

THE STATE BAR OF TEXAS
CRIMINAL JUSTICE SECTION

THE TEXAS CRIMINAL JUSTICE PROCESS

A CITIZEN'S GUIDE



STATE BAR OF TEXAS



CRIMINAL JUSTICE SECTION

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The Criminal Justice Section of the State Bar of Texas is proud to present The Texas Criminal Justice Process – A Citizen’s Guide. Many thanks are extended to all of the lawyers who devoted many hours of their time to production of this publication. The membership of the Criminal Justice Section hopes this publication will serve as a helpful guide to a better understanding of the Texas criminal justice process.

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HOW ARE CRIMINAL OFFENSES CLASSIFIED?

The Texas Legislature designates criminal offenses in our state's Penal Code as misdemeanors or felonies. Based on the relative seriousness of the offense, misdemeanors and felonies are classified into the categories shown in the chart below.

MISDEMEANORS

CATEGORY	PUNISHMENT RANGE	EXAMPLES
Class A	up to 1 year in county jail and/or a fine up to \$4,000	Assault (causes bodily injury); Violating Protective/Magistrate's Order (first offense); Harassment (one prior conviction) Criminal Trespass (habitation or with deadly weapon); Burglary of a Vehicle; DWI (one prior conviction). Theft/Criminal Mischief of \$500 or more
Class B	up to 180 days in county jail and/or a fine up to \$2,000	Terroristic Threat; Indecent Exposure; Harassment (first offense); Disorderly Conduct (discharge/display firearm); DWI (first offense); Theft/Criminal Mischief of \$50 or more
Class C	fine only not to exceed \$500	Assault (threatens bodily injury or causes offensive or provocative contact); Possession of Alcoholic Beverage in Motor Vehicle; Theft/Criminal Mischief of less than \$50

FELONIES

CATEGORY	PUNISHMENT	EXAMPLE(S)
Capital	death by lethal injection (only if 18 years of age or older when offense committed) or life imprisonment without parole	Capital Murder (murder peace officer or fireman; murder in course of kidnapping, burglary, robbery, aggravated sexual assault, arson; for remuneration or hire; while incarcerated in or escaping from a penal institution; murder more than one person; murder child younger than 6 years of age; murder a judge; or aggravated sexual assault (victim younger than 6 years of age or other special circumstances) and offender has a prior conviction for same type of sexual assault)
First Degree	5 to 99 years or life imprisonment, may also be fined up to \$10,000	Murder; Aggravated Sexual Assault; Injury to a Child, Elderly, or Disabled Individual (intentional or knowing/serious bodily injury); Aggravated Kidnapping; Aggravated Robbery; Arson (place of worship, place of assembly, a habitation, or causes bodily injury or death); Burglary of a Habitation (intent to commit felony other than felony theft); Theft/Criminal Mischief of \$200,000 or more
Second Degree	2 to 20 years imprisonment, may also be fined up to \$10,000	Murder (sudden passion); Manslaughter; Indecency With a Child (by sexual contact); Sexual Assault; Robbery; Aggravated Assault; Arson; Burglary of a Habitation; Theft/Criminal Mischief of \$100,000 or more but less than \$200,000; Stalking (subsequent conviction)

FELONIES

CATEGORY	PUNISHMENT	EXAMPLE(S)
Third Degree	2 to 10 years imprisonment, may also be fined up to \$10,000	Intoxication Assault; Kidnapping; Stalking (first offense); Violating Protective/Magistrate's Order (third conviction or commits assault or stalking); DWI (two prior convictions); Theft/Criminal Mischief of \$20,000 or more but less than \$100,000; Online Solicitation of a Minor (unless victim is younger is than 14 years of age)
State Jail	180 days to 2 years in state jail, may also be fined up to \$10,000; or court may impose Class A misdemeanor punishment	Criminally Negligent Homicide; Burglary of a Building; Criminal Nonsupport; Theft/Criminal Mischief of \$1,500 or more but less than \$20,000; Forgery (check or credit card); Identity Theft (if the number of items possessed is less than 5); Dog Fighting (subject to exceptions).

Criminal attempt is one category lower than the offense attempted. Criminal conspiracy is one category lower than the most serious felony that is the object of the conspiracy. Criminal solicitation is a first degree felony if the offense solicited is a capital felony; a second degree felony if the offense solicited is a first degree felony.

Provisions are made for enhanced (increased) punishments for repeat and habitual offenders; offenders who intentionally select the victim or property damaged or affected because of the offender's bias or prejudice against a group (race, color, disability, religion, national origin or ancestry, age, gender, or sexual preference); offenders who administer or provide a controlled substance to the victim to facilitate commission of the offense (ex. date rape drug); offenses that are gang related; offenders who commit continuous sexual assault of a child; and offenders who commit an offense in an area subject to a declaration of a state of disaster.

Misdemeanor and felony drug offenses are classified in the Texas Controlled Substances Act based on factors including: (1) the type and amount of drug; and (2) whether the defendant manufactured, delivered, or possessed the drug. Increased punishments are provided for certain drug offenses occurring in drug-free zones, offenses where a child (younger than 18 years of age) is present at the commission of the offense, and offenses where a person dies or suffers serious bodily injury as a result of the ingestion of a controlled substance delivered by a defendant.

A person may not be prosecuted for or convicted of any offense committed when younger than 15 except: (1) perjury and aggravated perjury; (2) a violation under Chapter 729, Transportation Code (except if conduct could result in confinement in jail or prison); (3) a violation of a motor vehicle traffic ordinance of an incorporated city or town; (4) a fine-only misdemeanor; (5) violations of penal ordinances of a political subdivision; (6) a capital felony, an aggravated controlled substance felony, or first degree felony and the person is 14 or older when the offense is committed and is transferred from juvenile court to district court for criminal proceedings; or (7) a capital felony or murder and the person is 10 or older and under 17 when the offense is committed and is transferred from juvenile court to district court. Unless the juvenile court transfers a child to district court for criminal prosecution, the child may not be prosecuted for any offense committed before age 17 except an offense described by (1)-(5) above and no person may be punished by death for an offense committed while their person was younger than 18 years.

WHAT HAPPENS AFTER A CRIME IS COMMITTED?

After a crime is committed, the preliminary investigation by a law enforcement agency generally begins when responding officers arrive at the scene of the incident. Emergency matters are handled and the crime scene secured. In most cases, an officer will meet with the victim in person to obtain important information concerning the crime. Witnesses are questioned. Any suspect at the scene is detained, questioned, and then released or arrested, depending on the circumstances. Additional responsibilities during the preliminary investigation may include: photographing, videotaping, measuring and sketching the scene; searching for evidence; identifying, collecting, examining, and processing physical evidence; and recording all observations and statements in notes.

Despite a thorough preliminary investigation, many cases require a follow-up investigation to close the case, arrest an offender, and/or recover weapons or stolen property. The follow-up investigation can be conducted by the officers who responded to the original call or, most often, by detectives. Investigative leads that may need to be followed-up include: checking the victim's background; determining who would benefit from the crime and who had knowledge to plan the crime; tracing weapons and stolen property; viewing mug shots, and fingerprint files. Petty thefts and like misdemeanors may not receive the same in-depth investigation as a major crime like murder or sexual assault.

After the law enforcement agency has completed its investigation, the case may be filed with the prosecuting attorney for review and, if appropriate, criminal prosecution. The prosecuting attorney considers such matters as the legality of the arrest, whether certain evidence essential to the case was legally obtained, and/or whether additional investigation is required. Depending on the facts and law involved, the prosecuting attorney may; accept the case for prosecution as filed, increase/reduce the charge filed, file additional/different charges, return the case for further investigation, or reject the case for prosecution.

WHAT ARE THE RIGHTS OF CRIME VICTIMS?

Each person who is (1) the victim of sexual assault, kidnapping, aggravated robbery, trafficking of persons, or injury to a child, elderly individual, or disabled individual, or who has suffered personal injury or death as a result of the criminal conduct of another, (2) the legal guardian of the victim, (3) the spouse of a deceased victim at the time of the victim's death or who is a parent, adult brother, sister, or child of a deceased victim, or (4) a person who as the result of the delinquent conduct of a child suffers a pecuniary loss or personal injury or harm is entitled to the following rights within the Texas criminal/juvenile justice process, including:

- (1) the right to receive from law enforcement agencies adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;
- (2) the right to have the court take the safety of the victim or his/her family into consideration as an element in fixing the amount of bail for the accused or determining whether a child should be detained before the child's conduct is adjudicated;
- (3) the right, if requested, to be informed: (A) by the prosecutor of relevant court proceedings, including appellate proceedings, and to be informed if those proceedings have been canceled or rescheduled prior to the event; and (B) by an appellate court of decisions of the court, after the decisions are entered but before the decisions are made public;
- (4) the right to be informed, when requested, by: (A) a peace officer concerning the defendant's right to bail and the procedures in criminal investigations and by the district attorney's office concerning the general procedures in the criminal justice process, including general procedures in guilty plea negotiations and arrangements, restitution, and the appeals and parole process; and/or (B) the court concerning the procedures in the juvenile justice

- process, including general procedures relating to the preliminary investigation, deferred prosecution of a case, and the appeal of the case;
- (5) the right to provide pertinent information to a probation department conducting a presentencing investigation or a juvenile court conducting a disposition hearing concerning the impact of the offense on the victim and his/her family by testimony, written statement, or any other manner prior to any sentencing of the offender or before the court renders its disposition in a juvenile proceeding;
 - (6) the right to receive information regarding compensation of crime victims as provided by subchapter B, chapter 56, Code of Criminal Procedure, including information related to the costs and the amounts that may be compensated, eligibility and procedures for application for compensation, the payment for a medical examination under Article 56.06 for a victim of a sexual assault, and when requested, to referral to available social service agencies that may offer additional assistance;
 - (7) the right to be informed, upon request, of parole procedures or release under supervision or transfer of the offender to the custody of the Board of Pardons and Paroles, to participate in the parole process, to be notified, if requested, of parole proceedings concerning the offender, to provide to the Board of Pardons and Paroles or Texas Youth Commission for inclusion in the offender's file information to be considered by the board/commission prior to the parole or release under supervision or transfer for parole of any offender convicted of any crime subject to these provisions, and to be notified, if requested, of the offender's release or transfer for parole;
 - (8) the right to be provided with a waiting area, separate or secure from other witnesses, including the offender and the offender's relatives, before testifying in any proceeding concerning the offender; if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the offender and the offender's relatives and witnesses, before and during court proceedings;
 - (9) the right to prompt return of any property of the victim that is held by a law enforcement agency or the prosecutor as evidence when the property is no longer required for that purpose;
 - (10) the right to have the prosecutor notify the victim's employer, if requested, of the necessity of the victim's cooperation and testimony in a proceeding that necessitates the victim's work absence for good cause;
 - (11) the right to counseling, on request, regarding AIDS and HIV infection and testing for AIDS, HIV infection, anti-bodies to HIV, or infection with any other probable causative agent of AIDS, if the offense is Continuous Sexual Abuse of a Child, Indecency with a Child, Sexual Assault, or Aggravated Sexual Assault;
 - (12) the right to request the court to require defendant to undergo testing for HIV or other sexually transmitted disease within 48 hours after indictment;
 - (13) the right to request victim-offender mediation coordinated by the victim services division of the Texas Department of Criminal Justice;
 - (14) the right to be informed of the uses of a victim impact statement and its purpose in the criminal justice system, to complete the victim impact statement and to have the victim impact statement considered: (A) by the prosecutor and the judge before sentencing or before a plea bargain agreement is accepted; and (B) by the Board of Pardons and Paroles before an inmate is released on parole; and
 - (15) except as provided by Article 56.06(a) of the Code of Criminal Procedure, for a victim of sexual assault, the right to a free forensic medical examination if the sexual assault is reported to a law enforcement agency within 96 hours of the assault.

In addition, a victim, guardian of a victim, or close relative of a deceased victim is entitled to the right to be present at all public court proceedings related to the offense, subject to the approval of the judge in the case. The prosecutor, juvenile probation department, sheriff, police, and other law enforcement agencies shall ensure to the extent practicable that a victim,

guardian of a victim, or close relative of a deceased victim is afforded the preceding rights and, on request, an explanation of those rights.

WHAT IS THE CRIME VICTIMS' COMPENSATION ACT?

The Crime Victims' Compensation Act (article 56.31 - article 56.64, Code of Criminal Procedure) creates a fund and establishes statutory guidelines to indemnify victims of crime and those who suffer personal injury or death as a result of criminally injurious conduct or in the good faith effort to prevent criminally injurious conduct, to apprehend a person reasonably suspected of having engaged in criminally injurious conduct, or to aid a peace officer. The money in the fund comes primarily from court costs and fees generated by criminal convictions. The fund is administered by the office of the Texas attorney general (1-800-983-9933).

The act provides that awards payable for pecuniary loss because of injury or death of a victim may not exceed \$50,000 in the aggregate. The attorney general may award an additional \$75,000 for extraordinary pecuniary losses, if the personal injury to a victim is catastrophic and results in a total and permanent disability to the victim, for lost wages and reasonable and necessary costs of: making a home or automobile accessible; obtaining job training and vocational rehabilitation; training in the use of special appliances; and receiving home health care; durable medical equipment; rehabilitation technology; and long-term medical expenses incurred as a result of medically indicated treatment for the personal injury. An application for compensation may not be filed unless the victim reports the crime to the appropriate local law enforcement agency within a reasonable time after the crime (does not apply if the victim is a child or the attorney general extends the time for extraordinary circumstances). The application must be filed with the attorney general within three years from the date of the crime unless the attorney general extends the filing time for good cause shown. If the victim is a child, the application must be filed within three years from the date the claimant or victim is made aware of the crime but not after the child is 21 years of age.

The attorney general may deny or reduce an award otherwise payable if, for example, the claimant or victim was engaging in an unlawful act, shares responsibility for the act or omission giving rise to the claim, or has not substantially cooperated with an appropriate law enforcement agency.

UNDER WHAT CIRCUMSTANCES IS AN ARREST MADE?

As a general rule, a peace officer must obtain an arrest warrant before taking a person into custody. However, a peace officer may arrest an offender without a warrant for any offense committed in his presence. A peace officer may also make a warrantless arrest for an offense committed outside his view under certain circumstances such as when a person is found in a suspicious place and under circumstances which reasonably show that such a person has committed or is about to commit a felony or breach of the peace, there is probable cause to believe that a person committed an assault causing bodily injury and there is a danger of further bodily injury, a person has violated a protective order or a person has committed an offense involving family violence.

A private citizen may, without a warrant, arrest an offender when an offense is committed in his presence, if the offense is either a felony or an offense against public peace (ex. DWI). This is often referred to as a 'citizen's arrest'. In addition, a person has the right to prevent the consequences of theft by seizing property reasonably believed to be stolen and bringing it, along with the person suspected of committing the theft, before a magistrate or peace officer for examination.

A magistrate may issue an arrest warrant based upon an affidavit made by any person under oath before the magistrate, establishing probable cause to believe another person has committed an offense. The arrest warrant commands a peace officer to bring an accused before a magistrate, to be dealt with according to law. A court may also issue a summons which requires the defendant to appear before a magistrate at a stated time and place. If a defendant fails to appear in response to the summons a warrant will be issued.

WHAT ARE THE RIGHTS OF THE PERSON ARRESTED?

The person making an arrest is required without unnecessary delay, but not later than 48 hours after the person is arrested, to take the person arrested before a magistrate. The magistrate is required to inform in clear language the person arrested of: (1) the accusation against the person arrested and of any affidavit filed therewith; (2) the right to retain counsel; (3) the right to remain silent; (4) the right to have an attorney present during any interview with peace officers or attorneys representing the state; (5) the right to terminate the interview at any time; (6) the right to request the appointment of counsel if the person arrested is indigent and cannot afford counsel; (7) the procedures for requesting appointment of counsel; (8) the right to have an examining trial; and that (9) the person arrested is not required to make a statement and any statement made may be used against the person arrested. The magistrate is also required to allow the accused reasonable time and opportunity to consult counsel and to be admitted to bail if allowed by law.

A peace officer who is charging a person with committing an offense that is a class C misdemeanor (other than public intoxication), may, instead of taking the person before a magistrate, issue a citation (ticket) to the person that contains written notice of the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged.

If an indigent defendant is entitled to and requests appointed counsel and if adversarial proceedings have been initiated against the defendant, counsel is required to be appointed as soon as possible, but not later than the third working day after the date on which the court or the court's designee receives the defendant's request for appointment of counsel; not later than one working day in a county with a population of 250,000 or more.

Additional rights of an accused in a criminal prosecution include: the presumption of innocence until proven guilty beyond a reasonable doubt; the right against self-incrimination; the right to not be prosecuted for a felony unless indicted by a grand jury; the right to a copy of the charging instrument (complaint, information or indictment); the right to a speedy trial by an impartial jury; the right to confront (cross-examine) the witnesses and to have compulsory process (subpoena) for obtaining witnesses, the right to reasonable bail and the right to appeal as permitted by law.

Generally, a defendant in a criminal prosecution may waive certain rights secured by law. It should be noted, however, that in a capital felony prosecution in which the state will seek the death penalty, the defendant does not have the right to waive trial by jury.

HOW IS A CRIMINAL PROSECUTION INITIATED?

A criminal case is prosecuted in the name of the State of Texas against the accused (defendant), and is conducted by the appropriate prosecuting attorney (prosecutor) acting under the authority of the state.

Prosecution of a class C misdemeanor in municipal or justice court is initiated by filing a *complaint*. A complaint is a written affidavit made by some credible person charging the defendant with the commission of an offense. A complaint must be filed within two years from the date of offense.

Prosecution of a class A or B misdemeanor in a county court, county court at law or county criminal court is initiated by filing an information which charges the defendant with the commission of an offense.

A felony is prosecuted in a district court or criminal district court and a grand jury indictment (sometimes called “bill of indictment”) is required unless waived by the defendant.

The grand jury, organized by the district judge for a set term (usually 3 to 6 months), has jurisdiction only over offenses occurring in its own county. The prosecutor is entitled to discuss cases with the grand jury at any time except when they are deliberating or voting upon the issuance of an indictment. The grand jury determines whether there is sufficient evidence to require the accused to stand trial for a criminal offense. At least 9 of the 12 grand jurors must concur to issue an indictment (“true bill”). If the grand jury does not find sufficient evidence, the case is “no-billed” and the suspect discharged. A no-bill does not bar indictment by the same or different grand jury at a later date.

When an information or indictment is filed, if the defendant is not in custody or under bond, a *capias* may issue. A *capias* is a writ issued by the court or clerk, and directed “To any peace officer of the State of Texas,” commanding the officer to arrest a person accused of an offense and to bring the accused before that court immediately, or on a day or at a term stated in the writ. The prosecutor may instead request that a summons be issued. A summons requires the presence of the defendant in court without the necessity of an arrest. If the defendant fails to appear in response to the summons a *capias* will be issued.

WHAT ARE THE PROCEDURES BEFORE TRIAL?

The court may set any criminal case for a pre-trial hearing before it is set for trial upon its merits. The pre-trial hearing is to address legal issues only such as: (1) arraignment of the defendant; (2) appointment of counsel to represent the defendant; (3) motions for change of venue; (4) motions for continuance; (5) defense motions to discover the state’s evidence in the case; (6) defense motions to suppress (exclude) evidence; and (7) any other defense motion. These matters are decided by the judge; sometimes the defense and/or prosecution present evidence and/or witness testimony.

HOW ARE CRIMINAL CASES RESOLVED?

Plea Bargaining

The State and Defense may often attempt to resolve a case by agreeing on a punishment or disposition of the case. This disposition of criminal charges by agreement between the prosecutor and the defendant is called “plea bargaining.” In exchange for the defendant pleading guilty or *nolo contendere* (no contest) and waiving the right of trial by jury, the prosecutor recommends a specific punishment which the judge can follow or reject. If the judge rejects the agreement, the defendant is permitted to withdraw his/her plea. If the judge follows the agreement, the defendant must obtain the judge’s permission before the defendant may appeal any matter in the case except matters raised by written motions filed prior to trial. The defendant usually waives the right of appeal as part of the plea bargain. The vast majority of all criminal cases are resolved by plea bargaining.

Nonnegotiated Guilty Plea (Open Plea)

A defendant may plead guilty or nolo contendere to a criminal charge without an agreement with the prosecutor as to the punishment the prosecutor will recommend. The judge has the responsibility to assess the punishment applicable to the offense (open plea) unless the defendant requests that a jury assess punishment (slow plea). Evidence offered by the State and Defense is for the purpose of assisting the judge or jury in determining the appropriate punishment in a specific case. The defendant retains a limited right to appeal.

Trial

The Texas Constitution guarantees the accused in all criminal prosecutions the right to a trial by jury. The defendant may waive trial by jury and proceed with trial to the court (judge) with the consent of the judge and the prosecutor except a capital felony in which the state seeks the death penalty.

A criminal trial before a jury (sometimes called a “petit jury”) proceeds as follows:

- (1) The jury is impaneled following voir dire examination and any challenges for cause or peremptory challenges.
- (2) The information or indictment is read to the jury.
- (3) The defendant enters his/her plea.
- (4) Opening statements may be made by each side.
- (5) The testimony on the part of the state is offered.
- (6) The testimony on the part of the defense is offered.
- (7) Rebutting testimony may be offered by each side.
- (8) The court’s written charge setting forth the law applicable in the case is read to the jury.
- (9) Attorneys for each side argue their case to the jury.
- (10) The jury deliberates. If the jury unanimously finds that the state proved beyond a reasonable doubt that the defendant committed the offense charged (or a lesser included offense), the trial proceeds to the punishment phase. If the jury unanimously agrees that the state has not proved the charge beyond a reasonable doubt, a not guilty verdict ends the trial and discharges the defendant. If the jury is unable to agree to a unanimous verdict, a mistrial or “hung jury” occurs and the jury is discharged. The case may be retried at a later date.
- (11) The judge assesses punishment unless the defendant requests the jury to assess punishment. The jury must assess punishment if the state seeks the death penalty in a capital felony. The judge may be required to direct a supervision (probation) officer to prepare a presentence investigation report prior to sentencing. Testimony concerning the circumstances of the offense may be considered by the judge or jury in determining the punishment to be assessed. Victim impact evidence (e.g., degree of physical or emotional injury to the victim) may be admissible as a circumstance of the offense if the evidence has some bearing on the defendant’s personal responsibility and moral guilt. Evidence is also admissible concerning the defendant’s prior criminal record, his/her general reputation and character, and any other evidence of an extraneous crime or bad act shown beyond a reasonable doubt to have been committed by the defendant.

If the jury has the responsibility of assessing punishment, the judge will give additional instructions (punishment charge) following testimony on the issue of proper punishment.

If, after deliberations, the jury fails to agree to a unanimous verdict on punishment, a mistrial is declared only in the punishment phase of the trial and the jury discharged. The court shall impanel another jury as soon as practicable to determine the issue of punishment.

Prior to the imposition of sentence by the court, if the court has received a victim impact statement, it must consider the information provided in the statement. Before sentencing the defendant, the court is required to permit the defendant or his/her counsel a reasonable time to read the statement, comment on the statement, and, with the approval of the court, introduce testimony or other information alleging a factual inaccuracy in the statement.

After sentence is pronounced, the court shall allow the victim, close relative of a deceased victim, or guardian of a victim to appear in person to present to the court and to the defendant a statement of the person's views about the offense, the defendant, and the effect of the offense on the victim.

Dismissal

The prosecutor may, with the consent of the judge, dismiss a criminal case. Common reasons for dismissal include: (1) insufficient evidence; (2) crucial evidence is suppressed (excluded) because of an illegal arrest or search; (3) the case is re-filed to correct mistakes in the information or indictment or to better plead the case; (4) at the request of the victim; (5) the defendant pleads guilty to other offenses; (6) the defendant has never been arrested; or (7) necessary witnesses cannot be located.

WHAT ARE THE PLACES OF CONFINEMENT?

Local correctional facilities designated by law for the confinement of persons include: (1) municipal (city) jails - generally hold arrested persons until either bonded or transferred to county jails; (2) county jails - hold defendants awaiting trial or transfer to prison, or confined for misdemeanor punishment or a condition or violation of a community supervision; and (3) community corrections facilities - such as restitution centers, boot camps, and substance abuse treatment facilities.

The Texas Department of Criminal Justice operates and manages the state prison system with more than 100 facilities located across the state, including: (1) minimum, medium, and maximum security units (prisons) for inmates convicted of capital, 1st, 2nd and 3rd degree felonies and inmates awaiting execution; (2) transfer facilities - hold defendants awaiting transfer to prison; (3) boot camps - for first time felony (except state jail) offenders (age 17-25) using a regimented program similar to military boot camps; (4) state jail facilities - for defendants convicted of state jail felonies; (5) substance abuse felony punishment facilities (SAFPFs); (6) psychiatric and medical facilities; and (7) private prisons - serve as pre-release centers for prisoners awaiting release on parole.

WHAT IS COMMUNITY SUPERVISION?

Community supervision, formerly called "probation," means that, instead of serving time in jail, the defendant is released under certain conditions set by the court and subject to court supervision. The maximum period of community supervision is ten years in a felony case; two years in a misdemeanor case (three years if extended by the judge). However, if the felony offense is indecency with a child, sexual assault, or aggravated sexual assault, the judge may extend the period of supervision for a period not to exceed 10 additional years. The judge also may extend the period in a misdemeanor case not to exceed an additional two years to pay the fine, costs, or restitution.

Basic conditions of community supervision include, for example, that the defendant: (1) commit no criminal offense; (2) report to the supervision officer as directed; (3) permit the supervision officer to visit at the defendant's home or elsewhere; (4) work faithfully at suitable employment and support his/her dependents; (5) remain within a specified place; and (6) pay restitution to

the victim and any fine assessed and all court costs. Defendants placed on regular community supervision are now required to submit a DNA sample for the DPS database. Defendants placed on community supervision are supervised by community supervision officers, formerly called “probation officers.”

A defendant’s eligibility for community supervision depends on factors including: (1) the type of community supervision (regular or deferred); (2) the offense involved; (3) whether the defendant used or exhibited a deadly weapon; (4) whether the defendant has previously been convicted of a felony offense or placed on community supervision; (5) whether the judge or jury sets the defendant’s punishment; and (6) whether the defendant is sentenced to a term of imprisonment exceeding ten years.

One type of community supervision is a *regular community supervision*. The defendant is convicted and given a term of confinement which the judge immediately suspends and then places the defendant on community supervision.

In a *deferred adjudication community supervision*, after receiving the defendant’s plea of guilty or nolo contendere, hearing the evidence, and finding that it substantiates the defendant’s guilt, the judge defers further proceedings without entering an adjudication of guilt and places the defendant on community supervision. Unlike the other types of community supervision, if the defendant successfully completes the supervision period, the judge is required to dismiss the proceedings and discharge the defendant. However, if the defendant violates a condition of the deferred adjudication community supervision, the defendant may be punished to the maximum extent allowed by law for the original offense.

Finally, in either a *continuing jurisdiction community supervision* (formerly called “shock probation”) or a *state boot camp program*, the defendant is convicted and given a sentence requiring confinement. After serving a set period of confinement, the judge may suspend further execution of the sentence and place the defendant on community supervision.

At any time during the period of any community supervision, the prosecutor may file a motion to revoke or adjudicate based upon a violation of the conditions of community supervision. The judge may then issue a warrant and cause the defendant to be arrested. If the defendant is on regular community supervision, he may be and held without bond until a hearing within 20 days after demand. If the defendant is on deferred community supervision, he is generally eligible for a reasonable bond. The state must prove by a preponderance of the evidence (greater weight and degree of credible evidence) that the defendant violated the conditions of the community supervision. After a hearing without a jury, the judge may either continue, extend, modify or revoke the community supervision or, in a deferred adjudication community supervision, proceed to adjudication. In a deferred adjudication, the judge may assess the full range of punishment prescribed for the offense; if it is regular community supervision, the judge may not go beyond the original term of confinement. No part of the time that the defendant is on community supervision shall be considered as any part of the time that he/she shall be sentenced to serve.

WHAT IS AN APPEAL?

An *appeal* generally occurs after a conviction when the defendant requests a higher (appellate) court to determine whether errors were committed in the trial that require a retrial, acquittal or modification of judgment. The decision of the appellate court is made solely upon the transcribed record of the trial and without a jury. If the case is affirmed, then the sentence must be served; if the court finds error that contributed to the conviction or punishment, the case is reversed and a new trial or punishment hearing may be ordered. Sometimes, though rarely,

a case may be reversed and the defendant ordered acquitted, that is, set free (e.g., state failed to provide sufficient evidence of guilt).

The state is entitled to appeal a limited number of orders of a court in a criminal case. The state may appeal an order that dismisses all or any portion of an indictment or information; arrests or modifies a judgment; grants a new trial; sustains a claim of former jeopardy; or grants a motion to suppress evidence, a confession or an admission. The state may not appeal from a judge's decision or jury's verdict finding a defendant not guilty of an offense.

WHAT IS PAROLE?

Parole is a system by which a prisoner earns the privilege to be released from prison prior to completing the full sentence. A prisoner may earn time off his/her sentence through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

An inmate under a sentence of death, serving a sentence of life imprisonment without parole, serving a sentence for continuous sexual abuse of a child or certain other aggravated sexual assaults is not eligible for release on parole. An inmate serving a life sentence is generally eligible for parole after 30 calendar years. If an inmate is serving a sentence for murder, capital murder, indecency with a child, aggravated kidnapping, aggravated sexual assault, aggravated robbery or certain other offenses, or is found to have used or exhibited a deadly weapon in the commission of the offense, he must serve one half of his sentence before becoming eligible for parole. In most other cases, prisoners may be eligible for release on parole when their calendar time served plus good conduct time equals one-fourth of the maximum sentence or 15 years, whichever is less. Effective September 1, 2009, if a defendant is charged with murder, aggravated sexual assault or sexual assault, for every 12 months that the defendant remains unapprehended after indictment, there is a 3 year delay in parole eligibility.

The decision whether to grant parole is made by the Texas Board of Pardons and Paroles (512/406-5250; for victims only 1-800-848-4284). A prisoner released on parole remains under the division's supervision and control subject to conditions much like a defendant placed on community supervision (e.g., report to a parole officer as directed; pay restitution to the victim). Violations of a condition of parole may result in revocation of parole.

ARE JUVENILES TREATED DIFFERENTLY?

There are significant differences in the procedures used to process juvenile and adult offenders. Despite the procedural differences and the considerable discretion associated with juvenile proceedings, juveniles have many of the rights and protections provided defendants in adult criminal proceedings. The Texas Rules of Civil Procedure govern juvenile proceedings except for certain exceptions listed in the Juvenile Justice Code where criminal rules apply, such as discovery, which is governed by the Texas Code of Criminal Procedure.

Each county's juvenile board (county judge, district judges, and judges of any statutory courts designated as a juvenile court) is required to designate one or more district, criminal district, domestic relations, juvenile, county courts or county courts at law as the juvenile court. The juvenile court has exclusive original jurisdiction over proceedings under the Juvenile Justice Code (Title 3, chapters 51-61, Family Code) involving children between the ages of 10 and under 17, and children who are 17 years of age and under 18, who committed offenses before

becoming 17. Venue is in (1) the county in which the alleged delinquent conduct or conduct indicating a need for supervision occurred; or (2) the county in which the child resides at the time the petition is filed, but only if: (A) the child was under probation supervision at the time of the conduct; (B) it cannot be determined in which county the conduct occurred; or (C) the county where the child resides agrees in writing to accept the case for prosecution.

A law enforcement officer who takes a child into custody may dispose of the case without referral to juvenile court, if: (1) guidelines for such disposition have been approved by the juvenile board of the county in which the disposition is made; (2) the disposition is authorized by the guidelines; and (3) the officer makes a written report of the disposition to the law enforcement agency, identifying the child and specifying the grounds for believing that the taking into custody was authorized.

If the case or child is referred to juvenile court, a person authorized by the court (usually someone from the juvenile probation department) is required to conduct a preliminary investigation to determine whether the person referred to juvenile court is a child under the Juvenile Justice Code and there is probable cause to believe the person engaged in delinquent conduct or conduct indicating a need for supervision. If it is determined that the person is not a child or there is no probable cause, the person shall immediately be released.

Each county is required to provide a suitable place of detention for children, separated by sight and sound from any adults detained in the same building. When a child is taken into custody, if the child is not released a detention hearing without a jury shall be held within two working days after the child is taken into custody; the next working day if the child is detained on a Friday or Saturday. The child may be detained if:

- (1) the child is likely to abscond or be removed from the jurisdiction of the court;
- (2) suitable supervision, care, or protection for the child is not being provided by a parent, guardian, custodian, or other person;
- (3) the child has no parent, guardian, custodian, or other person able to return him/her to the court when required;
- (4) the child may be dangerous to himself/herself or he/she may threaten the safety of the public if released; or
- (5) the child has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released.

A detention order extends to the conclusion of the disposition hearing, if there is one, but in no event for more than 10 working days. Further detention orders may be made following subsequent detention hearings.

If a preliminary investigation results in a determination that further proceedings in the case are authorized, the designated officer of the court may, subject to the direction of the juvenile court, advise the parties for a reasonable period of time not to exceed six months concerning deferred prosecution and rehabilitation of the child if: (1) deferred prosecution would be in the interest of the public and the child; (2) the child and his parent, guardian, or custodian consent with knowledge that consent is not obligatory; and (3) the child and his parent, guardian, or custodian are informed that they may terminate the deferred prosecution at any point and petition the court for a court hearing in the case.

A juvenile court may, on petition filed by the prosecuting attorney, waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal district court for criminal proceedings if:

- (1) the child is alleged to have committed a felony;
- (2) the child was:

- (A) 14 years of age or older at the time he/she is alleged to have committed the offense, if the offense is a capital felony, an aggravated controlled substance felony, or a felony of the first degree, and no adjudication hearing has been conducted concerning that offense; or
 - (B) 15 years of age or older at the time he/she is alleged to have committed the offense, if the offense is a felony of the second or third degree or a state jail felony, and no adjudication hearing has been conducted concerning that offense; and
- (3) after a full investigation and a hearing, the juvenile court determines that there is probable cause to believe that the child committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.

If the juvenile court waives jurisdiction and transfers the child for criminal proceedings, he/she shall be dealt with as an adult and in accordance with the Code of Criminal Procedure. However, no person may be punished by death for an offense committed while younger than 18 years. A juvenile whose case was transferred to criminal court pursuant to Section 54.02 of the Texas Family Code and who was adjudged guilty of a capital felony shall be punished by imprisonment in the Texas Department of Criminal Justice for life. A life sentence with eligibility for parole is automatic upon conviction for capital murder in the adult criminal court.

If the juvenile court does not transfer the child for adult criminal proceedings, the juvenile court may, on petition of the prosecuting attorney, conduct an adjudication hearing. Trial shall be by jury unless waived by the child and his/her attorney. Only material, relevant, and competent evidence in accordance with both the Texas Rules of Evidence and Chapter 38 of the Texas Code of Criminal Procedure, may be considered in the adjudication hearing. If the judge or jury does not find beyond a reasonable doubt that the child engaged in delinquent conduct or conduct indicating a need for supervision, the court shall dismiss the case. If the finding is that the child did engage in delinquent conduct or conduct indicating a need for supervision, the court shall conduct a disposition hearing.

At the disposition hearing, if the judge or jury does not find that the child is in need of rehabilitation or the protection of the public or the child requires that disposition be made, the court shall dismiss the child and enter a final judgment without any disposition. If the judge or jury finds that the child is in need of rehabilitation or the protection of the public or the child requires that disposition be made:

- (1) the judge or jury may place the child on probation for any period, of time in accordance with the guidelines in Chapter 59 of the Texas Family Code, except that the probation may not extend to or after the child's 18th birthday;
- (2) if the judge or jury finds at the adjudication hearing that the child engaged in delinquent conduct that is a felony or a misdemeanor and he/she has a prior felony or two prior misdemeanors, and if the petition was not approved by the grand jury under section 53.045, Family Code, the court may commit the child to the Texas Youth Commission (TYC) without a determinate sentence;
- (3) if the judge or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that included a violent offense listed under section 53.045(a), Family Code, and if the petition was approved by the grand jury for a determinate sentence under section 53.045, Family Code, the judge or jury may sentence the child to a commitment to the Texas Youth Commission with a possible transfer to the institutional division of the Texas Department of Criminal Justice for a term of confinement of not more than:
 - (A) 40 years for a capital felony, first degree felony, or an aggravated controlled substance felony;
 - (B) 20 years for a second degree felony; or
 - (C) 10 years for a third degree felony;

- (4) the judge may assign the child appropriate sanctions under section 59.003, Family Code; or
- (5) if applicable, the judge or jury may make a disposition for habitual felony conduct under section 54.04(m) of the Family Code.

A court may issue an order against a child to protect a victim of the child's conduct who, because of the victim's participation in the juvenile justice process, risks further harm by the child. In the order, the court may prohibit the child from doing specified acts or require the child to do specified acts necessary or appropriate to prevent or reduce the likelihood of further harm to the victim by the child.

An appeal from an order of a juvenile court is to a court of appeals, and the case may be carried to the Texas Supreme Court (unlike adult criminal appeals which may be carried to the Court of Criminal Appeals).

ARE COURT PROCEEDINGS OPEN TO THE PUBLIC?

Grand jury proceedings are secret and consequently closed to the public. The proceedings and trials in all courts are public. However, the court may exclude the public from juvenile hearings for: (1) good cause shown; or (2) if the child is under the age of 14 at the time of the hearing, the court shall close the hearing to the public unless the court finds that the interests of the child or the interests of the public would be better served by opening the hearing to the public.

A court may order witnesses excluded from the courtroom under "the rule" so that they cannot hear the testimony of other witnesses. "The Rule" is the legal term used by a court to exclude a witness from reading or hearing any other witness' testimony, this applies to all witnesses except the defendant in a criminal case. If under "the rule," witnesses may not converse with each other or with any other person about the case, except the lawyers involved in the case. Witnesses cannot read, watch or listen to any report of or comment upon the testimony in the case while the trial is being conducted. This rule does not authorize exclusion of the victim, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial.

WHAT COURTS HANDLE CRIMINAL CASES?

A *municipal court* (sometimes called "city" or "corporation" court) has exclusive original jurisdiction within the territorial limits of the municipality in all criminal cases that: (1) arise under the ordinances of the municipality; and (2) are punishable by a fine not to exceed: (A) \$2,000 in all cases arising under municipal ordinances that govern fire safety, zoning, or public health and sanitation, including dumping of refuse; or (B) \$500 in all other cases arising under a municipal ordinance. The municipal court has concurrent jurisdiction with the justice court of a precinct in which the municipality is located in all criminal cases arising under state law that: (1) arise within the territorial limits of the municipality and are punishable by fine only; or (2) arise under chapter 106 of the Alcoholic Beverage Code, and do not include confinement as an authorized sanction.

Justice courts (justices of the peace) have original jurisdiction in criminal cases punishable by fine only or by a fine and any authorized statutory sanction not including confinement (such as a driver's license suspension).

The *county courts, county courts at law* and *county criminal courts* 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 exceeds \$500. The county courts also have appellate jurisdiction. With

the exception of cases arising from municipal courts of record, appeals heard in county court are tried 'de novo'; that is, from the beginning, as if the case had not been previously heard.

District courts and *criminal district courts* have original jurisdiction in all felony criminal cases, all misdemeanors involving official misconduct, and misdemeanor cases transferred to district court when the county judge is not a licensed attorney.

Courts of appeals have appellate jurisdiction within the territorial limits of their respective districts, except in class "C" misdemeanor cases appealed to county court (with certain exceptions) or in cases where the death penalty has been assessed. The state is divided into fourteen court of appeals districts with a court of appeals in each district (except in Houston where there are two courts of appeals).

The *Court of Criminal Appeals* in Austin is our state's highest court for criminal matters – it has final appellate and review jurisdiction in criminal cases within the territorial limits of the state, and its determinations are final. The appeal of all cases in which the death penalty has been assessed go directly to the Court of Criminal Appeals, and it may review any decision of a court of appeals in a criminal case.

GLOSSARY

AFFIRMATIVE DEFENSE

A defendant's assertion of facts and arguments that, if true, will defeat the prosecution's claim even if all the allegations in the complaint, information or indictment are true. The defendant bears the burden of proving an affirmative defense by a preponderance of the evidence. Examples of affirmative defenses include insanity, duress and defense of property.

AFFIRMATIVE FINDING

A specific determination by the trier of fact (jury or judge) that is entered in the judgment of the court. Examples include a deadly weapon finding (which will delay the offender's parole eligibility), a hate crime finding (which may increase the offender's range of punishment), and a family violence finding (which may affect an offender's right to carry a weapon).

APPEAL

A request to a higher (appellate) court to review a case to determine whether errors were committed in the trial court which require a retrial or acquittal (release). In general, an appeal cannot be made until there has been a final order in the case.

ARRAIGNMENT

Procedure whereby the accused is brought before the court to plead to the criminal charges against him. A defendant may plead 'guilty,' 'not guilty,' or 'nolo contendere' (no contest). A defendant may waive arraignment.

ARREST

A person has been arrested when he/she has been deprived of his liberty by legal authority.

ARREST WARRANT

A written order from a magistrate, directed to a peace officer or some other person specifically named, commanding him/her to take the body of the person accused of an offense, to be dealt with according to law.

ATTEMPT (CRIMINAL ATTEMPT)

A person commits an offense if, with specific intent to commit an offense, he/she does an act

amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

BAIL

The primary purpose of bail is to secure the defendant's presence for trial. In setting the amount of bail, the judge considers the nature of the offense and the circumstances under which it was committed, the future safety of the victim or his/her family and the community, and the defendant's ability to make bail. Bail includes a personal bond, a cash bond, or a surety bond. A person not released on bail remains in jail.

The Texas Constitution provides that prisoners have the right to bail before conviction in all cases except: (1) capital offenses "when the proof is evident"; (2) when the person charged with a felony offense: (A) has two prior felony convictions (separate in time), (B) committed the offense while on bail and under indictment for a prior felony; or (C) used a deadly weapon after being convicted of a prior felony; (3) a district judge may, after a substantial showing of guilt, deny bail to a person accused of a violent or sexual offense while on probation or parole for a prior felony; or (4) bail may be denied a person accused of a felony who had been released on bail pending trial and whose bail is subsequently revoked or forfeited for a violation of a condition of release related to the safety of a victim of the offense or to the safety of the community.

A defendant may not be released on bail pending the appeal from any felony conviction where the punishment equals or exceeds 10 years confinement or where the defendant has been convicted of an offense listed under section 3g(a)(1), article 42.12 of the Code of Criminal Procedure.

BAIL BOND (SURETY BOND)

A written undertaking entered into by a defendant and his/her sureties for the appearance of the defendant before the proper court to answer the accusation.

BAILIFF

An officer of the court who acts under the direction of the judge of the court that the bailiff serves and who attends to the wants of the jury.

BOOK (BOOKED; BOOKED-IN)

Refers to the process when a person is arrested and taken to jail and a record is made of the charges including photographs and fingerprints of the person arrested.

CAPIAS

A capias is a writ issued by the court or clerk, and directed "To any peace officer of the State of Texas," commanding the officer to arrest a person accused of an offense and to bring the accused before that court immediately, or at a time stated in the writ.

CASH BOND

A written undertaking entered into by a defendant guaranteeing the defendant's appearance before the proper court to answer the accusation and secured by the deposit of a cash fund with the court. Cash funds deposited are refunded to the defendant if and when he complies with all conditions of his bond including his appearance in court.

CHALLENGE FOR CAUSE

An objection made to a prospective juror, alleging some fact which renders the juror incapable or unfit to serve on the jury. For example, a prospective juror is subject to a challenge for cause if he/she is a witness in the case. A challenge for cause may be made by either the prosecution or the defense. There is no limit to the number of challenges for cause either side may make. The judge decides all challenges for cause.

COMMUNITY SUPERVISION

Formerly called “probation,” it is the placement of a defendant by a court under programs and sanctions with conditions imposed by the court for a specified period during which criminal proceedings are deferred without an adjudication of guilt or punishment is probated and the imposition of sentence is suspended in whole or in part.

CONCURRENT SENTENCE

CUMULATIVE (CONSECUTIVE OR STACKED) SENTENCE

When the same defendant has been convicted in two or more criminal cases, the judge may order: (1) the sentence in the first case to run at the same time (concurrently) with the other case(s); or (2) the sentence in the second and subsequent convictions to begin to run only when the preceding sentence has ceased to operate (cumulative).

CONSPIRACY (CRIMINAL CONSPIRACY)

A person commits criminal conspiracy if, with intent that a felony be committed: (1) he/she agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense; and (2) he/she or one or more of them perform an overt act in pursuance of the agreement.

CONVICTED OFFENDER DNA DATABASE

A data bank of DNA profiles that is compiled of convicted offenders and is used to identify suspects in crimes where biological evidence is left by the perpetrator. Also known as CODIS (Combined DNA Index System), the DNA database requires adults who are convicted of a felony offense to submit a sample. More information is available at www.txdps.state.tx.us.

COURT REPORTER

The person appointed by the court to prepare a written record of a court proceeding by using written symbols in shorthand, machine shorthand, or oral stenography.

DEADLY WEAPON

A firearm or anything manifestly designed, made or adapted for the purpose of inflicting death or serious bodily injury; or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

DEFENDANT

The accused in a criminal case.

DISCOVERY

The defendant may request the court in which a criminal case is pending to order the state before or during trial to produce and permit inspection and photocopying of certain evidence which is in the possession of the state. Each party may request disclosure of the identity of the other party’s expert witnesses to be used at trial.

DNA TESTING

A convicted person may submit a motion for DNA testing if the material to be tested was not previously tested because DNA testing was not available or because new testing techniques will provide more accurate results. After receiving the motion, the court may order DNA testing if:

- (1) the evidence to be tested is still in a condition to be tested;
- (2) the chain of custody of the sample is intact;
- (3) identity was at issue in the case;
- (4) the convicted person establishes by a preponderance of the evidence (more likely than not) a reasonable probability that he would not have been prosecuted or convicted if exculpatory DNA results had been obtained; and

- (5) the request is not made to unreasonably delay execution of the sentence or the administration of justice. If the convicting court orders DNA testing, the court is required to conduct a hearing to determine whether the results are favorable to the convicted person and would have made it reasonably probable that the person would not have been prosecuted or convicted if the DNA results had been available before or during the trial.

DOUBLE JEOPARDY

The double jeopardy provisions of the United States and Texas Constitutions protect against: (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense. However, the same criminal act which violates both federal and state law may be prosecuted in both federal and state courts; the reasoning is that by violating the law of two separate sovereigns, a defendant commits two separate offenses.

DRUG-FREE ZONE

Section 481.134 of the Health and Safety Code increases punishment for certain drug offenses: (1) in, on, or within 1,000 feet of a school or school property, or an institution of higher learning, a public or private youth center or a playground; (2) on a school bus; or (3) in, on, or within 300 feet of a public swimming pool or video arcade facility.

EXAMINING TRIAL

The accused in any felony case has the right to request an examining trial before indictment in the county having jurisdiction of the offense; the right terminates on the issuance of an indictment by the grand jury. There is no right to an examining trial in a misdemeanor case.

An examining trial is conducted by a magistrate without a jury. The prosecutor has the burden of proving that there is probable cause to believe the accused committed the offense charged. At the conclusion of the examining trial, the magistrate is required to make an order committing the accused to jail, discharging the accused, or setting/modifying bail, as the law and facts of the case may require. Failure of the magistrate 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 must be discharged. The discharge of an adult accused at an examining trial does not bar later indictment by the grand jury.

EXTRADITION

The court-supervised surrender by one state (or nation) to another of an individual accused or convicted of an offense outside of its own territory, and within the territorial jurisdiction of the other which demands the surrender.

FELONY

An offense so designated by law or punishable by death or confinement in a penitentiary. A person convicted of a felony offense is: (1) disqualified to serve as a petit juror; (2) ineligible for public office in this state unless pardoned or otherwise released from the resulting disabilities; and (3) not allowed to vote unless properly discharged from parole or community supervision and at least two years have elapsed from the date of discharge.

GANG (CRIMINAL STREET GANG)

Three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.

GANG FREE ZONE

Section 71.028 of the Texas Penal Code increases punishment for certain gang related offenses: (1) in, on, or within 1,000 feet of a school, youth center or a playground; (2) on a school bus;

or (3) in, on, or within 300 feet of a shopping mall, movie theater, public swimming pool or video arcade facility.

GRAND JURY

Composed of 12 persons, the grand jury inquires into all offenses occurring in the county liable to indictment of which any member may have knowledge, or of which they shall be informed by the prosecutor or any other credible person. The grand jury is organized by the district judge and prospective grand jurors are summoned in the same manner as jury panels for the trial of civil cases in district courts, or after being selected by grand jury commissioners organized under chapter 19 of the Code of Criminal Procedure.

HABEAS CORPUS

Latin for “you have the body.” The writ of habeas corpus may be filed before or after conviction and is an attack by a person in custody upon the legality of that custody. The traditional function of the writ is to secure release from illegal custody.

Pre-trial habeas corpus also may be used by a defendant to request a reduction in bail. Postconviction habeas corpus is available only to review jurisdictional defects, or denials of fundamental or constitutional rights; it may not be used to litigate matters which should have been raised on appeal.

A prisoner convicted in state court may not obtain habeas corpus relief in the federal courts unless the prisoner has exhausted all of the remedies available in the state courts, or there is no adequate or effective state remedy to protect the prisoner’s rights.

HATE CRIME FINDING

An affirmative finding made by the trier of fact (jury or judge) beyond a reasonable doubt that the defendant intentionally selected the victim or the property damaged or affected because of the defendant’s bias or prejudice against a group identified by race, color, disability, religion, national origin or ancestry, age, gender, or sexual preference. Except for a first degree felony or a Class A misdemeanor, a hate crime finding increases the defendant’s punishment to the punishment prescribed for the next highest category of offense.

HUNG JURY

A jury that cannot agree upon any verdict. The jury may be discharged and the case tried again if both parties agree to discharge the jury or the judge discharges the jury when it has been kept together for such time as to render it improbable that it can agree on a verdict.

INDICTMENT

The written statement of a grand jury accusing a named person of an offense.

INCOMPETENCY TO STAND TRIAL

A person is incompetent to stand trial in a criminal case if he/she does not have: (1) sufficient present ability to consult with his/her lawyer with a reasonable degree of rational understanding; or (2) a rational as well as factual understanding of the proceedings against him/her. A defendant is presumed competent to stand trial unless proved incompetent by a preponderance of the evidence (greater weight and degree of credible evidence).

INFORMATTON

A written statement filed and presented on behalf of the state by the prosecutor, charging the defendant with an offense which may by law be so prosecuted.

INSANITY DEFENSE

To be found not guilty by reason of insanity, the defendant in a criminal case must prove by a

preponderance of evidence that at the time of the conduct charged, as a result of severe mental disease or defect, the defendant did not know that his/her conduct was wrong.

INSTRUCTED VERDICT OF NOT GUILTY

When the state has finished presenting its evidence at trial, if it has failed to prove each and every element of the offense charged beyond a reasonable doubt, the trial judge may grant the defendant's motion to instruct the jury to find the defendant not guilty of the offense charged.

JUDGMENT

The written declaration of the court signed by the trial judge and entered of record showing the conviction or acquittal of the defendant or other disposition of the case.

JURISDICTION

The authority or power of a court to try a case.

JUVENILE (CHILD)

A person who is 10 years of age or older and under 17 years of age; or 17 or older and under 18 who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17.

LESSER INCLUDED OFFENSE

A lesser included offense is a crime that is composed of some, but not all, of the elements of a more serious crime. For example, murder may be a lesser included offense of capital murder.

MAGISTRATE

Includes: justices of the Texas Supreme Court, judges of the Court of Criminal Appeals, justices of the courts of appeals, district court and criminal district court judges, county judges, county court at law judges, justices of the peace, and municipal court judges of incorporated cities.

MISTRIAL

A trial terminated by the judge without ruling on the merits of the case due to a procedural error, serious misconduct at trial or other manifest necessity.

NEW TRIAL

A new trial is the rehearing of a criminal case after a finding or verdict of guilt has been set aside upon motion of an accused. An accused is entitled to a new trial where, for example, material evidence favorable to the accused has been discovered since trial. Evidence is material only if there is a reasonable probability that, had the evidence been available to the defense, the result of the proceeding would have been different. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome.

NOLO CONTENDERE

Latin for "I will not contest it." It is a plea in a criminal case having the same legal effect as a plea of guilty, except that it may not be used against the defendant as an admission in a civil proceeding.

OPEN CONTAINER LAW

It is a Class C misdemeanor offense to possess an open alcoholic beverage within the passenger area of a motor vehicle, regardless of whether the vehicle is being operated, is stopped, or is parked.

PARDON

A "pardon" exempts the recipient from the punishment assessed against him/her by a court. "Commutation" means the change of punishment assessed to a less severe one. The power to

grant a pardon or commute a sentence is vested in the governor on the signed recommendation of the Board of Pardons and Paroles.

PAROLE

The discretionary and conditional release of an eligible prisoner sentenced to prison so that the prisoner may serve the remainder of his/her sentence under the supervision and control of the Board of Pardons and Paroles.

PARTY TO AN OFFENSE

A person is criminally responsible for an offense committed by the conduct of another if, for example, acting with intent to promote or assist the commission of the offense, he/she solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense.

PEACE OFFICER

Includes, for example: sheriffs and their deputies; marshals or police officers of an incorporated city, town or village; rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety; district attorney and county attorney investigators; officers commissioned by a school district or a state institution of higher education; and fire marshals and their inspectors and investigators.

PEREMPTORY CHALLENGE (peremptory strike)

During jury selection, the exclusion of a prospective juror by counsel without assigning any reason. A juror may not be excluded because of race or gender. In capital cases in which the state seeks the death penalty, each side has 15 peremptory challenges; 10 in non-capital felony cases and capital cases in which the state does not seek the death penalty; and 3 in misdemeanor cases tried in the various county courts.

PERSONAL BOND

A written undertaking entered into by a defendant promising to appear before the proper court to answer the accusation, without any security.

PETIT JURY

The jury for the trial of a criminal case. Prospective jurors are randomly selected from the names of all persons on current voter registration lists from all the precincts in the county and the names of all citizens of the county who hold a valid Texas driver's license or personal identification card issued by the Department of Public Safety. In the district courts, the jury consists of 12 jurors; in the county courts and inferior courts, 6 jurors.

PETITION FOR DISCRETIONARY REVIEW

A petition (formal written request) seeking review by the Court of Criminal Appeals of a decision of a court of appeals.

PLEA

The defendant in a criminal case may plead not guilty, guilty, or nolo contendere (no contest).

PLEA BARGAIN

The agreed disposition of criminal charges between the prosecutor and defendant subject to judicial approval.

PRESENTENCE INVESTIGATION REPORT

A written report prepared by a supervision officer before imposition of sentence by the judge concerning the circumstances of the offense with which the defendant is charged, the amount of restitution necessary to adequately compensate a victim of the offense, the criminal and

social history of the defendant, and any other information relating to the defendant or the offense requested by the judge. The report must contain a proposed supervision plan describing programs and sanctions that the community supervision and corrections department would provide the defendant if the judge placed the defendant on community supervision.

PRESUMPTION OF INNOCENCE

All persons are presumed innocent and may not be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact a person has been arrested, confined, indicted, or otherwise charged with the offense gives rise to no inference of guilt at trial.

PRE-TRIAL HEARING

A hearing held at the judge's discretion to dispose of legal issues prior to trial to avoid delays after jurors and witnesses have been summoned.

PROBABLE CAUSE

The existence of reasonably trustworthy information sufficient to warrant a reasonable person to believe that a particular individual has committed an offense or that the instrumentality or evidence of a crime will be found.

PROSECUTOR (PROSECUTING ATTORNEY; PROSECUTION)

The county attorney, district attorney, or other attorney who regularly represents the state in juvenile or criminal cases in a county's juvenile, county or district courts. The prosecutor in a municipal court is the city attorney.

PROTECTIVE ORDER OR MAGISTRATE'S ORDER

Issued by an appropriate court or magistrate for the protection of the victim(s) of family violence, the order may, among other things, prohibit certain communication or contact with the victim(s) and must suspend the concealed handgun license of the person arrested for or found to have committed family violence. The local prosecuting attorney may assist the victim(s) in obtaining the order.

PSEUDONYM

A set of initials or fictitious name chosen by a victim to designate the victim in all public files and records concerning the offense, including police summary reports, press releases, and records of judicial proceedings.

RACIAL PROFILING

The illegal initiation of action by law enforcement agencies or officers based on an individual's race, ethnicity, or national origin, rather than on any indication of criminal behavior. The Code of Criminal Procedure, article 2.131, prohibits a peace officer from engaging in racial profiling.

REASONABLE DOUBT

In a criminal trial, the prosecution has the burden of proving the defendant guilty and it must do so by proving each and every element of the offense charged beyond a reasonable doubt.

SEARCH WARRANT

A written order by a magistrate directed to a peace officer commanding him/her to search for certain property or thing and to seize it and bring it before the magistrate. A search warrant may not be issued unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause exists for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause must be filed in every instance in which a search warrant is requested. If the affidavit establishes probable cause that a person has committed an offense, the search warrant

may also order his/her arrest. With the exception of warrants for DNA, a search warrant must be executed within three days of its issuance.

SENTENCE

That part of the judgment, or order revoking a suspension of the imposition of a sentence, ordering that the punishment be carried into execution in the manner prescribed by law.

SEX OFFENDER REGISTRATION

Persons who are convicted of or placed on deferred community supervision for certain sexual offenses must register with their local law enforcement agency. Registered sex offender information is available to the public through the Texas Department of Public Safety. More information and a registry of offenders is available at <http://records.txdps.state.tx.us>.

SOLICITATION (CRIMINAL SOLICITATION)

A person commits an offense if, with intent that a capital or first degree felony be committed, he/she requests, commands, or attempts to induce another to engage in specific conduct that, under the circumstances surrounding his/her conduct as the actor believes them to be, would constitute the felony or make the other a party to its commission.

SUBPOENA OR SUBPOENA DUCES TECUM

Issued by the court or a clerk of the court, a subpoena may summon one or more persons to appear before the court to testify on a specified day. If a witness possesses any instrument of writing or other thing desired as evidence, a subpoena duces tecum may specify such evidence and direct that the witness bring the same with him/her and produce it in court.

VENUE OR CHANGE OF VENUE

Venue refers to the location where a trial is held. The trial court may, on its own motion or on the motion of the defendant or state, order a change of venue and transfer the case to another county if the court determines after a hearing that the defendant or the state cannot receive a fair and impartial trial in the county in which the case is pending (due to, for example, extensive pre-trial publicity).

VERDICT

A written declaration by the jury of its decision of the issue submitted to it in the case.

VICTIM IMPACT STATEMENT

Prepared by a victim, it is used by law enforcement agencies, prosecutors, and other participants in the criminal justice process to record the impact of an offense on a victim and to notify the victim of relevant stages of the criminal justice process, including parole proceedings.

VOIR DIRE EXAMINATION

Voir dire means "speak the truth." It is a preliminary examination of prospective jurors by a judge or lawyer to determine whether a person is qualified and suitable to serve on a jury. The term is loosely referred to as the "jury selection process."

WRIT

The general term for a written order issued by the court or clerk and directed to a named person requiring the performance of a specified act.



This booklet was prepared by the Criminal Justice Section of the State Bar of Texas.

This booklet is not a substitute for the advice of an attorney. Call 1-800-252-9690 toll free for the number of your nearest lawyer referral service.

Additional copies may be obtained from the State Bar of Texas, Public Information Department, P.O. Box 12487, Austin, Texas 78711-2487 (800/204-2222 ext. 1800).

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