminal conspiracy may be prosecuted in the county where the conspiracy was entered into, in the county where the conspiracy was agreed to be executed, or in any county in which one or more of the conspirators does any act to effect an object of the conspiracy. If a conspiracy was entered into outside this State under circumstances that give this State jurisdiction to prosecute the offender, the offender may be prosecuted in the county where the conspiracy was agreed to be executed, or in the county where any one of the conspirators was found, or in Travis County.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 978, ch. 399, § 2(C), eff. Jan. 1, 1974.]

Art. 13.14. Bigamy

Bigamy may be prosecuted in the county where the bigamous marriage occurred or in any county in this State in which the parties to such bigamous marriage may live or cohabit together as man and wife.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 978, ch. 399, § 2(C), eff. Jan. 1, 1974.]

Art. 13.15. Sexual Assault

Sexual assault may be prosecuted in the county in which it is committed, in the county in which the victim is abducted, or in any county through or into which the victim is transported in the course of the abduction and sexual assault. When it shall come to the knowledge of any district judge whose court has jurisdiction under this Article that sexual assault has probably been committed, he shall immediately, if his court be in session, and if not in session, then, at the first term thereafter in any county of the district, call the attention of the grand jury thereto; and if the court be in session, but the grand jury has been discharged, he shall immediately recall the grand jury to investigate the accusation. The district courts are authorized and directed to change the venue in such cases whenever it shall be necessary to secure a speedy trial.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 978, ch. 399, § 2(C), eff. Jan. 1, 1974; Acts 1977, 65th Leg., p. 692, ch. 262, § 1, eff. May 25, 1977; Acts 1981, 67th Leg., p. 2636, ch. 707, § 4(17), eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 5317, ch. 977, § 7, eff. Sept. 1, 1983.]

Section 13 of the 1983 amendatory act provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act.

"(b) An offense committed before the effective date of this Act is covered by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Art. 13.16. Criminal Nonsupport

Criminal nonsupport may be prosecuted in the county where the offended spouse or child is residing at the time the information or indictment is presented.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 978, ch. 399, § 2(C), eff. Jan. 1, 1974.]

Art. 13.17. Proof of Venue

In all cases mentioned in this Chapter, the indictment or information, or any pleading in the case, may allege that the offense was committed in the county where the prosecution is carried on. To sustain the allegation of venue, it shall only be necessary to prove by the preponderance of the evidence that by reason of the facts in the case, the county where such prosecution is carried on has venue.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 978, ch. 399, § 2(C), eff. Jan. 1, 1974.]

Art. 13.18. Other Offenses

If venue is not specifically stated, the proper county for the prosecution of offenses is that in which the offense was committed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 978, ch. 399, § 2(C), eff. Jan. 1, 1974.]

Art. 13.19. Where Venue Cannot be Determined

If an offense has been committed within the state and it cannot readily be determined within which county or counties the commission took place, trial may be held in the county in which the defendant resides, in the county in which he is apprehended, or in the county to which he is extradited.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 979, ch. 399, § 2(C), eff. Jan. 1, 1974.]

Art. 13.20. Venue by Consent

The trial of all felony cases, without a jury, may, with the consent of the defendant in writing, his attorney, and the attorney for the state, be held in any county within the judicial district or districts for the county where venue is otherwise authorized by law.

[Acts 1975, 64th Leg., p. 242, ch. 91, § 1, eff. Sept. 1, 1975.]

Art. 13.21. Organized Criminal Activity

The offense of engaging in organized criminal activity may be prosecuted in any county in which any act is committed to effect an objective of the combination.

[Acts 1977, 65th Leg., p. 924, ch. 346, § 2, eff. June 10, 1977.]

Art. 13.22. Possession and Delivery of Marihuana

An offense of possession or delivery of marihuana may be prosecuted in the county where the offense was committed or with the consent of the defendant in a county that is adjacent to and in the same judicial district as the county where the offense was committed.

[Acts 1979, 66th Leg., p. 18, ch. 10, § 1, eff. March 7, 1979.]

Section 2 of the 1979 amendatory act provided:

"This Act applies to a prosecution commenced by the filing of an indictment or information on or after the effective date of this Act."

ARREST, COMMITMENT AND BAIL

CHAPTER FOURTEEN. ARREST WITHOUT WARRANT

Art.
14.01. Offense Within View.
14.02. Within View of Magistrate.
14.03. Authority of Peace Officers.
14.04. When Felony Has Been Committed.
14.05. Rights of Officer.
14.06. Must Take Offender Before Magistrate.

Art. 14.01. Offense Within View

(a) A peace officer or any other person, may, without a warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony or as an offense against the public peace.

(b) A peace officer may arrest an offender without a warrant for any offense committed in his presence or within his view.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1735, ch. 659, § 8, eff. Aug. 28, 1967.]

Art. 14.02. Within View of Magistrate

A peace officer may arrest, without warrant, when a felony or breach of the peace has been committed in the presence or within the view of a magistrate, and such magistrate verbally orders the arrest of the offender.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 14.03. Authority of Peace Officers

Any peace officer may arrest, without warrant:

(a) persons found in suspicious places and under circumstances which reasonably show that such persons have been guilty of some felony or breach of the peace, or threaten, or are about to commit some offense against the laws; or

(b) persons who the peace officer has probable cause to believe have committed an assault resulting in bodily injury to another person and the peace officer has probable cause to believe that there is immediate danger of further bodily injury to that person.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1735, ch. 659, § 9, eff. Aug. 28, 1967; Acts 1981, 67th Leg., p. 1865, ch. 442, § 1, eff. Aug. 31, 1981.]

Art. 14.04. When Felony Has Been Committed

Where it is shown by satisfactory proof to a peace officer, upon the representation of a credible person, that a felony has been committed, and that the offender is about to escape, so that there is no time to procure a warrant, such peace officer may, without warrant, pursue and arrest the accused.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 14.05. Rights of Officer

In each case enumerated where arrests may be lawfully made without warrant, the officer or person making the arrest is justified in adopting all the measures which he might adopt in cases of arrest under warrant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 14.06. Must Take Offender Before Magistrate

In each case enumerated in this Code, the person making the arrest shall take the person arrested or have him taken without unnecessary delay before the magistrate who may have ordered the arrest or before some magistrate of the county where the arrest was made without an order. The magistrate shall immediately perform the duties described in Article 15.17 of this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1735, ch. 659, § 10, eff. Aug. 28, 1967.]

CHAPTER FIFTEEN. ARREST UNDER WARRANT

Art.
15.01. Warrant of Arrest.
15.02. Requisites of Warrant.

Art.
15.03. Magistrate May Issue Warrant or Summons.
15.04. Complaint.
15.05. Requisites of Complaint.
15.06. Warrant Extends to Every Part of the State.
15.07. Warrant Issued by Other Magistrate.
15.08. Warrant May be Telegraphed.
15.09. Complaint by Telegraph.
15.10. Copy to be Deposited.
15.11. Duty of Telegraph Manager.
15.12. Warrant or Complaint Must be Under Seal.
15.13. Telegram Prepaid.
15.14. Warrant May be Directed to Any Person.
15.15. Private Person Executing Warrant.
15.16. How Warrant is Executed.
15.17. Duties of Arresting Officer and Magistrate.
15.18. Arrest for Out-of-County Offense.
15.19. Notice of Arrest.
15.20. Duty of Sheriff Receiving Notice.
15.21. Prisoner Discharged If Not Timely Demanded.
15.22. When a Person is Arrested.
15.23. Time of Arrest.
15.24. What Force May be Used.
15.25. May Break Door.
15.26. Authority to Arrest Must be Made Known.
15.27. Repealed.

Art. 15.01. Warrant of Arrest

A "warrant of arrest" is a written order from a magistrate, directed to a peace officer or some other person specially named, commanding him to take the body of the person accused of an offense, to be dealt with according to law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.02. Requisites of Warrant

It issues in the name of "The State of Texas", and shall be sufficient, without regard to form, if it have these substantial requisites:

1. It must specify the name of the person whose arrest is ordered, if it be known, if unknown, then some reasonably definite description must be given of him.

2. It must state that the person is accused of some offense against the laws of the State, naming the offense.

3. It must be signed by the magistrate, and his office be named in the body of the warrant, or in connection with his signature.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.03. Magistrate May Issue Warrant or Summons

(a) A magistrate may issue a warrant of arrest or a summons:

1. In any case in which he is by law authorized to order verbally the arrest of an offender;

2. When any person shall make oath before the magistrate that another has committed some offense against the laws of the State; and

3. In any case named in this Code where he is specially authorized to issue warrants of arrest.

(b) A summons may be issued in any case where a warrant may be issued, and shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last known address. If a defendant fails to appear in response to the summons a warrant shall be issued.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.04. Complaint

The affidavit made before the magistrate or district or county attorney is called a "complaint" if it charges the commission of an offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.05. Requisites of Complaint

The complaint shall be sufficient, without regard to form, if it have these substantial requisites:

1. It must state the name of the accused, if known, and if not known, must give some reasonably definite description of him.

2. It must show that the accused has committed some offense against the laws of the State, either directly or that the affiant has good reason to believe, and does believe, that the accused has committed such offense.

3. It must state the time and place of the commission of the offense, as definitely as can be done by the affiant.

4. It must be signed by the affiant by writing his name or affixing his mark.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.06. Warrant Extends to Every Part of the State

A warrant of arrest, issued by any county or district clerk, or by any magistrate (except mayors or recorders of an incorporated city or town), shall extend to any part of the State; and any peace officer to whom said warrant is directed, or into whose hands the same has been transferred, shall be authorized to execute the same in any county in this State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.07. Warrant Issued by Other Magistrate

When a warrant of arrest is issued by any mayor or recorder of an incorporated city or town, it cannot be executed in another county than the one in which it issues, except:

1. It be endorsed by a judge of a court of record, in which case it may be executed anywhere in the State; or

2. If it be endorsed by any magistrate in the county in which the accused is found, it may be executed in such county. The endorsement may be: "Let this warrant be executed in the county of .....". Or, if the endorsement is made by a judge of a court of record, then the endorsement may be: "Let this warrant be executed in any county of the State of Texas". Any other words of the same meaning will be sufficient. The endorsement shall be dated, and signed officially by the magistrate making it.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.08. Warrant May be Telegraphed

A warrant of arrest may be forwarded by telegraph from any telegraph office to another in this State. If issued by any magistrate named in Article 15.06, the peace officer receiving the same shall execute it without delay. If it be issued by any other magistrate than is named in Article 15.06, the peace officer receiving the same shall proceed with it to the nearest magistrate of his county, who shall endorse thereon, in substance, these words:

"Let this warrant be executed in the county of .....", which endorsement shall be dated and signed officially by the magistrate making the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.09. Complaint by Telegraph

A complaint in accordance with Article 15.05, may be telegraphed, as provided in the preceding Article, to any magistrate in the State; and the magistrate who receives the same shall forthwith issue a warrant for the arrest of the accused; and the accused, when arrested, shall be dealt with as provided in this Chapter in similar cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.10. Copy to be Deposited

A certified copy of the original warrant or complaint, certified to by the magistrate issuing or taking the same, shall be deposited with the manager of the telegraph office from which the same is to be forwarded, taking precedence over other business, to the place of its destination or to the telegraph office nearest thereto, precisely as it is written, including the certificate of the seal attached.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.11. Duty of Telegraph Manager

When a warrant or complaint is received at a telegraph office for delivery, it shall be delivered to the party to whom it is addressed as soon as practicable, written on the proper blanks of the telegraph company and certified to by the manager of the telegraph office as being a true and correct copy of the warrant or complaint received at his office.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.12. Warrant or Complaint Must be Under Seal

No manager of a telegraph office shall receive and forward a warrant or complaint unless the same shall be certified to under the seal of a court of record or by a justice of the peace, with the certificate under seal of the district or county clerk of his county that he is a legally qualified justice of the peace of such county; nor shall it be lawful for any magistrate to endorse a warrant received by telegraph, or issue a warrant upon a complaint received by telegraph, unless all the requirements of the law in relation thereto have been fully complied with.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.13. Telegram Prepaid

Whoever presents a warrant or complaint to the manager of a telegraph office to be forwarded by telegraph, shall pay for the same in advance, unless, by the rules of the company, it may be sent collect.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.14. Warrant May be Directed to Any Person

If it is made known by satisfactory proof to the magistrate that a peace officer cannot be procured to execute a warrant of arrest, or that such delay will be occasioned in procuring the services of a peace officer that the accused will probably escape, such warrant may be directed to any suitable person who is willing to execute the same; and in such case, his name shall be set forth in the warrant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.15. Private Person Executing Warrant

No person other than a peace officer can be compelled to execute a warrant of arrest; but if any person shall undertake its execution, he shall be bound to do so under all the penalties to which a

peace officer would be liable. He has the same rights, and is governed by the same rules as apply to peace officers.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.16. How Warrant is Executed

The officer or person executing a warrant of arrest shall without unnecessary delay take the person or have him taken before the magistrate who issued the warrant or before the magistrate named in the warrant, if the magistrate is in the same county where the person is arrested. If the issuing or named magistrate is in another county, the person arrested shall without unnecessary delay be taken before some magistrate in the county in which he was arrested.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1736, ch. 659, § 11, eff. Aug. 28, 1967.]

Art. 15.17. Duties of Arresting Officer and Magistrate

(a) In each case enumerated in this Code, the person making the arrest shall without unnecessary delay take the person arrested or have him taken before some magistrate of the county where the accused was arrested. The magistrate shall inform in clear language the person arrested of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, of his right to request the appointment of counsel if he is indigent and cannot afford counsel, and of his right to have an examining trial. He shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall admit the person arrested to bail if allowed by law.

(b) When a deaf accused is taken before a magistrate under Article 14.06 or 15.17 of this Code, an interpreter appointed by the magistrate qualified and sworn as provided in Article 38.31 of this Code shall interpret the warning required by those articles in a language that the accused can understand, including but not limited to sign language.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1736, ch. 659, § 12, eff. Aug. 28, 1967; Acts 1979, 66th Leg., p. 398, ch. 186, § 3, eff. May 15, 1979.]

Art. 15.18. Arrest for Out-of-County Offense

One arrested under a warrant issued in a county other than the one in which the person is arrested shall be taken before a magistrate of the county where the arrest takes place who shall take bail, if allowed by law, and immediately transmit the bond taken to the court having jurisdiction of the offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.19. Notice of Arrest

If the accused fails or refuses to give bail, as provided in the preceding Article, he shall be committed to the jail of the county where he was arrested; and the magistrate committing him shall immediately notify the sheriff of the county in which the offense is alleged to have been committed of the arrest and commitment, which notice may be given by telegraph, by mail or by other written notice.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.20. Duty of Sheriff Receiving Notice

The sheriff receiving the notice shall forthwith go or send for the prisoner and have him brought before the proper court or magistrate.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.21. Prisoner Discharged If Not Timely Demanded

If the proper office of the county where the offense is alleged to have been committed does not demand the prisoner and take charge of him within ten days from the day he is committed, such prisoner shall be discharged from custody.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.22. When a Person is Arrested

A person is arrested when he has been actually placed under restraint or taken into custody by an officer or person executing a warrant of arrest, or by an officer or person arresting without a warrant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.23. Time of Arrest

An arrest may be made on any day or at any time of the day or night.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.24. What Force May be Used

In making an arrest, all reasonable means are permitted to be used to effect it. No greater force, however, shall be resorted to than is necessary to secure the arrest and detention of the accused.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.25. May Break Door

In case of felony, the officer may break down the door of any house for the purpose of making an arrest, if he be refused admittance after giving notice of his authority and purpose.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 15.26. Authority to Arrest Must be Made Known

In executing a warrant of arrest, it shall always be made known to the accused under what authority the arrest is made. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, provided the warrant was issued under the provisions of this Code, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of arrest he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1736, ch. 659, § 13, eff. Aug. 28, 1967.]

Art. 15.27. Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3(b), eff. Jan. 1, 1974

CHAPTER SIXTEEN. THE COMMITMENT OR DISCHARGE OF THE ACCUSED

Art.
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Art. 16.01. Examining Trial

When the accused has been brought before a magistrate for an examining trial that officer shall proceed to examine into the truth of the accusation made, allowing the accused, however, sufficient time to procure counsel. In a proper case, the magistrate may appoint counsel to represent an accused in such examining trial only, to be compensated as otherwise provided in this Code. The accused in any felony case shall have the right to an examining trial before indictment in the county having jurisdiction of the offense, whether he be in custody or on bail, at which time the magistrate at the hearing shall determine the amount or sufficiency of bail, if a bailable case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 16.02. Examination Postponed

The magistrate may at the request of either party postpone the examination to procure testimony; but the accused shall in the meanwhile be detained in custody unless he give bail to be present from day to day before the magistrate until the examination is concluded, which he may do in all cases except murder and treason.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 16.03. Warning to Accused

Before the examination of the witnesses, the magistrate shall inform the accused that it is his right to make a statement relative to the accusation brought against him, but at the same time shall also inform him that he cannot be compelled to make any statement whatever, and that if he does make such statement, it may be used in evidence against him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 16.04. Voluntary Statement

If the accused desires to make a voluntary statement, he may do so before the examination of any witness, but not afterward. His statement shall be reduced to writing by or under the direction of the magistrate, or by the accused or his counsel, and shall be signed by the accused by affixing his name or mark, but shall not be sworn to by him. The magistrate shall attest by his own certificate and signature to the execution and signing of the statement.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 16.05. Witness Placed Under Rule

The magistrate shall, if requested by the accused or his counsel, or by the prosecutor, have all the witnesses placed in charge of an officer, so that the testimony given by any one witness shall not be heard by any of the others. However, if the defendant is a corporation or association it may designate one representative in addition to counsel to assist at

the examining trial, which representative may not be placed under the rule.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 968, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 16.06. Counsel May Examine Witness

The counsel for the State, and the accused or his counsel may question the witnesses on direct or cross examination. If no counsel appears for the State the magistrate may examine the witnesses.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 16.07. Same Rules of Evidence as on Final Trial

The same rules of evidence shall apply to and govern a trial before an examining court that apply to and govern a final trial.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 16.08. Presence of the Accused

The examination of each witness shall be in the presence of the accused.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 16.09. Testimony Reduced to Writing

The testimony of each witness shall be reduced to writing by or under the direction of the magistrate, and shall then be read over to the witness, or he may read it over himself. Such corrections shall be made in the same as the witness may direct; and he shall then sign the same by affixing thereto his name or mark. All the testimony thus taken shall be certified to by the magistrate. In lieu of the above provision, a statement of facts authenticated by State and defense counsel and approved by the presiding magistrate may be used to preserve the testimony of witnesses.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 16.10. Attachment for Witness

The magistrate has the power in all cases, where a witness resides or is in the county where the prosecution is pending, to issue an attachment for the purpose of enforcing the attendance of such witness; this he may do without having previously issued a subpoena for that purpose.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 16.11. Attachment to Another County

The magistrate may issue an attachment for a witness to any county in the State, when affidavit is made by the party applying therefor that the testimony of the witness is material to the prosecution, or the defense, as the case may be; and the affidavit shall further state the facts which it is expected will be proved by the witness; and if the facts set forth are not considered material by the magistrate, or if they be admitted to be true by the adverse party, the attachment shall not issue.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 16.12. Witness Need Not be Tendered His Witness Fees or Expenses

A witness attached need not be tendered his witness fees or expenses.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 16.13. Attachment Executed Forthwith

The officer receiving the attachment shall execute it forthwith by bringing before the magistrate the witness named therein, unless such witness shall give bail for his appearance before the magistrate at the time and place required by the writ.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 16.14. Postponing Examination

After examining the witness in attendance, if it appear to the magistrate that there is other important testimony which may be had by a postponement, he shall, at the request of the prosecutor or of the defendant, postpone the hearing for a reasonable time to enable such testimony to be procured; but in such case the accused shall remain in the custody of the proper officer until the day fixed for such further examination. No postponement shall take place, unless a sworn statement be made by the defendant, or the prosecutor, setting forth the name and residence of the witness, and the facts which it is expected will be proved. If it be testimony other than that of a witness, the statement made shall set forth the nature of the evidence. If the magistrate is satisfied that the testimony is not material, or if the same be admitted to be true by the adverse party, the postponement shall be refused.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 16.15. Who May Discharge Capital Offense

The examination of one accused of a capital offense shall be conducted by a justice of the peace, county judge, county court at law, or county criminal court. The judge may admit to bail, except in capital cases where the proof is evident.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 16.16. If Insufficient Bail Has Been Taken

Where it is made to appear by affidavit to a judge of the Court of Criminal Appeals, a justice of a court of appeals, or to a judge of the district or county court, that the bail taken in any case is insufficient in amount, or that the sureties are not good for the amount, or that the bond is for any reason defective or insufficient, such judge shall issue a warrent of arrest, and require of the defendant sufficient bond and security, according to the nature of the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 802, ch. 291, § 104, eff. Sept. 1, 1981.]

Art. 16.17. Decision of Judge

After the examining trial has been had, the judge shall make an order committing the defendant to the jail of the proper county, discharging him or admitting him to bail, as the law and facts of the case may require. Failure of the judge to make or enter an order within 48 hours after the examining trial has been completed operates as a finding of no probable cause and the accused shall be discharged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 16.18. When No Safe Jail

If there is no safe jail in the county in which the prosecution is carried on, the magistrate may commit defendant to the nearest safe jail in any other county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 16.19. Warrant in Such Case

The commitment in the case mentioned in the preceding Article shall be directed to the sheriff of the county to which the defendant is sent, but the sheriff of the county from which the defendant is taken shall be required to deliver the prisoner into the hands of the sheriff to whom he is sent.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 16.20. "Commitment"

A "commitment" is an order signed by the proper magistrate directing a sheriff to receive and place in jail the person so committed. It will be sufficient if it have the following requisites:

1. That it run in the name of "The State of Texas";

2. That it be addressed to the sheriff of the county to the jail of which the defendant is committed;

3. That it state in plain language the offense for which the defendant is committed, and give his name, if it be known, or if unknown, contain an accurate description of the defendant;

4. That it state to what court and at what time the defendant is to be held to answer;

5. When the prisoner is sent out of the county where the prosecution arose, the warrant of commitment shall state that there is no safe jail in the proper county; and

6. If bail has been granted, the amount of bail shall be stated in the warrant of commitment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 16.21. Duty of Sheriff as to Prisoners

Every sheriff shall keep safely a person committed to his custody. He shall use no cruel or unusual means to secure this end, but shall adopt all necessary measures to prevent the escape of a prisoner. He may summon a guard of sufficient number, in case it becomes necessary to prevent an escape from jail, or the rescue of a prisoner.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER SEVENTEEN. BAIL

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Art. 17.01. Definition of "Bail"

"Bail" is the security given by the accused that he will appear and answer before the proper court the accusation brought against him, and includes a bail bond or a personal bond.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.02. Definition of "Bail Bond"

A "bail bond" is a written undertaking entered into by the defendant and his sureties for the appearance of the principal therein before some court or magistrate to answer a criminal accusation; provided, however, that the defendant upon execution of such bail bond may deposit with the custodian of funds of the court in which the prosecution is pending current money of the United States in the amount of the bond in lieu of having sureties signing the same. Any cash funds deposited under this Article shall be receipted for by the officer receiving the same and shall be refunded to the defendant if and when the defendant complies with the conditions of his bond, and upon order of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.03. Personal Bond

The court before whom the case is pending may, in its discretion, release the defendant on his personal bond without sureties or other security.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.031. Release on Personal Bond

(a) A magistrate may, upon the setting of a bond, release the defendant on his personal bond, in which case the bond may be transferred to any court wherein the case may later be heard, and subsequent courts may not revoke the personal bond except for good cause shown.

(b) Any magistrate in this state may release a defendant on his personal bond where the complaint and warrant for arrest does not originate in the county wherein the accused is arrested if the magistrate would have had jurisdiction over the matter had the complaint arisen within the county wherein the magistrate presides. The personal bond may not be revoked by the judge of the court issuing the warrant for arrest except for good cause shown.

(c) If there is a personal bond office in the county from which the warrant for arrest was issued, the court releasing a defendant on his personal bond will forward a copy of the personal bond to the personal bond office in that county.

[Acts 1971, 62nd Leg., p. 2445, ch. 787, § 1, eff. June 8, 1971.]

Art. 17.04. Requisites of a Personal Bond

A personal bond is sufficient if it includes the requisites of a bail bond as set out in Article 17.08, except that no sureties are required. In addition, a personal bond shall contain the defendant's name, address and place of employment, and the following oath sworn and signed by the defendant:

"I swear that I will appear before (the court or magistrate) at (address, city, county) Texas, on the (date), at the hour of (time, a. m. or p. m.) or upon notice by the court, or pay to the court the principal sum of (amount) plus all necessary and reasonable expenses incurred in any arrest for failure to appear."

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.045. Bail Bond Certificates

A bail bond certificate with respect to which a fidelity and surety company has become surety as provided in the Automobile Club Services Act, or for any truck and bus association incorporated in this state, when posted by the person whose signature appears thereon, shall be accepted as bail bond in an amount not to exceed $200 to guarantee the appearance of such person in any court in this state when the person is arrested for violation of any motor vehicle law of this state or ordinance of any municipality in this state, except for the offense of driving while intoxicated or for any felony, and the alleged violation was committed prior to the date of expiration shown on such bail bond certificate.

[Acts 1969, 61st Leg., p. 2033, ch. 697, § 2, eff. Sept. 1, 1969.]

Art. 17.05. When a Bail Bond is Given

A bail bond is entered into either before a magistrate, upon an examination of a criminal accusation, or before a judge upon an application under habeas corpus; or it is taken from the defendant by a peace officer if authorized by Article 17.20, 17.21, or 17.22.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1971, 62nd Leg., p. 3045, ch. 1006, § 1, eff. Aug. 30, 1971.]

Art. 17.06. Corporation as Surety

Wherever in this Chapter, any person is required or authorized to give or execute any bail bond, such bail bond may be given or executed by such principal and any corporation authorized by law to act as surety, subject to all the provisions of this Chapter

regulating and governing the giving of bail bonds by personal surety insofar as the same is applicable.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.07. Corporation to File With County Clerk Power of Attorney Designating Agent

Any corporation authorized by the law of this State to act as a surety, shall before executing any bail bond as authorized in the preceding Article, first file in the office of the county clerk of the county where such bail bond is given, a power of attorney designating and authorizing the named agent, agents or attorney of such corporation to execute such bail bonds and thereafter the execution of such bail bonds by such agent, agents or attorney, shall be a valid and binding obligation of such corporation.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.08. Requisites of a Bail Bond

A bail bond shall be sufficient if it contain the following requisites:

1. That it be made payable to "The State of Texas";

2. That the defendant and his sureties, if any, bind themselves that the defendant will appear before the proper court or magistrate to answer the accusation against him;

3. If the defendant is charged with a felony, that it state that he is charged with a felony. If the defendant is charged with a misdemeanor, that it state that he is charged with a misdemeanor;

4. That the bond be signed by name or mark by the principal and sureties, if any, each of whom shall write thereon his mailing address;

5. That the bond state the time and place, when and where the accused binds himself to appear, and the court or magistrate before whom he is to appear. The bond shall also bind the defendant to appear before any court or magistrate before whom the cause may thereafter be pending at any time when, and place where, his presence may be required under this Code or by any court or magistrate;

6. The bond shall also be conditioned that the principal and sureties, if any, will pay all necessary and reasonable expenses incurred by any and all sheriffs or other peace officers in rearresting the principal in the event he fails to appear before the court or magistrate named in the bond at the time stated therein. The amount of such expense shall be in addition to the principal amount specified in the bond. The failure of any bail bond to contain the conditions specified in this paragraph shall in no manner affect the legality of any such bond, but it is intended that the sheriff or other peace officer shall look to the defendant and his sureties, if any, for expenses incurred by him, and not to the State for any fees earned by him in connection with the rearresting of an accused who has violated the conditions of his bond.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.09. Duration; Original and Subsequent Proceedings; New Bail

Sec. 1. Where a defendant, in the course of a criminal action, gives bail before any court or person authorized by law to take same, for his personal appearance before a court or magistrate, to answer a charge against him, the said bond shall be valid and binding upon the defendant and his sureties, if any, thereon, for the defendant's personal appearance before the court or magistrate designated therein, as well as before any other court to which same may be transferred, and for any and all subsequent proceedings had relative to the charge, and each such bond shall be so conditioned except as hereinafter provided.

Sec. 2. When a defendant has once given bail for his appearance in answer to a criminal charge, he shall not be required to give another bond in the course of the same criminal action except as herein provided.

Sec. 3. Provided that whenever, during the course of the action, the judge or magistrate in whose court such action is pending finds that the bond is defective, excessive or insufficient in amount, or that the sureties, if any, are not acceptable, or for any other good and sufficient cause, such judge or magistrate may, either in term-time or in vacation, order the accused to be rearrested, and require the accused to give another bond in such amount as the judge or magistrate may deem proper. When such bond is so given and approved, the defendant shall be released from custody.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.10. Disqualified Sureties

A minor cannot be surety on a bail bond, but the accused party may sign as principal.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.11. How Bail Bond is Taken

Sec. 1. Every court, judge, magistrate or other officer taking a bail bond shall require evidence of the sufficiency of the security offered; but in every case, one surety shall be sufficient, if it be made to appear that such surety is worth at least double the amount of the sum for which he is bound, exclusive of all property exempted by law from execution,

and of debts or other encumbrances; and that he is a resident of this state, and has property therein liable to execution worth the sum for which he is bound.

Sec. 2. Provided, however, any person who has signed as a surety on a bail bond and is in default thereon shall thereafter be disqualified to sign as a surety so long as he is in default on said bond. It shall be the duty of the clerk of the court wherein such surety is in default on a bail bond, to notify in writing the sheriff, chief of police, or other peace officer, of such default. A surety shall be deemed in default from the time the trial court enters its final judgment on the scire facias until such judgment is satisfied or set aside.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1736, ch. 659, § 14, eff. Aug. 28, 1967.]

Art. 17.12. Exempt Property

The property secured by the Constitution and laws from forced sale shall not, in any case, be held liable for the satisfaction of bail, either as to principal or sureties, if any.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.13. Sufficiency of Sureties Ascertained

To test the sufficiency of the security offered to any bail bond, unless the court or officer taking the same is fully satisfied as to its sufficiency, the following oath shall be made in writing and subscribed by the sureties:

"I, do swear that I am worth, in my own right, at least the sum of (here insert the amount in which the surety is bound), after deducting from my property all that which is exempt by the Constitution and Laws of the State from forced sale, and after the payment of all my debts of every description, whether individual or security debts, and after satisfying all encumbrances upon my property which are known to me; that I reside in ..... County, and have property in this State liable to execution worth said amount or more.

(Dated ....., and attested by the judge of the court, clerk, magistrate or sheriff.)"

Such affidavit shall be filed with the papers of the proceedings.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.14. Affidavit Not Conclusive

Such affidavit shall not be conclusive as to the sufficiency of the security; and if the court or officer taking the bail bond is not fully satisfied as to the sufficiency of the security offered, further evidence shall be required before approving the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.15. Rules for Fixing Amount of Bail

The amount of bail to be required in any case is to be regulated by the court, judge, magistrate or officer taking the bail; they are to be governed in the exercise of this discretion by the Constitution and by the following rules:

1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.

2. The power to require bail is not to be so used as to make it an instrument of oppression.

3. The nature of the offense and the circumstances under which it was committed are to be considered.

4. The ability to make bail is to be regarded, and proof may be taken upon this point.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.151. Release Because of Delay

Sec. 1. A defendant who is detained in jail pending trial of an accusation against him must be released either on personal bond or by reducing the amount of bail required, if the state is not ready for trial of the criminal action for which he is being detained within:

(1) 90 days from the commencement of his detention if he is accused of a felony;

(2) 30 days from the commencement of his detention if he is accused of a misdemeanor punishable by a sentence of imprisonment in jail for more than 180 days;

(3) 15 days from the commencement of his detention if he is accused of a misdemeanor punishable by a sentence of imprisonment for 180 days or less; or

(4) five days from the commencement of his detention if he is accused of a misdemeanor punishable by a fine only.

Sec. 2. The provisions of this article do not apply to a defendant who is:

(1) serving a sentence of imprisonment for another offense while he is serving that sentence;

(2) being detained pending trial of another accusation against him as to which the applicable period has not yet elapsed; or

(3) incompetent to stand trial, during the period of his incompetence.

Sec. 3. If a person released under this article is arrested and detained for a violation of the conditions of his release, the time for release under

Section 1 of this article begins to run on the date of the arrest for violation of conditions of the release.

[Acts 1977, 65th Leg., p. 1972, ch. 787, § 2, eff. July 1, 1978.]

Art. 17.16. Surety May Surrender His Principal

Those who have become bail for the accused, or either of them, may at any time relieve themselves of their undertaking by surrendering the accused into the custody of the sheriff of the county where he is prosecuted.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.17. When Surrender is Made During Term

If a surrender of the accused be made during a term of the court to which he has bound himself to appear, the sheriff shall take him before the court; and if he is willing to give other bail, the court shall forthwith require him to do so. If he fails or refuses to give bail, the court shall make an order that he be committed to jail until the bail is given, and this shall be a sufficient commitment without any written order to the sheriff.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.18. Surrender in Vacation

When the surrender is made at any other time than during the session of the court, the sheriff may take the necessary bail bond, but if the defendant fails or refuses to give other bail, the sheriff shall take him before the nearest magistrate; and such magistrate shall issue a warrant of commitment, reciting the fact that the accused has been once admitted to bail, has been surrendered, and now fails or refuses to give other bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.19. Surety May Obtain a Warrant

Any surety, desiring to surrender his principal, may upon making affidavit of such intention before the court or magistrate before which the prosecution is pending, obtain from such court or magistrate a warrant of arrest for such principal, which shall be executed as in other cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.20. Bail in Misdemeanor

The sheriff, or other peace officer, in cases of misdemeanor, may, whether during the term of the court or in vacation, where he has a defendant in custody, take of the defendant a bail bond.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1971, 62nd Leg., p. 3045, ch. 1006, § 1, eff. Aug. 30, 1971.]

Art. 17.21. Bail in Felony

In cases of felony, when the accused is in custody of the sheriff or other peace officer, and the court before which the prosecution is pending is in session in the county where the accused is in custody, the court shall fix the amount of bail, if it is a bailable case and determine if the accused is eligible for a personal bond; and the sheriff, or other peace officer, unless it be the police of a city, is authorized to take a bail bond of the accused in the amount as fixed by the court, to be approved by such officer taking the same, and will thereupon discharge the accused from custody. It shall not be necessary for the defendant or his sureties to appear in court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.22. May Take Bail in Felony

In a felony case, if the court before which the same is pending is not in session in the county where the defendant is in custody, the sheriff, or other peace officer having him in custody, may take his bail bond in such amount as may have been fixed by the court or magistrate, or if no amount has been fixed, then in such amount as such officer may consider reasonable.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.23. Sureties Severally Bound

In all bail bonds taken under any provision of this Code, the sureties shall be severally bound. Where a surrender of the principal is made by one or more of them, all the sureties shall be considered discharged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.24. General Rules Applicable

All general rules in the Chapter are applicable to bail defendant before an examining court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.25. Proceedings When Bail is Granted

After a full examination of the testimony, the magistrate shall, if the case be one where bail may properly be granted and ought to be required, proceed to make an order that the accused execute a

bail bond with sufficient security, conditioned for his appearance before the proper court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.26. Time Given to Procure Bail

Reasonable time shall be given the accused to procure security.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.27. When Bail is Not Given

If, after the allowance of a reasonable time, the security be not given, the magistrate shall make an order committing the accused to jail to be kept safely until legally discharged; and he shall issue a commitment accordingly.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.28. When Ready to Give Bail

If the party be ready to give bail, the magistrate shall cause to be prepared a bond, which shall be signed by the accused and his surety or sureties, if any.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.29. Accused Liberated

When the accused has given the required bond, either to the magistrate or the officer having him in custody, he shall at once be set at liberty.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.30. Shall Certify Proceedings

The magistrate, before whom an examination has taken place upon a criminal accusation, shall certify to all the proceedings had before him, as well as where he discharges, holds to bail or commits, and transmit them, sealed up, to the court before which the defendant may be tried, writing his name across the seals of the envelope. The voluntary statement of the defendant, the testimony, bail bonds, and every other proceeding in the case, shall be thus delivered to the clerk of the proper court, without delay.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.31. Duty of Clerks Who Receive Such Proceedings

If the proceedings be delivered to a district clerk, he shall keep them safely and deliver the same to the next grand jury. If the proceedings are delivered to a county clerk, he shall without delay deliver them to the district or county attorney of his county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.32. In Case of No Arrest

Upon failure from any cause to arrest the accused the magistrate shall file with the proper clerk the complaint, warrant of arrest, and a list of the witnesses.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.33. Request Setting of Bail

The accused may at any time after being confined request a magistrate to review the written statements of the witnesses for the State as well as all other evidence available at that time in determining the amount of bail. This setting of the amount of bail does not waive the defendant's right to an examining trial as provided in Article 16.01.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.34. Witnesses to Give Bond

Witnesses for the State or defendant may be required by the magistrate, upon the examination of any criminal accusation before him, to give bail for their appearance to testify before the proper court. A personal bond may be taken of a witness by the court before whom the case is pending.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.35. Security of Witness

The amount of security to be required of a witness is to be regulated by his pecuniary condition, character and the nature of the offense with respect to which he is a witness.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.36. Effect of Witness Bond

The bond given by a witness for his appearance has the same effect as a bond of the accused and may be forfeited and recovered upon in the same manner.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.37. Witness May be Committed

A witness required to give bail who fails or refuses to do so shall be committed to jail as in other cases of a failure to give bail when required, but shall be released from custody upon giving such bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.38. Rules Applicable to All Cases of Bail

The rules in this Chapter respecting bail are applicable to all such undertakings when entered into in the course of a criminal action, whether before or after an indictment, in every case where authority is given to any court, judge, magistrate, or other officer, to require bail of a person accused of an offense, or of a witness in a criminal action.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 17.39. Records of Bail

A magistrate or other officer who sets the amount of bail or who takes bail shall record in a well-bound book the name of the person whose appearance the bail secures, the amount of bail, the date bail is set, the magistrate or officer who sets bail, the offense or other cause for which the appearance is secured, the magistrate or other officer who takes bail, the date the person is released, and the name of the bondsman, if any.

[Acts 1977, 65th Leg., p. 1525, ch. 618, § 1, eff. Aug. 29, 1977.]

Art. 17.40. Condition to Enter Treatment

When setting a personal bond under this chapter, upon a finding of alcohol or drug abuse related to the offense for which the defendant is charged, a magistrate may require as a condition of the bond that the defendant participate in an alcohol or drug abuse treatment or education program if such a condition will reasonably assure the appearance of the person for trial.

[Acts 1983, 68th Leg., p. 3206, ch. 551, § 1, eff. Sept. 1, 1983.]

CHAPTER SEVENTEEN-A. CORPORATIONS AND ASSOCIATIONS

Art.

17A.01. Application and Definitions.
17A.02. Allegation of Name.
17A.03. Summoning Corporation or Association.
17A.04. Service on Corporation.
17A.05. Service on Association.
17A.06. Appearance.
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17A.08. Probation.
17A.09. Notifying Attorney General of Corporation's Conviction.

Art. 17A.01. Application and Definitions

(a) This chapter sets out some of the procedural rules applicable to the criminal responsibility of corporations and associations. Where not in conflict with this chapter, the other chapters of this code apply to corporations and associations.

(b) In this code, unless the context requires a different definition:

(1) "Agent" means a director, officer, employee, or other person authorized to act in behalf of a corporation or association.

(2) "Association" means a government or governmental subdivision or agency, trust, partnership, or two or more persons having a joint or common economic interest.

(3) "High managerial agent" means:

(A) an officer of a corporation or association;

(B) a partner in a partnership; or

(C) an agent of a corporation or association who has duties of such responsibility that his conduct may reasonably be assumed to represent the policy of the corporation or association.

(4) "Person," "he," and "him" include corporation and association.

[Acts 1973, 63rd Leg., p. 979, ch. 399, § 2(D), eff. Jan. 1, 1974.]

Art. 17A.02. Allegation of Name

(a) In alleging the name of a defendant corporation, it is sufficient to state in the complaint, indictment, or information the corporate name, or to state any name or designation by which the corporation is known or may be identified. It is not necessary to allege that the defendant was lawfully incorporated.

(b) In alleging the name of a defendant association it is sufficient to state in the complaint, indictment, or information the association's name, or to state any name or designation by which the association is known or may be identified, or to state the name or names of one or more members of the association, referring to the unnamed members as "others." It is not necessary to allege the legal form of the association.

[Acts 1973, 63rd Leg., p. 979, ch. 399, § 2(D), eff. Jan. 1, 1974.]

Art. 17A.03. Summoning Corporation or Association

(a) When a complaint is filed or an indictment or information presented against a corporation or association, the court or clerk shall issue a summons to the corporation or association. The summons shall be in the same form as a capias except that:

(1) it shall summon the corporation or association to appear before the court named at the place stated in the summons; and

(2) it shall be accompanied by a certified copy of the complaint, indictment, or information; and

(3) it shall provide that the corporation or association appear before the court named at or before 10 a. m. of the Monday next after the expiration of 20 days after it is served with summons, except when service is made upon the secretary of state or chairman of the State Board of Insurance, in which instance the summons shall provide

that the corporation or association appear before the court named at or before 10 a. m. of the Monday next after the expiration of 30 days after the secretary of state or chairman of the State Board of Insurance is served with summons.

(b) No individual may be arrested upon a complaint, indictment, information, judgment, or sentence against a corporation or association.

[Acts 1973, 63rd Leg., p. 980, ch. 399, § 2(D), eff. Jan. 1, 1974.]

Art. 17A.04. Service on Corporation

(a) Except as provided in Paragraph (d) of this article, a peace officer shall serve a summons on a corporation by personally delivering a copy of it to the corporation's registered agent. However, if a registered agent has not been designated, or cannot with reasonable diligence be found at the registered office, then the peace officer shall serve the summons by personally delivering a copy of it to the president or a vice-president of the corporation.

(b) If the peace officer certifies on the return that he diligently but unsuccessfully attempted to effect service under Paragraph (a) of this article, or if the corporation is a foreign corporation that has no certificate of authority, then he shall serve the summons on the secretary of state by personally delivering a copy of it to him, or to the assistant secretary of state, or to any clerk in charge of the corporation department of his office. On receipt of the summons copy, the secretary of state shall immediately forward it by certified or registered mail, return receipt requested, addressed to the defendant corporation at its registered or principal office in the state or country under whose law it was incorporated.

(c) The secretary of state shall keep a permanent record of the date and time of receipt and his disposition of each summons served under Paragraph (b) of this article together with the return receipt.

(d) The method of service on a corporation regulated under the Insurance Code is governed by that code.

[Acts 1973, 63rd Leg., p. 980, ch. 399, § 2(D), eff. Jan. 1, 1974.]

Art. 17A.05. Service on Association

(a) Except as provided in Paragraph (b) of this article, a peace officer shall serve a summons on an association by personally delivering a copy of it:

(1) to a high managerial agent at any place where business of the association is regularly conducted; or

(2) if the peace officer certifies on the return that he diligently but unsuccessfully attempted to serve a high managerial agent, to any employee of suitable age and discretion at any place where business of the association is regularly conducted; or

(3) if the peace officer certifies on the return that he diligently but unsuccessfully attempted to serve a high managerial agent, or employee of suitable age and discretion, to any member of the association.

(b) The method of service on an association regulated under the Insurance Code is governed by that code.

[Acts 1973, 63rd Leg., p. 981, ch. 399, § 2(D), eff. Jan. 1, 1974.]

Art. 17A.06. Appearance

(a) In all criminal actions instituted against a corporation or association, in which original jurisdiction is in a district or county-level court:

(1) appearance is for the purpose of arraignment;

(2) the corporation or association has 10 full days after the day the arraignment takes place and before the day the trial begins to file written pleadings.

(b) In all criminal actions instituted against a corporation or association, in which original jurisdiction is in a justice court or corporation court:

(1) appearance is for the purpose of entering a plea; and

(2) 10 full days must elapse after the day of appearance before the corporation or association may be tried.

[Acts 1973, 63rd Leg., p. 981, ch. 399, § 2(D), eff. Jan. 1, 1974.]

Art. 17A.07. Presence of Corporation or Association

(a) A defendant corporation or association appears through counsel.

(b) If a corporation or association does not appear in response to summons, or appears but fails or refuses to plead:

(1) it is deemed to be present in person for all purposes; and

(2) the court shall enter a plea of not guilty in its behalf; and

(3) the court may proceed with trial, judgment, and sentencing.

(c) If, having appeared and entered a plea in response to summons, a corporation or association is absent without good cause at any time during later proceedings:

(1) it is deemed to be present in person for all purposes; and

(2) the court may proceed with trial, judgment, or sentencing.

[Acts 1973, 63rd Leg., p. 981, ch. 399, § 2(D), eff. Jan. 1, 1974.]

Art. 17A.08. Probation

The benefits of the adult probation laws shall not be available to corporations and associations.

[Acts 1973, 63rd Leg., p. 981, ch. 399, § 2(D), eff. Jan. 1, 1974.]

Art. 17A.09. Notifying Attorney General of Corporation's Conviction

If a corporation is convicted of an offense, or if a high managerial agent is convicted of an offense committed in the conduct of the affairs of the corporation, the court shall notify the attorney general in writing of the conviction when it becomes final and unappealable. The notice shall include:

(1) the corporation's name, and the name of the corporation's registered agent and the address of the registered office, or the high managerial agent's name and address, or both; and

(2) certified copies of the judgment and sentence and of the complaint, information, or indictment on which the judgment and sentence were based.

[Acts 1973, 63rd Leg., p. 981, ch. 399, § 2(D), eff. Jan. 1, 1974.]

SEARCH WARRANTS

CHAPTER EIGHTEEN. SEARCH WARRANTS

Art.

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Art. 18.01. Search Warrant

(a) A "search warrant" is a written order, issued by a magistrate and directed to a peace officer, commanding him to search for any property or thing and to seize the same and bring it before such magistrate or commanding him to search for and photograph a child and to deliver to the magistrate any of the film exposed pursuant to the order.

(b) No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. The affidavit is public information if executed.

(c) A search warrant may not be issued pursuant to Subdivision (10) of Article 18.02 of this code unless the sworn affidavit required by Subsection (b) of this article sets forth sufficient facts to establish probable cause: (1) that a specific offense has been committed, (2) that the specifically described property or items that are to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense, and (3) that the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched. Only a judge of a statutory county court, district court, the Court of Criminal Appeals, or the Supreme Court may issue warrants pursuant to Subdivision (10), Article 18.02 of this code.

(d) Only the specifically described property or items set forth in a search warrant issued under Subdivision (10) of Article 18.02 of this code or property or items enumerated in Subdivisions (1) through (9) of Article 18.02 of this code may be seized. Subsequent search warrants may not be issued pursuant to Subdivision (10) of Article 18.02 of this code to search the same person, place, or thing subjected to a prior search under Subdivision (10) of Article 18.02 of this code.

(e) A search warrant may not be issued under Subdivision (10) of Article 18.02 of this code to search for and seize property or items that are not described in Subdivisions (1) through (9) of that article and that are located in an office of a newspaper, news magazine, television station, or radio station, and in no event may property or items not described in Subdivisions (1) through (9) of that article be legally seized in any search pursuant to a search warrant of an office of a newspaper, news magazine, television station, or radio station.

(f) A search warrant may not be issued pursuant to Article 18.021 of this code unless the sworn affidavit required by Subsection (b) of this article sets forth sufficient facts to establish probable cause:

(1) that a specific offense has been committed;

(2) that a specifically described person has been a victim of the offense;

(3) that evidence of the offense or evidence that a particular person committed the offense can be detected by photographic means; and

(4) that the person to be searched for and photographed is located at the particular place to be searched.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 982, ch. 399, § 2(E), eff. Jan. 1, 1974; Acts 1977, 65th Leg., p. 640, ch. 237, § 1, eff. May 25, 1977; Acts 1979, 66th Leg., p. 1076, ch. 505, § 1, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1124, ch. 536, § 1, eff. June 11, 1979; Acts 1981, 67th Leg., p. 759, ch. 289, §§ 3, 4, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2789, ch. 755, § 1, eff. Sept. 1, 1981.]

Art. 18.02. Grounds for Issuance

A search warrant may be issued to search for and seize:

(1) property acquired by theft or in any other manner which makes its acquisition a penal offense;

(2) property specially designed, made, or adapted for or commonly used in the commission of an offense;

(3) arms and munitions kept or prepared for the purposes of insurrection or riot;

(4) weapons prohibited by the Penal Code;

(5) gambling devices or equipment, altered gambling equipment, or gambling paraphernalia;

(6) obscene materials kept or prepared for commercial distribution or exhibition, subject to the additional rules set forth by law;

(7) drugs kept, prepared, or manufactured in violation of the laws of this state;

(8) any property the possession of which is prohibited by law;

(9) implements or instruments used in the commission of a crime;

(10) property or items, except the personal writings by the accused, constituting evidence of an offense or constituting evidence tending to show that a particular person committed an offense; or

(11) persons.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 982, ch. 399, § 2(E), eff. Jan. 1, 1974; Acts 1977, 65th Leg., p. 640, ch. 237, § 2, eff. May 25, 1977; Acts 1981, 67th Leg., p. 2790, ch. 755, § 5, eff. Sept. 1, 1981.]

Art. 18.021. Issuance of Search Warrant to Photograph Injured Child

(a) A search warrant may be issued to search for and photograph a child who is alleged to be the victim of the offenses of injury to a child as defined by Section 22.04, Penal Code, as amended; sexual assault of a child as defined by Section 22.011(a), Penal Code, as amended; or aggravated sexual assault of a child as defined by Section 22.021, Penal Code.

(b) The officer executing the warrant may be accompanied by a photographer who is employed by a law enforcement agency and who acts under the direction of the officer executing the warrant. The photographer is entitled to access to the child in the same manner as the officer executing the warrant.

(c) In addition to the requirements of Subdivisions (1) and (4) of Article 18.04 of this code, a warrant issued under this article shall identify, as near as may be, the child to be located and photographed, shall name or describe, as near as may be, the place or thing to be searched, and shall command any peace officer of the proper county to search for and cause the child to be photographed.

(d) After having located and photographed the child, the peace officer executing the warrant shall take possession of the exposed film and deliver it forthwith to the magistrate. The child may not be removed from the premises on which he or she is located except under Section 17.03, Family Code, as amended.

(e) A search warrant under this section shall be executed by a peace officer of the same sex as the alleged victim or, if the officer is not of the same sex as the alleged victim, the peace officer must be assisted by a person the same sex as the alleged victim. The person assisting an officer under this subsection must be acting under the direction of the officer and must be with the alleged victim during the taking of the photographs.

[Acts 1981, 67th Leg., p. 758, ch. 289, § 2, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 5319, ch. 977, § 8, eff. Sept. 1, 1983.]

Section 13 of the 1983 amendatory act provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act.

"(b) An offense committed before the effective date of this Act is covered by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Art. 18.03. Search Warrant May Order Arrest

If the facts presented to the magistrate under Article 18.02 of this chapter also establish the existence of probable cause that a person has committed some offense under the laws of this state, the search warrant may, in addition, order the arrest of such person.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 983, ch. 399, § 2(E), eff. Jan. 1, 1974.]

Art. 18.04. Contents of Warrant

A search warrant issued under this chapter shall be sufficient if it contains the following requisites:

(1) that it run in the name of "The State of Texas";

(2) that it identify, as near as may be, that which is to be seized and name or describe, as near as may be, the person, place, or thing to be searched;

(3) that it command any peace officer of the proper county to search forthwith the person, place, or thing named; and

(4) that it be dated and signed by the magistrate.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 983, ch. 399, § 2(E), eff. Jan. 1, 1974.]

Art. 18.05. Warrants for Fire Marshals and Health Officers

(a) A search warrant may be issued to the fire marshal or health officer of the state or of any county, city, or other political subdivision for the purpose of allowing the inspection of any specified premises to determine the presence of a fire or health hazard or a violation of any fire or health regulation, statute, or ordinance.

(b) A search warrant may not be issued under this article except upon the presentation of evidence of probable cause to believe that a fire or health hazard or violation is present in the premises sought to be inspected.

(c) In determining probable cause, the magistrate is not limited to evidence of specific knowledge, but may consider any of the following:

(1) the age and general condition of the premises;

(2) previous violations or hazards found present in the premises;

(3) the type of premises;

(4) the purposes for which the premises are used; and

(5) the presence of hazards or violations in and the general condition of premises near the premises sought to be inspected.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1969, 61st Leg., p. 1623, ch. 502, § 1, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 983, ch. 399, § 2(E), eff. Jan. 1, 1974.]

Art. 18.06. Execution of Warrants

(a) A peace officer to whom a search warrant is delivered shall execute it without delay and forthwith return it to the proper magistrate. It must be executed within three days from the time of its issuance, and shall be executed within a shorter period if so directed in the warrant by the magistrate.

(b) On searching the place ordered to be searched, the officer executing the warrant shall present a copy of the warrant to the owner of the place, if he is present. If the owner of the place is not present but a person who is present is in possession of the place, the officer shall present a copy of the warrant to the person. Before the officer takes property from the place, he shall prepare a written inventory of the property to be taken. He shall legibly endorse his name on the inventory and present a copy of the inventory to the owner or other person in possession of the property. If neither the owner nor a person in possession of the property is present when the officer executes the warrant, the officer shall leave a copy of the warrant and the inventory at the place.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 983, ch. 399, § 2(E), eff. Jan. 1, 1974; Acts 1981, 67th Leg., p. 2789, ch. 755, § 2, eff. Sept. 1, 1981.]

Art. 18.07. Days Allowed for Warrant to Run

The time allowed for the execution of a search warrant shall be three whole days, exclusive of the day of its issuance and of the day of its execution. The magistrate issuing a search warrant under the provisions of this chapter shall endorse on such search warrant the date and hour of the issuance of the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 984, ch. 399, § 2(E), eff. Jan. 1, 1974.]

Art. 18.08. Power of Officer Executing Warrant

In the execution of a search warrant, the officer may call to his aid any number of citizens in this county, who shall be bound to aid in the execution of the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 984, ch. 399, § 2(E), eff. Jan. 1, 1974.]

Art. 18.09. Shall Seize Accused and Property

When the property which the officer is directed to search for and seize is found he shall take possession of the same and carry it before the magistrate. He shall also arrest any person whom he is directed to arrest by the warrant and immediately take such person before the magistrate.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 984, ch. 399, § 2(E), eff. Jan. 1, 1974.]

Art. 18.10. How Return Made

Upon returning the search warrant, the officer shall state on the back of the same, or on some paper attached to it, the manner in which it has been executed and shall likewise deliver to the magistrate a copy of the inventory of the property taken into his possession under the warrant. The officer who seized the property shall retain custody of it until the magistrate issues an order directing the

manner of safekeeping the property. The property may not be removed from the county in which it was seized without an order approving the removal, issued by a magistrate in the county in which the warrant was issued; provided, however, nothing herein shall prevent the officer, or his department, from forwarding any item or items seized to a laboratory for scientific analysis.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 984, ch. 399, § 2(E), eff. Jan. 1, 1974; Acts 1981, 67th Leg., p. 2789, ch. 755, § 3, eff. Sept. 1, 1981.]

Art. 18.11. Custody of Property Found

Property seized pursuant to a search warrant shall be kept as provided by the order of a magistrate issued in accordance with Article 18.10 of this code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 984, ch. 399, § 2(E), eff. Jan. 1, 1974; Acts 1981, 67th Leg., p. 2789, ch. 755, § 4, eff. Sept. 1, 1981.]

Art. 18.12. Magistrate Shall Investigate

The magistrate, upon the return of a search warrant, shall proceed to try the questions arising upon the same, and shall take testimony as in other examinations before him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 984, ch. 399, § 2(E), eff. Jan. 1, 1974.]

Art. 18.13. Shall Discharge Defendant

If the magistrate be not satisfied, upon investigation, that there was good ground for the issuance of the warrant, he shall discharge the defendant and order restitution of the property taken from him, except for criminal instruments. In such case, the criminal instruments shall be kept by the sheriff subject to the order of the proper court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 984, ch. 399, § 2(E), eff. Jan. 1, 1974.]

Art. 18.14. Examining Trial

The magistrate shall proceed to deal with the accused as in other cases before an examining court if he is satisfied there was good ground for issuing the warrant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 984, ch. 399, § 2(E), eff. Jan. 1, 1974.]

Art. 18.15. Certify Record to Proper Court

The magistrate shall keep a record of all the proceedings had before him in cases of search warrants, and shall certify the same and deliver them to the clerk of the court having jurisdiction of the case, before the next term of said court, and accompany the same with all the original papers relating thereto, including the certified schedule of the property seized.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 985, ch. 399, § 2(E), eff. Jan. 1, 1974.]

Art. 18.16. Preventing Consequences of Theft

All persons have a right to prevent the consequences of theft by seizing any personal property which has been stolen and bringing it, with the supposed offender, if he can be taken, before a magistrate for examination, or delivering the same to a peace officer for that purpose. To justify such seizure, there must, however, be reasonable ground to suppose the property to be stolen, and the seizure must be openly made and the proceedings had without delay.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 985, ch. 399, § 2(E), eff. Jan. 1, 1974.]

Art. 18.17. Disposition of Abandoned or Unclaimed Property

(a) All unclaimed or abandoned personal property of every kind, except whiskey, wine and beer, seized by any state or county peace officer in the State of Texas which is not held as evidence to be used in any pending case and has not been ordered destroyed or returned to the person entitled to possession of the same by a magistrate, which shall remain unclaimed for a period of 30 days shall be delivered for sale to the purchasing agent of the county in which the property was seized. If the county has no purchasing agent, then such property shall be sold by the sheriff of the county.

(b) The purchasing agent or sheriff of the county, as the case may be, shall mail a notice to the last known address of the owner of such property by certified mail. Such notice shall describe the property being held, give the name and address of the officer holding such property, and shall state that if the owner does not claim such property within six months from the date of the notice such property will be sold and the proceeds of such sale, after deducting the reasonable expense of keeping such property and the costs of the sale, placed in the county treasury.

(c) If the owner of such property is unknown or if the address of the owner is unknown, then the purchasing agent or the sheriff, as the case may be, shall cause to be published once in a paper of general circulation in the county a notice containing a description of the property held, the name of the owner if known, the name and address of the officer holding such property, and a statement that if the owner does not claim such property within six months from the date of the publication such property will be sold and the proceeds of such sale, after deducting the reasonable expense of keeping such property and the costs of the sale, placed in the county treasury.

(d) The sale of any property hereunder shall be preceded by a notice published once at least three

weeks prior to the date of such sale in a newspaper of general circulation in the county where the sale is to take place, stating the description of the property, the names of the owner if known, and the date and place that such sale will occur. If the purchasing agent or sheriff, as the case may be, shall consider any bid as insufficient, he need not sell such property but may decline such bid and reoffer such property for sale.

(e) The real owner of any property sold shall have the right to file a claim to the proceeds of such sale with the commissioners court of the county in which the sale took place. If the claim is allowed by the commissioners court, the county treasurer shall pay the owner such funds as were paid into the treasury of the county as proceeds of the sale. If the claim is denied by the commissioners court or if said court fails to act upon such claim within 90 days, the claimant may sue the county treasurer in a court of competent jurisdiction in the county, and upon sufficient proof of ownership, recover judgment against such county for the recovery of the proceeds of the sale.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1737, ch. 659, § 15, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 985, ch. 399, § 2(E), eff. Jan. 1, 1974.]

Art. 18.18. Disposition of Gambling Paraphernalia, Prohibited Weapon, Criminal Instrument, and Other Contraband

(a) Following the final conviction of a person for possession of a gambling device or equipment, altered gambling equipment, or gambling paraphernalia, for an offense involving a criminal instrument, for an offense involving an obscene device or material, or for an offense involving a prohibited weapon, the court entering the judgment of conviction shall order that the machine, device, gambling equipment or gambling paraphernalia, instrument, obscene device or material, or weapon be destroyed or forfeited to the state. Following the final conviction of a person for an offense involving dog fighting, the court entering the judgment of conviction shall order that any dog-fighting equipment be destroyed or forfeited to the state. Destruction of dogs, if necessary, must be carried out by a veterinarian licensed in this state or, if one is not available, by trained personnel of a humane society or an animal shelter. If forfeited, the court shall order the contraband delivered to the state, any political subdivision of the state, or to any state institution or agency. If gambling proceeds were seized, the court shall order them forfeited to the state and shall transmit them to the grand jury of the county in which they were seized for use in investigating alleged violations of the Penal Code, or to the state, any political subdivision of the state, or to any state institution or agency.

(b) If there is no prosecution or conviction following seizure, the magistrate to whom the return was made shall notify in writing the person found in possession of the alleged gambling device or equipment, altered gambling equipment or gambling paraphernalia, gambling proceeds, prohibited weapon, obscene device or material, criminal instrument, or dog-fighting equipment to show cause why the property seized should not be destroyed or the proceeds forfeited.

(c) The magistrate shall include in the notice a detailed description of the property seized and the total amount of alleged gambling proceeds; the name of the person found in possession; the address where the property or proceeds were seized; and the date and time of the seizure.

(d) The magistrate shall send the notice by registered or certified mail, return receipt requested, to the person found in possession at the address where the property or proceeds were seized. If no one was found in possession, or the possessor's address is unknown, the magistrate shall post the notice on the courthouse door.

(e) Any person interested in the alleged gambling device or equipment, altered gambling equipment or gambling paraphernalia, gambling proceeds, prohibited weapon, obscene device or material, criminal instrument, or dog-fighting equipment seized must appear before the magistrate on the 20th day following the date the notice was mailed or posted. Failure to timely appear forfeits any interest the person may have in the property or proceeds seized, and no person after failing to timely appear may contest destruction or forfeiture.

(f) If a person timely appears to show cause why the property or proceeds should not be destroyed or forfeited, the magistrate shall conduct a hearing on the issue and determine the nature of property or proceeds and the person's interest therein. Unless the person proves by a preponderance of the evidence that the property or proceeds is not gambling equipment, altered gambling equipment, gambling paraphernalia, gambling device, gambling proceeds, prohibited weapon, criminal instrument, or dog-fighting equipment and that he is entitled to possession, the magistrate shall dispose of the property or proceeds in accordance with Paragraph (a) of this article.

(g) For purposes of this article:

(1) "criminal instrument" has the meaning defined in the Penal Code;

(2) "gambling device or equipment, altered gambling equipment or gambling paraphernalia" has the meaning defined in the Penal Code;

(3) "prohibited weapon" has the meaning defined in the Penal Code; and

Text of subd. (4) as added by Acts 1983, 68th Leg., p. 1613, ch. 305, § 3

(4) "dog-fighting equipment" means:

(A) equipment used for training or handling a fighting dog, including a harness, treadmill, cage, decoy, pen, house for keeping a fighting dog, feeding apparatus, or training pen;

(B) equipment used for transporting a fighting dog, including any automobile, or other vehicle, and its appurtenances which are intended to be used as a vehicle for transporting a fighting dog;

(C) equipment used to promote or advertise an exhibition of dog fighting, including a printing press or similar equipment, paper, ink, or photography equipment; or

(D) a dog trained, being trained, or intended to be used to fight with another dog.

Text of subd. (4) as added by Acts 1983, 68th Leg., p. 1899, ch. 351, § 1

(4) "obscene device or material" means a device or material introduced into evidence and thereafter found obscene by virtue of a final judgment after all appellate remedies have been exhausted.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 986, ch. 399, § 2(E), eff. Jan. 1, 1974; Acts 1983, 68th Leg., pp. 1611, 1612, ch. 305, §§ 2, 3, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 1899, ch. 351, § 1, eff. Sept. 1, 1983.]

Art. 18.181. Disposition of Explosive Weapons and Chemical Dispensing Devices

(a) After seizure of an explosive weapon or chemical dispensing device, as these terms are defined in Section 46.01, Penal Code, a peace officer or a person acting at the direction of a peace officer shall:

(1) photograph the weapon in the position where it is recovered before touching or moving it;

(2) record the identification designations printed on a weapon if the markings are intact;

(3) if the weapon can be moved, move it to an isolated area in order to lessen the danger to the public;

(4) if possible, retain a portion of a wrapper or other packaging materials connected to the weapon;

(5) retain a small portion of the explosive material and submit the material to a laboratory for chemical analysis;

(6) separate and retain components associated with the weapon such as fusing and triggering mechanisms if those mechanisms are not hazardous in themselves;

(7) destroy the remainder of the weapon in a safe manner;

(8) at the time of destruction, photograph the destruction process and make careful observations of the characteristics of the destruction;

(9) after destruction, inspect the disposal site and photograph the site to record the destructive characteristics of the weapon; and

(10) retain components of the weapon and records of the destruction for use as evidence in court proceedings.

(b) Representative samples, photographs, and records made pursuant to this article are admissible in civil or criminal proceedings in the same manner and to the same extent as if the explosive weapon were offered in evidence, regardless of whether or not the remainder of the weapon has been destroyed. No inference or presumption of spoliation applies to weapons destroyed pursuant to this article.

[Acts 1983, 68th Leg., p. 4832, ch. 852, § 5, eff. Sept. 1, 1983.]

Section 6 of Acts 1983, 68th Leg., p. 4833, ch. 852, provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

Art. 18.19. Disposition of Certain Weapons

(a) Weapons seized in connection with an offense involving the use of a deadly weapon or an offense under Penal Code Chapter 46 shall be held by the law enforcement agency making the seizure, subject to the following provisions, unless:

(1) the weapon is a prohibited weapon identified in Penal Code Chapter 46, in which event Article 18.18 of this code applies; or

(2) the weapon is alleged to be stolen property, in which event Chapter 47 of this code applies.

(b) When a weapon described in Paragraph (a) of this article is seized, and the seizure is not made pursuant to a search or arrest warrant, the person seizing the same shall prepare and deliver to a magistrate a written inventory of each weapon seized.

(c) If there is no prosecution or conviction for an offense involving the weapon seized, the magistrate to whom the seizure was reported shall notify in writing the person found in possession that he is entitled to the weapon upon request to the court in which he was convicted. If the weapon is not requested within 60 days after notification, the magistrate may order the weapon destroyed or forfeited to the state for use by the law enforcement agency holding the weapon.

(d) A person convicted under Penal Code Chapter 46 is entitled to the weapon seized upon request to the law enforcement agency holding the weapon. However, the court entering the judgment of conviction may order the weapon destroyed or forfeited to

the state for use by the law enforcement agency holding the weapon if:

(1) the person does not request the weapon within 60 days after his release from jail or the date of the judgment of conviction if he was not imprisoned; or

(2) the person has been previously convicted under Penal Code Chapter 46; or

(3) the weapon is one defined as a prohibited weapon under Penal Code Chapter 46.

(e) If the person found in possession of a weapon is convicted of an offense involving the use of a deadly weapon or under Penal Code Chapter 46, the court entering judgment of conviction may order destruction of the weapon or forfeiture to the state for use by the law enforcement agency holding the weapon.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 987, ch. 399, § 2(E), eff. Jan. 1, 1974.]

Art. 18.20. Interception and Use of Wire or Oral Communications

Text of article effective until September 1, 1985

Definitions

Sec. 1. In this article:

(1) "Wire communication" means a communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception furnished or operated by a person engaged as a common carrier in providing or operating the facilities for the transmission of communications.

(2) "Oral communication" means an oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying that expectation.

(3) "Intercept" means the aural acquisition of the contents of a wire or oral communication through the use of an electronic, mechanical, or other device.

(4) "Electronic, mechanical, or other device" means a device or apparatus primarily designed or used for the nonconsensual interception of wire or oral communications.

(5) "Investigative or law enforcement officer" means an officer of this state or of a political subdivision of this state who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in Section 4 of this article or an attorney authorized by law to prosecute or participate in the prosecution of the enumerated offenses.

(6) "Contents," when used with respect to a wire or oral communication, includes any information concerning the identity of the parties to the communication or the existence, substance, purport, or meaning of that communication.

(7) "Judge of competent jurisdiction" means a judge from the panel of nine active district judges with criminal jurisdiction appointed by the presiding judge of the court of criminal appeals as provided by Section 3 of this article.

(8) "Prosecutor" means a district attorney, criminal district attorney, or county attorney performing the duties of a district attorney, with jurisdiction in the county in which the facility or place where the communication to be intercepted is located.

(9) "Director" means the director of the Department of Public Safety or, if the director is absent or unable to serve, the assistant director of the Department of Public Safety.

(10) "Communication common carrier" has the meaning given the term "common carrier" by Section 153(h), Title 47, of the United States Code.

(11) "Aggrieved person" means a person who was a party to an intercepted wire or oral communication or a person against whom the interception was directed.

(12) "Covert entry" means any entry into or onto premises which if made without a court order allowing such an entry under this Act, would be a violation of the Penal Code.

Prohibition of Use as Evidence of Intercepted Communications

Sec. 2. The contents of an intercepted communication and evidence derived from an intercepted communication may not be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States or of this state or a political subdivision of this state if the disclosure of that information would be in violation of this article. The contents of an intercepted communication and evidence derived from an intercepted communication may be received in a civil trial, hearing, or other proceeding only if the civil trial, hearing, or other proceeding arises out of a violation of the Penal Code, Code of Criminal Procedure, Controlled Substances Act, or Dangerous Drug Act.

Judges Authorized to Consider Interception Applications

Sec. 3. (a) The presiding judge of the court of criminal appeals, by order filed with the clerk of that court, shall appoint one district judge from each of the administrative judicial districts of this state to serve at his pleasure as the judge of competent jurisdiction within that administrative judicial district. The presiding judge shall fill vacancies, as they occur, in the same manner.

(b) Except as provided by Subsection (c) of this section, only the judge of competent jurisdiction for the administrative judicial district in which the proposed interception will be made may act on an application for authorization to intercept wire or oral communications.

(c) If the judge of competent jurisdiction for an administrative judicial district is absent or unable to serve or if exigent circumstances exist, the application may be made to the judge of competent jurisdiction in an adjacent administrative judicial district. Exigent circumstances does not include a denial of a previous application on the same facts and circumstances. To be valid, the application must fully explain the circumstances justifying application under this subsection.

Offenses for Which Interceptions may be Authorized

Sec. 4. A judge may issue an order authorizing interception of wire or oral communications only if the prosecutor applying for the order shows probable cause to believe that the interception will provide evidence of the commission of a felony (other than felony possession of marihuana) under the Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes) or of a felony under the Texas Dangerous Drug Act (Article 4476–14, Vernon's Texas Civil Statutes).

Control of Intercepting Devices

Sec. 5. (a) Only the Department of Public Safety is authorized by this article to own, possess, install, operate, or monitor an electronic, mechanical, or other device. The Department of Public Safety may be assisted by an investigative or law enforcement officer in the operation and monitoring of an interception of wire or oral communications, provided that a commissioned officer of the Department of Public Safety is present at all times.

(b) The director shall designate in writing the commissioned officers of the Department of Public Safety who are responsible for the possession, installation, operation, and monitoring of electronic, mechanical, or other devices for the department.

Request for Application for Interception

Sec. 6. (a) The director may, based on written affidavits, request in writing that a prosecutor apply for an order authorizing interception of wire or oral communications.

(b) The head of a local law enforcement agency or, if the head of the local law enforcement agency is absent or unable to serve, the acting head of the local law enforcement agency may, based on written affidavits, request in writing that a prosecutor apply for an order authorizing interception of wire or oral communications. Prior to the requesting of an application under this subsection, the head of a local law enforcement agency must submit the request and supporting affidavits to the director, who shall make a finding in writing whether the request and supporting affidavits establish that other investigative procedures have been tried and failed or they reasonably appear unlikely to succeed or to be too dangerous if tried, is feasible, is justifiable, and whether the Department of Public Safety has the necessary resources available. The prosecutor may file the application only after a written positive finding on all the above requirements by the director.

Authorization for Disclosure and Use of Intercepted Communications

Sec. 7. (a) An investigative or law enforcement officer who, by any means authorized by this article, obtains knowledge of the contents of a wire or oral communication or evidence derived from the communication may disclose the contents or evidence to another investigative or law enforcement officer to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(b) An investigative or law enforcement officer who, by any means authorized by this article, obtains knowledge of the contents of a wire or oral communication or evidence derived from the communication may use the contents or evidence to the extent the use is appropriate to the proper performance of his official duties.

(c) A person who receives, by any means authorized by this article, information concerning a wire or oral communication or evidence derived from a communication intercepted in accordance with the provisions of this article may disclose the contents of that communication or the derivative evidence while giving testimony under oath in any proceeding held under the authority of the United States, of this state, or of a political subdivision of this state.

(d) An otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this article does not lose its privileged character and any evidence derived from such privileged communication against the party to the privileged communication shall be considered privileged also.

(e) When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in a manner authorized by this article, intercepts wire or oral communications relating to offenses other than those specified in the order of authorization, the contents of and evidence derived from the communication may be disclosed or used as provided by Subsections (a) and (b) of this section. Such contents and any evidence derived therefrom may be used under Subsection (c) of this section when authorized by a judge of competent jurisdiction where the judge finds, on subsequent application, that the contents were otherwise inter-

cepted in accordance with the provisions of this article. The application shall be made as soon as practicable.

Application for Interception Authorization

Sec. 8. (a) To be valid, an application for an order authorizing the interception of a wire or oral communication must be made in writing under oath to a judge of competent jurisdiction and must state the applicant's authority to make the application. An applicant must include the following information in the application:

(1) the identity of the prosecutor making the application and of the officer requesting the application;

(2) a full and complete statement of the facts and circumstances relied on by the applicant to justify his belief that an order should be issued, including:

(A) details about the particular offense that has been, is being, or is about to be committed;

(B) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(C) a particular description of the type of communication sought to be intercepted; and

(D) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(3) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed or to be too dangerous if tried;

(4) a statement of the period of time for which the interception is required to be maintained and, if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication is first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur after the described type of communication is obtained;

(5) a statement whether or not a covert entry will be necessary to properly and safely install the wiretapping or electronic surveillance or eavesdropping equipment; if a covert entry is requested, a statement as to why such an entry is necessary and proper under the facts of the particular investigation shall be required;

(6) a full and complete statement of the facts concerning all applications known to the prosecutor making the application that have been previously made to a judge for authorization to intercept wire or oral communications involving any of the persons, facilities, or places specified in the application and of the action taken by the judge on each application; and

(7) if the application is for the extension of an order, a statement setting forth the results already obtained from the interception or a reasonable explanation of the failure to obtain results.

(b) The judge may, in an ex parte hearing in chambers, require additional testimony or documentary evidence in support of the application, and such testimony or documentary evidence shall be preserved as part of the application.

Action on Application for Interception Order

Sec. 9. (a) On receipt of an application, the judge may enter an ex parte order, as requested or as modified, authorizing interception of wire or oral communications if the judge determines from the evidence submitted by the applicant that:

(1) there is probable cause to believe that a person is committing, has committed, or is about to commit a particular offense enumerated in Section 4 of this article;

(2) there is probable cause to believe that particular communications concerning that offense will be obtained through the interception;

(3) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed or to be too dangerous if tried; and

(4) there is probable cause to believe that the facilities from which or the place where the wire or oral communications are to be intercepted are being used or are about to be used in connection with the commission of an offense or are leased to, listed in the name of, or commonly used by the person;

(5) a covert entry is or is not necessary to properly and safely install the wiretapping or electronic surveillance or eavesdropping equipment.

(b) An order authorizing the interception of a wire or oral communication must specify:

(1) the identity of the person, if known, whose communications are to be intercepted;

(2) the nature and location of the communications facilities as to which or the place where authority to intercept is granted;

(3) a particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates;

(4) the identity of the officer making the request and the identity of the prosecutor;

(5) the time during which the interception is authorized, including a statement of whether or not the interception will automatically terminate when the described communication is first obtained; and

(6) whether or not a covert entry or surreptitious entry is necessary to properly and safely install wiretapping, electronic surveillance, or eavesdropping equipment.

(c) In an order authorizing the interception of a wire or oral communication, the judge issuing it, on request of the applicant, shall direct that a communication common carrier, landlord, custodian, or other person furnish the applicant all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the carrier, landlord, custodian, or other person is providing the person whose communications are to be intercepted. Any communication common carrier, landlord, custodian, or other person furnishing facilities or technical assistance is entitled to compensation by the applicant for the facilities or assistance at the prevailing rates.

(d) An order entered pursuant to this section may not authorize the interception of a wire or oral communication for longer than is necessary to achieve the objective of the authorization and in no event may it authorize interception for more than 30 days. The issuing judge may grant extensions of an order, but only on application for an extension made in accordance with Section 8 of this article and the court making the findings required by Subsection (a) of this section. The period of extension may not be longer than the authorizing judge deems necessary to achieve the purposes for which it is granted and in no event may the extension be for more than 30 days. To be valid, each order and extension of an order must provide that the authorization to intercept be executed as soon as practicable, be conducted in a way that minimizes the interception of communications not otherwise subject to interception under this article, and terminate on obtaining the authorized objective or within 30 days, whichever occurs sooner.

(e) Whenever an order authorizing interception is entered pursuant to this article, the order may require reports to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Reports shall be made at any interval the judge requires.

(f) A judge who issues an order authorizing the interception of a wire or oral communication may not hear a criminal prosecution in which evidence derived from the interception may be used or in which the order may be an issue.

Procedure for Preserving Intercepted Communications

Sec. 10. (a) The contents of a wire or oral communication intercepted by means authorized by this article shall be recorded on tape, wire, or other comparable device. The recording of the contents of a wire or oral communication under this subsection shall be done in a way that protects the recording from editing or other alterations.

(b) Immediately on the expiration of the period of the order and all extensions, if any, the recordings shall be made available to the judge issuing the order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. The recordings may not be destroyed until at least 10 years after the date of expiration of the order and the last extension, if any. A recording may be destroyed only by order of the judge of competent jurisdiction for the administrative judicial district in which the interception was authorized.

(c) Duplicate recordings may be made for use or disclosure pursuant to Subsections (a) and (b), Section 7, of this article for investigations.

(d) The presence of the seal required by Subsection (b) of this section or a satisfactory explanation of its absence is a prerequisite for the use or disclosure of the contents of a wire or oral communication or evidence derived from the communication under Subsection (c), Section 7, of this article.

Sealing of Orders and Applications

Sec. 11. The judge shall seal each application made and order granted under this article. Custody of the applications and orders shall be wherever the judge directs. An application or order may be disclosed only on a showing of good cause before a judge of competent jurisdiction and may not be destroyed until at least 10 years after the date it is sealed. An application or order may be destroyed only by order of the judge of competent jurisdiction for the administrative judicial district in which it was made or granted.

Contempt

Sec. 12. A violation of Section 10 or 11 of this article may be punished as contempt of court.

Notice and Disclosure of Interception to a Party

Sec. 13. (a) Within a reasonable time but not later than 90 days after the date an application for an order is denied or after the date an order or the last extension, if any, expires, the judge who granted or denied the application shall cause to be served on the persons named in the order or the application and any other parties to intercepted communications, if any, an inventory, which must include notice:

(1) of the entry of the order or the application;

(2) of the date of the entry and the period of authorized interception or the date of denial of the application; and

(3) that during the authorized period wire or oral communications were or were not intercepted.

(b) The judge, on motion, may in his discretion make available to a person or his counsel for inspection any portion of an intercepted communication, application, or order that the judge determines, in the interest of justice, to disclose to that person.

(c) On an ex parte showing of good cause to the judge, the serving of the inventory required by this section may be postponed, but in no event may any evidence derived from an order under this article be disclosed in any trial, until after such inventory has been served.

Preconditions to Use as Evidence

Sec. 14. (a) The contents of an intercepted wire or oral communication or evidence derived from the communication may not be received in evidence or otherwise disclosed in a trial, hearing, or other proceeding in a federal or state court unless each party, not later than the 10th day before the date of the trial, hearing, or other proceeding, has been furnished with a copy of the court order and application under which the interception was authorized or approved. This 10-day period may be waived by the judge if he finds that it is not possible to furnish the party with the information 10 days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information.

(b) An aggrieved person charged with an offense in a trial, hearing, or proceeding in or before a court, department, officer, agency, regulatory body, or other authority of the United States or of this state or a political subdivision of this state may move to suppress the contents of an intercepted wire or oral communication or evidence derived from the communication on the ground that:

(1) the communication was unlawfully intercepted;

(2) the order authorizing the interception is insufficient on its face; or

(3) the interception was not made in conformity with the order.

(c) A person identified by a party to an intercepted wire or oral communication during the course of that communication may move to suppress the contents of the communication on the grounds provided in Subsection (b) of this section or on the ground that the harm to the person resulting from his identification in court exceeds the value to the prosecution of the disclosure of the contents.

(d) The motion to suppress must be made before the trial, hearing, or proceeding unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. The hearing on the motion shall be held in camera upon the written request of the aggrieved person. If the motion is granted, the contents of the intercepted wire or oral communication and evidence derived from the communication shall be treated as having been obtained in violation of this article. The judge, on the filing of the motion by the aggrieved person, shall make available to the aggrieved person or his counsel for inspection any portion of the intercepted communication or evidence derived from the communication that the judge determines, in the interest of justice, to make available.

(e) Any judge of this state, upon hearing a pretrial motion regarding conversations intercepted by wire pursuant to this article, or who otherwise becomes informed that there exists on such intercepted wire or oral communication identification of a specific individual who is not a party or suspect to the subject of interception:

(1) shall give notice and an opportunity to be heard on the matter of suppression of references to that person if identification is sufficient so as to give notice; or

(2) shall suppress references to that person if identification is sufficient to potentially cause embarrassment or harm which outweighs the probative value, if any, of the mention of such person, but insufficient to require the notice provided for in Subdivision (1), above.

Reports Concerning Intercepted Wire or Oral Communications

Sec. 15. (a) Within 30 days after the date an order or the last extension, if any, expires or after the denial of an order, the issuing or denying judge shall report to the Administrative Office of the United States Courts:

(1) the fact that an order or extension was applied for;

(2) the kind of order or extension applied for;

(3) the fact that the order or extension was granted as applied for, was modified, or was denied;

(4) the period of interceptions authorized by the order and the number and duration of any extensions of the order;

(5) the offense specified in the order or application or extension;

(6) the identity of the officer making the request and the prosecutor; and

(7) the nature of the facilities from which or the place where communications were to be intercepted.

(b) In January of each year each prosecutor shall report to the Administrative Office of the United States Courts the following information for the preceding calendar year:

(1) the information required by Subsection (a) of this section with respect to each application for an order or extension made;

(2) a general description of the interceptions made under each order or extension, including the approximate nature and frequency of incriminating communications intercepted, the approximate nature and frequency of other communications intercepted, the approximate number of persons whose communications were intercepted, and the approximate nature, amount, and cost of the man-

power and other resources used in the interceptions;

(3) the number of arrests resulting from interceptions made under each order or extension and the offenses for which arrests were made;

(4) the number of trials resulting from interceptions;

(5) the number of motions to suppress made with respect to interceptions and the number granted or denied;

(6) the number of convictions resulting from interceptions, the offenses for which the convictions were obtained, and a general assessment of the importance of the interceptions; and

(7) the information required by Subdivisions (2) through (6) of this subsection with respect to orders or extensions obtained.

(c) Any judge or prosecutor required to file a report with the Administrative Office of the United States Courts shall forward a copy of such report to the director of the Department of Public Safety. On or before March 1 of each year, the director shall submit to the governor; lieutenant governor; speaker of the house of representatives; chairman, senate jurisprudence committee; and chairman, house of representatives criminal jurisprudence committee a report of all intercepts as defined herein conducted pursuant to this article and terminated during the preceding calendar year. Such report shall include:

(1) the reports of judges and prosecuting attorneys forwarded to the director as required in this section;

(2) the number of Department of Public Safety personnel authorized to possess, install, or operate electronic, mechanical, or other devices;

(3) the number of Department of Public Safety and other law enforcement personnel who participated or engaged in the seizure of intercepts pursuant to this article during the preceding calendar year; and

(4) the total cost to the Department of Public Safety of all activities and procedures relating to the seizure of intercepts during the preceding calendar year, including costs of equipment, manpower, and expenses incurred as compensation for use of facilities or technical assistance provided to the department.

Recovery of Civil Damages Authorized

Sec. 16. (a) A person whose wire or oral communication is intercepted, disclosed, or used in violation of this article has a civil cause of action against any person who intercepts, discloses, or uses or procures another person to intercept, disclose, or use the communication and is entitled to recover from the person:

(1) actual damages but not less than liquidated damages computed at a rate of $100 a day for each day of violation or $1,000 whichever is higher;

(2) punitive damages; and

(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

(b) A good faith reliance on a court order or legislative authorization constitutes a complete defense to any civil or criminal action brought under this article.

Exceptions

Sec. 17. (a) It is an exception to the application of Section 16 that:

(1) an operator of a switchboard or an officer, employee, or agent of a communication common carrier whose facilities are used in the transmission of a wire communication intercepts a communication or discloses or uses an intercepted communication in the normal course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of the communication, unless the interception results from the communication common carrier's use of service observing or random monitoring for purposes other than mechanical or service quality control checks;

(2) an officer, employee, or agent of a communication common carrier provides information, facilities, or technical assistance to an investigative or law enforcement officer who is authorized as provided by this article to intercept a wire or oral communication;

(3) a person acting under color of law intercepts a wire or oral communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception; or

(4) a person not acting under color of law intercepts a wire or oral communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of this state or for the purpose of committing any other injurious act.

(b) Article 18.20 of this code does not apply to conduct described as an affirmative defense under Section 16.02(c)(5), Penal Code.

[Acts 1981, 67th Leg., p. 729, ch. 275, § 1, eff. Aug. 31, 1981. Amended by Acts 1983, 68th Leg., p. 4880, ch. 864, § 4, eff. June 19, 1983.]

Section 5 of the 1981 Act provides:

"This Act shall not be in force after September 1, 1985."

AFTER COMMITMENT OR BAIL AND BEFORE THE TRIAL

CHAPTER NINETEEN. ORGANIZATION OF THE GRAND JURY

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Art. 19.01. Appointment of Jury Commissioners; Selection Without Jury Commission

(a) The district judge, at or during any term of court, shall appoint not less than three, nor more than five persons to perform the duties of jury commissioners, and shall cause the sheriff to notify them of their appointment, and when and where they are to appear. The district judge shall, in the order appointing such commissioners, designate whether such commissioners shall serve during the term at which selected or for the next succeeding term. Such commissioners shall receive as compensation for each day or part thereof they may serve the sum of Ten Dollars, and they shall possess the following qualifications:

1. Be intelligent citizens of the county and able to read and write the English language;
2. Be qualified jurors in the county;
3. Have no suit in said court which requires intervention of a jury;
4. Be residents of different portions of the county; and
5. The same person shall not act as jury commissioner more than once in the same year.

(b) In lieu of the selection of prospective jurors by means of a jury commission, the district judge may direct that 20 to 75 prospective grand jurors be selected and summoned, with return on summons, in the same manner as for the selection and summons of panels for the trial of civil cases in the district courts. The judge shall try the qualifications for and excuses from service as a grand juror and impanel the completed grand jury in the same manner as provided for grand jurors selected by a jury commission.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1971, 62nd Leg., p. 905, ch. 131, § 1, eff. May 10, 1971; Acts 1979, 66th Leg., p. 393, ch. 184, § 1, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 2983, ch. 514, § 1, eff. June 19, 1983.]

Section 2 of the 1983 amendatory act, the emergency provision, provides, in part:

"The importance of this legislation due to the fact that the response to the summons of potential grand jurors when selected by a computerized system, because of age, infirmity, absence from the county, and other reasonable excuses, has not been as high as originally expected and the desirability of expanding the concept of democratically selecting the grand jury and the crowded condition of the calendars in both houses create an emergency ...."

Art. 19.02. Notified of Appointment

The judge shall cause the proper officer to notify such appointees of such appointment, and when and where they are to appear.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.03. Oath of Commissioners

When the appointees appear before the judge, he shall administer to them the following oath: "You do swear faithfully to discharge the duties required of you as jury commissioners; that you will not knowingly elect any man as juryman whom you believe to be unfit and not qualified; that you will not make known to any one the name of any juryman selected by you and reported to the court; that you will not, directly or indirectly, converse with any one selected by you as a juryman concerning the merits of any case to be tried at the next term of this court, until after said cause may be tried or continued, or the jury discharged".

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.04. Instructed

The jury commissioners, after they have been organized and sworn, shall be instructed by the judge in their duties and shall then retire in charge of the sheriff to a suitable room to be secured by the sheriff for that purpose. The clerk shall furnish them the necessary stationery, the names of those appearing from the records of the court to be exempt or disqualified from serving on the jury at each term, and the last assessment roll of the county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.05. Kept Free From Intrusion

The jury commissioners shall be kept free from the intrusion of any person during their session, and shall not separate without leave of the court until they complete their duties.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.06. Shall Select Grand Jurors

The jury commissioners shall select not less than 15 nor more than 20 persons from the citizens of the county to be summoned as grand jurors for the next term of court, or the term of court for which said commissioners were selected to serve, as directed in the order of the court selecting the commissioners. The commissioners shall, to the extent possible, select grand jurors who the commissioners determine represent a broad cross-section of the population of the county, considering the factors of race, sex, and age.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1158, ch. 515, § 1, eff. Aug. 28, 1967; Acts 1979, 66th Leg., p. 394, ch. 184, § 4, eff. Sept. 1, 1979.]

Art. 19.07. Extension Beyond Term of Period for Which Grand Jurors Shall Sit

If prior to the expiration of the term for which the grand jury was impaneled, it is made to appear by a declaration of the foreman or of a majority of the grand jurors in open court, that the investigation by the grand jury of the matters before it cannot be concluded before the expiration of the term, the judge of the district court in which said grand jury was impaneled may, by the entry of an order on the minutes of said court, extend, from time to time, for the purpose of concluding the investigation of matters then before it, the period during which said grand jury shall sit, for not to exceed a total of ninety days after the expiration of the term for which it was impaneled, and all indictments pertaining thereto returned by the grand jury within said extended period shall be as valid as if returned before the expiration of the term. The extension of the term of a grand jury under this article does not affect the provisions of Article 19.06 relating to the selection and summoning of grand jurors for each regularly scheduled term.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.08. Qualifications

No person shall be selected or serve as a grand juror who does not possess the following qualifications:

1. He must be a citizen of the state, and of the county in which he is to serve, and be qualified under the Constitution and laws to vote in said county, provided that his failure to register to vote shall not be held to disqualify him in this instance;
2. He must be of sound mind and good moral character;
3. He must be able to read and write;
4. He must not have been convicted of any felony;
5. He must not be under indictment or other legal accusation for theft or of any felony.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1969, 61st Leg., p. 1364, ch. 412, § 5, eff. Sept. 1, 1969; Acts 1981, 67th Leg., p. 3143, ch. 827, § 5, eff. Aug. 31, 1981.]

Art. 19.09. Names Returned

The names of those selected as grand jurors by the commissioners shall be written upon a paper; and the fact that they were so selected shall be certified and signed by the jury commissioners, who shall place said paper, so certified and signed, in an envelope, and seal the same, and endorse thereon the words, "The list of grand jurors selected at . . term of the district court", the blank being for the month and year in which the term of the court began its session. The commissioners shall write their names across the seal of said envelope, direct the same to the district judge and deliver it to him in open court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.10. List to Clerk

The judge shall deliver the envelope containing the list of grand jurors to the clerk or one of his deputies in open court without opening the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.11. Oath to Clerk

Before the list of grand jurors is delivered to the clerk, the judge shall administer to the clerk and each of his deputies in open court the following oath: "You do swear that you will not open the jury lists now delivered you, nor permit them to be opened until the time prescribed by law; that you

will not, directly or indirectly, converse with any one selected as a juror concerning any case or proceeding which may come before such juror for trial in this court at its next term".

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.12. Deputy Clerk Sworn

Should the clerk subsequently appoint a deputy, such clerk shall administer to him the same oath, at the time of such appointment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.13. Clerk Shall Open Lists

The grand jury may be convened on the first or any subsequent day of the term. The judge shall designate the day on which the grand jury is to be impaneled and notify the clerk of such date; and within thirty days of such date, and not before, the clerk shall open the envelope containing the list of grand jurors, make out a copy of the names of those selected as grand jurors, certify to it under his official seal, note thereon the day for which they are to be summoned, and deliver it to the sheriff.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.14. Summoning

The sheriff shall summon the persons named in the list at least three days, exclusive of the day of service, prior to the day on which the grand jury is to be impaneled, by giving personal notice to each juror of the time and place when and where he is to attend as a grand juror, or by leaving at his place of residence with a member of his family over sixteen years old, a written notice to such juror that he has been selected as a grand juror, and the time and place when and where he is to attend; or the judge, at his election, may direct the sheriff to summon the grand jurors by registered mail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.15. Return of Officer

The officer executing such summons shall return the list on the day on which the grand jury is to be impaneled, with a certificate thereon of the date and manner of service upon each juror. If any of said jurors have not been summoned, he shall also state in his certificate the reason why they have not been summoned.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.16. Absent Juror Fined

A juror legally summoned, failing to attend without a reasonable excuse, may, by order of the court entered on the record, be fined not less than ten dollars nor more than one hundred dollars.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.17. Failure to Select

If for any reason a grand jury shall not be selected or summoned prior to the commencement of any term of court, or when none of those summoned shall attend, the district judge may at any time after the commencement of the term, in his discretion, direct a writ to be issued to the sheriff commanding him to summon a jury commission, selected by the court, which commission shall select twenty persons, as provided by law, who shall serve as grand jurors.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.18. If Less Than Twelve Attend

When less than twelve of those summoned to serve as grand jurors are found to be in attendance and qualified to so serve, the court shall order the sheriff to summon such additional number of persons as may be deemed necessary to constitute a grand jury of twelve persons.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.19. Jurors to Attend Forthwith

The jurors provided for in the two preceding Articles shall be summoned in person to attend before the court forthwith.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.20. To Summon Qualified Persons

Upon directing the sheriff to summon grand jurors not selected by the jury commissioners, the court shall instruct him that he must summon no person to serve as a grand juror who does not possess the qualifications prescribed by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.21. To Test Qualifications

When as many as twelve persons summoned to serve as grand jurors are in attendance upon the court, it shall proceed to test their qualifications as such.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.22. Interrogated

Each person who is presented to serve as a grand juror shall, before being impaneled, be interrogated

on oath by the court or under his direction, touching his qualifications.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.23. Mode of Test

In trying the qualifications of any person to serve as a grand juror, he shall be asked:

1. Are you a citizen of this state and county, and qualified to vote in this county, under the Constitution and laws of this state?
2. Are you able to read and write?
3. Have you ever been convicted of a felony?
4. Are you under indictment or other legal accusation for theft or for any felony?

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1969, 61st Leg., p. 1364, ch. 412, § 6, eff. Sept. 1, 1969.]

Art. 19.24. Qualified Juror Accepted

When, by the answer of the person, it appears to the court that he is a qualified juror, he shall be accepted as such, unless it be shown that he is not of sound mind or of good moral character, or unless it be shown that he is in fact not qualified to serve as a grand juror.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.25. Excuses From Service

Any person summoned who does not possess the requisite qualifications shall be excused by the court from serving. The following qualified persons may be excused from grand jury service:

(1) a person older than 65 years;

(2) a person responsible for the care of a child younger than 18 years;

(3) a student of a public or private secondary school;

(4) a person enrolled and in actual attendance at an institution of higher education; and

(5) any other person that the court determines has a reasonable excuse from service.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 393, ch. 184, § 2, eff. Sept. 1, 1979.]

Art. 19.26. Jury Impaneled

When twelve qualified jurors are found to be present, the court shall proceed to impanel them as a grand jury, unless a challenge is made, which may be to the array or to any particular person presented to serve as a grand juror.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.27. Any Person May Challenge

Before the grand jury has been impaneled, any person may challenge the array of jurors or any person presented as a grand juror. In no other way shall objections to the qualifications and legality of the grand jury be heard. Any person confined in jail in the county shall upon his request be brought into court to make such challenge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.28. "Array"

By the "array" of grand jurors is meant the whole body of persons summoned to serve as such before they have been impaneled.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.29. "Impaneled" and "Panel"

A grand juror is said to be "impaneled" after his qualifications have been tried and he has been sworn. By "panel" is meant the whole body of grand jurors.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.30. Challenge to "Array"

A challenge to the "array" shall be made in writing for these causes only:

1. That those summoned as grand jurors are not in fact those selected by the method provided by Article 19.01(b) of this chapter or by the jury commissioners; and
2. In case of grand jurors summoned by order of the court, that the officer who summoned them had acted corruptly in summoning any one or more of them.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 394, ch. 184, § 3, eff. Sept. 1, 1979.]

Art. 19.31. Challenge to Juror

A challenge to a particular grand juror may be made orally for the following causes only:

1. That he is not a qualified juror; and
2. That he is the prosecutor upon an accusation against the person making the challenge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.32. Summarily Decided

When a challenge to the array or to any individual has been made, the court shall hear proof and decide in a summary manner whether the challenge be well-founded or not.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.33. Other Jurors Summoned

The court shall order another grand jury to be summoned if the challenge to the array be sustained, or order the panel to be completed if by challenge to any particular grand juror their number be reduced below twelve.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.34. Oath of Grand Jurors

When the grand jury is completed, the court shall appoint one of the number foreman; and the following oath shall be administered by the court, or under its direction, to the jurors: "You solemnly swear that you will diligently inquire into, and true presentment make, of all such matters and things as shall be given you in charge; the State's counsel, your fellows and your own, you shall keep secret, unless required to disclose the same in the course of a judicial proceeding in which the truth or falsity of evidence given in the grand jury room, in a criminal case, shall be under investigation. You shall present no person from envy, hatred or malice; neither shall you leave any person unpresented for love, fear, favor, affection or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding, so help you God".

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.35. To Instruct Jury

The court shall instruct the grand jury as to their duty.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.36. Bailiffs Appointed

The court and the district attorney may each appoint one or more bailiffs to attend upon the grand jury, and at the time of appointment, the following oath shall be administered to each of them by the court, or under its direction: "You solemnly swear that you will faithfully and impartially perform all the duties of bailiff of the grand jury, and that you will keep secret the proceedings of the grand jury, so help you God". Such bailiffs shall be compensated in a sum to be set by the commissioners court of said county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.37. Bailiff's Duties

A bailiff is to obey the instructions of the foreman, to summon all witnesses, and generally, to perform all such duties as the foreman may require of him. One bailiff shall be always with the grand jury, if two or more are appointed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.38. Bailiff Violating Duty

No bailiff shall take part in the discussions or deliberations of the grand jury nor be present when they are discussing or voting upon a question. The grand jury shall report to the court any violation of duty by a bailiff and the court may punish him for such violation as for contempt.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.39. Another Foreman Appointed

If the foreman of the grand jury is from any cause absent or unable or disqualified to act, the court shall appoint in his place some other member of the body.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.40. Quorum

Nine members shall be a quorum for the purpose of discharging any duty or exercising any right properly belonging to the grand jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 19.41. Reassembled

A grand jury discharged by the court for the term may be reassembled by the court at any time during the term. If one or more of them fail to reassemble, the court may complete the panel by impaneling other men in their stead in accordance with the rules provided in this Chapter for completing the grand jury in the first instance.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER TWENTY. DUTIES AND POWERS OF THE GRAND JURY

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Art. 20.01. Grand Jury Room

After the grand jury is organized they shall proceed to the discharge of their duties in a suitable place which the sheriff shall prepare for their sessions.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 20.02. Deliberations Secret

The deliberations of the grand jury shall be secret. Any grand juror or bailiff who divulges anything transpiring before them in the course of their official duties shall be liable to a fine as for contempt of the court, not exceeding five hundred dollars, and to imprisonment not exceeding thirty days.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 20.03. Attorney Representing State Entitled to Appear

"The attorney representing the State" means the Attorney General, district attorney, criminal district attorney, or county attorney. The attorney representing the State, is entitled to go before the grand jury and inform them of offenses liable to indictment at any time except when they are discussing the propriety of finding an indictment or voting upon the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 20.04. Attorney May Examine Witnesses

The attorney representing the State may examine the witnesses before the grand jury and may advise as to the proper mode of interrogating them.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 20.05. May Send for Attorney

The grand jury may send for the State's attorney and ask his advice upon any matter of law or upon any question arising respecting the proper discharge of their duties.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 20.06. Advice from Court

The grand jury may also seek and receive advice from the court touching any matter before them, and for this purpose, shall go into court in a body; but they shall so guard the manner of propounding their questions as not to divulge the particular accusation that is pending before them; or they may propound their questions in writing, upon which the court may give them the desired information in writing.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 20.07. Foreman Shall Preside

The foreman shall preside over the sessions of the grand jury, and conduct its business and proceedings in an orderly manner. He may appoint one or more members of the body to act as clerks for the grand jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 20.08. Adjournments

The grand jury shall meet and adjourn at times agreed upon by a majority of the body; but they shall not adjourn, at any one time, for more than three days, unless by consent of the court. With the consent of the court, they may adjourn for a longer time, and shall as near as may be, conform their adjournments to those of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 20.09. Duties of Grand Jury

The grand jury shall inquire into all offenses liable to indictment of which any member may have knowledge, or of which they shall be informed by the attorney representing the State, or any other credible person.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 20.10. Attorney or Foreman May Issue Process

The attorney representing the state, or the foreman, in term time or vacation, may issue a summons or attachment for any witness in the county where they are sitting; which summons or attachment may require the witness to appear before them at a time fixed, or forthwith, without stating the matter under investigation.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 20.11. Out-of-County Witnesses

Sec. 1. The foreman or the attorney representing the State may, upon written application to the district court stating the name and residence of the witness and that his testimony is believed to be material, cause a subpoena or an attachment to be issued to any county in the State for such witness, returnable to the grand jury then in session, or to the next grand jury for the county from whence the

same issued, as such foreman or attorney may desire. The subpoena may require the witness to appear and produce records and documents. An attachment shall command the sheriff or any constable of the county where the witness resides to serve the witness, and have him before the grand jury at the time and place specified in the writ.

Sec. 2. A subpoena or attachment issued pursuant to this article shall be served and returned in the manner prescribed in Chapter 24 of this code.

A witness subpoenaed pursuant to this article shall be compensated as provided in this code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 787, ch. 350, § 1, eff. June 12, 1973.]

Art. 20.12. Attachment in Vacation

The attorney representing the state may cause an attachment for a witness to be issued, as provided in the preceding Article, either in term time or in vacation.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 20.13. Execution of Process

The bailiff or other officer who receives process to be served from a grand jury shall forthwith execute the same and return it to the foreman, if the grand jury be in session; and if the grand jury be not in session, the process shall be returned to the district clerk. If the process is returned not executed, the return shall state why it was not executed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 20.14. Evasion of Process

If it be made to appear satisfactorily to the court that a witness for whom an attachment has been issued to go before the grand jury is in any manner wilfully evading the service of such summons or attachment, the court may fine such witness, as for contempt, not exceeding five hundred dollars.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 20.15. When Witness Refuses to Testify

When a witness, brought in any manner before a grand jury, refuses to testify, such fact shall be made known to the attorney representing the State or to the court; and the court may compel the witness to answer the question, if it appear to be a proper one, by imposing a fine not exceeding five hundred dollars, and by committing the party to jail until he is willing to testify.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 20.16. Oaths to Witnesses

The following oath shall be administered by the foreman, or under his direction, to each witness before being interrogated: "You solemnly swear that you will not divulge, either by words or signs, any matter about which you may be interrogated, and that you will keep secret all proceedings of the grand jury which may be had in your presence, and that you will true answers make to such questions as may be propounded to you by the grand jury, or under its direction, so help you God." Any witness who divulges any matter about which he is interrogated, or any proceedings of the grand jury had in his presence, other than when required to give evidence thereof in due course, shall be liable to a fine as for contempt of court, not exceeding $500, and to imprisonment not exceeding six months.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 968, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 20.17. How Suspect or Accused Questioned

The grand jury, in propounding questions to the person accused or suspected, shall first state the offense with which he is suspected or accused, the county where the offense is said to have been committed and as nearly as may be, the time of commission of the offense, and shall direct the examination to the offense under investigation.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 20.18. How Witness Questioned

When a felony has been committed in any county within the jurisdiction of the grand jury, and the name of the offender is known or unknown or where it is uncertain when or how the felony was committed, the grand jury shall first state to the witness called the subject matter under investigation, then may ask pertinent questions relative to the transaction in general terms and in such a manner as to determine whether he has knowledge of the violation of any particular law by any person, and if so, by what person.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 20.19. Grand Jury Shall Vote

After all the testimony which is accessible to the grand jury shall have been given in respect to any criminal accusation, the vote shall be taken as to the presentment of an indictment, and if nine members concur in finding the bill, the foreman shall make a memorandum of the same with such data as will enable the attorney who represents the State to write the indictment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 20.20. Indictment Prepared

The attorney representing the State shall prepare all indictments which have been found, with as little delay as possible, and deliver them to the foreman, who shall sign the same officially, and said attorney shall endorse thereon the names of the witnesses upon whose testimony the same was found.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 20.21. Indictment Presented

When the indictment is ready to be presented, the grand jury shall through their foreman, deliver the indictment to the judge or clerk of the court. At least nine members of the grand jury must be present on such occasion.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 1033, ch. 463, § 1, eff. June 7, 1979.]

Art. 20.22. Presentment Entered of Record

The fact of a presentment of indictment by a grand jury shall be entered upon the minutes of the court, noting briefly the style of the criminal action and the file number of the indictment, but omitting the name of the defendant, unless he is in custody or under bond.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 1033, ch. 463, § 2, eff. June 7, 1979.]

CHAPTER TWENTY-ONE. INDICTMENT AND INFORMATION

Art.

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Art. 21.01. "Indictment"

An "indictment" is the written statement of a grand jury accusing a person therein named of some act or omission which, by law, is declared to be an offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.02. Requisites of an Indictment

An indictment shall be deemed sufficient if it has the following requisites:

1. It shall commence, "In the name and by authority of The State of Texas".

2. It must appear that the same was presented in the district court of the county where the grand jury is in session.

3. It must appear to be the act of a grand jury of the proper county.

4. It must contain the name of the accused, or state that his name is unknown and give a reasonably accurate description of him.

5. It must show that the place where the offense was committed is within the jurisdiction of the court in which the indictment is presented.

6. The time mentioned must be some date anterior to the presentment of the indictment, and not so remote that the prosecution of the offense is barred by limitation.

7. The offense must be set forth in plain and intelligible words.

8. The indictment must conclude, "Against the peace and dignity of the State".

9. It shall be signed officially by the foreman of the grand jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.03. What Should be Stated

Everything should be stated in an indictment which is necessary to be proved.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.04. The Certainty Required

The certainty required in an indictment is such as will enable the accused to plead the judgment that may be given upon it in bar of any prosecution for the same offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.05. Particular Intent; Intent to Defraud

Where a particular intent is a material fact in the description of the offense, it must be stated in the indictment; but in any case where an intent to defraud is required to constitute an offense, it shall be sufficient to allege an intent to defraud, without naming therein the particular person intended to be defrauded.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.06. Allegation of Venue

When the offense may be prosecuted in either of two or more counties, the indictment may allege the offense to have been committed in the county where the same is prosecuted, or in any county or place where the offense was actually committed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.07. Allegation of Name

In alleging the name of the defendant, or of any other person necessary to be stated in the indictment, it shall be sufficient to state one or more of the initials of the Christian name and the surname. When a person is known by two or more names, it shall be sufficient to state either name. When the name of the person is unknown to the grand jury, that fact shall be stated, and if it be the accused, a reasonably accurate description of him shall be given in the indictment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.08. Allegation of Ownership

Where one person owns the property, and another person has the possession of the same, the ownership thereof may be alleged to be in either. Where property is owned in common, or jointly, by two or more persons, the ownership may be alleged to be in all or either of them. When the property belongs to the estate of a deceased person, the ownership may be alleged to be in the executor, administrator or heirs of such deceased person, or in any one of such heirs. Where the ownership of the property is unknown to the grand jury, it shall be sufficient to allege that fact.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1738, ch. 659, § 16, eff. Aug. 28, 1967.]

Art. 21.09. Description of Property

If known, personal property alleged in an indictment shall be identified by name, kind, number, and ownership. When such is unknown, that fact shall be stated, and a general classification, describing and identifying the property as near as may be, shall suffice. If the property be real estate, its general locality in the county, and the name of the owner, occupant or claimant thereof, shall be a sufficient description of the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1975, 64th Leg., p. 909, ch. 341, § 2, eff. June 19, 1975.]

For saving provisions of 1975 amendatory act, see note set out under Art. 3.01.

Art. 21.10. "Felonious" and "Feloniously"

It is not necessary to use the words "felonious" or "feloniously" in any indictment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.11. Certainty; What Sufficient

An indictment shall be deemed sufficient which charges the commission of the offense in ordinary and concise language in such a manner as to enable a person of common understanding to know what is meant, and with that degree of certainty that will give the defendant notice of the particular offense with which he is charged, and enable the court, on conviction, to pronounce the proper judgment; and in no case are the words "force and arms" or "contrary to the form of the statute" necessary.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.12. Special and General Terms

When a statute defining any offense uses special or particular terms, indictment on it may use the general term which, in common language, embraces the special term. To charge an unlawful sale, it is necessary to name the purchaser.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.13. Act With Intent to Commit an Offense

An indictment for an act done with intent to commit some other offense may charge in general terms the commission of such act with intent to commit such other offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.14. Perjury and Aggravated Perjury

An indictment for perjury or aggravated perjury need not charge the precise language of the false statement, but may state the substance of the same, and no such indictment shall be held insufficient on account of any variance which does not affect the subject matter or general import of such false statement; and it is not necessary in such indictment to set forth the pleadings, records or proceeding with which the false statement is connected, nor the commission or authority of the court or person before whom the false statement was made; but it is sufficient to state the name of the court or public

servant by whom the oath was administered with the allegation of the falsity of the matter on which the perjury or aggravated perjury is assigned.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 968, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 21.15. Must Allege Acts of Recklessness or Criminal Negligence

Whenever recklessness or criminal negligence enters into or is a part or element of any offense, or it is charged that the accused acted recklessly or with criminal negligence in the commission of an offense, the complaint, information, or indictment in order to be sufficient in any such case must allege, with reasonable certainty, the act or acts relied upon to constitute recklessness or criminal negligence, and in no event shall it be sufficient to allege merely that the accused, in committing the offense, acted recklessly or with criminal negligence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 968, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 21.16. Certain Forms of Indictments

The following form of indictments is sufficient:

"In the name and by authority of the State of Texas: The grand jury of ..... County, State of Texas, duly organized at the ..... term, A.D. ....., of the district court of said county, in said court at said term, do present that ..... (defendant) on the ..... day of ..... A.D. ....., in said county and State, did ..... (description of offense) against the peace and dignity of the State.

....., Foreman of the grand jury."

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.17. Following Statutory Words

Words used in a statute to define an offense need not be strictly pursued in the indictment; it is sufficient to use other words conveying the same meaning, or which include the sense of the statutory words.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.18. Matters of Judicial Notice

Presumptions of law and matters of which judicial notice is taken (among which are included the authority and duties of all officers elected or appointed under the General Laws of this State) need not be stated in an indictment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.19. Defects of Form

An indictment shall not be held insufficient, nor shall the trial, judgment or other proceedings thereon be affected, by reason of any defect of form which does not prejudice the substantial rights of the defendant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.20. "Information"

An "information" is a written statement filed and presented in behalf of the State by the district or county attorney, charging the defendant with an offense which may by law be so prosecuted.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.21. Requisites of an Information

An information is sufficient if it has the following requisites:

1. It shall commence, "In the name and by authority of the State of Texas";
2. That it appear to have been presented in a court having jurisdiction of the offense set forth;
3. That it appear to have been presented by the proper officer;
4. That it contain the name of the accused, or state that his name is unknown and give a reasonably accurate description of him;
5. It must appear that the place where the offense is charged to have been committed is within the jurisdiction of the court where the information is filed;
6. That the time mentioned be some date anterior to the filing of the information, and that the offense does not appear to be barred by limitation;
7. That the offense be set forth in plain and intelligible words;
8. That it conclude, "Against the peace and dignity of the State"; and
9. It must be signed by the district or county attorney, officially.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.22. Information Based Upon Complaint

No information shall be presented until affidavit has been made by some credible person charging the defendant with an offense. The affidavit shall be filed with the information. It may be sworn to before the district or county attorney who, for that purpose, shall have power to administer the oath, or it may be made before any officer authorized by law to administer oaths.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.23. Rules as to Indictment Apply to Information

The rules with respect to allegations in an indictment and the certainty required apply also to an information.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.24. Joinder of Certain Offenses

(a) Two or more offenses may be joined in a single indictment, information, or complaint, with each offense stated in a separate count, if the offenses arise out of the same criminal episode, as defined in Chapter 3 of the Penal Code.

(b) A count may contain as many separate paragraphs charging the same offense as necessary, but no paragraph may charge more than one offense.

(c) A count is sufficient if any one of its paragraphs is sufficient. An indictment, information, or complaint is sufficient if any one of its counts is sufficient.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 968, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 21.25. When Indictment Has Been Lost, etc.

When an indictment or information has been lost, mislaid, mutilated or obliterated, the district or county attorney may suggest the fact to the court; and the same shall be entered upon the minutes of the court. In such case, another indictment or information may be substituted, upon the written statement of such attorney that it is substantially the same as that which has been lost, mislaid, mutilated, or obliterated. Or another indictment may be presented, as in the first instance; and in such case, the period for the commencement of the prosecution shall be dated from the time of making such entry.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.26. Order Transferring Cases

Upon the filing of an indictment in the district court which charges an offense over which such court has no jurisdiction, the judge of such court shall make an order transferring the same to such inferior court as may have jurisdiction, stating in such order the cause transferred and to what court transferred.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.27. Causes Transferred to Justice Court

Causes over which justices of the peace have jurisdiction may be transferred to a justice of the peace at the county seat, or in the discretion of the judge, to a justice of the precinct in which the same can be most conveniently tried, as may appear by memorandum endorsed by the grand jury on the indictment or otherwise. If it appears to the judge that the offense has been committed in any incorporated town or city, the cause shall be transferred to a justice in said town or city, if there be one therein; and any justice to whom such cause may be transferred shall have jurisdiction to try the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.28. Duty on Transfer

The clerk of the court, without delay, shall deliver the indictments in all cases transferred, together with all the papers relating to each case, to the proper court or justice, as directed in the order of transfer; and shall accompany each case with a certified copy of all the proceedings taken therein in the district court, and with a bill of the costs that have accrued therein in the district court. The said costs shall be taxed in the court in which said cause is tried, in the event of a conviction.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.29. Proceedings of Inferior Court

Any case so transferred shall be entered on the docket of the court to which it is transferred. All process thereon shall be issued and the defendant tried as if the case had originated in the court to which it was transferred.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 21.30. Cause Improvidently Transferred

When a cause has been improvidently transferred to a court which has no jurisdiction of the same, the court to which it has been transferred shall order it to be re-transferred to the proper court; and the same proceedings shall be had as in the case of the original transfer. In such case, the defendant and the witnesses shall be held bound to appear before the court to which the case has been re-transferred, the same as they were bound to appear before the court so transferring the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER TWENTY-TWO. FORFEITURE OF BAIL

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Art. 22.01. Bail Forfeited, When

When a defendant is bound by bail to appear and fails to appear in any court in which such case may be pending and at any time when his personal appearance is required under this Code, or by any court or magistrate, a forfeiture of his bail and a judicial declaration of such forfeiture shall be taken in the manner provided in Article 22.02 of this Code and entered by such court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 886, ch. 312, § 2, eff. Aug. 31, 1981.]

Art. 22.01a. Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3(b), eff. Jan. 1, 1974

Art. 22.02. Manner of Taking a Forfeiture

Bail bonds and personal bonds are forfeited in the following manner: The name of the defendant shall be called distinctly at the courthouse door, and if the defendant does not appear within a reasonable time after such call is made, judgment shall be entered that the State of Texas recover of the defendant the amount of money in which he is bound, and of his sureties, if any, the amount of money in which they are respectively bound, which judgment shall state that the same will be made final, unless good cause be shown why the defendant did not appear.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 22.021. Forfeiture After Violating Treatment Condition

On its own motion or the motion of the attorney for the state, the magistrate who set a defendant's bond or before whom a prosecution is pending may issue a warrant for the arrest of the defendant for a violation of a condition of the defendant's bond under Article 17.40 of this code. If, at a hearing, the magistrate determines that the defendant violated the condition without sufficient cause, the magistrate shall forfeit the defendant's bond and enter a final judgment of forfeiture. Citation shall be issued as provided by this chapter, except that the citation is sufficient if it is in the form provided for citations in civil cases.

[Acts 1983, 68th Leg., p. 3206, ch. 551, § 2, eff. Sept. 1, 1983.]

Art. 22.03. Citation to Sureties

Upon entry of judgment, a citation shall issue forthwith notifying the sureties of the defendant, if any, that the bond has been forfeited, and requiring them to appear and show cause why the judgment of forfeiture should not be made final.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 22.04. Requisites of Citation

A citation shall be sufficient if it be in the form provided for citations in civil cases in such court; provided, however, that a copy of the judgment of forfeiture entered by the court shall be attached to the citation and the citation shall notify the parties cited to appear and show cause why the judgment of forfeiture should not be made final.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 22.05. Citation as in Civil Actions

Sureties shall be entitled to notice by service of citation, the length of time and in the manner required in civil actions; and the officer executing the citation shall return the same as in civil actions. It shall not be necessary to give notice to the defendant unless he has furnished his address on the bond, in which event notice to the defendant shall be deposited in the United States mail directed to the defendant at the address shown on the bond.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 22.06. Citation by Publication

Where the surety is a nonresident of the State, or where he is a transient person, or where his residence is unknown, the district or county attorney may, upon application in writing to the county clerk, stating the facts, obtain a citation to be served by publication; and the same shall be served by a publication and returned as in civil actions.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 22.07. Cost of Publication

When service of citation is made by publication, the county in which the forfeiture has been taken shall pay the costs thereof, to be taxed as costs in the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 22.08. Service Out of the State

Service of a certified copy of the citation upon any absent or non-resident surety may be made outside of the limits of this State by any person competent to make oath of the fact; and the affidavit of such person, stating the facts of such service, shall be a sufficient return.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 22.09. When Surety is Dead

If the surety is dead at the time the forfeiture is taken, the forfeiture shall nevertheless be valid. The final judgment shall not be rendered where a surety has died, either before or after the forfeiture has been taken, unless his executor, administrator or heirs, as the case may be, have been cited to appear and show cause why the judgment should not be made final, in the same manner as provided in the case of the surety.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 22.10. Scire Facias Docket

When a forfeiture has been declared upon a bond, the court or clerk shall docket the case upon the scire facias or upon the civil docket, in the name of the State of Texas, as plaintiff, and the principal and his sureties, if any, as defendants; and the proceedings had therein shall be governed by the same rules governing other civil suits.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 886, ch. 312, § 3, eff. Aug. 31, 1981.]

Art. 22.11. Sureties May Answer

After the forfeiture of the bond, if the sureties, if any, have been duly notified, the sureties, if any, may answer in writing and show cause why the defendant did not appear, which answer may be filed within the time limited for answering in other civil actions.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 22.12. Proceedings Not Set Aside for Defect of Form

The bond, the judgment declaring the forfeiture, the citation and the return thereupon, shall not be set aside because of any defect of form; but such defect of form may, at any time, be amended under the direction of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 22.12a. Powers of the Court

After a judicial declaration of forfeiture is entered, the court may proceed with the trial required by Article 22.14 of this code. The court may exonerate the defendant and his sureties, if any, from liability on the forfeiture, remit the amount of the forfeiture, or set aside the forfeiture only as expressly provided by this chapter.

[Added by Acts 1981, 67th Leg., p. 886, ch. 312, § 4, eff. Aug. 31, 1981.]

Art. 22.13. Causes Which Will Exonerate

The following causes, and no other, will exonerate the defendant and his sureties, if any, from liability upon the forfeiture taken:

1. That the bond is, for any cause, not a valid and binding undertaking in law. If it be valid and binding as to the principal, and one or more of his sureties, if any, they shall not be exonerated from liability because of its being invalid and not binding as to another surety or sureties, if any. If it be invalid and not binding as to the principal, each of the sureties, if any, shall be exonerated from liability. If it be valid and binding as to the principal, but not so as to the sureties, if any, the principal shall not be exonerated, but the sureties, if any, shall be.

2. The death of the principal before the forfeiture was taken.

3. The sickness of the principal or some uncontrollable circumstance which prevented his appearance at court, and it must, in every such case, be shown that his failure to appear arose from no fault on his part. The causes mentioned in this subdivision shall not be deemed sufficient to exonerate the principal and his sureties, if any, unless such principal appear before final judgment on the bond to answer the accusation against him, or show sufficient cause for not so appearing.

4. Failure to present an indictment or information at the first term of the court which may be held after the principal has been admitted to bail, in case where the party was bound over before indictment or information, and the prosecution has not been continued by order of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 22.14. Judgment Final

When, upon a trial of the issues presented, no sufficient cause is shown for the failure of the principal to appear, the judgment shall be made final against him and his sureties, if any, for the amount in which they are respectively bound; and the same shall be collected by execution as in civil actions. Separate executions shall issue against each party for the amount adjudged against him. The costs shall be equally divided between the sureties, if there be more than one.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 22.15. Judgment Final by Default

When the sureties have been duly cited and fail to answer, and the principal also fails to answer within the time limited for answering in other civil actions, the court shall enter judgment final by default.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 22.16. The Court May Remit

If, before final judgment is entered against the bail, the principal appears or is arrested and lodged in jail of the proper county, the court may, at its discretion, remit the whole or part of the sum specified in the bond if the arrest or appearance is a direct result of money spent or information furnished by the surety or is because of the principal's initiative in submitting himself to the authority of the court, sheriff, or other peace officers.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 886, ch. 312, § 5, eff. Aug. 31, 1981.]

Art. 22.17. Repealed by Acts 1981, 67th Leg., p. 886, ch. 312, § 6, eff. Aug. 31, 1981

CHAPTER TWENTY-THREE. THE CAPIAS

Art.
23.01. Definition of a "Capias".
23.02. Its Requisites.
23.03. Capias or Summons in Felony.
23.04. In Misdemeanor Case.
23.05. Capias After Forfeiture.
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23.15. Arrest in Capital Cases.
23.16. Arrest in Capital Case in Another County.
23.17. Return of Bail and Capias.
23.18. Return of Capias.

Art. 23.01. Definition of a "Capias"

A "capias" is a writ issued by the court or clerk, and directed "To any peace officer of the State of Texas", commanding him to arrest a person accused of an offense and bring him before that court immediately, or on a day or at a term stated in the writ.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 23.02. Its Requisites

A capias shall be held sufficient if it have the following requisites:

1. That it run in the name of "The State of Texas";

2. That it name the person whose arrest is ordered, or if unknown, describe him;

3. That it specify the offense of which the defendant is accused, and it appear thereby that he is accused of some offense against the penal laws of the State;

4. That it name the court to which and the time when it is returnable; and

5. That it be dated and attested officially by the authority issuing the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 23.03. Capias or Summons in Felony

(a) A capias shall be issued by the district clerk upon each indictment for felony presented, after bail has been set or denied by the judge of the court. Upon the request of the attorney representing the State, a summons shall be issued by the district clerk. The capias or summons shall be delivered by the clerk or mailed to the sheriff of the county where the defendant resides or is to be found. A capias or summons need not issue for a defendant in custody or under bond.

(b) Upon the request of the attorney representing the State a summons instead of a capias shall issue. If a defendant fails to appear in response to the summons a capias shall issue.

(c) Summons. The summons shall be in the same form as the capias except that it shall summon the defendant to appear before the proper court at a stated time and place. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last known address.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 1034, ch. 463, § 3, eff. June 7, 1979.]

Art. 23.04. In Misdemeanor Case

In misdemeanor cases the capias or summons shall issue from a court having jurisdiction of the case. The summons shall be issued only upon request of the attorney representing the State and shall follow the same form and procedure as in a felony case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 23.05. Capias After Forfeiture

Where a forfeiture of bail is declared, a capias shall be immediately issued for the arrest of the defendant, and when arrested, in its discretion, the court may require the defendant, in order to be released from custody, to deposit with the custodian of funds of the court in which the prosecution is

pending current money of the United States in the amount of the new bond as set by the court, in lieu of a surety bond, unless the forfeiture taken has been set aside under the third subdivision of Article 22.13 of this code, in which case the defendant and his sureties shall remain bound under the same bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1971, 62nd Leg., p. 2383, ch. 740, § 1, eff. Aug. 30, 1971.]

Art. 23.06. New Bail in Felony Case

When a defendant who has been arrested for a felony under a capias has previously given bail to answer said charge, his sureties, if any, shall be released by such arrest, and he shall be required to give new bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 23.07. Capias Does Not Lose Its Force

A capias shall not lose its force if not executed and returned at the time fixed in the writ, but may be executed at any time afterward, and return made. All proceedings under such capias shall be as valid as if the same had been executed and returned within the time specified in the writ.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 23.08. Reasons for Retaining Capias

When the capias is not returned at the time fixed in the writ, the officer holding it shall notify the court from whence it was issued, in writing, of his reasons for retaining it.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 23.09. Capias to Several Counties

Capiases for a defendant may be issued to as many counties as the district or county attorney may direct.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 23.10. Bail in Felony

In cases of arrest for felony in the county where the prosecution is pending, during a term of court, the officer making the arrest may take bail as provided in Article 17.21.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 23.11. Sheriff May Take Bail in Felony

In cases of arrest for felony less than capital, made during vacation or made in another county than the one in which the prosecution is pending, the sheriff may take bail; in such cases the amount of the bail bond shall be the same as is endorsed upon the capias; and if no amount be endorsed on the capias, the sheriff shall require a reasonable amount of bail. If it be made to appear by affidavit, made by any district attorney, county attorney, or the sheriff approving the bail bond, to a judge of the Court of Criminal Appeals, a justice of a court of appeals, or to a judge of the district or county court, that the bail taken in any case after indictment is insufficient in amount, or that the sureties are not good for the amount, or that the bond is for any reason defective or insufficient, such judge shall issue a warrant of arrest and require of the defendant sufficient bond, according to the nature of the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 803, ch. 291, § 105, eff. Sept. 1, 1981.]

Art. 23.12. Court Shall Fix Bail in Felony

In felony cases which are bailable, the court shall, before adjourning, fix and enter upon the minutes the amount of the bail to be required in each case. The clerk shall endorse upon the capias the amount of bail required. In case of neglect to so comply with this Article, the arrest of the defendant, and the bail taken by the sheriff, shall be as legal as if there had been no such omission.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 23.13. Who May Arrest Under Capias

A capias may be executed by any peace officer. In felony cases, the defendant must be delivered immediately to the sheriff of the county where the arrest is made together, with the writ under which he was taken.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 23.14. Bail in Misdemeanor

Any officer making an arrest under a capias in a misdemeanor may in term time or vacation take a bail bond of the defendant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 23.15. Arrest in Capital Cases

Where an arrest is made under a capias in a capital case, the sheriff shall confine the defendant in jail, and the capias shall, for that purpose, be a sufficient commitment. This Article is applicable when the arrest is made in the county where the prosecution is pending.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 23.16. Arrest in Capital Case in Another County

In each capital case where a defendant is arrested under a capias in a county other than that in which the case is pending, the sheriff who arrests or to whom the defendant is delivered, shall convey him immediately to the county from which the capias issued and deliver him to the sheriff of such county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 23.17. Return of Bail and Capias

When an arrest has been made and a bail taken, such bond, together with the capias, shall be returned forthwith to the proper court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 23.18. Return of Capias

The return of the capias shall be made to the court from which it is issued. If it has been executed, the return shall state what disposition has been made of the defendant. If it has not been executed, the cause of the failure to execute it shall be fully stated. If the defendant has not been found, the return shall further show what efforts have been made by the officer to find him, and what information he has as to the defendant's whereabouts.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER TWENTY-FOUR. SUBPOENA AND ATTACHMENT

Art.
24.01. Issuance of Subpoenas.
24.02. Subpoena Duces Tecum.
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24.28. Uniform Act to Secure Attendance of Witnesses From Without State.
24.29. Uniform Act to Secure Rendition of Prisoners in Criminal Proceedings.

Art. 24.01. Issuance of Subpoenas

(a) A subpoena may summon one or more persons to appear:

(1) before a court to testify in a criminal action at a specified term of the court or on a specified day; or

(2) on a specified day:

(A) before an examining court;

(B) at a coroner's inquest;

(C) before a grand jury;

(D) at a habeas corpus hearing; or

(E) in any other proceeding in which the person's testimony may be required in accordance with this code.

(b) The person named in the subpoena to summon the person whose appearance is sought must be:

(1) a peace officer; or

(2) a least 18 years old and, at the time the subpoena is issued, not a participant in the proceeding for which the appearance is sought.

(c) A person who is not a peace officer may not be compelled to accept the duty to execute a subpoena, but if he agrees in writing to accept that duty and neglects or refuses to serve or return the subpoena, he may be punished in accordance with Article 2.16 of this code.

(d) A court or clerk issuing a subpoena shall sign the subpoena and indicate on it the date it was issued, but the supoena need not be under seal.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 503, ch. 209, § 1, eff. Sept. 1, 1981.]

Art. 24.02. Subpoena Duces Tecum

If a witness have in his possession any instrument of writing or other thing desired as evidence, the subpoena may specify such evidence and direct that the witness bring the same with him and produce it in court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.03. Subpoena and Application Therefor

Before the clerk or his deputy shall be required or permitted to issue a subpoena in any felony case pending in any district or criminal district court of this State of which he is clerk or deputy, the defendant or his attorney or the State's attorney shall make written, sworn application to such clerk for each witness desired. Such application shall state the name of each witness desired, the location and vocation, if known, and that the testimony of said

witness is material to the State or to the defense. The application must be filed with the clerk and placed with the papers in the cause and made available to both the State and the defendant. As far as is practical such clerk shall include in one subpoena the names of all witnesses for the State and for defendant, and such process shall show that the witnesses are summoned for the State or for the defendant. When a witness has been served with a subpoena, attached or placed under bail at the instance of either party in a particular case, such execution of process shall inure to the benefit of the opposite party in such case in the event such opposite party desires to use such witness on the trial of the case, provided that when a witness has once been served with a subpoena, no further subpoena shall be issued for said witness.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.04. Service and Return of Subpoena

A subpoena is served by reading the same in the hearing of the witness or by delivering a copy of the subpoena to the witness. The officer having the subpoena shall make due return thereof, showing the time and manner of service, if served, and if not served, he shall show in his return the cause of his failure to serve it; and if the witness could not be found, he shall state the diligence he has used to find him, and what information he has as to the whereabouts of the witness.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 770, ch. 336, § 1, eff. Aug. 27, 1979.]

Art. 24.05. Refusing to Obey

If a witness refuses to obey a subpoena, he may be fined at the discretion of the court, as follows: In a felony case, not exceeding five hundred dollars; in a misdemeanor case, not exceeding one hundred dollars.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.06. What is Disobedience of a Subpoena

It shall be held that a witness refuses to obey a subpoena:

1. If he is not in attendance on the court on the day set apart for taking up the criminal docket or on any day subsequent thereto and before the final disposition or continuance of the particular case in which he is a witness;
2. If he is not in attendance at any other time named in a writ; and
3. If he refuses without legal cause to produce evidence in his possession which he has been summoned to bring with him and produce.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.07. Fine Against Witness Conditional

When a fine is entered against a witness for failure to appear and testify, the judgment shall be conditional; and a citation shall issue to him to show cause, at the term of the court at which said fine is entered, or at the first term thereafter, at the discretion of the judge of said court, why the same should not be final; provided, citation shall be served upon said witness in the manner and for the length of time prescribed for citations in civil cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.08. Witness May Show Cause

A witness cited to show cause, as provided in the preceding Article, may do so under oath, in writing or verbally, at any time before judgment final is entered against him; but if he fails to show cause within the time limited for answering in civil actions, a judgment final by default shall be entered against him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.09. Court May Remit Fine

It shall be within the discretion of the court to judge of the sufficiency of an excuse rendered by a witness, and upon the hearing the court shall render judgment against the witness for the whole or any part of the fine, or shall remit the fine altogether, as to the court may appear proper and right. Said fine shall be collected as fines in misdemeanor cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.10. When Witness Appears and Testifies

When a fine has been entered against a witness, but no trial of the cause takes place, and such witness afterward appears and testifies upon the trial thereof, it shall be discretionary with the judge, though no good excuse be rendered, to reduce the fine or remit it altogether; but the witness, in such case, shall, nevertheless, be adjudged to pay all the costs accruing in the proceeding against him by reason of his failure to attend.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.11. Requisites of an "Attachment"

An "attachment" is a writ issued by a clerk of a court under seal, or by any magistrate, or by the foreman of a grand jury, in any criminal action or proceeding authorized by law, commanding some peace officer to take the body of a witness and bring him before such court, magistrate or grand jury on a day named, or forthwith, to testify in behalf of the State or of the defendant, as the case

may be. It shall be dated and signed officially by the officer issuing it.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.12. When Attachment May Issue

When a witness who resides in the county of the prosecution has been duly served with a subpoena to appear and testify in any criminal action or proceeding fails to so appear, the State or the defendant shall be entitled to have an attachment issued forthwith for such witness.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.13. Attachment for Convict Witnesses

All persons who have been or may be convicted in this State, and who are confined in an institution operated by the Department of Corrections or any jail in this State, shall be permitted to testify in person in any court for the State and the defendant when the presiding judge finds, after hearing, that the ends of justice require their attendance, and directs that an attachment issue to accomplish the purpose, notwithstanding any other provision of this Code. Nothing in this Article shall be construed as limiting the power of the courts of this State to issue bench warrants.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.14. Attachment for Resident Witness

When a witness resides in the county of the prosecution, whether he has disobeyed a subpoena or not, either in term-time or vacation, upon the filing of an affidavit with the clerk by the defendant or State's counsel, that he has good reason to believe, and does believe, that such witness is a material witness, and is about to move out of the county, the clerk shall forthwith issue an attachment for such witness; provided, that in misdemeanor cases, when the witness makes oath that he cannot give surety, the officer executing the attachment shall take his personal bond.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.15. To Secure Attendance Before Grand Jury

At any time before the first day of any term of the district court, the clerk, upon application of the State's attorney, shall issue a subpoena for any witness who resides in the county. If at the time such application is made, such attorney files a sworn application that he has good reason to believe and does believe that such witness is about to move out of the county, then said clerk shall issue an attachment for such witness to be and appear before said district court on the first day thereof to testify as a witness before the grand jury. Any witness so summoned, or attached, who shall fail or refuse to obey a subpoena or attachment, shall be punished by the court by a fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.16. Application for Out-County Witness

Where, in misdemeanor cases in which confinement in jail is a permissible punishment, or in felony cases, a witness resides out of the county in which the prosecution is pending, the State or the defendant shall be entitled, either in term-time or in vacation, to a subpoena to compel the attendance of such witness on application to the proper clerk or magistrate. Such application shall be in the manner and form as provided in Article 24.03. Witnesses in such misdemeanor cases shall be compensated in the same manner as in felony cases. This Article shall not apply to more than one character witness in a misdemeanor case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.17. Duty of Officer Receiving Said Subpoena

The officer receiving said subpoena shall execute the same by delivering a copy thereof to each witness therein named. He shall make due return of said subpoena, showing therein the time and manner of executing the same, and if not executed, such return shall show why not executed, the diligence used to find said witness, and such information as the officer has as to the whereabouts of said witness.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.18. Subpoena Returnable Forthwith

When a subpoena is returnable forthwith, the officer shall immediately serve the witness with a copy of the same; and it shall be the duty of said witness to immediately make his appearance before the court, magistrate or other authority issuing the same. If said witness makes affidavit of his inability from lack of funds to appear in obedience to said subpoena, the officer executing the same shall provide said witness, if said subpoena be issued as provided in Article 24.16, with the necessary funds or means to appear in obedience to said subpoena, taking his receipt therefor, and showing in his return on said subpoena, under oath, the amount furnished to said witness, together with the amount of his fees for executing said subpoena.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.19. Certificate to Officer

The clerk, magistrate, or foreman of the grand jury issuing said process, immediately upon the return of said subpoena, if issued as provided in Article 24.16, shall issue to such officer a certificate for the amount furnished such witness, together with the amount of his fees for executing the same, showing the amount of each item; which certificate shall be approved by the district judge and recorded by the district clerk in a book kept for that purpose; and said certificate transmitted to the officer executing such subpoena, which amount shall be paid by the State, as costs are paid in other criminal matters.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.20. Subpoena Returnable at Future Date

If the subpoena be returnable at some future date, the officer shall have authority to take bail of such witness for his appearance under said subpoena, which bond shall be returned with such subpoena, and shall be made payable to the State of Texas, in the amount in which the witness and his surety, if any, shall be bound and conditioned for the appearance of the witness at the time and before the court, magistrate or grand jury named in said subpoena, and shall be signed by the witness and his sureties. If the witness refuses to give bond, he shall be kept in custody until such time as he starts in obedience to said subpoena, when he shall be, upon affidavit being made, provided with funds necessary to appear in obedience to said subpoena.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.21. Stating Bail in Subpoena

The court or magistrate issuing said subpoena may direct therein the amount of the bail to be required. The officer may fix the amount if not specified, and in either case, shall require sufficient security, to be approved by himself.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.22. Witness Fined and Attached

If a witness summoned from without the county refuses to obey a subpoena, he shall be fined by the court or magistrate not exceeding five hundred dollars, which fine and judgment shall be final, unless set aside after due notice to show cause why it should not be final, which notice may immediately issue, requiring the defaulting witness to appear at once or at the next term of said court, in the discretion of the judge, to answer for such default. The court may cause to be issued at the same time an attachment for said witness, directed to the proper county, commanding the officer to whom said writ is directed to take said witness into custody and have him before said court at the time named in said writ; in which case such witness shall receive no fees, unless it appears to the court that such disobedience is excusable, when the witness may receive the same pay as if he had not been attached. Said fine when made final and all costs thereon shall be collected as in other criminal cases. Said fine and judgment may be set aside in vacation or at the time or any subsequent term of the court for good cause shown, after the witness testifies or has been discharged. The following words shall be written or printed on the face of such subpoena for out-county witnesses: "A disobedience of this subpoena is punishable by fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases."

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.23. Witness Released

A witness who is in custody for failing to give bail shall be at once released upon giving bail required.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.24. Bail for Witness

Witnesses on behalf of the State or defendant may, at the request of either party, be required to enter into bail in an amount to be fixed by the court to appear and testify in a criminal action; but if it shall appear to the court that any witness is unable to give security upon such bail, he shall be released without security.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.25. Personal Bond of Witness

When it appears to the satisfaction of the court that personal bond of the witness will insure his attendance, no security need be required of him; but no bond without security shall be taken by any officer.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.26. Enforcing Forfeiture

The bond of a witness may be enforced against him and his sureties, if any, in the manner pointed out in this Code for enforcing the bond of a defendant in a criminal case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.27. No Surrender After Forfeiture

The sureties of a witness have no right to discharge themselves by the surrender of the witness after the forfeiture of their bond.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 24.28. Uniform Act to Secure Attendance of Witnesses From Without State

Short Title

Sec. 1. This Act may be cited as the "Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Proceedings".

Definitions

Sec. 2. "Witness" as used in this Act shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

The word "State" shall include any territory of the United States and the District of Columbia.

The word "summons" shall include a subpoena, order or other notice requiring the appearance of a witness.

Summoning Witness in This State to Testify in Another State

Sec. 3. (a) If a judge of a court of record in any State which by its laws has made provision for commanding persons within that State to attend and testify in this State certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this State is a material witness in such prosecution, or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

(b) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other State, and that the laws of the State in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, (and of any other State through which the witness may be required to pass by ordinary course of travel), will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

(c) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting State to assure his attendance in the requesting State, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting State.

(d) If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the compensation for nonresident witnesses authorized and provided for by Article 35.27 of this Code, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State.

Witness From Another State Summoned to Testify in This State

Sec. 4. (a) If a person in any State, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this State, is a material witness in a prosecution pending in a court of record in this State, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this State to assure his attendance in this State. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(b) If the witness is summoned to attend and testify in this State he shall be tendered the compensation for nonresident witnesses authorized by Article 35.27 of this Code, together with such additional compensation, if any, required by the other State for compliance. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this State a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this State, fails without good cause to attend and testify as

directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State.

Exemption From Arrest and Service of Process

Sec. 5. If a person comes into this State in obedience to a summons directing him to attend and testify in this State he shall not while in this State pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this State under the summons.

If a person passes through this State while going to another State in obedience to a summons to attend and testify in that State or while returning therefrom, he shall not while so passing through this State be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this State under the summons.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 1285, ch. 477, § 1, eff. Aug. 27, 1973.]

Art. 24.29. Uniform Act to Secure Rendition of Prisoners in Criminal Proceedings

Short Title

Sec. 1. This article may be cited as the "Uniform Act to Secure Rendition of Prisoners in Criminal Proceedings."

Definitions

Sec. 2. In this Act:

(1) "Penal institution" means a jail, prison, penitentiary, house of correction, or other place of penal detention.

(2) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory of the United States.

(3) "Witness" means a person who is confined in a penal institution in a state and whose testimony is desired in another state in a criminal proceeding or investigation by a grand jury or in any criminal action before a court.

Summoning Witness in This State to Testify in Another State

Sec. 3. (a) A judge of a state court of record in another state, which by its laws has made provision for commanding persons confined in penal institutions within that state to attend and testify in this state, may certify that:

(1) there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court;

(2) a person who is confined in a penal institution in this state may be a material witness in the proceeding, investigation, or action; and

(3) his presence will be required during a specified time.

(b) On presentation of the certificate to any judge having jurisdiction over the person confined and on notice to the attorney general, the judge in this state shall fix a time and place for a hearing and shall make an order directed to the person having custody of the prisoner requiring that the prisoner be produced before him at the hearing.

Court Order

Sec. 4. (a) A judge may issue a transfer order if at the hearing the judge determines that:

(1) the witness may be material and necessary;

(2) his attending and testifying are not adverse to the interest of this state or to the health or legal rights of the witness;

(3) the laws of this state in which he is requested to testify will give him protection from arrest and the service of civil and criminal process because of any act committed prior to his arrival in the state under the order; and

(4) as a practical matter the possibility is negligible that the witness may be subject to arrest or to the service of civil or criminal process in any state through which he will be required to pass.

(b) If a judge issues an order under Subsection (a) of this section, the judge shall attach to the order a copy of a certificate presented under Section 3 of this Act. The order shall:

(1) direct the witness to attend and testify;

(2) except as provided by Subsection (c) of this section, direct the person having custody of the witness to produce him in the court where the criminal action is pending or where the grand jury investigation is pending at a time and place specified in the order; and

(3) prescribe such conditions as the judge shall determine.

(c) The judge, in lieu of directing the person having custody of the witness to produce him in the requesting jurisdiction's court, may direct and require in his order that:

(1) an officer of the requesting jurisdiction come to the Texas penal institution in which the witness is confined to accept custody of the witness for physical transfer to the requesting jurisdiction;

(2) the requesting jurisdiction provide proper safeguards on his custody while in transit;

(3) the requesting jurisdiction be liable for and pay all expenses incurred in producing and returning the witness, including but not limited to food, lodging, clothing, and medical care; and

(4) the requesting jurisdiction promptly deliver the witness back to the same or another Texas

penal institution as specified by the Texas Department of Corrections at the conclusion of his testimony.

Terms and Conditions

Sec. 5. An order to a witness and to a person having custody of the witness shall provide for the return of the witness at the conclusion of his testimony, proper safeguards on his custody, and proper financial reimbursement or prepayment by the requesting jurisdiction for all expenses incurred in the production and return of the witness. The order may prescribe any other condition the judge thinks proper or necessary. The judge shall not require prepayment of expenses if the judge directs and requires the requesting jurisdiction to accept custody of the witness at the Texas penal institution in which the witness is confined and to deliver the witness back to the same or another Texas penal institution at the conclusion of his testimony. An order does not become effective until the judge of the state requesting the witness enters an order directing compliance with the conditions prescribed.

Exceptions

Sec. 6. This Act does not apply to a person in this state who is confined as mentally ill or who is under sentence of death.

Prisoner from Another State Summoned to Testify in This State

Sec. 7. (a) If a person confined in a penal institution in any other state may be a material witness in a criminal action pending in a court of record or in a grand jury investigation in this state, a judge of the court may certify that:

(1) there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court;

(2) a person who is confined in a penal institution in the other state may be a material witness in the proceeding, investigation, or action; and

(3) his presence will be required during a specified time.

(b) The judge of the court in this state shall:

(1) present the certificate to a judge of a court of record in the other state having jurisdiction over the prisoner confined; and

(2) give notice that the prisoner's presence will be required to the attorney general of the state in which the prisoner is confined.

Compliance

Sec. 8. A judge of the court in this state may enter an order directing compliance with the terms and conditions of an order specified in a certificate under Section 3 of this Act and entered by the judge of the state in which the witness is confined.

Exemption from Arrest and Service of Process

Sec. 9. If a witness from another state comes into or passes through this state under an order directing him to attend and testify in this or another state, while in this state pursuant to the order he is not subject to arrest or the service of civil or criminal process because of any act committed prior to his arrival in this state under the order.

Uniformity of Interpretation

Sec. 10. This Act shall be so construed as to effect its general purpose to make uniform the laws of those states which enact it.

[Acts 1983, 68th Leg., p. 1068, ch. 240, § 1, eff. Aug. 29, 1983.]

CHAPTER TWENTY-FIVE. SERVICE OF A COPY OF THE INDICTMENT

Art.
25.01. In Felony.
25.02. Service and Return.
25.03. If on Bail in Felony.
25.04. In Misdemeanor.

Art. 25.01. In Felony

In every case of felony, when the accused is in custody, or as soon as he may be arrested, the clerk of the court where an indictment has been presented shall immediately make a certified copy of the same, and deliver such copy to the sheriff, together with a writ directed to such sheriff, commanding him forthwith to deliver such certified copy to the accused.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 25.02. Service and Return

Upon receipt of such writ and copy, the sheriff shall immediately deliver such certified copy of the indictment to the accused and return the writ to the clerk issuing the same, with his return thereon, showing when and how the same was executed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 25.03. If on Bail in Felony

When the accused, in case of felony, is on bail at the time the indictment is presented, it is not necessary to serve him with a copy, but the clerk shall on request deliver a copy of the same to the accused or his counsel, at the earliest possible time.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 25.04. In Misdemeanor

In misdemeanors, it shall not be necessary before trial to furnish the accused with a copy of the indictment or information; but he or his counsel

may demand a copy, which shall be given as early as possible.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER TWENTY-SIX. ARRAIGNMENT

Art.
26.01. Arraignment.
26.02. Purpose of Arraignment.
26.03. Time of Arraignment.
26.04. Court Shall Appoint Counsel.
26.05. Compensation of Counsel Appointed to Defend.
26.055. Contribution from State for Defense of Certain Prisoners.
26.05–1. Contribution From State in Certain Counties.
26.06. Elected Officials Not to be Appointed.
26.07. Name as Stated in Indictment.
26.08. If Defendant Suggests Different Name.
26.09. If Accused Refuses to Give His Real Name.
26.10. Where Name is Unknown.
26.11. Indictment Read.
26.12. Plea of Not Guilty Entered.
26.13. Plea of Guilty.
26.14. Jury on Plea of Guilty.
26.15. Correcting Name.

Art. 26.01. Arraignment

In all felony cases, after indictment, and all misdemeanor cases punishable by imprisonment, there shall be an arraignment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 26.02. Purpose of Arraignment

An arraignment takes place for the purpose of fixing his identity and hearing his plea.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 26.03. Time of Arraignment

No arraignment shall take place until the expiration of at least two entire days after the day on which a copy of the indictment was served on the defendant, unless the right to such copy or to such delay be waived, or unless the defendant is on bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 26.04. Court Shall Appoint Counsel

(a) Whenever the court determines at an arraignment or at any time prior to arraignment that an accused charged with a felony or a misdemeanor punishable by imprisonment is too poor to employ counsel, the court shall appoint one or more practicing attorneys to defend him. In making the determination, the court shall require the accused to file an affidavit, and may call witnesses and hear any relevant testimony or other evidence.

(b) The appointed counsel is entitled to ten days to prepare for trial, but may waive the time by written notice, signed by the counsel and the accused.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 26.05. Compensation of Counsel Appointed to Defend

Sec. 1. A counsel appointed to defend a person accused of a felony or a misdemeanor punishable by imprisonment, or to represent an indigent in a habeas corpus hearing, shall be paid from the general fund of the county in which the prosecution was instituted or habeas corpus hearing held, according to the following schedule:

(a) For each day or a fractional part thereof in court representing the accused, a reasonable fee to be set by the court but in no event to be less than $50;

(b) For each day in court representing the accused in a capital case, a reasonable fee to be set by the court but in no event to be less than $250;

(c) For each day or a fractional part thereof in court representing the indigent in a habeas corpus hearing, a reasonable fee to be set by the court but in no event to be less than $50;

(d) For expenses incurred for purposes of investigation and expert testimony, a reasonable fee to be set by the court but in no event to exceed $500;

(e) For the prosecution to a final conclusion of a bona fide appeal to a court of appeals or the Court of Criminal Appeals, a reasonable fee to be set by the court but in no event to be less than $350;

(f) For the prosecution to a final conclusion of a bona fide appeal to the Court of Criminal Appeals in a case where the death penalty has been assessed, a reasonable fee to be set by the court but in no event to be less than $500.

Sec. 2. The minimum fee will be automatically allowed unless the trial judge orders more within five days of the judgment.

Sec. 3. All payments made under the provisions of this Article may be included as costs of court.

Sec. 4. An attorney may not receive more than one fee for each day in court, regardless of the number of cases in which he appears as appointed counsel on the same day.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1969, 61st Leg., p. 1054, ch. 347, § 1, eff. May 27, 1969; Acts 1971, 62nd Leg., p. 1777, ch. 520, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1126, ch. 426, art. 3, § 3, eff. June 14, 1973; Acts 1981, 67th Leg., p. 803, ch. 291, § 106, eff. Sept. 1, 1981.]

Art. 26.055. Contribution from State for Defense of Certain Prisoners

Sec. 1. A county in which a facility of the Texas Department of Corrections is located shall pay from

its general fund only the first $250 of the aggregate sum allowed and awarded by the court for attorneys' fees, investigation, and expert testimony under Article 26.05 toward defending a prisoner committed to that facility who is being prosecuted for an offense committed in that county while in the custody of the department if the prisoner was originally committed for an offense committed in another county.

Sec. 2. If the fees awarded for court-appointed counsel in a case covered by Section 1 of this article exceed $250, the court shall certify the amount in excess of $250 to the Comptroller of Public Accounts of the State of Texas. The comptroller shall issue a warrant to the court-appointed counsel in the amount certified to the comptroller by the court.

[Acts 1975, 64th Leg., p. 168, ch. 72, § 1, eff. Sept. 1, 1975.]

Acts 1982, 67th Leg., 2nd C.S., p. 6, ch. 2, inter alia, provides for appropriations for support of various departments of state government for penal, adult correctional, and criminal justice purposes and for certain legal fees, court costs, and expenses. Sections 4 to 6 of said Act provide:

"Sec. 4. In addition to sums previously appropriated, the sum of $250,000 is appropriated from the general revenue fund to the comptroller of public accounts for the period ending August 31, 1983, for the payment of attorneys' fees and related expenses as provided by Article 26.055, Code of Criminal Procedure, 1965.

"Sec. 5. No state funds shall be expended in excess of $10,000 for plaintiff's attorney's or attorneys' fees, court costs or other plaintiff's expenses in any one suit brought against the Texas Department of Corrections or any employee thereof unless the expenditure of said funds is specifically authorized by an appropriations act of the legislature which specifically identifies the plaintiff's attorney or attorneys and the suit or suits brought against the State of Texas or any board or agency thereof.

"Sec. 6. The Board of the Texas Department of Corrections may authorize the director to expend out of the herein appropriated funds for express contracts with existing public and private agencies or expressly designated habitats for separate custody and specialized care and treatment of persons under his custody and control."

Op.Atty.Gen.1982, No. MW-498, states that Acts 1982, 67th Leg., 2nd C.S., p. 6, ch. 2, is not an invalid attempt to amend general law by an appropriations act rider and that its provisions applied only to appropriations made therein.

Art. 26.05-1. Contribution From State in Certain Counties

Sec. 1. A county in which a state training school for delinquent children is located shall pay from its general fund the first $250 of fees awarded for court-appointed counsel under Article 26.05 toward defending a child committed to the school from another county who is being prosecuted for a felony or misdemeanor in the county where the training school is located.

Sec. 2. If the fees awarded for counsel compensation are in excess of $250, the court shall certify the amount in excess of $250 to the Comptroller of Public Accounts of the State of Texas. The Comptroller shall issue a warrant to the court-appointed counsel in the amount certified to the comptroller by the court.

[Acts 1967, 60th Leg., p. 733, ch. 307, § 1, eff. Aug. 28, 1967.]

Art. 26.06. Elected Officials Not to be Appointed

No court may appoint an elected county, district or state official to represent a person accused of crime, unless the official has notified the court of his availability for appointment. If an official has notified the court of his availability and is appointed as counsel, he may decline the appointment if he determines that it is in the best interest of his office to do so. Nothing in this Code shall modify any statutory provision for legislative continuance.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 26.07. Name as Stated in Indictment

When the defendant is arraigned, his name, as stated in the indictment, shall be distinctly called; and unless he suggest by himself or counsel that he is not indicted by his true name, it shall be taken that his name is truly set forth, and he shall not thereafter be allowed to deny the same by way of defense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 26.08. If Defendant Suggests Different Name

If the defendant, or his counsel for him, suggests that he bears some name different from that stated in the indictment, the same shall be noted upon the minutes of the court, the indictment corrected by inserting therein the name of the defendant as suggested by himself or his counsel for him, the style of the case changed so as to give his true name, and the cause proceed as if the true name had been first recited in the indictment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 26.09. If Accused Refuses to Give His Real Name

If the defendant alleges that he is not indicted by his true name, and refuses to say what his real name is, the cause shall proceed as if the name stated in the indictment were true; and the defendant shall not be allowed to contradict the same by way of defense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 26.10. Where Name is Unknown

A defendant described as a person whose name is unknown may have the indictment so corrected as to give therein his true name.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 26.11. Indictment Read

The name of the accused having been called, if no suggestion, such as is spoken of in the four preceding Articles, be made, or being made is disposed of as before directed, the indictment shall be read, and the defendant asked whether he is guilty or not, as therein charged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 26.12. Plea of Not Guilty Entered

If the defendant answers that he is not guilty, such plea shall be entered upon the minutes of the court; if he refuses to answer, the plea of not guilty shall in like manner be entered.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 26.13. Plea of Guilty

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

(1) the range of the punishment attached to the offense;

(2) the fact that the recommendation of the prosecuting attorney as to punishment is not binding on the court. Provided that the court shall inquire as to the existence of any plea bargaining agreements between the state and the defendant and, in the event that such an agreement exists, the court shall inform the defendant whether it will follow or reject such agreement in open court and before any finding on the plea. Should the court reject any such agreement, the defendant shall be permitted to withdraw his plea of guilty or nolo contendere, and neither the fact that the defendant had entered a plea of guilty or nolo contendere nor any statements made by him at the hearing on the plea of guilty or nolo contendere may be used against the defendant on the issue of guilt or punishment in any subsequent criminal proceeding; and

(3) the fact that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his attorney, the trial court must give its permission to the defendant before he may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial.

(b) No plea of guilty or plea of nolo contendere shall be accepted by the court unless it appears that the defendant is mentally competent and the plea is free and voluntary.

(c) In admonishing the defendant as herein provided, substantial compliance by the court is sufficient, unless the defendant affirmatively shows that he was not aware of the consequences of his plea and that he was misled or harmed by the admonishment of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 969, ch. 399, § 2(A), eff. Jan. 1, 1974; Acts 1975, 64th Leg., p. 909, ch. 341, § 3, eff. June 19, 1975; Acts 1977, 65th Leg., p. 748, ch. 280, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1108, ch. 524, § 1, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1160, ch. 561, § 1, eff. Sept. 1, 1979.]

For saving provisions of 1975 amendatory act, see note set out under art. 3.01.

Art. 26.14. Jury on Plea of Guilty

Where a defendant in a case of felony persists in pleading guilty or in entering a plea of nolo contendere, if the punishment is not absolutely fixed by law, a jury shall be impaneled to assess the punishment and evidence may be heard to enable them to decide thereupon, unless the defendant in accordance with Articles 1.13 or 37.07 shall have waived his right to trial by jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 26.15. Correcting Name

In any case, the same proceedings shall be had with respect to the name of the defendant and the correction of the indictment or information as provided with respect to the same in capital cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER TWENTY-SEVEN. THE PLEADING IN CRIMINAL ACTIONS

Art.

27.01. Indictment or Information.
27.02. Defendant's Pleadings.
27.03. Motion to Set Aside Indictment.
27.04. Motion Tried by Judge.
27.05. Defendant's Special Plea.
27.06. Special Plea Verified.
27.07. Special Plea Tried.
27.08. Exception to Substance of Indictment.
27.09. Exception to Form of Indictment.
27.10. Written Pleadings.
27.11. Ten Days Allowed for Filing Pleadings.
27.12. Time After Service.
27.13. Plea of Guilty or Nolo Contendere in Felony.
27.14. Plea of Guilty or Nolo Contendere in Misdemeanor.
27.15. Change of Venue to Plead Guilty.
27.16. Plea of Not Guilty, How Made.
27.17. Plea of Not Guilty Construed.

Art. 27.01. Indictment or Information

The primary pleading in a criminal action on the part of the State is the indictment or information.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 27.02. Defendant's Pleadings

The pleadings and motions of the defendant shall be:

(1) A motion to set aside or an exception to an indictment or information for some matter of form or substance;

(2) A special plea as provided in Article 27.05 of this code;

(3) A plea of guilty;

(4) A plea of not guilty;

(5) A plea of nolo contendere, the legal effect of which shall be the same as that of a plea of guilty, except that such plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based;

(6) An application for probation, if any;

(7) An election, if any, to have the jury assess the punishment if he is found guilty; and

(8) Any other motions or pleadings that are by law permitted to be filed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1738, ch. 659, § 17, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 968, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 27.03. Motion to Set Aside Indictment

In addition to any other grounds authorized by law, a motion to set aside an indictment or information may be based on the following:

1. That it appears by the records of the court that the indictment was not found by at least nine grand jurors, or that the information was not based upon a valid complaint;

2. That some person not authorized by law was present when the grand jury was deliberating upon the accusation against the defendant, or was voting upon the same; and

3. That the grand jury was illegally impaneled; provided, however, in order to raise such question on motion to set aside the indictment, the defendant must show that he did not have an opportunity to challenge the array at the time the grand jury was impaneled.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 27.04. Motion Tried by Judge

An issue of fact arising upon a motion to set aside an indictment or information shall be tried by the judge without a jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 27.05. Defendant's Special Plea

A defendant's only special plea is that he has already been prosecuted for the same or a different offense arising out of the same criminal episode that was or should have been consolidated into one trial, and that the former prosecution:

(1) resulted in acquittal;

(2) resulted in conviction;

(3) was improperly terminated; or

(4) was terminated by a final order or judgment for the defendant that has not been reversed, set aside, or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 969, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 27.06. Special Plea Verified

Every special plea shall be verified by the affidavit of the defendant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 27.07. Special Plea Tried

All issues of fact presented by a special plea shall be tried by the trier of the facts on the trial on the merits.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 27.08. Exception to Substance of Indictment

There is no exception to the substance of an indictment or information except:

1. That it does not appear therefrom that an offense against the law was committed by the defendant;

2. That it appears from the face thereof that a prosecution for the offense is barred by a lapse of time, or that the offense was committed after the finding of the indictment;

3. That it contains matter which is a legal defense or bar to the prosecution; and

4. That it shows upon its face that the court trying the case has no jurisdiction thereof.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 27.09. Exception to Form of Indictment

Exceptions to the form of an indictment or information may be taken for the following causes only:

1. That it does not appear to have been presented in the proper court as required by law;

2. The want of any requisite prescribed by Articles 21.02 and 21.21.

3. That it was not returned by a lawfully chosen or empaneled grand jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 27.10. Written Pleadings

All motions to set aside an indictment or information and all special pleas and exceptions shall be in writing.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 27.11. Ten Days Allowed for Filing Pleadings

In all cases the defendant shall be allowed ten entire days, exclusive of all fractions of a day after his arrest, and during the term of the court, to file written pleadings.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 27.12. Time After Service

In cases where the defendant is entitled to be served with a copy of the indictment, he shall be allowed the ten days time mentioned in the preceding Article to file written pleadings after such service.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 27.13. Plea of Guilty or Nolo Contendere in Felony

A plea of "guilty" or a plea of "nolo contendere" in a felony case must be made in open court by the defendant in person; and the proceedings shall be as provided in Articles 26.13, 26.14 and 27.02. If the plea is before the judge alone, same may be made in the same manner as is provided for by Articles 1.13 and 1.15.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 27.14. Plea of Guilty or Nolo Contendere in Misdemeanor

(a) A plea of "guilty" or a plea of "nolo contendere" in a misdemeanor case may be made either by the defendant or his counsel in open court; in such case, the defendant or his counsel may waive a jury, and the punishment may be assessed by the court either upon or without evidence, at the discretion of the court.

(b) A defendant charged with a misdemeanor for which the maximum possible punishment is by fine only may, in lieu of the method provided in Subsection (a) of this article, mail to the court a plea of "guilty" or a plea of "nolo contendere" and a waiver or jury trial. The defendant may also request in writing that the court notify the defendant, at the address stated in the request, of the amount of an appeal bond that the court will approve. If the court receives a plea and waiver before the time the defendant is scheduled to appear in court, the court shall dispose of the case without requiring a court appearance by the defendant. The court shall notify the defendant by certified mail, return receipt requested, of the amount of any fine assessed in the case and, if requested by the defendant, the amount of an appeal bond that the court will approve. The defendant shall pay any fine assessed or give an appeal bond in the amount stated in the notice before the 31st day after receiving the notice.

(c) In a misdemeanor case arising out of a moving traffic violation for which the maximum possible punishment is by fine only, payment of a fine, or an amount accepted by the court constitutes a finding of guilty in open court, as though a plea of nolo contendere had been entered by the defendant.

(d) If written notice of a violation relating to the manner, time, and place of parking has been prepared, delivered, and filed with the court and a legible duplicate copy has been given to the defendant, the duplicate copy serves as a complaint to which the defendant may plead "guilty," "not guilty," or "nolo contendere." If the defendant pleads "not guilty" to the parking offense, a complaint shall be filed that conforms to the requirements of Article 45.01, Code of Criminal Procedure, 1965, as amended, and that complaint serves as an original complaint. A defendant may waive the filing of a sworn complaint and elect that the prosecution proceed on the written notice of the charged parking offense if the defendant agrees in writing with the prosecution, signs the agreement, and files it with the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1738, ch. 659, § 18, eff. Aug. 28, 1967; Acts 1977, 65th Leg., p. 2143, ch. 858, § 1, eff. June 16, 1977; Acts 1979, 66th Leg., p. 450, ch. 207, § 1, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 1257, ch. 273, § 1, eff. Sept. 1, 1983.]

Section 4 of the 1979 amendatory act provided:

"This Act applies only to appeal bonds given for an appeal from a sentence of a justice or municipal court rendered on or after the effective date of this Act. The sufficiency of an appeal bond for an appeal from a sentence of a justice or municipal court rendered before the effective date of this Act is governed by the law amended by this Act as it existed at the time the sentence was rendered, and that law is continued in effect for this purpose as if this Act were not in force."

Section 2 of the 1983 amendatory act provides:

"This Act takes effect September 1, 1983, and applies only to parking offenses that are committed on or after that date. Parking offenses committed before the effective date of this Act are covered by the law in effect at the time the offense was committed, and that law is continued in effect for that purpose. For purposes of this Act, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Art. 27.15. Change of Venue to Plead Guilty

When in any county which is located in a judicial district composed of more than one county, a party is charged with a felony and the maximum punishment therefor shall not exceed fifteen years, and the district court of said county is not in session, such party may, if he desires to plead guilty, or enter a plea of nolo contendere, make application to the district judge of such district for a change of venue to the county in which said court is in session, and said district judge may enter an order changing

the venue of said cause to the county in which the court is then in session, and the defendant may plead guilty or enter a plea of nolo contendere to said charge in said court to which the venue has been changed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 27.16. Plea of Not Guilty, How Made

(a) The plea of not guilty may be made orally by the defendant or by his counsel in open court. If the defendant refuses to plead, the plea of not guilty shall be entered for him by the court.

(b) A defendant charged with a misdemeanor for which the maximum possible punishment is by fine only may, in lieu of the method provided in Subsection (a) of this article, mail to the court a plea of not guilty.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1977, 65th Leg., p. 2143, ch. 858, § 2, eff. June 16, 1977.]

Art. 27.17. Plea of Not Guilty Construed

The plea of not guilty shall be construed to be a denial of every material allegation in the indictment or information. Under this plea, evidence to establish the insanity of defendant, and every fact whatever tending to acquit him of the accusation may be introduced, except such facts as are proper for a special plea under Article 27.05.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER TWENTY-EIGHT. MOTIONS, PLEADINGS AND EXCEPTIONS

Art.
28.01. Pre-Trial.
28.02. Order of Argument.
28.03. Process for Testimony on Pleadings.
28.04. Quashing Charge in Misdemeanor.
28.05. Quashing Indictment in Felony.
28.06. Shall be Fully Discharged, When.
28.061. Discharge for Delay.
28.07. If Exception is That No Offense is Charged.
28.08. When Defendant is Held by Order of Court.
28.09. Exception on Account of Form.
28.10. Amendment of Indictment or Information.
28.11. How Amended.
28.12. Exception and Trial of Special Pleas.
28.13. Former Acquittal or Conviction.
28.14. Plea Allowed.

Art. 28.01. Pre-Trial

Sec. 1. The court may set any criminal case for a pre-trial hearing before it is set for trial upon its merits, and direct the defendant and his attorney, if any of record, and the State's attorney, to appear before the court at the time and place stated in the court's order for a conference and hearing. The defendant must be present at the arraignment, and his presence is required during any pre-trial proceeding. The pre-trial hearing shall be to determine any of the following matters:

(1) Arraignment of the defendant, if such be necessary; and appointment of counsel to represent the defendant, if such be necessary;

(2) Pleadings of the defendant;

(3) Special pleas, if any;

(4) Exceptions to the form or substance of the indictment or information;

(5) Motions for continuance either by the State or defendant; provided that grounds for continuance not existing or not known at the time may be presented and considered at any time before the defendant announces ready for trial;

(6) Motions to suppress evidence—When a hearing on the motion to suppress evidence is granted, the court may determine the merits of said motion on the motions themselves, or upon opposing affidavits, or upon oral testimony, subject to the discretion of the court;

(7) Motions for change of venue by the State or the defendant; provided, however, that such motions for change of venue, if overruled at the pre-trial hearing, may be renewed by the State or the defendant during the voir dire examination of the jury;

(8) Discovery;

(9) Entrapment; and

(10) Motion for appointment of interpreter.

Sec. 2. When a criminal case is set for such pre-trial hearing, any such preliminary matters not raised or filed seven days before the hearing will not thereafter be allowed to be raised or filed, except by permission of the court for good cause shown; provided that the defendant shall have sufficient notice of such hearing to allow him not less than 10 days in which to raise or file such preliminary matters. The record made at such pre-trial hearing, the rulings of the court and the exceptions and objections thereto shall become a part of the trial record of the case upon its merits.

Sec. 3. The notice mentioned in Section 2 above shall be sufficient if given in any one of the following ways:

(1) By announcement made by the court in open court in the presence of the defendant or his attorney of record;

(2) By personal service upon the defendant or his attorney of record;

(3) By mail to either the defendant or his attorney of record deposited by the clerk in the mail at least six days prior to the date set for hearing. If the defendant has no attorney of record such notice shall be addressed to defendant at the address shown on his bond, if the bond shows such an address, and if not, it may be addressed to one of the sureties on his bond. If the envelope containing the notice is properly ad-

dressed, stamped and mailed, the state will not be required to show that it was received.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1738, ch. 659, § 19, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 969, ch. 399, § 2(A), eff. Jan. 1, 1974; Acts 1979, 66th Leg., p. 204, ch. 113, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 453, ch. 209, § 2, eff. Aug. 27, 1979.]

Art. 28.02. Order of Argument

The counsel of the defendant has the right to open and conclude the argument upon all pleadings of the defendant presented for the decision of the judge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 28.03. Process for Testimony on Pleadings

When the matters involved in any written pleading depend in whole or in part upon testimony, and not altogether upon the record of the court, every process known to the law may be obtained on behalf of either party to procure such testimony; but there shall be no delay on account of the want of the testimony, unless it be shown to the satisfaction of the court that all the means given by the law have been used to procure the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 28.04. Quashing Charge in Misdemeanor

If the motion to set aside or the exception to an indictment or information is sustained, the defendant in a misdemeanor case shall be discharged, but may be again prosecuted within the time allowed by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 28.05. Quashing Indictment in Felony

If the motion to set aside or the exception to the indictment in cases of felony be sustained, the defendant shall not therefor be discharged, but may immediately be recommitted by order of the court, upon motion of the State's attorney or without motion; and proceedings may afterward be had against him as if no prosecution had ever been commenced.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 28.06. Shall be Fully Discharged, When

Where, after the motion or exception is sustained, it is made known to the court by sufficient testimony that the offense of which the defendant is accused will be barred by limitation before another indictment can be presented, he shall be fully discharged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 28.061. Discharge for Delay

If a motion to set aside an indictment, information, or complaint for failure to provide a speedy trial as required by Article 32A.02 is sustained, the court shall discharge the defendant. A discharge under this article is a bar to any further prosecution for the offense discharged or for any other offense arising out of the same transaction.

[Acts 1977, 65th Leg., p. 1972, ch. 787, § 4, eff. July 1, 1978.]

Art. 28.07. If Exception is That No Offense is Charged

If an exception to an indictment or information is taken and sustained upon the ground that there is no offense against the law charged therein, the defendant shall be discharged, unless an affidavit be filed accusing him of the commission of a penal offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 28.08. When Defendant is Held by Order of Court

If the motion to set aside the indictment or any exception thereto is sustained, but the court refuses to discharge the defendant, then at the expiration of ten days from the order sustaining such motions or exceptions, the defendant shall be discharged, unless in the meanwhile complaint has been made before a magistrate charging him with an offense, or unless another indictment has been presented against him for such offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 28.09. Exception on Account of Form

If the exception to an indictment or information is only on account of form, it shall be amended, if defective, and the cause proceed upon such amended charge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 28.10. Amendment of Indictment or Information

Any matter of form in an indictment or information may be amended at any time before an announcement of ready for trial upon the merits by both parties, but not afterward. No matter of substance can be amended.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 28.11. How Amended

All amendments of an indictment or information shall be made with the leave of the court and under its direction.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 28.12. Exception and Trial of Special Pleas

When a special plea is filed by the defendant, the State may except to it for substantial defects. If the exception be sustained, the plea may be amended. If the plea be not excepted to, it shall be considered that issue has been taken upon the same. Such special pleas as set forth matter of fact proper to be tried by a jury shall be submitted and tried with a plea of not guilty.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 28.13. Former Acquittal or Conviction

A former judgment of acquittal or conviction in a court of competent jurisdiction shall be a bar to any further prosecution for the same offense, but shall not bar a prosecution for any higher grade of offense over which said court had not jurisdiction, unless such judgment was had upon indictment or information, in which case the prosecution shall be barred for all grades of the offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 28.14. Plea Allowed

Judgment shall, in no case, be given against the defendant where his motion, exception or plea is overruled; but in all cases the plea of not guilty may be made by or for him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER TWENTY-NINE. CONTINUANCE

Art.
29.01. By Operation of Law.
29.02. By Agreement.
29.03. For Sufficient Cause Shown.
29.04. First Motion by State.
29.05. Subsequent Motion by State.
29.06. First Motion by Defendant.
29.07. Subsequent Motion by Defendant.
29.08. Motion Sworn to.
29.09. Controverting Motion.
29.10. When Denial is Filed.
29.11. Argument.
29.12. Bail Resulting From Continuance.
29.13. Continuance After Trial is Begun.

Art. 29.01. By Operation of Law

Criminal actions are continued by operation of law if:

(1) The individual defendant has not been arrested;

(2) A defendant corporation or association has not been served with summons; or

(3) There is not sufficient time for trial at that term of court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 970, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 29.02. By Agreement

A criminal action may be continued by consent of the parties thereto, in open court, at any time on a showing of good cause, but a continuance may be only for as long as is necessary.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1977, 65th Leg., p. 1972, ch. 787, § 3, eff. July 1, 1978.]

Art. 29.03. For Sufficient Cause Shown

A criminal action may be continued on the written motion of the State or of the defendant, upon sufficient cause shown; which cause shall be fully set forth in the motion. A continuance may be only for as long as is necessary.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1977, 65th Leg., p. 1972, ch. 787, § 3, eff. July 1, 1978.]

Art. 29.04. First Motion by State

It shall be sufficient, upon the first motion by the State for a continuance, if the same be for the want of a witness, to state:

1. The name of the witness and his residence, if known, or that his residence is unknown;

2. The diligence which has been used to procure his attendance; and it shall not be considered sufficient diligence to have caused to be issued, or to have applied for, a subpoena, in cases where the law authorized an attachment to issue; and

3. That the testimony of the witness is believed by the applicant to be material for the State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 29.05. Subsequent Motion by State

On any subsequent motion for a continuance by the State, for the want of a witness, the motion, in addition to the requisites in the preceding Article, must show:

1. The facts which the applicant expects to establish by the witness, and it must appear to the court that they are material;

2. That the applicant expects to be able to procure the attendance of the witness at the next term of the court; and

3. That the testimony cannot be procured from any other source during the present term of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 29.06. First Motion by Defendant

In the first motion by the defendant for a continuance, it shall be necessary, if the same be on account of the absence of a witness, to state:

1. The name of the witness and his residence, if known, or that his residence is not known.

2. The diligence which has been used to procure his attendance; and it shall not be considered sufficient diligence to have caused to be issued, or to have applied for, a subpoena, in cases where the law authorized an attachment to issue.

3. The facts which are expected to be proved by the witness, and it must appear to the court that they are material.

4. That the witness is not absent by the procurement or consent of the defendant.

5. That the motion is not made for delay.

6. That there is no reasonable expectation that attendance of the witness can be secured during the present term of court by a postponement of the trial to some future day of said term. The truth of the first, or any subsequent motion, as well as the merit of the ground set forth therein and its sufficiency shall be addressed to the sound discretion of the court called to pass upon the same, and shall not be granted as a matter of right. If a motion for continuance be overruled, and the defendant convicted, if it appear upon the trial that the evidence of the witness or witnesses named in the motion was of a material character, and that the facts set forth in said motion were probably true, a new trial should be granted, and the cause continued or postponed to a future day of the same term.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 29.07. Subsequent Motion by Defendant

Subsequent motions for continuance on the part of the defendant shall, in addition to the requisites in the preceding Article, state also:

1. That the testimony cannot be procured from any other source known to the defendant; and

2. That the defendant has reasonable expectation of procuring the same at the next term of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 29.08. Motion Sworn to

All motions for continuance must be sworn to by a person having personal knowledge of the facts relied on for the continuance.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 504, ch. 210, § 1, eff. Sept. 1, 1981.]

Art. 29.09. Controverting Motion

Any material fact stated, affecting diligence, in a motion for a continuance, may be denied in writing by the adverse party. The denial shall be supported by the oath of some credible person, and filed as soon as practicable after the filing of such motion.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 29.10. When Denial is Filed

When such denial is filed, the issue shall be tried by the judge; and he shall hear testimony by affidavits, and grant or refuse continuance, according to the law and facts of the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 29.11. Argument

No argument shall be heard on a motion for a continuance, unless requested by the judge; and when argument is heard, the applicant shall have the right to open and conclude it.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 29.12. Bail Resulting From Continuance

If a defendant in a capital case demand a trial, and it appears that more than one continuance has been granted to the State, and that the defendant has not before applied for a continuance, he shall be entitled to be admitted to bail, unless it be made to appear to the satisfaction of the court that a material witness of the State had been prevented from attendance by the procurement of the defendant or some person acting in his behalf.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 29.13. Continuance After Trial is Begun

A continuance or postponement may be granted on the motion of the State or defendant after the trial has begun, when it is made to appear to the satisfaction of the court that by some unexpected occurrence since the trial began, which no reasonable diligence could have anticipated, the applicant is so taken by surprise that a fair trial cannot be had.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER THIRTY. DISQUALIFICATION OF THE JUDGE

Art.

30.01. Causes Which Disqualify.
30.02. District Judge Disqualified.
30.03. County Judge Disqualified, Absent or Disabled.
30.04. Special Judge to Take Oath.
30.05. Record Made by Clerk.
30.06. Compensation.
30.07. Justice Disqualified.
30.08. Order of Transfer.

Art. 30.01. Causes Which Disqualify

No judge or justice of the peace shall sit in any case where he may be the party injured, or where he has been of counsel for the State or the accused, or where the accused or the party injured may be connected with him by consanguinity or affinity within the third degree.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 30.02. District Judge Disqualified

Whenever any case is pending in which the district judge or criminal district judge is disqualified from trying the case, no change of venue shall be made necessary thereby; but the judge presiding shall certify that fact to the presiding judge of the administrative judicial district in which the case is pending and the presiding judge of such administrative judicial district shall assign a judge to try such case in accordance with the provisions of Article 200a, V.A.C.S.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 30.03. County Judge Disqualified, Absent or Disabled

Sec. 1. When the judge of the county court or county court at law, or of any county criminal court, is disqualified in any criminal case pending in the court of which he is judge, the parties may by consent agree upon a special judge to try such case. If they fail to agree upon a special judge to try such case, on or before the third day of the term at which such case may be called for trial, the practicing attorneys of the court present may elect from among their number a special judge who shall try the case. The election of the special judge shall be conducted in accordance with the provisions of Article 1887, et seq., V.A.C.S.

Sec. 2. In the event a county judge or the regular judge of a county court at law created in a county is absent, or is for any cause disabled from presiding, a special judge, who is an attorney, may be appointed by the commissioners court of the county.

Sec. 3. The special judge so appointed must possess those qualifications required of the regular judge of the court and, when appointed shall serve for the period of time designated by the order of appointment but in no event beyond that period of time the regular judge is absent or disabled.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1975, 64th Leg., p. 1191, ch. 448, § 1, eff. June 19, 1975.]

Art. 30.04. Special Judge to Take Oath

The attorney agreed upon, elected, or appointed shall, before he enters upon his duties as special judge, take the oath of office required by the Constitution.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1975, 64th Leg., p. 1191, ch. 448, § 2, eff. June 19, 1975.]

Art. 30.05. Record Made by Clerk

When a special judge is agreed upon by the parties, elected, or appointed as herein provided, the clerk shall enter in the minutes as a part of the proceedings in such cause a record showing:

1. That the judge of the court was disqualified, absent, or disabled to try the cause;
2. That such special judge (naming him) was by consent of the parties agreed upon, or elected or appointed;
3. That the oath of office prescribed by law was duly administered to such special judge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1975, 64th Leg., p. 1191, ch. 448, § 3, eff. June 19, 1975.]

Art. 30.06. Compensation

A special judge selected or appointed in accordance with the preceding Articles shall receive the same compensation as provided by law for regular judges in similar cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 30.07. Justice Disqualified

If a justice of the peace be disqualified from sitting in any criminal action pending before him, he shall transfer the same to any justice of the peace in the county who is not disqualified to try the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 30.08. Order of Transfer

In cases provided for in the preceding Article, the order of transfer shall state the cause of the transfer, and name the court to which the transfer is made, and the time and place, when and where, the parties and witnesses shall appear before such court. The rules governing the transfer of cases from the district to inferior courts shall govern in the transfer of cases under the preceding Article.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER THIRTY-ONE. CHANGE OF VENUE

Art.
31.01. On Court's Own Motion.
31.02. State May Have.
31.03. Granted on Motion of Defendant.
31.04. Motion May be Controverted.
31.05. Clerk's Duties on Change of Venue.

Art.
31.06. If Defendant be in Custody.
31.07. Witness Need Not Again be Summoned.

Art. 31.01. On Court's Own Motion

Whenever in any case of felony or misdemeanor punishable by confinement, the judge presiding shall be satisfied that a trial, alike fair and impartial to the accused and to the State, cannot, from any cause, be had in the county in which the case is pending, he may, upon his own motion, after due notice to accused and the State, and after hearing evidence thereon, order a change of venue to any county in the judicial district in which such county is located or in an adjoining district, stating in his order the grounds for such change of venue. The judge, upon his own motion, after ten days notice to the parties or their counsel, may order a change of venue to any county beyond an adjoining district; provided, however, an order changing venue to a county beyond an adjoining district shall be grounds for reversal if, upon timely contest by the defendant, the record of the contest affirmatively shows that any county in his own and the adjoining district is not subject to the same conditions which required the transfer.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 31.02. State May Have

Whenever the district or county attorney shall represent in writing to the court before which any felony or misdemeanor case punishable by confinement, is pending, that, by reason of existing combinations or influences in favor of the accused, or on account of the lawless condition of affairs in the county, a fair and impartial trial as between the accused and the State cannot be safely and speedily had; or whenever he shall represent that the life of the prisoner, or of any witness, would be jeopardized by a trial in the county in which the case is pending, the judge shall hear proof in relation thereto, and if satisfied that such representation is well-founded and that the ends of public justice will be subserved thereby, he shall order a change of venue to any county in the judicial district in which such county is located or in an adjoining district.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 31.03. Granted on Motion of Defendant

(a) A change of venue may be granted in any felony or misdemeanor case punishable by confinement on the written motion of the defendant, supported by his own affidavit and the affidavit of at least two credible persons, residents of the county where the prosecution is instituted, for either of the following causes, the truth and sufficiency of which the court shall determine:

1. That there exists in the county where the prosecution is commenced so great a prejudice against him that he cannot obtain a fair and impartial trial; and

2. That there is a dangerous combination against him instigated by influential persons, by reason of which he cannot expect a fair trial.

An order changing venue to a county beyond an adjoining district shall be grounds for reversal, if upon timely contest by defendant, the record of the contest affirmatively shows that any county in his own and the adjoining district is not subject to the same conditions which required the transfer.

(b) For the convenience of parties and witnesses, and in the interest of justice, the court upon motion of the defendant and with the consent of the attorney for the state may transfer the proceeding as to him to another district.

(c) The court upon motion of the defendant and with the consent of the attorney for the state may transfer the proceedings to another district in those cases wherein the defendant stipulates that a plea of guilty will be entered.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 266, ch. 140, § 1, eff. Aug. 27, 1979.]

Art. 31.04. Motion May be Controverted

The credibility of the persons making affidavit for change of venue, or their means of knowledge, may be attacked by the affidavit of a credible person. The issue thus formed shall be tried by the judge, and the motion granted or refused, as the law and facts shall warrant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 31.05. Clerk's Duties on Change of Venue

Where an order for a change of venue of any court in any criminal cause in this State has been made the clerk of the court where the prosecution is pending shall make out a certified copy of the court's order directing such change of venue, together with a certified copy of the defendant's bail bond or personal bond, together with all the original papers in said cause and also a certificate of the said clerk under his official seal that such papers are the papers and all the papers on file in said court in said cause; and he shall transmit the same to the clerk of the court to which the venue has been changed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 31.06. If Defendant be in Custody

When the venue is changed in any criminal action if the defendant be in custody, an order shall be made for his removal to the proper county, and his

delivery to the sheriff thereof before the next succeeding term of the court of the county to which the case is to be taken, and he shall be delivered by the sheriff as directed in the order.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 31.07. Witness Need Not Again be Summoned

When the venue in a criminal action has been changed, it shall not be necessary to have the witnesses therein again subpoenaed, attached or bailed, but all the witnesses who have been subpoenaed, attached or bailed to appear and testify in the cause shall be held bound to appear before the court to which the cause has been transferred, as if there had been no such transfer.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

TRIAL AND ITS INCIDENTS

CHAPTER THIRTY-TWO. DISMISSING PROSECUTIONS

Art.
32.01. Defendant in Custody and No Indictment Presented.
32.02. Dismissal by State's Attorney.

Art. 32.01. Defendant in Custody and No Indictment Presented

When a defendant has been detained in custody or held to bail for his appearance to answer any criminal accusation before the district court, the prosecution, unless otherwise ordered by the court, for good cause shown, supported by affidavit, shall be dismissed and the bail discharged, if indictment or information be not presented against such defendant at the next term of the court which is held after his commitment or admission to bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 32.02. Dismissal by State's Attorney

The attorney representing the State may, by permission of the court, dismiss a criminal action at any time upon filing a written statement with the papers in the case setting out his reasons for such dismissal, which shall be incorporated in the judgment of dismissal. No case shall be dismissed without the consent of the presiding judge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER THIRTY-TWO A. SPEEDY TRIAL

Art.
32A.01. Trial Priorities.
32A.02. Time Limitations.

Art. 32A.01. Trial Priorities

Insofar as is practicable, the trial of a criminal action shall be given preference over trials of civil cases, and the trial of a criminal action against a defendant who is detained in jail pending trial of the action shall be given preference over trials of other criminal actions.

[Acts 1977, 65th Leg., p. 1970, ch. 787, § 1, eff. July 1, 1978.]

Art. 32A.02. Time Limitations

Sec. 1. A court shall grant a motion to set aside an indictment, information, or complaint if the state is not ready for trial within:

(1) 120 days of the commencement of a criminal action if the defendant is accused of a felony;

(2) 90 days of the commencement of a criminal action if the defendant is accused of a misdemeanor punishable by a sentence of imprisonment for more than 180 days; or

(3) 60 days of the commencement of a criminal action if the defendant is accused of a misdemeanor punishable by a sentence of imprisonment for 180 days or less or punishable by a fine only.

Sec. 2. (a) Except as provided in Subsections (b) and (c) of this section, a criminal action commences for purposes of this article when an indictment, information, or complaint against the defendant is filed in court, unless prior to the filing the defendant is either detained in custody or released on bail or personal bond to answer for the same offense or any other offense arising out of the same transaction, in which event the criminal action commences when he is arrested.

(b) If a defendant is to be retried following a mistrial, an order granting a new trial, or an appeal or collateral attack, a criminal action commences for purposes of this article on the date of the mistrial, the order granting a new trial, or the remand.

(c) If an indictment, information, or complaint is dismissed on motion of the defendant, a criminal action commences for the purposes of the article when a new indictment, information, or complaint against the defendant is filed in court, unless the defendant is either detained in custody or released on bail or personal bond to answer for the same offense or any other offense arising out of the same transaction, in which event the criminal action commences when he is detained or released.

Sec. 3. The failure of a defendant to move for discharge under the provisions of this article prior to trial or the entry of a plea of guilty constitutes a waiver of the rights accorded by this article.

Sec. 4. In computing the time by which the state must be ready for trial, the following periods shall be excluded:

(1) a reasonable period of delay resulting from other proceedings involving the defendant, includ-

ing but not limited to proceedings for the determination of competence to stand trial, hearing on pretrial motions, appeals, and trials of other charges;

(2) any period during which the defendant is incompetent to stand trial;

(3) a period of delay resulting from a continuance granted at the request or with the consent of the defendant or his counsel, except that a defendant without counsel is deemed not to have consented to a continuance unless the court advised him of his right to a speedy trial and of the effect of his consent;

(4) a period of delay resulting from the absence of the defendant because his location is unknown and:

(A) he is attempting to avoid apprehension or prosecution; or

(B) the state has been unable to determine his location by due diligence;

(5) a period of delay resulting from the unavailability of the defendant whose location is known to the state but whose presence cannot be obtained by due diligence or because he resists being returned to the state for trial;

(6) a reasonable period of delay resulting from a continuance granted at the request of the state if the continuance is granted:

(A) because of the unavailability of evidence that is material to the state's case, if the state has exercised due diligence to obtain the evidence and there are reasonable grounds to believe the evidence will be available within a reasonable time; or

(B) to allow the state additional time to prepare its case and the additional time is justified because of the exceptional circumstances of the case;

(7) if the charge is dismissed upon motion of the state or the charge is disposed of by a final judgment and the defendant is later charged with the same offense or another offense arising out of the same transaction, the period of delay from the date of dismissal or the date of the final judgment to the date the time limitation would commence running on the subsequent charge had there been no previous charge;

(8) a reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run, if there is good cause for not granting a severance;

(9) a period of delay resulting from detention of the defendant in another jurisdiction, if the state is aware of the detention and exercises due diligence to obtain his presence for trial; and

(10) any other reasonable period of delay that is justified by exceptional circumstances.

[Acts 1977, 65th Leg., p. 1970, ch. 787, eff. July 1, 1978. Amended by Acts 1979, 66th Leg., p. 4, ch. 3, § 1, eff. Sept. 1, 1979.]

Section 2 of the 1979 amendatory act provided:

"This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date."

CHAPTER THIRTY-THREE. THE MODE OF TRIAL

Art.

33.01. Jury; When of Twelve, When of Six.
33.011. Alternate Jurors.
33.02. Failure to Register.
33.03. Presence of Defendant.
33.04. May Appear by Counsel.
33.05. On Bail During Trial.
33.06. Sureties Bound in Case of Mistrial.
33.07. Criminal Docket.
33.08. To Fix Day for Criminal Docket.
33.09. Jury Drawn.

Art. 33.01. Jury; When of Twelve, When of Six

In the district court, the jury shall consist of twelve qualified jurors; in the county court and inferior courts, the jury shall consist of six qualified jurors.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 33.011. Alternate Jurors

(a) In district courts, the judge may direct that not more than four jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. In county courts, the judge may direct that not more than two jurors in addition to the regular jury be called and impaneled to sit as alternate jurors.

(b) Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn and selected in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, security, and privileges as regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict.

[Acts 1983, 68th Leg., p. 4594, ch. 775, § 2, eff. Aug. 29, 1983.]

Art. 33.02. Failure to Register

Failure to register to vote shall not disqualify any person from jury service.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 3143, ch. 827, § 6, eff. Aug. 31, 1981.]

Art. 33.03. Presence of Defendant

In all prosecutions for felonies, the defendant must be personally present at the trial, and he must likewise be present in all cases of misdemeanor when the punishment or any part thereof is imprisonment in jail; provided, however, that in all cases, when the defendant voluntarily absents himself after pleading to the indictment or information, or after the jury has been selected when trial is before a jury, the trial may proceed to its conclusion. When the record in the appellate court shows that the defendant was present at the commencement, or any portion of the trial, it shall be presumed in the absence of all evidence in the record to the contrary that he was present during the whole trial. Provided, however, that the presence of the defendant shall not be required at the hearing on the motion for new trial in any misdemeanor case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 1832, ch. 745, § 1, eff. Aug. 27, 1979.]

Art. 33.04. May Appear by Counsel

In other misdemeanor cases, the defendant may, by consent of the State's attorney, appear by counsel, and the trial may proceed without his personal presence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 33.05. On Bail During Trial

If the defendant is on bail when the trial commences, such bail shall be considered as discharged if he is acquitted. If a verdict of guilty is returned against him, the discharge of his bail shall be governed by other provisions of this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 33.06. Sureties Bound in Case of Mistrial

If there be a mistrial in a felony case, the original sureties, if any, of the defendant shall be still held bound for his appearance until they surrender him in accordance with the provisions of this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 33.07. Criminal Docket

Each clerk of a court of record having criminal jurisdiction shall keep a docket in which shall be set down the style and file number of each criminal action, the nature of the offense, the names of counsel, the proceedings had therein, and the date of each proceeding.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 33.08. To Fix Day for Criminal Docket

The district courts and county courts shall have control of their respective dockets as to the settings of criminal cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 33.09. Jury Drawn

Jury panels, including special venires, for the trial of criminal cases shall be selected and summoned (with return on summons) in the same manner as the selection of panels for the trial of civil cases except as otherwise provided in this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER THIRTY-FOUR. SPECIAL VENIRE IN CAPITAL CASES

Art.
34.01. Special Venire.
34.02. Additional Names Drawn.
34.03. Instructions to Sheriff.
34.04. Notice of List.

Art. 34.01. Special Venire

A "special venire" is a writ issued in a capital case by order of the district court, commanding the sheriff to summon either verbally or by mail such a number of persons, not less than 50, as the court may order, to appear before the court on a day named in the writ from whom the jury for the trial of such case is to be selected. Where as many as one hundred jurors have been summoned in such county for regular service for the week in which such capital case is set for trial, the judge of the court having jurisdiction of a capital case in which a motion for a special venire has been made, shall grant or refuse such motion for a special venire, and upon such refusal require the case to be tried by regular jurors summoned for service in such county for the week in which such capital case is set for trial and such additional talesmen as may be summoned by the sheriff upon order of the court as provided in Article 34.02 of this Code, but the clerk of such court shall furnish the defendant or his counsel a list of the persons summoned as provided in Article 34.04.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 34.02. Additional Names Drawn

In any criminal case in which the court deems that the veniremen theretofore drawn will be insufficient for the trial of the case, or in any criminal case in which the venire has been exhausted by challenge or otherwise, the court shall order additional veniremen in such numbers as the court may deem advisable, to be summoned as follows:

(a) In a jury wheel county, the names of those to be summoned shall be drawn from the jury wheel.

(b) In counties not using the jury wheel, the veniremen shall be summoned by the sheriff.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 34.03. Instructions to Sheriff

When the sheriff is ordered by the court to summon persons upon a special venire whose names have not been selected under the Jury Wheel Law, the court shall, in every case, caution and direct the sheriff to summon such persons as have legal qualifications to serve on juries, informing him of what those qualifications are, and shall direct him, as far as he may be able to summon persons of good character who can read and write, and such as are not prejudiced against the defendant or biased in his favor, if he knows of such bias or prejudice.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 34.04. Notice of List

No defendant in a capital case shall be brought to trial until he shall have had at least two days (including holidays) a copy of the names of the persons summoned as veniremen, for the week for which his case is set for trial except where he waives the right or is on bail. When such defendant is on bail, the clerk of the court in which the case is pending shall furnish such a list to the defendant or his counsel at least two days prior to the trial (including holidays) upon timely motion by the defendant or his counsel therefor at the office of such clerk, and the defendant shall not be brought to trial until such list has been furnished defendant or his counsel for at least two days (including holidays). Where the venire is exhausted, by challenges or otherwise, and additional names are drawn, the defendant shall not be entitled to two days service of the names additionally drawn; but the clerk shall compile a list of such names promptly after they are drawn and if the defendant is not on bail, the sheriff shall serve a copy of such list promptly upon the defendant, and if on bail, the clerk shall furnish a copy of such list to the defendant or his counsel upon request, but the proceedings shall not be delayed thereby.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER THIRTY-FIVE. FORMATION OF THE JURY

Art.
35.01. Jurors Called.
35.02. Sworn to Answer Questions.
35.03. Excuses.
35.04. Claiming Exemption.
35.05. Excused by Consent.
35.06. Challenge to Array First Heard.
35.07. Challenge to the Array.
35.08. When Challenge is Sustained.
35.09. List of New Venire.
35.10. Court to Try Qualifications.
35.11. Preparation of List.
35.12. Mode of Testing.
35.13. Passing Juror for Challenge.
35.14. A Peremptory Challenge.
35.15. Number of Challenges.
35.16. Reasons for Challenge for Cause.
35.17. Voir Dire Examination.
35.18. Other Evidence on Challenge.
35.19. Absolute Disqualification.
35.20. Names Called in Order.
35.21. Judge to Decide Qualifications.
35.22. Oath to Jury.
35.23. Jurors May Separate.
35.24. Repealed.
35.25. Making Peremptory Challenge.
35.26. Lists Returned to Clerk.
35.27. Compensation of Nonresident Witnesses.
35.28. When No Clerk.

Art. 35.01. Jurors Called

When a case is called for trial and the parties have announced ready for trial, the names of those summoned as jurors in the case shall be called. Those not present may be fined not exceeding fifty dollars. An attachment may issue on request of either party for any absent summoned juror, to have him brought forthwith before the court. A person who is summoned but not present, may upon an appearance, before the jury is qualified, be tried as to his qualifications and impaneled as a juror unless challenged, but no cause shall be unreasonably delayed on account of his absence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 35.02. Sworn to Answer Questions

To those present the court shall cause to be administered this oath: "You, and each of you, solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its directions, touching your service and qualifications as a juror, so help you God."

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 35.03. Excuses

The court shall then hear and determine excuses offered for not serving as a juror, and if he deems the excuse sufficient, he shall discharge the juror.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 35.04. Claiming Exemption

Any person summoned as a juror who is exempt by law from jury service may establish his exemp-

tion without appearing in person by filing a signed statement of the ground of his exemption with the clerk of the court at any time before the date upon which he is summoned to appear.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1971, 62nd Leg., p. 1560, ch. 421, § 3, eff. May 26, 1971.]

Art. 35.05. Excused by Consent

One summoned upon a special venire may by consent of both parties be excused from attendance by the court at any time before he is impaneled.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 35.06. Challenge to Array First Heard

The court shall hear and determine a challenge to the array before interrogating those summoned as to their qualifications.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 35.07. Challenge to the Array

Each party may challenge the array only on the ground that the officer summoning the jury has wilfully summoned jurors with a view to securing a conviction or an acquittal. All such challenges must be in writing setting forth distinctly the grounds of such challenge. When made by the defendant, it must be supported by his affidavit or the affidavit of any credible person. When such challenge is made, the judge shall hear evidence and decide without delay whether or not the challenge shall be sustained.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 35.08. When Challenge is Sustained

The array of jurors summoned shall be discharged if the challenge be sustained, and the court shall order other jurors to be summoned in their stead, and direct that the officer who summoned those so discharged, and on account of whose misconduct the challenge has been sustained shall not summon any other jurors in the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 35.09. List of New Venire

When a challenge to the array has been sustained, the defendant shall be entitled, as in the first instance, to service of a copy of the list of names of those summoned by order of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 35.10. Court to Try Qualifications

When no challenge to the array has been made, or if made, has been over-ruled, the court shall proceed to try the qualifications of those present who have been summoned to serve as jurors.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 35.11. Preparation of List

The trial judge, upon the demand of the defendant or his attorney, or of the State's counsel, shall cause the names of all the members of the general panel drawn or assigned as jurors in such case to be placed in a receptacle and well-shaken, and the clerk shall draw therefrom the names of a sufficient number of jurors from which a jury may be selected to try such case, and such names shall be written, in the order drawn, on the jury list from which the jury is to be selected to try such case, and write the names as drawn upon two slips of paper and deliver one slip to the State's counsel and the other to the defendant or his attorney.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 35.12. Mode of Testing

In testing the qualification of a prospective juror after he has been sworn, he shall be asked by the court, or under its direction:

1. Except for failure to register, are you a qualified voter in this county and state under the Constitution and laws of this state?
2. Have you ever been convicted of theft or any felony?
3. Are you under indictment or legal accusation for theft or any felony?

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1969, 61st Leg., p. 1364, ch. 412, § 2, eff. Sept. 1, 1969; Acts 1981, 67th Leg., p. 3143, ch. 827, § 7, eff. Aug. 31, 1981.]

Art. 35.13. Passing Juror for Challenge

A juror in a capital case in which the state has made it known it will seek the death penalty, held to be qualified, shall be passed for acceptance or challenge first to the state and then to the defendant. Challenges to jurors are either peremptory or for cause.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1739, ch. 659, § 20, eff. Aug. 28, 1967.]

Art. 35.14. A Peremptory Challenge

A peremptory challenge is made to a juror without assigning any reason therefor.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 35.15. Number of Challenges

(a) In capital cases both the State and defendant shall be entitled to fifteen peremptory challenges. Where two or more defendants are tried together, the State shall be entitled to eight peremptory challenges for each defendant; and each defendant shall be entitled to eight peremptory challenges.

(b) In non-capital felony cases, the State and defendant shall each be entitled to ten peremptory challenges. If two or more defendants are tried together each defendant shall be entitled to six peremptory challenges and the State to six for each defendant.

(c) The State and the defendant shall each be entitled to five peremptory challenges in a misdemeanor tried in the district court and to three in the county court, or county court at law. If two or more defendants are tried together, each defendant shall be entitled to three such challenges and the State to three for each defendant in either court.

(d) The State and the defendant shall each be entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impaneled and two peremptory challenges if three or four alternate jurors are to be impaneled. The additional peremptory challenges provided by this subsection may be used against an alternate juror only, and the other peremptory challenges allowed by law may not be used against an alternate juror.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 1127, ch. 426, art. 3, § 4, eff. June 14, 1973; Acts 1983, 68th Leg., p. 4594, ch. 775, § 3, eff. Aug. 29, 1983.]

Art. 35.16. Reasons for Challenge for Cause

(a) A challenge for cause is an objection made to a particular juror, alleging some fact which renders him incapable or unfit to serve on the jury. A challenge for cause may be made by either the state or the defense for any one of the following reasons:

1. That he is not a qualified voter in the state and county under the Constitution and laws of the state; provided, however, the failure to register to vote shall not be a disqualification;
2. That he has been convicted of theft or any felony;
3. That he is under indictment or other legal accusation for theft or any felony;
4. That he is insane;
5. That he has such defect in the organs of feeling or hearing, or such bodily or mental defect or disease as to render him unfit for jury service, or that he is legally blind and the court in its discretion is not satisfied that he is fit for jury service in that particular case;
6. That he is a witness in the case;
7. That he served on the grand jury which found the indictment;
8. That he served on a petit jury in a former trial of the same case;
9. That he has a bias or prejudice in favor of or against the defendant;
10. That from hearsay, or otherwise, there is established in the mind of the juror such a conclusion as to the guilt or innocence of the defendant as would influence him in his action in finding a verdict. To ascertain whether this cause of challenge exists, the juror shall first be asked whether, in his opinion, the conclusion so established will influence his verdict. If he answers in the affirmative, he shall be discharged without further interrogation by either party or the court. If he answers in the negative, he shall be further examined as to how his conclusion was formed, and the extent to which it will affect his action; and, if it appears to have been formed from reading newspaper accounts, communications, statements or reports or mere rumor or hearsay, and if the juror states that he feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that he is impartial and will render such verdict, may, in its discretion, admit him as competent to serve in such case. If the court, in its discretion, is not satisfied that he is impartial, the juror shall be discharged;
11. That he cannot read or write.

No juror shall be impaneled when it appears that he is subject to the second, third or fourth grounds of challenge for cause set forth above, although both parties may consent. All other grounds for challenge may be waived by the party or parties in whose favor such grounds of challenge exist.

In this subsection "legally blind" shall mean having not more than $^{20}/_{200}$ of visual acuity in the better eye with correcting lenses, or visual acuity greater than $^{20}/_{200}$ but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(b) A challenge for cause may be made by the State for any of the following reasons:

1. That the juror has conscientious scruples in regard to the infliction of the punishment of death for crime, in a capital case, where the State is seeking the death penalty;
2. That he is related within the third degree of consanguinity or affinity to the defendant; and
3. That he has a bias or prejudice against any phase of the law upon which the State is entitled to rely for conviction or punishment.

(c) A challenge for cause may be made by the defense for any of the following reasons:

1. That he is related within the third degree of consanguinity or affinity to the person injured by

the commission of the offense, or to any prosecutor in the case; and

2. That he has a bias or prejudice against any of the law applicable to the case upon which the defense is entitled to rely, either as a defense to some phase of the offense for which the defendant is being prosecuted or as a mitigation thereof or of the punishment therefor.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1969, 61st Leg., p. 1364, ch. 412, § 3, eff. Sept. 1, 1969; Acts 1975, 64th Leg., p. 475, ch. 202, § 2, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 3143, ch. 827, § 8, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 619, ch. 134, § 2, eff. Sept. 1, 1983.]

Art. 35.17. Voir Dire Examination

1. When the court in its discretion so directs, except as provided in Section 2, the state and defendant shall conduct the voir dire examination of prospective jurors in the presence of the entire panel.

2. In a capital felony case, the court shall propound to the entire panel of prospective jurors questions concerning the principles, as applicable to the case on trial, of reasonable doubt, burden of proof, return of indictment by grand jury, presumption of innocence, and opinion. Then, on demand of the State or defendant, either is entitled to examine each juror on voir dire individually and apart from the entire panel, and may further question the juror on the principles propounded by the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 1127, ch. 426, art. 3, § 5, eff. June 14, 1973.]

Art. 35.18. Other Evidence on Challenge

Upon a challenge for cause, the examination is not confined to the answers of the juror, but other evidence may be heard for or against the challenge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 35.19. Absolute Disqualification

No juror shall be impaneled when it appears that he is subject to the second, third or fourth cause of challenge in Article 35.16, though both parties may consent.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1969, 61st Leg., p. 1364, ch. 412, § 4, eff. Sept. 1, 1969.]

Art. 35.20. Names Called in Order

In selecting the jury from the persons summoned, the names of such persons shall be called in the order in which they appear upon the list furnished the defendant. Each juror shall be tried and passed upon separately. A person who has been summoned, but who is not present, may, upon his appearance before the jury is completed, be tried as to his qualifications and impaneled as a juror, unless challenged, but no cause shall be unreasonably delayed on account of such absence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 35.21. Judge to Decide Qualifications

The court is the judge, after proper examination, of the qualifications of a juror, and shall decide all challenges without delay and without argument thereupon.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 35.22. Oath to Jury

When the jury has been selected, the following oath shall be administered them by the court or under its direction: "You and each of you do solemnly swear that in the case of the State of Texas against the defendant, you will a true verdict render according to the law and the evidence, so help you God".

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 35.23. Jurors May Separate

The court may adjourn veniremen to any day of the term. When jurors have been sworn in a felony case, the court may, at its discretion, permit the jurors to separate until the court has given its charge to the jury, after which the jury shall be kept together, and not permitted to separate except to the extent of housing female jurors separate and apart from male jurors, until a verdict has been rendered or the jury finally discharged, unless by permission of the court with the consent of each party. Any person who makes known to the jury which party did not consent to separation shall be punished for contempt of court. If such jurors are kept overnight, facilities shall be provided for female jurors separate and apart from the facilities provided for male jurors. In misdemeanor cases the court may, at its discretion, permit the jurors to separate at any time before the verdict. In any case in which the jury is permitted to separate, the court shall first give the jurors proper instructions with regard to their conduct as jurors when so separated.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 35.24. Repealed by Acts 1975, 64th Leg., p. 1353, ch. 510, § 2, eff. Sept. 1, 1975

See, now, Civil Statutes, art. 2122.

Art. 35.25. Making Peremptory Challenge

In non-capital cases and in capital cases in which the State's attorney has announced that he will not qualify the jury for, or seek the death penalty, the

party desiring to challenge any juror peremptorily shall strike the name of such juror from the list furnished him by the clerk.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 35.26. Lists Returned to Clerk

(a) When the parties have made or declined to make their peremptory challenges, they shall deliver their lists to the clerk. Except as provided in Subsection (b) of this section, the clerk shall, if the case be in the district court, call off the first twelve names on the lists that have not been stricken. If the case be in the county court, he shall call off the first six names on the lists that have not been stricken. Those whose names are called shall be the jury.

(b) In a capital case, the court may direct that two alternate jurors be selected and that the first fourteen names not stricken be called off by the clerk. The last two names to be called are the alternate jurors.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 2264, ch. 545, § 1, eff. June 12, 1981.]

Art. 35.27. Compensation of Nonresident Witnesses

Expenses for Nonresident Witnesses

Sec. 1. Every person subpoenaed by either party or otherwise required or requested in writing by the prosecuting attorney or the court to appear for the purpose of giving testimony in a criminal proceeding who resides outside the State or the county in which the prosecution is pending shall be compensated by the State for the reasonable and necessary travel and daily living expenses he incurs by reason of his attendance as a witness at such proceeding.

Amount of Compensation for Expenses

Sec. 2. Any person seeking compensation as a witness shall make an affidavit setting out the travel and daily living expenses necessitated by his travel to and from and attendance at the place he appeared to give testimony, together with the number of days that such travel and attendance made him absent from his place of residence. Compensation paid by the State to the witness for such expenses shall not exceed $50 per day for daily living expenses and 16 cents per mile for travel by personal automobile.

Other Expenses

Sec. 3. In addition to compensation for travel and living expenses, the Comptroller of Public Accounts, upon proper application by the attorney for the State, shall pay such other expenses as may be required by the laws of this State or the state from which the attendance of the witness is sought.

Application and Approval by Judge

Sec. 4. Compensation to witnesses as provided for in this Article shall be paid by the State to the witness or his assignee. Claim shall be made by sworn application to the Comptroller of Public Accounts, a copy of which shall be filed with the clerk of the court, setting out the facts showing entitlement as provided in this Article to the compensation, which application shall be presented for approval by the judge who presided over the court or empaneled the grand jury before whom the criminal proceeding was pending. No fee shall be required of any witness for the processing of his claim for compensation.

Payment by State

Sec. 5. The Comptroller of Public Accounts, upon receipt of a claim approved by the judge, shall examine it and, if he deems the claim in compliance with and authorized by this Article, draw his warrant on the State Treasury for the amount due the witness, or to any person to which the certificate has been assigned by the witness, but no warrant may issue to any assignee of a witness claim unless the assignment is made under oath and acknowledged before some person authorized to administer oaths, certified to by the officer, and under seal. If the appropriation for paying the account is exhausted, the Comptroller of Public Accounts shall file it away and issue a certificate in the name of the witness entitled to it, stating therein the amount of the claim. Each claim not filed in the office of the Comptroller of Public Accounts within twelve months from the date it became due and payable shall be forever barred.

Advance by State

Sec. 6. Funds required to be tendered to an out-of-state witness pursuant to Article 24.28 of this Code shall be paid by the Comptroller of Public Accounts into the registry of the Court in which the case is to be tried upon certification by the Court such funds are necessary to obtain attendance of said witness. The court shall then cause to be issued checks drawn upon the registry of the Court to secure the attendance of such witness. In the event that such funds are not used pursuant to this Act, the Court shall return the funds to the Comptroller of Public Accounts.

Advance by County

Sec. 7. The county in which a criminal proceeding is pending, upon request of the district attorney or other prosecutor charged with the duty of prosecution in the proceeding, may advance funds from its treasury to any witness who will be entitled to compensation under this Article in such amounts as

may be reasonably necessary to enable the witness to attend as required or requested, including any sums in excess of the compensation provided for by this Article which are required for compliance with Section 4 of Article 24.28 in securing the attendance of a witness from another state under the Uniform Act, and upon any such advance or advances, the county shall be entitled to reimbursement by the State, as an assignee of compensation due a witness from the State.

Advance for Expenses for Witnesses of Indigent Defendant

Sec. 8. Upon application by a defendant shown to be indigent and a showing to the court of reasonable necessity and materiality for the testimony of a witness residing outside the State, the court shall act pursuant to Section 6 hereof to secure advance of funds necessary for the attendance of such witness.

Limitations

Sec. 9. A witness, when attached and conveyed by a sheriff or other officer, shall not be entitled to receive compensation while in custody of such officers and the court in its discretion may limit the number of character witnesses allowed compensation pursuant to this Article to not less than two for each defendant and two per defendant for the State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 1287, ch. 477, § 2, eff. Aug. 27, 1973; Acts 1979, 66th Leg., p. 1039, ch. 469, § 1, eff. Sept. 1, 1979.]

Section 2 of the 1979 amendatory act provided:

"This Act applies to reimbursement of a nonresident witness for travel expenses and daily living expenses incurred on or after the effective date of this Act. The reimbursement for travel expenses and daily living expenses incurred before the effective date of this Act are governed by the law amended by this Act as it existed before the effective date of this Act, and that law is continued in force for this purpose as if this Act were not in effect."

Art. 35.28. When No Clerk

In each instance in Article 35.27 in which the clerk of the court is authorized or directed to perform any act, the judge of such court shall perform the same if there is no clerk of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER THIRTY-SIX. THE TRIAL BEFORE THE JURY

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Art. 36.01. Order of Proceeding in Trial

A jury being impaneled in any criminal action, the cause shall proceed in the following order:

1. The indictment or information shall be read to the jury by the attorney prosecuting. When prior convictions are alleged for purposes of enhancement only and are not jurisdictional, that portion of the indictment or information reciting such convictions shall not be read until the hearing on punishment is held as provided in Article 37.07.

2. The special pleas, if any, shall be read by the defendant's counsel, and if the plea of not guilty is also relied upon, it shall also be stated.

3. The State's attorney shall state to the jury the nature of the accusation and the facts which are expected to be proved by the State in support thereof.

4. The testimony on the part of the State shall be offered.

5. The nature of the defenses relied upon and the facts expected to be proved in their support shall be stated by defendant's counsel.

6. The testimony on the part of the defendant shall be offered.

7. Rebutting testimony may be offered on the part of each party.

8. In the event of a finding of guilty, the trial shall then proceed as set forth in Article 37.07.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.02. Testimony at Any Time

The court shall allow testimony to be introduced at any time before the argument of a cause is concluded, if it appears that it is necessary to a due administration of justice.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.03. Witnesses Placed Under Rule

At the request of either party, the witnesses on both sides may be sworn and placed in the custody of an officer and removed out of the courtroom to some place where they cannot hear the testimony as delivered by any other witness in the cause. This is termed placing witnesses under the rule. However, if the defendant is a corporation or association it may designate one representative in addition to counsel to aid in the presentation of its case, which representative may not be placed under the rule.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 971, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 36.04. Part of Witnesses Under Rule

The party requesting the witnesses to be placed under rule may designate such as he desires placed under rule, and those not designated will be exempt from the rule, or the party may have all of the witnesses in the case placed under rule. The enforcement of the rule is in the discretion of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.05. Not to Hear Testimony

Witnesses under rule shall be attended by an officer, and all their reasonable wants provided for, unless the court, in its discretion, directs that they be allowed to go at large; but in no case where the witnesses are under rule shall they be allowed to hear any testimony in the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.06. Instructed by the Court

Witnesses, when placed under rule, shall be instructed by the court that they are not to converse with each other or with any other person about the case, except by permission of the court, and that they are not to read any report of or comment upon the testimony in the case while under rule. The officer who attends the witnesses shall report to the court at once any violation of its instructions, and the party violating the same shall be punished for contempt of court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.07. Order of Argument

The order of argument may be regulated by the presiding judge; but the State's counsel shall have the right to make the concluding address to the jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.08. Number of Arguments

The court shall never restrict the argument in felony cases to a number of addresses less than two on each side.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.09. Severance on Separate Indictments

Two or more defendants who are jointly or separately indicted or complained against for the same offense or any offense growing out of the same transaction may be, in the discretion of the court, tried jointly or separately as to one or more defendants; provided that in any event either defendant may testify for the other or on behalf of the state; and provided further, that in cases in which, upon timely motion to sever, and evidence introduced thereon, it is made known to the court that there is a previous admissible conviction against one defendant or that a joint trial would be prejudicial to any defendant, the court shall order a severance as to the defendant whose joint trial would prejudice the other defendant or defendants.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1739, ch. 659, § 21, eff. Aug. 28, 1967.]

Art. 36.10. Order of Trial

If a severance is granted, the defendants may agree upon the order in which they are to be tried, but if they fail to agree, the court shall direct the order of the trial.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.11. Discharge Before Verdict

If it appears during a trial that the court has no jurisdiction of the offense, or that the facts charged in the indictment do not constitute an offense, the jury shall be discharged. The accused shall also be discharged, but such discharge shall be no bar in any case to a prosecution before the proper court for any offense unless termination of the former prosecution was improper.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 971, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 36.12. Court May Commit

If the want of jurisdiction arises from the fact that the defendant is not liable to prosecution in the county where the indictment was presented, the court may in felony cases order the accused into custody for a reasonable length of time to await a warrant for his arrest from the proper county; or if the offense be bailable, may require him to enter into recognizance to answer before the proper court; in which case a certified copy of the recognizance shall be sent forthwith to the clerk of the proper court, to be enforced by that court in case of forfeiture.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.13. Jury is Judge of Facts

Unless otherwise provided in this Code, the jury is the exclusive judge of the facts, but it is bound to receive the law from the court and be governed thereby.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.14. Charge of Court

Subject to the provisions of Article 36.07 in each felony case and in each misdemeanor case tried in a court of record, the judge shall, before the argument begins, deliver to the jury, except in pleas of guilty, where a jury has been waived, a written charge distinctly setting forth the law applicable to the case; not expressing any opinion as to the weight of the evidence, not summing up the testimony, discussing the facts or using any argument in his charge calculated to arouse the sympathy or excite the passions of the jury. Before said charge is read to the jury, the defendant or his counsel shall have a reasonable time to examine the same and he shall present his objections thereto in writing, distinctly specifying each ground of objection. Said objections may embody errors claimed to have been committed in the charge, as well as errors claimed to have been committed by omissions therefrom or in failing to charge upon issues arising from the facts, and in no event shall it be necessary for the defendant or his counsel to present special requested charges to preserve or maintain any error assigned to the charge, as herein provided. The requirement that the objections to the court's charge be in writing will be complied with if the objections are dictated to the court reporter in the presence of the court and the state's counsel, before the reading of the court's charge to the jury. Compliance with the provisions of this Article is all that is necessary to preserve, for review, the exceptions and objections presented to the charge and any amendment or modification thereof. In no event shall it be necessary for the defendant to except to the action of the court in over-ruling defendant's exceptions or objections to the charge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1975, 64th Leg., p. 617, ch. 253, § 1, eff. Sept.1, 1975; Acts 1981, 67th Leg., p. 2244, ch. 537, § 1, eff. June 12, 1981.]

Art. 36.15. Requested Special Charges

Before the court reads his charge to the jury, counsel on both sides shall have a reasonable time to present written instructions and ask that they be given to the jury. The requirement that the instructions be in writing is complied with if the instructions are dictated to the court reporter in the presence of the court and the state's counsel, before the reading of the court's charge to the jury. The court shall give or refuse these charges. The defendant may, by a special requested instruction, call the trial court's attention to error in the charge, as well as omissions therefrom, and no other exception or objection to the court's charge shall be necessary to preserve any error reflected by any special requested instruction which the trial court refuses.

Any special requested charge which is granted shall be incorporated in the main charge and shall be treated as a part thereof, and the jury shall not be advised that it is a special requested charge of either party. The judge shall read to the jury only such special charges as he gives.

When the defendant has leveled objections to the charge or has requested instructions or both, and the court thereafter modifies his charge and rewrites the same and in so doing does not respond to objections or requested charges, or any of them, then the objections or requested charges shall not be deemed to have been waived by the party making or requesting the same, but shall be deemed to continue to have been urged by the party making or requesting the same unless the contrary is shown by the record; no exception by the defendant to the action of the court shall be necessary or required in order to preserve for review the error claimed in the charge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 1109, ch. 525, § 1, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 2245, ch. 537, § 1, eff. June 12, 1981.]

Art. 36.16. Final Charge

After the judge shall have received the objections to his main charge, together with any special charges offered, he may make such changes in his main charge as he may deem proper, and the defendant or his counsel shall have the opportunity to present their objections thereto and in the same manner as is provided in Article 36.15, and thereupon the judge shall read his charge to the jury as finally written, together with any special charges given, and no further exception or objection shall be

required of the defendant in order to preserve any objections or exceptions theretofore made. After the argument begins no further charge shall be given to the jury unless required by the improper argument of counsel or the request of the jury, or unless the judge shall, in his discretion, permit the introduction of other testimony, and in the event of such further charge, the defendant or his counsel shall have the right to present objections in the same manner as is prescribed in Article 36.15. The failure of the court to give the defendant or his counsel a reasonable time to examine the charge and specify the ground of objection shall be subject to review either in the trial court or in the appellate court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.17. Charge Certified by Judge

The general charge given by the court and all special charges given or refused shall be certified by the judge and filed among the papers in the cause.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.18. Jury May Take Charge

The jury may take to their jury room the charges given by the court after the same have been filed. They shall not be permitted to take with them any charge or part thereof which the court has refused to give.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.19. Review of Charge on Appeal

Whenever it appears by the record in any criminal action upon appeal that any requirement of Articles 36.14, 36.15, 36.16, 36.17 and 36.18 has been disregarded, the judgment shall not be reversed unless the error appearing from the record was calculated to injure the rights of defendant, or unless it appears from the record that the defendant has not had a fair and impartial trial. All objections to the charge and to the refusal of special charges shall be made at the time of the trial.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.20. Bill of Exceptions

The defendant, by himself, or counsel, may tender his bills of exceptions to any decision, opinion, order or charge of the court or other proceedings in the case; and the judge shall sign such bills of exceptions, under the rules prescribed in Article 40.10. The bills of exception may be in narrative form or by questions and answers, and no particular form of words shall be required. Where the matter about which complaint is made and the trial court's ruling thereon reasonably appear from any formal or informal bill of exception, same shall be considered upon appeal, regardless of whether or not the bill of exception is multifarious or relates to more than one subject, complaint, or objection. Where the argument of State's counsel about which complaint is made in a bill of exception is manifestly improper, or violates some mandatory statute, or some new fact is thereby injected into the case, it shall not be necessary that the bill of exception negative that the argument was not invited, or in reply to argument of defendant or his counsel, or any other fact by which the argument complained of may have been authorized. If such matters exist, the trial court by qualification or otherwise, may require the bill of exception to reflect any reason whereby the argument complained of would not be error. The transcription of any evidence, testimony, or argument of State's counsel, with the objections made to such evidence, testimony, or argument, shall constitute an acceptable bill of exceptions under this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.21. To Provide Jury Room

The sheriff shall provide a suitable room for the deliberation of the jury and supply them with such necessary food and lodging as he can obtain. No intoxicating liquor shall be furnished them. In all cases wherein a jury consists partly of male jurors and partly of female jurors, the sheriff shall provide facilities for the female jurors separate and apart from the facilities provided for the male jurors.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.22. Conversing With Jury

No person shall be permitted to be with a jury while it is deliberating. No person shall be permitted to converse with a juror about the case on trial except in the presence and by the permission of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.23. Violation of Preceding Article

Any juror or other person violating the preceding Article shall be punished for contempt of court by confinement in jail not to exceed three days or by fine not to exceed one hundred dollars, or by both such fine and imprisonment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.24. Officer Shall Attend Jury

The sheriff of the county shall furnish the court with a bailiff during the trial of any case to attend the wants of the jury and to act under the direction

of the court. If the person furnished by the sheriff is to be called as a witness in the case he may not serve as bailiff.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.25. Written Evidence

There shall be furnished to the jury upon its request any exhibits admitted as evidence in the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.26. Foreman of Jury

Each jury shall appoint one of its members foreman.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.27. Jury May Communicate With Court

When the jury wishes to communicate with the court, it shall so notify the sheriff, who shall inform the court thereof. Any communication relative to the cause must be written, prepared by the foreman and shall be submitted to the court through the bailiff. The court shall answer any such communication in writing, and before giving such answer to the jury shall use reasonable diligence to secure the presence of the defendant and his counsel, and shall first submit the question and also submit his answer to the same to the defendant or his counsel or objections and exceptions, in the same manner as any other written instructions are submitted to such counsel, before the court gives such answer to the jury, but if he is unable to secure the presence of the defendant and his counsel, then he shall proceed to answer the same as he deems proper. The written instruction or answer to the communication shall be read in open court unless expressly waived by the defendant.

All such proceedings in felony cases shall be a part of the record and recorded by the court reporter.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.28. Jury May Have Witness Re-Examined or Testimony Read

In the trial of a criminal case in a court of record, if the jury disagree as to the statement of any witness they may, upon applying to the court, have read to them from the court reporter's notes that part of such witness testimony or the particular point in dispute, and no other; but if there be no such reporter, or if his notes cannot be read to the jury, the court may cause such witness to be again brought upon the stand and the judge shall direct him to repeat his testimony as to the point in dispute, and no other, as nearly as he can in the language used on the trial.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.29. If a Juror Becomes Ill

(a) Not less than twelve jurors can render and return a verdict in a felony case. It must be concurred in by each juror and signed by the foreman. Except as provided in Subsection (b) of this section, however, when pending the trial of any felony case, one juror may die or be disabled from sitting at any time before the charge of the court is read to the jury, the remainder of the jury shall have the power to render the verdict; but when the verdict shall be rendered by less than the whole number, it shall be signed by every member of the jury concurring in it.

(b) If alternate jurors have been selected in a capital case and a juror dies or becomes disabled from sitting at any time before the charge of the court is read to the jury, the alternate juror whose name was called first under Article 35.26 of this code shall replace the dead or disabled juror. Likewise, if another juror dies or becomes disabled from sitting before the charge of the court is read to the jury, the other alternate juror shall replace the second juror to die or become disabled.

(c) After the charge of the court is read to the jury, if any one of them becomes so sick as to prevent the continuance of his duty, or any accident of circumstance occurs to prevent their being kept together under circumstances under which the law or the instructions of the court requires that they be kept together, the jury shall be discharged.

(d) After the charge of the court is read to the jury, the court shall discharge an alternate juror who has not replaced a juror.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 2264, ch. 545, § 2, eff. June 12, 1981.]

Art. 36.30. Discharging Jury in Misdemeanor

If nine of the jury can be kept together in a misdemeanor case in the district court, they shall not be discharged. If more than three of the twelve are discharged, the entire jury shall be discharged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.31. Disagreement of Jury

After the cause is submitted to the jury, it may be discharged when it cannot agree and both parties consent to its discharge; or the court may in its discretion discharge it where it has been kept to-

gether for such time as to render it altogether improbable that it can agree.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.32. Receipt of Verdict and Final Adjournment

During the trial of any case, the term shall be deemed to have been extended until such time as the jury has rendered its verdict or been discharged according to law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 36.33. Discharge Without Verdict

When a jury has been discharged, as provided in the four preceding Articles, without having rendered a verdict, the cause may be again tried at the same or another term.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER THIRTY-SEVEN. THE VERDICT

Art.
37.01. Verdict.
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Art. 37.01. Verdict

A "verdict" is a written declaration by a jury of its decision of the issue submitted to it in the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 37.02. Verdict by Nine Jurors

In misdemeanor cases in the district court, where one or more jurors have been discharged from serving after the cause has been submitted to them, if all the alternate jurors selected under Article 33.011 of this code have either been seated or discharged, and there be as many as nine of the jurors remaining, those remaining may render and return a verdict; but in such case, the verdict must be signed by each juror rendering it.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1983, 68th Leg., p. 4594, ch. 775, § 4, eff. Aug. 29, 1983.]

Art. 37.03. In County Court

In the county court the verdict must be concurred in by each juror.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 37.04. When Jury Has Agreed

When the jury agrees upon a verdict, it shall be brought into court by the proper officer; and if it states that it has agreed, the verdict shall be read aloud by the judge, the foreman, or the clerk. If in proper form and no juror dissents therefrom, and neither party requests a poll of the jury, the verdict shall be entered upon the minutes of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 171, ch. 78, § 1, eff. April 30, 1981.]

Art. 37.05. Polling the Jury

The State or the defendant shall have the right to have the jury polled, which is done by calling separately the name of each juror and asking him if the verdict is his. If all, when asked, answer in the affirmative, the verdict shall be entered upon the minutes; but if any juror answer in the negative, the jury shall retire again to consider its verdict.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 37.06. Presence of Defendant

In felony cases the defendant must be present when the verdict is read unless his absence is wilful or voluntary. A verdict in a misdemeanor case may be received and read in the absence of the defendant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 37.07. Verdict Must be General; Separate Hearing on Proper Punishment

Sec. 1. (a) The verdict in every criminal action must be general. When there are special pleas on which a jury is to find they must say in their verdict that the allegations in such pleas are true or untrue.

(b) If the plea is not guilty, they must find that the defendant is either guilty or not guilty, and, except as provided in Section 2, they shall assess the punishment in all cases where the same is not absolutely fixed by law to some particular penalty.

(c) If the charging instrument contains more than one count or if two or more offenses are consolidated for trial pursuant to Chapter 3 of the Penal Code, the jury shall be instructed to return a finding of guilty or not guilty in a separate verdict as to each count and offense submitted to them.

Sec. 2. (a) In all criminal cases, other than misdemeanor cases of which the justice court or municipal court has jurisdiction, which are tried before a

jury on a plea of not guilty, the judge shall, before argument begins, first submit to the jury the issue of guilt or innocence of the defendant of the offense or offenses charged, without authorizing the jury to pass upon the punishment to be imposed.

(b) Except as provided in Article 37.071, if a finding of guilty is returned, it shall then be the responsibility of the judge to assess the punishment applicable to the offense; provided, however, that (1) in any criminal action where the jury may recommend probation and the defendant filed his sworn motion for probation before the trial began, and (2) in other cases where the defendant so elects in writing at the time he enters his plea in open court, the punishment shall be assessed by the same jury. If a finding of guilty is returned, the defendant may, with the consent of the attorney for the state, change his election of one who assesses the punishment.

(c) Punishment shall be assessed on each count on which a finding of guilty has been returned.

Sec. 3. Evidence of prior criminal record in all criminal cases after a finding of guilty

(a) Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may be offered by the state and the defendant as to the prior criminal record of the defendant, his general reputation and his character. The term prior criminal record means a final conviction in a court of record, or a probated or suspended sentence that has occurred prior to trial, or any final conviction material to the offense charged.

(b) After the introduction of such evidence has been concluded, and if the jury has the responsibility of assessing the punishment, the court shall give such additional written instructions as may be necessary and the order of procedure and the rules governing the conduct of the trial shall be the same as are applicable on the issue of guilt or innocence.

(c) In cases where the matter of punishment is referred to the jury, the verdict shall not be complete until the jury has rendered a verdict both on the guilt or innocence of the defendant and the amount of punishment, where the jury finds the defendant guilty. In the event the jury shall fail to agree, a mistrial shall be declared, the jury shall be discharged, and no jeopardy shall attach.

(d) When the judge assesses the punishment, he may order an investigative report as contemplated in Section 4 of Article 42.12 of this code and after considering the report, and after the hearing of the evidence hereinabove provided for, he shall forthwith announce his decision in open court as to the punishment to be assessed.

(e) Nothing herein contained shall be construed as affecting the admissibility of extraneous offenses on the question of guilt or innocence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1739, ch. 659, § 22, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 971, ch. 399, § 2(A), eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1126, ch. 426, art. 3, § 2, eff. June 14, 1973; Acts 1981, 67th Leg., p. 2466, ch. 639, § 1, eff. Sept. 1, 1981.]

Art. 37.071. Procedure in Capital Case

(a) Upon a finding that the defendant is guilty of a capital offense, the court shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death or life imprisonment. The proceeding shall be conducted in the trial court before the trial jury as soon as practicable. In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence. This subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Texas. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

(b) On conclusion of the presentation of the evidence, the court shall submit the following issues to the jury:

(1) whether the conduct of the defendant that caused the death of the deceased was committed deliberately and with the reasonable expectation that the death of the deceased or another would result;

(2) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and

(3) if raised by the evidence, whether the conduct of the defendant in killing the deceased was unreasonable in response to the provocation, if any, by the deceased.

(c) The state must prove each issue submitted beyond a reasonable doubt, and the jury shall return a special verdict of "yes" or "no" on each issue submitted.

(d) The court shall charge the jury that:

(1) it may not answer any issue "yes" unless it agrees unanimously; and

(2) it may not answer any issue "no" unless 10 or more jurors agree.

(e) If the jury returns an affirmative finding on each issue submitted under this article, the court shall sentence the defendant to death. If the jury returns a negative finding on or is unable to answer any issue submitted under this article, the court shall sentence the defendant to confinement in the Texas Department of Corrections for life. The court, the attorney for the state, or the attorney for the defendant may not inform a juror or a prospec-

tive juror of the effect of failure of the jury to agree on an issue submitted under this article.

(f) The judgment of conviction and sentence of death shall be subject to automatic review by the Court of Criminal Appeals within 60 days after certification by the sentencing court of the entire record unless time is extended an additional period not to exceed 30 days by the Court of Criminal Appeals for good cause shown. Such review by the Court of Criminal Appeals shall have priority over all other cases, and shall be heard in accordance with rules promulgated by the Court of Criminal Appeals.

[Acts 1973, 63rd Leg., p. 1125, ch. 426, art. 3, § 1, eff. June 14, 1973. Amended by Acts 1981, 67th Leg., p. 2673, ch. 725, § 1, eff. Aug. 31, 1981.]

Art. 37.08. Conviction of Lesser Included Offense

In a prosecution for an offense with lesser included offenses, the jury may find the defendant not guilty of the greater offense, but guilty of any lesser included offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 972, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 37.09. Lesser Included Offense

An offense is a lesser included offense if:

(1) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(2) it differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property, or public interest suffices to establish its commission;

(3) it differs from the offense charged only in the respect that a less culpable mental state suffices to establish its commission; or

(4) it consists of an attempt to commit the offense charged or an otherwise included offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 972, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 37.10. Informal Verdict

If the verdict of the jury is informal, its attention shall be called to it, and with its consent the verdict may, under the direction of the court, be reduced to the proper form. If the jury refuses to have the verdict altered, it shall again retire to its room to deliberate, unless it manifestly appear that the verdict is intended as an acquittal; and in that case, the judgment shall be rendered accordingly, discharging the defendant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 37.11. Defendants Tried Jointly

Where several defendants are tried together, the jury may convict each defendant it finds guilty and acquit others. If it agrees to a verdict as to one or more, it may find a verdict in accordance with such agreement, and if it cannot agree as to others, a mistrial may be entered as to them.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 37.12. Judgment on Verdict

On each verdict of acquittal or conviction, the proper judgment shall be entered immediately. If acquitted, the defendant shall be at once discharged from all further liability upon the charge for which he was tried; provided that, in misdemeanor cases where there is returned a verdict, or a plea of guilty is entered and the punishment assessed is by fine only, the court may, on written request of the defendant and for good cause shown, defer judgment until some other day fixed by order of the court; but in no event shall the judgment be deferred for a longer period of time than six months. On expiration of the time fixed by the order of the court, the court or judge thereof, shall enter judgment on the verdict or plea and the same shall be executed as provided by Chapter 43 of this Code. Provided further, that the court or judge thereof, in the exercise of sound discretion may permit the defendant where judgment is deferred, to remain at large on his personal bond, or may require him to enter into bail bond in a sum at least double the amount of the assessed fine and costs, conditioned that the defendant and sureties, jointly and severally, will pay such fine and costs unless the defendant personally appears on the day, set in the order and discharges the judgment in the manner provided by Chapter 43 of this Code; and for the enforcement of any judgment entered, all writs, processes and remedies of this Code are made applicable so far as necessary to carry out the provisions of this Article.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 37.13. If Jury Believes Accused Insane

When a jury has been impaneled to assess the punishment upon a plea of guilty, it shall say in its verdict what the punishment is which it assesses; but if it is of the opinion that a person pleading guilty is insane, it shall so report to the court, and an issue as to that fact shall be tried before another jury; and if, upon such trial, it be found that the defendant is insane, such proceedings shall be had as directed in cases where a defendant becomes insane after conviction.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 37.14. Acquittal of Higher Offense as Jeopardy

If a defendant, prosecuted for an offense which includes within it lesser offenses, be convicted of an offense lower than that for which he is indicted, and a new trial be granted him, or the judgment be arrested for any cause other than the want of jurisdiction, the verdict upon the first trial shall be considered an acquittal of the higher offense; but he may, upon a second trial, be convicted of the same offense of which he was before convicted, or any other inferior thereto.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER THIRTY-EIGHT. EVIDENCE IN CRIMINAL ACTIONS

Art.

38.01. Rules of Common Law.
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Art. 38.01. Rules of Common Law

The rules of evidence known to the common law of England, both in civil and criminal cases, shall govern in the trial of criminal actions in this State, except where they are in conflict with the provisions of this Code or of some other statute of the State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.02. Rules of Civil Statute

The rules of evidence prescribed in the statute law of this State in civil suits shall, so far as applicable, govern also in criminal actions when not in conflict with the provisions of this Code or of the Penal Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.03. Presumption of Innocence

All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that he has been arrested, confined, or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 2247, ch. 539, § 1, eff. June 12, 1981.]

Art. 38.04. Jury are Judges of Facts

The jury, in all cases, is the exclusive judge of the facts proved, and of the weight to be given to the testimony, except where it is provided by law that proof of any particular fact is to be taken as either conclusive or presumptive proof of the existence of another fact, or where the law directs that a certain degree of weight is to be attached to a certain species of evidence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.05. Judge Shall Not Discuss Evidence

In ruling upon the admissibility of evidence, the judge shall not discuss or comment upon the weight of the same or its bearing in the case, but shall simply decide whether or not it is admissible; nor shall he, at any stage of the proceeding previous to the return of the verdict, make any remark calculated to convey to the jury his opinion of the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.06. Persons Competent to Testify

All persons are competent to testify in criminal cases except the following:

1. Insane persons who are in an insane condition of mind at the time when they are offered as a witness, or who were in that condition when the events happened of which they are called to testify; and

2. Children or other persons who, after being examined by the court, appear not to possess sufficient intellect to relate transactions with respect to which they are interrogated, or who do not understand the obligation of an oath.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.07. Testimony in Corroboration of Victim of Sexual Offense

A conviction under Chapter 21, Section 22.011, or Section 22.021, Penal Code, is supportable on the uncorroborated testimony of the victim of the sexual offense if the victim informed any person, other than the defendant, of the alleged offense within six months after the date on which the offense is alleged to have occurred. The requirement that the victim inform another person of an alleged offense does not apply if the victim was younger than 14 years of age at the time of the alleged offense. The court shall instruct the jury that the time which lapsed between the alleged offense and the time it was reported shall be considered by the jury only for the purpose of assessing the weight to be given to the testimony of the victim.

[Acts 1975, 64th Leg., p. 479, ch. 203, § 6, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 2090, ch. 382, § 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5317, ch. 977, § 7, eff. Sept. 1, 1983.]

Subsection 7(b) of the 1975 amendatory act provided:

"Sections 3 and 6 of this Act apply to the prosecution of criminal offenses committed but not brought to trial before the effective date of this Act."

Section 2 of Acts 1983, 68th Leg., p. 2091, ch. 382, provides:

"The change in the law made by this Act applies only to a prosecution commenced on or after the effective date of this Act. A prosecution commenced before the effective date of this Act is covered by the law in effect when the prosecution was commenced."

Section 13 of Acts 1983, 68th Leg., p. 5321, ch. 977, provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act.

"(b) An offense committed before the effective date of this Act is covered by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Art. 38.071. Testimony of Child Who is Victim of Offense

Sec. 1. This article applies only to a proceeding in the prosecution of an offense, including but not limited to an offense under Chapter 21, Penal Code, as amended, or Section 43.25, Penal Code, as amended, alleged to have been committed against a child 12 years of age or younger, and applies only to the statements or testimony of that child.

Sec. 2. (a) The recording of an oral statement of the child made before the proceeding begins is admissible into evidence if:

(1) no attorney for either party was present when the statement was made;

(2) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(3) the recording equipment was capable of making an accurate recording, the operator of the equipment was competent, and the recording is accurate and has not been altered;

(4) the statement was not made in response to questioning calculated to lead the child to make a particular statement;

(5) every voice on the recording is identified;

(6) the person conducting the interview of the child in the recording is present at the proceeding and available to testify or be cross-examined by either party;

(7) the defendant or the attorney for the defendant is afforded an opportunity to view the recording before it is offered into evidence; and

(8) the child is available to testify.

(b) If the electronic recording of the oral statement of a child is admitted into evidence under this section, either party may call the child to testify, and the opposing party may cross-examine the child.

Sec. 3. The court may, on the motion of the attorney for any party, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding. Only the attorneys for the defendant and for the state, persons necessary to operate the equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant.

Sec. 4. The court may, on the motion of the attorney for any party, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding. Only those persons permitted to be present at the taking of testimony under Section 3 of this article may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by Section 3. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child

cannot hear or see the defendant. The court shall also ensure that:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and is not altered;

(3) each voice on the recording is identified; and

(4) each party is afforded an opportunity to view the recording before it is shown in the courtroom.

Sec. 5. If the court orders the testimony of a child to be taken under Section 3 or 4 of this article, the child may not be required to testify in court at the proceeding for which the testimony was taken.

[Acts 1983, 68th Leg., p. 3828, ch. 599, § 1, eff. Aug. 29, 1983.]

Art. 38.08. Defendant May Testify

Any defendant in a criminal action shall be permitted to testify in his own behalf therein, but the failure of any defendant to so testify shall not be taken as a circumstance against him, nor shall the same be alluded to or commented on by counsel in the cause.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.09. Court May Determine Competency

The court may, upon suggestion made, or of its own option interrogate a person who is offered as a witness, to ascertain whether he is competent to testify, or the competency or incompetency of the witness may be shown by evidence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.10. All Others Competent Witnesses

All other persons, except those enumerated in Articles 38.06, 38.101, 38.11, and 38.111, whatever may be the relationship between the defendant and witness, are competent to testify, except that an attorney at law shall not disclose a communication made to him by his client during the existence of that relationship, nor disclose any other fact which came to the knowledge of such attorney by reason of such relationship.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1971, 62nd Leg., p. 2984, ch. 983, § 1, eff. June 15, 1971; Acts 1983, 68th Leg., p. 1643, ch. 310, § 1, eff. Sept. 1, 1983.]

Art. 38.101. Communications by Drug Abusers

A communication to any person involved in the treatment or examination of drug abusers by a person being treated voluntarily or being examined for admission to voluntary treatment for drug abuse is not admissible. However, information derived from the treatment or examination of drug abusers may be used for statistical and research purposes if the names of the patients are not revealed.

[Acts 1971, 62nd Leg., p. 2984, ch. 983, § 2, eff. June 15, 1971.]

Art. 38.11. Husband or Wife as Witness

Neither husband nor wife shall, in any case, testify as to communications made by one to the other while married. Neither husband nor wife shall, in any case, after the marriage relation ceases, be made witnesses as to any communication made while the marriage relation existed except in a case where one or the other is on trial for an offense and a declaration or communication made by the wife to the husband or by the husband to the wife goes to extenuate or justify the offense. The husband and wife may, in all criminal actions, be witnesses for each other, but except as hereinafter provided, they shall in no case testify against each other in a criminal prosecution. However, a wife or husband may voluntarily testify against each other in any case for an offense involving any grade of assault or violence committed by one against the other or against any child of either under 16 years of age, or in any case where either is charged with incest of a child of either, or in any case where either is charged with bigamy, or in any case where either is charged with interference with child custody, or in any case where either is charged with nonsupport of his or her spouse or minor child.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 972, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 38.111. Communications to Clergymen

(a) In this article:

(1) A "clergyman" is a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization or an individual reasonably believed so to be by the person consulting him.

(2) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) A defendant has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the defendant to a clergyman in his professional character as spiritual adviser.

[Acts 1983, 68th Leg., p. 1643, ch. 310, § 1, eff. Sept. 1, 1983.]

Art. 38.12. Religious Opinion

No person is incompetent to testify on account of his religious opinion or for the want of any religious belief.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.13. Judge as a Witness

The trial judge is a competent witness for either the State or the accused, and may be sworn by the clerk of his court and examined, but he is not required to testify if he declares that there is no fact within his knowledge important in the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.14. Testimony of Accomplice

A conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.15. Two Witnesses in Treason

No person can be convicted of treason except upon the testimony of at least two witnesses to the same overt act, or upon his own confession in open court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.16. Evidence in Treason

Evidence shall not be admitted in a prosecution for treason as to an overt act not expressly charged in the indictment; nor shall any person be convicted under an indictment for treason unless one or more overt acts are expressly charged therein.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.17. Two Witnesses Required

In all cases where, by law, two witnesses, or one with corroborating circumstances, are required to authorize a conviction, if the requirement be not fulfilled, the court shall instruct the jury to render a verdict of acquittal, and they are bound by the instruction.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.18. Perjury and Aggravated Perjury

(a) No person may be convicted of perjury or aggravated perjury if proof that his statement is false rests solely upon the testimony of one witness other than the defendant.

(b) Paragraph (a) of this article does not apply to prosecutions for perjury or aggravated perjury involving inconsistent statements.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 973, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 38.19. Intent to Defraud in Forgery

In trials of forgery, it need not be proved that the defendant committed the act with intent to defraud any particular person. It shall be sufficient to prove that the forgery was, in its nature, calculated to injure or defraud any of the sovereignties, bodies corporate or politic, officers or persons, named in the definition of forgery in the Penal Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.20. Dying Declarations

The dying declaration of a deceased person may be offered in evidence, either for or against a defendant charged with the homicide of such deceased person, under the restrictions hereafter provided. To render the declarations of the deceased competent evidence, it must be satisfactorily proved:

1. That at the time of making such declaration he was conscious of approaching death, and believed there was no hope of recovery;
2. That such declaration was voluntarily made, and not through the persuasion of any person;
3. That such declaration was not made in answer to interrogatories calculated to lead the deceased to make any particular statement; and
4. That he was of sane mind at the time of making the declaration.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.21. Statement

A statement of an accused may be used in evidence against him if it appears that the same was freely and voluntarily made without compulsion or persuasion, under the rules hereafter prescribed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1977, 65th Leg., p. 935, ch. 348, § 1, eff. Aug. 29, 1977.]

Art. 38.22. When Statements May be Used

Sec. 1. In this article, a written statement of an accused means a statement signed by the accused or a statement made by the accused in his own handwriting or, if the accused is unable to write, a statement bearing his mark, when the mark has been witnessed by a person other than a peace officer.

Sec. 2. No written statement made by an accused as a result of custodial interrogation is admis-

sible as evidence against him in any criminal proceeding unless it is shown on the face of the statement that:

(a) the accused, prior to making the statement, either received from a magistrate the warning provided in Article 15.17 of this code or received from the person to whom the statement is made a warning that:

(1) he has the right to remain silent and not make any statement at all and that any statement he makes may be used against him at his trial;

(2) any statement he makes may be used as evidence against him in court;

(3) he has the right to have a lawyer present to advise him prior to and during any questioning;

(4) if he is unable to employ a lawyer, he has the right to have a lawyer appointed to advise him prior to and during any questioning; and

(5) he has the right to terminate the interview at any time; and

(b) the accused, prior to and during the making of the statement, knowingly, intelligently, and voluntarily waived the rights set out in the warning prescribed by Subsection (a) of this section.

Sec. 3. (a) No oral or sign language statement of an accused made as a result of custodial interrogation shall be admissible against the accused in a criminal proceeding unless:

(1) an electronic recording, which may include motion picture, video tape, or other visual recording, is made of the statement;

(2) prior to the statement but during the recording the accused is given the warning in Subsection (a) of Section 2 above and the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning;

(3) the recording device was capable of making an accurate recording, the operator was competent, and the recording is accurate, has not been altered, and reflects that the accused was advised before the interrogation that the interrogation will be recorded; and

(4) all voices on the recording are identified.

(b) Every electronic recording of any statement made by an accused during a custodial interrogation must be preserved until such time as the defendant's conviction for any offense relating thereto is final, all direct appeals therefrom are exhausted, or the prosecution of such offenses is barred by law.

(c) Subsection (a) of this section shall not apply to any statement which contains assertions of facts or circumstances that are found to be true and which conduce to establish the guilt of the accused, such as the finding of secreted or stolen property or the instrument with which he states the offense was committed.

(d) If the accused is a deaf person, the accused's statement under Section 2 or Section 3(a) of this article is not admissible against the accused unless the warning in Section 2 of this article is interpreted to the deaf person by an interpreter who is qualified and sworn as provided in Article 38.31 of this code.

Sec. 4. When any statement, the admissibility of which is covered by this article, is sought to be used in connection with an official proceeding, any person who swears falsely to facts and circumstances which, if true, would render the statement admissible under this article is presumed to have acted with intent to deceive and with knowledge of the statement's meaning for the purpose of prosecution for aggravated perjury under Section 37.03 of the Penal Code. No person prosecuted under this subsection shall be eligible for probation.

Sec. 5. Nothing in this article precludes the admission of a statement made by the accused in open court at his trial, before a grand jury, or at an examining trial in compliance with Articles 16.03 and 16.04 of this code, or of a statement that is the res gestae of the arrest or of the offense, or of a statement that does not stem from custodial interrogation, or of a voluntary statement, whether or not the result of custodial interrogation, that has a bearing upon the credibility of the accused as a witness, or of any other statement that may be admissible under law.

Sec. 6. In all cases where a question is raised as to the voluntariness of a statement of an accused, the court must make an independent finding in the absence of the jury as to whether the statement was made under voluntary conditions. If the statement has been found to have been voluntarily made and held admissible as a matter of law and fact by the court in a hearing in the absence of the jury, the court must enter an order stating its conclusion as to whether or not the statement was voluntarily made, along with the specific finding of facts upon which the conclusion was based, which order shall be filed among the papers of the cause. Such order shall not be exhibited to the jury nor the finding thereof made known to the jury in any manner. Upon the finding by the judge as a matter of law and fact that the statement was voluntarily made, evidence pertaining to such matter may be submitted to the jury and it shall be instructed that unless the jury believes beyond a reasonable doubt that the statement was voluntarily made, the jury shall not consider such statement for any purpose nor any evidence obtained as a result thereof. In any case where a motion to suppress the statement has been filed and evidence has been submitted to the court on this issue, the court within its discretion may reconsider such evidence in his finding that the statement was voluntarily made and the same evidence submitted to the court at the hearing on the motion to suppress shall be made a part of

the record the same as if it were being presented at the time of trial. However, the state or the defendant shall be entitled to present any new evidence on the issue of the voluntariness of the statement prior to the court's final ruling and order stating its findings.

Sec. 7. When the issue is raised by the evidence, the trial judge shall appropriately instruct the jury, generally, on the law pertaining to such statement.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1740, ch. 659, § 23, eff. Aug. 28, 1967; Acts 1977, 65th Leg., p. 935, ch. 348, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 398, ch. 186, §§ 4, 5, eff. May 15, 1979; Acts 1981, 67th Leg., p. 711, ch. 271, § 1, eff. Sept. 1, 1981.]

Section 3 of the 1977 amendatory act provided:

"This Act applies only to statements made on or after its effective date."

Section 2 of the 1981 amendatory act provides:

"This Act applies to oral statements of an accused made on or after its effective date. Section 3, Article 38.22, Code of Criminal Procedure, 1965, as amended, as in existence before the effective date of this Act, is continued in force for the purpose of determining the admissibility in a criminal proceeding of an oral statement of an accused made before the effective date of this Act."

Art. 38.23. Evidence Not to be Used

No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case.

In any case where the legal evidence raises an issue hereunder, the jury shall be instructed that if it believes, or has a reasonable doubt, that the evidence was obtained in violation of the provisions of this Article, then and in such event, the jury shall disregard any such evidence so obtained.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.24. Part of an Act, Declaration, Conversation or Writing

When part of an act, declaration or conversation or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other, as when a letter is read, all letters on the same subject between the same parties may be given. When a detailed act, declaration, conversation or writing is given in evidence, any other act, declaration or writing which is necessary to make it fully understood or to explain the same may also be given in evidence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.25. Written Part of Instrument Controls

When an instrument is partly written and partly printed, the written shall control the printed portion when the two are inconsistent.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.26. If Subscribing Witness Denies Execution

When a subscribing witness denies or does not recollect the execution of an instrument to which his name appears, its execution may be proved by other evidence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.27. Evidence of Handwriting

It is competent to give evidence of handwriting by comparison, made by experts or by the jury. Proof by comparison only shall not be sufficient to establish the handwriting of a witness who denies his signature under oath.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.28. Attacking Testimony of His Own Witness

A party may, when testimony of his own witness is injurious to his cause, attack the testimony in any other manner except by offering evidence of the witness' bad character.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.29. Indictment, Information or Complaint Not Admissible to Impeach Witness

The fact that a defendant in a criminal case, or a witness in a criminal case, is or has been, charged by indictment, information or complaint, with the commission of an offense against the criminal laws of this State, of the United States, or any other State shall not be admissible in evidence on the trial of any criminal case for the purpose of impeaching any person as a witness unless on trial under such indictment, information or complaint a final conviction has resulted, or a suspended sentence has been given and has not been set aside, or such person has been placed on probation and the period of probation has not expired. In trials of defendants under Article 36.09, it may be shown that the witness is presently charged with the same offense as the defendant at whose trial he appears as a witness.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 38.30. Interpreter

When a motion for appointment of an interpreter is filed by any party or on motion of the court, in any criminal proceeding, it is determined that a person charged or a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him. Any person may be subpoenaed, attached or recognized in any criminal action or proceeding, to appear before the proper judge or court to act as interpreter therein, under the same rules and penalties as are provided for witnesses. In the event that the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or the interpreter is not familiar with use of slang, the person charged or witness may be permitted by the court to nominate another person to act as intermediary between himself and the appointed interpreter during the proceedings. Interpreters appointed under the terms of this article will receive from the general fund of the county for their services a sum not to exceed $100 a day as follows: interpreters shall be paid not less than $15 nor more than $100 a day at the discretion of the judge presiding, and when travel of the interpreter is involved all the actual expenses of travel, lodging, and meals incurred by the interpreter pertaining to the case he is appointed to serve shall be paid at the same rate applicable to state employees.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 453, ch. 209, § 1, eff. Aug. 27, 1979.]

Sections 3 and 4 of the 1979 amendatory act provided:

"Sec. 3. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 4. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Art. 38.31. Interpreters for Deaf Persons

(a) If the court is notified by a party that the defendant is deaf and will be present at an arraignment, hearing, examining trial, or trial, or that a witness is deaf and will be called at a hearing, examining trial, or trial, the court shall appoint a qualified interpreter to interpret the proceedings in any language that the deaf person can understand, including but not limited to sign language. On the court's motion or the motion of a party, the court may order testimony of a deaf witness and the interpretation of that testimony by the interpreter visually, electronically recorded for use in verification of the transcription of the reporter's notes. The clerk of the court shall include that recording in the appellate record if requested by a party under Article 40.09 of this Code.

(b) Following the filing of an indictment, information, or complaint against a deaf defendant, the court on the motion of the defendant shall appoint a qualified interpreter to interpret in a language that the defendant can understand, including but not limited to sign language, communications concerning the case between the defendant and defense counsel. The interpreter may not disclose a communication between the defendant and defense counsel or a fact that came to the attention of the interpreter while interpreting those communications if defense counsel may not disclose that communication or fact.

(c) In all cases where the mental condition of a person is being considered and where such person may be committed to a mental institution, and where such person is deaf, all of the court proceedings pertaining to him shall be interpreted by a qualified interpreter appointed by the court.

(d) A proceeding for which an interpreter is required to be appointed under this Article may not commence until the appointed interpreter is in a position not exceeding ten feet from and in full view of the deaf person.

(e) The interpreter appointed under the terms of this Article shall be required to take an oath that he will make a true interpretation to the person accused or being examined, which person is deaf, of all the proceedings of his case in a language that he understands; and that he will repeat said deaf person's answer to questions to counsel, court, or jury, in the English language, in his best skill and judgment.

(f) Interpreters appointed under this Article are entitled to a reasonable fee determined by the court after considering the recommendations of the State Commission for the Deaf. When travel of the interpreter is involved all the actual expenses of travel, lodging, and meals incurred by the interpreter pertaining to the case he is appointed to serve shall be paid at the same rate applicable to state employees.

(g) In this Code:

(1) "Deaf person" means a person who has a hearing impairment, regardless of whether the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

(2) "Qualified interpreter" means an interpreter for the deaf whose qualifications have been approved by the State Commission for the Deaf.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 195, ch. 105, § 2, eff. Aug. 28, 1967; Acts 1979, 66th Leg., p. 396, ch. 186, § 1, eff. May 15, 1979.]

Art. 38.32. Presumption of Death

(a) Upon introduction and admission into evidence of a valid certificate of death wherein the time of

death of the decedent has been entered by a licensed physician, a presumption exists that death occurred at the time stated in the certificate of death.

(b) A presumption existing pursuant to Section (a) of this Article is sufficient to support a finding as to time of death but may be rebutted through a showing by a preponderance of the evidence that death occurred at some other time.

[Acts 1969, 61st Leg., p. 1034, ch. 337, § 1, eff. May 27, 1969.]

Art. 38.33. Preservation and Use of Evidence of Drunk or Drugged Driving Convictions

Documents Filed

Sec. 1. When a person is finally convicted of an offense of driving while intoxicated or of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, the clerk of the court shall mail a notice of the conviction to the sheriff of the county in which the offense occurred. The sheriff shall compile and send to the clerk a copy of the defendant's signature, fingerprint, and driver's license number and copies of any photograph, picture, description, or measurement of the defendant made by a law enforcement agency in connection with that offense. The clerk shall forward to the department of public safety those documents and any complaint, information, indictment, judgment, sentence, mandate, or written waiver or motion in possession of the clerk pertaining to the conviction and the name of the attorney of record in that case.

Use as Evidence

Sec. 2. A certified copy of a document of the department of public safety forwarded to the department pursuant to Section 1 of this article is admissible as evidence in a criminal proceeding to prove that a particular person was convicted of the offense to which the document pertains if the court finds that 15 days before trial, the party against whom the evidence is offered was provided a copy of the document offered as evidence.

Dissemination of Documents

Sec. 3. (a) On written request of a prosecuting attorney for any documents of the department of public safety forwarded to the department pursuant to Section 1 of this article pertaining to a particular person, the department shall furnish the prosecuting attorney at no cost to the prosecuting attorney certified copies of those documents.

(b) The court in which a criminal case is pending may request the department to mail to the defendant or the defendant's attorney copies of documents filed in the name of the defendant under Section 1 of this article. The department shall furnish the copies to the defendant or the defendant's attorney without cost to the defendant or the attorney.

[Acts 1979, 66th Leg., p. 1851, ch. 751, § 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 1586, ch. 303, § 7, eff. Jan. 1, 1984.]

Section 28(c) of the 1983 amendatory act provides:

"An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

CHAPTER THIRTY-NINE. DEPOSITIONS AND DISCOVERY

Art.
39.01. In Examining Trial.
39.02. Depositions for Defendant.
39.03. Officers Who May Take the Deposition.
39.04. Applicability of Civil Rules.
39.05. Objections.
39.06. Written Interrogatories.
39.07. Certificate.
39.08. Authenticating the Deposition.
39.09. Non-Resident Witnesses.
39.10. Return.
39.11. Waiver.
39.12. Predicate to Read.
39.13. Impeachment.
39.14. Discovery.

Art. 39.01. In Examining Trial

When an examination takes place in a criminal action before a magistrate, the defendant may have the deposition of any witness taken by any officer or officers named in this Chapter. The defendant shall not use the deposition for any purpose unless he first consent that the entire evidence or statement of the witness may be used against him by the State on the trial of the case, subject to all legal objections. The deposition of a witness duly taken before an examining trial or a jury of inquest and reduced to writing and certified according to law where the defendant was present when such testimony was taken, and had the privilege afforded of cross-examining the witness, or taken at any prior trial of the defendant for the same offense, may be used by either the State or the defendant in the trial of such defendant's criminal case under the following circumstances:

When oath is made by the party using the same that the witness resides outside the State; or that since his testimony was taken, the witness has died, or that he has removed beyond the limits of the State, or that he has been prevented from attending the court through the act or agency of the other party, or by the act or agency of any person whose object was to deprive the defendant of the benefit of the testimony; or that by reason of age or bodily infirmity, such witness cannot attend. When the testimony is sought to be used by the State, the oath may be made by any credible person. When

sought to be used by the defendant, the oath shall be made by him in person.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 39.02. Depositions for Defendant

Depositions of witnesses may be taken by the defendant. When the defendant desires to take the deposition of a witness, he shall, by himself or counsel, file with the clerk of the court in which the case is pending an affidavit stating the facts necessary to constitute a good reason for taking the same, and an application to take the same. Provided that upon the filing of such application, and after notice to the attorney for the state, the courts shall hear the application and determine if good reason exists for taking the deposition. Such determination shall be based on the facts made known at the hearing and the court, in its judgment, shall grant or deny the application on such facts.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1741, ch. 659, § 24, eff. Aug. 28, 1967.]

Art. 39.03. Officers Who May Take the Deposition

Upon the filing of such an affidavit and application, the court shall appoint, order or designate one of the following persons before whom such deposition shall be taken:

1. A district judge.
2. A county judge.
3. A notary public.
4. A district clerk.
5. A county clerk.

Such order shall specifically name such person and the time when and place where such deposition shall be taken. Failure of a witness to respond thereto, shall be punishable by contempt by the court. Such deposition shall be oral or written, as the court shall direct.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1741, ch. 659, § 25, eff. Aug. 28, 1967.]

Art. 39.04. Applicability of Civil Rules

The rules prescribed in civil cases for issuance of commissions, subpoenaing witnesses, taking the depositions of witnesses and all other formalities governing depositions shall, as to the manner and form of taking and returning the same and other formalities to the taking of the same, govern in criminal actions, when not in conflict with this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 39.05. Objections

The rules of procedure as to objections in depositions in civil actions shall govern in criminal actions when not in conflict with this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 39.06. Written Interrogatories

When any such deposition is to be taken by written interrogatories, such written interrogatories shall be filed with the clerk of the court, and a copy of the same served on all other parties or their counsel for the length of time and in the manner required for service of interrogatories in civil action, and the same procedure shall also be followed with reference to cross-interrogatories as that prescribed in civil actions.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 39.07. Certificate

Where depositions are taken under commission in criminal actions, the officer or officers taking the same shall certify that the person deposing is the identical person named in the commission; or, if they cannot certify to the identity of the witness, there shall be an affidavit of some person attached to the deposition proving the identity of such witness, and the officer or officers shall certify that the person making the affidavit is known to them.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1742, ch. 659, § 26, eff. Aug. 28, 1967.]

Art. 39.08. Authenticating the Deposition

The official seal and signature of the officer taking the deposition shall be attached to the certificate authenticating the deposition.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 39.09. Non-Resident Witnesses

Depositions of a witness residing out of the State may be taken before a judge or before a commissioner of deeds and depositions for this State, who resides within the State where the deposition is to be taken, or before a notary public of the place where such deposition is to be taken, or before any commissioned officer of the armed services or before any diplomatic or consular officer. The deposition of a non-resident witness who may be temporarily within the State, may be taken under the same rules which apply to the taking of depositions of other witnesses in the State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 39.10. Return

In all cases the return of depositions may be made as provided in civil actions.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 39.11. Waiver

The State and defense may agree upon a waiver of any formalities in the taking of a deposition other than that the taking of such deposition must be under oath.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 39.12. Predicate to Read

Depositions taken in criminal actions shall not be read unless oath be made that the witness resides out of the State; or that since his deposition was taken, the witness has died; or that he has removed beyond the limits of the State; or that he has been prevented from attending the court through the act or agency of the defendant; or by the act or agency of any person whose object was to deprive the defendant of the benefit of the testimony; or that by reason of age or bodily infirmity, such witness cannot attend. When the deposition is sought to be used by the State, the oath may be made by any credible person. When sought to be used by the defendant, the oath shall be made by him in person.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 39.13. Impeachment

Nothing contained in the preceding Articles shall be construed as prohibiting the use of any such evidence for impeachment purposes under the rules of evidence heretofore existing at common law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 39.14. Discovery

Upon motion of the defendant showing good cause therefor and upon notice to the other parties, the court in which an action is pending may order the State before or during trial of a criminal action therein pending or on trial to produce and permit the inspection and copying or photographing by or on behalf of the defendant of any designated documents, papers, written statement of the defendant, (except written statements of witnesses and except the work product of counsel in the case and their investigators and their notes or report), books, accounts, letters, photographs, objects or tangible things not privileged, which constitute or contain evidence material to any matter involved in the action and which are in the possession, custody or control of the State or any of its agencies. The order shall specify the time, place and manner of making the inspection and taking the copies and photographs of any of the aforementioned documents or tangible evidence; provided, however, that the rights herein granted shall not extend to written communications between the State or any of its agents or representatives or employees. Nothing in this Act shall authorize the removal of such evidence from the possession of the State, and any inspection shall be in the presence of a representative of the State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

PROCEEDINGS AFTER VERDICT

CHAPTER FORTY. NEW TRIALS

Art.
40.01. Definition of "New Trial".
40.02. Granted Only to Accused.
40.03. Grounds for New Trial in Felony.
40.04. In Misdemeanors.
40.05. Time to Apply for New Trial; Amendment.
40.06. State May Controvert Motion.
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Art. 40.01. Definition of "New Trial"

A "new trial" is the rehearing of a criminal action, after verdict, before the judge or another jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 40.02. Granted Only to Accused

A new trial can in no case be granted where the verdict or judgment has been rendered for the accused.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 40.03. Grounds for New Trial in Felony

New trials, in cases of felony, shall be granted the defendant for the following causes, and for no other:

(1) Where the defendant is an individual and has been tried in his absence, except as otherwise provided in this code, or has been denied counsel;

(2) Where the court has misdirected the jury as to the law, or has committed any other material error calculated to injure the rights of the defendant;

(3) Where the verdict has been decided by lot, or in any other manner than by a fair expression of opinion by the jurors;

(4) Where a juror has received a bribe to convict, or has been guilty of any other corrupt conduct;

(5) Where any material witness of the defendant has, by force, threats or fraud, been prevented from attending the court, or where any written evidence, tending to establish the innocence of the defendant, has been intentionally destroyed or removed so that it could not be produced upon the trial;

(6) Where new evidence material to the defendant has been discovered since the trial. A motion for a new trial on this ground shall be governed by the rules which regulate civil suits;

(7) Where the jury, after having retired to deliberate upon a case, has received other evidence; or where a juror has conversed with any person in regard to the case; or where any juror at any time during the trial or after retiring for deliberation, may have become so intoxicated as to render it probable his verdict was influenced thereby. The mere consumption of alcoholic beverage by a juror shall not be sufficient ground for a new trial;

(8) Where, from the misconduct of the jury, the court is of the opinion that the defendant has not received a fair and impartial trial. It shall be competent to prove such misconduct by the voluntary affidavit of a juror; and the verdict may, in like manner, be sustained by such affidavit; and

(9) Where the verdict is contrary to law and evidence. A verdict is not contrary to the law and evidence, within the meaning of this provision, where the defendant is found guilty of an offense of inferior grade to, but of the same nature as, the offense proved.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 973, ch. 399, § 2(A), eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1127, ch. 426, art. 3, § 5, eff. June 14, 1973.]

Art. 40.04. In Misdemeanors

New trials in misdemeanor cases may be granted for any cause specified in the preceding Article, except that the first cause specified in subdivision 1 of said Article shall not be available as ground for new trial in any misdemeanor case where the maximum punishment may be a fine only.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 40.05. Time to Apply for New Trial; Amendment

(a) A motion for new trial, if filed, shall be filed prior to or within 30 days after the date the sentence is imposed or suspended in open court.

(b) One or more amended motions for new trial may be filed without leave of court before any preceding motion for new trial filed by the movant is overruled and within 30 days after the date the sentence is imposed or suspended in open court.

(c) In the event an original or amended motion for new trial is not determined by written order signed within 75 days after the date the sentence is imposed or suspended in open court, it shall be considered overruled by operation of law on expiration of that period.

(d) It shall be the duty of the proponent of an original or amended motion for new trial to present the same to the court within 10 days after the same is filed. However, at the discretion of the judge, an original motion or amended motion for new trial may be presented or hearing thereon completed after such 10-day period. Such delayed hearing shall not operate to extend the 75-day time limit within which the original or amended motion must be determined.

(e) Within the time limits prescribed in this article, a motion for new trial may be filed after the expiration of the term at which the date the sentence was imposed or suspended in open court, either during a new term of court or during vacation, and a motion for new trial may be determined in vacation or at a new term of court, and need not be determined during the term at which filed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 803, ch. 291, § 107, eff. Sept. 1, 1981.]

Art. 40.06. State May Controvert Motion

The State may take issue with the defendant upon the truth of any cause set forth in the motion for a new trial; and in such case, the judge shall hear evidence, by affidavit or otherwise, and determine the issue.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 40.07. Judge Not to Discuss Evidence

In granting or refusing a new trial, the judge shall not sum up, discuss or comment upon the evidence in the case, but shall simply grant or refuse the motion, without prejudice to either party.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 40.08. Effect of a New Trial

The effect of a new trial is to place the cause in the same position in which it was before any trial had taken place. The former conviction shall be regarded as no presumption of guilt, nor shall it be alluded to in the argument.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 40.09. The Record on Appeal

1. Record on Appeals

In all cases appealable by law to the courts of appeals or the Court of Criminal Appeals, the clerk

of the court that entered the judgment of conviction or order revoking probation sought to be appealed from shall, under his hand and seal of the court, make and prepare an appellate record comprising a true copy of the matter designated by the parties, but shall always include, whether designated or not, copies of the material pleadings, material docket entries made by the court, the court's charges, the jury's verdicts, the judgment or any order revoking probation, the motion or amended motion for new trial, the notice of appeal, any appeal bond, copies of all exhibits on file, other than physical exhibits or documents of unusually large bulk or weight, and all formal bills of exception. The matter so prepared shall be assembled and shall constitute the record on appeal. The pages of this record shall be numbered consecutively and there shall be an index prepared by the clerk showing the location of each document in the record. The record shall be made in duplicate and one copy shall be retained by the clerk for use by the parties with permission of the court.

2. Designation of Material for Inclusion in the Record

Each party may file with the clerk a written designation specifying matter for inclusion in the record. The appellant shall file his designation within 20 days after the giving of notice of appeal. The state shall file its designation within 30 days after the giving of notice of appeal. The failure of the clerk to include designated matter will not be ground for complaint on appeal if the designation specifying such matter is not timely filed. Each party shall serve a copy of its designation on the opposing party.

3. Statement of Facts and Other Proceedings

The record may include a transcription of all or any part of the proceedings shown by notes of the reporter to have occurred before, during or after the trial and the same will constitute the statement of facts for the appeal. A transcription applicable to any proceeding occurring before notice of appeal shall be filed with the clerk for inclusion in the record not later than 60 days after notice of appeal. A transcription of the notes applicable to any proceeding occurring after notice of appeal shall be filed with the clerk for inclusion in the record not later than thirty days after the end of such proceeding.

4. Effect of the Transcription of the Court Reporter's Notes

At the request of either party the court reporter shall take shorthand notes of all trial proceedings, including voir dire examination, objections to the court's charge, and final arguments. He is not entitled to any fee in addition to his salary for taking these notes. A transcription of the reporter's notes when certified to by him and included in the record shall establish the occurrence and existence of all testimony, argument, motions, pleas, objections, exceptions, court actions, refusals of the court to act and other events thereby shown and no further proof of the occurrence or existence of same shall be necessary on appeal; provided, however, that the court shall have power, after hearing, to enter and make part of the record any finding or adjudication which the court may deem essential to make any such transcription speak the truth in any particular in which the court finds it does not speak the truth and any such finding or adjudication having support in the evidence shall be final.

5. Responsibility for Obtaining a Transcription of the Reporter's Notes

If a party desires to have all or any portion of a transcription of the court reporter's notes included in the record, he shall so designate with the clerk in writing and within the time required by Section 2 of this Article. Such party shall then have the responsibility of obtaining such transcription from the court reporter and furnishing the same to the clerk in duplicate in time for inclusion in the record and the appellant shall pay therefor. The court will order the reporter to make such transcription without charge to appellant if the court finds, after hearing in response to an affidavit filed by the appellant not more than 20 days after giving notice of appeal that he is unable to pay or give security therefor. Upon certificate of the court that this service has been rendered, payment therefor shall be made from the general funds by the county in which the offense is alleged to have been committed in a sum to be set by the trial judge. The court reporter shall report any portion of the proceedings requested by either party or directed by the court.

6. Formal Bills of Exception

(a) A party desiring to have the record disclose some action, testimony, evidence, proceeding, objection, exception or other event or occurrence not otherwise shown by the record may utilize a bill of exception for this purpose. Bills of exception must be filed with the clerk within 75 days after notice of appeal is given. The clerk shall notify the court of each bill immediately upon its being filed and shall immediately send a copy of the bill to opposing counsel. Opposing counsel shall then have 10 days after the filing of the bill in which to make his objections to the same. The bill shall then be presented to the court not less than 10 days nor more than 20 days after the filing of the bill. Upon presentation, the court shall either approve the bill without qualification or shall approve it subject to qualification or refuse it, setting forth in the qualification or refusal any reasons that may seem proper to the judge. Notice of the court's action in qualifying or refusing a bill shall be immediately given by

the clerk to the party filing the bill or to his counsel and the opposing counsel, and the party filing the bill, if unwilling to accept the court's qualification or refusal may not later than 15 days after receipt of such notice, file a bystander's bill of exception, and the clerk shall include same in the record. A bill of exception will be deemed approved without qualification if it be not acted upon by the trial judge within a period of 100 days after notice of appeal is given and no extension of time for filing has been granted; provided, however, if an extension of time for filing has been granted, a bill of exception will be deemed approved without qualification if it be not acted upon by the trial judge within a period of 25 days after the actual filing of the bill.

(b) A bill of exception shall be a necessary predicate for appellate review only if the matter complained of is not otherwise shown by the record as herein provided. Errors otherwise shown by the record may be reviewed on appeal without the necessity of any bill of exception. If the date of filing with the clerk of any document in the record is shown by notation of the clerk thereon, no further proof of such date or of the fact of the filing of the document with the clerk shall be necessary. If the transcription of the reporter's notes or any court order or docket entry by the court shows the occurrence or existence of any particular action by the court or refusal of the court to act or any objection or exception or any other event, no further proof of the occurrence or existence of same shall be necessary.

(c) Formal exceptions to rulings on evidence, opinions or other actions of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary, it is sufficient that a party, at the time the ruling, opinion or action of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and if a party has no opportunity to object to the ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

(d)(1) When the court refuses to admit offered testimony or other evidence, the party offering same shall as soon as practicable but before the court's charge is read to the jury be allowed, out of the presence of the jury, to adduce the excluded testimony or other evidence before the reporter, and a transcription of his notes showing such testimony or other evidence and any objections and exceptions of the party offering same shall, when certified to by the reporter and included in the record, establish the nature of such testimony or other evidence, and the objections and exceptions made in connection with the court's exclusion of such testimony or other evidence and no bills of exception shall be essential to authorize appellate review of the question whether the court erred in excluding such testimony or other evidence. The court, in its discretion, may allow an offer of proof in the form of a concise statement by the party offering the same of what the excluded evidence would show, to be made before the reporter out of the presence of the jury as an alternative method of causing the record to show such excluded testimony or other evidence, and in the event the record contains transcription of the reporter's notes showing such an offer of proof the same shall be accepted on appeal as establishing what such excluded testimony or other evidence would have consisted of had it been admitted into evidence.

(2) When testimony or other evidence has been excluded by the court over objection of the party offering same, no further offer of the same need be made to preserve the claimed error.

(3) When the court hears objections to offered evidence out of the presence of the jury and rules that such evidence shall be admitted, then in that event such objections shall be deemed to apply to such evidence when it is admitted before the jury without the necessity of such objections being renewed in the presence of the jury.

7. Approval of the Record

Notice of completion of the record shall be made by the clerk by certified or registered mail to the parties or their respective counsel. If neither files and presents to the court in writing any objection to the record, within 15 days after the mailing of such notice and if the court has no objection to the record, he shall approve the same. If the trial court deems that a supplemental record or any other modification of the record be necessary to make the record speak the truth, for any reason, with or without objections from the state or the defendant, and whether on the court's own motion or the motion of either party or by order of the court of appeals or the Court of Criminal Appeals, the defendant and the state shall be notified by certified or registered mail of same and be given five days from receipt of notice for objections to such modification or supplementation. If objection be made, or if the court fails to approve the record within five days after the expiration of such 15-day period, the court shall set the matter down for hearing, and, after hearing, shall enter such orders as may be appropriate to cause the record to speak the truth and the findings and adjudications in such orders, if supported by evidence, shall be final. In its discretion, the court may require the attendance of the defendant at such hearing. Such proceeding shall be included in the record, and the entire record approved by the court.

8. Filing Approved Record with Clerk

The record, on approval by the court, shall be filed with the clerk of the trial court, who shall immediately transmit it to the appropriate appellate court. Notice of the approval of the record by the court shall be made by the clerk by registered or certified mail to the parties or their respective counsel. The 30-day time limit provided in Section 9 of this article shall commence when the notice is mailed.

9. Appellant's Brief

Within 30 days after approval of the record by the court, the appellant shall file with the clerk of the appellate court the original and three copies of his appellate brief, or the number of copies required by the rules of the court of criminal appeals. The rules may not require him to file more than 10 copies. This brief shall set forth separately each ground of error of which the appellant desires to complain on appeal and may set forth such arguments as he deems appropriate. Each ground of error shall briefly refer to that part of the ruling of the trial court, charge given to the jury, or charge refused, admission or rejection of evidence, or other proceedings which are designated to be complained of in such way so that the point of objection can be clearly identified and understood by the court. If the appellant includes in his brief arguments supporting a particular ground of error, they shall be construed with it in determining what point of objection is sought to be presented by such ground of error; and if the court, upon consideration of such ground of error in the light of arguments made in support thereof in the brief, can identify and understand such point of objection, the same shall be reviewed notwithstanding any generality, vagueness, or any other technical defect that may exist in the language employed to set forth such ground of error.

10. The State's Brief

Within 30 days after appellant files his brief with the clerk of the appellate court, the state shall file with the clerk of the appellate court the original and three copies of its brief, or the number of copies required by the rules of the court of criminal appeals. The rules may not require the state to file more than 10 copies. Each party, upon filing his brief with the clerk of the appellate court, shall cause a true copy thereof to be delivered to the opposing party or to the latter's counsel.

11. Agreed Statement

The parties may agree, with the approval of the trial court, upon a brief statement of the case and of the facts proven as will enable the appellate court to determine whether there is error in the trial. Such statement shall be copied into the record in lieu of the proceedings themselves.

12. Order as to Original Papers or Exhibits

Whenever the trial court is of the opinion that original papers or exhibits should be inspected by the appellate court or sent to the appellate court in lieu of copies, it may make such order therefor and for the safekeeping, transportation and return thereof as it deems proper. The appellate court on its own initiative may direct the clerk of the trial court to send to it any original paper or exhibit for its inspection.

13. Extensions of Time

Text of subd. 13 (former subd. 16) as amended by Acts 1981, 67th Leg., p. 361, ch. 144, § 1

Extensions of time for meeting the limits prescribed in Sections 3, 6, 9, and 10 of this Article for either the appellant or the State may be granted by the trial court for good cause shown on timely application to the trial court.

13. Extensions of Time

Text of subd. 13 as amended by Acts 1981, 67th Leg., p. 804, ch. 291, § 108

Extensions of time for meeting the limits prescribed in Sections 3, 6, 7, 9, and 10 of this Article for either the appellant or the state may be granted by the appellate court in which the case will be filed or a judge thereof for good cause shown on timely application to the appellate court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1742, ch. 659, § 27, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1261, ch. 460, § 2, eff. Aug. 27, 1973; Acts 1977, 65th Leg., p. 638, ch. 236, §§ 1 to 3, eff. May 25, 1977; Acts 1979, 66th Leg., p. 447, ch. 204, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 731, ch. 324, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 865, ch. 390, § 1, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 361, ch. 144, § 1, eff. May 14, 1981; Acts 1981, 67th Leg., p. 804, ch. 291, § 108, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 1730, ch. 329, § 1, eff. Aug. 29, 1983.]

Section 2 of Acts 1979, 66th Leg., p. 866, ch. 390, provided:

"This Act applies to an appellate brief only if that brief is filed with the clerk of the trial court on or after the effective date of this Act."

Art. 40.10. Application of Civil Statutes

The provisions of the rules of civil procedure, insofar as the same are applicable and not in conflict with the provisions of this Code or rules promulgated by the court of criminal appeals, as such rules now exist or may hereafter exist, shall govern bills of exception and statements of fact.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 808, ch. 291, § 109, eff. Sept. 1, 1981.]

Art. 40.11. Requirement for Filing Court Reporter's Notes

(a) In all cases in which a defendant is convicted and sentenced to a term of more than two years and no appeal is taken, the court reporter shall file the nontranscribed notes of the proceeding with the sentencing court within 20 days following the expiration of the time for giving notice of appeal under Article 44.08(b), Code of Criminal Procedure, 1965.

(b) In any case in which a person seeks to obtain a transcription of the proceedings in an action in which the notes of a court reporter have been filed pursuant to the foregoing provision, the court reporter who prepared the notes, if available and able to do so within a reasonable period of time, shall be given the opportunity to prepare any transcription from the notes.

(c) The sentencing court or district clerk shall not be required to retain the notes beyond 15 years from the date of their filing.

[Acts 1983, 68th Leg., p. 5441, ch. 1018, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1983 Act provides that the Act applies only to trials concluded on or after September 1, 1983.

CHAPTER FORTY-ONE. ARREST OF JUDGMENT

Art.
41.01. Motion in Arrest of Judgment.
41.02. Time to Make Motion.
41.03. Granted for Substantial Defect.
41.04. Want of Form.
41.05. Effect of Arresting Judgment.

Art. 41.01. Motion in Arrest of Judgment

A motion in arrest of judgment is an oral or written suggestion to the court on the part of defendant that judgment has not been legally rendered against him. The record must show the grounds of the motion.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 41.02. Time to Make Motion

(a) A motion must be made within 30 days after the date the sentence is imposed or suspended in open court.

(b) In the event a motion in arrest of judgment is not determined by oral order or written signed order within 75 days after the date the sentence is imposed or suspended in open court, it shall be considered overruled by operation of law on expiration of that period.

(c) An order overruling a motion in arrest of judgment shall be considered as an order overruling a motion or amended motion for new trial for the purpose of giving notice of appeal.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 808, ch. 291, § 110, eff. Sept. 1, 1981.]

Art. 41.03. Granted for Substantial Defect

Such motion shall be granted upon any ground which may be good upon exception to an indictment or information for any substantial defect therein.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 41.04. Want of Form

No judgment shall be arrested for want of form.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 41.05. Effect of Arresting Judgment

The effect of arresting a judgment is to place the defendant in the same position he was before the indictment or information was presented; and if the court be satisfied from the evidence that he may be convicted upon a proper indictment or information, he shall be remanded into custody or bailed. If not so satisfied, the defendant shall be discharged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER FORTY-TWO. JUDGMENT AND SENTENCE

Art.
42.01. Judgment.
42.02. Sentence.
42.03. Pronouncing Sentence; Time; Credit for Time Spent in Jail Between Arrest and Sentence or Pending Appeal.
42.04. Sentence When Appeal is Taken.
42.04a. Issuance of Mandate; Judgments Final.
42.05. If Court is About to Adjourn.
42.06. Sentence Nunc Pro Tunc.
42.07. Reasons to Prevent Sentence.
42.08. Cumulative or Concurrent Sentence.
42.09. Commencement of Sentence and Delivery to Place of Confinement.
42.10. Satisfaction of Judgment as in Misdemeanor Convictions.
42.11. Uniform Act for Out-of-State Parolee Supervision.
42.12. Adult Probation, Parole, and Mandatory Supervision Law.
42.121. Texas Adult Probation Commission.
42.13. Misdemeanor Adult Probation and Supervision Law.
42.14. In Absence of Defendant.
42.15. Fines.
42.16. On Other Judgment.
42.17. Transfer Under Treaty.

Art. 42.01. Judgment

Sec. 1. A judgment is the written declaration of the court signed by the trial judge and entered of

record showing the conviction or acquittal of the defendant. The judgment should reflect:

1. The title and number of the case;

2. That the case was called and the parties appeared, naming the attorney for the state, the defendant, and the attorney for the defendant, or, where a defendant is not represented by counsel, that the defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel;

3. The plea or pleas of the defendant to the offense charged;

4. Whether the case was tried before a jury or a jury was waived;

5. The submission of the evidence, if any;

6. In cases tried before a jury that the jury was charged by the court;

7. The verdict or verdicts of the jury or the finding or findings of the court;

8. In the event of a conviction that the defendant is adjudged guilty of the offense as found by the verdict of the jury or the finding of the court, and that the defendant be punished in accordance with the jury's verdict or the court's finding as to the proper punishment;

9. In the event of conviction where death or any nonprobated punishment is assessed that the defendant be sentenced to death, a term of imprisonment, or to pay a fine, as the case may be;

10. In the event of conviction where any probated punishment is assessed that the imposition of sentence is suspended and the defendant is placed on probation, setting forth the punishment assessed, the length of probation, and the probationary terms and conditions; and

11. In the event of acquittal that the defendant be discharged.

Sec. 2. The judge may order the clerk of the court, the prosecuting attorney, or the attorney or attorneys representing any defendant to prepare the judgment, or the court may prepare the same.

Sec. 3. The provisions of this Article shall apply to both felony and misdemeanor cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1975, 64th Leg., p. 245, ch. 95, § 1, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 809, ch. 291, § 111, eff. Sept. 1, 1981.]

Art. 42.02. Sentence

The sentence is that part of the judgment, or order revoking a probated sentence, that orders that the punishment be carried into execution in the manner prescribed by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 809, ch. 291, § 112, eff. Sept. 1, 1981.]

Art. 42.03. Pronouncing Sentence; Time; Credit for Time Spent in Jail Between Arrest and Sentence or Pending Appeal

Sec. 1. Except as provided in Article 42.14, sentence shall be pronounced in the defendant's presence.

Sec. 2. (a) In all criminal cases the judge of the court in which the defendant was convicted shall give the defendant credit on his sentence for the time that the defendant has spent in jail in said cause, from the time of his arrest and confinement until his sentence by the trial court.

(b) In all felony probation revocations the judge shall enter the restitution or reparation due and owing on the date of the revocation of probation.

Sec. 3. If a defendant appeals his conviction, is not released on bail, and is retained in a local jail as provided in Section 5, Article 42.09, pending his appeal, the judge of the court in which the defendant was convicted shall give the defendant credit on his sentence for the time that the defendant has spent in jail pending disposition of his appeal. The court shall endorse on both the commitment and the mandate from the appellate court all credit given the defendant under this section, and the Department of Corrections shall grant the credit in computing the defendant's eligibility for parole and discharge.

Sec. 4. When a defendant who has been sentenced to imprisonment in the Department of Corrections has spent time in jail pending trial and sentence or pending appeal, the judge of the sentencing court shall direct the sheriff to attach to the commitment papers a statement assessing the defendant's conduct while in jail. On the basis of the statement, the Department of Corrections shall grant the defendant such credit for good behavior for the time spent in jail as he would have earned had he been in the custody of the department.

Sec. 5. (a) Where jail time has been awarded to a person sentenced for a misdemeanor or sentenced to confinement in the county jail for a felony, the trial judge, at the time of the pronouncement of sentence or at any time while the defendant is serving the sentence, when in his or her discretion the ends of justice would best be served and upon written motion of the defendant, may permit the defendant to serve his or her sentence during his or her off-work hours, or on weekends. When such a sentence is permitted by the trial judge it must be served on consecutive days or consecutive weekends. The trial judge may require bail of the defendant to insure the faithful performance of the sentence. The trial judge may attach conditions regarding the employment, travel, and other conduct of the defendant during the performance of such a sentence.

(b) The court may impose as a condition to permitting a defendant to serve the jail time assessed during off-work hours or on weekends a requirement that he or she make any of the following payments to the court, agencies, or persons, or that the defendant execute a letter and direct it to his or her employer directing the employer to deduct from the defendant's salary an amount directed by the court, which is to be sent by the employer to the clerk of the court. The money directed by the court under this section may be used to pay the following expenses as directed by the court:

(1) the support of the prisoner's dependents, if necessary;

(2) the prisoner's personal, business, and travel expenses;

(3) reimbursement of the general fund of the county for the maintenance of the prisoner in jail; and

(4) installment payments on restitution, fines, and court costs ordered by the court.

The condition shall not be binding on the employer and his or her compliance shall be on a voluntary basis.

(c) The court may permit the defendant to serve his or her sentence during his or her off-work hours or on weekends in order for the defendant to continue his or her employment if the court imposes confinement for failure to pay a fine or court costs, or as punishment for criminal nonsupport under Section 25.05, Penal Code, or contempt of a court order for periodic payments for the support of a child.

(d) The court may impose as a condition to permitting a defendant to serve the jail time assessed during off-work hours or on weekends a requirement that the defendant execute a letter and direct it to his or her employer directing the employer to deduct from the defendant's salary an amount directed by the court, which is to be sent by the employer to the clerk of the court and credited against any arrears of child support payments. The condition shall not be binding on the employer and his or her compliance shall be on a voluntary basis.

(e) The court may permit the defendant to seek employment or obtain medical or psychological treatment or counseling or obtain training or needed education under the same terms and conditions that apply to employment under this statute.

Sec. 6. (a) A judge may sentence a prisoner convicted of a felony of the third degree or an offense punishable by confinement in county jail to serve an alternate term for the same period of time in the county jail work release program of the county in which the offense occurred if prior to sentencing:

(1) the defendant requests of the court in writing a special issue as to whether the defendant caused the bodily injury, serious bodily injury, or death of another as a result of the commission of the offense and the trier of fact answers the issue in the negative; and

(2) the attorney for the state makes a written request to the judge that if convicted the defendant be sentenced to the county jail work release program.

(b) A prisoner sentenced under this section who would otherwise be sentenced to confinement in jail may earn good conduct credit in the same manner as provided by Section 1, Chapter 461, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 5118a, Vernon's Texas Civil Statutes).

(c) A prisoner sentenced under this section who would otherwise be sentenced to imprisonment in the Texas Department of Corrections earns good conduct credit in the same manner as provided by Article 6181–1, Revised Statutes, and may become eligible for release on parole or mandatory supervision in the same manner as provided by Article 42.12, Code of Criminal Procedure, 1965, as amended.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1743, ch. 659, § 28, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 205, ch. 91, § 1, eff. Aug. 27, 1973; Acts 1977, 65th Leg., p. 1036, ch. 382, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2076, ch. 827, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 353, ch. 141, § 2, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 809, ch. 291, § 113, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2418, ch. 616, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 3792, ch. 586, § 4, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4666, ch. 809, § 1, eff. Aug. 29, 1983.]

Section 5 of Acts 1983, 68th Leg., p. 3793, ch. 586, provides:

"The change in the law made by this Act applies only to the imposition of a sentence on or after the effective date of this Act. A sentence imposed before the effective date of this Act is covered by the law in effect at the time of the imposition, and the former law is continued in effect for that purpose."

Art. 42.04. Sentence When Appeal is Taken

When a defendant is sentenced to death, no date shall be set for the execution of sentence until after the receipt by the clerk of the trial court of the mandate of affirmance of the court of criminal appeals.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 809, ch. 291, § 114, eff. Sept. 1, 1981.]

Art. 42.04a. Issuance of Mandate; Judgments Final

(a) When a decision of a court of appeals or the Court of Criminal Appeals becomes final, the clerk of such court shall issue a mandate in the case to the trial court.

(b) A decision of a court of appeals shall be final:

(1) at the expiration of 45 days after the final ruling of the court, unless:

(A) a petition for review has been filed within 30 days after the final ruling of the court of appeals; or

(B) the Court of Criminal Appeals has filed an order for review of the decision on its own motion; or

(2) at the expiration of 15 days from the date of refusal of the Court of Criminal Appeals to grant a petition for review.

(c) A decision of the Court of Criminal Appeals shall be final at the expiration of 15 days from the ruling on the final motion for rehearing or from the rendition of the decision if no motion for rehearing is filed.

[Added by Acts 1981, 67th Leg., p. 810, ch. 291, § 116, eff. Sept. 1, 1981.]

Art. 42.05. If Court is About to Adjourn

The time limit within which any act is to be done within the meaning of this Code shall not be affected by the expiration of the term of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 42.06. Sentence Nunc Pro Tunc

If there is a failure from any cause whatever to enter judgment and pronounce sentence, the judgment may be entered and sentence pronounced at any subsequent time, unless a new trial has been granted, or the judgment arrested, or an appeal has been taken. Any time served or punishment suffered from the time the judgment and sentence should have been entered and pronounced and until finally entered shall be credited upon the sentence finally pronounced.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 42.07. Reasons to Prevent Sentence

Before pronouncing sentence, the defendant shall be asked whether he has anything to say why the sentence should not be pronounced against him. The only reasons which can be shown, on account of which sentence cannot be pronounced, are:

1. That the defendant has received a pardon from the proper authority, on the presentation of which, legally authenticated, he shall be discharged.

2. That the defendant is incompetent to stand trial; and if evidence be shown to support a finding of incompetency to stand trial, no sentence shall be pronounced, and the court shall proceed under Article 46.02 of this code; and

3. When a person who has been convicted escapes after conviction and before sentence and an individual supposed to be the same has been arrested he may before sentence is pronounced, deny that he is the person convicted, and an issue be accordingly tried before a jury, or before the court if a jury is waived, as to his identity.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1975, 64th Leg., p. 1102, ch. 415, § 3, eff. June 19, 1975; Acts 1981, 67th Leg., p. 810, ch. 291, § 115, eff. Sept. 1, 1981.]

Art. 42.08. Cumulative or Concurrent Sentence

When the same defendant has been convicted in two or more cases, and the punishment assessed in each case is confinement in an institution operated by the Department of Corrections or the jail for a term of imprisonment, judgment and sentence shall be pronounced in each case in the same manner as if there had been but one conviction, except that in the discretion of the court, the judgment in the second and subsequent convictions may either be that the punishment shall begin when the judgment and sentence in the preceding conviction has ceased to operate, or that the punishment shall run concurrently with the other case or cases, and sentence and execution shall be accordingly.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 42.09. Commencement of Sentence and Delivery to Place of Confinement

Sec. 1. Except as provided in Sections 2 and 3, a defendant shall be delivered to jail or to the Department of Corrections when his sentence to imprisonment is pronounced, or his sentence to death is announced, by the court. The defendant's sentence begins to run on the day it is pronounced, but with all credits, if any, allowed by Article 42.03.

Sec. 2. If a defendant appeals his conviction and is released on bail pending disposition of his appeal, when his conviction is affirmed, the clerk of the trial court, on receipt of the mandate from the appellate court, shall issue a commitment against the defendant. The officer executing the commitment shall endorse thereon the date he takes the defendant into custody and the defendant's sentence begins to run from the date endorsed on the commitment. The Department of Corrections shall admit the defendant named in the commitment on the basis of the commitment.

Sec. 3. If a defendant is convicted of a felony and sentenced to death, life, or a term of more than ten years in the Department of Corrections and he gives notice of appeal, he shall be transferred to the Department of Corrections on a commitment pending a mandate from the court of appeals or the Court of Criminal Appeals.

Sec. 4. If a defendant is convicted of a felony and his sentence is a term of ten years or less and he gives notice of appeal, he shall be transferred to the Department of Corrections on a commitment pending a mandate from the court of appeals or the Court of Criminal Appeals upon request in open

court or upon written request to the sentencing court. Upon a valid transfer to the Department of Corrections under this section, the defendant may not thereafter be released on bail pending his appeal.

Sec. 5. If a defendant is transferred to the Department of Corrections pending appeal under Section 3 or 4, his sentence shall be computed as if no appeal had been taken if the appeal is affirmed.

Sec. 6. All defendants who have been transferred to the Department of Corrections pending the appeal of their convictions under this Article, shall be under the control and authority of the Department of Corrections for all purposes as if no appeal were pending.

Text of section as added by Acts 1983, 68th Leg., p. 148, ch. 40, § 1

Sec. 7. If a defendant is sentenced to a term of confinement in the Texas Department of Corrections but is not transferred to the Department of Corrections under Section 3 or 4 of this article, the court, before the date on which it would lose jurisdiction under Section 3e, Article 42.12, of this code, shall send to the department a document containing a statement of the date on which the defendant's sentence was pronounced and credits earned by the defendant under Section 42.03 of this code as of the date of the statement.

Text of section as added by Acts 1983, 68th Leg., p. 4668, ch. 810, § 1

Sec. 7. (a) A county that transfers a defendant to the Department of Corrections under this Article shall prepare a written report to the director of the department that states:

(1) the offense or offenses for which the defendant has been sentenced; and

(2) the nature and the seriousness of each offense.

(b) The Department of Corrections may not take a defendant into custody under this Article until the director receives the written report required by Subsection (a) of this section.

(c) The Department of Corrections shall make a report required by Subsection (a) of this section available to the Board of Pardons and Paroles on the request of the board or its representative.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 206, ch. 91, § 2, eff. Aug. 27, 1973; Acts 1977, 65th Leg., p. 2018, ch. 806, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 810, ch. 291, § 117, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 148, ch. 40, § 1, eff. April 26, 1983; Acts 1983, 68th Leg., p. 4668, ch. 810, § 1, eff. Sept. 1, 1983.]

Art. 42.10. Satisfaction of Judgment as in Misdemeanor Convictions

When a person is convicted of a felony, and the punishment assessed is only a fine or a term in jail, or both, the judgment may be satisfied in the same manner as a conviction for a misdemeanor is by law satisfied.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 42.11. Uniform Act for Out-of-State Parolee Supervision

Sec. 1. This Act may be cited as the Uniform Act for out-of-State parolee supervision.

Sec. 2. The Governor of this State is hereby authorized and directed to execute a compact on behalf of the State of Texas with any of the United States legally joining therein in the form substantially as follows:

A COMPACT

Entering into by and among the contracting state, signatories hereto, with the consent of the Congress of the United States of America, granted by an Act entitled "An Act granting the consent of Congress to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes".

The contracting States solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a State party to this compact (herein called "sending State"), to permit any person convicted of an offense within such State and placed on probation or released on parole to reside in any other State party to this compact (herein called "receiving State"), while on probation or parole, if

(a) Such person is in fact a resident of or has his family residing within the receiving State and can obtain employment there; and

(b) Though not a resident of the receiving State and not having his family residing there, the receiving State consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving State to investigate the home and prospective employment of such person.

A resident of the receiving State, within the meaning of this section is one who has been an actual inhabitant of such State continuously for more than one year prior to his coming to the sending State and has not resided within the sending State more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) That each receiving State will assume the duties of visitation of and supervision over probationers or parolees of any sending State and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending State may at all times enter a receiving State and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of States party hereto, as to such persons. The decision of the sending State to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving State; provided, however, that if at the time when a State seeks to retake a probationer or parolee there should be pending against him within the receiving State any criminal charge, or he should be suspected of having committed within such State a criminal offense, he shall not be retaken without the consent of the receiving State until discharged from prosecution or from any imprisonment for such offense.

(4) That the duly accredited officers of the sending State will be permitted to transport prisoners being retaken through any and all States party to this compact, without interference.

(5) That the Governor of each State may designate an officer who, acting jointly with like officers of other contracting States, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its execution by any State as between it and other State or States so executing. When executed it shall have the full force and effect of law within such State, the form of execution to be in accordance with the laws of the executing State.

(7) That this compact shall continue in force and remain binding upon each executing State until renounced by it. The duties and obligations hereunder of a renouncing State shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending State. Renunciation of this compact shall be by the same authority which executed it, by sending six months notice in writing of its intention to withdraw from the compact to the other States party hereto.

Sec. 3. The officer designated by the Governor under Subdivision (5) of the compact shall be entitled the Interstate Parole Compact Administrator and is authorized to appoint two Deputy Parole Compact Administrators.

Sec. 3a. The office of Interstate Parole Compact Administrator for Texas is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the office is abolished, and this Article expires effective September 1, 1987.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 547, ch. 233, § 1, eff. Aug. 27, 1973; Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.134, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

Art. 42.12. Adult Probation, Parole, and Mandatory Supervision Law

A. Purpose of Article and Definitions

Sec. 1. It is the purpose of this Article to place wholly within the State courts of appropriate jurisdiction the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of probation, and the supervision of probationers, in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas. It is also the intent of this Article to provide for the release of persons on parole and for the method thereof, to designate the Board of Pardons and Paroles as the agency of State government with exclusive authority to determine paroles and to further designate the Board of Pardons and Paroles as responsible for the investigation and supervision of persons released on parole. It is the intent of this Article to aid all prisoners to readjust to society upon completion of their period of incarceration by providing a program of mandatory supervision for those prisoners not released on parole or through executive clemency and to designate the Board of Pardons and Paroles as the agency of government responsible for the program. It is the final purpose of this Article to remove from existing statutes the limitations, other than questions of constitutionality, that have acted as barriers to effective systems of probations and paroles in the public interest.

Sec. 2. This Article may be cited as the "Adult Probation, Parole, and Mandatory Supervision Law".

Unless the context otherwise requires, the following definitions shall apply to the specified words and phrases as used in this Article:

a. "Courts" shall mean the courts of record having original criminal jurisdiction;

b. "Probation" shall mean the release of a convicted defendant by a court under conditions imposed by the court for a specified period during which the imposition of sentence is suspended;

c. "Parole" shall mean the release of a prisoner from imprisonment but not from the legal

custody of the State, for rehabilitation outside of prison walls under such conditions and provisions for disciplinary supervision as the Board of Pardons and Paroles may determine. Parole shall not be construed to mean a commutation of sentence or any other form of executive clemency;

d. "Mandatory supervision" shall mean the release of a prisoner from imprisonment but not on parole and not from the legal custody of the State, for rehabilitation outside of prison walls under such conditions and provisions for disciplinary supervision as the Board of Pardons and Paroles may determine. Mandatory supervision may not be construed as a commutation of sentence or any other form of executive clemency;

e. "Probation officer" shall mean either a person duly appointed by one or more courts of record having original criminal jurisdiction, to supervise defendants placed on probation; or a person designated by such courts for such duties on a part-time basis;

f. "Parole officer" shall mean a person duly appointed by the Director of the Division of Parole Supervision and assigned the duties of investigating and supervising paroled prisoners and prisoners released to mandatory supervision to see that the conditions of parole or mandatory supervision are complied with;

g. "Board" shall mean the Board of Pardons and Paroles;

h. "Division" shall mean the Division of Parole Supervision of the Board of Pardons and Paroles; and

i. "Director" shall mean the Director of the Board of Pardons and Paroles.

B. Probations

Sec. 3. The judges of the courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, shall have the power, after conviction or a plea of guilty for any crime or offense, where the maximum punishment assessed against the defendant does not exceed ten years imprisonment, to suspend the imposition of the sentence and may place the defendant on probation or impose a fine applicable to the offense committed and also place the defendant on probation as hereinafter provided. In all cases where the punishment is assessed by the Court it may fix the period of probation without regard to the term of punishment assessed, but in no event may the period of probation be greater than 10 years or less than the minimum prescribed for the offense for which the defendant was convicted. Any such person placed on probation, whether in a trial by jury or before the court, shall be under the supervision of such court.

Sec. 3a. When there is a conviction in any court of this State and the punishment assessed by the jury shall not exceed ten years, the jury may recommend probation for a period of any term of years authorized for the offense for which the defendant was convicted, but in no event for more than ten years, upon written sworn motion made therefor by the defendant, filed before the trial begins. When the jury recommends probation, it may also assess a fine applicable to the offense for which the defendant was convicted. When the trial is to a jury, and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the sworn motion and proof shall show, and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other State. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but he may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court, if the jury recommends it in their verdict, for the period recommended by the jury.

Sec. 3b. Where probation is recommended by the verdict of a jury as provided for in Sec. 3a above, a defendant's probation shall not be revoked during his good behavior, so long as he is within the jurisdiction of the court and his residence is known, except in accordance with the provisions of Sec. 8 of this Article. If such a defendant has no counsel, it shall be the duty of the court to inform him of his right to show cause why his probation should not be revoked; and if such a defendant requests such right, the court shall appoint counsel in accordance with Articles 26.04 and 26.05 of this Code to prepare and present the same; and in all other respects the procedure set forth in said Sec. 8 of this Article shall be followed.

Sec. 3c. Nothing herein shall limit the power of the court to grant a probation of sentence regardless of the recommendation of the jury or prior conviction of the defendant.

Sec. 3d. (a) Except as provided by Subsection (d) of this section, when in its opinion the best interest of society and the defendant will be served, the court may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on probation for a period as the court may prescribe, not to exceed 10 years. The court may impose a fine applicable to the offense and require any reasonable terms and conditions of probation, including any of the conditions enumerated in Sections 6 and 6a of this Article. However, upon written motion of the

defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the court shall proceed to final adjudication as in all other cases.

(b) On violation of a condition of probation imposed under Subsection (a) of this section, the defendant may be arrested and detained as provided in Section 8 of this Article. The defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of probation, and defendant's appeal continue as if the adjudication of guilt had not been deferred.

(c) On expiration of a probationary period imposed under Subsection (a) of this section, if the court has not proceeded to adjudication of guilt, the court shall dismiss the proceedings against the defendant and discharge him. The court may dismiss the proceedings and discharge the defendant prior to the expiration of the term of probation if in its opinion the best interest of society and the defendant will be served. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that upon conviction of a subsequent offense, the fact that the defendant had previously received probation shall be admissible before the court or jury to be considered on the issue of penalty.

(d) This section does not apply to a defendant charged with an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011–1, Revised Statutes, as amended.

Sec. 3e. (a) For the purposes of this section, the jurisdiction of a court in which a sentence requiring confinement in the Texas Department of Corrections is imposed for conviction (of a felony) shall continue for 180 days from the date the execution of the sentence actually begins. After the expiration of 60 days but prior to the expiration of 180 days from the date the execution of the sentence actually begins, the judge of the court that imposed such sentence may on his own motion or on written motion of the defendant, suspend further execution of the sentence imposed and place the defendant on probation under the terms and conditions of this article, if in the opinion of the judge the defendant would not benefit from further incarceration in a penitentiary. Probation may be granted under this section only if:

(1) the defendant is otherwise eligible for probation under this article; and

(2) the defendant had never before been incarcerated in a penitentiary serving a sentence for a felony; and

(3) the offense for which the defendant was convicted was other than those defined by Section 19.02, 20.04, 22.021, 22.03, 22.04(a)(1), (2), or (3), 29.03, 36.02, 38.07, 71.02 or a felony of the second degree under Section 38.10, Penal Code.

(b) When the defendant files a written motion requesting suspension by the court of further execution of the sentence and placement on probation, and when requested to do so by the court, the clerk of the court shall request a copy of the defendant's record while incarcerated from the Texas Department of Corrections. Upon receipt of such request, the Texas Department of Corrections shall forward to the court, as soon as possible, a full and complete copy of the defendant's record while incarcerated. When the defendant files a written motion requesting suspension of further execution of the sentence and placement on probation, he shall immediately deliver or cause to be delivered a true and correct copy of the motion to the office of the prosecuting attorney.

(c) The court may deny the motion without a hearing but may not grant the motion without holding a hearing and providing the attorney for the state and the defendant the opportunity to present evidence on the motion.

Sec. 3f. (a) The provisions of Sections 3 and 3c of this Article do not apply:

(1) to a defendant adjudged guilty of an offense defined by the following sections of the Penal Code:

(A) Section 19.03 (Capital murder);

(B) Section 20.04 (Aggravated kidnapping);

(C) Section 22.021 (Aggravated sexual assault);

(D) Section 29.03 (Aggravated robbery); or

(2) to a defendant when it is shown that the defendant used or exhibited a deadly weapon as defined in Section 1.07(a)(11), Penal Code, during the commission of a felony offense or during immediate flight therefrom. Upon affirmative finding that the defendant used or exhibited a deadly weapon during the commission of an offense or during immediate flight therefrom, the trial court shall enter the finding in the judgment of the court. Upon an affirmative finding that the deadly weapon the defendant used or exhibited was a firearm, the court shall enter that finding in its judgment.

(b) If there is an affirmative finding that the defendant convicted of a felony of the second degree or higher used or exhibited a firearm during the commission or flight from commission of the offense and the defendant is granted probation, the court may order the defendant confined in the Texas Department of Corrections for not less than 60 and not more than 120 days. At any time after the defendant has served 60 days in the custody of the

Department of Corrections, the sentencing judge, on his own motion or on motion of the defendant, may order the defendant released to probation. The Department of Corrections shall release the defendant to probation after he has served 120 days.

(c) The provisions of Section 3d of this Article do not apply to a defendant charged with or adjudged guilty of an offense under Section 4.052 or 4.053 Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes), or an offense listed in Section 4.012(b) of that Act.

Text of section as amended by Acts 1983, 68th Leg., p. 1587, ch. 303, § 9

Sec. 4. (a) When directed by the court, a probation officer shall fully investigate and report to the court in writing the circumstances of the offense, criminal record, social history and present condition of the defendant. Whenever practicable, such investigation shall include a physical and mental examination of the defendant. Defendant, if not represented by counsel, counsel for defendant and counsel for the state shall be afforded an opportunity to see a copy of the report upon request. If a defendant is committed to any institution the probation officer shall send a report of such investigation to the institution at the time of commitment.

(b) Except as otherwise provided by this subsection, if a defendant is charged with an offense under Article 67011–1, Revised Statutes, and the offense is punishable under Subsection (c) of that article, the court shall direct a probation officer or other person approved by the probation department for that purpose to conduct an evaluation to determine the appropriateness of alcohol or drug rehabilitation for the defendant and to report that evaluation to the court. The evaluation may be made at any time, except that if the defendant elects to have a jury assess punishment, the court may not order an evaluation until after sentencing. The court is not required to request an evaluation and report if it determines that the resources required to properly conduct the evaluation are not available in the county.

Text of section as amended by Acts 1983, 68th Leg., p. 1790, ch. 343, § 1

Sec. 4. (a) Except as provided by Subsection (b) of this section, prior to the imposition of sentence by the court in a criminal case the court shall direct a probation officer to report to the court in writing on the circumstances of the offense with which the defendant is charged, the criminal and social history of the defendant, and any other information relating to the defendant or the offense requested by the court.

(b) The court is not required to direct a probation officer to prepare a report if:

(1) the defendant requests that a report not be made and the court agrees to the request; or

(2) the court finds that there is sufficient information in the record to permit the meaningful exercise of sentencing discretion and the court explains this finding on the record.

(c) The court may not inspect a report and the contents of the report may not be disclosed to any person unless:

(1) the defendant pleads guilty or nolo contendere or is convicted of the offense; or

(2) the defendant, in writing, authorizes the judge to inspect the report.

(d) Before sentencing a defendant, the court shall permit the defendant or his counsel to read the presentence report.

(e) The court shall allow the defendant or his attorney to comment on the report and, with the approval of the court, introduce testimony or other information alleging a factual inaccuracy in the report.

(f) The court shall allow the attorney representing the state access to any information made available to the defendant under this section.

(g) The probation officer making a report under this section shall send a copy of the report to an institution to which the defendant is committed.

Sec. 5. (a) Only the court in which the defendant was tried may grant probation, fix or alter conditions, revoke the probation, or discharge the defendant, unless the court has transferred jurisdiction of the case to another court with the latter's consent. Only the judge who originally sentenced the defendant may suspend execution thereof and place the defendant under probation pursuant to Section 3e of this article except that if the judge who originally sentenced the defendant is deceased or disabled or if the office is vacant and a motion is filed in accordance with Section 3e of this article, the clerk of the court shall promptly forward a copy of the motion to the presiding judge of the administrative judicial district for that court, who may deny the motion without a hearing or appoint a judge to hold a hearing on the motion.

(b) After a defendant has been placed on probation, jurisdiction of the case may be transferred to a court of the same rank in this State having geographical jurisdiction where the defendant is residing or where a violation of the conditions of probation occurs. Upon transfer, the clerk of the court of original jurisdiction shall forward a transcript of

such portions of the record as the transferring judge shall direct to the court accepting jurisdiction, which latter court shall thereafter proceed as if the trial and conviction had occurred in that court.

(c) Any court having geographical jurisdiction where the defendant is residing or where a violation of the conditions of probation occurs may issue a warrant for his arrest, but the determination of action to be taken after arrest shall be only by the court having jurisdiction of the case at the time the action is taken.

Sec. 6. (a) The court having jurisdiction of the case shall determine the terms and conditions of probation and may, at any time, during the period of probation alter or modify the conditions; provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer, and shall note the date of delivery of such copy on the docket. Terms and conditions of probation may include, but shall not be limited to, the conditions that the probationer shall:

a. Commit no offense against the laws of this State or of any other State or of the United States;

b. Avoid injurious or vicious habits;

c. Avoid persons or places of disreputable or harmful character;

d. Report to the probation officer as directed by the judge or probation officer and obey all rules and regulations of the probation department;

e. Permit the probation officer to visit him at his home or elsewhere;

f. Work faithfully at suitable employment as far as possible;

g. Remain within a specified place;

h. Pay his fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums, and make restitution or reparation in any sum that the court shall determine;

i. Support his dependents;

j. Participate, for a time specified by the court and subject to the same conditions imposed on community-service probationers by Sections 10A(c), (d), (g), and (h) of this article, in any community-based program, including a community-service work program designated by the court;

k. Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed, or if he was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;

l. Remain under custodial supervision in a community-based facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;

m. Pay a percentage of his income to his dependents for their support while under custodial suspension in a community-based facility; and

n. Pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense.

Text of subsec. (b) as added by Acts 1983, 68th Leg., p. 1056, ch. 237, § 1

(b) If the court grants probation to a defendant and requires the defendant to serve a probationary term in a restitution center, the court shall require as a condition of probation that the defendant secure employment and obey all rules and regulations of the center.

Text of subsec. (b) as added by Acts 1983, 68th Leg., p. 1588, ch. 303, § 10

(b) If the court grants probation to a person convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011–1, Revised Statutes, the court may require as a condition of probation that the person participate, for a time specified by the court and subject to the same conditions imposed on community-service probationers by Subsections (c), (d), (g), and (h), Section 10A of this article, in a community-service work program designated by the court.

Sec. 6a. (a) A court granting probation may fix a fee not exceeding $15 per month to be paid to the court by the probationer during the probationary period. The court may make payment of the fee a condition of granting or continuing the probation.

(b) The court shall deposit the fees received under Subsection (a) of this section in the special fund of the county treasury provided by Section 4.05(b), Article 42.121 of this Code, to be used for the same purposes for which state-aid may be used under that section.

Sec. 6b. (a) When the court having jurisdiction of the case grants probation to the defendant, in addition to the conditions imposed under Section 6 of this article, the court may require as a condition of probation that the defendant submit to a period of detention in a penal institution to serve a term of imprisonment not to exceed 30 days or one-third of the sentence whichever is lesser.

(b) A court granting probation to a defendant convicted of an offense under Article 67011–1, Revised Statutes, and punished under Subsection (d),

(e), or (f) of that article shall require as a condition of probation that the defendant submit to:

(1) 72 hours of detention in a jail if the defendant was convicted under Subsection (d) of Article 67011–1, Revised Statutes, as amended; 10 days of detention in a jail if the defendant was convicted under Subsection (e) of Article 67011–1, Revised Statutes, as amended; or 30 days of detention in a jail if the defendant was convicted under Subsection (f) of Article 67011–1, Revised Statutes, as amended; and

(2) an evaluation by a probation officer, by a person approved by the probation department, or by a program or facility approved by the Texas Commission on Alcoholism for the purpose of having the facility prescribe a course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition.

(c) A court granting probation to a defendant convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, shall require as a condition of probation that the defendant submit to a period of detention in a penal institution to serve a term of confinement of not less than 120 days.

(d) If the director of a facility to which a person is referred under Subdivision (2) of Subsection (b) of this article determines that the person is not making a good faith effort to participate in a program of rehabilitation, the director shall notify the court that referred the person of that fact.

(e) If a court requires as a condition of probation that the defendant participate in a prescribed course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition, the court shall require that the defendant pay for all or part of the cost of such rehabilitation based on the defendant's ability to pay. The court may, in its discretion, credit such cost paid by the defendant against the fine assessed.

(f) The imprisonment imposed shall be treated as a condition of probation, and in the event of a sentence of imprisonment upon the revocation of probation, the term of imprisonment served hereunder shall be credited toward service of such subsequent imprisonment.

Text of section as added by Acts 1983, 68th Leg., p. 1057, ch. 237, § 2

Sec. 6c. (a) If a judge sentences a defendant to a term of imprisonment in the Texas Department of Corrections and the defendant is eligible for probation, the judge may suspend imposition of the sentence of imprisonment and require as a condition of probation, in addition to the conditions imposed under Section 6 of this article, that the defendant serve an alternate probationary sentence of not less than six months or more than 12 months in a restitution center if:

(1) the district is served by a restitution center;

(2) the defendant is not sentenced for a felony offense under Title 5, Penal Code,[1] or under the Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes);

(3) before sentencing, the defendant, in writing, requests of the court special issues as to whether the defendant:

(A) caused the bodily injury, serious bodily injury, or death of another as a result of the commission of the offense; or

(B) used a deadly weapon during the commission of or flight from the offense;

(4) the trier of facts answers both issues submitted under Subdivision (3) of this subsection in the negative; and

(5) the trier of facts determines that the defendant does not have an extensive history of drug or alcohol abuse and is employable.

(b) If a jury recommends that an eligible defendant serve an alternate term in a restitution center, the judge shall follow the jury's recommendation.

(c) A probationer granted probation under this section may not earn good conduct credit for time spent in a restitution center or apply time spent in the center toward completion of a sentence in the Texas Department of Corrections if the probation is revoked.

(d) No later than six months after the date on which a defendant is granted probation under this section, the restitution center director shall file with the chief adult probation officer or the probation department director a copy of an evaluation made by the director of the probationer's behavior and attitude at the center. The officer or director shall examine the evaluation, make written comments on the evaluation that he considers relevant, and file the evaluation and comments with the judge who granted probation to the probationer. If the evaluation indicates that the probationer has made significant progress toward compliance with court-ordered conditions of probation and payment of restitution, the court may release the probationer from the restitution center. The probationer shall serve the remainder of his probation under any terms and conditions the court imposes under this article. The court shall require the probation department to place the probationer under intensive supervision during the first two months after his release.

(e) No later than nine months after the date on which a defendant is granted probation under this

section, the restitution center director shall file with the chief adult probation officer or the probation department director a copy of an evaluation made by the director of the probationer's behavior and attitude at the center. The officer or director shall examine the evaluation, make written comments on the evaluation that he considers relevant, and file the evaluation and comments with the judge who granted probation to the defendant. If the report indicates that the probationer has made significant progress toward court-ordered conditions of probation and payment of restitution, the court shall modify its sentence and release the probationer in the same manner as provided by Subsection (d) of this section. If the report indicates that the probationer would benefit from continued participation in the restitution center program, the court may order the probationer to remain at the restitution center for a period determined by the court. If the report indicates that the probationer has not made significant progress toward rehabilitation, the court may revoke probation and order the prisoner to the term of imprisonment specified in the probationer's sentence.

(f) A restitution center director shall attempt to secure employment for each probationer required to serve a probationary term in a restitution center under this article. The director shall also attempt to place each probationer as a worker in a community-service project of a type described in Section 10A(g) of this article, either during off-work hours if the probationer is employed or during any time if the probationer is unable to find employment.

(g) The employer of a probationer participating in a program under this section shall deliver the probationer's salary to the restitution center director. The director shall deposit the salary into a fund to be given to the probationer on his release after deducting:

(1) the cost to the center for the probationer's food, housing, and supervision;

(2) necessary travel expense to and from work and community-service projects and other incidental expenses of the probationer;

(3) support of the probationer's dependents; and

(4) restitution to the victims of an offense committed by the probationer.

(h) If a restitution center director is unable to find employment for a probationer, the director shall transfer the probationer to the supervision of the director of another restitution center who agrees to accept the probationer as a participant in the center's program.

(i) If a restitution center director determines that the probationer is knowingly or intentionally failing to seek employment, the director shall request the court having jurisdiction of the case to revoke the probationer's probation and transfer the probationer to the custody of the Texas Department of Corrections.

(j) A restitution center director may grant an emergency furlough to a probationer for the purpose of obtaining medical treatment or diagnosis or to attend funerals or visit critically ill relatives. A furlough for purposes other than medical purposes may not exceed 24 hours in length.

(k) A probationer participating in a program under this article shall be confined in the restitution center at all times except for:

(1) time spent at work and traveling to and from work;

(2) time spent attending and traveling to and from an education or rehabilitation program approved by the restitution center director;

(3) time spent attending and traveling to and from a community-service project; and

(4) time spent on emergency furlough.

(*l*) Before sentencing a defendant to an alternate probationary sentence under this section, the court shall consider whether the defendant is a proper subject for probation authorized under Section 3e of this article.

[1] Penal Code, § 19.01 et seq.

Text of section as added by Acts 1983, 68th Leg., p. 1711, ch. 325, § 2

Sec. 6c. (a) If a payment is received under Subdivision h or n of Section 6 of this article from a probationer for transmittal to a victim of an offense and the victim cannot be located, the probation department that receives the payment for disbursement to the victim shall deposit the payment in an interest-bearing account in the department having original jurisdiction.

(b) If the payment is not claimed by the victim before the expiration of four years after the date on which the first unsuccessful attempt to locate the victim after full restitution has been made, the probation department shall transfer the payment from the interest-bearing account to the comptroller of public accounts, after deducting five percent of the payment as a collection fee and deducting any interest accrued on the payment. The comptroller shall deposit the payment in the state treasury to the credit of the compensation to victims of crime auxiliary fund.

(c) The collection fee and the accrued interest shall be deposited in the special fund of the county

treasury provided by Section 4.05(b), Article 42.121, of this code to be used for the same purposes for which state aid may be used under that section. The probation department has a maximum of 121 days after the four-year expiration date to transfer the funds to the comptroller's office. Failure to comply with the 121-day deadline will result in a five percent collection fee penalty calculated from the total deposit and all interest attributable to the unclaimed funds.

(d) If the victim of the offense claims the payment during the four-year period in which the payment is held in the interest-bearing account, the probation department shall pay the victim the amount of the original payment, less any interest earned while holding the payment. After the payment has been transferred to the comptroller, the probation department has no liability in regard to the payment, and any claim for the payment must be made to the comptroller. If the victim makes a claim to the comptroller, the comptroller shall pay the victim the amount of the original payment, less the collection fee, from the compensation to victims of crime auxiliary fund.

Text of section as added by Acts 1983, 68th Leg., p. 4877, ch. 863, § 1

Sec. 6c. A court receiving a probationer for supervision as authorized by Article 42.11 of this code may impose on the probationer any term of probation authorized by Section 6 of this article, and may require the probationer to pay the fee authorized by Section 6a of this article. Fees received under this section shall be deposited in the same manner as required by Section 6a(b) of this article.

Sec. 7. At any time, after the defendant has satisfactorily completed one-third of the original probationary period or two years of probation, whichever is the lesser, the period of probation may be reduced or terminated by the court. Upon the satisfactory fulfillment of the conditions of probation, and the expiration of the period of probation, the court, by order duly entered, shall amend or modify the original sentence imposed, if necessary, to conform to the probation period and shall discharge the defendant. In case the defendant has been convicted or has entered a plea of guilty or a plea of nolo contendere to an offense other than an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011–1, Revised Statutes, and the court has discharged the defendant hereunder, such court may set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the accusation, complaint, information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted or to which he has pleaded guilty, except that proof of his said conviction or plea of guilty shall be made known to the court should the defendant again be convicted of any criminal offense.

Sec. 8. (a) At any time during the period of probation the court may issue a warrant for violation of any of the conditions of the probation and cause the defendant to be arrested. Any probation officer, police officer or other officer with power of arrest may arrest such defendant without a warrant upon the order of the judge of such court to be noted on the docket of the court. A probationer so arrested may be detained in the county jail or other appropriate place of detention until he can be taken before the court. Such officer shall forthwith report such arrest and detention to such court. If the defendant has not been released on bail, on motion by the defendant the court shall cause the defendant to be brought before it for a hearing within 20 days of filing of said motion, and after a hearing without a jury, may either continue, modify, or revoke the probation. The state may amend the motion to revoke probation any time up to seven days before the date of the revocation hearing, after which time the motion may not be amended except for good cause shown, and in no event may the state amend the motion after the commencement of taking evidence at the hearing. The court may continue the hearing for good cause shown by either the defendant or the state. If probation is revoked, the court may proceed to dispose of the case as if there had been no probation, or if it determines that the best interests of society and the probationer would be served by a shorter term of imprisonment, reduce the term of imprisonment originally assessed to any term of imprisonment not less than the minimum prescribed for the offense of which the probationer was convicted. If probation is revoked, the court may sentence a probationer to serve a term in a restitution center if the probationer would have been eligible for sentencing to the center on conviction of the offense for which the probationer received probation and the probationer had not been placed under intensive supervision probation prior to revocation because of failure to meet court-imposed conditions.

(b) Any probationer who removes himself from the State of Texas without permission of the court having jurisdiction of the case, shall be deemed and considered a fugitive from justice and shall be subject to extradition as now provided by law. No part of the time that the defendant is on probation shall be considered as any part of the time that he shall be sentenced to serve. The right of the probationer to appeal to the Court of Appeals for a review of the trial and conviction, as provided by law, shall be accorded the probationer at the time he is placed on

probation. When he is notified that his probation is revoked for violation of the conditions of probation and he is called on to serve a sentence in a jail or in an institution operated by the Department of Corrections, he may appeal the revocation.

(c) In a probation revocation hearing at which it is alleged only that the probationer violated the conditions of probation by failing to pay compensation paid to appointed counsel, probation fees, court costs, restitution, or reparations, the inability of the probationer to pay as ordered by the court is an affirmative defense to revocation, which the probationer must prove by a preponderance of evidence.

Sec. 9. If, for good and sufficient reasons, probationers desire to change their residence within the State, such transfer may be effected by application to their supervising probation officer, which transfer shall be subject to the court's consent and subject to such regulations as the court may require in the absence of a probation officer in the locality to which the probationer is transferred.

Sec. 10. (a) For the purpose of providing adequate probation services, the district judge or district judges trying criminal cases in each judicial district in this state shall establish a probation office and employ, in accordance with standards set by the commission, district personnel as may be necessary to conduct presentence investigations, supervise and rehabilitate probationers, and enforce the terms and conditions of misdemeanor and felony probation. The district judge or judges may authorize district personnel to operate programs for the supervision and rehabilitation of persons in pretrial diversion programs. Persons in pretrial diversion programs may be supervised for a period not to exceed 12 months and may be assessed a supervisory fee or a program fee, or both, provided the maximum fees do not exceed a total of $200.00. If two or more judicial districts serve a county, or a district has more than one county, one district probation department shall serve all courts and counties in the districts. However, the adult probation commission may adopt rules to allow more than one probation department in a judicial district with more than one county if providing more than one probation department will promote administrative convenience or economy or improve probation services. The district judge or judges may direct the probation department to establish and maintain a restitution center under this subsection. The district judge or judges may enter into an agreement with the judge or judges of other districts for the purpose of establishing a regional restitution center. If a restitution center is established, the district judge or judges shall appoint a community advisory council to advise the probation department in its establishment and maintenance of the center.

(b) Where more than one probation officer is required, the judge or judges shall appoint a chief adult probation officer or director, who, with their approval, shall appoint a sufficient number of assistants and other employees to carry on the professional, clerical, and other work of the court. The chief adult probation officer or director shall also appoint the director of a restitution center established in the district. The appointment is subject to the approval of the district judge or judges.

(c) To be eligible for appointment as an adult probation officer, a person who is not an adult probation officer on the effective date of this Act:

(1) must have acquired a bachelor's degree conferred by a college or university accredited by an accrediting organization recognized by the Coordinating Board, Texas College and University System; and

(A) one year of graduate study in criminology, corrections, counseling, law, social work, psychology, sociology, or a related field that has been approved by the Texas Adult Probation Commission; [1] or

(B) one year of experience in full-time case work, counseling, or community or group work in a social, community, corrections, or juvenile agency that deals with offenders or disadvantaged persons that has been approved by the Texas Adult Probation Commission; and

(2) must not be otherwise disqualified by Section 31 of this article.

(d) The adult probation commission may adopt rules under which a judicial district may employ an adult probation officer who is not qualified under Subdivision (B), Subsection (c) of this section if the district judge, district judges, chief adult probation officer, or director tried but failed to employ a probation officer qualified under Subsection (c) of this section.

(e) The same person serving as a probation officer for juveniles may not be required to serve as a probation officer for adults and vice versa.

(f) Probation officers shall be furnished transportation or, alternatively, shall be entitled to an automobile allowance for use of personal automobile on official business.

(g) Except as provided in Subsection (j) of this section, personnel of the respective district probation departments shall not be deemed state employees and the responsible judge or judges of a district probation department shall negotiate a contract with the most populous county within the judicial district for all district probation department staff to participate in that county's group insurance programs, retirement plan, including the district and county retirement system if the county participates in that system for any county employees, and personnel policies with regard to vacation credit, sick leave credit, holiday schedule, credit union, jury leave, military leave, etc.

(h) Where a judicial district has criminal jurisdiction in two or more counties, those counties may enter into agreement that the total expenses of such facilities, equipment, and utilities be distributed approximately in the same proportion as the population in each county bears to the total population of all those counties, according to the last preceding or any future federal census.

(i) The salaries of personnel, and other expenses essential to the adequate supervision of probationers, shall be paid from the funds of the judicial district. In all the instances of employment of probation officers, the responsible judges are authorized to accept state-aid, grants or gifts from other political subdivisions of the state or associations and foundations, for the sole purpose of financing adequate and effective probationary programs and community-based correctional facilities other than jails or prisons in the various parts of the district. For the purposes of this Act, the municipalities of this state are specifically authorized to grant and allocate such sums of money as their respective governing bodies may approve to their appropriate county governments for the support and maintenance of effective programs. All grants, gifts, and allocations of the character and purpose described in this section shall be handled and accounted for separately from other public funds of the county.

Text of subsec. (j) as added by Acts 1983, 68th Leg., p. 2038, ch. 372, § 1

(j) In a county with a population in excess of 2,000,000 according to the most recent federal census, both the district judges trying criminal cases and the judges of statutory county courts trying criminal cases are entitled to participate in the supervision and administration of the probation office serving those courts.

Text of subsec. (j) as added by Acts 1983, 68th Leg., p. 5003, ch. 897, § 1

(j) The county or counties comprising a judicial district or geographical area served by a district probation department shall provide physical facilities, equipment, and utilities for an effective and professional adult probation and adult community-based correctional service.

Text of subsec. (j) as added by Acts 1983, 68th Leg., p. 4535, ch. 747, § 1

(j) Persons employed as district personnel under Subsection (a) of this section are state employees for the purposes of Chapter 309, Acts of 64th Legislature, 1975 (Article 6252-26, Vernon's Texas Civil Statutes), and Article 8309g, Revised Statutes.

(k) The district judge or judges may authorize the expenditure of district funds in order to provide expanded facilities, equipment, and utilities if:

(1) the probation department needs to increase its number of employees in order to provide more effective service;

(2) the county or counties certify to the judge or judges that they have neither adequate space in county-owned buildings nor adequate funds to lease additional physical facilities, purchase additional equipment, and pay for additional utilities required by the department; and

(3) the county or counties provide facilities, equipment, and utilities at or above the level required by the Texas Adult Probation Commission.

(*l*) The Texas Adult Probation Commission shall set as the level of contribution a county or counties must meet or exceed to receive district funds under Subsection (k) of this section a level that is not lower than the average level provided by the county or counties during the county fiscal years of 1979, 1980, 1981, 1982, and 1983. In setting the level, the commission may consider inflation and changes in the population and tax base in the county or counties.

(m) If the probation department needs to expand its facilities in order to provide more effective services and if the judge or judges determine that effective management of the department requires all or part of the department to be moved to rented or leased space outside of the county-owned building because additional space in a county-owned building is unavailable, the county or counties shall provide the department with funds necessary to pay for the rental or lease of the same number of square feet as provided to the department in county-owned buildings immediately before such a move. The district judge or judges may approve a proportional reduction in a county's contribution to the cost of rental or lease of space provided to a probation department if the judge or judges determine that the number of probationers supervised by the department has decreased and the department is able to provide effective services with a reduced number of officers requiring less office space.

(n) The district judge or judges may authorize expenditures of funds provided by the Texas Adult Probation Commission to the department for the purposes of providing facilities, equipment, and utilities for community-based correctional programs if:

(1) the judge or judges direct the probation department to establish community-based correctional programs requiring facilities other than a probation office;

(2) the adult probation commission provides state funds for the purpose of establishing or improving residential centers, restitution centers, and other community-based correctional programs other than jails or prisons; and

(3) the county or counties certify to the judge or judges that space in county-owned buildings is

not available and county funds are not available to provide facilities, equipment, and utilities for the establishment of community-based correctional programs.

[1] See art. 42.121.

Sec. 10A. Deferred Adjudication and Performance of Community Service.

(a) Except for a defendant charged with an offense under Article 6701*l*–1, Revised Statutes, as amended, a defendant who pleads guilty or nolo contendere to a first offense felony that does not involve bodily injury or the threat of bodily injury to any person and for which the maximum punishment assessed against the defendant does not exceed 10 years' imprisonment is eligible for community-service restitution probation.

(b) The judges of the courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, shall have the power, upon application of an eligible defendant and after receiving the defendant's plea, hearing the evidence, and finding that it substantiates the defendant's guilt, to defer further proceedings without entering an adjudication of guilt and place the defendant on community-service restitution probation.

(c) If the court places a defendant on community-service restitution probation, the court shall require, as a condition of the probation, that the defendant work a specified number of hours at a specified community-service project for an organization named in the court's order.

(d) The amount of community-service work ordered by the court:

(1) may not exceed 1,000 hours and may not be less than 320 hours for an offense classified as a first degree felony;

(2) may not exceed 800 hours and may not be less than 240 hours for an offense classified as a second degree felony; and

(3) may not exceed 600 hours and may not be less than 160 hours for an offense classified as a third degree felony.

(e) The terms of community-service restitution probation shall include the condition that the defendant shall:

(1) work faithfully at the community-service task assigned by the court; and

(2) make restitution and/or reparation to the victim of the offense and any other person who suffered loss of property or physical injury as a result of the offense as ordered by the court; and shall include, but shall not be limited to, the conditions set forth in Sections 6 and 6a of this article.

(f) The clerk of a court granting community-service restitution probation shall promptly furnish the probationer with a written statement of the period and terms of the probation.

(g) Community-service work authorized pursuant to this section must be for any nonprofit organization that has agreed to accept community-service probationers and supervise and report on their work and whose services are provided to the general public and are designed to enhance the social welfare, physical or mental stability, environmental quality, or general well-being of the community.

(h) The court shall select community-service tasks that may be performed during hours the probationer is not working or attending school and that are within the probationer's capabilities. A probationer may not receive compensation for community-service work.

(i) On violation of a condition of community-service probation, the defendant may be arrested and detained as provided in Section 8 of this article. The defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of probation, and defendant's appeal continue as if the adjudication of guilt had not been deferred.

(j) Except as provided in Subsection (k) of this section on satisfactory completion by a probationer of the required amount of community-service restitution work and full payment of restitution as ordered by the court, if the court has not proceeded to adjudication of guilt, the court shall dismiss the proceedings against the defendant and discharge him. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that on conviction of a subsequent offense the fact that the defendant previously received community-service probation is admissible on the issue of penalty.

(k) The provisions of Subsection (j) of this section do not apply a [1] defendant charged with an offense listed in Section 4.012(b), Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes). On satisfactory completion of probation by a defendant charged with such an offense, the court shall adjudge the defendant guilty of the offense and shall discharge him without further punishment.

[1] So in enrolled bill; probably should read "to a".

Sec. 11. For the purpose of determining when fees are to be paid to any officer or officers, the placing of the defendant on probation shall be considered a final disposition of the case, without the

necessity of waiting for the termination of the period of probation or suspension of sentence.

Sec. 11a. The provisions of Sections 6a, 10, and 11 of this Article also apply to Article 42.13.

C. Paroles

Sec. 12. (a) The Board of Pardons and Paroles is established as a statutory agency. The Board consists of six members appointed by the Governor with the advice and consent of the senate.

(b) Members of the Board must be resident citizens of this state and must have been residents for a period of not less than two years immediately preceding their appointment. Members hold office for staggered terms of six years. The terms expire on January 31 of odd-numbered years.

(c) If a vacancy occurs, the Governor shall appoint a person to serve the remainder of the unexpired term in the same manner as other appointments.

(d) The Board shall administer the provisions of this Act respecting determinations of which prisoners shall be paroled from an institution operated by the Department of Corrections and the conditions of parole and mandatory supervision, may recommend the revocation of conditional pardons by the Governor, and may revoke paroles and releases to mandatory supervision. Keeping the goals of this Act in mind, the Board shall have the authority to determine the degree and intensity of supervision a prisoner released on parole or released to mandatory supervision should receive.

Sec. 12a. The Board of Pardons and Paroles is subject to the Texas Sunset Act,[1] but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1987 and of every 12th year after 1987 are reviewed.

[1] Civil Statutes, art. 5429k.

Sec. 13. The members of the Board shall give full time to the duties of their office and shall be paid such salaries as the Legislature may determine in Appropriation Acts. The Governor shall biennially designate one member to serve as chairman and one member to serve as vice-chairman.

The Board shall meet at the call of the chairman and from time to time as may otherwise be determined by majority vote of the Board. A majority of the Board shall constitute a quorum for the transaction of all business.

The Board shall adopt an official seal of which the courts shall take judicial notice. Decisions of the Board shall be by majority vote.

The Board shall keep a record of its acts and shall notify each institution of its decision relating to the persons who are confined therein. At the close of each fiscal year the Board shall submit to the Governor and to the Legislature a report with statistical and other data of its work.

All minutes of the Board and decisions relating to mandatory supervision, parole, pardon, and clemency shall be matters of public record and subject to public inspection at all reasonable times.

The Board shall employ an executive director who shall be responsible to the Board for the conduct of the affairs of the agency.

Sec. 14. The necessary office quarters shall be provided for the Board in the manner that the same are furnished to other departments, boards, commissions, bureaus and offices of the State.

Sec. 14A. (a) To aid and assist the Board of Pardons and Paroles in parole and mandatory supervision decisions, provision is hereby made for the employment of parole commissioners.

(b) There shall be employed no less than six commissioners subject to the approval of a majority of the members of the Board.

(c) The commissioners shall assist the Board in parole decisions and mandatory supervision revocation decisions. The votes on individual recommendations by the commissioners on parole decisions and mandatory supervision revocation decisions shall be independent and have the same force and effect as votes by the Board. The commissioners may assist the Board in other matters as determined by the Board.

A parole panel, as hereinafter provided, may recommend the granting, denying, or revocation of parole, the revocation of mandatory supervision status, and may conduct parole revocation hearings and mandatory supervision revocation hearings. The commissioners shall perform their duties as directed by the board.

(d) The board may provide and promulgate a written plan for the administrative review of actions taken by a parole panel.

(e) In matters of parole and release to mandatory supervision, the board members and commissioners may act in panels comprised of three persons in each panel. The composition of the respective panels shall be designated by the board. A majority of each panel shall constitute a quorum for the transaction of its business, and its decisions shall be by a majority vote. The functions given to the board throughout Article 42.12, Code of Criminal Procedure, 1965, as amended, may be enlarged and extend to the parole panels, as provided by board rules. The powers of the board and the board

members can be delegated by the board to the parole panels and to the commissioners as needed for the convenience of and assistance to the board.

Sec. 15. (a) The Board is authorized to release on parole any person confined in any penal or correctional institution of this State who is eligible for parole under Subsection (b) of this Section. The period of parole shall be equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. All paroles shall issue upon order of the Board.

(b) A prisoner under sentence of death is not eligible for parole. If a prisoner is serving a sentence for the offenses listed in Section 3f(a)(1) of this Article or if the judgment contains an affirmative finding under Section 3f(a)(2) of this Article, he is not eligible for release on parole until his actual calendar time served, without consideration of good conduct time, equals one-third of the maximum sentence or 20 calendar years, whichever is less, but in no event shall he be eligible for release on parole in less than two calendar years. All other prisoners shall be eligible for release on parole when their calendar time served plus good conduct time equals one-third of the maximum sentence imposed or 20 years, whichever is less.

(c) A prisoner who is not on parole, except a person under sentence of death, shall be released to mandatory supervision by order of the Board when the calendar time he has served plus any accrued good conduct time equal the maximum term to which he was sentenced. A prisoner released to mandatory supervision shall, upon release, be deemed as if released on parole. To the extent practicable, arrangements for the prisoner's proper employment, maintenance, and care shall be made prior to his release to mandatory supervision. The period of mandatory supervision shall be for a period equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. The time served on mandatory supervision is calculated as calendar time. Every prisoner while on mandatory supervision shall remain in the legal custody of the institution from which he was released but shall be amenable to the orders of the Board.

(d) A prisoner who has not been released to mandatory supervision and has 180 calendar days or less remaining on his sentence may be released by order of the Board to mandatory supervision.

(e) Within one year after a prisoner's admittance to the penal or correctional institution and at such intervals thereafter, as it may determine, the Board shall secure and consider all pertinent information regarding each prisoner, except any under sentence of death, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment and attitude in prison, and his physical and mental health.

(f) Before ordering the parole of any prisoner, the Board may have the prisoner appear before it and interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered to be a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his employment or for his maintenance and care, and when the Board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released but shall be amenable to the orders of the Board.

(g) The Board may adopt such other reasonable rules not inconsistent with law as it may deem proper or necessary with respect to the eligibility of prisoners for parole and mandatory supervision, the conduct of parole and mandatory supervision hearings, or conditions to be imposed upon parolees and persons released to mandatory supervision. Each person to be released on parole shall be furnished a written statement and contract setting forth in clear and intelligible language the conditions and rules of parole. The conditions shall include the making of restitution or reparation to the victim of the prisoner's crime, in an amount not greater than such restitution or reparation as established by the court and entered in the sentence of the court which sentenced the prisoner to his term of imprisonment. Acceptance, signing, and execution of the contract by the inmate to be paroled shall be a precondition to release on parole. Persons released on mandatory supervision shall be furnished a written statement setting forth in clear and intelligible language the conditions and rules of mandatory supervision.

(h) The Board shall certify and contract with halfway houses and shall use them to the maximum extent:

(1) to provide close supervision;

(2) to help persons released on parole make restitution or reparation and fulfill the obligations of law-abiding citizens; and

(3) to reduce recidivism.

(i) The halfway houses shall include a pilot project for selected inmates over 55 years of age in order to assist these elderly persons in obtaining parole by providing transitional living arrangements and possible suitable employment.

(j) Funding for this pilot project for parole for the elderly should come from the Criminal Justice Division of the Governor's Office. The funding agency should evaluate the performance of the pilot project at the end of two years of operation and provide recommendations to the Governor and the Legislature regarding the need and value of continuing the project.

(k) It shall be the duty of the Board at least ten days before ordering the parole of any prisoner or upon the granting of executive clemency by the Governor to notify the sheriff, the prosecuting attorney and the district judge in the county where such person was convicted that such parole or clemency is being considered by the Board or by the Governor.

(*l*) If no parole officer has been assigned to the locality where a person is to be released on parole, mandatory supervision, or executive clemency the Board shall notify the chairman of the Voluntary Parole Board of such county prior to the release of such person. The Board shall request such Voluntary Parole Board, in the absence of a parole officer, for information which would herein be required of such duly appointed parole officer. This shall not, however, preclude the Board from requesting information from any public agency in such locality. Further, the Board is authorized to contract with the Texas Adult Probation Commission for the supervision of persons released on parole or mandatory supervision for the supervision by an adult probation officer, subject to the approval of the judge or judges that employ the officer. The Board shall report annually all such payments made to the Texas Adult Probation Commission, the Governor, and the Legislature.

(m) As an element of the board's halfway house program, the board, in cooperation with the Texas Department of Corrections, shall utilize halfway houses for the purpose of diverting from housing in regular units of the department of corrections suitable low-risk prisoners and other prisoners who would benefit from a smoother transition from incarceration to conditional freedom. To accomplish this purpose, the board, after reviewing all available pertinent information and receiving the approval of the governor, may designate a presumptive parole date for any inmate who (i) is not serving a sentence for an offense listed in Subdivision (1) of Subsection (a) of Section 3f of this article and whose judgment does not contain an affirmative finding under Subdivision (2) of Subsection (a) of Section 3F of this article, (ii) has never been convicted of an offense listed in Subdivision (1) of Subsection (a) of Section 3f of this article and has never had a conviction, the judgment for which contains an affirmative finding under Subdivision (2) of Subsection (a) of Section 3f of this article, and (iii) has not previously been denied release by the board. The presumptive parole date may not be a date which is earlier than the prisoner's initial parole eligibility date, as calculated or projected pursuant to Subsection (b) of Section 15 of this article. If a prisoner for whom a presumptive parole date has been established is transferred into a pre-parole residence in a halfway house pursuant to the terms of Article 6166x–4, Revised Statutes, the board is responsible for his supervision. The board may rescind or postpone a previously established presumptive parole date on the basis of reports from agents of the board responsible for supervision or agents of the department of corrections acting in the case. If a prisoner transferred to pre-parole status has satisfactorily served his sentence in the halfway house to which he is assigned, from the date of transfer to the presumptive parole date, without rescission or postponement of the date, the board shall order his release to parole and issue an appropriate certificate of release. The prisoner is subject to the provisions of this article governing release on parole.

Sec. 16. It shall be the duty of any judge, district attorney, county attorney, police officer or other public official of the state, having information with reference to any prisoner eligible for parole, to send in writing such information as may be in his possession or under his control to the Board, upon request of any member or employee thereof.

Sec. 17. It shall be the duty of all prison officials to grant to the members of the Board, or its properly accredited representatives, access at all reasonable times to any prisoner, to provide for the Board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the Board such reports as the Board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the Board pertinent in determining whether such prisoner shall be paroled.

Sec. 18. The Board shall formulate rules as to the submission and presentation of information and arguments to the Board for and in behalf of any person within the jurisdiction of the Board.

All persons presenting information or arguments to the Board shall submit therewith an affidavit stating whether any fee has been paid or is to be paid for their services in the case, the amount of such fee, if any, and by whom such fee is paid or to be paid.

Sec. 19. The Board shall have power to issue subpoenas requiring the attendance of such witnesses and the production of such records, books, papers, and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oath administered by any member of the Board. Subpoenas so issued may be served by a sheriff, constable, police, parole, or probation officer, or other law enforcement officer, in the same manner as similar process in courts of record having original jurisdiction of criminal actions. Any person who testifies falsely or fails to appear when subpoenaed, or fails or refuses to produce such material pursuant to the subpoena, shall be subject to the same orders and penalties to which a person before a court is subject. Any courts of record having original jurisdiction of criminal actions upon application of the Board, may in

their discretion compel the attendance of witnesses, the production of such material and the giving of testimony before the Board, by an attachment for contempt or otherwise in the same manner as production of evidence may be compelled before such courts of record having original jurisdiction of criminal actions.

Sec. 20. The Board shall have the power and duty to make rules for the conduct of persons placed on parole and of persons released to mandatory supervision.

Sec. 21. (a) A warrant for the return of a paroled prisoner, a prisoner released to mandatory supervision, a prisoner released on emergency reprieve or on furlough, or a person released on a conditional pardon to the institution from which he was paroled, released, or pardoned may be issued by the Board in cases of parole or mandatory supervision, or by the Board on order by the Governor in other cases, when there is reason to believe that he has committed an offense against the laws of this State or of the United States, violated a condition of his parole, mandatory supervision, or conditional pardon, or when the circumstances indicate that he poses a danger to society that warrants his immediate return to incarceration. Such warrant shall authorize all officers named therein to take actual custody of the prisoner and return him to the institution from which he was released. Pending hearing, as hereinafter provided, upon any charge of parole violation or violation of the conditions of mandatory supervision, the prisoner shall remain incarcerated.

(b) A prisoner for whose return a warrant has been issued by the Board shall, after the issuance of such warrant, be deemed a fugitive from justice and if it shall appear that he has violated the conditions or provisions of his mandatory supervision or parole, then the time from the issuing of such warrant to the date of his arrest shall not be counted as any part of the time to be served under his sentence. The law now in effect concerning the right of the State of Texas to extradite persons and return fugitives from justice, and Article 42.11 of this Code concerning the waiver of all legal requirements to obtain extradition of fugitives from justice, from other states to this State, shall not be impaired by this Act and shall remain in full force and effect.

Sec. 22. Whenever a prisoner or a person granted a conditional pardon is accused of a violation of his parole, mandatory supervision, or conditional pardon on information and complaint by a law enforcement officer or parole officer, he shall be entitled to be heard on such charges before the Board or its designee under such rules and regulations as the Board may adopt; providing, however, said hearing shall be a public hearing and shall be held within ninety days of the date of arrest under a warrant issued by the Board of Pardons and Paroles or the Governor and at a time and place set by the Board. When the Board has heard the facts, it may recommend to the Governor that the conditional pardon be continued, or revoked, or modified, or it may continue, revoke, or modify the parole or mandatory supervision, in any manner warranted by the evidence. When a person's parole, mandatory supervision, or conditional pardon is revoked, that person may be required to serve the portion remaining of the sentence on which he was released, such portion remaining to be calculated without credit for the time from the date of his release to the date of revocation. When a warrant is issued by the Board of Pardons and Paroles or the Governor charging a violation of release conditions, the sentence time credit shall be suspended until a determination is made by the Board of Pardons and Paroles or the Governor in such case and such suspended time credit may be re-instated by the Board of Pardons and Paroles should such parole, mandatory supervision, or conditional pardon be continued.

Sec. 23. In order to complete the parole period, a parolee shall be required to serve out the whole term for which he was sentenced, subject to the deduction of the time he had served prior to his parole and to any diminution of sentence earned for good behavior while imprisoned in the Department of Corrections. The time on parole shall be calculated as calendar time. This provision, however, shall not be construed so as to interfere with the constitutional power conferred upon the Governor to grant pardons and to commute sentences.

When any paroled prisoner has fulfilled the obligations of his parole and has served out his term as conditioned in the preceding paragraph, the Board shall make a final order of discharge and issue to the parolee a certificate of such discharge.

Sec. 24. When any prisoner who has been paroled or released to mandatory supervision has complied with the rules and conditions governing his release until the end of the term to which he was sentenced, and without a revocation of his parole or mandatory supervision, the Board shall make a final order of discharge and issue the prisoner a certificate of discharge.

Sec. 25. On request of the Governor the Board shall investigate and report to the Governor with respect to any person being considered by the Governor for pardon, commutation of sentence, reprieve, or remission of fine or forfeiture, and make recommendations thereon.

D. Supervision of Parolees

Sec. 26. The Board of Pardons and Paroles shall have general responsibility for the investigation and supervision of all prisoners released on parole and to mandatory supervision. For the discharge of this responsibility, there is hereby created with the Board of Pardons and Paroles, a Division of Parole

Supervision. Subject to the general direction of the Board of Pardons and Paroles, the Division of Parole Supervision, including its field staff shall be responsible for obtaining and assembling any facts the Board of Pardons and Paroles may desire in considering parole eligibility, in establishing a mandatory supervision plan, and for investigating and supervising paroled prisoners and prisoners released to mandatory supervision to see that the conditions of parole and mandatory supervision are complied with, and for making such periodic reports on the progress of parolees and prisoners released to mandatory supervision as the Board may desire.

Sec. 27. All information obtained in connection with inmates of the Texas Department of Corrections subject to parole, release to mandatory supervision, or executive clemency or individuals who may be on mandatory supervision or parole and under the supervision of the division, or persons directly identified in any proposed plan of release for a prisoner, shall be confidential and privileged information and shall not be subject to public inspection; provided, however, that all such information shall be available to the Governor and the Board of Pardons and Paroles upon request. It is further provided, that statistical and general information respecting the parole and mandatory supervision program and system, including the names of paroled prisoners, prisoners released to mandatory supervision, and data recorded in connection with parole and mandatory supervision services, shall be subject to public inspection at any reasonable time.

Sec. 28. It is expressly provided that no person may be employed as a parole officer or supervisor, or be responsible for the investigations or supervision of persons on parole or mandatory supervision, unless he meets the following qualifications together with any other qualifications that may be specified by the Director, with the approval of the Board of Pardons and Paroles; four years of successfully completed education in an accredited college or university, and two years of full time paid employment in responsible correctional work with adults or juveniles, social welfare work, teaching, or personnel work. Additional experience in the above categories may be substituted year for year for the required college education, with a maximum substitution for two years.

Sec. 29. Any parole officer or supervisor may, with the approval of the director, be designated as a probation officer by the judge of a court of the State having original jurisdiction of criminal actions. Any proportional part of the salary paid to a parole officer or supervisor so designated, however, in compensation for his service as a probation officer, shall be only with the prior written approval of the director; and all such proportional salary payments shall be periodically reported to the Governor and the Legislature by the director.

Sec. 30. In order to provide supervision of parolees, persons released to mandatory supervision, and persons granted executive clemency who reside in sparsely settled areas of the State and in localities not served by regularly employed parole officers, the Governor of this State is authorized to appoint chairmen of Voluntary Parole Boards for such areas or localities. The appointed chairman may, with the advice and approval of the Director, appoint additional members of such Voluntary Parole Boards. The term of service by such appointed chairmen of Voluntary Parole Boards shall not exceed the term of office of the appointing Governor; and the terms of service of locally appointed additional members of such Voluntary Parole Boards shall not exceed the terms of office of the director. However, it is expressly provided that the terms of service by such chairmen and additional members of Voluntary Parole Boards may be continued by appropriate reappointments. The chairman of the Voluntary Parole Board shall be responsible for assigning supervision of parolees and of persons released to mandatory supervision to the members of such board.

Sec. 31. No person who is serving as a sheriff, deputy sheriff, constable, deputy constable, city policeman, Texas Ranger, state highway patrolman, or similar law enforcement officer, or as a prosecuting attorney, shall act as a parole officer or be responsible for the supervision of persons on parole or released to mandatory supervision.

Sec. 32. Any parole officer or supervisor, upon order of the Board and by direction of the director, shall be responsible for supervising persons placed on conditional pardon or furlough or prisoners transferred to pre-parole status under Article 6166x–4, Revised Statutes.

E. General Provisions

Sec. 33. The provisions of this Act shall not be construed to prevent or limit the exercise by the Governor of powers of executive clemency vested in him by the Constitution of this State.

Sec. 34. The provisions of this Act shall not apply to parole from institutions for juveniles.

Sec. 35. This Article shall not be deemed to alter or invalidate any probationary period fixed under statutes in force prior to the effective date of this Code or to limit the jurisdiction or power of a court to modify or terminate such probationary period. In other respects, persons placed on probation or parole prior to the effective date of this Code shall be amenable to the provisions of this Code insofar as it may be made applicable to them. All other actions pertaining to probations and paroles granted prior to the effective date of this Code shall be regulated according to the law in force at the time the probation or parole was granted.

Sec. 36. The provisions of this article do not apply to temporary furloughs granted to an inmate by the Texas Department of Corrections under Article 6184n, Revised Civil Statutes of Texas, 1925.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1744 to 1746, ch. 659, § 29, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 568, ch. 241, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1235, ch. 447, § 1, eff. June 14, 1973; Acts 1973, 63rd Leg., p. 1269, ch. 464, § 1, eff. June 14, 1973; Acts 1975, 64th Leg., p. 263, ch. 110, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 572, ch. 231, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 909, ch. 341, § 4, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1243, ch. 467, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1244, ch. 468, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2150, ch. 692, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 38, ch. 22, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 102, ch. 47, § 1, eff. April 5, 1977; Acts 1977, 65th Leg., p. 821, ch. 306, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 909, ch. 342, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 914, ch. 343, § 2, eff. Sept. 1, 1978; Acts 1977, 65th Leg., p. 925, ch. 347, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1058, ch. 388, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.133, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 265, ch. 139, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1336, ch. 605, §§ 1, 2, 4, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 154, ch. 69, §§ 1 to 4, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 353, ch. 141, §§ 2 to 9, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 741, ch. 276, § 3, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 707, ch. 268, § 16, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 811, ch. 291, § 118, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2246, ch. 538, §§ 1, 2, eff. June 12, 1981; Acts 1981, 67th Leg., p. 2263, ch. 544, § 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2464, ch. 638, § 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2466, ch. 639, § 2, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 148, ch. 40, §§ 2, 3, eff. April 26, 1983; Acts 1983, 68th Leg., p. 974, ch. 232, §§ 1 to 5; Acts 1983, 68th Leg., p. 1056 to 1062, ch. 237, §§ 1 to 4, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 1587, ch. 303, §§ 8 to 13, eff. Jan. 1, 1984; Acts 1983, 68th Leg., p. 1711, ch. 325, § 2, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 1790, ch. 343, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 2038, ch. 372, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 2415, ch. 425, § 25, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 3193, ch. 548, §§ 2, 3, eff. June 19, 1983; Acts 1983, 68th Leg., p. 4535, ch. 747, § 1, eff. June 19, 1983; Acts 1983, 68th Leg., p. 4572, ch. 762, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4669, ch. 811, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4877, ch. 863, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 5003, ch. 897, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 5319, ch. 977, §§ 9, 10, eff. Sept. 1, 1983.]

For saving provisions of Acts 1975, 64th Leg., p. 909, ch. 341, see note set out under art. 3.01.

Section 7 of Acts 1977, 65th Leg., p. 934, ch. 347, provided:

"This Act applies only to inmates sentenced to the Texas Department of Corrections for an offense committed on or after the effective date of this Act. Inmates sentenced for an offense committed prior to the effective date of this Act are governed by the law existing before the effective date, which is continued in effect for this purpose. For the purpose of this Act, an offense is committed on or after the effective date if any element of the offense occurs on or after the effective date."

Section 5 of Acts 1981, 67th Leg., p. 155, ch. 69, provides:

"A defendant's eligibility for shock probation is governed by this Act if the judgment of conviction is entered on or after the effective date of this Act. The eligibility for shock probation of a defendant as to whom a judgment of conviction was entered before the effective date of this Act is governed by the law in existence before the effective date, and that law is continued in effect for this purpose as if this law were not in force."

Section 10 of Acts 1981, 67th Leg., p. 357, ch. 141, provides:

"The terms of the parole commissioners expire on the effective date of this Act. They shall remain employed as commissioners until the employment is terminated by a majority of the Board of Pardons and Paroles."

Acts 1981, 67th Leg., p. 820, ch. 291, § 149, provides:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction. At least 1,800 appeals including death penalty appeals pending in the Court of Criminal Appeals prior to September 1, 1981, shall be retained by that court for disposition in accordance with laws in effect prior to the effective date of this Act, and for that purpose, all laws repealed or amended by this Act shall remain in force and effect for those appeals pending in the Court of Criminal Appeals. The remaining appeals pending in the Court of Criminal Appeals shall be transferred to the various courts of appeals on which the number of judges is increased by the 67th Session of the legislature; provided, no more than 75 nondeath penalty appeals shall be transferred for each newly created judgeship and such a transfer shall not be made until such justice assumes office."

Sections 6 and 7 of Acts 1983, 68th Leg., p. 978, ch. 232, provide:

"Sec. 6. (a) To fill the three new positions on the Board of Pardons and Paroles created by this Act, the governor shall appoint one person to a term expiring January 31, 1985, one to a term expiring January 31, 1987, and one to a term expiring January 31, 1989.

"(b) Members of the Board of Pardons and Paroles who are in office on the effective date of this Act serve the remainder of the term to which they are appointed.

"Sec. 7. This Act takes effect on adoption of the constitutional amendment proposed by S.J.R. No. 13, Acts of the 68th Legislature, Regular Session, 1983. If that amendment is not adopted, this Act has no effect."

Section 28(c) of Acts 1983, 68th Leg., p. 1607, ch. 303, provides:

"An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

Section 28 of Acts 1983, 68th Leg., p. 2417, ch. 425, provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act only if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

Section 4 of Acts 1983, 68th Leg., p. 3195, ch. 548, provides:

"If the constitutional amendment submitted to the voters on November 8, 1983, changing the Board of Pardons and Paroles from a constitutional agency to a statutory agency and giving the board the power to revoke paroles is adopted, on and after the effective date of that amendment, the board is not required to receive the governor's approval for dates established for pre-parole transfer under Article 6166x-4, Revised Statutes, or Subsection (m), Section 15, Article 42.12, Code of Criminal Procedure, 1965."

Art. 42.121. Texas Adult Probation Commission

Text of article added effective until September 1, 1987

SUBCHAPTER A. GENERAL PROVISION

Purposes

Sec. 1.01. The purposes of this article are to make probation services available throughout the

state, to improve the effectiveness of probation services, to provide alternatives to incarceration by providing financial aid to judicial districts for the establishment and improvement of probation services, community-based correctional programs, including restitution centers, and facilities other than jails or prisons, to establish uniform probation administration standards, and to assist judicial districts that choose to participate in programs for the supervision of persons entering a pretrial diversion program in the implementation and maintenance of those programs.

Definitions

Sec. 1.02. In this article:

(1) "Director" means the executive director of the Texas Adult Probation Commission.

(2) "Commission" means the Texas Adult Probation Commission.

(3) "Probation office" means the office established under Section 10(a), Article 42.12, Code of Criminal Procedure, 1965, as amended, to provide probation services in each judicial district.

(4) "Employee in the criminal justice system" means a person employed as a peace officer, county attorney, district attorney, probation officer, parole officer, corrections officer, or any person employed by a court.

SUBCHAPTER B. TEXAS ADULT PROBATION COMMISSION

Creation

Sec. 2.01. The Texas Adult Probation Commission is hereby created.

Membership

Sec. 2.02. The commission shall consist of three judges of the district courts of Texas and two citizens of Texas who are not employed in the criminal justice system to be appointed by the Chief Justice of the Supreme Court of Texas and three judges of the district courts of Texas and one citizen of Texas not employed in the criminal justice system to be appointed by the presiding judge of the Texas Court of Criminal Appeals.

Terms of Office

Sec. 2.03. (a) The first members appointed to the Board shall serve terms of two, four, and six years respectively, and until their successors are appointed. Thereafter each member shall serve for six years.

(b) The appointing authority shall draw lots to determine which members serve two, four, and six-year terms.

(c) If any member of the commission resigns or expires, the appointing authority for his respective commission position shall appoint another member to serve the remainder of the unexpired term.

Chairman

Sec. 2.04. (a) The members of the commission shall elect a chairman from among its members.

(b) The chairman of the commission shall serve for a term of two years.

Expenses

Sec. 2.05. Members of the commission are not entitled to compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing their official duties as commission members.

Meetings

Sec. 2.06. (a) The Chief Justice of the Supreme Court of Texas shall call the first meeting of the commission in September, 1977.

(b) The commission shall hold regular quarterly meetings each year on dates fixed by the commission and such special meetings as the commission determines necessary. The commission shall make rules providing for the regulation of its proceedings and for the holding of special meetings.

(c) A majority of the commission shall constitute a quorum.

(d) The commission shall keep a public record of its decisions at its general office.

Executive Director, Employees

Sec. 2.07. (a) The commission shall employ an executive director, whose qualifications shall comply with the standards required for a probation officer and who has a minimum of two years experience in the administration and supervision of adult probation services, and as many other employees as it needs to administer this article.

(b) The commission may delegate authority to the executive director to select employees of the commission.

Expiration

Sec. 2.08. Unless continued by law, the commission is abolished and this article expires effective September 1, 1987.

SUBCHAPTER C. POWERS AND DUTIES OF COMMISSION

Standards for Probation Offices, Probation Officers, and Community-based Correctional Programs and Facilities

Sec. 3.01. The commission shall promulgate reasonable rules:

(1) establishing minimum standards for case loads, programs, facilities, and equipment, and

other aspects of the operation of a probation office necessary for the provision of adequate and effective probation services;

(2) establishing a code of ethics for probation officers and providing for the enforcement thereof.

Records and Reports

Sec. 3.02. The commission shall require each probation office in Texas to:

(1) keep such financial and statistical records as the commission deems necessary;

(2) submit periodic financial and statistical reports to the commission.

Gifts and Grants

Sec. 3.03. The commission may apply for and accept gifts or grants from any public or private source for use in maintaining and improving probation services in Texas.

Intergovernmental Cooperation

Sec. 3.04. The commission may cooperate and contract with the federal government, with governmental agencies of Texas and other states, and with political subdivisions of Texas to improve probation services.

Inspections, Audits

Sec. 3.05. The commission may inspect and evaluate any probation office and conduct audits of financial records at any reasonable time to determine compliance with the commission's rules, regulations, or standards.

Studies

Sec. 3.06. The commission may conduct or participate in studies of corrections methods and systems.

Annual Report

Sec. 3.07. The commission shall make a report to the governor and to the legislature each year covering its operations and the condition of probation services in Texas during the previous year and making whatever recommendations it considers desirable.

Delegation of Authority

Sec. 3.08. The commission may delegate to the director or to any other employee any authority given it by this article except the authority to make rules.

Deposit of Money

Sec. 3.09. All money received by the commission under Section 3.03 of this article shall be deposited to the credit of special funds, which shall be appropriated, from the General Revenue Fund, for the payment of state aid by this article and for the administration of this article.

Restitution centers

Sec. 3.10. In order to establish and maintain restitution centers, as authorized by Section 10(a), Article 42.12, of this code, the commission may:

(1) develop standards for the operation of restitution centers;

(2) fund department-managed restitution centers if local contractors are not available or do not meet the standards established by the commission;

(3) consider funding for other management options, such as contracting, for management of restitution centers;

(4) provide funds to probation departments for the renovation of leased or donated buildings for use as restitution centers;

(5) allow probation departments to accept and use buildings provided by units of local government for use as restitution centers;

(6) provide funds to probation departments to lease buildings, land, or other real property for use as restitution centers, lease or purchase equipment necessary for the operation of centers, and pay other costs necessary for the management and operation of centers;

(7) require that all restitution centers be secure and be in compliance with state and local safety laws;

(8) develop standards for disciplinary rules to be imposed on residents of restitution centers;

(9) require probation departments to provide data requested by the commission; and

(10) develop standards for the granting of emergency furloughs to probationers.

SUBCHAPTER D. STATE-AID TO PROBATION OFFICES

State-Aid Defined

Sec. 4.01. "State-aid" means funds appropriated by the state legislature to be used by the commission for financial assistance to judicial districts to achieve the purposes of this Act as stated previously in Section 1.01 of this Act and to conform to the standards and policies promulgated by the commission.

Determination of Amount

Sec. 4.02. The legislature shall determine and appropriate the amount of state-aid necessary to maintain and improve statewide probation services commensurate with the purposes as stated in Section 1.01 of this Act.

Data for State-Aid

Sec. 4.03. The district judge or judges in each judicial district shall present data to the commission, determined by the commission, which is necessary to determine the amount of state financial aid needed for use in maintaining and improving probation services and community-based correctional programs and facilities other than jails or prisons in the district.

Reports

Sec. 4.04. A judicial district receiving state-aid shall submit reports as required by the commission.

Payment of State-Aid

Sec. 4.05. (a) When the commission determines that a judicial district complies with its standards, the commission shall prepare and submit to the comptroller of public accounts a voucher for payment to the district the amount of state-aid to which it is entitled.

(b) The fiscal officer designated for the district shall deposit all state-aid received under this article in a special fund of the county treasury, to be used solely for the provision of adult probation services, community-based correctional programs and facilities other than jails or prisons, and programs for the supervision of persons entering a pretrial diversion program.

Refusal or Suspension of State-Aid

Sec. 4.06. The commission shall refuse or suspend payment of state-aid to any district that fails to comply with the commission standards. The commission shall provide for notice and a hearing in cases in which it refuses or suspends state-aid.

[Acts 1977, 65th Leg., p. 910, ch. 343, § 1, eff. June 10, 1977. Amended by Acts 1979, 66th Leg., p. 1644, ch. 687, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., pp. 1063, 1064, ch. 237, §§ 5, 6, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4573, ch. 762, §§ 2, 3, eff. Aug. 29, 1983.]

Section 3 of the 1977 Act provided:

"Section 4.05 of Article 42.121, Code of Criminal Procedure, 1965, as amended, and Section 2 of this Act take effect on September 1, 1978."

Art. 42.13. Misdemeanor Adult Probation and Supervision Law

Sec. 1. It is the purpose of this article to place wholly within the state courts of appropriate jurisdiction the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of probation, and the supervision of probationers in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas. It is the further purpose of this article to remove from existing statutes the limitations other than questions of constitutionality that have acted as barriers to an effective system of probation in the public interest.

Sec. 2. This article may be cited as the "Misdemeanor Adult Probation and Supervision Law."

Unless the context otherwise requires, the following definitions shall apply to the specified words and phrases as used in this article:

(1) "Courts" shall mean the courts of record having original criminal jurisdiction.

(2) "Probation" shall mean the release of a convicted defendant by a court under conditions imposed by the court for a specified period during which the imposition of sentence is suspended.

(3) "Probationer" means a defendant who is on probation.

(4) "Probation officer" shall mean either a person duly appointed by one or more courts of record having original criminal jurisdiction to supervise defendants placed on probation or a person designated by such courts for such duties on a part-time basis.

Sec. 3. The judges of the courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, shall have the power, after conviction or a plea of guilty or nolo contendere for any crime or offense, where the punishment assessed against the defendant is by confinement in jail or by fine or by both such fine and imprisonment, to suspend the imposition of the sentence and may place the defendant on probation or impose a fine applicable to the offense committed and also place the defendant on probation as hereinafter provided. When imprisonment is assessed, the period of probation shall be for the maximum imprisonment applicable to such offense. Any such person placed on probation, whether in a trial by jury or before the court, shall be under the supervision of such court.

Sec. 3a. Where there is a conviction in any court of this state and the punishment assessed by the jury shall be by imprisonment in jail or by a fine or by both such fine and imprisonment, the jury may recommend probation for a period of the maximum imprisonment applicable to such offense of which the defendant is convicted, upon sworn motion made therefor by the defendant, filed before the penalty stage of the trial begins. When the jury recommends probation, it may recommend that the imprisonment or fine or both such fine and imprisonment found in its verdict may be probated. If the jury recommends probation for a person convicted of an offense under Article 6701*l*-1, Revised Statutes, and punished under Subsection (c) of that article, it may recommend that any operator's, commercial operator's, or chauffeur's license issued to the defendant under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes) not be sus-

pended. When the trial is to a jury and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the defendant, before the trial began, had filed a sworn statement that the defendant has never before been convicted of a felony, and after conviction and before the penalty stage of the trial began, the defendant shall have filed a sworn motion for probation and the proof shall show and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other state. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but the defendant may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court, if the jury recommends it in their verdict.

If probation is granted by the jury, the court may impose only those conditions which are set out in Section 6, 6a, or 6b hereof. The court may impose any one or all of those conditions. If probation is granted by the jury for a person convicted of an offense under Article 6701*l*–1, Revised Statutes, and punished under Subsection (c) of that article, the court shall impose as a condition the condition set out in Section 6c of this article.

Sec. 3b. Where probation is recommended by the verdict of a jury as provided for in Section 3a above, a defendant's probation shall not be revoked during his good behavior, so long as the defendant is within the jurisdiction of the court and his residence is known, except in accordance with the provisions of Section 8 of this article. If such defendant has no counsel, it shall be the duty of the court to inform the defendant of his right to show cause why the defendant's probation should not be revoked; and if the defendant requests such right, the court shall appoint counsel in accordance with Articles 26.04 and 26.05 of this code to prepare and present the same; and in all other respects the procedure set forth in Section 8 of this article shall be followed.

Sec. 3c. Nothing herein shall limit the power of the court to grant a probation of sentence regardless of the recommendation of the jury or prior conviction of the defendant.

Sec. 3d. (a) Except as provided by Subsection (d) of this section, when in its opinion the best interest of society and the defendant will be served, the court may, after receiving a plea of guilty or a plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period as the court may prescribe, not to exceed the maximum period of imprisonment prescribed for the offense for which the defendant is charged. The court may impose a fine applicable to the offense and require any reasonable terms and conditions of probation, including any of the conditions enumerated in Sections 6, 6a, and 6c of this Article. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the court shall proceed to final adjudication as in all other cases.

(b) On violation of a condition of probation imposed under Subsection (a) of this section, the defendant may be arrested and detained as provided in Section 8 of this article. The defendant is entitled to a hearing limited to a determination by the court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of probation, and defendant's appeal continue as if the adjudication of guilt had not been deferred.

(c) On expiration of a probationary period imposed under Subsection (a) of this section, if the court has not proceeded to adjudication of guilt, the court shall dismiss the proceedings against the defendant and discharge the defendant. The court may dismiss the proceedings and discharge the defendant prior to the expiration of the term of probation if in its opinion the best interest of society and the defendant will be served. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that upon conviction of a subsequent offense, the fact that the defendant had previously received probation shall be admissible before the court or jury to be considered on the issue of penalty.

(d) This section does not apply to a defendant charged with an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 6701*l*–1, Revised Statutes, as amended.

Sec. 3e. (a) For the purposes of this section, the jurisdiction of the courts in this state in which a sentence requiring confinement in a jail is imposed for conviction of a misdemeanor shall continue for a period of 90 days from the date the execution of the sentence actually begins. After the expiration of 10 days but prior to 90 days from the date the execution of the sentence actually begins, the judge of the court that imposed such sentence may on his own motion or on the motion of the defendant suspend further execution of the sentence imposed and place the defendant on probation under the terms and conditions of this article, if prior to the execution of that sentence the defendant had never been incarcerated in a penitentiary or jail serving a sentence for a felony or misdemeanor and in the

opinion of the judge the defendant would not benefit from further incarceration in a jail.

(b) When the defendant files a written motion with the court requesting suspension of further execution of the sentence and placement on probation or when requested to do so by the judge, the clerk of the court shall request a copy of the defendant's record while incarcerated from the agency operating the jail where the defendant is incarcerated. Upon receipt of such request, the agency operating the jail where the defendant is incarcerated shall forward to the court as soon as possible a full and complete copy of the defendant's record while incarcerated.

Sec. 4. (a) When directed by the court, a probation officer shall fully investigate and report to the court in writing the circumstances of the offense, criminal record, social history and present condition of the defendant. Whenever practicable, such investigation shall include a physical and mental examination of the defendant. Defendant, if not represented by counsel, counsel for defendant, and counsel for the state shall be afforded an opportunity to see a copy of the report upon request. If a defendant is committed to any institution, the probation officer shall send a report of such investigation to the institution at the time of commitment.

(b) Except as otherwise provided by this subsection, if a defendant is charged with an offense under Article 6701*l*-1, Revised Statutes, and the offense is punishable under Subsection (c) of that article, the court shall direct a probation officer or other person approved by the probation department for that purpose to conduct an evaluation to determine the appropriateness of alcohol or drug rehabilitation for the defendant and to report that evaluation to the court. The evaluation may be made at any time, except that if the defendant elects to have a jury assess punishment, the court may not order an evaluation until after sentencing. The court is not required to request an evaluation and report if it determines that the resources required to properly conduct the evaluation are not available in the county.

Sec. 5. Only the court in which the defendant was tried may grant probation, fix or alter conditions, revoke the probation, or discharge the defendant, unless the court has transferred jurisdiction of the case to another court with the latter's consent. After a defendant has been placed on probation, jurisdiction of the case may be transferred to a court of the same rank in this state having geographical jurisdiction where the defendant is residing or where a violation of the conditions of probation occurs. Upon transfer, the clerk of the court of original jurisdiction shall forward a transcript of such portions of the record as the transferring judge shall direct to the court accepting jurisdiction, which latter court shall thereafter proceed as if the trial and conviction had occurred in that court. Any court having geographical jurisdiction where the defendant is residing or where a violation of the conditions of probation occurs may issue a warrant for his arrest, but the determination of action to be taken after arrest shall be only by the court having jurisdiction of the case at the time the action is taken.

Sec. 6. (a) The court having jurisdiction of the case shall determine the terms and conditions of probation and may at any time during the period of probation alter or modify the conditions; provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer and shall note the date of delivery of such delivery on the docket. Terms and conditions of probation may include but shall not be limited to the conditions that the probationer shall:

(1) commit no offense against the laws of this state or of any other state or of the United States;

(2) avoid injurious or vicious habits;

(3) avoid persons or places of disreputable or harmful character;

(4) report to the probation officer as directed by the court or probation officer and obey all rules and regulations of the probation department;

(5) permit the probation officer to visit him at his home or elsewhere;

(6) work faithfully at suitable employment as far as possible;

(7) remain within a specified place;

(8) pay his fine, if one be assessed, and all court costs, whether a fine be assessed or not, in one or several sums and make restitution or reparation in any sum that the court shall determine;

(9) support his dependents;

(10) participate, for a time specified by the court and subject to the same conditions imposed on community-service probationers by Sections 3B(c), (d), (g), and (h) of this article, in any community-based program, including a community-service work program designated by the court, or participate in an alcohol or drug abuse treatment or education program and abstain from the use of alcoholic beverages or specified drugs at all times or under certain circumstances;

(11) reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed or if he was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;

(12) remain under custodial supervision in a community-based facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;

(13) pay a percentage of his income to his dependents for their support while under custodial supervision in the community-based facility; and

(14) pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense.

(b) If the court grants probation to a person convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 6701*l*–1, Revised Statutes, the court may require as a condition of probation that the person participate, for a time specified by the court and subject to the same conditions imposed on community-service probationers by Subsections (c), (d), (g), and (h), Section 3B of this article, in a community-service work program designated by the court.

Sec. 6a. (a) A court granting probation may fix a fee not exceeding $15 per month to be paid to the court by the probationer during the probationary period. The court may make payment of the fee a condition of granting or continuing the probation.

(b) The court shall deposit the fees received under Subsection (a) of this section in the special fund of the county treasury provided by Section 4.05(b), Article 42.121 of this code, as added, to be used for the same purposes for which state aid may be used under that section.

Sec. 6b. (a) When the court having jurisdiction of the case grants probation to the defendant, in addition to the conditions imposed under Section 6 of this article, the court may require as a condition of probation that the defendant submit to a period of detention in jail to serve a term of imprisonment not to exceed 30 days or one-third of the sentence, whichever is lesser.

(b) A court granting probation to a defendant convicted of an offense under Article 6701*l*–1, Revised Statutes, and punished under Subsection (d), (e), or (f) of that article shall require as a condition of probation that the defendant submit to:

(1) 72 hours of detention in a jail if the defendant was convicted under Subsection (d) of Article 6701*l*–1, Revised Statutes, as amended; 10 days of detention in a jail if the defendant was convicted under Subsection (e) of Article 6701*l*–1, Revised Statutes, as amended; or 30 days of detention in a jail if the defendant was convicted under Subsection (f) of Article 6701*l*–1, Revised Statutes, as amended; and

(2) an evaluation by a probation officer, by a person approved by the probation department, or by a program or facility approved by the Texas Commission on Alcoholism for the purpose of having the facility prescribe a course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition.

(c) A court granting probation to a defendant convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, shall require as a condition of probation that the defendant submit to a period of detention in a penal institution to serve a term of confinement of not less than 120 days.

(d) If the director of a facility to which a person is referred under Subdivision (2) of Subsection (b) of this article determines that the person is not making a good faith effort to participate in a program of rehabilitation, the director shall notify the court that referred the person of that fact.

(e) If a court requires as a condition of probation that the defendant participate in a prescribed course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition, the court shall require that the defendant pay for all or part of the cost of such rehabilitation based on the defendant's ability to pay. The court may, in its discretion, credit such cost paid by the defendant against the fine assessed.

(f) The imprisonment imposed shall be treated as a condition of probation, and in the event of a sentence of imprisonment upon the revocation of probation, the term of imprisonment served hereunder shall be credited toward service of such subsequent imprisonment.

Sec. 6c. If a person convicted of an offense under Article 6701*l*–1, Revised Civil Statutes of Texas, 1925, as amended, is punished under Subsection (c) of that article, and is placed on probation, the court shall require, as a condition of the probation, that the defendant attend and successfully complete before the 181st day after the day probation is granted an educational program jointly approved by the Texas Commission on Alcoholism, the Texas Department of Public Safety, the Traffic Safety Section of the State Department of Highways and Public Transportation, and the Texas Adult Probation Commission designed to rehabilitate persons who have driven while intoxicated. The Texas Commission on Alcoholism shall publish the jointly approved rules and regulations and shall monitor and coordinate the educational programs. Persons who have successfully completed an approved educational program or who are currently under an order to attend an educational program shall not be eligible for attendance upon a subsequent offense. The judge may waive the educational program requirement, however, if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider, but is not limited to: the offender's school and work schedule, the offender's health, the distance which the offender must travel to attend an educational program, and the fact that the offender resides out-of-state, has no valid driver's license or does not have access to transportation. The judge shall set out the finding of good

cause in the judgment. If a person is required, as a condition of probation, to attend an educational program, the court clerk shall immediately report such fact to the Texas Department of Public Safety, on a form prescribed by the department, for inclusion in the person's driving record. The report must include the beginning date of the person's probation. Upon the successful completion of the educational program, the person shall give notice to the probation department. The probation department shall then forward the notice to the court clerk. The court clerk shall then report the date of successful completion of the educational program to the Texas Department of Public Safety for inclusion in the person's driving record. If the department does not receive notice that a person required to complete an educational program has successfully completed the program within the period required by this section, as shown on department records, the department shall suspend the person's driver's license, permit, or privilege, or prohibit the person from obtaining a license or permit, as provided by Subdivision (2), Subsection (g), Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes).

Text of section as added by Acts 1983, 68th Leg., p. 1712, ch. 325, § 3

Sec. 6d. (a) If a payment is received under Section 6(8) or (14) of this article for transmittal to a victim of the offense and the victim cannot be located, the probation department that receives the payment for disbursement to the victim shall deposit the payment in an interest-bearing account in the department having original jurisdiction.

(b) If the payment is not claimed by the victim before the expiration of four years after the date on which the first unsuccessful attempt to locate the victim after full restitution has been made, the probation department shall transfer the payment from the interest-bearing account to the comptroller of public accounts after deducting five percent of the payment as a collection fee and deducting any interest accrued on the payment. The comptroller shall deposit the payment in the state treasury to the credit of the compensation to victims of crime auxiliary fund.

(c) The collection fee and the accrued interest shall be deposited in the special fund of the county treasury provided by Section 4.05(b), Article 42.121, of this code to be used for the same purposes for which state aid may be used under that section. The probation department has a maximum of 121 days after the four-year expiration date to transfer the funds to the comptroller's office. Failure to comply with the 121-day deadline will result in a five percent collection fee penalty calculated from the total deposit and all interest attributable to the unclaimed funds.

(d) If the victim of the offense claims the payment during the four-year period in which the payment is held in the interest-bearing account, the probation department shall pay the victim the amount of the original payment, less any interest earned while holding the payment. After the payment has been transferred to the comptroller, the probation department has no liability in regard to the payment, and any claim for the payment must be made to the comptroller. If the victim makes a claim to the comptroller, the comptroller shall pay the victim the amount of the original payment, less the collection fee, from the compensation to victims of crime auxiliary fund.

Text of section as added by Acts 1983, 68th Leg., p. 4877, ch. 863, § 2

Sec. 6d. A court receiving a probationer for supervision as authorized by Article 42.11 of this code may impose on the probationer any term of probation authorized by Section 6 of this article, and may require the probationer to pay the fee authorized by Section 6a of this article. Fees received under this section shall be deposited in the same manner as required by Section 6a(b) of this article.

Sec. 7. At any time after the defendant has satisfactorily completed one-third of the original probationary period, the period of probation may be reduced or terminated by the court. Upon the satisfactory fulfillment of the conditions of probation and the expiration of the period of probation, the court by order duly entered shall amend or modify the original sentence imposed, if necessary, to conform to the probation period and shall discharge the defendant. In case the defendant has been convicted or has entered a plea of guilty or a plea of nolo contendere to an offense other than an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes, and the court has discharged the defendant hereunder, such court shall set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the accusation, complaint, information, or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which defendant has been convicted or to which defendant has pleaded guilty or pleaded nolo contendere, except that proof of defendant's conviction or plea of guilty or nolo contendere shall be made known to the court should the defendant again be convicted of any criminal offense.

Sec. 8. (a) At any time during the period of probation the court may issue a warrant for violation of any of the conditions of the probation and cause the defendant to be arrested. Any probation officer, police officer or other officer with power of arrest may arrest such defendant without a warrant upon the order of the judge of such court to be noted on the docket of the court. A probationer so

arrested may be detained in the county jail or other appropriate place of detention until he can be taken before the court. Such officer shall forthwith report such arrest and detention to such court. If the defendant has not been released on bail, on motion by the defendant the court shall cause the defendant to be brought before it for a hearing within 20 days of filing of said motion, and after a hearing without a jury, may either continue, modify, or revoke the probation. The court may continue the hearing for good cause shown by either the defendant or the state. If probation is revoked, the court may proceed to dispose of the case as if there had been no probation or if it determines that the best interests of society and the probationer would be served by a shorter term of imprisonment, reduce the term of imprisonment not less than the minimum prescribed for the offense of which the probationer was convicted.

(b) Any probationer who removes himself from the State of Texas without permission of the court having jurisdiction of the case shall be deemed and considered a fugitive from justice and shall be subject to extradition as now provided by law. No part of the time that the defendant is on probation shall be considered as any part of the time that defendant shall be sentenced to serve. The right of the probationer to appeal to the Court of Appeals for a review of the trial and conviction as provided by law shall be accorded the probationer at the time the defendant is placed on probation. When the probationer is notified that his probation is revoked for violation of the conditions of probation and he is called on to serve a sentence in jail or in an institution operated by the Texas Department of Corrections, he may appeal the revocation.

(c) In a probation revocation hearing at which it is alleged only that the probationer violated the conditions of probation by failing to pay probation fees, court costs, restitution, or reparations or compensation paid to appointed counsel, the inability of the probationer to pay as ordered by the court is an affirmative defense to revocation, which the probationer must prove by a preponderance of evidence.

Sec. 9. If for good and sufficient reasons probationers desire to change their residence within the state, such transfer may be effected by application to their supervising probation officer, which transfer shall be subject to the court's consent and subject to such regulations as the court may require in the absence of a probation officer in the locality to which the probationer is transferred.

Sec. 10. For the purpose of providing adequate probation services under this article, all of the provisions of Section 10 of Article 42.12 of the Code of Criminal Procedure, 1965, as amended, apply hereto.

Sec. 11. For the purpose of determining when fees are to be paid to any officer or officers, the placing of the defendant on probation shall be considered a final disposition of the case, without the necessity of waiting for the termination of the period of probation or suspension of sentence.

[Acts 1979, 66th Leg., p. 1514, ch. 654, § 1, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 358, ch. 142, §§ 1, 2, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 811, ch. 291, § 119, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2263, ch. 544, § 2, eff. Sept. 1, 1981; Acts 1983, 68th Leg., pp. 1592, 1594 to 1600, ch. 303, §§ 14, 16 to 21, eff. Jan. 1, 1984; Acts 1983, 68th Leg., p. 1712, ch. 325, § 3, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4671, ch. 811, § 2, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4877, ch. 863, § 2, eff. Aug. 29, 1983.]

Acts 1979, 66th Leg., p. 2062, ch. 807, § 1, without reference to the repeal and reenactment of this article by Acts 1979, 66th Leg., p. 1514, ch. 654, § 1, added a § 3B to read as follows:

Suspension of Sentence and Performance of Community Service

Sec. 3B. (a) Except for a defendant charged with an offense under Article 67011–1, Revised Statutes, as amended, a defendant who pleads guilty or nolo contendere to a first offense misdemeanor that does not involve bodily injury or the threat of bodily injury to any person and for which the maximum permissible punishment is by confinement in jail or by a fine in excess of $200 or by both a fine and confinement is eligible for community-service probation.

(b) If an eligible defendant applies for community-service probation and the court finds that it will be in the best interests of society and the defendant, the court, after receiving the defendant's plea, hearing the evidence, and finding that it substantiates the defendant's guilt, may defer further proceedings without entering an adjudication of guilt and place the defendant on community-service probation.

(c) If the court places a defendant on community-service probation, the court shall require, as a condition of the probation, that the defendant work a specified number of hours at a specified community-service project for an organization named in the court's order.

(d) The amount of community-service work ordered by the court:

(1) may not exceed 100 hours and may not be less than 24 hours for an offense classified as a Class B misdemeanor or for any other misdemeanor for which the maximum permissible imprisonment, if any, does not exceed six months and the maximum permissible fine, if any, does not exceed $1,000; and

(2) may not exceed 200 hours and may not be less than 80 hours for an offense classified as a Class A misdemeanor or for any other misdemeanor for which the maximum permissible im-

prisonment, if any, exceeds six months or the maximum permissible fine, if any, exceeds $1,000.

(e) The terms of community-service probation must include, but are not limited to, requirements that the probationer:

(1) commit no offense against the laws of this or any other state or the United States;

(2) avoid injurious or vicious habits;

(3) avoid persons or places of disreputable or harmful character;

(4) work faithfully at suitable employment as far as possible;

(5) work faithfully at the community-service task assigned by the court;

(6) remain within a specified place; and

(7) support his dependents.

(f) The clerk of a court granting community-service probation shall promptly furnish the probationer with a written statement of the period and terms of the probation.

(g) Community-service work authorized pursuant to this section must be for any nonprofit organization that has agreed to accept community-service probationers and supervise and report on their work and whose services are provided to the general public and are designed to enhance the social welfare, physical or mental stability, environmental quality, or general well-being of the community.

(h) The court shall select community-service tasks that may be performed during hours the probationer is not working or attending school and that are within the probationer's capabilities. A probationer may not receive compensation for community-service work.

(i) On violation of a condition of community-service probation, the defendant may be arrested and detained as provided in Section 6 of this article. The defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of probation, and defendant's appeal continue as if the adjudication of guilt had not been deferred.

(j) On satisfactory completion by a probationer of the required amount of community-service work, if the court has not proceeded to adjudication of guilt, the court shall dismiss the proceedings against the defendant and discharge him. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that on conviction of a subsequent offense the fact that the defendant previously received community-service probation is admissible on the issue of penalty.

[Acts 1979, 66th Leg., p. 2062, ch. 807, § 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 1594, ch. 303, § 15, eff. Jan. 1, 1984.]

Acts 1979, 66th Leg., p. 1514, ch. 654, § 1, repealed former art. 42.13, as amended, and enacted a new art. 42.13 in lieu thereof. Section 2 of ch. 654 repealed Acts 1965, 59th Leg., ch. 164 and Acts 1979, 66th Leg., H.B. 588 (ch. 26). Section 3 of the Act provided:

"If any provision, section, or clause of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision, section, or clause, and to this end the provisions of this Act are declared to be severable."

Acts 1981, 67th Leg., p. 359, ch. 142, § 4, provides:

"This Act takes effect January 1, 1982, and applies only to probation and license suspension for offense committed on or after that date. Probation under Article 42.13, Code of Criminal Procedure, 1965, as amended, and license suspension under Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), for an offense committed before the effective date of this Act are governed by the law as it existed when the offense occurred, and that law is continued in effect for that purpose. For the purpose of this Act, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Acts 1981, 67th Leg., p. 820, ch. 291, § 149, provides:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction. At least 1,800 appeals including death penalty appeals pending in the Court of Criminal Appeals prior to September 1, 1981, shall be retained by that court for disposition in accordance with laws in effect prior to the effective date of this Act, and for that purpose, all laws repealed or amended by this Act shall remain in force and effect for those appeals pending in the Court of Criminal Appeals. The remaining appeals pending in the Court of Criminal Appeals shall be transferred to the various courts of appeals on which the number of judges is increased by the 67th Session of the legislature; provided, no more than 75 nondeath penalty appeals shall be transferred for each newly created judgeship and such a transfer shall not be made until such justice assumes office."

Section 28(c) of Acts 1983, 68th Leg., p. 1607, provides:

"An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

Art. 42.14. In Absence of Defendant

The judgment and sentence in a misdemeanor case may be rendered in the absence of the defendant.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 42.15. Fines

(a) When the defendant is fined, the judgment shall be that the defendant pay the amount of the fine and all costs to the state.

(b) When imposing a fine and costs a court may direct a defendant:

(1) to pay the entire fine and costs when sentence is pronounced; or

(2) to pay the entire fine and costs at some later date; or

(3) to pay a specified portion of the fine and costs at designated intervals.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1971, 62nd Leg., p. 2990, ch. 987, § 1, eff. June 15, 1971.]

Art. 42.16. On Other Judgment

If the punishment is any other than a fine, the judgment shall specify it, and order it enforced by the proper process. It shall also adjudge the costs against the defendant, and order the collection thereof as in other cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 42.17. Transfer Under Treaty

When a treaty is in effect between the United States and a foreign country providing for the transfer of convicted offenders who are citizens or nationals of foreign countries to the foreign countries of which they are citizens or nationals, the governor is authorized, subject to the terms of such treaty, to act on behalf of the State of Texas and to consent to the transfer of such convicted offenders under the provisions of Article IV, Section 11 of the Constitution of the State of Texas.

[Acts 1977, 65th Leg., p. 1266, ch. 489, § 1, eff. June 15, 1977.]

CHAPTER FORTY-THREE. EXECUTION OF JUDGMENT

Art.

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Art. 43.01. Discharging Judgment for Fine

(a) When the sentence against an individual defendant is for fine and costs, he shall be discharged from the same:

(1) when the amount thereof has been fully paid; or

(2) when remitted by the proper authority; or

(3) when he has remained in custody for the time required by law to satisfy the amount thereof.

(b) When the sentence against a defendant corporation or association is for fine and costs, it shall be discharged from same:

(1) when the amount thereof has been fully paid; or

(2) when the execution against the corporation or association has been fully satisfied; or

(3) when the judgment has been fully satisfied in any other manner.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 974, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 43.02. Payable in Money

All recognizances, bail bonds, and undertakings of any kind, whereby a party becomes bound to pay money to the State, and all fines and forfeitures of a pecuniary character, shall be collected in the lawful money of the United States only.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 43.03. Payment of Fine

(a) If a defendant is sentenced to pay a fine or costs or both and he defaults in payment, the court may order him imprisoned in jail until discharged as provided by law. A certified copy of the judgment, sentence, and order is sufficient to authorize such imprisonment.

(b) A term of imprisonment for default in payment of fine or costs or both may not exceed the maximum term of imprisonment authorized for the offense for which defendant was sentenced to pay the fine or costs or both.

(c) If a defendant is sentenced both to imprisonment and to pay a fine or costs or both, and he defaults in payment of either, a term of imprisonment for the default, when combined with the term of imprisonment already assessed, may not exceed the maximum term of imprisonment authorized for the offense for which defendant was sentenced.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1971, 62nd Leg., p. 2990, ch. 987, § 2, eff. June 15, 1971; Acts 1973, 63rd Leg., p. 974, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 43.04. If Defendant is Absent

When a judgment and sentence have been rendered against a defendant for a fine in his absence, the court may order a capias issued for his arrest. The sheriff shall execute the capias by bringing the defendant before the court or by placing the defendant in jail until he can be brought before the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1971, 62nd Leg., p. 2990, ch. 987, § 3, eff. June 15, 1971.]

Art. 43.05. Capias Shall Recite What

Where such capias issues, it shall state the rendition and amount of the judgment and sentence, and command the sheriff to bring the defendant before the court or place him in jail until he can be brought before the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1971, 62nd Leg., p. 2990, ch. 987, § 4, eff. June 15, 1971.]

Art. 43.06. Capias May Issue to Any County

The capias provided for in this Chapter may be issued to any county in the State, and shall be executed and returned as in other cases, but no bail shall be taken in such cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 43.07. Execution for Fine and Costs

In each case of pecuniary fine, an execution may issue for the fine and costs, though a capias was issued for the defendant; and a capias may issue for the defendant though an execution was issued against his property. The execution shall be collected and returned as in civil actions. When the execution has been collected, the defendant shall be at once discharged; and whenever the fine and costs have been legally discharged in any way, the execution shall be returned satisfied.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 43.08. Further Enforcement of Judgment

When a defendant has been committed to jail in default of the fine and costs adjudged against him, the further enforcement of such judgment and sentence shall be in accordance with the provisions of this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 43.09. Fine Discharged

When a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine, if he is unable to pay the fine and costs adjudged against him, he may for such time as will satisfy the judgment be put to work in the workhouse, or on the county farm, or public improvements of the county, as provided in the succeeding Article; or if there be no such workhouse, farm or improvements, he shall be imprisoned in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against him; rating such labor or imprisonment at fifteen dollars for each day thereof; provided, however, that the defendant may pay the pecuniary fine assessed against him at any time while he is serving at work in the workhouse, or on the county farm, or on the public improvements of the county, or while he is serving his jail sentence, and in such instances he shall be entitled to a credit of fifteen dollars for each day or fraction of a day that he has served and he shall only be required to pay his balance of the pecuniary fine assessed against him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 360, ch. 143, § 1, eff. May 14, 1981.]

Art. 43.10. To Do Manual Labor

Where the punishment assessed in a conviction for misdemeanor is confinement in jail for more than one day, or where in such conviction the punishment is assessed only at a pecuniary fine and the party so convicted is unable to pay the fine and costs adjudged against him, those so convicted shall be required to do manual labor in accordance with the provisions of this Article under the following rules and regulations:

1. Each commissioners court may provide for the erection of a workhouse and the establishment of a county farm in connection therewith for the purpose of utilizing the labor of said parties so convicted;

2. Such farms and workhouses shall be under the control and management of the sheriff and the sheriff may adopt such rules and regulations not inconsistent with the rules and regulations of the Texas Commission on Jail Standards and with the laws as the sheriff deems necessary;

3. Such overseers and guards may be employed by the sheriff under the authority of the commissioners court as may be necessary to prevent escapes and to enforce such labor, and they shall be paid out of the county treasury such compensation as the commissioners court may prescribe;

4. They shall be put to labor upon public works;

5. One who from age, disease, or other physical or mental disability is unable to do manual labor shall not be required to work. His inability to do manual labor may be determined by a physician appointed for that purpose by the county judge or the commissioners court, who shall be paid for such service such compensation as said court may allow; and

6. For each day of manual labor, in addition to any other credits allowed by law, a prisoner is entitled to have one day deducted from each sentence he is serving. The deduction authorized by this Act, when combined with the deduction required by Article 42.10, Code of Criminal Procedure, 1965, may not exceed two-thirds (2/3) of the sentence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 2647, ch. 708, § 1, eff. Aug. 31, 1981.]

Section 4 of the 1981 amendatory act provides:

"This Act affects the term of a prisoner serving a sentence in a county jail on the effective date of this Act only to the extent that the sentence is served on or after the effective date of this Act."

Art. 43.11. Authority for Imprisonment

When, by the judgment and sentence of the court, a defendant is to be imprisoned in jail, a certified copy of such judgment and sentence shall be sufficient authority for the sheriff to place such defendant in jail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 43.12. Capias for Imprisonment

A capias issued for the arrest and commitment of one convicted of a misdemeanor, the penalty of which or any part thereof is imprisonment in jail, shall recite the judgment and sentence and command the sheriff to place the defendant in jail, to remain the length of time therein fixed; and this writ shall be sufficient to authorize the sheriff to place such defendant in jail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 43.13. Discharge of Defendant

A defendant who has remained in jail the length of time required by the judgment and sentence shall be discharged. The sheriff shall return the copy of the judgment and sentence, or the capias under which the defendant was imprisoned, to the proper court, stating how it was executed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 43.14. Execution of Convict

Whenever the sentence of death is pronounced against a convict, the sentence shall be executed at any time before the hour of sunrise on the day set for the execution not less than thirty days from the day the court sets the execution date, as the court may adjudge, by intravenous injection of a substance or substances in a lethal quantity sufficient to cause death and until such convict is dead, such execution procedure to be determined and supervised by the Director of the Department of Corrections.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1977, 65th Leg., p. 287, ch. 138, § 1, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 812, ch. 291, § 120, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction. At least 1,800 appeals including death penalty appeals pending in the Court of Criminal Appeals prior to September 1, 1981, shall be retained by that court for disposition in accordance with laws in effect prior to the effective date of this Act, and for that purpose, all laws repealed or amended by this Act shall remain in force and effect for those appeals pending in the Court of Criminal Appeals. The remaining appeals pending in the Court of Criminal Appeals shall be transferred to the various courts of appeals on which the number of judges is increased by the 67th Session of the legislature; provided, no more than 75 nondeath penalty appeals shall be transferred for each newly created judgeship and such a transfer shall not be made until such justice assumes office."

Art. 43.15. Warrant of Execution

Whenever any person is sentenced to death, the clerk of the court in which the sentence is pronounced, shall within ten days after the court enters its order setting the date for execution, issue a warrant under the seal of the court for the execution of the sentence of death, which shall recite the fact of conviction, setting forth specifically the offense, the judgment of the court, the time fixed for his execution, and directed to the Director of the Department of Corrections at Huntsville, Texas, commanding him to proceed, at the time and place named in the order of execution, to carry the same into execution, as provided in the preceding Article, and shall deliver such warrant to the sheriff of the county in which such judgment of conviction was had, to be by him delivered to the said Director of the Department of Corrections, together with the condemned person if he has not previously been so delivered.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 812, ch. 291, § 121, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction. At least 1,800 appeals including death penalty appeals pending in the Court of Criminal Appeals prior to September 1, 1981, shall be retained by that court for disposition in accordance with laws in effect prior to the effective date of this Act, and for that purpose, all laws repealed or amended by this Act shall remain in force and effect for those appeals pending in the Court of Criminal Appeals. The remaining appeals pending in the Court of Criminal Appeals shall be transferred to the various courts of appeals on which the number of judges is increased by the 67th Session of the legislature; provided, no more than 75 nondeath penalty appeals shall be transferred for each newly created judgeship and such a transfer shall not be made until such justice assumes office."

Art. 43.16. Taken to Department of Corrections

Immediately upon the receipt of such warrant, the sheriff shall transport such condemned person

to the Director of the Department of Corrections, if he has not already been so delivered, and shall deliver him and the warrant aforesaid into the hands of the Director of the Department of Corrections and shall take from the Director of the Department of Corrections his receipt for such person and such warrant, which receipt the sheriff shall return to the office of the clerk of the court where the judgment of death was rendered. For his services, the sheriff shall be entitled to the same compensation as is now allowed by law to sheriffs for removing or conveying prisoners under the provisions of Section 4 of Article 1029 or 1030 of the Code of Criminal Procedure of 1925, as amended.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 812, ch. 291, § 122, eff. Sept. 1, 1981.]

Art. 43.17. Visitors

Upon the receipt of such condemned person by the Director of the Department of Corrections, the condemned person shall be confined therein until the time for his or her execution arrives, and while so confined, all persons outside of said prison shall be denied access to him or her, except his or her physician, lawyer, and clergyperson, who shall be admitted to see him or her when necessary for his or her health or for the transaction of business, and the relatives and friends of the condemned person, who shall be admitted to see and converse with him or her at all proper times, under such reasonable rules and regulations as may be made by the Board of Directors of the Department of Corrections.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 1181, ch. 572, § 1, eff. Aug. 27, 1979.]

Art. 43.18. Executioner

The Director of the Texas Department of Corrections, shall designate an executioner to carry out the death penalty provided by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1975, 64th Leg., p. 911, ch. 341, § 6, eff. June 19, 1975; Acts 1977, 65th Leg., p. 288, ch. 138, § 2, eff. Aug. 29, 1977.]

For saving provisions of 1975 amendatory act, see note set out under art. 3.01.

Art. 43.19. Place of Execution

The execution shall take place at the Department of Corrections at Huntsville, Texas, in a room arranged for that purpose.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 43.20. Present at Execution

The following persons may be present at the execution: the executioner, and such persons as may be necessary to assist him in conducting the execution; the Board of Directors of the Department of Corrections, two physicians, including the prison physician, the spiritual advisor of the condemned, the chaplains of the Department of Corrections, the county judge and sheriff of the county in which the Department of Corrections is situated, and any of the relatives or friends of the condemned person that he may request, not exceeding five in number, shall be admitted. No convict shall be permitted by the prison authorities to witness the execution.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 43.21. Escape after Sentence

If the condemned escape after sentence and before his delivery to the Director of the Department of Corrections, and be not rearrested until after the time fixed for execution, any person may arrest and commit him to the jail of the county in which he was sentenced; and thereupon the court by whom the condemned was sentenced; either in term-time or vacation, on notice of such arrest being given by the sheriff, shall again appoint a time for the execution, not less than thirty days from such appointment, which appointment shall be by the clerk of said court immediately certified to the Director of the Department of Corrections and such clerk shall place such certificate in the hands of the sheriff, who shall deliver the same, together with the warrant aforesaid and the condemned person to the Director of the Department of Corrections, who shall receipt to the sheriff for the same and proceed at the appointed time to carry the sentence of death into execution as hereinabove provided.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 43.22. Escape from Department of Corrections

If the condemned person escapes after his delivery to the Director of the Department of Corrections, and is not retaken before the time appointed for his execution, any person may arrest and commit him to the Director of the Department of Corrections whereupon the Director of the Department of Corrections shall certify the fact of his escape and recapture to the court in which sentence was passed; and the court, either in term-time or vacation, shall again appoint a time for the execution which shall not be less than thirty days from the date of such appointment; and thereupon the clerk of such court shall certify such appointment to the Director of the Department of Corrections, who shall proceed at the time so appointed to execute the condemned, as hereinabove provided. The sheriff or other officer or other person performing any service under this and the preceding Article shall receive the same compensation as is provided for similar services under the provisions of Articles 1029 or 1030 of the Code of Criminal Procedure of

1925, as amended. If for any reason execution is delayed beyond the date set, then the court which originally sentenced the defendant may set a later date for execution.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 43.23. Return of Director

When the execution of sentence is suspended or respited to another date, same shall be noted on the warrant and on the arrival of such date, the Director of the Department of Corrections shall proceed with such execution; and in case of death of any condemned person before the time for his execution arrives, or if he should be pardoned or his sentence commuted by the Governor, no execution shall be had; but in such cases, as well as when the sentence is executed, the Director of the Department of Corrections shall return the warrant and certificate with a statement of any such act and his proceedings endorsed thereon, together with a statement showing what disposition was made of the dead body of the convict, to the clerk of the court in which the sentence was passed, who shall record the warrant and return in the minutes of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 43.24. Treatment of Condemned

No torture, or ill treatment, or unnecessary pain, shall be inflicted upon a prisoner to be executed under the sentence of the law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 43.25. Body of Convict

The body of a convict who has been legally executed shall be embalmed immediately and so directed by the Director of the Department of Corrections. If the body is not demanded or requested by a relative or bona fide friend within forty-eight hours after execution then it shall be delivered to the Anatomical Board of the State of Texas, if requested by the Board. If the body is requested by a relative, bona fide friend, or the Anatomical Board of the State of Texas, such recipient shall pay a fee of not to exceed twenty-five dollars to the mortician for his services in embalming the body for which the mortician shall issue to the recipient a written receipt. When such receipt is delivered to the Director of the Department of Corrections, the body of the deceased shall be delivered to the party named in the receipt or his authorized agent. If the body is not delivered to a relative, bona fide friend, or the Anatomical Board of the State of Texas, the Director of the Department of Corrections shall cause the body to be decently buried, and the fee for embalming shall be paid by the county in which the indictment which resulted in conviction was found.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 43.26. Preventing Rescue

The sheriff may, when he supposes there will be a necessity, order such number of citizens of his county, or request any military or militia company, to aid in preventing the rescue of a prisoner.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

APPEAL AND WRIT OF ERROR

CHAPTER FORTY-FOUR. APPEAL AND WRIT OF ERROR

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Art. 44.01. State Cannot Appeal

The State shall have no right of appeal in criminal actions. However, this statute shall not be construed to prevent the State from petitioning the Court of Criminal Appeals to review a decision of a court of appeals in a criminal case, on its own motion.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 812, ch. 291, § 123, eff. Sept. 1, 1981.]

Art. 44.02. Defendant May Appeal

A defendant in any criminal action has the right of appeal under the rules hereinafter prescribed, provided, however, before the defendant who has been convicted upon either his plea of guilty or plea of nolo contendere before the court and the court, upon the election of the defendant, assesses punishment and the punishment does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his attorney may prosecute his appeal, he must have permission of the trial court, except on those matters which have been raised by written motion filed prior to trial. This article in no way affects appeals pursuant to Article 44.17 of this chapter.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1977, 65th Leg., p. 940, ch. 351, § 1, eff. Aug. 29, 1977.]

Art. 44.03. Presence in Appellate Court

The defendant need not be personally present upon the hearing of his cause in the court of appeals or the Court of Criminal Appeals, but if not in jail, he may appear in person.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 813, ch. 291, § 124, eff. Sept. 1, 1981.]

Art. 44.04. Bond Pending Appeal

(a) Pending the determination of any motion for new trial or the appeal from any misdemeanor conviction, the defendant is entitled to be released on reasonable bail, and if a defendant charged with a misdemeanor is on bail, is convicted, and appeals that conviction, his bond is not discharged until his conviction is final or in the case of an appeal to a court where a trial de novo is held, he files an appeal bond as required by this code for appeal from the conviction.

(b) The defendant may not be released on bail pending the appeal from any felony conviction where the punishment exceeds 15 years confinement or where the defendant has been convicted of an offense listed under Section 4.012(b), Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), but shall immediately be placed in custody and the bail discharged.

(c) Pending the appeal from any felony conviction other than a conviction described in Subsection (b) of this section (where the punishment does not exceed 15 years confinement), the trial court may deny bail and commit the defendant to custody if there then exists good cause to believe that the defendant would not appear when his conviction became final or is likely to commit another offense while on bail, permit the defendant to remain at large on the existing bail, or, if not then on bail, admit him to reasonable bail until his conviction becomes final. The court may impose reasonable conditions on bail pending the finality of his conviction. On a finding by the court on a preponderance of the evidence of a violation of a condition, the court may revoke the bail.

(d) After conviction, either pending determination of any motion for new trial or pending final determination of the appeal, the court in which trial was had may increase or decrease the amount of bail, as it deems proper, either upon its own motion or the motion of the State or of the defendant.

(e) Any bail entered into after conviction and the sureties on the bail must be approved by the court where trial was had. Bail is sufficient if it substantially meets the requirements of this code and may be entered into and given at any term of court.

(f) In no event shall the defendant and the sureties on his bond be released from their liability on such bond or bonds until the defendant is placed in the custody of the sheriff.

(g) The right of appeal to the Court of Appeals of this state is expressly accorded the defendant for a review of any judgment or order made hereunder, and said appeal shall be given preference by the appellate court.

(h) When a conviction is reversed by a decision of a Court of Appeals and the State files a petition for discretionary review, or a motion for an extension of time in which to file a petition for discretionary review, the defendant, if in custody, shall be entitled to release on reasonable bail, regardless of the length of term of imprisonment, pending final determination of the appeal. The Court of Criminal Appeals shall determine the amount of bail, but the sureties on the bail must be approved by the court where the trial was had.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1977, 65th Leg., p. 636, ch. 234, § 1, Aug. 29, 1977; Acts 1981, 67th Leg., p. 707, ch. 268, § 17, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 813, ch. 291, § 125, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 1104, ch. 249, § 2, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 2416, ch. 425, § 26, eff. Aug. 29, 1983.]

Section 28 of Acts 1983, 68th Leg., p. 2417, ch. 425, provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act only if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

Art. 44.05. Receipt of Mandate

When the clerk of any court from whose judgment an appeal has been taken in cases wherein bail has been allowed shall receive the mandate of the court of appeals or the Court of Criminal Appeals affirming such judgment, he shall send an acknowledgment to the court of appeals or the Court of Criminal Appeals of the receipt of the mandate and immediately file the same and forthwith issue a capias for the arrest of the defendant for the execution of the sentence of the court, which shall recite the fact of conviction, setting forth the offense and the judgment and sentence of the court, the appeal from and affirmance of such judgment and the filing of such mandate, and shall command the sheriff to arrest and take into his custody the defendant and place him in jail and therein keep him until delivered to the proper authorities, as directed by said sentence. The sheriff shall forthwith execute such capias as directed. The sheriff shall notify the clerk of the trial court and the court of appeals or the Court of Criminal Appeals when the mandate has been carried out and executed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 1900, ch. 769, § 1, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 814, ch. 291, § 126, eff. Sept. 1, 1981.]

Art. 44.06. Capias May Issue to Any County

Such capias may issue to any county of this State, and shall be executed and returned as in other felony cases, except that no bail shall be taken in such cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 44.07. Right of Appeal Not Abridged

The right of appeal, as otherwise provided by law, shall in no wise be abridged by any provision of this Chapter.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 44.08. Notice of Appeal

(a) It shall be necessary for defendant, as a condition of perfecting an appeal to the Court of Appeals, to give notice of appeal. This notice may be given orally in open court or may be in writing and filed in duplicate with the clerk. If notice is given orally in open court, the clerk shall in duplicate reduce the same to writing. In either case, the clerk of the trial court shall note upon the duplicate the file number of the case and the date the notice of appeal was filed or given and forward it to the appropriate court of appeals. Such notice shall be sufficient if it shows the desire of defendant to appeal from the judgment or other appealable order to the Court of Appeals. A notice of appeal may be withdrawn by a defendant at any time prior to the decision of the court of appeals. The withdrawal shall be in writing, signed by the defendant, and filed in duplicate with the clerk of the court of appeals in which the appeal is pending, who shall immediately forward the duplicate to the clerk of the trial court in which the notice of appeal was filed or given. Notice of appeal may not be withdrawn after the decision of the court of appeals without consent of the state and approval by the court of appeals. If consent and approval are obtained, the opinion of the court of appeals shall be withdrawn, and the appeal shall be dismissed. Notice of the dismissal shall be sent to the clerk of the trial court in which notice of appeal was filed or given. No notice of appeal need be given in a case in which the death penalty has been assessed, because appeal is automatic to the Court of Criminal Appeals in such cases.

(b) Notice of appeal shall be filed within 15 days after overruling of the motion or amended motion for new trial and if there be no motion or amended motion for new trial, then within 15 days after sentencing.

(c) For the purpose of this article, "sentencing" means the date the sentence is imposed or suspended in open court or the date the other appealable order is signed by the trial judge.

(d) The record on appeal will be deemed sufficient to show notice of appeal if it contains written notice of appeal showing a date of filing within the time required by law or if the record contains any judgment or other court order or any docket entry by the court showing that notice of appeal was duly given.

(e) For good cause shown, the court of appeals may permit the giving of notice of appeal after the expiration of such 15 days.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 814, ch. 291, § 127, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides, in part:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction."

Art. 44.09. Escape Pending Appeal

If the defendant, after giving notice of appeal, makes his escape from custody, the jurisdiction of the court of appeals or the Court of Criminal Appeals shall no longer attach in the case. Upon the fact of such escape being made to appear, the appropriate court shall, on motion of the attorney representing the state, dismiss the appeal and withdraw any prior opinion; but the order dismissing the appeal shall be set aside if it is made to appear that the defendant has voluntarily returned within ten days to the custody of the officer from whom he

escaped; and in cases where the punishment inflicted by the jury or the court is confinement in an institution operated by the Department of Corrections for life, the court may in its discretion reinstate the appeal if the defendant is recaptured or voluntarily surrenders within thirty days after such escape. No appeal shall be dismissed as to any defendant to whom the death penalty has been assessed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 815, ch. 291, § 128, eff. Sept. 1, 1981.]

Art. 44.10. Sheriff to Report Escape

When any such escape occurs, the sheriff who had the prisoner in custody shall immediately report the fact under oath to the district or county attorney of the county in which the conviction was had, who shall forthwith forward such report to the State prosecuting attorney. Such report shall be sufficient evidence of the fact of such escape to authorize the dismissal of the appeal.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 44.11. Effect of Appeal

Upon the appellate record being filed in the court of appeals or the Court of Criminal Appeals, all further proceedings in the trial court, except as to bond as provided in Article 44.04, shall be suspended and arrested until the mandate of the appellate court is received by the trial court. In cases where the record or any portion thereof is lost or destroyed it may be substituted in the trial court and when so substituted the record may be prepared and transmitted to the court of appeals or the Court of Criminal Appeals as in other cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1748, ch. 659, § 31, eff. Aug. 28, 1967; Acts 1981, 67th Leg., p. 815, ch. 291, § 129, eff. Sept. 1, 1981.]

Art. 44.12. Procedure as to Bail Pending Appeal

The amount of any bail given in any felony or misdemeanor case to perfect an appeal from any court to the Court of Appeals shall be fixed by the court in which the judgment or order appealed from was rendered. The sufficiency of the security thereon shall be tested, and the same proceedings had in case of forfeiture, as in other cases regarding bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 815, ch. 291, § 130, eff. Sept. 1, 1981.]

Art. 44.13. Appeals From Justice and Municipal Courts

(a) In appeals from the judgments and sentence of justice or municipal courts, the defendant shall, if he be in custody, be committed to jail unless he gives bail.

(b) If the court from whose judgment and sentence the appeal is taken is in session, the court must approve the bail. The amount of a bail bond may not be less than double the amount of fine and costs adjudged against the defendant, payable to the State of Texas; provided the bail shall not in any case be for a less sum than fifty dollars. Without requiring a court appearance by the defendant, the court shall approve an appeal bond in an amount that the court under Article 27.14(b) of this code notified the defendant would be approved if the appeal bond otherwise meets the requirements of this code.

(c) If the court from whose judgment and sentence the appeal is taken is not in session, a peace officer may take a bail bond of the defendant. The amount shall be double the amount of fine and costs adjudged against the defendant or fifty dollars, whichever is the lesser. The bond shall be payable to the State of Texas. The peace officer shall file the bond with the court from whose judgment and sentence the appeal is taken.

(d) An appeal bond shall recite that in the cause the defendant was convicted and has appealed, and be conditioned that the defendant shall make his personal appearance before the court to which the appeal is taken instanter, if said court be then in session; and if said court be not in session, then at its next regular term, stating the time and place of holding the same, and there remain from day to day and term to term, and answer in said cause in said court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 451, ch. 207, § 2, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 1866, ch. 443, § 1, eff. Sept. 1, 1981.]

Art. 44.14. Filing Bond Perfects Appeal

In appeals from justice and corporation courts, when the appeal bond provided for in the preceding Article has been filed with the justice or judge who tried the case, the appeal in such case shall be held to be perfected. No appeal shall be dismissed because defendant failed to give notice of appeal in open court, nor on account of any defect in the transcript.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 44.15. Appellate Court May Allow New Bond

When an appeal is taken from any court of this State, by filing a bond within the time prescribed by law in such cases, and the court to which appeal is taken determines that such bond is defective in form or substance, such appellate court may allow

the appellant to amend such bond by filing a new bond, on such terms as the court may prescribe.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 44.16. Appeal Bond Given Within What Time

If the defendant is not in custody, a notice of appeal as provided in Article 44.13 shall have no effect whatever until the required appeal bond has been given and approved. The appeal bond shall be given within ten days after the sentence of the court has been rendered, except as provided in Article 27.14 of this code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 451, ch. 207, § 3, eff. Sept. 1, 1979.]

Art. 44.17. Trials De Novo

In all appeals from justice and corporation courts to the county court, the trial shall be de novo in the trial in the county court, the same as if the prosecution had been originally commenced in that court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 44.18. Original Papers Sent Up

In appeals from justice and corporation courts, all the original papers in the case, together with the appeal bond, if any, and together, with a certified transcript of all the proceedings had in the case before such court shall be delivered without delay to the clerk of the court to which the appeal was taken, who shall file the same and docket the case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 44.19. Witnesses Not Again Summoned

In the cases mentioned in the preceding Article, the witnesses who have been summoned or attached to appear in the case before the court below, shall appear before the court to which the appeal is taken without further process. In case of their failure to do so, the same proceedings may be had as if they had been originally summoned or attached to appear before such court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 44.20. Rules Governing Appeal Bonds

The rules governing the taking and forfeiture of bail shall govern appeal bonds, and the forfeiture and collection of such appeal bonds shall be in the court to which such appeal is taken.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 44.21. Clerk to Make List of Cases

The clerk, immediately after the adjournment of the court at which appeals were taken, shall make out a certificate under his seal showing a list of each cause appealed. This certificate shall show the style of the cause, the offense, the date judgment was rendered, and the date the appeal was taken; and the clerk shall send it to the clerk of the appellate court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 44.22. Failure to Receive Record

When it appears by the clerk's certificate that an appeal has been taken but that the record has not been received by the clerk of the court of appeals or the Court of Criminal Appeals within the time required by law for filing the record, such clerk shall immediately notify the clerk of the proper court that the same has not been received, and such clerk without delay shall prepare and forward another record as in the first instance, and notify the clerk of the appellate court by letter of the fact that such record has been forwarded and how and when it was forwarded.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 815, ch. 291, § 131, eff. Sept. 1, 1981.]

Art. 44.23. Appeals, When Determined

The courts of appeals and the Court of Criminal Appeals shall hear and determine appeals in criminal actions at the earliest time it may be done, with due regard to the rights of parties and proper administration of justice, and no affirmance or reversal of a case shall be determined on mere technicalities or on technical errors in the preparation and filing of the record on appeal.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1748, ch. 659, § 32, eff. Aug. 28, 1967; Acts 1981, 67th Leg., p. 816, ch. 291, § 132, eff. Sept. 1, 1981.]

Art. 44.24. Presumptions on Appeal; Decisions by the Appellate Court

(a) The courts of appeals and the Court of Criminal Appeals shall presume that the venue was proved in the court below; that the jury was properly impaneled and sworn; that the defendant was arraigned; that he pleaded to the indictment or other charging instrument; that the court's charge was certified by the judge and filed by the clerk before it was read to the jury, unless such matters were made an issue in the court below, or it otherwise affirmatively appears to the contrary from the record.

(b) The courts of appeals and the Court of Criminal Appeals may affirm the judgment of the court below, or may reverse and remand for a new trial,

or may reverse and dismiss the case, or may reform and correct the judgment or may enter any other appropriate order, as the law and nature of the case may require.

(c) The Courts of Appeals, in each case decided by them, shall deliver a written opinion, setting forth the reason for such decision; or where precedent exists, in its discretion may decide the same by a certificate of affirmance or reversal with citation of supporting authorities. In either event, any judge may file an opinion dissenting from or concurring in the action of the court.

(d) The Court of Criminal Appeals, in each case decided by it, either on appeal or on review, shall deliver a written opinion setting forth the reasons for such decision and precedent where it exists. Any judge may file an opinion concurring in or dissenting from the action of the court.

(e) The clerk of each court of appeals shall, on the date the court renders a decision in a criminal case, mail or deliver a copy of the opinion to the clerk of the trial court, the trial judge, the attorney for the appellant, the local prosecuting attorney, the state prosecuting attorney, and the clerk of the Court of Criminal Appeals.

(f) The clerk of the Court of Criminal Appeals shall, upon the date the court renders a decision, mail or deliver a copy of the opinion to the clerk of the trial court, the trial judge, the attorney for the appellant, the local prosecuting attorney, the state prosecuting attorney, and, in a discretionary review case, the clerk of the court of appeals from which discretionary review was sought.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 1260, ch. 460, § 1, eff. Aug. 27, 1973; Acts 1981, 67th Leg., p. 816, ch. 291, § 133, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction. At least 1,800 appeals including death penalty appeals pending in the Court of Criminal Appeals prior to September 1, 1981, shall be retained by that court for disposition in accordance with laws in effect prior to the effective date of this Act, and for that purpose, all laws repealed or amended by this Act shall remain in force and effect for those appeals pending in the Court of Criminal Appeals. The remaining appeals pending in the Court of Criminal Appeals shall be transferred to the various courts of appeals on which the number of judges is increased by the 67th Session of the legislature; provided, no more than 75 nondeath penalty appeals shall be transferred for each newly created judgeship and such a transfer shall not be made until such justice assumes office."

Art. 44.25. Cases Remanded

The courts of appeals or the Court of Criminal Appeals may reverse the judgment in a criminal action, as well upon the law as upon the facts.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 817, ch. 291, § 134, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction. At least 1,800 appeals including death penalty appeals pending in the Court of Criminal Appeals prior to September 1, 1981, shall be retained by that court for disposition in accordance with laws in effect prior to the effective date of this Act, and for that purpose, all laws repealed or amended by this Act shall remain in force and effect for those appeals pending in the Court of Criminal Appeals. The remaining appeals pending in the Court of Criminal Appeals shall be transferred to the various courts of appeals on which the number of judges is increased by the 67th Session of the legislature; provided, no more than 75 nondeath penalty appeals shall be transferred for each newly created judgeship and such a transfer shall not be made until such justice assumes office."

Art. 44.251. Reformation of Sentence in Capital Case

The court of criminal appeals shall reform a sentence of death to a sentence of confinement in the Texas Department of Corrections for life if:

(1) the court finds that there is insufficient evidence to support an affirmative answer to an issue submitted to the jury under Article 37.071(b) of this code; and

(2) within 15 days after the date on which the opinion is handed down, the prosecuting attorney files a motion requesting that the sentence be reformed to confinement for life.

[Added by Acts 1981, 67th Leg., p. 2673, ch. 725, § 2, eff. Aug. 31, 1981.]

Art. 44.26. Duty of the Clerk after Judgment

When the judgment of the court of appeals or of the Court of Criminal Appeals is final, the clerk shall make out the proper certificate of the proceedings had and judgment rendered, and mail the same to the clerk of the proper court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 817, ch. 291, § 135, eff. Sept. 1, 1981.]

Art. 44.27. Mandate to be Filed

When the mandate of the court of appeals or of the Court of Criminal Appeals is received by the proper clerk, he shall file it with the papers of the cause, and note it upon the docket.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 817, ch. 291, § 136, eff. Sept. 1, 1981.]

Art. 44.28. When Misdemeanor is Affirmed

In misdemeanor cases where there has been an affirmance, no proceedings need be had after filing the mandate, except to forfeit the bond of the defendant, or to issue a capias for the defendant, or an execution against his property, to enforce the judgment of the court, as if no appeal had been taken.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 44.29. Effect of Reversal

Where the court of appeals or the Court of Criminal Appeals awards a new trial to the defendant, the cause shall stand as it would have stood in case the new trial had been granted by the court below.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 817, ch. 291, § 137, eff. Sept. 1, 1981.]

Art. 44.30. Motion in Arrest of Judgment

Where the motion in arrest of judgment was overruled, and it is decided on appeal that the same ought to have been sustained, the cause shall stand as if the motion had been sustained, unless the appellate court directs the cause to be dismissed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 44.31. Defendant Discharged, When

When the court of appeals or the Court of Criminal Appeals reverses a judgment and orders the cause to be dismissed, the defendant, if in custody, must be discharged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 817, ch. 291, § 138, eff. Sept. 1, 1981.]

Art. 44.32. Bail after Reversal

When a felony case is reversed and remanded for a new trial, the defendant shall be released from custody, upon his giving bail as in other cases when he is entitled to bail. The clerk of the appellate court shall send the officer having custody of the defendant an order to that effect.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 44.33. Hearing in Appellate Court

(a) The Court of Criminal Appeals shall make rules of posttrial and appellate procedure as to the hearing of criminal actions not inconsistent with this Code. After the record is filed in the Court of Appeals or the Court of Criminal Appeals the parties may file such supplemental briefs as they may desire before the case is submitted to the court. Each party, upon filing any such supplemental brief, shall promptly cause true copy thereof to be delivered to the opposing party or to the latter's counsel. In every case at least two counsel for the defendant shall be heard in the Court of Appeals if such be desired by defendant. In every case heard by the Court of Criminal Appeals at least two counsel for the defendant shall be permitted oral argument if desired by the appellant.

(b) Appellant's failure to file his brief in the time prescribed shall not authorize a dismissal of the appeal by the Court of Appeals or the Court of Criminal Appeals, nor shall the Court of Appeals or the Court of Criminal Appeals, for such reason, refuse to consider appellant's case on appeal.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 817, ch. 291, § 139, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction. At least 1,800 appeals including death penalty appeals pending in the Court of Criminal Appeals prior to September 1, 1981, shall be retained by that court for disposition in accordance with laws in effect prior to the effective date of this Act, and for that purpose, all laws repealed or amended by this Act shall remain in force and effect for those appeals pending in the Court of Criminal Appeals. The remaining appeals pending in the Court of Criminal Appeals shall be transferred to the various courts of appeals on which the number of judges is increased by the 67th Session of the legislature; provided, no more than 75 nondeath penalty appeals shall be transferred for each newly created judgeship and such a transfer shall not be made until such justice assumes office."

Art. 44.34. Appeal in Habeas Corpus

When the defendant appeals from the judgment rendered on the hearing of an application under habeas corpus, a record of the proceedings in the cause shall be made out and certified to, together with all the testimony offered, if requested by the defendant, and shall be sent up to the Court of Appeals for review. This record shall be sent up to the Court of Appeals within fifteen days after the date of the judgment, except that if good cause is shown, the time may be extended by the Court of Appeals. This record, when the proceedings take place before the court in session, shall be prepared and certified by the clerk thereof; but when had before a judge in vacation, the record may be prepared by any person, under direction of the judge, and certified by such judge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 1270, ch. 465, § 1, eff. June 14, 1973; Acts 1981, 67th Leg., p. 818, ch. 291, § 140, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction. At least 1,800 appeals including death penalty appeals pending in the Court of Criminal Appeals prior to September 1, 1981, shall be retained by that court for disposition in accordance with laws in effect prior to the effective date of this Act, and for that purpose, all laws repealed or amended by this Act shall remain in force and effect for those appeals pending in the Court of Criminal Appeals. The remaining appeals pending in the Court of Criminal Appeals shall be transferred to the various courts of appeals on which the number of judges is increased by the 67th Session of the legislature; provided, no more than 75 nondeath penalty appeals shall be transferred for each newly created judgeship and such a transfer shall not be made until such justice assumes office."

Art. 44.35. Bail Pending Habeas Corpus Appeal

In any habeas corpus proceeding in any court or before any judge in this State where the defendant is remanded to the custody of an officer and an appeal is taken to an appellate court, the defendant shall be allowed bail by the court or judge so

remanding the defendant, except in capital cases where the proof is evident. The fact that such defendant is released on bail shall not be grounds for a dismissal of the appeal except in capital cases where the proof is evident.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 44.36. Hearing Habeas Corpus

Cases of habeas corpus, taken to the Court of Appeals by appeal, or in which the Court of Criminal Appeals has granted discretionary review, shall be heard at the earliest practicable time. The appellant need not be personally present, and such appeal shall be heard and determined upon the law and the facts arising upon record. No incidental question which may have arisen on the hearing of the application before the court below shall be reviewed. The only design of the appeal or discretionary review is to do substantial justice to the party appealing or seeking discretionary review.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 818, ch. 291, § 141, eff. Sept. 1, 1981.]

Art. 44.37. Orders on Appeal

The appellate court shall enter such judgment, and make such orders as the law and the nature of the case may require, and may make such orders relative to the costs in the case as may seem right, allowing costs and fixing the amount, or allowing no costs at all.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 818, ch. 291, § 142, eff. Sept. 1, 1981.]

Art. 44.38. Judgment Conclusive

The judgment of the Court of Appeals in appeals under habeas corpus shall be final and conclusive if discretionary review is not granted by the Court of Criminal Appeals. If discretionary review is granted, the judgment of the Court of Criminal Appeals under habeas corpus shall be final and conclusive. In either case, no further application in the same case can be made for the writ, except in cases specially provided for by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 818, ch. 291, § 143, eff. Sept. 1, 1981.]

Art. 44.39. Appellant Detained by Other Than Officer

If the appellant in a case of habeas corpus be detained by any person other than an officer, the sheriff receiving the mandate of the appellate court, shall immediately cause the person so held to be discharged; and the mandate shall be sufficient authority therefor.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 818, ch. 291, § 144, eff. Sept. 1, 1981.]

Art. 44.40. Judgment to be Certified

The judgment of the appellate court shall be certified by the clerk thereof to the officer holding the defendant in custody, or when he is held by any person other than an officer, to the sheriff of the proper county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 819, ch. 291, § 145, eff. Sept. 1, 1981.]

Art. 44.41. Who Shall Take Bail Bond

When, by the judgment of the appellate court upon cases of habeas corpus, the applicant is ordered to give bail, such judgment shall be certified to the officer holding him in custody; and if such officer be the sheriff, the bail bond may be executed before him; if any other officer, he shall take the person detained before some magistrate, who may receive a bail bond, and shall file the same in the proper court of the proper county; and such bond may be forfeited and enforced as provided by law.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 819, ch. 291, § 146, eff. Sept. 1, 1981.]

Art. 44.42. Appeal on Forfeitures

An appeal may be taken by the defendant from every final judgment rendered upon a personal bond, bail bond or bond taken for the prevention or suppression of offenses, where such judgment is for twenty dollars or more, exclusive of costs, but not otherwise.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 44.43. Writ of Error

The defendant may also have any such judgment as is mentioned in the preceding Article, and which may have been rendered in courts other than the justice and corporation courts, reviewed upon writ of error.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 44.44. Rules in Forfeitures

In the cases provided for in the two preceding Articles, the proceeding shall be regulated by the same rules that govern civil actions where an appeal is taken or a writ of error sued out.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 44.45. Review by Court of Criminal Appeals

(a) The Court of Criminal Appeals may review decisions of the court of appeals on its own motion. An order for review must be filed before the decision of the court of appeals becomes final as determined by Article 42.04a.

(b) The Court of Criminal Appeals may review decisions of the court of appeals upon a petition for review.

(1) The state or a defendant in a case may petition the Court of Criminal Appeals for review of the decision of a court of appeals in that case.

(2) The petition shall be filed with the clerk of the court of appeals which rendered the decision within 30 days after the final ruling of the court of appeals.

(3) The petition for review shall be addressed to "The Court of Criminal Appeals of Texas," and shall state the name of the petitioning party and shall include a statement of the case and authorities and arguments in support of each ground for review.

(4) Upon filing a petition for review, the petitioning party shall cause a true copy to be delivered to the attorney representing the opposing party. The opposing party may file a reply to the petition with the Court of Criminal Appeals within 30 days after receipt of the petition from the petitioning party.

(5) Within 15 days after the filing of a petition for review, the clerk of the court of appeals shall note the filing on the record and forward the petition together with the original record and the opinion of the court of appeals to the Court of Criminal Appeals.

(6) The Court of Criminal Appeals shall either grant the petition and review the case or refuse the petition.

(7) Subsequent to granting the petition for review, the Court of Criminal Appeals may reconsider, set aside the order granting the petition, and refuse the petition as though the petition had never been granted.

(c) The Court of Criminal Appeals may promulgate rules pursuant to this article.

(d) Extensions of time for meeting the limits prescribed in Subdivisions (2) and (4) of Subsection (b) of this article may be granted by the Court of Criminal Appeals or a judge thereof for good cause shown on timely application to the Court of Criminal Appeals.

[Acts 1981, 67th Leg., p. 819, ch. 291, § 147, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1103, ch. 249, § 1, eff. Aug. 29, 1983.]

JUSTICE AND CORPORATION COURTS

CHAPTER FORTY-FIVE. JUSTICE AND CORPORATION COURTS

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Art. 45.01. Complaint

Proceedings in a corporation court shall be commenced by complaint, which shall begin: "In the

name and by authority of the State of Texas"; and shall conclude: "Against the peace and dignity of the State"; and if the offense is only covered by an ordinance, it may also conclude: "Contrary to the said ordinance". The recorder shall charge the jury when requested in writing by the defendant or his attorney. Complaints before such court may be sworn to before any officer authorized to administer oaths or before the recorder, clerk of the court, city secretary, city attorney or his deputy, each of whom, for that purpose, shall have power to administer oaths.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1969, 61st Leg., p. 1655, ch. 520, § 1, eff. June 10, 1969.]

Art. 45.02. Seal

The said court shall have a seal with a star of five points in the center and the words "Corporation Court in _____ Texas", the impress of which shall be attached to all papers issued out of said court except subpoenas, and shall be used to authenticate the official acts of the clerk and of the recorder.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.03. Prosecutions

All prosecutions in a corporation court shall be conducted by the city attorney of such city, town or village, or by his deputy. The county attorney of the county in which said city, town or village is situated may, if he so desires, also represent the State in such prosecutions. In such cases, the said county attorney shall not be entitled to receive any fees or other compensation whatever for said services. The county attorney shall have no power to dismiss any prosecution pending in said court unless for reasons filed and approved by the recorder.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.031. Directed Verdict

If, upon the trial of a case in a corporation court, there is a material variance between the allegations in the complaint and the proof offered by the state, or the state has failed to prove a prima facie case of the offense alleged in the complaint, the defendant is entitled to a directed verdict of "not guilty" as in any other criminal case.

[Acts 1969, 61st Leg., p. 1655, ch. 520, § 2, eff. June 10, 1969.]

Art. 45.04. Service of Process

Sec. 1. All process issuing out of a corporation court may be served and shall be served when directed by the court, by a policeman or marshal of the city, town or village within which it is situated, under the same rules as are provided by law for the service by sheriffs and constables of process issuing out of the justice court, so far as applicable.

Sec. 2. The policeman or marshal may serve all process issuing out of a corporation court anywhere in the county in which the city, town or village is situated. If the city, town or village is situated in more than one county, the policeman or marshal may serve the process throughout those counties.

Sec. 3. A defendant is entitled to at least one day's notice of any complaint against him, if such time is demanded.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1171, ch. 523, § 1, eff. Aug. 28, 1967.]

Art. 45.05. Commitment

When the defendant in such cases is committed to custody, he shall be committed to the custody of the chief of police or city marshal of such city, town or village, to be held by him in accordance with the ordinance providing for the custody of prisoners convicted before such corporation court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.06. Fines and Special Expenses

The governing body of each incorporated city, town or village shall by ordinance prescribe such rules, not inconsistent with any law of this State, as may be proper to enforce, by execution against the property of the defendant, or imprisonment of the defendant, the collection of all fines imposed by such court, and shall also have power to adopt such rules and regulations concerning the practice and procedure in such court as said governing body may deem proper, not inconsistent with any law of this State. All such fines; a special expense, not to exceed $25 for the issuance and service of a warrant of arrest for an offense under Section 38.11, Penal Code, or under Section 149, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes); and the special expenses described in Article 17.04 dealing with the requisites of a personal bond and a special expense for the issuance and service of a warrant of arrest, after due notice, not to exceed $25, shall be paid into the city treasury for the use and benefit of the city, town or village.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1983, 68th Leg., p. 2140, ch. 389, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1983 amendatory act provides:

"(a) The change in law made by this Act applies only to the collection of a special expense after release following arrest for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) The collection of a special expense after release following arrest for an offense committed before the effective date of this

Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

Art. 45.07. Collection of Costs

No costs shall be provided for by any ordinance of any incorporated city, town, or village, and none shall be collected.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.08. Jury Fees

The provisions of this Code regulating the amount and collection of jury and witness fees, and for enforcing the attendance of witnesses in criminal cases tried in the justice court shall, so far as applicable, govern such corporation court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.09. Officers' Fees

Unless provided by special charter, the governing body of each city, town or village by ordinance shall prescribe the compensation and fees which shall be paid to the recorder, city attorney, city secretary and other officers of said court, to be paid out of the municipal treasury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.10. Appeal

Appeals from a corporation court shall be heard by the county court except in cases where the county court has no jurisdiction, in which counties such appeals shall be heard by the proper court. In such appeals the trial shall be de novo. Said appeals shall be governed by the rules of practice and procedure for appeals from justice courts to the county court, as far as applicable.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.11. Disposition of Fees

The fine imposed on appeal and the costs imposed on appeal shall be collected of the defendant, and such fine of the corporation court when collected shall be paid into the municipal treasury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.12. Contempt and Bail

The recorder shall have power to admit to bail, and to forfeit bonds under such rules as govern such taking and forfeiture in the county court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1971, 62nd Leg., p. 2536, ch. 831, § 5, eff. Aug. 30, 1971.]

Art. 45.13. Criminal Docket

Each justice of the peace and each recorder shall keep a docket in which he shall enter the proceedings in each trial had before him, which docket shall show:

1. The style of the action;
2. The nature of the offense charged;
3. The date the warrant was issued and the return made thereon;
4. The time when the examination or trial was had, and if a trial, whether it was by a jury or by himself;
5. The verdict of the jury, if any;
6. The judgment and sentence of the court;
7. Motion for new trial, if any, and the decision thereon;
8. If an appeal was taken; and
9. The time when, and the manner in which, the judgment and sentence was enforced.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.14. To File Transcript of Docket

At each term of the district court, each justice of the peace shall, on the first day of the term of said court for their county, file with the clerk of said court a certified transcript of the docket kept by such justice, of all criminal cases examined or tried before him since the last term of such district court; and such clerk shall immediately deliver such transcript to the foreman of the grand jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.15. Warrant Without Complaint

Whenever a criminal offense which a justice of the peace has jurisdiction to try shall be committed within the view of such justice, he may issue his warrant for the arrest of the offender.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.16. Complaint Shall be Written

Upon complaint being made before any justice of the peace, or any other officer authorized by law to administer oaths, that an offense has been committed in the county which a justice of the peace has jurisdiction finally to try, the justice or other officer shall reduce the same to writing and cause the same to be signed and sworn to by the complainant. It shall be duly attested by the officer before whom it was made; and when made before such justice, or when returned to him made before any other officer, the same shall be filed by him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.17. What Complaint Must State

Such complaint shall state:

1. The name of the accused, if known, and if unknown, shall describe him as accurately as practicable;

2. The offense with which he is charged, in plain and intelligible words;

3. That the offense was committed in the county in which the complaint is made; and

4. It must show, from the date of the offense stated therein, that the offense is not barred by limitation.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.18. Warrant Shall Issue

When the requirements of the preceding Article have been complied with, the justice shall issue a warrant for the arrest of the accused and deliver the same to the proper officer to be executed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.19. Requisites of Warrant

Said warrant shall be deemed sufficient if it contains the following requisites:

1. It shall issue in the name of "The State of Texas";

2. It shall be directed to the proper sheriff, constable or some other person specially named therein;

3. It shall command that the body of the accused be taken, and brought before the authority issuing the warrant, at the time and place therein named;

4. It must state the name of the person whose arrest is ordered, if it be known, and if not known, he must be described as in the complaint;

5. It must state that the person is accused of some offense against the laws of the State, naming the offense; and

6. It must be signed by the justice, and his office named in the body of the warrant, or in connection with his signature.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.20. Any Person May Execute Warrant

A justice of the peace may, when he deems it necessary, authorize any person other than a peace officer to execute a warrant of arrest by naming such person specially in the warrant. In such case, such person shall have the same powers, and shall be subject to the same rules that govern peace officers in like cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.21. Offenses Committed in Another County

Whenever complaint is made before any justice of the peace that a felony has been committed in any other than a county in which the complaint is made, such justice shall issue his warrant for the arrest of the accused, directed as in other cases, commanding that the accused be arrested and taken before any magistrate of the county where such felony is alleged to have been committed, forthwith, for examination as in other cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.22. Offenses in Counties of 225,000; Venue; Fee of Constable; Penalties

Sec. 1. No person shall ever be tried in any justice precinct court unless the offense with which he was charged was committed in such precinct. Provided, however, should there be no duly qualified justice precinct court in the precinct where such offense was committed, then the defendant shall be tried in the justice precinct next adjacent which may have a duly qualified justice court. And provided further, that if the justice of the peace of the precinct in which the offense was committed is disqualified for any reason for trying the case, then such defendant may be tried in some other justice precinct within the county.

Sec. 2. No constable shall be allowed a fee in any misdemeanor case arising in any precinct other than the one for which he has been elected or appointed, except through an order duly entered upon the minutes of the county commissioners court.

Sec. 3. Any justice of the peace, constable or deputy constable violating this Act shall be punished by a fine of not less than $100 nor more than $500.

Sec. 4. The provisions of this Article shall apply only to counties having a population of 225,000 or over according to the last preceding federal census.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.23. To Try Cause Without Delay

When the defendant is brought before the justice, he shall proceed to try the cause without delay, unless good ground be shown for a postponement thereof, in which case he may postpone the trial to any time not longer than five days, and may, if he deem proper, require the defendant to give bail for his appearance; and if, when required, he fails to give bail, he shall be kept in custody until the final determination of the cause.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.24. Defendant May Waive Jury

The accused may waive a trial by jury; and in such case, the justice shall hear and determine the cause without a jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.25. Jury Summoned

If the accused does not waive a trial by jury, the justice shall issue a writ commanding the proper officer to summon forthwith a venire from which six qualified persons shall be selected to serve as jurors in the case. Said jurors when so summoned shall remain in attendance as jurors in all cases that may come up for hearing until discharged by the court. Any person so summoned who fails to attend may be fined not exceeding $20 for contempt.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.26. Complaint Read

If the warrant is issued upon a complaint made to the justice, the complaint shall be read to the defendant. If issued by the justice without previous complaint, he shall state to the defendant the accusation against him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.27. Not Discharged for Informality

A defendant shall not be discharged by reason of any informality in the complaint or warrant. The proceeding before the justice shall be conducted without reference to technical rules except as provided in Article 4.15.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.28. Challenge of Jurors

In all jury trials in the justice court the State and each defendant in the case shall be entitled to three peremptory challenges, and also to any number of challenges for cause, which cause shall be judged of by the justice.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.29. Other Jurors Summoned

If, from challenges or any other cause, a sufficient number of jurors are not in attendance, the justice shall order the proper officer to summon a sufficient number of qualified persons to form the jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.30. Oath to Jury

The justice shall administer the following oath to the jury: "Each of you do solemnly swear that you will well and truly try the cause about to be submitted to you and a true verdict render therein, according to the law and the evidence, so help you God".

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.31. Defendant Shall Plead

After the jury is impaneled, or after the defendant has waived trial by jury, the defendant may plead guilty or not guilty or may enter a plea of nolo contendere, or the special plea named in the succeeding Article.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.32. The Only Special Plea

The only special pleas allowed are those defined in Article 27.05 of this code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 974, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 45.33. Pleading is Oral

All pleading of the defendant in justice court may be oral or in writing as the defendant may elect. The justice shall note upon his docket the plea offered.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.34. Plea of Guilty

Proof as to the offense may be heard upon a plea of guilty and a plea of nolo contendere and the punishment assessed by the court or jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.35. If Defendant Refuses to Plead

The justice shall enter a plea of not guilty if the defendant refuses to plead.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.36. Witnesses Examined by Whom

The justice shall examine the witnesses if the State is not represented by counsel.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.37. May Appear by Counsel

The defendant has a right to appear by counsel as in all other cases. Not more than one counsel shall

conduct either the prosecution or defense. State's counsel may open and conclude the argument.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.38. Rules of Evidence

The rules of evidence which govern the trials of criminal actions in the district court shall apply to such actions in justice courts.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.39. Jury Kept Together

The jury shall retire in charge of an officer when the cause is submitted to them, and be kept together until they agree to a verdict or are discharged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.40. Mistrial

A jury shall be discharged if it fails to agree to a verdict after being kept together a reasonable time. If there be time left on the same day, another jury may be impaneled to try the cause, or the justice may adjourn for not more than two days and again impanel a jury to try such cause.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.41. Defendant to Give Bail

In case of adjournment, the justice shall require the defendant to give bail for his appearance. If he fails to give bail he may be held in custody.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.42. Verdict

When the jury has agreed upon a verdict, it shall bring the same into court; and the justice shall see that it is in proper form and shall enter it upon his docket and render the proper judgment and sentence thereon.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.43. Defendant Placed in Jail

Whenever, by the provisions of this title, the peace officer is authorized to retain a defendant in custody, he may place him in jail or any other place where he can be safely kept.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.44. New Trial Granted

A justice may, for good cause shown, grant the defendant a new trial, whenever he considers that justice has not been done the defendant in the trial of such case.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.45. Motion for New Trial

An application for a new trial must be made within one day after the rendition of judgment and sentence, and not afterward; and the execution of the judgment and sentence shall not be stayed until a new trial has been granted.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.46. Only One New Trial Granted

Not more than one new trial shall be granted the defendant in the same case. When a new trial has been granted, the justice shall proceed, as soon as practicable, to try the case again.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.47. State Not Entitled to New Trial

In no case shall the State be entitled to a new trial.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.48. Effect of Appeal

When a defendant files the appeal bond required by law with the justice, all further proceeding in the case in the justice court shall cease.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.49. Judgments in Open Court

All judgments and sentences and final orders of the justice shall be rendered in open court and entered upon his docket.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 45.50. The Judgment

(a) The judgment and sentence, in case of conviction in a criminal action before a justice of the peace, shall be that the defendant pay the amount of the fine and costs to the state.

(b) The justice may direct the defendant:

(1) to pay the entire fine and costs when sentence is pronounced; or

(2) to pay the entire fine and costs at some later date; or

(3) to pay a specified portion of the fine and costs at designated intervals.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1971, 62nd Leg., p. 2990, ch. 987, § 5, eff. June 15, 1971.]

Art. 45.51. Capias

(a) If the defendant is not in custody when the judgment is rendered, the court may order a capias issued for his arrest. The capias shall state the amount of the judgment and sentence, and command the sheriff to bring the defendant before the court or place him in jail until he can be brought before the court.

(b) If the defendant escapes from custody after judgment is rendered, a capias shall issue for his arrest and confinement until he is legally discharged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1971, 62nd Leg., p. 2991, ch. 987, § 6, eff. June 15, 1971.]

Art. 45.52. Collection of Fines

(a) When a judgment and sentence have been rendered against a defendant for a fine and costs and he defaults in payment, the justice may order him imprisoned in jail until discharged by law. A certified copy of the judgment, sentence, and order is sufficient to authorize such imprisonment.

(b) The justice may order the fine and costs collected by execution against the defendant's property in the same manner as a judgment in a civil suit.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1971, 62nd Leg., p. 2991, ch. 987, § 7, eff. June 15, 1971.]

Art. 45.53. Discharged From Jail

A defendant placed in jail on account of failure to pay the fine and costs can be discharged on habeas corpus by showing:

1. That he is too poor to pay the fine and costs; and

2. That he has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of not less than $15 for each day.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 2648, ch. 708, § 3, eff. Aug. 31, 1981.]

Section 4 of the 1981 amendatory act provides:

"This Act affects the term of a prisoner serving a sentence in a county jail on the effective date of this Act only to the extent that the sentence is served on or after the effective date of this Act."

Art. 45.54. Suspension of Fine and Deferral of Final Disposition

(1) Upon conviction of the defendant of a misdemeanor punishable by fine only, other than a misdemeanor described by Section 143A, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), the justice may suspend the imposition of the fine and defer final disposition of the case for a period not to exceed 180 days.

(2) During said deferral period, the justice may require the defendant to:

(a) post a bond in the amount of the fine assessed to secure payment of the fine;

(b) pay restitution to the victim of the offense in an amount not to exceed the fine assessed;

(c) submit to professional counseling; and

(d) comply with any other reasonable condition, other than payment of all or part of the fine assessed.

(3) At the conclusion of the deferral period, if the defendant presents satisfactory evidence that he has complied with the requirements imposed, the justice may dismiss the complaint. Otherwise, the justice may reduce the fine assessed or may then impose the fine assessed. If the complaint is dismissed, a special expense not to exceed $50 may be imposed.

(4) Records relating to a complaint dismissed as provided by this article may not be expunged under Article 55.01 of this code.

[Acts 1981, 67th Leg., p. 894, ch. 318, § 1, eff. Sept. 1, 1981.]

MISCELLANEOUS PROCEEDINGS

CHAPTER FORTY-SIX. INSANITY AS DEFENSE

Art.
46.01. Mental Illness after Conviction.
46.02. Incompetency to Stand Trial.
46.03. Insanity Defense.

Art. 46.01. Mental Illness after Conviction

Persons Not Charged with a Criminal Offense

Sec. 1. A person who has been convicted of a criminal offense and sentenced to a term in an institution operated by the Department of Corrections or the county jail and whose sentence has been probated, or suspended, or served or who is on parole, is not by reason of that offense a person charged with a criminal offense as that phrase is used in Article 1, Sections 15 and 15a of the Constitution of the State of Texas, and such a person who is mentally ill may be hospitalized under the same procedures provided for other persons who are mentally ill.

Transfer from Department of Corrections to Mental Hospital

Sec. 2. (a) The Director of the Department of Corrections may transfer a prisoner not under death sentence who is confined in an institution operated by the Department of Corrections to a State mental hospital, or to an agency of the United States operating a mental hospital or to a Veterans' Administration hospital, if a prison physician is of the opinion that the prisoner is mentally ill and would benefit from treatment in a mental hospital and if he is

advised by the head of the mental hospital that facilities are available and the prisoner is eligible for treatment.

(b) A prisoner so transferred remains under the jurisdiction of the Department of Corrections.

(c) The Director of the Department of Corrections shall transport the prisoner to and from the mental hospital.

Transfer from County Jail to Mental Hospital

Sec. 3. (a) The county judge may transfer a prisoner who is serving sentence in a county jail to a State mental hospital, or to an agency of the United States operating a mental hospital or to a Veterans' Administration hospital, if the county health officer certifies that the prisoner is mentally ill and would benefit from treatment in a mental hospital and if the judge is advised by the head of the mental hospital that facilities are available and the prisoner is eligible for treatment.

(b) A prisoner so transferred remains under the jurisdiction of the sheriff of the county.

(c) The county from which a prisoner is so transferred shall transport the prisoner to and from the mental hospital, and shall pay the costs of his support, treatment and maintenance while in a State mental hospital as a prisoner.

Confinement in Mental Hospital

Sec. 4. The head of the mental hospital in which a prisoner is being treated shall take reasonable precaution to prevent the escape of the prisoner and shall not discharge or furlough the prisoner or transfer him to any mental hospital other than a State mental hospital or an agency of the United States operating a mental hospital or a Veterans' Administration hospital during the term of his sentence.

Escape from Mental Hospital

Sec. 5. The Director of the Department of Corrections or the sheriff from whose custody the prisoner was transferred is responsible for regaining custody of a prisoner who escapes from a mental hospital.

Recovery Before Expiration of Sentence

Sec. 6. When the head of a mental hospital determines that a prisoner whose sentence has not expired no longer requires hospitalization for mental illness or will not benefit from continued hospitalization, he shall so notify the Director of the Department of Corrections or the county judge who transferred the prisoner to the mental hospital. Upon receiving this notice the Director of the Department of Corrections or the county judge shall immediately transport the prisoner from the mental hospital to the Department of Corrections or county jail to serve the unexpired portion of his sentence.

Examination Prior to Expiration of Sentence

Sec. 7. Prior to the date of the expiration of the sentence of a prisoner who is being treated in a mental hospital, the head of the mental hospital shall have the prisoner examined and shall determine whether he requires further hospitalization as a mentally ill person and whether because of his mental illness he is likely to cause injury to himself or others if not restrained.

(a) The head of the mental hospital shall release the prisoner upon receiving notice of his discharge from the Department of Corrections or from jail, unless he determines that the prisoner requires further hospitalization as a mentally ill person and because of his mental illness is likely to cause injury to himself or others if not restrained.

(b) If the head of the hospital determines that the prisoner requires further hospitalization as a mentally ill person and because of his mental illness is likely to cause injury to himself or others if not restrained, he shall cause to be filed in the county court of the county in which the hospital is located a Certificate of Examination for Mental Illness and an Application for Temporary Hospitalization or Petition for Indefinite Commitment and may detain the person as a patient after his discharge from prison pending order of the court.

(c) If the head of the hospital determines that the prisoner requires further hospitalization as a mentally ill person, he shall so inform a responsible relative of the patient, and may cause an Application for Temporary Hospitalization or Petition for Indefinite Commitment to be filed in the county court of the proper county.

Time Credited

Sec. 8. The time a prisoner is confined in a mental hospital for treatment shall be considered time served and shall be credited to the term of his sentence, but he shall not be entitled to any commutation of sentence for good conduct while he is under treatment in a mental hospital.

Discharge from Prison

Sec. 9. Upon the expiration of the sentence of a prisoner who is being treated in a mental hospital, he shall receive a discharge from the Department of Corrections or the county jail as in all other cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 717 to 719, ch. 299, § 2, eff. Aug. 28, 1967.]

Art. 46.02. Incompetency to Stand Trial

Incompetency to Stand Trial

Sec. 1. (a) A person is incompetent to stand trial if he does not have:

(1) sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding; or

(2) a rational as well as factual understanding of the proceedings against him.

(b) A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a preponderance of the evidence.

Raising the Issue of Incompetency to Stand Trial

Sec. 2. (a) The issue of the defendant's incompetency to stand trial shall be determined in advance of the trial on the merits if the court determines there is evidence to support a finding of incompetency to stand trial on its own motion or on written motion by the defendant or his counsel filed prior to the date set for trial on the merits asserting that the defendant is incompetent to stand trial.

(b) If during the trial evidence of the defendant's incompetency is brought to the attention of the court from any source, the court must conduct a hearing out of the presence of the jury to determine whether or not there is evidence to support a finding of incompetency to stand trial.

Examination of the Defendant

Sec. 3. (a) At any time the issue of the defendant's incompetency to stand trial is raised, the court may, on its own motion or motion by the defendant, his counsel, or the prosecuting attorney, appoint disinterested experts experienced and qualified in mental health or mental retardation to examine the defendant with regard to his competency to stand trial and to testify at any trial or hearing on this issue.

(b) The court may order any defendant to submit to examination for the purposes described in this article. If the defendant is free on bail, the court in its discretion may order him to submit to examination. If the defendant fails or refuses to submit to examination, the court may order him to custody for examination for a reasonable period not to exceed 21 days. The court may not order a defendant to a facility operated by the Texas Department of Mental Health and Mental Retardation for examination without the consent of the head of that facility or for a period exceeding 21 days. If a defendant who has been ordered to a facility operated by Texas Department of Mental Health and Mental Retardation for examination remains in such facility for a period of time exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the Texas Department of Mental Health and Mental Retardation facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(c) The court shall advise any expert appointed pursuant to this section of the facts and circumstances of the offense with which the defendant is charged and the meaning of incompetency to stand trial.

(d) A written report of the examination shall be submitted to the court within 30 days of the order of examination, and the court shall furnish copies of the report to the defense counsel and the prosecuting attorney. The report shall include a description of the procedures used in the examination, the examiner's observations and findings pertaining to the defendant's competency to stand trial, and recommended treatment. If the examiner concludes that the defendant is incompetent to stand trial, the report shall include the examiner's observations and findings about whether there is a substantial probability that the defendant will attain the competence to stand trial in the foreseeable future. The examiner shall also submit a separate report setting forth his observations and findings concerning:

(1) whether the defendant is mentally ill and requires observation and/or treatment or hospitalization in a mental hospital for his own welfare and protection or the protection of others; or

(2) whether the defendant is a mentally retarded person as defined in The Mentally Retarded Persons Act (Article 3871b, Vernon's Texas Civil Statutes) [1] and requires commitment to a mental retardation facility.

(e) If the examiner is a physician and concludes that the defendant is mentally ill, he shall complete and submit to the court a Certificate of Medical Examination for Mental Illness. If the examiner concludes that the defendant is a mentally retarded person and the examination has been conducted at a facility of the Texas Department of Mental Health and Mental Retardation or at a diagnostic center approved by the Texas Department of Mental Health and Mental Retardation, the examiner shall submit to the court an affidavit setting forth the conclusions reached as a result of the diagnostic examination.

(f) The appointed experts shall be paid by the county in which the indictment was returned or information was filed. A facility operated by the Texas Department of Mental Health and Mental Retardation which accepts a defendant for examination under Subsection (a) of this section shall be reimbursed by the county in which the indictment was returned or information was filed for such

expenses incurred as are determined by the department to be reasonably necessary and incidental to the proper examination of the defendant.

(g) No statement made by the defendant during the examination or hearing on his competency to stand trial may be admitted in evidence against the defendant on the issue of guilt in any criminal proceeding.

(h) When a defendant wishes to be examined by a psychiatrist or other expert of his own choice, the court on timely request shall provide the examiner with reasonable opportunity to examine the defendant.

(i) The experts appointed under this section to examine the defendant with regard to his competency to stand trial also may be appointed by the court to examine the defendant with regard to the insanity defense pursuant to Section 3 of Article 46.03 of this code, but separate written reports concerning the defendant's competency to stand trial and the insanity defense shall be filed with the court.

[1] Repealed; see, now, the Mentally Retarded Persons Act of 1977, classified as Civil Statutes, art. 5547-300.

Incompetency Hearing

Sec. 4. (a) If the court determines that there is evidence to support a finding of incompetency to stand trial, a jury shall be impaneled to determine the defendant's competency to stand trial. This determination shall be made by a jury that has not been selected to determine the guilt or innocence of the defendant. If the defendant is found incompetent to stand trial, a further hearing may be held to determine whether or not the defendant is mentally ill and requires observation and/or treatment or hospitalization in a mental hospital for his own welfare and protection or the protection of others or whether he is a mentally retarded person as defined in The Mentally Retarded Persons Act (Article 3871b, Vernon's Texas Civil Statutes), and requires commitment to a mental retardation facility.

(b) The defendant is entitled to counsel at the competency hearing. If the defendant is indigent and the court has not yet appointed counsel to represent the defendant, the court shall appoint counsel prior to the competency hearing.

(c) If the issue of incompetency to stand trial is raised other than by written motion in advance of trial pursuant to Subsection (a) of Section 2 of this article and the court determines that there is evidence to support a finding of incompetency to stand trial, the court shall set the issue for determination at any time prior to the sentencing of the defendant. If the competency hearing is delayed until after a verdict on the guilt or innocence of the defendant is returned, the competency hearing shall be held as soon thereafter as reasonably possible, but a competency hearing may be held only if the verdict in the trial on the merits is "guilty." If the defendant is found incompetent to stand trial after the beginning of the trial on the merits, the court shall declare a mistrial in the trial on the merits. A subsequent trial and conviction of the defendant for the same offense is not barred and jeopardy does not attach by reason of a mistrial under this section.

(d) Instructions submitting the issue of incompetency to stand trial shall be framed to require the jury to state in its verdict:

(1) whether the defendant is incompetent to stand trial; and

(2) if found incompetent to stand trial, whether there is no substantial probability that the defendant will attain the competency to stand trial within the foreseeable future.

(e) If the jury is unable to agree on a unanimous verdict after a reasonable opportunity to deliberate, the court shall declare a mistrial of the incompetency hearing, discharge the jury, and impanel another jury to determine the incompetency of the defendant to stand trial.

(f) If the defendant is found competent to stand trial, the court shall dismiss the jury that decided the issue and may continue the trial on the merits before the court or with the jury selected for that purpose.

(g) If the defendant is found incompetent to stand trial and it is determined that there is a substantial probability that he will attain the competency to stand trial within the foreseeable future, the court shall proceed under Section 5 of this article.

(h) If the defendant is found incompetent to stand trial and there is found no substantial probability that he will become competent within the foreseeable future, and the court determines there is evidence that the defendant is mentally ill or is a mentally retarded person, and all charges pending against the defendant are not then dismissed, the court shall proceed under Section 6 of this article or shall release the defendant.

(i) If the defendant is found incompetent to stand trial and there is found no substantial probability that he will become competent within the foreseeable future, and the court determines there is evidence that the defendant is mentally ill or is a mentally retarded person, and all charges pending against the defendant are then dismissed, the court shall proceed under Section 7 of this article or shall release the defendant.

Criminal Commitment

Sec. 5. (a) When a defendant has been determined incompetent to stand trial, and absent a determination that there is no substantial probability that the defendant will attain competency to stand trial in the foreseeable future, the court shall enter an order committing the defendant to the maximum

security unit of Rusk State Hospital, to the maximum security unit of any other facility designated by the Texas Department of Mental Health and Mental Retardation, to an agency of the United States operating a mental hospital, or to a Veterans Administration hospital for a period of at least 60 days, but not to exceed 18 months, and placing him in the custody of the sheriff for transportation to the facility to be confined therein for further examination and treatment toward the specific objective of attaining competency to stand trial. The court shall order that a transcript of all medical testimony received by the jury be forthwith prepared by the court reporter and that such transcript, together with a statement of the facts and circumstances surrounding the alleged offense, shall accompany the patient to the facility.

(b) No person shall be committed to a mental health or mental retardation facility under this section except on competent medical or psychiatric testimony.

(c) The facility to which the defendant is committed shall develop an individual program of treatment and shall report on the defendant's progress towards achieving competency to the court at least every 90 days.

(d) Nothing in this section precludes the court from allowing the defendant to be released on bail if the court determines that the defendant can be adequately treated on an outpatient basis for the purpose of attaining competency to stand trial.

(e) If the charges pending against a defendant are dismissed, the committing court shall send a copy of the order of dismissal to the head of the facility in which the defendant is held and the defendant shall then be discharged.

(f) The head of a facility to which a person has been committed pursuant to Subsection (a) of this section shall promptly notify the committing court:

(1) when he is of the opinion that the defendant has attained competency to stand trial; or

(2) when he is of the opinion that there is no substantial probability that the defendant will attain the competency to stand trial in the foreseeable future; or

(3) when an 18-month commitment is due to expire, such notice to be given 14 days prior to such expiration.

(g) On notification to the committing court under Subsection (f) of this section, the sheriff of the county in which the committing court is located shall forthwith transport the defendant to the committing court; provided, however, that if the defendant remains in the maximum security unit of a facility of the Texas Department of Mental Health and Mental Retardation 14 days following receipt by the committing court of such notification, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the Texas Department of Mental Health and Mental Retardation facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(h) Upon the defendant's return to court, if he has no counsel and the court determines that the defendant is indigent, the court shall appoint counsel to represent him.

(i) When the head of a facility to which the defendant is committed discharges the defendant and the defendant is returned to court, a final report shall be filed with the court documenting the applicable reason therefor under Subsection (f) of this section, and the court shall furnish copies to the defense counsel and the prosecuting attorney. If the head of such facility is of the opinion that the defendant is mentally ill and requires observation and/or treatment or hospitalization in a mental hospital for his own welfare and protection or the protection of others, he shall complete and submit to the court a Certificate of Medical Examination for Mental Illness. If the head of such facility is of the opinion that the defendant is mentally retarded, he shall submit to the court an affidavit setting forth the conclusions reached as a result of the diagnostic examination. When the report is filed with the court, the court is authorized to make a determination based solely on the report with regard to the defendant's competency to stand trial, unless the prosecuting attorney or the defense counsel objects in writing or in open court to the findings of the report within 15 days from the time the report is served on the parties. In the event of objection, the issue shall be set for a hearing before the court or, on motion by the defendant, his counsel, the prosecuting attorney, or the court, the hearing shall be held before a jury. The hearing shall be held within 30 days following the date of objection unless continued for good cause.

(j) No defendant who has been committed to a facility under Subsection (a) of this section may be recommitted to a facility under that subsection in connection with the same offense.

(k) If the defendant is found competent to stand trial, criminal proceedings against him may be resumed.

(l) If the defendant is found incompetent to stand trial, and all charges pending against the defendant are not then dismissed, the court shall proceed under Section 6 of this article or shall release the defendant.

(m) If the defendant is found incompetent to stand trial, and all charges pending against the

defendant are then dismissed, the court shall proceed under Section 7 of this article or shall release the defendant.

Civil Commitment–Charges Pending

Sec. 6. (a) If a defendant is found incompetent to stand trial and there is found no substantial probability that he will become competent in the foreseeable future, or if the defendant is found incompetent to stand trial and he has been previously committed to a facility under Subsection (a) of Section 5 of this article in connection with the same offense, and, in either event, all charges pending against the defendant are not then dismissed, the court shall determine whether there is evidence to support findings that the defendant is mentally ill or is mentally retarded and requires commitment to a mental health or mental retardation facility.

(b) If it appears to the court that the defendant may be mentally ill and there is on file with the court Certificates of Medical Examination for Mental Illness by two physicians, at least one of whom must not be employed by the Texas Department of Mental Health and Mental Retardation, who have examined the defendant within 45 days of the date of the commitment hearing, each stating that the defendant is mentally ill and requires observation and/or treatment or hospitalization in a mental hospital, the court shall impanel a jury to determine whether the defendant shall be committed to a mental health facility or such hearing may be held before the jury impaneled to determine the defendant's competency to stand trial.

(1) If there has not been filed with the court two such Certificates of Medical Examination for Mental Illness, the judge shall appoint the necessary physicians, at least one of whom shall be a psychiatrist if one is available in the county, to examine the defendant and file certificates with the court. The judge may order the defendant to submit to the examination.

(2) The Texas Mental Health Code (Article 5547–1 et seq., Vernon's Texas Civil Statutes) shall govern proceedings for commitment of the defendant to a mental health facility insofar as the provisions of that code are applicable and not in conflict herewith, except that the criminal court shall conduct the proceedings whether or not the criminal court is also the county court.

(3) If the defendant has not been under observation and/or treatment in a mental hospital for at least 60 days under the provisions of Section 5(a) above or under an Order of Temporary Commitment pursuant to the provisions of the Texas Mental Health Code (Article 5547–1 et seq., Vernon's Texas Civil Statutes) within the 12 months immediately preceding the date of the hearing, the instructions submitting the issue shall be framed to require the jury to state in its verdict:

(i) whether the defendant is mentally ill, and if so

(ii) whether he requires observation and/or treatment in a mental hospital for his own welfare and protection or the protection of others.

(4) If the jury finds that the defendant is not mentally ill or does not require observation and/or treatment in a mental hospital, the court shall order the immediate release of the defendant.

If the jury finds that the defendant is mentally ill and requires observation and/or treatment in a mental hospital for his own welfare and protection or the protection of others, the court shall order that the defendant be committed as a patient for observation and/or treatment in a state mental hospital for a period not exceeding 90 days.

(5) If the defendant has been under observation and/or treatment in a mental hospital for at least 60 days under the provisions of Section 5(a) above or under an Order of Temporary Commitment pursuant to the provisions of the Texas Mental Health Code (Article 5547–1 et seq., Vernon's Texas Civil Statutes) within the 12 months immediately preceding the date of the hearing, the instructions submitting the issue shall be framed to require the jury to state in its verdict:

(i) whether the defendant is mentally ill, and if so

(ii) whether he requires hospitalization in a mental hospital for his own welfare and protection or the protection of others, and if so

(iii) whether he is mentally incompetent.

(6) If the jury finds that the defendant is not mentally ill or that he does not require hospitalization in a mental hospital for his own welfare and protection or the protection of others, the court shall enter an order discharging the defendant.

If the jury finds that the defendant is mentally ill and requires hospitalization in a mental hospital for his own welfare and protection or the protection of others, the court shall order that the defendant be committed as a patient to a state mental hospital for an indefinite period.

(7) If the court enters an order committing the defendant to a state mental hospital, the defendant shall be treated and released in conformity to the Texas Mental Health Code except as may be provided in this article.

(c) If it appears to the court that the defendant may be mentally retarded and there is on file with the court an Affidavit of Examination of Alleged Mentally Retarded Person based upon an examination conducted at a facility of the Texas Department of Mental Health and Mental Retardation or at a diagnostic center approved by that department, the

court shall impanel a jury to determine whether the defendant is a mentally retarded person or such hearing may be held before the jury impaneled to determine the defendant's competency to stand trial.

(1) If such affidavit is not on file with the court, the judge shall arrange for such diagnostic examination of the defendant by a facility of the Texas Department of Mental Health and Mental Retardation or by a diagnostic center approved by that department. The judge may order the defendant to submit to the examination. The county shall reimburse the facility or center which conducts the examination for the reasonable and necessary expenses incurred in conducting such examination.

(2) The Mentally Retarded Persons Act (Article 3871b, Vernon's Texas Civil Statutes) shall govern proceedings for commitment of the defendant to a mental retardation facility insofar as the provisions of that Act are applicable and not in conflict herewith, except that the criminal court shall conduct the proceedings whether or not the criminal court is also a county court.

(3) The instructions submitting the issue of mental retardation to the jury shall be framed to require the jury to state in its verdict whether the defendant is a mentally retarded person as defined in the Mentally Retarded Persons Act, and if so, whether he requires commitment to a mental retardation facility.

(4) If the jury finds that the defendant is not a mentally retarded person as defined in the Mentally Retarded Persons Act, or that he does not require commitment to a mental retardation facility, the court shall enter an order discharging the defendant.

(5) If the jury finds that the defendant is a mentally retarded person as defined in the Mentally Retarded Persons Act, and requires commitment to a mental retardation facility, the court shall enter an order declaring that fact and that the person is committed to a mental retardation facility of the Texas Department of Mental Health and Mental Retardation.

(d) In the proceedings conducted under this section:

(1) no Application for Temporary Hospitalization, Petition for Indefinite Commitment or Application to have the defendant declared a mentally retarded person shall be required;

(2) the provisions of the Texas Mental Health Code and the Mentally Retarded Persons Act of 1977 relating to notice of hearing shall not be applicable;

(3) appeals from the criminal court proceedings under this section shall be to the court of appeals as in the proceedings for temporary hospitalization or for indefinite commitment under the Texas Mental Health Code.

Civil Commitment—Charges Dismissed

Sec. 7. If a defendant is found incompetent to stand trial and there is found no substantial probability that he will become competent in the foreseeable future, or if the defendant is found incompetent to stand trial and he has been previously committed to a facility under Section 5 of this article and all charges pending against the defendant are then dismissed, the court shall determine whether there is evidence to support findings that the defendant is either mentally ill or is a mentally retarded person. If it appears to the court that there is evidence to support either of such findings, the court shall enter an order transferring the defendant to the appropriate court for civil commitment proceedings, stating that all charges pending against the defendant in that court have been dismissed, and may order the defendant detained in jail or other suitable place pending the prompt initiation and prosecution by the attorney for the state or other person designated by the court of appropriate civil proceedings to determine whether the defendant will be committed to a mental health or mental retardation facility; provided, however, that a patient placed in a facility of the Texas Department of Mental Health and Mental Retardation pending civil hearing under this section may be detained in such facility only pursuant to an Order of Protective Custody issued pursuant to the provisions of the Texas Mental Health Code and with the consent of the head of the facility, or the court may give the defendant into the care of a responsible person on satisfactory security being given for his proper care and protection; otherwise, the defendant shall be discharged.

General

Sec. 8. (a) A person committed to a mental health or mental retardation facility as a result of the proceedings initiated pursuant to Section 6 or Section 7 of this article and who presently has felony charges pending against him or has had felony charges against him dismissed pursuant to Section 7 of this article shall be committed to the maximum security unit of the Rusk State Hospital or to the maximum security unit of any other facility designated by the Texas Department of Mental Health and Mental Retardation. Within 60 days following arrival at the maximum security unit, the person shall be transferred to a nonsecurity unit of a mental health or mental retardation facility designated by the Texas Department of Mental Health and Mental Retardation unless the person is determined to be manifestly dangerous by a review board with the Texas Department of Mental Health and Mental Retardation. The Commissioner of the Texas Department of Mental Health and Mental Retardation shall appoint a review board of five members, including one psychiatrist licensed to practice medicine in the State of Texas and two persons who work directly with mental health pa-

tients or mentally retarded clients, to determine whether the person is manifestly dangerous and, as a result of the danger which he presents, requires continued placement in a maximum security unit. The review board shall make no determination as to the person's need for treatment. A finding that the person is not manifestly dangerous is not a medical determination that the person no longer meets the criteria for involuntary civil commitment under the Texas Mental Health Code (Article 5547–1 et seq., Vernon's Texas Civil Statutes) or the Mentally Retarded Persons Act of 1977 (Article 5547–300 et seq., Vernon's Texas Civil Statutes). If the superintendent of the facility at which the maximum security unit is located disagrees with the determination, then the matter will be referred to the Commissioner of the Texas Department of Mental Health and Mental Retardation who will resolve the disagreement by deciding whether the person is manifestly dangerous. A person committed to a mental health facility as a result of the proceedings initiated pursuant to Section 6 or Section 7 of this article who presently has misdemeanor charges pending against him or has had misdemeanor charges against him dismissed pursuant to Section 7 of this article shall be committed to the mental health facility which is designated by the Commission of the Texas Department of Mental Health and Mental Retardation to serve the catchment area in which the committing court is located. A person committed to a mental retardation facility as a result of the proceedings initiated pursuant to Section 6 or 7 of this article and who presently has misdemeanor charges pending against or has had misdemeanor charges against him dismissed pursuant to Section 7 of this article shall be committed to the maximum security unit of the Rusk State Hospital for the maximum of 60 days pending placement in a nonsecurity facility.

(b) The court shall order that a transcript of all medical testimony received in both the criminal proceedings and the civil commitment proceedings be prepared forthwith by the court reporters and that such transcripts, together with a statement of the facts and circumstances surrounding the alleged offense, shall accompany the patient to the mental health or mental retardation facility.

(c) If the head of a mental health facility determines that a patient committed to a state mental hospital for a period not exceeding 90 days as a result of proceedings initiated pursuant to Section 6 or Section 7 of this article requires indefinite commitment to a mental hospital for his own welfare and protection or the protection of others, he shall notify the court from which the patient was committed in writing at least 30 days prior to the expiration of the temporary commitment. The court from which the patient was committed shall order the sheriff of the county in which the court is located to return the patient for a Hearing for Indefinite Commitment or shall make arrangements for the hearing to be held in an appropriate court of the county in which the patient is hospitalized. Provided, however, that if the patient has not received a Hearing for Indefinite Commitment by the date on which the temporary commitment expires, the head of the facility in which the patient is hospitalized shall cause the patient to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the court is located. That county shall reimburse the facility of the Texas Department of Mental Health and Mental Retardation for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(d) The head of a mental health or mental retardation facility to which a person has been committed or transferred as a result of the proceedings initiated pursuant to Section 6 of this article and who has received written notice from a court or prosecuting attorney that criminal charges are pending against the person shall notify the court in writing at least 14 days prior to the discharge of the person unless the notice provided for in (c) above has been given. A written report as to the competency of the person to stand trial shall accompany the notice of discharge.

(e) On written notice by the head of a mental health or mental retardation facility that in his opinion a person who has been civilly committed to that facility and against whom criminal charges are pending is competent to stand trial, or on good cause shown by the defendant, his counsel, or the prosecuting attorney, the court in which the criminal charges are pending may hold a hearing to determine the competency of the defendant to stand trial. The hearing shall be before a jury unless waived by agreement of the parties. The order setting the hearing shall order the defendant placed in the custody of the sheriff for transportation to the court. The court may appoint disinterested experts to examine the defendant in accordance with the provisions of Section 3 of this article. If the defendant is found to be competent to stand trial, the proceedings on the criminal charges may be continued. If the defendant is found incompetent to stand trial and is under an order of commitment to a mental health or mental retardation facility, the court shall order him placed in the custody of the sheriff for transportation to that facility. If the defendant is found incompetent to stand trial and has been discharged from a mental health or mental retardation facility, the court may civilly recommit the person pursuant to the provisions of the Texas Mental Health Code, as amended (Article 5547–1 et seq., Vernon's Texas Civil Statutes), or pursuant to the provisions of the Mentally Retarded Persons Act of 1977, as amended (Article 5547–300, Vernon's Texas Civil Statutes). Such a recommitment shall be made to the facility from which the defendant

was discharged if accomplished under the Texas Mental Health Code and to the Texas Department of Mental Health and Mental Retardation if accomplished under the Mentally Retarded Persons Act of 1977. The provisions of (d) above shall again be followed prior to discharge of the committed person.

Time Credited

Sec. 9. The time a person charged with a criminal offense is confined in a mental health or mental retardation facility pending trial shall be credited to the term of his sentence on subsequent sentencing or resentencing.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1748, ch. 659, § 33, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 716, ch. 299, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 1698, ch. 554, § 1, eff. June 10, 1969; Acts 1969, 61st Leg., p. 2474, ch. 833, § 1, eff. June 18, 1969; Acts 1971, 62nd Leg., p. 3026, ch. 995, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 3027, ch. 995, § 2, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 658, ch. 275, § 1, eff. June 11, 1973; Acts 1973, 63rd Leg., p. 1274, ch. 468, § 1, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 1095, ch. 415, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1458, ch. 596, § 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 820, ch. 291, § 148, eff. Sept. 1, 1981; Acts 1983, 68th Leg., pp. 278 to 280, ch. 54, §§ 1, 2, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4588, ch. 772, § 1, eff. Aug. 29, 1983.]

Section 10 of the 1977 amendatory act provided:

"If any portion of this Act is declared invalid or unconstitutional, it is the intention of the Legislature that the other portions shall remain in full force and effect, and to this end the provisions of this Act are declared to be severable."

Art. 46.03. Insanity Defense

The Insanity Defense

Sec. 1. (a) The insanity defense provided in Section 8.01 of the Penal Code shall be submitted to the jury only if supported by competent evidence.

(b) When the insanity defense is submitted, the trier of facts shall determine and include in the verdict or judgment or both whether the defendant is guilty, not guilty, or not guilty by reason of insanity.

(c) The trier of facts shall return a verdict of not guilty by reason of insanity if the prosecution has established beyond a reasonable doubt that the alleged conduct was committed and the defense has established by a preponderance of the evidence that the defendant was insane at the time of the alleged conduct.

(d) A defendant who has been found not guilty by reason of insanity shall stand acquitted of the offense charged and may not be considered a person charged with a criminal offense.

(e) The court, the attorney for the state, or the attorney for the defendant may not inform a juror or a prospective juror of the consequences to the defendant if a verdict of not guilty by reason of insanity is returned.

Raising the Insanity Defense

Sec. 2. (a) A defendant planning to offer evidence of the insanity defense shall file a notice of his intention to offer such evidence with the court and the prosecuting attorney:

(1) at least 10 days prior to the date the case is set for trial; or

(2) if the court sets a pretrial hearing before the 10-day period, the defendant shall give notice at the hearing; or

(3) if the defendant raises the issue of his incompetency to stand trial before the 10-day period, he shall at the same time file notice of his intention to offer evidence of the insanity defense.

(b) Unless notice is timely filed pursuant to Subsection (a) of this section, evidence on the insanity defense is not admissible unless the court finds that good cause exists for failure to give notice.

Examination of the Defendant

Sec. 3. (a) If notice of intention to raise the insanity defense is filed under Section 2 of this article, the court may, on its own motion or motion by the defendant, his counsel, or the prosecuting attorney, appoint disinterested experts experienced and qualified in mental health and mental retardation to examine the defendant with regard to the insanity defense and to testify thereto at any trial or hearing on this issue.

(b) The court may order any defendant to submit to examination for the purposes described in this article. If the defendant is free on bail, the court in its discretion may order him to submit to examination. If the defendant fails or refuses to submit to examination, the court may order him to custody for examination for a reasonable period not to exceed 21 days. The court may not order a defendant to a facility operated by the Texas Department of Mental Health and Mental Retardation for examination without the consent of the head of that facility or for a period exceeding 21 days. If a defendant who has been ordered to a facility operated by the Texas Department of Mental Health and Mental Retardation for examination remains in such facility for a period of time exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the Texas Department of Mental Health and Mental Retardation facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at that time.

(c) The court shall advise any expert appointed pursuant to this section of the facts and circumstances of the offense with which the defendant is charged and the elements of the insanity defense.

(d) A written report of the examination shall be submitted to the court within 30 days of the order of examination, and the court shall furnish copies of the report to the defense counsel and the prosecuting attorney. The report shall include a description of the procedures used in the examination and the examiner's observations and findings pertaining to the insanity defense. The examiner shall also submit a separate report setting forth his observations and findings concerning:

(1) whether the defendant is presently mentally ill and requires observation and/or treatment or hospitalization in a mental hospital for his own welfare and protection or the protection of others; or

(2) whether the defendant is a mentally retarded person as defined in the Mentally Retarded Persons Act (Article 3871b, Vernon's Texas Civil Statutes).[1]

(e) The appointed experts shall be paid by the county in which the indictment was returned or information was filed. A facility operated by the Texas Department of Mental Health and Mental Retardation which accepts a defendant for examination under Subsection (a) of this section shall be reimbursed by the county in which the indictment was returned or information was filed for such expenses incurred as are determined by the department to be reasonably necessary and incidental to the proper examination of the defendant.

(f) When a defendant wishes to be examined by a psychiatrist or other expert of his own choice, the court on timely request shall provide the examiner with reasonable opportunity to examine the defendant.

(g) The experts appointed under this section to examine the defendant with regard to the insanity defense also may be appointed by the court to examine the defendant with regard to his competency to stand trial pursuant to Section 3 of Article 46.02 of this code, provided that separate written reports concerning the defendant's competency to stand trial and the insanity defense shall be filed with the court.

[1] Repealed; see, now, the Mentally Retarded Persons Act of 1977, classified as Civil Statutes, art. 5547-300.

Disposition Following Acquittal by Reason of Insanity

Sec. 4. (a) Act Did Not Involve Serious Bodily Injury; Civil Commitment. If a defendant is found not guilty by reason of insanity in the trial of a criminal offense, the court shall determine whether the conduct committed by the defendant involved an act, attempt, or threat of serious bodily injury to another person. If the court determines that the defendant had not committed an act, attempt, or threat of serious bodily injury to another person, then the court shall further determine whether there is evidence to support findings that the defendant is either mentally ill or is a mentally retarded person. If the court determines that there is evidence to support either of such findings, the court shall transfer the defendant to the appropriate court for civil commitment proceedings and may order the defendant detained in jail or other suitable place pending the prompt initiation and prosecution by the attorney for the state or other person designated by the court of appropriate civil proceedings to determine whether the defendant shall be committed to a mental health or mental retardation facility; provided, however, that a patient placed in a facility of the Texas Department of Mental Health and Mental Retardation pending civil hearing under this section shall only be detained pursuant to the provisions for an Order of Protective Custody as set out in the Texas Mental Health Code and with the consent of the head of the facility, or the court may give the defendant into the care of a responsible person on satisfactory security being given for his proper care and protection; otherwise, the defendant shall be discharged.

(b) Commitment to Maximum Security Unit; Transfer to Nonsecurity Unit. A person committed to a mental health or mental retardation facility as a result of the proceedings initiated pursuant to Subsection (d) of this section shall be committed to the maximum security unit of Rusk State Hospital or the maximum security unit of any other facility designated by the Texas Department of Mental Health and Mental Retardation. Within 60 days following arrival at the maximum security unit, the person shall be transferred to a nonsecurity unit of a mental health or mental retardation facility designated by the Texas Department of Mental Health and Mental Retardation unless the person is determined to be manifestly dangerous by a review board within the Texas Department of Mental Health and Mental Retardation. The Commissioner of the Texas Department of Mental Health and Mental Retardation shall appoint three psychiatrists who are licensed to practice medicine in the State of Texas to determine whether the person is manifestly dangerous. If the superintendent of the facility at which the maximum security unit is located disagrees with the determination, then the matter will be referred to the Commissioner of the Texas Department of Mental Health and Mental Retardation who will resolve the disagreement by deciding whether the person is manifestly dangerous.

(c) Transcript of all Medical Testimony. The court shall order that a transcript of all medical testimony received in both the criminal proceedings and the commitment proceedings be prepared forthwith by the court reporters and that such transcripts, together with a statement of the facts and

circumstances surrounding the alleged offense, shall accompany the patient to the mental health or mental retardation facility.

(d) Act, Attempt, or Threat of Serious Bodily Injury; Special Commitment; Out-patient Supervision; Recommitment.

(1) Automatic Commitment for Evaluation. If a defendant is found not guilty by reason of insanity in the trial of a criminal offense and the court determines that the defendant committed an act, attempt, or threat of serious bodily injury to another person, the trial court shall retain jurisdiction over the person so acquitted and shall order such person to be committed to the maximum security unit of Rusk State Hospital or the maximum security unit of any other facility designated by the Texas Department of Mental Health and Mental Retardation until such time as he is eligible for release pursuant to this subsection or is eligible for transfer to a nonsecurity facility pursuant to Subsection (b) of this section. The court shall order that an examination of the defendant's present mental condition be conducted and that a report be filed with the court.

(2) Hearing. A hearing shall take place not later than 30 days following the acquittal order to determine if the person acquitted by reason of insanity is presently mentally ill or mentally retarded and meets the criteria for involuntary commitment as provided in the Texas Mental Health Code (Article 5547–1 et seq., Vernon's Texas Civil Statutes) or the Mentally Retarded Person's Act (Article 5547–300, Vernon's Texas Civil Statutes). The hearing shall be conducted by the trial court in the same manner as a hearing on an application for involuntary commitment pursuant to the Mental Health Code or the Mentally Retarded Person's Act.

(3) Determination and Disposition. If, after the hearing, the court finds that the acquitted person meets the criteria for involuntary commitment, the court shall order that person to be committed to a mental hospital or other appropriate facility, as designated by the Texas Department of Mental Health and Mental Retardation, for a period not exceeding 90 days. The court may order the acquitted person to participate in a prescribed regimen of medical, psychiatric, or psychological care or treatment on an out-patient basis pursuant to the provisions of Subdivision (4) of this subsection. If the court finds that the person acquitted by reason of insanity does not meet the criteria for involuntary commitment, the court shall order that person's immediate release.

(4) Out-patient Supervision. If at the time of the evaluation as provided in Subdivision (1) of this subsection prior to the hearing on involuntary commitment, the report of the defendant's present mental condition includes a recommendation that the person acquitted by reason of insanity meets the criteria for involuntary commitment but that such treatment or care can be provided on an out-patient basis provided he participates in a prescribed regimen of medical, psychiatric, or psychological care or treatment, and the court finds that the acquitted person does meet those criteria, the court may order the acquitted person to participate in that prescribed regimen of medical, psychiatric, or psychological care or treatment. The court may at any time modify or revoke the out-patient regimen of medical, psychiatric, or psychological care or treatment pursuant to the requirements of the Mental Health Code or the Mentally Retarded Person's Act. The court shall review the continuing need for such order at the completion of 90 days from the issuance of the initial out-patient order and no less often than once every 12 months for subsequent out-patient orders pursuant to the requirements of the Mental Health Code or Mentally Retarded Person's Act.

(5) Judicial Release. A person acquitted by reason of insanity and committed to a mental hospital or other appropriate facility pursuant to Subdivision (3) of this subsection may only be discharged by order of the committing court in accordance with the procedures specified in this subsection. If at any time prior to the expiration of a commitment order the superintendent of the facility to which the acquitted person is committed determines that the person has recovered from his mental condition to such an extent that he no longer meets the criteria for involuntary commitment or that he continues to meet those criteria but that treatment or care can be provided on an out-patient basis provided he participates in an prescribed regimen of medical, psychiatric, or psychological care and treatment, the director of the facility shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. If the superintendent of the facility intends to recommend release, out-patient care, or continued in-patient care upon the expiration of a commitment order, the superintendent shall file a certificate to that effect with the clerk of the court that ordered the commitment at least 14 days prior to the expiration of that order. The clerk shall notify the district or county attorney upon receipt of such certificate. Upon receipt of such certificate or upon the expiration of a commitment order, the court shall order the discharge of the acquitted person or on the motion of the district or county attorney or on its own motion shall hold a hearing, prior to the expiration of the commitment order, conducted pursuant to the provisions of the Mental Health Code or the Mentally Retarded Person's Act as appropriate, to determine if the acquitted person continues to meet the criteria for involuntary commitment and whether an order should be issued requiring the person to participate in a pre-

scribed regimen of medical, psychiatric, or psychological care or treatment on an out-patient basis as provided in Subdivision (4) of this subsection. If the court determines that the acquitted person continues to meet the criteria for involuntary commitment and that out-patient supervision is not appropriate, the court shall order that the person be returned to a mental hospital or other appropriate in-patient or residential facility. If the court finds that continued in-patient or residential care is required, the commitment will continue until the expiration of the original order, if one is still in effect, or the court shall issue a new commitment order of an appropriate duration as specified in the Mental Health Code or the Mentally Retarded Person's Act. If a hearing on a request for discharge or out-patient supervision has been held prior to the expiration of a commitment order, the court is not required to act on a subsequent request except upon the expiration of a commitment order or upon the expiration of 90 days following a hearing on a previous request. Commitment orders subsequent to an initial commitment order issued under this subsection shall be of an appropriate duration as specified in the Mental Health Code or the Mentally Retarded Person's Act, whichever is applicable.

(6) Modification or Revocation of Out-patient Supervision. The director of the facility or other individual responsible for administering a regimen of out-patient care or treatment imposed on an acquitted person pursuant to Subdivision (4) or (5) of this subsection shall notify the court ordering such out-patient care of any failure of the person to comply with that regimen or if the person's condition has so deteriorated that out-patient care is no longer appropriate. Upon such notice or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person may be taken into custody and brought without unnecessary delay before the court having jurisdiction over him. The court shall determine, after a hearing, whether the person should be remanded to a suitable facility for protective custody, pursuant to the provisions of the Mental Health Code or the Mentally Retarded Person's Act, pending a hearing on whether the person continues to meet the criteria for involuntary commitment and whether the out-patient order should be modified or revoked.

(7) In no event may a person acquitted by reason of insanity be committed to a mental hospital or other in-patient or residential facility pursuant to this subsection for a cumulative period of time which exceeds the maximum term provided by law for the crime for which the acquitted person was tried. Upon expiration of that maximum term, the acquitted person may be further confined in such a facility only pursuant to civil commitment proceedings.

[Acts 1975, 64th Leg., p. 1100, ch. 415, § 2, eff. June 19, 1975. Amended by Acts 1977, 65th Leg., p. 1467, ch. 596, § 2, eff. Sept. 1, 1977; Act 1983, 68th Leg., pp. 2640, 2641, ch. 454, §§ 2, 3, eff. Aug. 29, 1983.]

CHAPTER FORTY-SEVEN. DISPOSITION OF STOLEN PROPERTY

Art.
47.01. Subject to Order of Court.
47.01a. Restoration When No Trial is Pending.
47.02. Restored on Trial.
47.03. Schedule.
47.04. Restored to Owner.
47.05. Bond Required.
47.06. Property Sold.
47.07. Owner May Recover.
47.08. Written Instrument.
47.09. Claimant to Pay Charges.
47.10. Charges of Officer.
47.11. Scope of Chapter.

Art. 47.01. Subject to Order of Court

An officer who comes into custody of property alleged to have been stolen must hold it subject to the order of the proper court or magistrate.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 47.01a. Restoration When No Trial is Pending

If no criminal action is pending, a magistrate of the county or city in which the property is being held may hold a hearing to determine the right to possession of the property, upon the petition of any interested person. The magistrate shall order the property delivered to whoever has the superior right to possession, subject to the condition that the property be made available to the prosecuting authority should it be needed in the future, or the magistrate may remand the property to the custody of the peace officer.

[Acts 1977, 65th Leg., p. 2034, ch. 813, § 1, eff. Aug. 29, 1977.]

Art. 47.02. Restored on Trial

Upon the trial of any criminal action for theft, or for any other illegal acquisition of property which is by law a penal offense, the court trying the case shall order the property to be restored to the person appearing by the proof to be the owner of the same.

Likewise, the judge of any court in which the trial of any criminal action for theft or any other illegal acquisition of property which is by law a penal offense is pending may, upon hearing, if it is proved to the satisfaction of the judge of said court that any person is a true owner of the property alleged to have been stolen, and which is in possession of a

peace officer, by written order, direct the property to be restored to such owner.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 47.03. Schedule

When an officer seizes property alleged to have been stolen, he shall immediately file a schedule of the same, and its value, with the magistrate or court having jurisdiction of the case, certifying that the property has been seized by him, and the reason therefor.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 47.04. Restored to Owner

Upon an examining trial, if it is proven to the satisfaction of the magistrate that any person is the true owner of property alleged to have been stolen, and which is in possession of a peace officer, he may upon motion by the state, by written order direct the property to be restored to such owner subject to the conditions that such property shall be made available to the state or by order of any court having jurisdiction over the offense to be used for evidentiary purposes.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 47.05. Bond Required

If the magistrate has any doubt as to the ownership of the property, he may require a bond of the claimant for its re-delivery in case it should thereafter be shown not to belong to such claimant; or he may, in his discretion, direct the property to be retained by the sheriff until further orders as to its possession. Such bond shall be in a sum equal to the value of the property, with sufficient security, payable to and approved by the county judge of the county in which the property is in custody. Such bond shall be filed in the office of the county clerk of such county, and in case of a breach thereof may be sued upon in such county by any claimant of the property; or by the county treasurer of such county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 47.06. Property Sold

If the property is not claimed within 30 days from the conviction of the person accused of illegally acquiring it, the same procedure for its disposition as set out in Article 18.30 of this Code shall be followed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 47.07. Owner May Recover

The real owner of the property sold under the provisions of Article 47.06 may recover such property under the same terms as prescribed in Section 4 of Article 18.30 of this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 47.08. Written Instrument

If the property is a written instrument, it shall be deposited with the county clerk of the county where the proceedings are had, subject to the claim of any person who may establish his right thereto. The claimant of any such written instrument shall file his written sworn claim thereto with the county judge. If such judge be satisfied that such claimant is the real owner of the written instrument, the same shall be delivered to him. The county judge may, in his discretion, require a bond of such claimant, as in other cases of property claimed under any provision of this Chapter, and may also before such delivery require the written instrument to be recorded in the minutes of his court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 47.09. Claimant to Pay Charges

The claimant of the property, before he shall be entitled to have the same delivered to him, shall pay all reasonable charges for the safekeeping of the same while in the custody of the law, which charges shall be verified by the affidavit of the officer claiming the same, and determined by the magistrate of a court having jurisdiction thereof. If said charges are not paid, the property shall be sold as under execution; and the proceeds of sale, after the payment of said charges and costs of sale, paid to the owner of such property.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 47.10. Charges of Officer

When property is sold, and the proceeds of sale are ready to be paid into the county treasury, the amount of expenses for keeping the same and the costs of sale shall be determined by the county judge. The account thereof shall be in writing and verified by the officer claiming the same, with the approval of the county judge thereto for the amount allowed and shall be filed in the office of the county treasurer at the time of paying into his hands the balance of the proceeds of such sale.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 47.11. Scope of Chapter

Each provision of this Chapter relating to stolen property applies as well to property acquired in any

manner which makes the acquisition a penal offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER FORTY-EIGHT. PARDON AND PAROLE

Art.
48.01. Governor May Pardon.
48.02. Shall File Reasons.
48.03. Governor's Acts Under Seal.
48.04. Power to Remit Fines and Forfeitures.
48.05. Repealed.

Art. 48.01. Governor May Pardon

In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction, on the written signed recommendation and advice of the Board of Pardons and Paroles, or a majority thereof, to grant reprieves and commutations of punishments and pardons; and upon the written recommendation and advice of a majority of the Board of Pardons and Paroles, he shall have the power to remit fines and forfeitures. The Governor shall have the power to grant one reprieve in any capital case for a period not to exceed 30 days; and he shall have power to revoke paroles and conditional pardons. With the advice and consent of the Legislature, the Governor may grant reprieves, commutations of punishment and pardons in cases of treason.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 48.02. Shall File Reasons

When the Governor remits fines or forfeitures, or grants reprieves, commutation of punishment or pardons, he shall file in the office of Secretary of State his reasons therefor.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 48.03. Governor's Acts Under Seal

All remissions of fines and forfeitures, and all reprieves, commutations of punishment and pardons, shall be signed by the Governor, and certified by the Secretary of State, under the great seal of State, and shall be forthwith obeyed by any officer to whom the same may be presented.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 48.04. Power to Remit Fines and Forfeitures

The Governor shall have the power to remit forfeitures of bail bonds.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 48.05. Repealed by Acts 1977, 65th Leg., p. 933, ch. 347, § 6, eff. Aug. 29, 1977

CHAPTER FORTY-NINE. INQUESTS UPON DEAD BODIES

Art.
49.01. When Held.
49.02. Body Disinterred or Cremated.
49.03. Autopsies and Tests.
49.04. Liability of Physician Performing Autopsy Where Order Invalid.
49.05. Consent to Autopsy.
49.06. Chemical Analysis.
49.07. Upon What Justice May Act.
49.08. Death in Jail or Other Custody.
49.09. Subpoenas.
49.10. Testimony.
49.11. Private Inquest.
49.12. Hindering Proceedings.
49.13. Inquest Record.
49.14. In Homicide Cases.
49.15. Warrant of Arrest.
49.16. Commitment of Homicide Suspect.
49.17. Bail.
49.18. Warrant of Arrest.
49.19. Requisites of Warrant.
49.20. Officers Shall Execute Warrant.
49.21. Arrest Pending Inquest.
49.22. To Certify Proceedings.
49.23. Evidence.
49.24. Witnesses to Give Bail.
49.25. Medical Examiners.

Art. 49.01. When Held

It is the duty of the justice of the peace to hold inquests, with or without a jury, within his county in the following cases:

1. When a person dies in prison or in jail;

2. When any person is killed, or from any cause dies an unnatural death, except under sentence of the law; or dies in the absence of one or more good witnesses;

3. When the body of a human being is found, and the circumstances of his death are unknown;

4. When the circumstances of the death of any person are such as to lead to suspicion that he came to his death by unlawful means;

5. When any person commits suicide, or the circumstances of his death are such as to lead to suspicion that he committed suicide;

6. When a person dies without having been attended by a duly licensed and practicing physician, and the local health officer or registrar required to report the cause of death under Rule 41a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, General Laws, 46th Legislature, 1939, page 343, does not know the cause of death. When the local health officer or registrar of vital statistics whose duty it is to certify the cause of death does not know the cause of death, he shall so notify the justice of the peace of the

precinct in which the death occurred and request an inquest;

7. When a person dies who has been attended by a duly licensed and practicing physician or physicians, and such physician or physicians are not certain as to the cause of death and are unable to certify with certainty the cause of death as required by Rule 40a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, Chapter 41, Acts, First Called Session, 40th Legislature, 1927, page 116. In case of such uncertainty the attending physician or physicians, or the superintendent or general manager of the hospital or institution in which the deceased shall have died, shall so report to the justice of the peace of the precinct in which the death occurred, and request an inquest.

The inquests authorized and required by this Article shall be held by the justice of the peace of the precinct in which the death occurred, but in event the justice of the peace of such precinct is unavailable, or shall fail or refuse to act, then such inquest shall be conducted by the nearest available justice of the peace, corporation court judge, county judge or judge of the county court at law of the county in which the death occurred.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1969, 61st Leg., p. 2123, ch. 727, § 1, eff. Sept. 1, 1969.]

Art. 49.02. Body Disinterred or Cremated

Sec. 1. When a body upon which an inquest ought to have been held has been interred, the justice may cause it to be disinterred for the purpose of holding such inquest.

Sec. 2. Before any body, upon which an inquest is authorized by the provisions of Article 49.01 can lawfully be cremated, an autopsy shall be performed thereon as provided in this Article, or a certificate that no autopsy was necessary shall be furnished by the justice of the peace. Before any dead body can be lawfully cremated, the owner or operator of the crematory shall demand and be furnished with a certificate, signed by the justice of the peace of the justice precinct in which the death occurred showing that an autopsy was performed on said body or that no autopsy thereon was necessary. No autopsy shall be required by the justice of the peace as a prerequisite to cremation in case death was caused by the pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox, named in Rule 77, Sanitary Code of Texas, Article 4477, Revised Civil Statutes of Texas, 1925. All certificates furnished the owner or operator of a crematory by any justice of the peace, under the terms of this Article, shall be preserved by such owner or operator of such crematory for a period of two years from the date of the cremation of said body.

Sec. 3. Any person violating any provision of this Article insofar as it relates to the cremation of bodies, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than $500 and not more than $1,000, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 49.03. Autopsies and Tests

The justice of the peace may in all cases call in the County Health Officer, or if there be none or if his services are not then obtainable, then a duly licensed and practicing physician, and shall procure their opinions and their advice on whether or not to order an autopsy to determine the cause of death. If upon his own determination he deems an autopsy necessary, or if he is requested to order an autopsy by the district attorney, criminal district attorney, or if there is no district or criminal district attorney, by the county attorney, the justice of the peace shall, by proper order, request the County Health Officer, or if there be none or if it be impracticable to secure his service, then some duly licensed and practicing physician who is trained in pathology to make an autopsy in order to determine the cause of death, and whether death was from natural causes or resulting from violence, and the nature and character of either of them. The county in which such autopsy is ordered shall pay the physician making such autopsy a reasonable fee. The Commissioners Court may authorize payment for transportation of the body within this state for the performance of an autopsy ordered by a justice of the peace. In those cases where a complete autopsy is deemed unnecessary by the officers authorized by this article to request an autopsy, the justice of the peace may by proper order, order the taking of blood samples or any other samples of fluids, body tissues or organs in order to ascertain the cause of death or whether any crime has been committed. In the case of a body of a human being whose identity is unknown, the justice of the peace may, by proper order, authorize such investigative and laboratory tests and processes as are required to determine the identity as well as the cause of death.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1969, 61st Leg., p. 1845, ch. 618, § 1, eff. June 11, 1969; Acts 1977, 65th Leg., p. 691, ch. 261, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 601, ch. 277, § 1, eff. May 24, 1979; Acts 1983, 68th Leg., p. 748, ch. 179, § 1, eff. Aug. 29, 1983.]

Art. 49.04. Liability of Physician Performing Autopsy Where Order Invalid

A physician authorized to practice medicine in this State who performs an autopsy upon an order of a justice of the peace, or a person who makes a test on a body upon an order of a justice of the peace,

who does so in the good faith belief that the order is a valid one, shall not be held liable for damages in the event it is determined that the order was for any reason invalid.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 49.05. Consent to Autopsy

Sec. 1. Consent for a licensed physician to conduct an autopsy of the body of a deceased person shall be deemed sufficient when given by the following: In the case of a married person, the surviving spouse, or if no spouse survive him, by any child of such marriage, or in the event of a minor child of such marriage, the guardian of such child if any there be, or in the absence of such guardian, the court having jurisdiction of the person of such minor; in the event that neither spouse nor child survives such deceased, then permission for an autopsy shall be valid when given by a person who would be allowed to give such permission in the case of an unmarried deceased.

If the deceased be unmarried, then permission shall be given by the following for such autopsy, in the order stated: parent, guardian, or next of kin, and in the absence of any of the foregoing, by any natural person assuming custody of and responsibility for burial of the body of such deceased. If two or more of the above-named persons assume custody of the body, consent of one of them shall be deemed sufficient.

Sec. 2. For purposes of this Article, "licensed physician" shall be defined as any person duly licensed by the Texas State Board of Medical Examiners, and whose license is current in all respects.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1977, 65th Leg., p. 1106, ch. 407, § 1, eff. Aug. 29, 1977.]

Art. 49.06. Chemical Analysis

If upon such inquest, it becomes necessary to determine whether the death has been produced by poison, the justice of the peace, upon his own determination, or upon request of the physician performing such autopsy, shall call in to his aid, if necessary, some medical expert, chemist, toxicologist or licensed physician practicing pathology, qualified to make an analysis of the stomach and its contents, together with such other portions of the body as may be necessary to be analyzed and tested, for the purpose of determining the presence of poison in such body. The commissioners court shall pay to such expert or specialist such fee as it may determine reasonable not to exceed $300.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1969, 61st Leg., p. 1845, ch. 618, § 2, eff. June 11, 1969.]

Art. 49.07. Upon What Justice May Act

The justice shall act in such cases upon information given him by any credible person or upon facts within his knowledge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 49.08. Death in Jail or Other Custody

(a) The sheriff and every keeper of any prison shall inform such justice of the death of any person confined therein.

(b) If a person dies while in the custody of a peace officer or if a prisoner dies while confined in a municipal or county jail or in the Texas Department of Corrections, the director of the law enforcement agency of which the officer is a member or of the facility in which the prisoner was confined shall investigate the death and file a written report of the cause of death with the attorney general no later than the 20th day after the day on which the prisoner died. The director shall make a good faith effort to obtain all facts relevant to the death and include those facts in the report. The attorney general shall make the report, with the exception of any portion of the report that he determines is privileged, available to any interested person.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1983, 68th Leg., p. 2510, ch. 441, § 1, eff. Sept. 1, 1983.]

Section 3 of the 1983 amendatory act provides:

"The change in the law made by this Act applies only to a report required to be filed after the death of a prisoner who dies on or after the effective date of this Act."

Art. 49.09. Subpoenas

The justice may issue subpoenas to enforce the attendance of witnesses upon an inquest and may issue attachments for those subpoenaed who fail to attend.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 49.10. Testimony

Witnesses shall be sworn and examined by the justice and their testimony reduced to writing by or under his direction, and subscribed by them.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 49.11. Private Inquest

Should the justice deem proper, the inquest may be held in private; but in all cases where a person has been arrested, charged with having caused the death of the deceased, such person and his counsel shall have the right to be present at the inquest, and to examine witnesses and introduce evidence.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 49.12. Hindering Proceedings

If any other person than the justice, the accused and his counsel, and the counsel for the State, are present at the inquest, they shall not interfere with the proceedings. No questions shall be asked a witness, except by the justice, the accused or his counsel, and the counsel for the State. The justice of the peace may fine any person violating this Article for contempt of court, not exceeding $20, and may cause such person to be placed in the custody of a peace officer and removed from the presence of the inquest.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 49.13. Inquest Record

The justice shall keep full and complete records properly indexed, of all the proceedings relating to every inquest held by him. The record shall include:

1. The name of the deceased, if known, or if not, as accurate a description of him as can be given;
2. The time, date and place where the body was found, and the time, date and place where the inquest was held;
3. The testimony taken by the justice, and by whom;
4. The full report and detailed findings of the autopsy, if any;
5. The findings by the justice at the inquest;
6. Whether any person was arrested as a suspect before the inquest, and the person's identity, as well as everything material relating to the arrest.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 49.14. In Homicide Cases

When the justice has knowledge that the killing was the act of any person, or when an affidavit is made that such person has killed the deceased, a warrant may issue for the arrest of the accused before inquest held; and the accused and his counsel shall have the right to be present when the same is held, and to examine the witnesses and introduce evidence before the jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 49.15. Warrant of Arrest

Any peace officer to whose hands the justice's warrant of arrest shall come is bound to execute the same without delay, and he shall detain the person arrested until his discharge is ordered by the justice or other proper authority.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 49.16. Commitment of Homicide Suspect

If it be found by the justice, upon evidence adduced at the inquest, that a person already arrested did in fact kill the deceased, or was a party to the death, the justice may, according to the facts of the case, commit him to jail or require him to execute a bail bond with security for his appearance before the proper court to answer for the offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 974, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 49.17. Bail

Bail bond taken before a justice shall be sufficient if it state the grade of offense of which the party is accused, be payable to the State of Texas, be dated and signed by the principal and his surety, if any. Bail may be forfeited, and judgment recovered thereon, and the same collected as in the case of any other bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 49.18. Warrant of Arrest

When, by the evidence adduced before a justice holding an inquest, it is found that any person not in custody killed the deceased, or was a party to the death, the justice shall forthwith issue his warrant of arrest to the sheriff or other peace officer, commanding him to arrest the person accused, and bring him before such justice, or before some other magistrate named in the writ.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 974, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 49.19. Requisites of Warrant

A warrant of arrest shall be sufficient if it run in the name of "The State of Texas," give the name of the accused, or describe him when his name is unknown, recite the offense with which he is charged in plain language, and be dated and signed officially by the justice.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 49.20. Officer Shall Execute Warrant

The peace officer into whose hands such warrant may come shall forthwith execute the same by arresting the accused and taking him before the magistrate named in the warrant; and the same proceedings shall be had thereon as in other cases where persons accused of offenses are brought before him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 49.21. Arrest Pending Inquest

Nothing contained in this title shall prevent proceedings being had for the arrest and examination of an accused before a magistrate, pending the inquest. When a person accused of an offense has been already arrested under a warrant from the justice, he shall not be taken from the hands of the peace officer by a warrant from any other magistrate.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 49.22. To Certify Proceedings

The justice holding an inquest shall certify to the proceedings, and shall enclose in an envelope the testimony taken, the finding of the justice, the bail, if any, and all other papers connected with the inquest, shall seal up such envelope and without delay deliver it properly endorsed to the clerk of the district court, who shall safely keep the same in his office subject to the order of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 49.23. Evidence

The justice shall preserve all evidence that may come to his knowledge and possessions which might in his opinion tend to show the real cause of death or the person who caused such death, and deliver all such evidence to the district clerk, who shall keep the same safely, subject to the order of the court.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 49.24. Witnesses to Give Bail

The justice, if he deems it proper, may require bail of witnesses examined before the inquest to appear and testify before the next grand jury, or before an examining or other proper court, as in other cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 49.25. Medical Examiners

Office Authorized

Sec. 1. Subject to the provisions of this Act, the Commissioners Court of any county having a population of more than 500,000 and not having a reputable medical school as defined in Articles 4501 and 4503, Revised Civil Statutes of Texas, shall establish and maintain the office of medical examiner, and the Commissioners Court of any county may establish and provide for the maintenance of the office of medical examiner. Population shall be according to the last preceding federal census.

Multi-county District; Joint Office

Sec. 1a. (a) The commissioners courts of two or more counties may enter into an agreement to create a medical examiners district and to jointly operate and maintain the office of medical examiner of the district. The district must include the entire area of all counties involved. The counties within the district must, when taken together, form a continuous area.

(b) There may be only one medical examiner in a medical examiners district, although he may employ, within the district, necessary staff personnel. When a county becomes a part of a medical examiners district, the effect is the same within the county as if the office of medical examiner had been established in that county alone. The district medical examiner has all the powers and duties within the district that a medical examiner who serves in a single county has within that county.

(c) The commissioners court of any county which has become a part of a medical examiners district may withdraw the county from the district, but twelve months' notice of withdrawal must be given to the commissioners courts of all other counties in the district.

Appointments and Qualifications

Sec. 2. The commissioners court shall appoint the medical examiner, who shall serve at the pleasure of the commissioners court. No person shall be appointed medical examiner unless he is a physician licensed by the State Board of Medical Examiners. To the greatest extent possible, the medical examiner shall be appointed from persons having training and experience in pathology, toxicology, histology and other medico-legal sciences. The medical examiner shall devote so much of his time and energy as is necessary in the performance of the duties conferred by this Article.

Assistants

Sec. 3. The medical examiner may, subject to the approval of the commissioners court, employ such deputy examiners, scientific experts, trained technicians, officers and employees as may be necessary to the proper performance of the duties imposed by this Article upon the medical examiner.

Salaries

Sec. 4. The commissioners court shall establish and pay the salaries and compensations of the medical examiner and his staff.

Offices

Sec. 5. The commissioners court shall provide the medical examiner and his staff with adequate office space and shall provide laboratory facilities or make arrangements for the use of existing laborato-

ry facilities in the county, if so requested by the medical examiner.

Death Investigations

Sec. 6. Any medical examiner, or his duly authorized deputy, shall be authorized, and it shall be his duty, to hold inquests with or without a jury within his county, in the following cases:

1. When a person shall die within twenty-four hours after admission to a hospital or institution or in prison or in jail;

2. When any person is killed; or from any cause dies an unnatural death, except under sentence of the law; or dies in the absence of one or more good witnesses;

3. When the body of a human being is found, and the circumstances of his death are unknown;

4. When the circumstances of the death of any person are such as to lead to suspicion that he came to his death by unlawful means;

5. When any person commits suicide, or the circumstances of his death are such as to lead to suspicion that he committed suicide;

6. When a person dies without having been attended by a duly licensed and practicing physician, and the local health officer or registrar required to report the cause of death under Rule 41a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, General Laws, 46th Legislature, 1939, page 343, does not know the cause of death. When the local health officer or registrar of vital statistics whose duty it is to certify the cause of death does not know the cause of death, he shall so notify the medical examiner of the county in which the death occurred and request an inquest; and

7. When a person dies who has been attended immediately preceding his death by a duly licensed and practicing physician or physicians, and such physician or physicians are not certain as to the cause of death and are unable to certify with certainty the cause of death as required by Rule 40a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, Chapter 41, Acts, First Called Session, 40th Legislature, 1927. In case of such uncertainty the attending physician or physicians, or the superintendent or general manager of the hospital or institution in which the deceased shall have died, shall so report to the medical examiner of the county in which the death occurred, and request an inquest.

The inquests authorized and required by this Article shall be held by the medical examiner of the county in which the death occurred.

In making such investigations and holding such inquests, the medical examiner or an authorized deputy may administer oaths and take affidavits. In the absence of next of kin or legal representatives of the deceased, the medical examiner or authorized deputy shall take charge of the body and all property found with it.

Organ Transplant Donors; Notice; Inquests and Autopsies

Sec. 6a. (a) When death occurs to an individual designated a prospective organ donor for transplantation by a licensed physician under circumstances requiring the medical examiner of the county in which death occurred, or his duly authorized deputy, to hold an inquest, the medical examiner, or a member of his staff will be so notified by the administrative head of the facility in which the transplantation is to be performed.

(b) When notified pursuant to Subsection (a) of this Section, the medical examiner or his duly authorized deputy shall immediately go to the transplant facility, perform an inquest on the deceased prospective organ donor, and determine if an autopsy is required.

(c) If an autopsy is required, the medical examiner or his duly authorized deputy will examine the organ to be transplanted in its whole state and will examine any other clinical evidence on the condition of the organ.

(d) The organ to be transplanted will then be released to the transplant team for removal and transplantation.

(e) Thereafter, the remainder of the body will be removed to some convenient and suitable area designated by the administrative head of the transplant facility for completion of the autopsy.

Reports of Death

Sec. 7. Any police officer, superintendent of institution, physician, or private citizen who shall become aware of a death under any of the circumstances set out in Section 6 of this Article, shall immediately report such death to the office of the medical examiner or to the city or county police departments; any such report to a city or county police department shall be immediately transmitted to the office of medical examiner.

Removal of Bodies

Sec. 8. When any death under circumstances set out in Section 6 shall have occurred, the body shall not be disturbed or removed from the position in which it is found by any person without authorization from the medical examiner or authorized deputy, except for the purpose of preserving such body from loss or destruction or maintaining the flow of traffic on a highway, railroad or airport.

Autopsy

Sec. 9. If the cause of death shall be determined beyond a reasonable doubt as a result of the investigation, the medical examiner shall file a report

thereof setting forth specifically the cause of death with the district attorney or criminal district attorney, or in a county in which there is no district attorney or criminal district attorney with the county attorney, of the county in which the death occurred. If in the opinion of the medical examiner an autopsy is necessary, or if such is requested by the district attorney or criminal district attorney, or county attorney where there is no district attorney or criminal district attorney, the autopsy shall be immediately performed by the medical examiner or a duly authorized deputy. In those cases where a complete autopsy is deemed unnecessary by the medical examiner to ascertain the cause of death, the medical examiner may perform a limited autopsy involving the taking of blood samples or any other samples of body fluids, tissues or organs, in order to ascertain the cause of death or whether a crime has been committed. In the case of a body of a human being whose identity is unknown, the medical examiner may authorize such investigative and laboratory tests and processes as are required to determine its identity as well as the cause of death. In performing an autopsy the medical examiner or authorized deputy may use the facilities of any city or county hospital within the county or such other facilities as are made available. Upon completion of the autopsy, the medical examiner shall file a report setting forth the findings in detail with the office of the district attorney or criminal district attorney of the county, or if there is no district attorney or criminal district attorney, with the county attorney of the county.

Disinterments and Cremations

Sec. 10. When a body upon which an inquest ought to have been held has been interred, the medical examiner may cause it to be disinterred for the purpose of holding such inquest.

Before any body, upon which an inquest is authorized by the provisions of this Article, can be lawfully cremated, an autopsy shall be performed thereon as provided in this Article, or a certificate that no autopsy was necessary shall be furnished by the medical examiner. Before any dead body can be lawfully cremated, the owner or operator of the crematory shall demand and be furnished with a certificate, signed by the medical examiner of the county in which the death occurred showing that an autopsy was performed on said body or that no autopsy thereon was necessary. It shall be the duty of the medical examiner to determine whether or not, from all the circumstances surrounding the death, an autopsy is necessary prior to issuing a certificate under the provisions of this section. No autopsy shall be required by the medical examiner as a prerequisite to cremation in case death is caused by the pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox, named in Rule 77, Sanitary Code of Texas, Article 4477, Revised Civil Statutes of Texas, 1925. All certificates furnished to the owner or operator of a crematory by any medical examiner, under the terms of this Article, shall be preserved by such owner or operator of such crematory for a period of two years from the date of the cremation of said body.

Waiting Period Between Death and Cremation

Sec. 10a. The body of a deceased person shall not be cremated within forty-eight hours after the time of death as indicated on the regular death certificate, unless the death certificate indicates death was caused by the pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox, or unless the time requirement is waived in writing by the county medical examiner or, in counties not having a county medical examiner, a justice of the peace.

Records

Sec. 11. The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. Such records shall be public records.

Transfer of Duties of Justice of Peace

Sec. 12. When the commissioners court of any county shall establish the office of medical examiner, all powers and duties of justices of the peace in such county relating to the investigation of deaths and inquests shall vest in the office of the medical examiner. Any subsequent General Law pertaining to the duties of justices of the peace in death investigations and inquests shall apply to the medical examiner in such counties as to the extent not inconsistent with this Article, and all laws or parts of laws otherwise in conflict herewith are hereby declared to be inapplicable to this Article.

Penalty

Sec. 13. Any person in violation of any provision of this Article, upon conviction, shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than thirty days or both such fine and imprisonment.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1969, 61st Leg., p. 1033, ch. 336, § 1, eff. May 27, 1969; Acts 1969, 61st Leg., p. 1619, ch. 500, §§ 1 to 3, eff. June 10, 1969; Acts 1971, 62nd Leg., p. 1165, ch. 270, § 1, eff. Aug. 30, 1971; Acts 1975, 64th Leg., p. 1826, ch. 562, § 1, eff. Sept. 1, 1975.]

Acts 1969, 61st Leg., p. 1619, ch. 500, amending sections 1, 5 and 12 of this article, provided in section 4:

"All laws, or parts of laws, in conflict with the provisions of this Act are hereby repealed to the extent of the conflict only."

CHAPTER FIFTY. FIRE INQUESTS

Art.
50.01. Investigations.
50.02. Proceedings.
50.03. Verdict in Fire Inquest.
50.04. Witnesses Bound Over.
50.05. Warrant for Accused.
50.06. Testimony Written Down.
50.07. Compensation.

Art. 50.01. Investigations

When an affidavit is made by a credible person before any justice of the peace that there is ground to believe that any building has been unlawfully set or attempted to be set on fire, such justice shall cause the truth of such complaint to be investigated.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 50.02. Proceedings

The proceedings in such case shall be governed by the laws relating to inquests upon dead bodies. The officer conducting such investigations shall have the same powers as are conferred upon justices of the peace in the preceding Articles of this Chapter.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 50.03. Verdict in Fire Inquest

The jury after inspecting the place in question and after hearing the testimony, shall deliver to the justice holding such inquest its written signed verdict in which it shall find and certify how and in what manner such fire happened or was attempted, and all the circumstances attending the same, and who are guilty thereof, and in what manner. If such a jury is unable to so ascertain, it shall find and certify accordingly.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1973, 63rd Leg., p. 975, ch. 399, § 2(A), eff. Jan. 1, 1974.]

Art. 50.04. Witnesses Bound Over

If the jury finds that any building has been unlawfully set on fire or has been attempted so to be, the justice holding such inquest shall bind over the witnesses to appear and testify before the next grand jury of the county in which such offense was committed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 50.05. Warrant for Accused

If the person charged with the offense, if any, be not in custody, the justice of the peace shall issue a warrant for his arrest, and when arrested, such person shall be dealt with as in other like cases.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 50.06. Testimony Written Down

In all such investigations, the testimony of all witnesses examined before the jury shall be reduced to writing by or under the direction of the justice and signed by each witness. Such testimony together with the verdict and all bail bonds taken in the case shall be certified to and returned by the justice to the next district or criminal district court of his county.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 50.07. Compensation

The pay of the officers and jury making such investigation shall be the same as that allowed for the holding of an inquest upon a dead body, so far as applicable, and shall be paid in like manner.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER FIFTY-ONE. FUGITIVES FROM JUSTICE

Art.
51.01. Delivered Up.
51.02. To Aid in Arrest.
51.03. Magistrate's Warrant.
51.04. Complaint.
51.05. Bail or Commitment.
51.06. Notice of Arrest.
51.07. Discharge.
51.08. Second Arrest.
51.09. Governor May Demand Fugitive.
51.10. Pay of Agent; Traveling Expenses.
51.11. Reward.
51.12. Sheriff to Report.
51.13. Uniform Criminal Extradition Act.
51.14. Interstate Agreement on Detainers.

Art. 51.01. Delivered Up

A person in any other State of the United States charged with treason or any felony who shall flee from justice and be found in this State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 51.02. To Aid in Arrest

All peace officers of the State shall give aid in the arrest and detention of a fugitive from any other

State that he may be held subject to a requisition by the Governor of the State from which he fled.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 51.03. Magistrate's Warrant

When a complaint is made to a magistrate that any person within his jurisdiction is a fugitive from justice from another State, he shall issue a warrant of arrest directing a peace officer to apprehend and bring the accused before him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 51.04. Complaint

The complaint shall be sufficient if it recites:

1. The name of the person accused;
2. The State from which he has fled;
3. The offense committed by the accused;
4. That he has fled to this State from the State where the offense was committed; and
5. That the act alleged to have been committed by the accused is a violation of the penal law of the State from which he fled.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 51.05. Bail or Commitment

When the accused is brought before the magistrate, he shall hear proof, and if satisfied that the accused is charged in another State with the offense named in the complaint, he shall require of him bail with sufficient security, in such amount as the magistrate deems reasonable, to appear before such magistrate at a specified time. In default of such bail, he may commit the defendant to jail to await a requisition from the Governor of the State from which he fled. A properly certified transcript of an indictment against the accused is sufficient to show that he is charged with the crime alleged. One arrested under the provisions of this title shall not be committed or held to bail for a longer time than ninety days.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 51.06. Notice of Arrest

The magistrate who held or committed such fugitive shall immediately notify the Secretary of State and the district or county attorney of his county of such fact and the date thereof, stating the name of such fugitive, the State from which he fled, and the crime with which he is charged; and such officers so notified shall in turn notify the Governor of the proper State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 51.07. Discharge

A fugitive not arrested under a warrant from the Governor of this State before the expiration of ninety days from the day of his commitment or the date of the bail shall be discharged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 51.08. Second Arrest

A person who has once been arrested under the provisions of this title and discharged under the provisions of the preceding Article or by habeas corpus shall not be again arrested upon a charge of the same offense, except by a warrant from the Governor of this State.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 51.09. Governor May Demand Fugitive

When the Governor deems it proper to demand a person who has committed an offense in this State and has fled to another State, he may commission any suitable person to take such requisition. The accused, if brought back to the State, shall be delivered up to the sheriff of the county in which it is alleged he has committed the offense.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 51.10. Pay of Agent; Traveling Expenses

Sec. 1. The officer or person so commissioned shall receive as compensation the actual and necessary traveling expenses upon requisition of the Governor to be allowed by such Governor and to be paid out of the State Treasury upon a certificate of the Governor reciting the services rendered and the allowance therefor.

Sec. 2. The commissioners court of the county where an offense is committed may in its discretion, on the request of the sheriff and the recommendation of the district attorney, pay the actual and necessary traveling expenses of the officer or person so commissioned out of any fund or funds not otherwise pledged.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 51.11. Reward

The Governor may offer a reward for the apprehension of one accused of a felony in this State who is evading arrest, by causing such offer to be published in such manner as he deems most likely to effect the arrest. The reward shall be paid out of the State Treasury to the person who becomes entitled to it upon a certificate of the Governor

reciting the facts which entitle such person to receive it.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 51.12. Sheriff to Report

Each sheriff upon the close of any regular term of the district or criminal district court in his county, or within thirty days thereafter, shall make out and mail to the Director of the Department of Public Safety a certified list of all persons, who, after indictment for a felony, have fled from said county. Such lists shall contain the full name of each such fugitive, the offense with which he is charged, and a description giving his age, height, weight, color and occupation, the complexion of the skin and the color of eyes and hair, and any peculiarity in person, speech, manner or gait that may serve to identify such person so far as the sheriff may be able to give them. The Director of the Department of Public Safety shall prescribe and forward to all sheriffs the necessary blanks upon which are to be made the lists herein required.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 51.13. Uniform Criminal Extradition Act

Definitions

Sec. 1. Where appearing in this Article, the term "Governor" includes any person performing the functions of Governor by authority of the laws of this State. The term "Executive Authority" includes the Governor, and any person performing the functions of Governor in a State other than this State, and the term "State", referring to a State other than this State, includes any other State organized or unorganized of the United States of America.

Fugitives from Justice; Duty of Governor

Sec. 2. Subject to the provisions of this Article, the provisions of the Constitution of the United States controlling, and any and all Acts of Congress enacted in pursuance thereof, it is the duty of the Governor of this State to have arrested and delivered up to the Executive Authority of any other State of the United States any person charged in that State with treason, felony, or other crime, who has fled from justice and is found in this State.

Form of Demand

Sec. 3. No demand for the extradition of a person charged with crime in another State shall be recognized by the Governor unless in writing, alleging, except in cases arising under Section 6, that the accused was present in the demanding State at the time of the commission of the alleged crime, and that thereafter he fled from the State, and accompanied by a copy of an indictment found or by information supported by affidavit in the State having jurisdiction of the crime, or by a copy of an affidavit before a magistrate there, together with a copy of any warrant which issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the Executive Authority of the demanding State that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that State; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the Executive Authority making the demand; provided, however, that all such copies of the aforesaid instruments shall be in duplicate, one complete set of such instruments to be delivered to the defendant or to his attorney.

Governor May Investigate Case

Sec. 4. When a demand shall be made upon the Governor of this State by the Executive Authority of another State for the surrender of a person so charged with crime, the Governor may call upon the Secretary of State, Attorney General or any prosecuting officer in this State to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

Extradition of Persons Imprisoned or Awaiting Trial in Another State or Who have Left the Demanding State Under Compulsion

Sec. 5. When it is desired to have returned to this State a person charged in this State with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another State, the Governor of this State may agree with the Executive Authority of such other State for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other State, upon condition that such person be returned to such other State at the expense of this State as soon as the prosecution in this State is terminated.

The Governor of this State may also surrender on demand of the Executive Authority of any other State any person in this State who is charged in the manner provided in Section 23 of this Act with having violated the laws of the State whose Executive Authority is making the demand, even though such person left the demanding State involuntarily.

Extradition of Persons Not Present in Demanding State at Time of Commission of Crime

Sec. 6. The Governor of this State may also surrender, on demand of the Executive Authority of any other State, any person in this State charged in

such other State in the manner provided in Section 3 with committing an act in this State, or in a third State, intentionally resulting in a crime in the State whose Executive Authority is making the demand, and the provisions of this Article not otherwise inconsistent, shall apply to such cases, even though the accused was not in that State at the time of the commission of the crime, and has not fled therefrom.

Issue of Governor's Warrant of Arrest; Its Recitals

Sec. 7. If the Governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

Manner and Place of Execution

Sec. 8. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the State and to command the aid of all peace officers and other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this Article to the duly authorized agent of the demanding State.

Authority of Arresting Officer

Sec. 9. Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

Rights of Accused Person; Application for Writ of Habeas Corpus

Sec. 10. No person arrested upon such warrant shall be delivered over to the agent whom the Executive Authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this State, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such a writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding State.

Penalty for Non-compliance With Preceding Section

Sec. 11. Any officer who shall deliver to the agent for extradition of the demanding State a person in his custody under the Governor's warrant, in wilful disobedience to Section 10 of this Act, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than one thousand dollars or be imprisoned not more than six months, or both.

Confinement in Jail, When Necessary

Sec. 12. The officer or persons executing the Governor's warrant of arrest, or the agent of the demanding State to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding State to whom a prisoner may have been delivered following extradition proceedings in another State, or to whom a prisoner may have been delivered after waiving extradition in such other State, and who is passing through this State with such a prisoner for the purpose of immediately returning such prisoner to the demanding State may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding State after a requisition by the Executive Authority of such demanding State. Such prisoner shall not be entitled to demand a new requisition while in this State.

Arrest Prior to Requisition

Sec. 13. Whenever any person within this State shall be charged on the oath of any credible person before any judge or magistrate of this State with the commission of any crime in any other State and except in cases arising under Section 6, with having fled from justice, or with having been convicted of a crime in that State and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this State setting forth on the affidavit of any credible person in another State that a crime has been committed in such other State and that the accused has been charged in such State with the commission of the crime, and except in cases arising

under Section 6, has fled from justice, or with having been convicted of a crime in that State and having escaped from confinement, or having broken the terms of his bail, probation or parole and is believed to be in this State, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this State, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

Arrest Without a Warrant

Sec. 14. The arrest of a person may be lawfully made also by any peace officer or private person, without a warrant upon reasonable information that the accused stands charged in the courts of a State with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on a warrant.

Commitment to Await Requisition; Bail

Sec. 15. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and except in cases arising under Section 6, that he has fled from justice, the judge or magistrate must, by warrant reciting the accusation, commit him to the county jail for such time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the Executive Authority of the State having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged.

Bail; In What Cases; Conditions of Bond

Sec. 16. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the State in which it was committed, a judge or magistrate in this State may admit the person arrested to bail by bond, with sufficient sureties and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the Governor in this State.

Extension of Time of Commitment; Adjournment

Sec. 17. If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty days, or a judge or magistrate may again take bail for his appearance and surrender, as provided in Section 16, but within a period not to exceed sixty days after the date of such new bond.

Forfeiture of Bail

Sec. 18. If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this State. Recovery may be had on such bond in the name of the State as in the case of other bonds given by the accused in criminal proceedings within this State.

Persons Under Criminal Prosecution in this State at the Time of Requisition

Sec. 19. If a criminal prosecution has been instituted against such person under the laws of this State and is still pending, the Governor, in his discretion, either may surrender him on demand of the Executive Authority of another State or hold him until he has been tried and discharged or convicted and punished in this State.

Guilt or Innocence of Accused, When Inquired Into

Sec. 20. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime.

Governor May Recall Warrant or Issue Alias

Sec. 21. The governor may recall his warrant of the arrest or may issue another warrant whenever he deems proper. Each warrant issued by the Governor shall expire and be of no force and effect when not executed within one year from the date thereof.

Fugitives from this State; Duty of Governor

Sec. 22. Whenever the Governor of this State shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this State, from the Executive Authority of any other State, or from the Chief Justice or an Associate Justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the Unit-

ed States, he shall issue a warrant under the seal of this State, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this State in which the offense was committed, or in which the prosecution for such offense is then pending.

Application for Issuance of Requisition; By Whom Made; Contents

Sec. 23. 1. When the return to this State of a person charged with crime in this State is required, the State's attorney shall present to the Governor his written motion for a requisition for the return of the person charged, in which motion shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the State in which he is believed to be, including the location of the accused therein at the time the motion is made and certifying that, in the opinion of the said State's attorney the ends of justice require the arrest and return of the accused to this State for trial and that the proceeding is not instituted to enforce a private claim.

2. When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement, or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement, or the circumstances of the breach of the terms of his bail, probation or parole, the State in which he is believed to be, including the location of the person therein at the time application is made.

3. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the Secretary of State to remain on record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.

Costs and Expenses

Sec. 24. In all cases of extradition, the commissioners court of the county where an offense is alleged to have been committed, or in which the prosecution is then pending may in its discretion, on request of the sheriff and the recommendation of the prosecuting attorney, pay the actual and necessary expenses of the officer or person commissioned to receive the person charged, out of any county fund or funds not otherwise pledged.

Immunity from Service of Process in Certain Civil Cases

Sec. 25. A person brought into this State by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or if acquitted, until he has had reasonable opportunity to return to the State from which he was extradited.

Written Waiver of Extradition Proceedings

Sec. 25a. Any person arrested in this State charged with having committed any crime in another State or alleged to have escaped from confinement, or broken the terms of his bail, probation, or parole may waive the issuance and service of the warrant provided for in Sections 7 and 8 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge or any court of record within this State a writing which states that he consents to return to the demanding State; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in Section 10.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the Governor of this State and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding State, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding State, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding State or of this State.

Non-waiver by this State

Sec. 25b. Nothing in this Act contained shall be deemed to constitute a waiver by this State of its right, power or privilege to try such demanded person for crime committed within this State, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this State, nor shall any proceedings had under this Article which result, or fail to result in, extradition to be deemed a waiver by this State of any of its rights, privileges or jurisdiction in any way whatsoever.

No Right of Asylum, No Immunity from Other Criminal Prosecutions While in this State

Sec. 26. After a person has been brought back to this State by, or after waiver of extradition proceedings, he may be tried in this State for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

Interpretation

Sec. 27. The provisions of this Article shall be interpreted and construed as to effectuate its general purposes to make uniform the law of those States which enact it.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 51.14. Interstate Agreement on Detainers

This article may be cited as the "Interstate Agreement on Detainers Act." This agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joined therein in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I.

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II.

As used is this agreement: (a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

ARTICLE III.

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in Paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to Paragraph (a) hereof shall operate as a request for final disposition of all

untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to Paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of Paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in Paragraph (a) hereof shall void the request.

ARTICLE IV.

(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Paragraph (a) of Article V hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request; and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in Paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in Paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executing authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Paragraph (e) of Article V hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V.

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) proper identification and evidence of his authority to act for the state into whose temporary custody this prisoner is to be given;

(2) a duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI.

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII.

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII.

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX.

(a) This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this

agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(b) As used in this article, "appropriate court" means a court of record with criminal jurisdiction.

(c) All courts, departments, agencies, officers, and employees of this state and its political subdivisions are hereby directed to enforce this article and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

(d) Any prisoner escapes from lawful custody while in another state as a result of the application of this article shall be punished as though such escape had occurred within this state.

(e) The governor is empowered to designate the officer who will serve as central administrator of and information agent for the agreement on detainers pursuant to the provisions of Article VII hereof.

(f) Copies of this article, upon its enactment, shall be transmitted to the governor of each state, the Attorney General and the Secretary of State of the United States, and the council of state governments.

[Acts 1975, 64th Leg., p. 920, ch. 343, § 1, eff. June 19, 1975.]

CHAPTER FIFTY-TWO. COURT OF INQUIRY

Art.
52.01. Courts of Inquiry Conducted by County and District Judges.
52.02. Evidence; Deposition; Affidavits.
52.03. Subpoenas.
52.04. Rights of Witnesses.
52.05. Witness Must Testify.
52.06. Contempt.
52.07. Stenographic Record; Public Hearing.
52.08. Criminal Prosecutions.
52.09. Costs.

Art. 52.01. Courts of Inquiry Conducted by County and District Judges

When a judge of any county or district court of this state, acting in his capacity as magistrate, has good cause to believe that an offense has been committed against the laws of this state, he may summon and examine any witness in relation thereto in accordance with the rules hereinafter provided, which procedure is defined as a "Court of Inquiry".

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1751, ch. 659, § 34, eff. Aug. 28, 1967.]

Art. 52.02. Evidence; Deposition; Affidavits

At the hearing at a Court of Inquiry, evidence may be taken orally or by deposition, or, in the discretion of the judge, by affidavit. If affidavits are admitted, any witness against whom they may bear has the right to propound written interrogatories to the affiants or to file answering affidavits. The judge in hearing such evidence, at his discretion, may conclude not to sustain objections to all or to any portion of the evidence taken nor exclude same; but any of the witnesses or attorneys engaged in taking the testimony may have any objections they make recorded with the testimony and reserved for the action of any court in which such evidence is thereafter sought to be admitted, but such court is not confined to objections made at the taking of the testimony at the Court of Inquiry. Without restricting the foregoing, the judge may allow the introduction of any documentary or real evidence which he deems reliable, and the testimony adduced before any grand jury.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1751, ch. 659, § 35, eff. Aug. 28, 1967.]

Art. 52.03. Subpoenas

The judge or his clerk has power to issue subpoenas which may be served within the same territorial limits as subpoenas issued in felony prosecutions or to summon witnesses before grand juries in this state.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1751, ch. 659, § 36, eff. Aug. 28, 1967.]

Art. 52.04. Rights of Witnesses

All witnesses testifying in any Court of Inquiry have the same rights as to testifying as do defendants in felony prosecutions in this state. Before any witness is sworn to testify in any Court of Inquiry, he shall be instructed by the judge that he is entitled to counsel; that he cannot be forced to testify against himself; and that such testimony may be taken down and used against him in a later trial or trials ensuing from the instant Court of Inquiry. Any witness or his counsel has the right to fully cross-examine any of the witnesses whose testimony bears in any manner against him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1751, ch. 659, § 37, eff. Aug. 28, 1967.]

Art. 52.05. Witness Must Testify

A person may be compelled to give testimony or produce evidence when legally called upon to do so at any Court of Inquiry; however, if any person refuses or declines to testify or produce evidence on the ground that it may incriminate him under laws of this state, then the judge may, in his discretion, compel such person to testify or produce evidence but the person shall not be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which

he may be compelled to testify or produce evidence at such Court of Inquiry.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1751, ch. 659, § 38, eff. Aug. 28, 1967.]

Art. 52.06. Contempt

Contempt of court in a Court of Inquiry may be punished by a fine not exceeding One Hundred Dollars ($100.00) and any witness refusing to testify may be attached and imprisoned until he does testify.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 52.07. Stenographic Record; Public Hearing

All evidence taken at a Court of Inquiry shall be transcribed by the court reporter and all proceedings shall be open to the public.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 52.08. Criminal Prosecutions

If it appear from a Court of Inquiry or any testimony adduced therein, that an offense has been committed, the Judge shall issue a warrant for the arrest of the offender as if complaint had been made and filed.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 52.09. Costs

All costs incurred in conducting a Court of Inquiry shall be borne by the county in which said Court of Inquiry is conducted; provided, however, that where the Attorney General of Texas has submitted a request in writing to the judge for the holding of such Court of Inquiry, then and in that event the costs shall be borne by the State of Texas and shall be taxed to the attorney general and paid in the same and from the same funds as other court costs.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1967, 60th Leg., p. 1752, ch. 659, § 39, eff. Aug. 28, 1967.]

CHAPTER FIFTY-THREE. COSTS AND FEES

Art.
53.01. Peace Officers.
53.02. Fees of Peace Officers.
53.03. Fee of State's Attorney.
53.04. Officers in Examining Court.
53.05. In District and County Courts.
53.06. Trial Fee.
53.07. Justice of Peace Salary.
53.08. Fees in Proceedings for Expunction of Criminal Records.
53.08. Fee for Collecting and Processing Sight Order.
53.09. Justice of Peace Court Costs in Counties Over Two Million.

Art. 53.01. Peace Officers

The following fees shall be allowed the sheriff, or other peace officer performing the same services in misdemeanor cases, to be taxed against the defendant on conviction:

1. For executing each warrant of arrest or capias, or making arrest without warrant, $3.00.
2. For summoning each witness, $1.00.
3. For serving any writ not otherwise provided for, $2.00.
4. For taking and approving each bond, and returning the same to the courthouse, when necessary, $2.00.
5. For each commitment or release, $2.00.
6. Jury fee, in each case where a jury is actually summoned, $2.00.
7. For attending a prisoner on habeas corpus, when such prisoner, upon a hearing, has been remanded to custody or held to bail, for each day's attendance, $4.00.
8. For conveying a witness attached by him to any court out of his county, $5.00 for each day or fractional part thereof, and his actual necessary expenses by the nearest practicable public conveyance, the amount to be stated by said officer, under oath, and approved by the judge of the court from which the attachment issued.
9. For conveying a prisoner after conviction to the county jail, for each mile, going and coming, by the nearest practicable route by private conveyance, fifteen cents per mile, or by railway, fifteen cents per mile.
10. For conveying a prisoner arrested on a warrant or capias issued from another county to the court or jail of the county from which the process was issued, for each mile traveled, going and coming, by the nearest practicable route, fifteen cents.
11. For each mile he may be compelled to travel in executing criminal process and summoning or attaching witness, fifteen cents. For traveling in the service of process not otherwise provided for, the sum of fifteen cents for each mile going and returning. If two or more persons are mentioned in the same writ, or two or more writs in the same case, he shall charge only for the distance actually and necessarily traveled in the same.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 53.02. Fees of Peace Officers

Constables, marshals or other peace officers who execute process and perform services for justices in

criminal actions, shall receive the same fees allowed to sheriffs for the same services.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 53.03. Fee of State's Attorney

The attorney representing the state before a justice court shall receive no fee for his appearance before said court in a case involving the violation of any penal statute or of the Uniform Act Regulating Traffic on Highways.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 53.04. Officers in Examining Court

Sheriffs and constables serving process and attending any examining court in the examination of a misdemeanor case shall be entitled to such fees as are allowed by law for similar services in the trial of such cases, not to exceed $3.00 in any one case, to be paid by the defendant in case of final conviction.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 53.05. In District and County Courts

In each criminal action tried by a jury in the district or county court, or county court at law, a jury fee of $5.00 shall be taxed against the defendant if he is convicted.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 53.06. Trial Fee

In each case of conviction in a county court or a county court at law, whether by a jury or by a court, there shall be taxed against the defendant or against all defendants, when several are held jointly, a trial fee of $5.00, the same to be collected and paid over in the same manner as in the case of a jury fee; and there shall be no trial fee allowed in a justice court in a case involving the violation of any penal statute or of the Uniform Act Regulating Traffic on Highways.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 53.07. Justice of Peace Salary

(a) Every justice of the peace in the State of Texas shall be compensated by salary, the amount of which shall be determined by the commissioners court.

(b) All fines imposed by justices of the peace and all trial fees and other fees which justices of the peace are required by law to collect shall be deposited to the credit of the Officers' Salary Fund of the county, or whichever fund is used to pay the salaries of district, county or precinct officers.

(c) This Article shall not affect the salary of any justice of the peace who received compensation on a salary basis before the effective date of this Code, but such justices of the peace shall continue to receive the salary provided by law.

(d) All justices of the peace compensated on a fee basis before the effective date of this Code shall receive a salary to be determined by the commissioners court of each county, not to exceed the maximum amount of fees which they were entitled by law to retain before the effective date of this Code.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 53.08. Fees in Proceedings for Expunction of Criminal Records

Text as added by Acts 1979, 66th Leg., p. 1335, ch. 604, § 2

The following fees shall be taxed against the petitioner seeking expunction of a criminal record:

(1) the fee charged for filing ex parte petitions in other civil actions in district court;

(2) $1.00 plus postage for each certified mailing of notice of the hearing date;

(3) $2.00 plus postage for each certified mailing of certified copies of the order of expunction.

[Acts 1979, 66th Leg., p. 1335, ch. 604, § 2, eff. Aug. 27, 1979.]

For text as added by Acts 1979, 66th Leg., p. 1802, ch. 734, § 1, see art. 53.08, post

Art. 53.08. Fee for Collecting and Processing Sight Order

Text as added by Acts 1979, 66th Leg., p. 1802, ch. 734, § 1

(a) A county attorney, district attorney, or criminal district attorney may collect a fee if his office collects and processes a check or similar sight order if the check or similar sight order:

(1) has been issued or passed in a manner which makes the issuance or passing an offense under:

(A) Section 32.41, Penal Code;

(B) Section 31.03, Penal Code; or

(C) Section 31.04, Penal Code; or

(2) has been forged under Section 32.21, Penal Code.

(b) The county attorney, district attorney, or criminal district attorney may collect the fee from any person who is a party to the offense described in Subsection (a) of this article.

(c) The amount of the fee shall not exceed:

(1) $5 if the face amount of the check or sight order does not exceed $10;

(2) $10 if the face amount of the check or sight order is greater than $10 but does not exceed $100;

(3) $30 if the face amount of the check or sight order is greater than $100 but does not exceed $300;

(4) $50 if the face amount of the check or sight order is greater than $300 but does not exceed $500; and

(5) $75 if the face amount of the check or sight order is greater than $500.

(d) If the person from whom the fee is collected was a party to the offense of forgery under Section 32.21, Penal Code, committed by altering the face amount of the check or sight order, the face amount as altered governs for the purpose of determining the amount of the fee.

(e) Fees collected under this article shall be deposited in the county treasury in a special fund to be administered by the county attorney, district attorney, or criminal district attorney. Expenditures from this fund shall be at the sole discretion of the attorney, and may be used only to defray the salaries and expenses of the prosecutor's office, but in no event may the county attorney, district attorney, or criminal district attorney supplement his or her own salary from this fund. Nothing in this Act shall be construed to decrease the total salaries, expenses, and allowances which a prosecuting attorney's office is receiving at the time this Act takes effect.

[Acts 1979, 66th Leg., p. 1802, ch. 734, § 1, eff. Aug. 27, 1979.]

For text as added by Acts 1979, 66th Leg., p. 1335, ch. 604, § 2, see art. 53.08, ante

Art. 53.09. Justice of Peace Court Costs in Counties Over Two Million

In counties with a population of two million or more according to the most recent federal census, the commissioners court may set court costs for persons convicted of a Class C misdemeanor in the justice courts. Court costs set as provided by this article may not exceed $7 for each conviction. Funds collected under this article shall be deposited in the county treasury.

[Acts 1983, 68th Leg., p. 4954, ch. 888, § 1, eff. Aug. 29, 1983.]

CHAPTER FIFTY-FOUR. MISCELLANEOUS PROVISIONS

Art.
54.01. Severability Clause.
54.02. Repealing Clause.
54.03. Emergency Clause.

Art. 54.01. Severability Clause

If any provision, section or clause of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision, section or clause, and to this end the provisions of this Act are declared to be severable.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 54.02. Repealing Clause

Sec. 1. (a) Except as otherwise provided in this Article 54.02, all laws relating to criminal procedure in this State that are not embraced, incorporated, or included in this Act and that have not been enacted during the Regular Session of the 59th Legislature are repealed.

(b) None of the following articles of the Code of Criminal Procedure of Texas, 1925, in force on the effective date of this Act, is repealed: 52; 52–1 through 52–161, both inclusive; 367D through 367K, both inclusive; 781B–1, 781B–2; 944 through 951, both inclusive; 1009 through 1035, both inclusive; 1037 through 1056, both inclusive; 1058 through 1064, both inclusive; and 1075 through 1082, both inclusive.

Sec. 2. (a) All laws and parts of laws relating to criminal procedure omitted from this Act have been intentionally omitted, and all additions to and changes in such procedure have been intentionally made. This Act shall be construed to be an independent Act of the Legislature, enacted under its caption, and the articles contained in this Act, as revised, rewritten, changed, combined, and codified, may not be construed as a continuation of former laws except as otherwise provided in this Act. The existing statutes of the Revised Civil Statutes of Texas, 1925, as amended, and of the Penal Code of Texas, 1925, as amended, which contain special or specific provisions of criminal procedure covering specific instances are not repealed by this Act.

(b) A person under recognizance or bond on the effective date of this Act continues under such recognizance or bond pending final disposition of any action pending against him.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 54.03. Emergency Clause

The fact that the laws relating to criminal procedure in this State have not been completely revised and re-codified in more than a century past and the further fact that the administration of justice, in the field of criminal law, has undergone changes, through judicial construction and interpretation of constitutional provisions, which have been, in certain instances, modified or nullified, as the case may

be, necessitates important changes requiring the revision or modernization of the laws relating to criminal procedure, and the further fact that it is desirous and desirable to strengthen, and to conform, various provisions in such laws to current interpretation and application, emphasizes the importance of this legislation and all of which, together with the crowded condition of the calendar in both Houses, create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days be suspended, and said Rule is hereby suspended, and that this Act shall take effect and be in force and effect from and after 12 o'clock Meridian on the 1st day of January, Anno Domini, 1966, and it is so enacted.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER FIFTY-FIVE. EXPUNCTION OF CRIMINAL RECORDS

Art.
55.01. Right to Expunction.
55.02. Procedure for Expunction.
55.03. Effect of Expunction.
55.04. Violation of Expunction Order.
55.05. Notice of Right to Expunction.

Acts 1979, 66th Leg., p. 1333, ch. 604, which by § 1 amended this Chapter 55, provided in § 3:

"Any law or portion of a law that conflicts with Chapter 55, Code of Criminal Procedure, 1965, as amended, is repealed to the extent of the conflict."

Art. 55.01. Right to Expunction

A person who has been arrested for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if each of the following conditions exist:

(1) an indictment or information charging him with commission of a felony has not been presented against him for an offense arising out of the transaction for which he was arrested or, if an indictment or information charging him with commission of a felony was presented, it has been dismissed and the court finds that it was dismissed because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense or because it was void;

(2) he has been released and the charge, if any, has not resulted in a final conviction and, is no longer pending and there was no court ordered supervision under Article 42.13, Code of Criminal Procedure, 1965, as amended, nor a conditional discharge under Section 4.12 of the Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes); and

(3) he has not been convicted of a felony in the five years preceding the date of the arrest.

[Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.]

Art. 55.02. Procedure for Expunction

Sec. 1. (a) A person who is entitled to expunction of records and files under this chapter may file an ex parte petition for expunction in a district court for the county in which he was arrested.

(b) The petitioner shall include in the petition a list of all law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state and of all central federal depositories of criminal records that the petitioner has reason to believe have records or files that are subject to expunction.

Sec. 2. The court shall set a hearing on the matter no sooner than thirty days from the filing of the petition and shall give reasonable notice of the hearing to each official or agency or other entity named in the petition by certified mail, return receipt requested, and such entity may be represented by the attorney responsible for providing such agency with legal representation in other matters.

Sec. 3. (a) If the court finds that the petitioner is entitled to expunction of any records and files that are the subject of the petition, it shall enter an order directing expunction and directing any state agency that sent information concerning the arrest to a central federal depository to request such depository to return all records and files subject to the order of expunction. Any petitioner or agency protesting the expunction may appeal the court's decision in the same manner as in other civil cases. When the order of expunction is final, the clerk of the court shall send a certified copy of the order by certified mail, return receipt requested, to each official or agency or other entity of this state or of any political subdivision of this state named in the petition that there is reason to believe has any records or files that are subject to the order. The clerk shall also send a certified copy by certified mail, return receipt requested, of the order to any central federal depository of criminal records that there is reason to believe has any of the records, together with an explanation of the effect of the order and a request that the records in possession of the depository, including any information with respect to the proceeding under this article, be destroyed or returned to the court.

(b) All returned receipts received by the clerk from notices of the hearing and copies of the order shall be maintained in the file on the proceedings under this chapter.

Sec. 4. (a) If the state establishes that the petitioner is still subject to conviction for an offense arising out of the transaction for which he was arrested because the statute of limitations has not run and there is reasonable cause to believe that the state may proceed against him for the offense, the court may provide in its order that the law enforcement agency and the prosecuting attorney responsible for investigating the offense may retain any records and files that are necessary to the investigation.

(b) Unless the petitioner is again arrested for or charged with an offense arising out of the transaction for which he was arrested, the provisions of Articles 55.03 and 55.04 of this code apply to files and records retained under this section.

Sec. 5. (a) On receipt of the order, each official or agency or other entity named in the order shall:

(1) return all records and files that are subject to the expunction order to the court or, if removal is impracticable, obliterate all portions of the record or file that identify the petitioner and notify the court of its action; and

(2) delete from its public records all index references to the records and files that are subject to the expunction order.

(b) The court may give the petitioner all records and files returned to it pursuant to its order.

(c) If an order of expunction is issued under this article, the court records concerning expunction proceedings are not open for inspection by anyone except the petitioner unless the order permits retention of a record under Section 4 of this article and the petitioner is again arrested for or charged with an offense arising out of the transaction for which he was arrested. The clerk of the court issuing the order shall obliterate all public references to the proceeding and maintain the files or other records in an area not open to inspection.

[Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.]

Art. 55.03. Effect of Expunction

After entry of an expunction order:

(1) the release, dissemination, or use of the expunged records and files for any purpose is prohibited;

(2) except as provided in Subdivision 3 of this article, the petitioner may deny the occurrence of the arrest and the existence of the expunction order; and

(3) the petitioner or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

[Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.]

Art. 55.04. Violation of Expunction Order

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state or any political subdivision of the state and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

Sec. 2. A person who knowingly fails to return or to obliterate identifying portions of a record or file ordered expunged under this chapter commits an offense.

Sec. 3. An offense under this article is a Class B misdemeanor.

[Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.]

Art. 55.05. Notice of Right to Expunction

On release or discharge of an arrested person, the person responsible for the release or discharge shall give him a written explanation of his rights under this chapter and a copy of the provisions of this chapter.

[Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.]

PART II. MISCELLANEOUS PROVISIONS

Chapter		Article
101.	Collection of Money	1001
102.	Taxation of Costs	1009
103.	Costs Paid by the State	1018
104.	Costs Paid by Counties	1037
105.	Costs to be Paid by Defendant	1061

The Texas Code of Criminal Procedure enacted in 1965, expressly saved from repeal certain enumerated articles which had theretofore appeared in the Code of Criminal Procedure of 1925, as amended and supplemented. See Article 54.02 of the 1965 Code.

Included in the articles saved from repeal were articles 944 through 951, 1009 through 1035, 1037 through 1056, 1058 through 1064, and 1075 through 1082. These articles are incorporated herein as Part II. Articles 944 through 951 have been renumbered as 1001 through 1008. The remainder appear under the same numbers assigned to them in the 1925 Code.

CHAPTER ONE HUNDRED ONE. COLLECTION OF MONEY

Art.
1001. Reports of Money Collected.
1002. Contents of Report.
1003. Report of Collections for County.
1004. What Officers to Report.
1005. Report to Embrace All Moneys.
1006. Money Collected Paid to Treasurer.
1007. Commissions on Collections.
1008. Commissions to Other Officers.

Art. 1001. Reports of Money Collected

All officers charged by law with collecting money in the name or for the use of the State shall report in writing under oath to the respective district courts of their several counties, on the first day of each term, the amounts of money that have come to their hands since the last term of their respective courts aforesaid.

[1925 C.C.P.]

Art. 1002. Contents of Report

Such report shall state:

1. The amount collected.
2. When and from whom collected.
3. By virtue of what process collected.
4. The disposition that has been made of the money.
5. If no money has been collected, the report shall so state.

[1925 C.C.P.]

Art. 1003. Report of Collections for County

A report, such as is required by the two preceding articles, shall also be made of all moneys collected for the county, which report shall be made to each regular term of the commissioners court for each county.

[1925 C.C.P.]

Art. 1004. What Officers to Report

The officers charged by law with the collection of money, within the meaning of the three preceding articles, and who are required to make the reports therein mentioned, are: District and county attorneys, clerks of the district and county courts, sheriffs, constables, and justices of the peace.

[1925 C.C.P.]

Art. 1005. Report to Embrace All Moneys

The moneys required to be reported embrace all moneys collected for the State or county other than taxes.

[1925 C.C.P.]

Art. 1006. Money Collected Paid to Treasurer

Money collected by an officer upon recognizances, bail bonds and other obligations recovered upon in the name of the State under any provision of this Code, and all fines, forfeitures, judgments and jury fees, collected under any provision of this Code, shall forthwith be paid over by the officers collecting the same to the county treasurer of the proper county, after first deducting therefrom the legal fees and commissions for collecting the same.

[1925 C.C.P.]

Art. 1007. Commissions on Collections

The district or county attorney shall be entitled to ten per cent of all fines, forfeitures or moneys collected for the State or county, upon judgments recovered by him; and the clerk of the court in which said judgments are rendered shall be entitled to five per cent of the amount of said judgments, to be paid out of the amount when collected.

[1925 C.C.P.]

Art. 1008. Commissions to Other Officers

The sheriff or other officer, except a justice of the peace or his clerk, who collects money for the State or county, except jury fees, under any provision of this Code, shall be entitled to retain five per cent thereof when collected.

[1925 C.C.P. Amended by Acts 1929, 41st Leg., p. 240, ch. 105, § 1.]

CHAPTER ONE HUNDRED TWO. TAXATION OF COSTS

Art.
1009. Fee Books.
1010. Fee Book Shall Show What.
1010a. Receipt Books; Delivery Monthly to County Auditor; Penalty.
1011. Extortion.
1012. Costs Payable in Money.
1013. When Costs Payable.
1014. Bill of Costs to Accompany Appeal.
1015. Taxing After Payment.
1016. Costs Retaxed.
1017. Fee Book Evidence.

Art. 1009. Fee Books

Each clerk of a court, county judge, justice of the peace, sheriff, constable and marshal, shall keep a fee book and enter therein all fees charged for service rendered in any criminal action or proceeding; which book may be inspected by any person interested in such costs.

[1925 C.C.P.]

Art. 1010. Fee Book Shall Show What

The fee book shall show the number and style of the action or proceeding in which the costs are charged, and shall name the officer or person to

whom such costs are due, and state each item of costs separately.

[1925 C.C.P. Amended by Acts 1935, 44th Leg., p. 470, ch. 188.]

Art. 1010a. Receipt Books; Delivery Monthly to County Auditor; Penalty

Sec. 1. Each fee officer within this State collecting fines and fees in criminal cases shall be furnished, by the county, in addition to the fee books now provided by law, duplicate official receipts in book form, each of which receipts shall bear a distinct number, and a facsimile of the official seal of the county. Whenever any money is received by any such officer in his official capacity, to be applied on the payment of any fine or costs in any case, the person paying said money shall be given a receipt showing the amount, date, style of case, number of case and purpose for which paid, which receipt shall show the name of the person paying and the official signature of the receiving officer.

Sec. 2. At the close of each month's business the receipt book shall be delivered to the County Auditor and the County Auditor shall thoroughly check said receipt book to see that proper disposition has been made of the money collected, and after such audit, the receipt books shall be returned to the officer, if any portion of the book is unused, but if all the book is used it shall be retained by the County Auditor. Such books shall be open to public inspection.

Sec. 3. Any officer who shall fail or refuse to comply with any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction therefor, may be fined not to exceed Two Hundred Dollars ($200.00), and may be removed from office upon petition of the County or District Attorney; and the principal of any office shall be responsible for the failure of his Deputies to comply herewith, insofar as the remedy of removal from office shall apply; but the Deputy so failing or refusing to comply herewith shall be liable for the fine herein provided.

[Acts 1935, 44th Leg., p. 470, ch. 188.]

Art. 1011. Extortion

No item of costs shall be taxed for a purported service which was not performed, or for a service for which no fee is expressly provided by law.

[1925 C.C.P.]

Art. 1012. Costs Payable in Money

All costs in criminal actions or proceedings are due and payable in money.

[1925 C.C.P.]

Art. 1013. When Costs Payable

No costs shall be payable by any person until there be produced, or ready to be produced, unto the person chargeable with the same, a written bill containing the items of such costs, signed by the officer to whom such costs are due or by whom the same are charged.

[1925 C.C.P.]

Art. 1014. Bill of Costs to Accompany Appeal

When a criminal action or proceeding is taken by appeal from one court to another, or whenever the same is in any other way transferred from one court to another, it shall be accompanied by a complete bill of all costs that have accrued therein, certified to and signed by the proper officer of the court from which the same is forwarded.

[1925 C.C.P.]

Art. 1015. Taxing After Payment

No further costs shall be taxed against or collected from a defendant after he has paid the costs taxed against him at the time of such payment, unless otherwise adjudged by the court upon a proper motion filed for that purpose.

[1925 C.C.P.]

Art. 1016. Costs Retaxed

Whenever costs have been erroneously taxed against a defendant, he may have the error corrected, and the costs properly taxed, upon filing a written motion for that purpose in the court in which the case is then or was last pending. Such motion may be made at any time within one year after the final disposition of the case in which the costs were taxed, and not afterward. Notice of such motion shall be given to each party to be affected thereby, as in the case of a similar motion in a civil action.

[1925 C.C.P.]

Art. 1017. Fee Book Evidence

The items of costs taxed in an officer's fee book shall be prima facie evidence of the correctness of such items.

[1925 C.C.P.]

CHAPTER ONE HUNDRED THREE. COSTS PAID BY THE STATE

Art.

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Art. 1018. Defendant Liable for Costs

When the defendant is convicted, the costs and fees paid by the State under this title shall be a charge against him, except when sentenced to death or to imprisonment for life, and when collected shall be paid into the State Treasury.

[1925 C.C.P.]

Art. 1019. *Conviction for Misdemeanor*

If the defendant is indicted for a felony and upon conviction his punishment is by fine or confinement in the county jail, or by both such fine and confinement in the county jail or convicted of a misdemeanor, no costs shall be paid by the State to any officer. All costs in such cases shall be taxed, assessed and collected as in misdemeanor cases.

[1925 C.C.P. Amended by Acts 1931, 42nd Leg., p. 338, ch. 205, § 1.]

Art. 1019a. Fees in Felony Cases Against Same Defendant

In all felony cases where any officer is allowed fees payable by the State for services performed either before or after indictment, including examining trials before magistrates and habeas corpus proceedings, no officer shall be entitled to fees in more than five cases against the same defendant; provided, however, that where defendants are indicted and tried separately after severance of their cases, said officers shall be entitled to fees in five cases against each of said defendants, the same as if indicted and tried separately for separate offenses; provided further, that cases in which the same defendant has previously been indicted, tried, and convicted prior to the date of any act or acts for which said defendant is again apprehended, indicted, and/or tried shall not be computed in determining the number of cases against such defendant in which such officers are entitled to collect fees.

[Acts 1931, 42nd Leg., p. 334, ch. 200, § 1. Amended by Acts 1935, 44th Leg., p. 697, ch. 297, § 1.]

Art. 1020. Fees in Examining Court

In each case where a County Judge or a Justice of the Peace shall sit as an examining court in a felony case, they shall be entitled to the same fees allowed by law for similar services in misdemeanor cases to Justices of the Peace, and ten cents for each one hundred words for writing down the testimony, to be paid by the State, not to exceed Three and No/100 ($3.00) Dollars, for all his services in any one case.

Sheriffs and Constables serving process and attending any examining court in the examination of any felony case, shall be entitled to such fees as are fixed by law for similar services in misdemeanor cases in County Court to be paid by the State, not to exceed Four and No/100 ($4.00) Dollars in any one case, and mileage actually and necessarily traveled in going to the place of arrest, and for conveying the prisoner or prisoners to jail as provided in Articles 1029 and 1030, Code of Criminal Procedure, as the facts may be, but no mileage whatever shall be paid for summoning or attaching witnesses in the county where case is pending. Provided no sheriff or constable shall receive from the State any additional mileage for any subsequent arrest of a defendant in the same case, or in any other case in an examining court or in any district court based upon the same charge or upon the same criminal act, or growing out of the same criminal transaction, whether the arrest is made with or without a warrant, or before or after indictment, and in no event shall he be allowed to duplicate his fees for mileage for making arrests, with or without warrant, or when two or more warrants of arrest or capiases are served or could have been served on the same defendant on any one day.

District and County Attorneys, for attending and prosecuting any felony case before an examining court, shall be entitled to a fee of Five and no/100 ($5.00) Dollars, to be paid by the State for each case prosecuted by him before such court. Such fee shall not be paid except in cases where the testimony of the material witnesses to the transaction shall be reduced to writing, subscribed and sworn to by said witnesses; and provided further that such written testimony of all material witnesses to the transaction shall be delivered to the District Clerk under seal, who shall deliver the same to the foreman of the grand jury and take his receipt therefor. Such foreman shall, on or before the adjournment of the grand jury, return the same to the clerk who shall receipt him and shall keep said testimony in the files of his office for a period of five years.

The fees mentioned in this Article shall become due and payable only after the indictment of the defendant for an offense based upon or growing out of the charge filed in the examining court and upon an itemized account, sworn to by the officers claiming such fees, approved by the Judge of the District

Court, and said County or District Attorney shall present to the District Judge the testimony transcribed in the examining trial, who shall examine the same and certify that he has done so and that he finds the testimony of one or more witnesses to be material; and provided further that a certificate from the District Clerk, showing that the written testimony of the material witnesses has been filed with said District Clerk, in accordance with the preceding paragraph, shall be attached to said account before such District or County Attorney shall be entitled to a fee in any felony case for services performed before an examining court.

Only one fee shall be allowed to any officer mentioned herein for services rendered in an examining trial, though more than one defendant is joined in the complaint, or a severance is had. When defendants are proceeded against separately, who could have been proceeded against jointly, but one fee shall be allowed in all cases that could have been so joined. No more than one fee shall be allowed to any officer where more than one case is filed against the same defendant for offenses growing out of the same criminal act or transaction. The account of the officer and the approval of the District Judge must affirmatively show that the provisions of this Article have been complied with.

[1925 C.C.P. Amended by Acts 1933, 43rd Leg., p. 219, ch. 99.]

Art. 1021. District Attorneys of Two or More Counties

District Attorneys in all judicial districts composed of two counties or more, shall receive from the State as pay for their services the sum of $500.00 per annum, and in addition thereto, shall receive from the State as pay for their services, the sum of $20.00 for each day they attend the Session of the District Court in their respective districts in the necessary discharge of their official duties, and $20.00 for each day used in necessarily going to and coming from the District Court in one county to the District Court in another county in their respective districts in the necessary discharge of their official duties, and in attending any Session of said Court; and $20.00 per day for each day they represent the State at examining trials, inquest proceedings and habeas corpus proceedings in vacation; said $20.00 per day to be paid upon the sworn account of the District Attorney, approved by the District Judge, who shall certify that the attendance of said District Court for the number of days mentioned in his account was necessary, after which said account shall be recorded in the Minutes of the District Court; provided that the maximum number of days for which compensation is allowed shall not exceed one hundred and seventy-five days in any one year. All commissions and fees allowed District Attorneys under the provisions hereof, in the districts composed of two or more counties, shall, when collected, be paid to the District Clerk of the County of his residence, who shall pay the same over to the State Treasurer.

[1925 C.C.P. Amended by Acts 1927, 40th Leg., p. 350, ch. 236, § 1.]

Art. 1022. If there are Several Defendants

If there be more than one defendant in a case, and they are tried jointly, but one fee shall be allowed the district or county attorney. If the defendants sever, and are tried separately, a fee shall be allowed for each final conviction, except in habeas corpus cases, in which cases only one fee shall be allowed, without regard to the number of defendants or whether they are tried jointly or separately.

[1925 C.C.P.]

Art. 1023. Fees in Trust Cases

For every conviction obtained under the provisions of the anti-trust laws, the State shall pay to the county or district attorney in such prosecution the sum of two hundred and fifty dollars. If both the county and district attorney shall serve together in such prosecution, such fee shall be divided between them as follows: One hundred dollars to the county attorney, and one hundred and fifty dollars to the district attorney.

[1925 C.C.P.]

Art. 1024. Attorney for Dallas and Harris Counties

In addition to the fees allowed by law to other district attorneys for other services, the Criminal District Attorney of Dallas county and the Criminal District Attorney of Harris county shall each receive the following fees:

For all convictions of felony when the defendant does not appeal or dies or escapes after appeal and before final judgment of the appellate court, or when the judgment is affirmed on appeal, thirty dollars for each felony other than felonious homicide, and forty dollars for each such homicide.

For representing the State in each case of habeas corpus where the applicant is charged with felony, twenty dollars.

[1925 C.C.P.]

Art. 1025. Fees to District and County Attorneys

In each county where there have been cast at the preceding presidential election 3000 votes or over, the district or county attorney shall receive the following fees:

For all convictions of felony when the defendant does not appeal, or dies or escapes after appeal and before final judgment of the appellate court, or when the judgment is affirmed on ap-

peal, twenty-four dollars for each felony other than felonious homicide, and forty dollars for each such homicide.

For representing the State in each case of habeas corpus where the applicant is charged with felony, sixteen dollars.

In each county where less than 3000 such votes have been so cast, such attorney shall receive thirty dollars for each such conviction of felony other than homicide, and fifty dollars for each such conviction of felonious homicide, and twenty dollars for each such habeas corpus case.

[1925 C.C.P.]

Art. 1026. Fees of District Clerk

In each county where there have been cast at the preceding presidential election 3000 votes or over, the district clerk or criminal district clerk shall receive the following fees:

Eight dollars for each felony case finally disposed of without trial or dismissed, or tried by jury whether the defendant be acquitted or convicted;

Eight cents for each one hundred words in each transcript on appeal or change of venue;

Eighty cents for entering judgment in habeas corpus cases, and eight cents for each one hundred words for preparing transcript in habeas corpus cases.

In no event shall the fees in habeas corpus cases exceed eight dollars in any one case. In each county where less than 3000 such votes have been so cast, such clerk shall receive ten dollars for each felony case so disposed of, and ten cents for each one hundred words in such transcripts, and one dollar for entering judgment in each habeas corpus. The district clerk of any county shall receive fifty cents for recording each account of the sheriff.

[1925 C.C.P.]

Art. 1027. Officers Not to be Paid Fees until Case Finally Disposed Of

In all cases where a defendant is indicted for a felony but under the indictment he may be convicted of a misdemeanor or a felony, and the punishment which may be assessed is a fine, jail sentence or both such fine and imprisonment in jail, the State shall pay no fees to any officer, except where the defendant is indicted for the offense of murder, until the case has been finally disposed of in the trial court. Provided the provisions of this Article shall not be construed as affecting in any way the provisions of Article 1019, Code of Criminal Procedure, as amended by Chapter 205, General Laws, Regular Session, Forty-second Legislature; Provided this shall not apply to examining trial fees to County Attorneys and/or Criminal District Attorneys.

[1925 C.C.P. Amended by Acts 1931, 42nd Leg., p. 338, ch. 205; Acts 1933, 43rd Leg., p. 308, ch. 119.]

Art. 1028. Sheriff Due Fees after Approval

All fees accruing under the two succeeding articles shall be due and payable at the close of each term of the district court, after being duly approved, except as provided for in subdivisions 7 and 8 of said articles, which shall be paid when approved by the judge under whose order the writ was issued.

[1925 C.C.P.]

Art. 1029. Fees to Sheriff or Constable

In each county where there have been cast at the preceding presidential election 3000 votes or more, the sheriff and constable shall receive the following fees:

1. For executing each warrant of arrest or capias, for making arrest without warrant when so authorized by law, the sum of one dollar, and in all cases five cents per mile for each mile actually and necessarily traveled in going to the place of arrest; and for conveying each prisoner to jail, he shall receive the mileage provided in subdivision 4.

2. For summoning or attaching each witness, fifty cents.

3. For summoning a jury in each case where a jury is actually sworn in, two dollars.

4. For removing or conveying prisoners, for each mile going and coming, including guards and all other necessary expenses, when traveling by railroad, ten cents. When traveling otherwise than by railroad, fourteen cents; provided that where more than one prisoner is so conveyed or removed at the same time, in addition to the foregoing, he shall be allowed eight cents per mile for each additional prisoner.

5. For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, five cents; provided that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case or series of cases against the same defendant, or in companion cases, or otherwise; when it is possible to serve process on them in the same neighborhood or vicinity during the same trip, he shall not charge mileage for serving such witnesses to or from the County seat, but shall charge only one mileage and for such additional miles only as are actually and necessarily travelled in summoning each additional witness.

6. For service of criminal process, not otherwise provided for, the sum of five cents a mile going and returning shall be allowed. If two or

more persons are mentioned in the same or different writs, the rule prescribed in subdivision 5 shall apply.

7. For conveying witnesses attached by him to any court, or in habeas corpus proceedings out of his county, or when directed by the judge from any other county to the court where the case is pending, one dollar and fifty cents per day for each day actually and necessarily consumed in going to and returning from such courts, and his actual and necessary expenses by the nearest practical route, or nearest practical public conveyance, the amount to be stated by him in an account which shall show the place where the witnesses were attached, the distance to the nearest railroad station, and miles actually traveled to each court; if horses or vehicles are used, from whom hired and price paid and length of time consumed and paid out for feeding horses, and to whom; if meals and lodgings are provided from whom and when, and price paid; provided that officers shall not be entitled to receive exceeding fifty cents per meal, and thirty-five cents per night for lodging for any witness. No item for expenses shall be allowed, unless the officer present with his account to the officer whose duty it is to approve the same, a written receipt for each item of account, except as to such items as are furnished by the officer himself. When meals and lodgings are furnished by the officer in person, conveying the witness, he shall be allowed to receive not exceeding twenty-five cents per meal, and twenty-five cents per night for lodging. Each said receipt shall be filed with the clerk of the court approving such accounts. Said accounts shall also show, before said officer shall be entitled to compensation for expenses of attached witnesses, that, before starting with said witnesses to the foreign court, he carried each of them before the magistrate nearest place of serving the attachment, giving his name and residence, and that said witness made oath in writing before said magistrate, certified copies of which shall be attached to the account, that they were unable to give bond for their appearance at court, or refused to give bond after having been advised by said officer of their right to do so. The officer shall also present to the court the affidavit of the witness to the same effect, or shall show that the witness refused to make the affidavit; and should it appear to the court that the witness is willing and able to give bond, the sheriff shall not be entitled to any compensation for conveying such witness. All accounts for fees in criminal cases, by sheriffs, shall be sworn to by the said officer, and shall state that said account is true, just and correct in every particular, and be presented to the judge, who shall during such term of court, carefully examine such account and, if found to be correct, in whole or in part, shall so certify and allow the same for such amount as he may find to be correct. If allowed by him in whole or in part, he shall so certify; and such account, with the affidavit of the sheriff, and certificate of the judge, shall be recorded by the district clerk in a book kept by him for that purpose, which shall constitute a part of the proceedings or minutes of the court. The clerk shall certify to the original account, and shall show that the same has been recorded, and said account shall then become due, and the same shall constitute a voucher on which the Comptroller is authorized to issue a warrant, if such account, when presented to the Comptroller, shall be accompanied by a certified copy under the hand and seal of the district clerk, of the returns made on the process for which such officer is claiming fees, corresponding to the amount so claimed in his account. The minutes of the court above provided for, or a certified copy thereof, may be used in evidence against the officer making the affidavit, for perjury, in case said affidavit shall be wilfully false. When the officer receiving the writ for the attachment of such a witness shall take bond for the appearance of such witness, he shall be entitled to receive from the State one dollar for each bond so taken; but he shall be responsible to the court issuing said writ, that the said bond is in proper form, and has been executed by the witness with one or more good and solvent sureties; and said bond shall in no case be less than one hundred dollars. The Comptroller may require from such officer a certified copy of all such process before auditing any account. When no inquest or examining trial has been held at which sufficient evidence is taken upon which to find an indictment, which fact shall be certified by the grand jury, or when the grand jury shall state to the district judge that an indictment cannot be procured except upon testimony of nonresident witnesses, the district judge may have attachments issued to other counties for witnesses not to exceed the number for which the sheriff may receive pay as provided for by law, to testify before grand juries; provided, that the judge shall not approve the accounts of any sheriff for more than one witness to any one fact, nor more than three witnesses to any one case pending before the grand jury, in which case the sheriff shall receive the same compensation as he does for conveying attached witnesses before the court. Subdivision 7 of this article shall apply to the officers affected thereby in all counties in Texas.

8. For attending a prisoner on habeas corpus, for each day, four dollars, together with mileage as provided in subdivision 4 when removing such prisoner out of the county, under an order issued by a district or appellate judge.

[1925 C.C.P. Amended by Acts 1933, 43rd Leg., p. 144, ch. 69.]

Art. 1030. Fees to Sheriff or Constable

In each county where there have been cast at the preceding presidential election less than 3000 votes, the sheriff or constable shall receive the following fees when the charge is a felony:

1. For executing each warrant of arrest or capias, or for making arrest without warrant, when authorized by law, the sum of one dollar; and five cents for each mile actually and necessarily traveled in going to place of arrest, and for conveying the prisoner or prisoners to jail, mileage, as provided for in subdivision 4 shall be allowed; provided, that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: For executing each warrant of arrest or capias, or for making arrest without warrant, when authorized by law, three dollars and fifteen cents for each mile actually and necessarily traveled in going to place of arrest, and for conveying prisoners to jail, mileage as provided for in subdivision 4 shall be allowed; and one dollar shall be allowed for the approval of a bond.

2. For summoning or attaching each witness, fifty cents; provided that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: For summoning or attaching each witness, fifty cents, and where a bond is required of said witness, for the approval of said bond, one dollar.

3. For summoning jury in each case, where jury is actually sworn in, two dollars.

4. For removing a prisoner, for each mile going and coming, including guards and all other expenses, when traveling by railroad, ten cents; when traveling otherwise than by railroad, fifteen cents; provided, that when more than one prisoner is removed at the same time, in addition to the foregoing, he shall only be allowed ten cents a mile for each additional prisoner.

5. For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, five cents; provided that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case, and he shall serve process on them in the same vicinity or neighborhood, during the same trip; he shall not charge mileage for serving such witness to and from the county seat, but shall only charge one mileage and for such additional miles only as are actually and necessarily traveled in summoning or attaching each additional witness. When process is sent by mail to any officer away from the county seat or returned by mail by such officer, he shall only be allowed to charge mileage for the miles actually traveled by him in executing such process, and the return of the officer shall show the character of the service and miles actually traveled in accordance with this subdivision; and his accounts shall show the facts; provided, that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, ten cents; provided, that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case and he shall serve process on them in the same vicinity or neighborhood, during the same trip, he shall not charge mileage for serving such witness to and from the county seat, but shall only charge one mileage, and for such additional miles only as are actually and necessarily traveled in summoning or attaching each additional witness. When process is sent by mail to any officer away from the county seat or returned by mail by such officer, he shall only be allowed to charge mileage for the miles actually traveled by him in executing such process, and the return of the officer shall show the character of the service and the miles actually traveled in accordance with this subdivision; and his accounts shall show the facts.

6. To officers for service of criminal process not otherwise provided for, the sum of five cents a mile going and returning, shall be allowed; provided, if two or more persons are mentioned in the same or different writs, the rules prescribed in subdivision 5 shall apply; provided, that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: To officers for service of criminal process not otherwise provided for, the sum of ten cents a mile going and returning shall be allowed; provided, if two or more persons are mentioned in the same or different writs, the rule prescribed in subdivision 5 shall apply.

7. For conveying a witness attached by him to any court, or grand jury, or in habeas corpus proceeding out of his county, or when directed by the judge from any other county, to the court where the case is pending, one dollar per day for each day actually and necessarily consumed in going and returning from such court, and his actual necessary expenses, by the nearest practicable route or nearest practicable public conveyance, the amount to be stated by him in an account, which shall show the place at which the witness was attached, the distance to the nearest railroad station, and miles actually traveled to reach the court; if horses or vehicles are used, from whom hired, and price paid, and length of time consumed, and the amount paid out for feeding horses, and to whom; if meals and lodging

were provided, from whom and when and price paid; provided, that officers shall not be entitled to receive exceeding fifty cents per meal, and thirty-five cents per night for lodging for any witness. Said account shall also show, before said officer shall be entitled to compensation for expenses of attached witnesses, that, before starting with said witnesses to the foreign court, he carried each of them before the magistrate nearest the place of serving the attachment, giving his name and residence, and that said witness made oath in writing before such magistrate, certified copies of which shall be attached to the account, that they were unable to give bond for their appearance at court, or refused to give bond after having been advised by said officer of their right to do so. The officer shall also present to the court the affidavit of the witness to the same effect or shall show that the witness refused to make the affidavit and, should it appear to the court that the witness was able and willing to give bond the sheriff shall not be entitled to any compensation for conveying such witness; and said account shall be sworn to by the officer, and shall state that said account is true, just and correct in every particular, and present same to the judge, who shall, during such term of court, carefully examine such account, and, if found to be correct, in whole or in part, shall so certify, and allow the same for such an amount as he may find to be correct; and, if by him allowed, in whole or in part, he shall so certify; and such account with the affidavit of the sheriff, and certificate of the judge, shall be recorded by the district clerk in a book to be kept by him for that purpose, which shall constitute a part of the proceedings or minutes of the court; and the clerk shall certify to the original account and shall show that the same has been so recorded; and said account shall then become due, and the same shall constitute a voucher, on which the Comptroller is authorized to issue a warrant; and such minutes of the court, or a certified copy thereof, may be used in evidence against the officer making the affidavit, for perjury, in case said affidavit shall be wilfully false. When the officer receiving a writ for the attachment of such witness shall take a bond for the appearance of any such witness he shall be entitled to receive from the State, one dollar for each bond so taken; but he shall be responsible to the court issuing said writ, that said bond is in proper form, and has been executed by the witness with one or more good or solvent securities; and said bond shall, in no case, be less than one hundred dollars. The Comptroller may require from such officer a certified copy of all such process before auditing any such account.

8. For attending a prisoner on habeas corpus, for each day, four dollars, together with mileage as provided in subdivision 5, when removing such prisoner out of the county under an order issued by a district or appellate judge.

[1925 C.C.P.]

Art. 1030a. Fugitives from Justice; Allowance to Sheriffs and Deputies for Expenses

Sec. 1. Every sheriff, or deputy sheriff, in any county of this State, who shall hereafter arrest, or cause to be arrested, any person, or persons indicted for a criminal offense of the grade of a felony, in the county where such officer is the duly acting sheriff, or deputy sheriff, shall be paid the sum of five cents (5¢) per mile from the state line and return thereto, along the nearest practicable route, to the point where such person or persons has been, or will be, placed under arrest, and in addition thereto, such officer, or officers, shall be paid, not to exceed Five Dollars ($5) per day, per person, for hotel bills, meals and other expenses necessarily contracted in the performance of such official duty.

Sec. 2. The Comptroller of Public Accounts of the State of Texas is authorized and directed to pay, out of any fund or funds, provided for such purpose, upon the presentment of a duly itemized and verified mileage, per diem and expense account of any such officer, approved by the District Judge of the District where such official duty was performed as provided in the preceding Section, all of such account due, provided that only one (1) claim for mileage shall be paid for any such trip, and further providing that not more than two (2) such officers shall draw per diem and expense accounts for one (1) of such trips.

Sec. 3. In the event the Comptroller of Public Accounts of the State of Texas certifies that no funds are available for the payment of such per diem mileage and expense account, as specified in the preceding Section, then upon presentment of such itemized account duly verified by such officer and approved by the District Judge of the Judicial District in which such county is located, the Commissioners Court is authorized, within its discretion, to pay out of any fund or funds not otherwise pledged, such mileage per diem and expense accounts.

Sec. 4. It is further specifically provided that if the county of the sheriff or deputy sheriff making said trip is operating on a fee basis and no State funds are available, then and in that event, the Commissioners Court is authorized, within its discretion, to pay out of any available funds the mileage and per diem not in excess of the amounts stated in Section 1 of this Act, to said sheriff or deputy sheriff from the county seat to the state line and return.

Sec. 5. The compensation herein provided for the sheriff or any deputy sheriff of the county shall be allowable to such officer as expenses of office,

and shall not be included in his compensation, and/or salary paid him, as now authorized by law.

Sec. 6. The provisions of this Act shall be severable, and if any section, subsection, sentence, clause or word of the same shall be held unconstitutional, or invalid for any reason, the same shall not be construed to affect the validity of any of the remaining provisions of this Act. It is hereby declared as the legislative intent that this Act would have been adopted, had such invalid provision not been included therein.

Sec. 7. It is not the intention of the Legislature by the passage of this Act to repeal any existing law providing for the reimbursement of traveling expenses and this Act is cumulative of all other statutes on this subject.

[1925 C.C.P.]

Art. 1031. Services by Officer Other Than Sheriff

When services have been rendered by any peace officer other than a sheriff, such as are enumerated in the two preceding articles, such officer shall receive the same fees therefor as are allowed the sheriff. The same shall be taxed in the sheriff's bill of costs, and noted therein as costs due such peace officer; and when received by such sheriff, he shall pay the same to such peace officer.

[Acts 1941, 47th Leg., p. 669, ch. 412.]

Art. 1032. Sheriff Shall Not Charge Fees, When

A sheriff shall not charge fees for arrests made by rangers, or mileage for prisoners transported by rangers, or mileage or other fees for transporting a witness under attachment issued from another county, unless such witness refuses to give bail for his appearance, or files an affidavit with such sheriff of his inability to give bail.

[1925 C.C.P.]

Art. 1033. Officer Shall Make Out Cost Bill

Before the close of each term of the district court, the district or county attorney, sheriff and clerk of said court shall each make out a bill of the costs claimed to be due them by the State, respectively, in the felony cases tried at that term; the bill shall show:

1. The style and number of each case.
2. The offense charged against the defendant.
3. The term of the court at which the case was disposed of.
4. The disposition of the case, and that the case was finally disposed of, and no appeal taken.
5. The name and number of defendants; and, if more than one, whether they were tried jointly or separately.
6. Where each defendant was arrested, or witness served, stating the county in which the service was made, giving distance and direction from county seat of county in which the process is served.
7. The court shall inquire whether there have been several prosecutions for a transaction that is but one offense in law. If there is more than one prosecution for the same transaction, or a portion thereof, that could have been combined in one indictment against the same defendant, the judge shall allow fees to sheriffs, clerks and district and county attorneys in but one prosecution.
8. Where the defendants in a case have severed on the trial, the judge shall not allow the charges for service of process and mileage to be duplicated in each case as tried; but only such additional fees shall be allowed as are caused by the severance.

[1925 C.C.P.]

Art. 1034. Judge to Examine Bill, Etc.

The District Judge, when any such bill is presented to him, shall examine the same carefully, and inquire into the correctness thereof, and approve the same, in whole or in part, or disapprove the entire bill, as the facts and law may require; and such approval shall be conditioned only upon, and subject to the approval of the State Comptroller as provided for in Article 1035 of this Code, and the Judge's approval shall so state therein; and such bill, with the action of the Judge thereon, shall be entered on the minutes of said Court; and immediately on the rising of said Court, the Clerk thereof shall make a certified copy from the minutes of said Court of said bill, and the action of the Judge thereon, and send same by registered letter to the Comptroller. Provided the bill herein referred to shall before being presented to such District Judge, be first presented to the County Auditor, if such there be, who shall carefully examine and check the same, and shall make whatever recommendations he shall think proper to be made to such District Judge relating to any item or the whole bill.

Fees due District Clerks for recording sheriff's accounts shall be paid at the end of said term; and all fees due District Clerks for making transcripts on change of venue and on appeal shall be paid as soon as the service is performed; and the Clerk's bill for such fees shall not be required to show that the case has been finally disposed of. Bills for fees for such transcripts shall be approved by the District Judge as above provided, and with the same conditions, and when approved shall be recorded as part of the minutes of the last preceding term of the Court.

[1925 C.C.P. Amended by Acts 1931, 42nd Leg., p. 239, ch. 143, § 1.]

Art. 1035. Duty of Comptroller

The Comptroller upon the receipt of such claim, and said certified copy of the minutes of said Court, shall closely and carefully examine the same, and, if he deems the same to be correct, he shall draw his warrant on the State Treasurer for the amount found by him to be due, and in favor of the officer entitled to the same. If the appropriation for paying such accounts is exhausted, the Comptroller shall file the same away, if found to be correct, and issue a certificate in the name of the officer entitled to the same, stating herein the amount of the claim and the character of the services performed. All such claims or accounts not sent to or placed on file in the office of the Comptroller within twelve (12) months from the date the same becomes due and payable shall be forever barred.

[1925 C.C.P. Amended by Acts 1931, 42nd Leg., p. 239, ch. 143, § 2.]

Art. 1036. Cost of Statement of Facts and Transcript.

Text of article effective until August 31, 1985

The state may pay to Walker County, Texas, for costs of prosecution of offenses committed while the actor was a prisoner in the custody of the Department of Corrections, or while the actor was an employee of the Department of Corrections in the discharge of his official duties. The court in which the case is tried shall certify the amount of reimbursement for expenses under this provision to the comptroller of public accounts. The comptroller shall issue a warrant in that amount to Walker County subject to the amounts appropriated for this purpose. This provision applies only to the reimbursement of expenses incurred by Walker County in a prosecution which occurs after the effective date of this Act.

[Acts 1983, 68th Leg., p. 4562, ch. 758, § 1, eff. Sept. 1, 1983.]

Section 3 of the 1983 Act provides:

"This Act expires August 31, 1985."

CHAPTER ONE HUNDRED FOUR. COSTS PAID BY COUNTIES

Art.
1037. County Liable for Costs.
1038. Food and Lodging of Jurors.
1039. Juror May Pay His Own Expenses.
1040. Allowance to Sheriff for Prisoners.
1041. Guards and Matrons.
1041a. Chief Jailer or Turnkey.
1041b. Vacations for Jailers, Jail Guards and Matrons.
1042. Sheriff Reimbursed.
1043. Sheriff Shall Present Account.
1044. Judge Shall Examine Account.
1045. Judge Shall Give Sheriff Draft.
1046. Account for Keeping Prisoners.
1047. Court to Examine Account.
1048. Expenses of Prisoner from Another County.
1049. Draft to Sheriff.
1050. In Case of Change of Venue.
1051. Account in Change of Venue.
1052. Fees of Judge and Justice of the Peace.
1053. Inquest Fee.
1054. Pay for Inquest.
1055. Half Costs Paid Officers.
1056, 1057. Repealed.
1058. Pay of Bailiffs.
1058a. Bailiffs of Court of Civil Appeals.
1059. Certificates for Pay.
1060. Receivable for Taxes.

Art. 1037. County Liable for Costs

Each county shall be liable for all expense incurred on account of the safe keeping of prisoners confined in jail or kept under guard, except prisoners brought from another county for safe keeping, or on habeas corpus or change of venue; in which cases, the county from which the prisoner is brought shall be liable for the expense of his safe keeping.

[1925 C.C.P.]

Art. 1038. Food and Lodging of Jurors

The Sheriff of each County shall, with the approval of the Commissioners Court, provide food and lodging for jurors empaneled in a felony case and jurors so empaneled shall be paid as other jurors are paid, in addition to such food and lodging.

[1925 C.C.P. Amended by Acts 1953, 53rd Leg., p. 918, ch. 380, § 1.]

Art. 1039. Juror May Pay His Own Expenses

A juror may pay his own expenses and draw his script; but the county is responsible in the first place for all expense incurred by the sheriff in providing suitable food and lodging for the jury, not to exceed two dollars a day.

[1925 C.C.P.]

Art. 1040. Allowance to Sheriff for Prisoners

For the safe keeping, support and maintenance of prisoners confined in jail or under guard, the sheriff shall be allowed the following charges:

1. For the safekeep of each prisoner for each day the sum of fifteen cents, not to exceed the sum of two hundred dollars per month.

2. For support and maintenance, for each prisoner for each day such an amount as may be fixed by the commissioners court, provided the same shall be reasonably sufficient for such purpose, and in no event shall it be less than forty cents per day nor more than seventy-five cents per day for each prisoner. The net profits shall constitute fees of office and shall be accounted for by the sheriff in his annual report as other fees now provided by law. The sheriff shall in such report furnish an itemized verified account

of all expenditures made by him for feeding and maintenance of prisoners, accompanying such report with receipts and vouchers in support of such items of expenditure, and the difference between such expenditures and the amount allowed by the commissioners court shall be deemed to constitute the net profits for which said officer shall account as fees of office.

3. For necessary medical bill and reasonable extra compensation for attention to a prisoner during sickness, such an amount as the commissioners court of the county where the prisoner is confined may determine to be just and proper.

4. For reasonable funeral expenses in case of death.

[1925 C.C.P.]

Art. 1041. Guards and Matrons

The sheriff shall be allowed for each guard or matron necessarily employed in the safekeeping of prisoners Two Dollars and Fifty Cents ($2.50) for each day. No allowance shall be made for the board of such guard or matron, nor shall any allowance be made for jailer or turnkey, except in counties having a population in excess of forty thousand (40,000) inhabitants according to the last preceding Federal Census. In such counties of forty thousand (40,000) or more inhabitants, the Commissioners Court may allow each jail guard, matron, jailer and turnkey Four Dollars and Fifty Cents ($4.50) per day; provided that in counties having a population in excess of seventy thousand (70,000) inhabitants and less than two hundred and twenty thousand (220,000) inhabitants, according to the last preceding Federal Census, the Commissioners Court of such counties may allow each jail guard, jailer, matron and turnkey a salary of not to exceed One Hundred and Eighty-seven Dollars and Fifty Cents ($187.50) per month; provided further that, in counties having a population in excess of two hundred and twenty thousand (220,000) inhabitants, according to the last preceding Federal Census, each jail guard, matron, jailer, jail bookkeeper and turnkey shall be paid not less than One Hundred and Seventy-five Dollars ($175) per month.

[1925 C.C.P. Amended by Acts 1937, 45th Leg., p. 7, ch. 7, § 1; Acts 1941, 47th Leg., p. 843, ch. 518, § 1; Acts 1945, 49th Leg., p. 205, ch. 158, § 1; Acts 1947, 50th Leg., p. 166, ch. 104, § 1.]

Art. 1041a. Chief Jailer or Turnkey

In all counties in this State having a population of one hundred and forty-five thousand (145,000) inhabitants and not more than three hundred thousand (300,000) inhabitants according to the last or any future Federal Census, the Commissioners Court shall allow the chief jailer and/or turnkey who has the care and custody of persons in the County Jail, not to exceed Eight Dollars ($8) per day, and shall allow each assistant jailer and/or turnkey who has the care and custody of prisoners in the County Jail, not to exceed Six Dollars and Fifty Cents ($6.50) per day, and not to exceed four (4) assistant jailers and/or turnkeys and a matron for each jail.

[Acts 1933, 43rd Leg., 1st C.S., p. 151, ch. 51, § 1. Amended by Acts 1947, 50th Leg., p. 1011, ch. 429, § 1.]

Art. 1041b. Vacations for Jailers, Jail Guards and Matrons

Every member of the sheriff's department assigned to duty as jailer, jail guard, or jail matron at any county jail in any city of more than twenty-five thousand (25,000) inhabitants shall be allowed fifteen (15) days vacation in each year with pay, not more than two (2) members to be on vacation at the same time; provided that the provisions of this Section of this Act shall not be applied to any such jailer, jail guard, or jail matron in any city of more than twenty-five thousand (25,000) inhabitants, unless such member shall have been regularly employed as such jailer, jail guard, or jail matron for a period of at least one year.

Each preceding Federal Census shall determine the population.

The sheriff having supervision of the county jail shall designate the days upon which each jailer, jail guard, or jail matron shall be allowed to be on vacation.

The sheriff having supervision of the county jail in any such city who violates any provision of this Article shall be fined not less than Ten Dollars ($10) nor more than One Hundred Dollars ($100).

[Acts 1937, 45th Leg., p. 247, ch. 129, § 1.]

Art. 1042. Sheriff Reimbursed

The sheriff shall pay the expenses of jurors impaneled in cases of felony (except when they are paid by the juror himself), the expenses of employing and maintaining a guard, and to support and take care of all prisoners, for all of which, he shall be reimbursed by the proper county according to the rates fixed in the two preceding articles.

[1925 C.C.P.]

Art. 1043. Sheriff Shall Present Account

At each term of the district court of his county, the sheriff may present to the district judge presiding his accounts for all expenses incurred by him for food and lodging of jurors in case of trials for felony during the term at which his account is presented. Such account shall state the number and style of the cases in which the jurors were impaneled, and specify by name each juror's expenses paid by such sheriff, and the number of days the same were paid, and shall be verified by the affidavit of such sheriff.

[1925 C.C.P.]

Art. 1044. Judge Shall Examine Account

Such account shall be carefully examined by the district judge; and he shall approve it, or so much thereof as he finds correct. He shall write his approval of said account, specifying the amount for which it is approved, date and sign the same officially, and shall cause the same to be filed in the office of the district clerk of the county liable therefor.

[1925 C.C.P.]

Art. 1045. Judge Shall Give Sheriff Draft

The district judge shall give the sheriff a draft upon the county treasurer of the proper county for the amount of each account allowed by him; and the same, when presented to such treasurer, shall be paid in like manner as jury certificates are paid.

[1925 C.C.P.]

Art. 1046. Account for Keeping Prisoners

At each regular term of the commissioners court, the sheriff shall present to such court his account verified by his affidavit for the expense incurred by him since the last account presented for the safe-keeping and maintenance of prisoners, including guards employed, if any. Such account shall state the name of each prisoner, each item of expense incurred on account of such prisoner, the date of each item, the name of each guard employed, the length of time employed and the purpose of such employment.

[1925 C.C.P.]

Art. 1047. Court to Examine Account

The commissioners court shall examine such account and allow the same, or so much thereof as is reasonable and in accordance with law, and shall order a draft issued to the sheriff upon the county treasurer for the amount so allowed. Such account shall be filed and kept in the office of such court.

[1925 C.C.P.]

Art. 1048. Expenses of Prisoner from Another County

If the expenses incurred are for the safe-keeping and maintenance of a prisoner from another county, the sheriff shall make out a separate account therefor, and submit the same to the county judge of his county, who shall carefully examine the same, write thereon his approval for such amount as he finds correct and sign and date such approval officially.

[1925 C.C.P.]

Art. 1049. Draft to Sheriff

The account mentioned in the preceding article shall then be presented to the commissioners court of the county liable for the same, at a regular term of such court; and such court shall, if the charges therein be in accordance with law, order a draft issued to the sheriff upon the county treasurer for the amount allowed.

[1925 C.C.P.]

Art. 1050. In Case of Change of Venue

In all causes where indictments have been presented against persons in one county and such causes have been removed by change of venue to another county, and tried therein, the county from which such cause is removed shall be liable for all expenses incurred for pay for jurors in trying such causes.

[1925 C.C.P.]

Art. 1051. Account in Change of Venue

The county commissioners of each county at each regular meeting shall ascertain whether, since the last regular meeting, any person has been tried for crime upon a change of venue from any other county. If they find such to be the case they shall make out an account against such county from which such cause was removed showing the number of days the jury in such case was employed therein, and setting forth the amount paid for such jury service; such account shall then be certified to as correct by the county judge of such county, under his hand and seal, and be, by him, forwarded to the county judge of the county from which the said cause was removed; which account shall be paid in the same manner as accounts for the safe keeping of prisoners.

[1925 C.C.P.]

Art. 1052. Fees of Judge and Justice of the Peace

Five Dollars ($5) shall be paid to the County Judge or Judge of the Court at Law and Four Dollars ($4) shall be paid to the Justice of the Peace for each criminal action tried and finally disposed of before him. Such Judge or Justices shall present to the Commissioners Court of his county at a regular term thereof a written account specifying each criminal action in which he claims such fee certified by such Judge or Justice to be correct and filed with the County Clerk. The Commissioners Court shall approve such account for such amounts as they find to be correct and order a draft to be issued on the County Treasurer in favor of such Judge or Justice for the amount due said Judge or Justice from the county. The Commissioners Court shall not however pay any account or trial fees in any case tried and in which an acquittal is had unless the State of Texas was represented in the trial of said cause by the County Attorney or his assistant, Criminal District Attorney or his assistant and the certificate of said Attorney is attached to said account certifying to the fact that said cause was tried, and the State of Texas was represented, and that in their judgment there was sufficient evidence in said cause to demand a trial of the same. All fees provided

herein which are paid to officers who are compensated on a salary basis shall be paid into the Officers Salary Fund.

[1925 C.C.P. Amended by Acts 1929, 41st Leg., 1st C.S., p. 155, ch. 55, § 1; Acts 1949, 51st Leg., p. 917, ch. 496, § 1; Acts 1953, 53rd Leg., p. 852, ch. 344, § 1.]

Art. 1053. Inquest Fee

A Justice of the Peace shall be entitled, for an inquest on a dead body, including certifying and returning the proceeding to the proper court, the sum of Ten Dollars ($10), to be paid by the county. When an inquest is held over the dead body of a State penitentiary convict, the State shall pay the inquest fees allowed by law of all officers, upon the approval of the account therefor by the Commissioners Court of the county in which the inquest may be held and by the General Manager of the Texas Prison System.

[1925 C.C.P. Amended by Acts 1947, 50th Leg., p. 745, ch. 369, § 5.]

Art. 1054. Pay for Inquest

Any officer claiming pay for services mentioned in the preceding article shall present to the commissioners court of the county, at a regular term of such court, an account therefor, verified by the affidavit of such claimant. If such account be found correct the court shall order a draft to issue upon the county treasurer in favor of such claimant for the amount due him. Such account shall be filed and kept in the office of the county clerk.

[1925 C.C.P.]

Art. 1055. Half Costs Paid Officers

The county shall not be liable to the officer and witness having costs in a misdemeanor case where defendant pays his fine and costs. The county shall be liable for one-half of the fees of the officers of the Court, when the defendant fails to pay his fine and lays his fine out in the county jail or discharges the same by means of working such fine out on the county roads or on any county project. And to pay such half of costs, the County Clerk shall issue his warrant on the County Treasurer in favor of such officer to be paid out of the Road and Bridge Fund or other funds not otherwise appropriated.

[1925 C.C.P. Amended by Acts 1937, 45th Leg., p. 1323, ch. 488, § 1; Acts 1939, 46th Leg., p. 143, § 1.]

Art. 1056. Repealed by Acts 1975, 64th Leg., p. 1353, ch. 510, § 2, eff. Sept. 1, 1975

See, now, Civil Statutes, art. 2122.

Art. 1057. Repealed by Acts 1945, 49th Leg., p. 371, ch. 239, § 4

Art. 1058. Pay of Bailiffs

Each grand jury bailiff appointed as such bailiff shall receive as compensation for his services the sum of Five ($5.00) Dollars for each day he may serve, and each riding grand jury bailiff appointed in counties of a population of one hundred fifty thousand (150,000) or more, according to the last Federal Census, shall receive as compensation for his services the sum of Six ($6.00) Dollars for each day he may serve, and shall further receive One ($1.00) Dollar per day for automobile expense and upkeep; provided, however, that not more than ten (10) such bailiffs shall be employed at any one time; and providing further, that the sheriff or deputy sheriff attending any County or District Court in counties of over three hundred fifty thousand (350,000), according to the last preceding Federal Census shall be paid the sum of Six ($6.00) Dollars for each day the sheriff or deputy sheriff shall serve in any of such said courts as bailiffs, and One ($1.00) Dollar per day as automobile expense and upkeep for each day he may use said automobile.

The compensation herein provided for shall be paid from the General or Jury Fund of the county affected, as may be determined by the Commissioners Court thereof, upon sworn accounts showing the Court in which or the Grand Jury for which, said Bailiff, Sheriff, or Deputy Sheriff serves, with a statement showing the dates on which the service was performed and the amounts due. No such claim shall be paid until approved by the foreman of the Grand Jury or the Judge of the Court for which the service was performed, and said claim shall be presented to the Commissioners Court or to the County Auditor in counties having a County Auditor, and shall be allowed in the manner provided by law for so much thereof as may be found due, and no warrant in payment of the amount due shall be paid unless countersigned by the County Auditor, if any.

[1925 C.C.P. Amended by Acts 1927, 40th Leg., p. 320, ch. 217, § 1; Acts 1927, 40th Leg., 1st C.S., p. 154, ch. 54, § 1; Acts 1931, 42nd Leg., p. 222, ch. 130, § 1; Acts 1935, 44th Leg., p. 476, ch. 192, § 1; Acts 1947, 50th Leg., p. 781, ch. 388, § 1.]

Art. 1058a. Bailiffs of Court of Civil Appeals

That the Commissioners court of any county, having a population of 210,000 or more, in which is located a Court of Civil Appeals having its quarters in the County Court House, is authorized to pay out of its General Fund, not exceeding fifty dollars per month, to the Bailiff of such Court of Civil Appeals, or other employee of said Court designated by it, as additional compensation for his services as Custodian of the Court Room, Judges Chambers and Library of such Court of Civil Appeals.

[Acts 1927, 40th Leg., 1st C.S., p. 154, ch. 54, § 1.]

Art. 1059. Certificates for Pay

The amount due jurors and bailiffs shall be paid by the county treasurer, upon the certificate of the proper clerk or the justice of the peace, stating the

service, when and by whom rendered, and the amount due therefor.

[1925 C.C.P.]

Art. 1060. Receivable for Taxes

Drafts drawn and certificates issued under the provisions of this chapter may be transferred by delivery, and shall without further action or acceptance by any authority, except registration by the county treasurer, be receivable from the holder thereof at par for all county taxes.

[1925 C.C.P.]

CHAPTER ONE HUNDRED FIVE. COSTS TO BE PAID BY DEFENDANT

1. IN DISTRICT AND COUNTY COURTS

Art.
1061. District and County Attorneys.
1062. Joint Defendants.
1063. Attorney Appointed.
1064. Fees of District and County Clerks.
1065. County Clerks in Counties of 53,500 to 53,800; Temporary Support Orders; Fee.

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4. CRIMINAL JUSTICE PLANNING FUND

1083. Criminal Justice Planning Fund.

1. IN DISTRICT AND COUNTY COURTS

Art. 1061. District and County Attorneys

District and county attorneys shall be allowed the following fees in cases tried in the district or county courts, or a county court at law, to be taxed against the defendant:

For every conviction under the laws against gaming when no appeal is taken, or when, on appeal, the judgment is affirmed, Fifteen Dollars ($15.00);

For every other conviction in cases of misdemeanor, where no appeal is taken, or when, on appeal the judgment is affirmed, Fifteen Dollars ($15.00).

[1925 C.C.P. Amended by Acts 1955, 54th Leg., p. 1112, ch. 410, § 1.]

Art. 1062. Joint Defendants

Where several defendants are tried together, but one fee shall be allowed and taxed in the case for the district or county attorney. Where the defendants sever and are tried separately, a fee shall be allowed and taxed for each trial.

[1925 C.C.P.]

Art. 1063. Attorney Appointed

An attorney appointed by the court to represent the State in the absence of the district or county attorney shall be entitled to the fee allowed by law to the district or county attorney.

[1925 C.C.P.]

Art. 1064. Fees of District and County Clerks

(1) The clerks of the county courts, county courts at law and district courts shall be allowed the following fees:

(a) A fee of Twenty-five Dollars ($25.00) in each cause filed in said courts: for filing complaints, information, for docketing and taxing costs for each defendant, for issuing original writs, issuing subpoenas, for swearing and impaneling a jury, receiving and recording verdict, for filing each paper entered in this cause, for swearing witnesses and for all other clerical duties in connection with such cause in county and district courts.

(b) A fee of One Dollar ($1.00) per page or part of a page, to be paid at the time each order is placed, for issuing each certified copy, transcript or any other paper authorized, permitted, or required, to be issued by said county clerk or clerk of county courts or clerk of district courts.

(c) A fee of Ten Dollars ($10.00) for furnishing to a person convicted of an offense for which the person's license is automatically suspended a certified copy of a court order restricting the person's license as prescribed by Subsection (a), Section 25, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes).

[1925 C.C.P. Amended by Acts 1967, 60th Leg., p. 2010, ch. 743, § 1, eff. Aug. 28, 1967; Acts 1983, 68th Leg., p. 304, ch. 66, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1983 amendatory act provides:

"The change in the law made by this Act applies only to a fee imposed for a clerical duty performed on or after the effective date of this Act and a fee imposed for furnishing a certified copy that is supplied on or after the effective date of this Act. A fee imposed for a clerical duty performed before the effective date of this Act is covered by the law in effect when the duty was performed, and the former law is continued in effect for this purpose."

Art. 1065. County Clerks in Counties of 53,500 to 53,800; Temporary Support Orders; Fee

In any county having a population of not less than 53,500, nor more than 53,800, according to the last preceding federal census, the clerk of the coun-

ty court is entitled to a fee of $5 for the administrative costs of handling temporary support orders issued pursuant to Article 604, Penal Code of Texas, 1925, as amended. The fee shall be taxed against the defendant at the time the order is entered against him.

[Acts 1971, 62nd Leg., p. 2371, ch. 732, § 1, eff. June 8, 1971.]

2. JURY AND TRIAL FEES

Art. 1075. Jury Fee in Justice Court

If the defendant is convicted in a criminal action tried by a jury in a justice court, a jury fee of three dollars shall be taxed against him.

[1925 C.C.P.]

Art. 1076. Several Defendants

Only one jury fee shall be taxed against several defendants tried jointly. A jury fee shall be taxed in each trial if they sever and are tried separately.

[1925 C.C.P.]

Art. 1077. Jury Fee Collected

A jury fee shall be collected as other costs in a case, and the officer collecting it shall forthwith pay it to the county treasurer of the county where the conviction was had.

[1925 C.C.P.]

3. WITNESS FEES

Art. 1078. Fees of Witnesses

Witnesses in criminal cases shall be allowed one dollar and fifty cents a day for each day they are in attendance upon the court, and six cents for each mile they may travel in going to or returning from the place of trial.

[1925 C.C.P.]

Art. 1079. Taxed Against Defendant

Upon conviction, the costs accruing from the attendance of witnesses shall be taxed against the defendant, upon the affidavit of such witness, or of some credible person, stating the number of days that such witness has attended upon the court in the case, and the number of miles he has traveled in going to and returning from the place of trial. The affidavit shall be filed with the papers in the case.

[1925 C.C.P.]

Art. 1080. No Fees Allowed

No fees shall be allowed to a person as witness fees unless such person has been subpoenaed, attached or recognized as a witness in the case.

[1925 C.C.P.]

Art. 1081. Witness Record

Each clerk of the district and county court or county court at law, and each justice of the peace, shall keep a book, in which shall be entered the number and style of each criminal action in their respective courts, and the name of each witness subpoenaed, attached or recognized to testify therein, showing whether on the part of the State or the defendant.

[1925 C.C.P.]

Art. 1082. Witness Liable for Costs

In any criminal case where a witness has been subpoenaed and fails to attend, he shall be liable for the costs of an attachment, unless good cause be shown to the court why he failed to obey the subpoena.

[1925 C.C.P.]

4. CRIMINAL JUSTICE PLANNING FUND

Art. 1083. Criminal Justice Planning Fund

Purpose

Sec. 1. The purpose of this Act is to continue in existence the special fund known as the Criminal Justice Planning Fund, to provide for the continued use of this fund for assistance to state and local law enforcement, judicial, prosecutorial, criminal defense, and adult and juvenile correctional and rehabilitative agencies; to provide for the continued administration of this fund; and to provide for costs of court as the source of this fund; and to provide that the costs be borne in part by those who necessitate the establishment and maintenance of the criminal justice system.

Creation

Sec. 2. There is hereby created and established a special fund to be known as the Criminal Justice Planning Fund.

Costs Upon Conviction in Certain Misdemeanor Cases; Traffic Violations

Sec. 3. (a) The sum of $5.00 shall be taxed as costs of court, in addition to other taxable court costs, upon conviction in each misdemeanor case in which original jurisdiction lies in courts whose jurisdiction is limited to a maximum fine of $200.00 only.

(b) Convictions arising under the traffic laws of this State are specifically included and are those defined in:

(1) Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), known as the "Driver's License Law"; and

(2) Chapter 421, Acts of the 50th Legislature, 1947, as amended (Article 6701d, Vernon's Texas

Civil Statutes) known as the "Uniform Act Regulating Traffic on Highways," except laws regulating pedestrians and the parking of motor vehicles.

Costs Upon Conviction in Misdemeanor and Felony Cases

Sec. 4. The sum of $10.00 shall be taxed as costs of court in addition to other taxable court costs, upon conviction in each misdemeanor case, including cases in which probation is granted, and the sum of $20.00 shall be taxed as costs of court, in addition to other taxable court costs, upon conviction in each felony case, including cases in which probation is granted, in all cases in which original jurisdiction lies in courts whose jurisdiction is limited to fines and/or confinement in a jail or the department of corrections.

Collection of Costs

Sec. 5. The costs due the State under this Act shall be collected along with and in the same manner as other fines or costs are collected in the case.

Officers Collecting Costs; Separate Records; Deposits

Sec. 6. (a) The officer collecting the costs due under this Act in cases in municipal court shall keep separate records of the funds collected as costs under this Act, and shall deposit the funds in the municipal treasury.

(b) The officer collecting the costs due under this Act in justice, county and district courts shall keep separate records of the funds collected as costs under this Act, and shall deposit the funds in the county treasury.

(c) The officer collecting the costs due under this Act in county courts on appeal from justice or municipal courts shall keep separate records of the funds collected under this Act, and shall deposit the funds in the county treasury.

Custodians of Funds; Quarterly Remittance; Service Fee

Sec. 7. On receipt, the custodians of the municipal and county treasuries with whom funds collected under this Act are entrusted may deposit the funds collected under this section in interest-bearing accounts. The custodian shall keep records of the amount of funds collected under this Act which are on deposit with them, and shall on or before the last day of the month following each calendar quarter period of three months remit to the Comptroller of Public Accounts funds collected under this Act during the preceding quarter. The municipal and county treasuries are hereby authorized to retain ten percent (10%) of funds collected under this Act as a service fee for said collection. The city or county may also retain all interest accrued on the funds.

Special Fund Deposits

Sec. 8. The Comptroller of Public Accounts shall deposit the funds received by him in a Special Fund to be known as the Criminal Justice Planning Fund.

Appropriation of Funds; Simultaneous Expenditure with Federal Funds

Sec. 9. The legislature shall determine and appropriate the necessary amount from the Criminal Justice Planning Fund to the Criminal Justice Division of the Governor's Office for expenditure for state and local criminal justice projects and for costs of administering the funds for such projects. The Criminal Justice Division shall allocate not less than 20 percent of these funds to juvenile justice programs. The distribution of the funds to local units of government shall be in an amount equal at least to the same percentage as local expenditures for criminal justice activities are to total state and local expenditures for criminal justice activities for the preceding state fiscal year. Funds shall be allocated among combinations of local units of government taking into consideration the population of the combination of local units of government as compared to the population of the state and the incidence of crime of the combination of local units of government as compared to the incidence of crime of the state. All funds collected shall be subject to audit by the comptroller of public accounts. All funds expended shall be subject to audit by the state auditor. Additionally, all funds collected or expended shall be subject to audit by the Governor's Division of Planning Coordination.

Appropriation of Unexpended Balance of Funds Authorized

Sec. 10. The Legislature may appropriate the unobligated balance of the Criminal Justice Planning Fund for the preceding biennium for the improvement and upgrading of the criminal justice system.

Officers Collecting Funds; Reports

Sec. 11. (a) All officers collecting funds due as costs under this Act shall file the reports required under Articles 1001 and 1002, Code of Criminal Procedure, 1925.

(b) If no funds due as costs under this section have been collected in any quarter, the report required for each quarter shall be filed in the regular manner, and the report shall state that no funds due under this section were collected.

[Acts 1971, 62nd Leg., p. 2855, ch. 935, §§ 1 to 11, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 2123, ch. 495, §§ 2 to 8, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 1739, ch. 335, § 3, eff. Sept. 1, 1983.]

This article was not enacted as part of the Code of Criminal Procedure of 1965

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CODE OF CRIMINAL PROCEDURE

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