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Administrative Director

INTRODUCTION TO THE 2023 EDITION

To the District Clerks of Texas:

The *District Clerk Procedure Manual* is a reference guide covering the various duties, responsibilities and procedures of District Clerks in Texas. The 2023 edition contains updates from legislation passed during the 88th Legislature, regular session and called special sessions, as well as references to the Texas Constitution, relevant caselaw, rules and standards, and opinions of the Texas Attorney General. Please be aware that, although we make every effort to ensure the accuracy of the information found within the Manual, the Manual does not cover every topic that may be relevant to district clerk duties.

The statutes and constitutional provisions found in the Manual can be accessed on the Texas Legislature's website at https://capitol.texas.gov. Opinions of the Texas Attorney General can be accessed on the Texas Attorney General's website at https://www.oag.state.tx.us/attorney-general-opinions.

This manual is not published in hard copy, but can be found at http://www.txcourts.gov/publications-training/training-materials/manuals-bench-books/. Please feel free to contact Brandon Bellows by telephone at 512-463-1625 or by e-mail at brandon.bellows@txcourts.gov with any questions concerning the Manual.

Megan LaVoie, Administrative Director

LEGAL SOURCE LEGEND

In this manual, references to specific legal sources are abbreviated as shown below:

ABBREVIATION	REFERENCE
A.G. Op.	Texas Attorney General Opinion
A.G. ORD	Texas Attorney General Open Records Decision
A.G. LO	Texas Attorney General Letter Opinion
Agric. Code	Texas Agriculture Code
Appr. Act	Appropriations Act
Alco. Bev.	Texas Alcoholic Beverage Code
Bus & Com. Code	Texas Business and Commerce Code
CCP	Texas Code of Criminal Procedures
Civ. Prac. & Rem. Code	Texas Civil Practice & Remedies Code
Const.	Constitution of the State of Texas
Elec. Code	Texas Election Code
Estates Code	Texas Estates Code
Fam. Code	Texas Family Code
Gov't Code	Texas Government Code
Health & Safety Code	Texas Health & Safety Code
Hum. Res. Code	Texas Human Resources Code
Loc. Gov't Code	Texas Local Government Code
Nat. Res. Code	Texas Natural Resources Code
Occ. Code	Texas Occupations Code
OR	Texas Attorney General Open Records Letter Rulings

ABBREVIATION	REFERENCE
Parks & Wild. Code	**Texas Parks and Wildlife Code**
Penal Code	**Texas Penal Code**
Prop. Code	**Texas Property Code**
TRAP	**Texas Rules of Appellate Procedure**
TRCP	**Texas Rules of Civil Procedure**
TAC	**Texas Administrative Code**
Tax Code	**Texas Tax Code**
Transp. Code	**Texas Transportation Code**
VTCA	**Vernon's Texas Codes Annotated**
VTCS	**Vernon's Annotated Texas Civil Statutes**
USCA	**United States Code Annotated**

CHAPTER 1

RESPONSIBILITIES OF THE DISTRICT CLERK'S OFFICE

A. OFFICE OF DISTRICT CLERK

Article 5, Section 9 of the Texas Constitution provides that there shall be a District Clerk in each county. The District Clerk is an elected official who serves a four-year term. If the office becomes vacant, a district court judge appoints a new Clerk, who holds office until is it filled by election.

Const. *Art. 5, Sec. 9*

The District Clerk provides support for the district courts in each county. The Clerk is custodian of all court pleadings and papers that are part of any cause of action, civil or criminal, in the district courts served by the Clerk. The District Clerk indexes and secures all court records, enters judgments of the court under the direct supervision of the judge, collects court costs and filing fees, and records the acts and proceedings of the court.

Gov't Code *Sec. 51.303*

B. BOND, OATH, AND INSURANCE

Before beginning the duties of office, a District Clerk must give a bond with two or more sureties or with a surety company authorized to do business in Texas as a surety company. The bond is given to ensure proper performance of the duties of the Clerk's office. The bond is payable to the Governor and must be approved by the Commissioners Court. The bond amount cannot be less than 20 percent of the maximum amount of fees collected in any year during the term of office immediately preceding the term of office for which the bond is given, except the bond cannot be less than $5,000 nor more than $100,000. Alternatively, the county may self-insure against losses that would have been covered by the bond.

Gov't Code *Sec. 51.302(a), (g)*

Before beginning the duties of office, a District Clerk must first subscribe to an anti-bribery statement for elected or appointed officials and then take the oath or affirmation of office. The anti-bribery statement must be subscribed before the oath or affirmation of office is taken. The anti-bribery statement is as follows:

Const. *Art. 16, Sec. 1*

> "I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment of confirmation, whichever the case may be, so help me God."

Art. 16, Sec. 1(b)

Clerks may wish to use the form promulgated by the Secretary of State for the anti-bribery statement, which is available with instructions (from the Secretary of State's website) here: www.sos.state.tx.us/statdoc/forms/2201.pdf.

District Clerks are to retain this signed statement with the official records of their office.

Art. 16, Sec. 1(c)

After subscribing to the anti-bribery statement, the District Clerk is to take the following Oath or Affirmation of Office. The oath or affirmation is as follows:

> "I, _____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws

Art. 16, Sec. 1(a)

of the United States and of this State, so help me God."

Clerks may wish to use the form promulgated by the Secretary of State for the anti-bribery statement and the execution of the oath.

The form, along with instructions, is available from the Secretary of State's website (www.sos.state.tx.us/statdoc/forms/2204.pdf.)

Please note, however, that the oath is generally printed on the District Clerk's bond because the District Clerk is required to endorse his or her oath on the bond (unless the county chooses to self-insure against losses).

The District Clerk is to record his or her oath in the County Clerk's office.

Gov't Code
Sec. 51.302(b)

The District Clerk must cover himself or herself and any Deputy Clerk against liabilities incurred through errors or omissions. The Clerk shall obtain an insurance policy or similar coverage from a governmental insurance pool operating under Local Government Code Chapter 119, or from a self-insurance fund or risk retention group created by one or more governmental units under Government Code Chapter 2259. The amount of coverage must be equal to the maximum amount of fees collected in any year during the term of office immediately preceding the term for which coverage is obtained, except that the amount of the policy or similar coverage must be at least $20,000 but no more than $700,000. However, if the policy or similar coverage covers other county officials as well, the amount must be at least $1,000,000.

Sec. 51.302(c)

The District Clerk must also provide insurance or coverage for losses resulting from burglary, theft, robbery, counterfeit currency, or destruction. The policy or other coverage may be obtained as detailed above. The amount of coverage must be at least $20,000 but not more than $700,000.

Sec. 51.302(d)

The Commissioners Court may establish a contingency fund to provide the required coverage described above if the District Clerk determines that insurance coverage is unavailable at a reasonable cost.

Sec. 51.302(e)

The Commissioners Court shall pay the premiums on the bonds and insurance policies or other similar coverage required under this section from the county's general fund.

Sec. 51.302(f)

In addition, the Commissioners Court of a county by order may indemnify the District Clerk against personal liability for the loss of county funds or the loss of or damage to personal property if incurred by the Clerk in the performance of official duties if the loss was not the result of the Clerk's negligence or criminal action.

Loc. Gov't Code
Sec. 157.903

C. DEPUTY CLERKS

The District Clerk may appoint Deputy Clerks. Each appointment must be in writing under the hand and seal of the district court and must be recorded in the County Clerk's office. A Deputy Clerk must take the oath prescribed for officers of this state. A Deputy Clerk may perform in the name of the District Clerk all official acts of the office of District Clerk.

Gov't Code
Sec. 51.309(a)

Const.
Art. 16, Sec. 1

The District Clerk shall obtain one or more surety bonds to each Deputy Clerk or other employee. The District Clerk must obtain (1) an individual bond for each deputy clerk and other employee in an amount for each bond that is equal to the District Clerk's bond, or (2) a schedule or blanket surety bond to cover all Deputy Clerks and all other

Gov't Code
Sec. 51.309(b)
Sec. 51.309(c)

employees in a total amount that is equal to the District Clerk's bond. A Deputy Clerk and an employee must be covered by a surety bond on the same conditions as the District Clerk. A bond covering a Deputy Clerk or other employee must be made payable to the Governor for the use and benefit of the District Clerk. Alternatively, the county may self-insure against losses that would have been covered by the bond.

D. CONTINUING EDUCATION

Gov't Code
Sec. 51.605

A Clerk must complete 20 hours of instruction regarding the performance of the Clerk's duties of office before the first anniversary of the date the Clerk assumed those duties. After the first anniversary, the Clerk must complete 20 hours of continuing education courses each calendar year. A clerk may carry over from the current calendar year to the following calendar year not more than 10 hours of completed continuing education courses that exceed the number of hours of completed continuing education courses required under Government Code §51.605(c). **Beginning September 2023**, as part of the 20 hours of initial instruction and of continuing education courses prescribed under §51.605, a district clerk must complete one hour of instruction on impaneling petit and grand juries.

Deputy District Clerks are not required to complete continuing education.

E. NOTARIZING INSTRUMENTS

Gov't Code
Sec. 406.014(a)

A Clerk notarizing instruments for the court does not have to keep a record of the notarization of each instrument, as does a notary public in other situations.

F. DISPLAY OF NOTICES

Gov't Code
Sec. 51.3032

The Clerk may post an official and legal notice by electronic display instead of posting a physical document, in the manner provided for a county clerk by Local Government Code §82.051.

CHAPTER 2

JURY SELECTION AND ASSIGNMENT

A. THE GRAND JURY

The grand jury inquiries into criminal conduct and determines whether criminal charges should be brought against a person. If charges are appropriate, the grand jury issues a bill of indictment.

CCP Art. 20A.051

The bill of indictment initiates most of the criminal cases heard in district court.

The process of selecting grand jurors is established in Code of Criminal Procedure Chapter 19A. In Texas, prospective grand jurors are selected and summoned in the same manner that petit jurors are selected and summoned for the trial of civil cases in the district courts. The grand jurors are randomly selected and summoned from a fair cross section of the population of the area served by the court.

Art. 19A.051
Art. 19A.201

A grand jury is composed of 12 grand jurors and 4 alternates. The alternates serve on the disqualification or unavailability of a grand juror during the term of the grand jury. A grand juror is considered unavailable if he or she is unable to participate fully in the duties of the grand jury due to death, a physical or mental illness, or any other reason the court deems appropriate for dismissing the grand juror.

Art. 19A.053
Art. 19A.201
Art. 19A.252(c)

A party may orally challenge a particular grand juror for any of the following:

Art. 19A.153

- the juror is insane;
- the juror has such defect in the organs of feeling or hearing, or such bodily or mental defect or disease as to render the juror unfit for jury service, or the juror is legally blind and the court in its discretion is not satisfied the juror is fit for jury service in the particular case;
- the juror is a witness in or a target of an investigation of a grand jury;
- the juror served on a petit jury in a former trial of the same alleged conduct or offense that the grand jury is investigating;
- the juror has a bias or prejudice in favor of or against the person accused or suspected of committing an offense that the grand jury is investigating;
- 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 person accused or suspected of committing an offense that the grand jury is investigating as would influence the juror's vote on the present of an indictment;
- the juror is related within the third degree by consanguinity or affinity, as determined under Government Code Chapter 573, to a person accused or suspected of committing an offense that the grand jury is investigating or to a person who is a victim of an offense that the grand jury is investigating;
- the juror has a bias or prejudice against any phase of the law upon which the state is entitled to rely for an indictment;
- the juror is not a qualified juror; or

- the juror is the prosecutor upon an accusation against the person making the challenge.

A grand juror has a duty to recuse himself or herself if the grand juror believes a valid challenge for cause under Code of Criminal Procedure Article 19A.153 exists against him or her. The court must instruct grand jurors on their duty to recuse themselves. A juror who knowingly fails to recuse himself or herself can be held in contempt of court. Persons authorized to be in the grand jury room have a duty to report a juror who fails to recuse himself or herself when a valid challenge for cause exists.

CCP
Art. 19A.253

1. Selection and Summons of Prospective Grand Jurors

The judge determines the number of prospective grand jurors to summons for grand jury service to ensure an adequate number of grand jurors under Article 19A.201.

Art. 19A.051

2. Choosing and Impaneling the Grand Jurors

On the day of impaneling, if there are at least 16 prospective grand jurors in attendance, the judge will examine their qualifications. When less than 16 are found to be in attendance and qualified to serve, the court can order the sheriff **or the clerk of the district court** to summon additional people. When at least 14 persons summoned are present, the court will test the qualifications of the prospective grand jurors. When at least 16 qualified grand jurors are found to be present, the court will select 12 fair and impartial persons as grand jurors and 4 additional persons to serve as alternates who will serve on the disqualification or unavailability of a grand juror during the term of the grand jury. The court will impanel the grand jurors and alternates unless a challenge is made to the array or to a particular person. After the judge impanels the grand jury, he or she will appoint a foreman and administer an oath of office to the grand jurors. Traditionally, the District Clerk makes an entry in the minutes of the court indicating that the grand jury has been impaneled. The Clerk shall list the names of the grand jurors and identify the foreman in the minutes.

Art. 19A.053
Art. 19A.102
Art. 19A.103
Art. 19A.105
Art. 19A.201
Art. 19A.252
Art. 19A.202
Art. 19A.203

Information collected during the grand jury selection process, including a prospective juror's home address, home telephone number, social security number, driver's license number, and other personal information, is confidential and may not be disclosed by the court, court personnel, or prosecuting attorney. However, upon a showing of good cause, the court must disclosure the information to a party to the proceeding.

Art. 19A.104

> ***NOTE:*** *Grand jury lists contain only the names of grand jurors and prospective grand jurors. These lists are not confidential. Neither a Clerk nor a judge has a duty to keep a grand jury list confidential after the Clerk opens the envelope containing the names of prospective grand jurors.*

A.G. Op.
GA-0422 (2006)

3. Other Grand Jury Information

Traditionally, the District Clerk enters the name of each potential grand juror in the grand jury docket which is the official record of grand jurors for each term of court.

If the grand jury returns an indictment, the grand jury, through its foreman, will deliver the indictment to the judge or clerk. At least 9 members of the grand jury must be present when the foreman delivers the indictment. If the defendant is in custody or

CCP
Art. 20A.301
Art. 20A.302
Art. 20A.303

under bond, the fact that the grand jury returned an indictment shall be entered upon the record of the court, noting briefly the style of the criminal action, the file number of the indictment, and the defendant's name. If the defendant is not in custody or under bond upon an indictment's return, the fact that an indictment has returned shall not be entered in the record of the court until the defendant is in custody or under bond.

CCP
Art. 20A.304

After the court sets or denies bail, the Clerk shall issue a capias for each felony indictment presented, unless the attorney representing the State requests a summons or the defendant is in custody or under bond already.

Art. 23.03

The grand jury may adjourn any time it is in session. However, if the adjournment will last more than 3 days, the judge must issue an order authorizing the adjournment. The judge can reconvene the grand jury at any time during the term of the court. The judge must discharge the grand jurors at the end of the term. The Clerk should record, in the court's minutes, all orders adjourning, reconvening, or discharging the grand jury.

Art. 20A.053
Art. 19A.254

Gov't. Code
Sec. 51.303

The court ***must*** excuse any person who does not possess the requisite qualifications to serve as a grand juror. A person is qualified to serve as a grand juror if the person:

CCP
Art. 19A.105

Art. 19A.101

- is at least 18 years of age;
- is a citizen of the United States;
- is a resident of this state, and of the county in which the person is to serve;
- is qualified under the Constitution and laws to vote in the county in which the grand jury is sitting, regardless of whether the person is registered to vote;
- is of sound mind and good moral character;
- is able to read and write;
- has **never** been convicted of misdemeanor theft or a felony;
- is not under indictment or other legal accusation for misdemeanor theft or a felony;
- is not related within the third degree of consanguinity or second degree of affinity, as determined under Government Code Chapter 573, to any person selected to serve or serving on the same grand jury;
- has not served as grand juror in the year before the date on which the term of court for which the person has been selected as grand juror begins; and
- is not a complainant in any matter to be heard by the grand jury during the term of court for which the person has been selected as a grand juror.

The court, in its discretion, ***may*** excuse the following from grand jury service:

Art. 19A.105

- a person older than 70 years;
- a person responsible for the care of a child younger than 18 years;
- a student of a public or private secondary school;
- a person enrolled and in actual attendance at an institution of higher education; and

- any other person the court determines has a reasonable excuse from service.

CCP
Art. 19A.101(b)

On the third business day of each month, the clerk of the district court must prepare a list of persons who in the preceding month were disqualified from serving as a grand juror based on the person's citizenship or indictment or conviction for misdemeanor theft or a felony and send a copy of the list to (1) the secretary of state and (2) the prosecuting attorney for the court to which the grand jurors were summoned for investigating into whether any person made a false claim concerning the person's grand juror qualifications.

B. THE PETIT JURY

1. Compiling the List of Potential Jurors for the Jury Wheel

The jury wheel is reconstituted by using a single source consisting of:

Gov't. Code
Sec. 62.001(a)

- the names of all persons on the current voter registration lists from all the precincts in the county; and
- all names on a current list furnished by the Texas Department of Public Safety (DPS) showing the citizens of the county who hold either a valid Texas driver's license or a valid personal identification card or certificate issued by DPS, and who are not disqualified from jury service due to age, citizenship, or prior misdemeanor theft or felony conviction.

Sec. 62.001(k)

In reconstituting the jury wheel, the Clerk must update jury wheel cards to reflect changes of address noted by the United States Postal Service on returned summons.

Sec. 62.001(c)
Sec. 62.001(d)

Each year not later than the third Tuesday in November, the voter registrar of each county furnishes a current voter registration list from all the precincts in the county to the Secretary of State. This list excludes the names of persons on the suspense list maintained under Election Code §15.081.

Sec. 62.114

The Clerk is required to maintain a list containing the names and address of each person excused or disqualified from jury service because the person is not a resident of the county, and on the third business day of each month, the Clerk must send the previous month's list to the voter registrar of the county and the secretary of state. Upon receiving the list, the voter registrar will notify each person on the list and provide information on how the person may be restored to regular voter registration status.

Sec. 62.001(f)

On or before the first Monday in October of each year, DPS must furnish its list to the Secretary of State.

Sec. 62.001(g)

The Secretary of State combines the lists received from the voter registrar and DPS and sends it to each county on or before December 31 of each year, or as may be required under a plan developed in accordance with Government Code §62.011. If a county has adopted a plan under §62.011, the Clerk or designated officer in charge of the jury selection process must give the Secretary of State 90 days' notice that the combined list is needed. After combining the lists, the Secretary of State will certify the combined list and provide it free of charge to the county.

Sec. 62.001(h)

If the Secretary of State is unable to combine the lists because the voter registrar failed to provide its list, the County Tax Assessor-Collector, Sheriff, County Clerk, and District Clerk shall meet at the county courthouse between January 1 and January 15 of

the following year to reconstitute the jury wheel, provided the county has adopted a plan under §62.011. If the county has adopted a plan, the deadlines in the plan control the reconstitution of the jury wheel. In this event, the Secretary of State will send DPS's list to the voter registrar who will combine and certify the lists for use as the juror source.

Instead of using the method described in Government Code §62.001(c) – (h), the Commissioners Court may contract with another governmental unit or private entity or person to combine the lists.

Gov't Code
Sec. 62.001(i)

In a county with a population of 250,000 or more, the names of persons who are summoned for jury service in the county and who appear for service must be removed from the jury wheel and may not be maintained in the jury wheel until the third anniversary of the date the person appeared for service or until the next date the jury wheel is reconstituted, whichever date occurs earlier, even if person did not serve on a jury as a result of the summons.

Sec. 62.001(j)

When the jury wheel is reconstituted, the Clerk must transfer the names to small cards and place the cards in the jury wheel. Many larger counties have discontinued the use of the jury wheel and keep the jury pool on a computer storage device instead. Counties using computerized jury selection must adopt a jury plan that requires the court to use the same list for the selection of persons for jury service until the list is exhausted or for a period of time specified by the plan.

Sec. 62.002

Sec. 62.003

2. Compiling the List of Potential Jurors by Electronic Means

Upon the recommendation of a majority of the district and criminal district judges in a county, the Commissioners Court of that county may adopt a plan for selection of potential jurors through electronic or mechanical equipment instead of drawing names from a jury wheel.

Sec. 62.011(a)

If adopted, the plan must:

Sec. 62.011(b)

- be in written form;
- specify that the source of names of person for jury service is the same as that provided for the selection of potential jurors by use of the jury wheel and that the names of persons exempted from jury service may not be included in the source;
- provide a fair, impartial, and objective method of selecting names of persons for jury service with the aid of electronic or mechanical equipment;
- designate the district clerk, or in a county with a population of at least 1.7 million and in which more than 70% of the population resides in a single municipality, a bailiff appointed in accordance with Government Code §62.019, as the officer in charge of the selection process and define the officer's duties; and
- provide that the method of selection either will use the same record of names for the selection of persons for jury service until that record is exhausted or will use the same record of names for a period of time specified by the plan.

The provisions of Government Code Chapter 62 that apply to the selection of potential jurors by the use of a jury wheel do not apply in a county that adopts a jury plan requiring the use of electronic or mechanic equipment to select potential jurors.

Gov't Code
Sec. 62.011(c)

3. Exemptions from Jury Service and Removal of Names from Jury Wheel or Pool

A person qualified to serve as a juror may establish an exemption from jury service if the person:

Sec. 62.106

- is over 75 years of age;
- has legal custody of a child under the age of 12 years if jury service by that person would necessitate leaving the child without adequate supervision;
- is a student of a public or private secondary school;
- is a person enrolled and in actual attendance at an institution of higher education;
- is summoned for service in a county with a population of at least 200,000 and has served as a petit juror during the preceding 24-month period (or the period of time specified in a plan for the electronic selection of jurors under Government Code §62.011);
- is an officer or an employee of the Senate, the House of Representatives, or any department, commission, board, office, or other agency in the legislative branch of state government;
- is the primary caretaker of a person who is unable to care for himself or herself;
- is summoned for service in a county with a population of at least 250,000 and the person has served as a petit juror in the county during the three-year period preceding the date the person is to appear for jury service. This exemption does not apply if the jury wheel in the county has been reconstituted after the date the person served as a petit juror; or
- is a member of the United States military forces serving on active duty and deployed to a location away from the person's home station and out of the person's county of residence.

A person who is older than 75 years of age may claim a permanent exemption by filing a signed statement with the Clerk or voter registrar of the county declaring the person's intent to claim a permanent exemption based on age. Upon receiving the statement, the Clerk must deliver a copy of it to the voter registrar of the county and remove the person's name from the jury wheel or source of names. A person may rescind a permanent exemption based on age at any time by filing a signed requesting to do so with the voter registrar of the county. The signed statement or request for a permanent exemption may not be combined with the Jury Summons. The signed statement or request must be on a separate document.

Sec. 62.107
Sec. 62.108

The judge of a district court by order may permanently or for a specified period exempt from jury service a person with a physical or mental impairment or an inability

Sec. 62.109

to comprehend or communicate in the English language. A person requesting an exemption must submit to the court an affidavit that states the person's name and address and the reason for and duration of the requested exemption. If the person is requesting an exemption due to physical or mental impairment, the person must attach to the affidavit a statement from a physician. The affidavit and physician's statement may be submitted to the court at the time the person is summoned for jury service or at any other time. Three model affidavit forms are included below.

- Form II-1—Request for Exemption due to Physical Impairment
- Form II-2—Request for Exemption due to Mental Impairment
- Form II-3—Request for Exemption due to English Language Inability

Promptly upon receipt of an order from the district judge exempting such person (Form II-4), the District Clerk shall promptly notify the voter registrar of the county of the name and address of each person permanently exempted. The person shall not be summoned for jury service during the period for which the person is exempt, and the person's name shall not be placed in the jury wheel or otherwise used in preparing the record of names from which a jury list is selected during the exemption period.

Gov't Code
Sec. 62.0145
Sec. 62.0146

If a written summons for jury service sent by a clerk, sheriff, constable, or bailiff is undeliverable, the Clerk or bailiff for a general panel, whichever is appropriate, may remove the person's card from the jury wheel or name from the source of names of persons for jury service. But, if the summons is returned with a notation from the United States Postal Service of a change of address, the Clerk can update the jury wheel card to reflect the person's new address.

4. Qualifications of Jurors

Sec. 62.102
Sec. 62.103

A person is qualified to serve as a juror if he or she:

- is at least 18 years of age;
- is a citizen of the United States;
- is a resident of this state and of the county in which the person is to serve as a juror;
- is qualified under the Constitution and laws to vote in the county in which he or she is to serve as a juror;

  ***Note**: The person does not have to be registered to vote in order to be "qualified" as a juror.*

- is of sound mind and good moral character;
- is able to read and write;

  ***Note**: The court may suspend this qualification.*

- has not served as a juror for six days during the preceding three months in the county court or during the preceding six months in the district court;

  ***Note**: The court may suspend this qualification.*

- has not been convicted of misdemeanor theft or a felony; and

- is not under indictment or other legal accusation for misdemeanor theft or a felony.

The law requires the Clerk to maintain a list of the name and address of each person who is excused or disqualified from jury service because the person is not a citizen of the United States, and on the third business day of each month, the Clerk must send a copy of the list to the voter registrar of the county, the secretary of state, and the county or district attorney for an investigation of whether the person committed an offense under Election Code §13.007 or another law. This list should not be combined with any other information provided to the voter registrar, such as the non-county resident list required to be provided under Government Code §62.114, and should be clearly marked to indicate the list contains individuals identifying as non-U.S. citizens.

Gov't Code
Secs. 62.113

> ***Note****: The Secretary of State has indicated that some counties are combining the non-U.S. citizens list with the county resident list provided under Government Code §62.114. Counties must submit separate lists to avoid confusion, as each list has its own workflow and timelines for potential cancellation.* ***The best practice is to create two separate, clearly identifiable lists.***

Government Code §62.0132(g) provides that the information contained in a completed written jury summons questionnaire, other than information that is related to §62.102(8) or §62.102(9) (Misdemeanor Theft or Felon responses), may be shared with the voter registrar of a county in connection with any matter of voter registration or the administration of elections. This would include indications that the prospective juror is not yet 18 years of age, is deceased, or that the summons was returned with or without a forwarding address. The registrar should never be given possession of the questionnaire. The Clerk of the Court is only authorized to provide information (other than misdemeanor theft or felon information) to the registrar.

Sec. 62.0132

5. Postponement of Jury Service

A court or the court's designee may hear any reasonable sworn excuse of a prospective juror, including any claim of an exemption or a lack of qualification, and if the excuse is considered sufficient, the court shall, or the court's designee may, release the person from jury service entirely or until another day of the term, as appropriate.

Sec. 62.110

A person summoned for jury service may request a postponement of his or her initial appearance for jury service by contacting the Clerk of the court in person, in writing, or by telephone before the appearance date. The Clerk shall grant the postponement if no other postponement has been granted during the year preceding the appearance date AND a substitute date on which the person will appear has been set within six months of the original appearance date.

Sec. 62.0143(a)
Sec. 62.0143(b)

A subsequent postponement may be granted, but only in the event of an unanticipated, extreme emergency (*e.g.*, a death in the family or a natural disaster). A substitute appearance date within six months must be set before a second postponement will be granted.

Sec. 62.0143(c)

It should be noted that Government Code §62.0144 (Postponement of Jury Service in Certain Counties) applies to counties with a population of 1.4 million or more and which have at least two municipalities that each have a population of 300,00 or more.

Sec. 62.0144

Government Code §62.0147 (Means of Postponement of Jury Service in Certain Counties) applies to counties that have a council of judges composed of the judges of the district courts and county courts at law and that have a designated jury duty court that addresses administrative matters related to jury service paid for by the county.

Gov't Code
Sec. 62.0147

6. Selection and Summons for Jury Service

One of the principal duties of the District Clerk is the selection and summons of potential jurors for jury service. The procedure for doing so is as follows.

If the case is heard in a justice, county court at law, or district court in a county that uses electronic or mechanical equipment to select prospective jurors, the appropriate number of names are drawn according to the method adopted in the jury plan.

Sec. 62.011

If the case is heard in a justice, county court at law, or district court in a county that uses a jury wheel to manually pull a jury, the District Clerk and the sheriff or any constable of the county draw the names of prospective jurors from the jury wheel in the presence and under the direction of the district judge after the wheel has been turned to thoroughly mix the jury wheel cards. The names are drawn one by one, if so directed by the judge, and at least 10 days before the first day of the term of the court. The Clerk and sheriff or constable shall draw as many jury lists as are required for the term of court, and shall record the names that are drawn on as many lists as the judge in whose presence the names are drawn considers as necessary to ensure an adequate number of jurors for the term.

Sec. 62.004(a)

The District Clerk prepares a list of jurors selected (Form II-5) and seals it in an envelope until the judge notifies the District Clerk of the date the prospective jurors are to be summoned. Upon such notification, the District Clerk shall immediately note on the list the date the jurors are to be summoned and must either (1) summon the prospective jurors directly in the same manner as sheriff or constable would, or, (2) deliver the list to the sheriff for a district court jury. The clerk or the sheriff, as applicable, shall then immediately notify the jurors on the list to appear for jury service on the date designated by the judge. Prospective jurors may not be summoned to appear for jury service on the date of the general election for state and county officers.

Sec. 62.006
Sec. 62.007
Sec. 62.008
Sec. 62.012
Sec. 62.013
Sec. 62.0125

In counties with a single district court and a single county court at law with concurrent jurisdiction, the judges may agree to a general panel of jurors for service in both courts. The names are drawn from the jury wheel, either weekly or in advance as determined by the judges. The clerk or sheriff notifies persons whose names are drawn to appear before the district judge for jury service. Once impaneled, the jurors constitute a general panel and may be used interchangeably by both courts. General panels with interchangeable jurors may not be used in a capital case or a mental health commitment case;

Sec. 62.0175

A plan authorized by a Commissioners Court under Government Code §62.011 may allow prospective jurors to appear in response to a summons by: (1) contacting a designated officer by computer; (2) calling an automated telephone system; or (3) appearing before the court in person. Additionally, the plan may allow prospective jurors and the county officer responsible for summoning prospective jurors to exchange information by computer or an automated telephone system, including the exchange of

Sec. 62.0111

information regarding a prospective juror's qualifications, exemptions, requests for postponement or excuses, criminal history, and email address.

The District Clerk must be the officer in charge of the selection process, if the county uses interchangeable juries and electronic or mechanical equipment to select prospective jurors.

In many counties, the sheriff or constable is responsible for notifying persons who must appear for jury service. The sheriff or constable will notify each person verbally or by a written summons sent by first class mail or registered or certified mail, with return receipt requested, to the address on the jury wheel card or current voter registration list for the county. However, in a county with at least nine district courts, the district judges may direct the sheriff or bailiff in charge to summons prospective jurors. The clerk, sheriff, or bailiff may summons the prospective jurors verbally in person, by registered mail, by ordinary mail, or by any other method the district judges choose. Prospective jurors summoned for service on a general jury panel can serve as jurors in civil and criminal cases.

AG Op.
DM-34 (1991)

Gov't Code
Sec. 62.013
Sec. 62.014

7. Model Jury Summons/Questionnaire — Use Is Required

The Office of Court Administration (OCA) is required to develop and maintain a model for a uniform written jury summons and juror questionnaire. The Legislature requires all written jury summonses and juror questionnaires to conform to the model or the list of minimum requirements developed by OCA. All written jury summonses must include a copy of the model questionnaire or the electronic address of the court's website from which the questionnaire may be easily printed. If the district and criminal district judges of a county have adopted a plan for an electronic jury selection method, the county may allow a person to complete and submit a jury summons questionnaire on the court's Internet website.

Sec. 62.0131
Sec. 62.0132

OCA's model summons and juror questionnaire are located on the agency's website at https://www.txcourts.gov/rules-forms/forms.aspx.

8. Selection of Jury Panel

On the day that jurors appear for jury service, the judge, if jury trials have been set, shall select from the names on the jury lists a sufficient number of qualified jurors to serve on the jury panel. If the court at any time does not have a sufficient number of prospective jurors whose names are on the jury lists present and who are not excused by the judge from jury service, the judge must order the clerk, sheriff, or constable to summon additional prospective jurors to provide the requisite number of jurors for the panel. The names of the additional prospective jurors shall be drawn from the jury wheel under orders of the judge, and the additional jurors shall be discharged when their services are no longer required. The judge may order all or part of a jury panel to stand adjourned from jury service until a subsequent date in the term, but a juror may not receive compensation for the time that the juror stands adjourned.

Sec. 62.015

When impaneling the jury panel, the following procedures are required:

- All jurors summoned are gathered in the court or jury room for examination by the judge and the granting of excuses and exemptions from jury duty.

- The Clerk brings the jury cards (or a list of petit jurors) drawn from the wheel to the court or jury room and removes the names of absent jurors and those exempted or excused from duty.

- The exact size of the jury list may vary with the type of case. For non-capital criminal cases, at least 32 names should be drawn for each case (12 for the jury and 10 for each attorney to strike). For civil cases, at least 24 names should be drawn (12 for the jury and 6 for each attorney to strike). The Clerk may wish to add a few more names to allow for those who may be excused by the judge.

CCP *Art. 35.11*

TRCP *224*

- The Clerk must randomly select the jurors by a computer or other process of random selection and write or print the names, in the order selected, on the jury list. A copy of each jury list shall be prepared for the parties. (Form II-6; Form II-7). In addition to juror names, the list should contain the file number and style of the case. In counties using the jury wheel, jury cards are placed in a box and mixed well. The Clerk will draw the names of the jurors in the presence of the court.

CCP *Art. 35.11*

TRCP *224*

Before the parties begin examining the jurors, the jurors shall be given the following oath:

In Civil Cases:

TRCP *226*

> "You, and each of you, do solemnly swear that you will true answers give to all questions propounded to you concerning your qualifications as a juror, so help you God."

In Criminal Cases:

CCP *Art. 35.02*

> "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."

The final jury list will consist of the first 12 (or more, if alternate jurors are chosen) names on the jury list to survive challenges and strikes by the attorneys. This final list is filed in the case file folder as a part of the permanent record. (Form II-8).

Art. 35.26

TRCP *234*

The 12 jurors and any alternate jurors are officially impaneled upon the administration of the following oath:

In Civil Cases:

TRCP *236*

> "You, and each of you, do solemnly swear that in all cases between parties which shall be to you submitted, you will a true verdict render, according to the law, as it may be given you in charge by the court, and to the evidence submitted to you under the rulings of the court. So help you God."

In Criminal Cases:

CCP *Art. 35.22*

> "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."

CCP
Art. 33.011(b)

In criminal cases, alternate jurors who do not replace a regular juror shall be discharged after the jury has rendered a verdict on the guilt or innocence of the defendant and, if applicable, the amount of punishment.

Gov't **Code**
Sec. 62.021

In a county with a population of 2.5 million or more, a prospective juror removed from a jury panel for cause, by peremptory challenge, or for any other reason, must be dismissed from jury service. After dismissal, the person may not be placed on another jury panel until the person's name is returned to the jury wheel and drawn again for jury service.

9. Juror Reimbursement

Sec. 61.001(a);
Sec. 61.001(b)

Persons who report for jury service in response to a summons are entitled to receive as reimbursement for their travel and other expenses an amount of not less than $20 for the first day or fraction of a first day, and not less than $58 for each day or fraction of a day thereafter. The Commissioners Court sets the actual reimbursement rates.

Sec. 61.0015

The State reimburses a county $14 a day for the person who reports for jury services in response to the process of a court for the first day or fraction thereof, and $52 a day for the person who reports for jury services in response to the process of a court for each day or fraction of day thereafter. The Commissioners Court entitled to this reimbursement may file a claim for reimbursement with the Comptroller. The District Clerk may have to provide the county auditor or treasurer with a report concerning jury service upon which the claim for reimbursement is based.

10. Donation of Juror Pay

Sec. 61.003

Each person who reports for jury service must be provided the opportunity, either through a written form or electronically, to direct the county treasurer or a designated county employee to donate all, a specific amount designed by the person, or the entire amount divided among funds, programs, and county entities listed, of the person's daily reimbursement to:

- the compensation to victims of crime fund under Subchapter J, Chapter 56B, Code of Criminal Procedure;
- the child welfare, child protective services, or child services board of the county appointed under Family Code §264.005 that serves abused and neglected children;
- any program selected by the Commissioners Court that is operated by a public or private nonprofit organization and that provides shelter and services to victims of family violence;
- any other program approved by the Commissioners Court of the county, including a program established under Code of Criminal Procedure Article 56A.205 that offers psychological counseling in criminal cases involving graphic evidence or testimony;
- a veterans treatment court program established by the commissioners court as provided by Government Code Chapter 124; or

- a veterans county service office established by the commissioners court as provided by Government Code Chapter 434, Subchapter B.

The county treasurer or a designated county employee must collect any information provided under Government Code §61.003(a). A sample "Juror Donation Form" is located here (Form II-9). The Clerk should modify the form to reflect the donation options or programs available in the county of original jurisdiction. In most cases, this will be the Clerk's county, unless there has been a change of venue.

11. Juror Excuses

Normally, the court hears and determines excuses offered for not serving as a juror, including any claim of an exemption or a lack of qualification, and if the court considers the excuse sufficient, the court will discharge the prospective juror or postpone the prospective juror's service to a later date. However, in counties with an approved plan, the court's designee hears and determines the excuses, including claims of exemption and lack of qualification. The designee may discharge the prospective juror or postpone the juror's service if the designee considers the excuse sufficient and the juror submits to the designee a statement of the ground of the excuse, exemption, or lack of qualification. Neither the court nor the court's designee may excuse a prospective juror for an economic reason unless each party of record is present and approves the release of the juror for that reason.

CCP *Art. 35.03*

Gov't Code *Sec. 62.110*

If a prospective juror is required to appear at a court proceeding on a religious holiday observed by the prospective juror, the court or the court's designee shall release the prospective juror from jury service entirely or until another day of the term.

Sec. 62.112

12. Uniform Jury Handbook

The State Bar of Texas publishes a uniform jury handbook that:

- informs jurors in lay terminology of their duties and responsibilities as a juror;
- explains basic trial procedures and legal terminology; and
- provides other practical information relating to jury service.

Sec. 23.202

A Spanish language version of the handbook exists.

The handbook is a public document and is distributed by the Bar to each trial court in the state in sufficient numbers for the Clerk to provide each juror in a civil or criminal case with a copy of the handbook to read before the juror begins jury service.

Sec. 23.203

The handbook can be viewed on the State Bar of Texas website at this link: http://www.texasbar.com/AM/Template.cfm?Section=Jury_Information&Template=/CM/ContentDisplay.cfm&ContentID=23549. A copy of the publication may be obtained by calling the State Bar at 800/204-2222, ext. 2610.

13. Jury Fees in Civil Cases

Senate Bill 41 (87R) repealed, among many fees, the $40 jury fee effective January 1, 2022. However, the $10 jury fee required by TRCP 216 remains in place, and the clerk can collect the $10 fee when a written jury demand is made. For additional information on current fees and timing around the effective date of SB 41, please see the chart for

TRCP *216*

Civil Filing Fees in District Courts on the Office of Court Administration website. The $10 fee must be paid not less than 30 days before the date set for trial.

14. Personal Information About Jurors

CCP
Art. 35.29

Information collected by the court or prosecuting attorney during the jury selection process about a person who serves as a juror, including the juror's home address, home telephone number, social security number, driver's license number, and other personal information, is confidential and may not be disclosed by the Clerk, court, the prosecuting attorney, the defense counsel, or any court personnel. However, such information may be disclosed to a party in the trial or on application of a bona fide member of the news media acting in such capacity if the court permits the disclosure. The defense counsel may disclose the information to successor counsel.

15. Compilation of List of Convicted Persons

Gov't Code
Sec. 62.115

The clerk of the court shall maintain a list of the name and address of each person who is disqualified under Subchapter B, Chapter 62, Government Code from jury service because the person was convicted of misdemeanor theft or a felony.

A person who was convicted of misdemeanor theft or a felony shall be permanently disqualified from serving as a juror. A person is exempt from this section if the person:

- was placed on deferred adjudication and received a dismissal and discharge in accordance with Article 42A.111, Code of Criminal Procedure;
- was placed on community supervision and the period of community supervision was terminated early under Article 42A.701, Code of Criminal Procedure; or
- was pardoned or has had the person's civil rights restored.

The district clerk may remove from the jury wheel the jury wheel card for the person whose name appears on the list. On the third business day of each month, the clerk shall send to the secretary of state a copy of the list of persons disqualified because of a conviction of misdemeanor theft or a felony in the preceding month.

CHAPTER 3

CASE PROCESSING AND COSTS OF COURT

A. JUDICIAL POWER

The judicial power of this State is vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law. The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts.

Const.
Art. 5, Sec. 1

The district court is the highest level of trial court of original jurisdiction in the Texas judicial system. In general, the district court will hear the more serious criminal cases, the more serious civil cases, and most cases dealing with juveniles and domestic relations.

CCP
Art. 4.05

The role of the District Clerk in supporting the court system is critical to its smooth operation. Thus, the importance of proper and competent court support cannot be overstated.

B. DISTRICT COURT JURISDICTION

District court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by the Texas Constitution or other law on some other court, tribunal, or administrative body. District court judges have the power to issue writs necessary to enforce their jurisdiction. The district court has appellate jurisdiction and general supervisory control over the county commissioners court, with such exceptions and under such regulations as may be prescribed by law.

Const.
Art. 5, Sec. 8

District courts are established by the State legislature. These courts have both civil and criminal jurisdiction.

The Texas Constitution requires that each county elect a District Clerk, who shall hold office for four years, subject to removal by information, or by indictment of a grand jury, and conviction of a petit jury. In case of vacancy, the Judge of the District Court shall appoint a Clerk, who shall hold the office until it can be filled by election.

Art. 5, Sec. 9

1. Criminal Jurisdiction

Districts court and criminal district courts have original jurisdiction of all felonies, of all misdemeanor cases involving official misconduct, and of misdemeanor cases transferred to the district court under Code of Criminal Procedure Article 4.17.

CCP
Art. 4.05

In counties where the judge of a county court is not a licensed attorney, on a plea of not guilty to a misdemeanor offense punishable by confinement, the state or defendant may request to have the case transferred to a district court or county court at law with a judge who is a licensed attorney. If such a case is transferred to the district court, the District Clerk will process the misdemeanor case. In this event, the District Clerk should refer to the chapter entitled “Supporting the Criminal Courts” in the County Clerk Procedure Manual.

Art. 4.17

Felonies are classified into five categories: (1) capital felonies; (2) first degree felonies**;** (3) second degree felonies; (4) third degree felonies; and (5) state jail felonies. An offense designated a felony in the Penal Code without specification as to category is a state jail felony.

Penal Code
Sec. 12.04

Punishment for felonies includes imprisonment, confinement in a state jail facility, and, under certain circumstances, death by lethal injection. The specific punishment for each felony classification is enumerated in Penal Code Chapter 12.

2. Civil Jurisdiction

Civil cases, unlike criminal cases, involve private disputes between persons or organizations. The purpose of most civil cases is to obtain a judgment for money, but civil cases are also filed to enforce a civil remedy or to compel or enjoin some action.

Const.
Art. 5, Sec. 8

Gov't Code
Sec. 24.007(b)
Sec. 24.008
Sec. 26.042(d)
Sec. 25.0003(c)(1)

In general, the district court has original jurisdiction in any civil matter in which the amount in controversy is more than $500, exclusive of interest, unless jurisdiction has been legally conferred on some other court, tribune, or administrative body. District courts may hear and determine any cause that is cognizable by courts of law or equity and may grant any relief that could be granted by either of these courts. District courts have concurrent jurisdiction with constitutional county courts when the matter in controversy exceeds $500 but is less than $5,000, excluding interest, and with statutory county courts (a.k.a. county courts at law) when the amount in controversy exceeds $500 but is less than $250,000, excluding interest, punitive damages or penalties, attorney fees, and courts costs. In some cases, certain statutory county courts have jurisdiction in cases that exceed the general $250,000 ceiling. In instances of concurrent jurisdiction, the plaintiff has the option to file in any court with jurisdiction.

District courts will hear probate cases typically only when the matter is contested. Other kinds of civil cases commonly filed in district court include:

- Debt and sequestration;
- Suits for damages;
- Injunctions;
- Title and possession;
- Removal of cloud on title to real property;
- Breach of warranty;
- Promissory note;
- Suit on contract;
- Appeals from administrative law decisions of State agencies, commissions, and boards;
- Partition suits;
- Will contests;
- Suit on insurance policy; and
- Bond forfeiture.

3. Domestic Relations

The district court is granted jurisdiction over most family law matters and Juvenile Law. See Chapter 10 (Family Law) and Chapter 11 (Juvenile Law) for more information.

4. Specialized District Courts

While all district courts are courts of general trial jurisdiction, legislation creating some district courts specifies that they hear only certain kinds of cases or are to give preference to certain cases. These courts generally will be required to give preference to family, criminal, or civil law matters.

In some counties with more than one district court, the courts may specialize by agreement of the judges even though they are all courts of general jurisdiction. In such cases, the Clerks should be familiar with the specialization of the various courts to ensure that cases are filed properly.

Gov't Code *Ch. 24, Subchs. B - E*

C. CRIMINAL PROCESS

1. Examining Trial

The accused in any felony case has the right to an examining trial before indictment in the county having jurisdiction of the offense. The purpose of the examining trial is to determine whether there is probable cause to charge the accused with an offense. Examining trials are conducted by magistrates. Examining trials, however, are not commonly used in Texas.

CCP *Art. 16.01*

After an examining trial, if the magistrate determines that probable cause for prosecution exists, the arresting officer will swear out an affidavit (complaint) alleging that a crime has been committed. The magistrate will also determine if the accused is entitled to bail and will set the amount.

The magistrate will then forward the affidavit, the warrant, and the bond (if any) to the Clerk who maintains a file for examining trial cases. The examining trial files may be used by the district attorney in preparing an indictment against the defendant. After indictment, the accused no longer has a right to an examining trial.

2. Initial Proceedings

Two types of charging instrument are used to bring a criminal case before the district court: (1) indictment by the grand jury and (2) information filed by the district attorney. A third method is by transfer from another court.

The most common method of bringing a case before the district court is by an indictment issued by a grand jury. The district attorney prepares a bill of indictment for any case which he or she intends to prosecute. The grand jury will examine each bill and determine whether it is a "true" bill or a "no" bill. No bills are not prosecuted. True bills are forwarded to the District Clerk to be filed as criminal cases. The grand jury may also return a direct indictment (not prepared by the district attorney) as a product of its own investigation; however, this is not a common practice.

Art. 21.01

The Code of Criminal Procedure provides for waiver of indictment for any offense other than a capital felony. A defendant who has been accused of a felony but who has not been indicted may waive such indictment in hopes of going to trial at an earlier date. Because the defendant cannot get a trial before indictment, he may wish to sign the waiver rather than wait until the grand jury meets again. The waiver is often (but not necessarily) accompanied by a plea of guilty.

Art. 1.141

Occasionally, a defendant will request a change of venue, or the judge on his own motion may order a change of venue to another county. If the judge grants the change, the

judge will issue an order transferring the case to another county. If the court orders a change of venue, the clerk of the court in which the prosecution is pending shall prepare and transmit certain documents to the clerk of the court to which venue is changed. No additional indictment, information, or waiver is necessary.

CCP
Art. 31.01- 31.09, effective until 1-1-2025

3. Initial Filing Procedures

Before a case may be heard in district court, it must be filed for record in the District Clerk's office. The following initial procedures must be completed before proceedings can begin.

- If the defendant is in custody or under bond, the fact of a presentment of indictment by a grand jury is entered upon the minutes of the court, noting briefly the style of the criminal action, the file number of the indictment, and the defendant's name. *Art. 20A.304(a)*

- If the defendant is not in custody or under bond at the time of the presentment of the indictment, the entry in the minutes of the court relating to said indictment is delayed until such time as the capias (arrest warrant) is served and the defendant is placed in custody or under bond. The indictment may not be made public until the defendant is placed in custody or under bond. *Art. 20A.304(b)*

- If an information is to be filed rather than an indictment, an affidavit must be made by a credible person charging the defendant with an offense. The affidavit may be sworn to before the district or county attorney, or any officer authorized by law to administer oaths. The affidavit must be filed with the information. The Clerk can then issue criminal processes. *Art. 21.20* *Art. 21.22*

- On transfers to inferior courts, the Clerk delivers the indictments in all cases transferred, together with all papers related to each case, to the proper court or justice, as directed in the order of transfer. The records are to be accompanied by a certified copy of all proceedings taken in the district court before the transfer and by a bill of the costs that have accrued in district court. The costs will be taxed in the court in which the case is tried, in event of a conviction. *Art. 21.28*

- A capias is issued by the Clerk upon each felony indictment, after bail has been set or denied by the judge. (See "Issuance of Process," Chapter 4.) The capias is given to the sheriff in the county where the defendant resides for execution and return, but it may be issued to as many counties as the district attorney directs. A capias need not issue for a defendant in custody or under bond. *Art. 23.03*

- Upon the request of the attorney representing the State, a summons instead of a capias is issued. (A summons must contain specific language in both English and Spanish.) If the defendant then fails to appear in response to the summons, a capias must be issued.

- The Clerk must indicate on the capias the amount of bail that the court has required. *Art. 23.12*

- The Clerk also provides the sheriff a certified copy of the indictment and precept to serve the indictment to accompany the capias. This will officially inform the defendant as to the charges brought against him.

***NOTE**: The Clerk must keep a record of criminal cases. (See "Record of* *Art. 33.07*

Criminal Actions," below.)

The case is now filed in the district court and is ready for further proceedings. The Clerk's role is a passive one at this stage of the process. The next action will be triggered by the prosecutor, defense attorney, or judge. Some cases will be filed and disposed of in the same day, while others will stay pending for indefinite periods of time.

4. Post-Filing Procedures

a. General Provisions

Gov't Code
Sec. 51.303

As a case moves toward disposition, numerous and varied documents and instruments will be filed as a part of the permanent record.

The Clerk must file, record, and safely preserve any item that has received the court's consideration. A list of common instruments include:

- Order of arraignment
- Waiver of jury trial
- Application for community supervision
- Stipulation of testimony
- Judgment
- Order granting community supervision
- Order of dismissal
- Motion by counsel

AG Op.
JM-373 (1985)

AG L.O.
97-082 (1997)

***NOTE**: In criminal cases, a judge may "sign" a document by allowing another person to place a mark on a document that constitutes the judge's approval of a document, only if the other person does so in the presence of and under the direction of the judge. A judge may also "sign" an arrest warrant by personally entering a computer graphic of his or her signature on the warrant in a computer system. According to the Statewide Rules Governing Electronic Filing in Criminal Cases (Texas Supreme Court Order, Misc. Docket No. 17-9039 (April 27, 2017); Texas Court of Criminal Apps. Order, Misc. Docket No. 17-005 (April 24, 2017)), a criminal judge may electronically sign an order by applying his or her electronic signature to the order. Judges are not required to electronically sign orders.*

b. Filing and Disposition Duties

Gov't Code
Sec. 51.303

CCP
Art. 2.21,
effective until 1-1-2025
Art. 33.07,
effective until 1-1-2025

Proper filing procedures for all documents presented to the Clerk are as follows:

- File-mark the document to show the date and time received. Note the case number on the document if it does not already appear.
- Accept and file electronic documents and digital multimedia evidence from the defendant if the Clerk accepts such documents and evidence from an attorney representing the state.

- If the document is an order, judgment, or dismissal, record it in the criminal minutes and note the volume and page number(s) in the index, file record, and the judge's docket sheet.
- Place the document in the permanent file folder and note the type of document and the date filed on the outside of the jacket or folder.

CCP
Art. 2.21(d), effective until 1-1-2025
Art. 2.21(e), effective until 1-1-2025

It is the Clerk's duty to dispose of all eligible exhibits at the conclusion of a criminal proceeding. Eligible exhibits are those filed with the Clerk except:

- Firearms and contraband
- Exhibits that the court has ordered to be returned to its owner
- Exhibits that are also exhibits in another pending criminal action

Art. 2.21(e), effective until 1-1-2025

The Clerk may dispose of exhibits on or after the first anniversary of the date on which a conviction becomes final in the case, if the case is a misdemeanor or a felony for which the sentence imposed by the court is 5 years or less. The Clerk must wait until the second anniversary of the date on which the conviction becomes final when the case is a non-capital felony for which the sentence is greater than 5 years to dispose of the exhibits. The Clerk may dispose of an eligible exhibit on or after the first anniversary of the date of the acquittal of a defendant or on or after the first anniversary of the date of the death of a defendant.

Art. 2.21(f), effective until 1-1-2025
Art. 2.21(f-1), effective until 1-1-2025

Subject to Code of Criminal Procedure Article 2.21(g), (h), (i), and (j), a Clerk may dispose of an eligible exhibit or may deliver the eligible exhibit to the county purchasing agent for disposal as surplus or salvage property under Local Government Code §263.152 if on the date provided by Subsection (e) the Clerk has not received a request for the exhibit from the attorneys in the case. Notwithstanding Local Government Code §263.156 or any other law, the commissioners court shall remit 50% of any proceeds of the disposal of an eligible exhibit as surplus or salvage property as described by Article 2.21(f), less the reasonable expense of keeping the exhibit before disposal and the costs of that disposal, to each of the following: (1) the county treasury, to be used only to defray the costs incurred by the District Clerk of the county for the management, maintenance, or destruction of eligible exhibits in the county and (2) the state treasury to the credit of the compensation to victims of crime fund established under Chapter 56B, Subchapter J.

Art. 2.21(g), effective until 1-1-2025
Art. 2.21(h), effective until 1-1-2025

A Clerk in a county with a population of less than 2.5 million must provide written notice by mail to the attorneys in the case. The notice must describe the eligible exhibit; give the name and address of the court holding the exhibit; and state that the eligible exhibit will be disposed of unless a written request is received by the Clerk before the 31st day after the date of the notice.

Art. 2.21(i), effective until 1-1-2025
Art. 2.21(j), effective until 1-1-2025

If a request for the exhibit is not received before the 31st day after the date of notice, the Clerk may dispose of the eligible exhibit as surplus or salvage property under Local Government Code §263.152 or the Clerk may deliver the exhibit to the county purchasing agent for disposal under that section. If a timely request is received, the Clerk must deliver the eligible exhibit to the person making the request, but only if the court determines that the requestor is the owner of the exhibit.

Art. 2.21(b)(c), effective until 1-1-2025

Firearms and contraband are not eligible exhibits. At any time during or after a criminal proceeding in which a firearm or contraband was admitted as an exhibited, the court reporter has the responsibility of releasing the firearm or contraband for safekeeping to the sheriff **or**, if in a county of 500,000 or more people, to the law enforcement agency that collected, seized, took possession of, or produced the firearm or contraband. The sheriff or law enforcement agency must receive and hold the firearm or contraband and release it only

to the person or persons authorized by the court or dispose of it in the manner provide by Code of Criminal Procedure Chapter 18.

c. Felony Judgments

The Office of Court Administration (OCA) has promulgated felony judgment forms and courts are required by law to use the forms when entering a felony judgment. The forms are listed below and, along with a list containing affirmative findings and special orders, can be found at http://www.txcourts.gov/rules-forms/forms.aspx. The website also contains instructions on how to complete the forms.

CCP Art. 42.01, Sec. 4

Art. 42.09, Sec. 8(a)(1) Sec. 8(a)(2)

1. Judgment of Acquittal by Court
2. Judgment of Acquittal by Jury
3. Judgment of Conviction by Court
4. Judgment of Conviction by Jury
5. Judgment of Conviction (Capital Murder-State Seeks Death)
6. Judgment of Conviction (Sex Offender- Capital Case Death)
7. Order of Deferred Adjudication
8. Judgment Adjudicating Guilt
9. Judgment Revoking Community Supervision

d. Fingerprint on Judgment, Order of Probation, or Docket Sheet

A defendant who is convicted of a felony or misdemeanor offense that is punishable by confinement in jail or prison must place a thumbprint or fingerprint on the judgment or the docket sheet in the case. A defendant who is placed on deferred adjudication community supervision under Code of Criminal Procedure Chapter 42A, Subchapter C for an offense punishable by confinement in jail or prison must also place a thumbprint or fingerprint on the order placing the defendant on deferred adjudication. The thumbprint or fingerprint is taken by the Clerk, bailiff, or person qualified to take fingerprints using the ink-rolled print method or a live-scanning device.

Art. 38.33, Sec. 1

Code of Criminal Procedure Article 38.33(1) requires a thumbprint of the defendant's right thumb. If the defendant does not have a right thumb, the left thumbprint is required. If defendant does not have a right or a left thumb, a fingerprint of the defendant's index finger is required. The document on which the thumbprint or fingerprint is placed must contain a statement that describes from which thumb or finger the print was taken.

5. Record of Criminal Actions

The Code of Criminal Procedure requires each clerk of a court of record having criminal jurisdiction to maintain a record of each criminal action. This ensures an accurate account of cases in progress and serves as a master reference guide to all aspects of a case.

Art. 33.07

The record should initially include:

- Style and file number of the case
- Nature of the offense
- Names of counsel

- Date of filing

As the case progresses, each item or occurrence in the case and the date of such item or occurrence should be noted in the record. Some examples are:

- Processes issued by the Clerk and date of issuance
- Returns of processes and date of return
- Instruments filed for record and date of filing
- Orders, judgments, and verdicts, and date given
- Commitments and releases, and date of action
- Exhibits received

Also, a portion of the record should be devoted to accounting for court costs and fines as they are incurred, as well as for receipts of payments and disbursements of costs and fines to the various county offices. Thus, a properly maintained record also establishes a complete accounting record for each case.

AG Op. *JM-358 (1985)*

Most Clerks are in the habit of using the outside of each case file to duplicate the entries made to the record. This is a very convenient way for judges and attorneys to quickly review the case activity before hearings and trial. The Attorney General has stated that a District Clerk may use the case file jacket to maintain a record without maintaining the same information on a separate sheet inside the jacket.

The criminal actions record serves two functions. First, it serves as official notification to the judge that a case has been filed and is to be decided in his court. It gives the judge preliminary information about the offense, such as the nature of the offense and the identity of the attorneys in the case. Second, it is a record of important events that happen in the courtroom. For each case, the judge takes minutes of the proceedings and records all orders, judgments, verdicts, sentences and fines that are handed down.

While not required by code, many Clerks also prepare a separate record, or docket, for the judge at the time a case is first filed. This is commonly referred to as the "Judge's Docket." While it can be formatted to meet the needs of the individual court, the following information shall be included:

- Case number
- Date of filing
- Names of parties (style of the case is always "The State of Texas v. [defendant]")
- Attorneys of record
- Nature of the offense
- Orders of the court

The last item is the judge's own notes and should include the order and date of the order. The volume and page number in the criminal minutes are added by the Clerk as the minutes are recorded.

At the termination of each case, the Clerk should examine the contents of the case jacket to insure that all instruments that have been filed for record are present. The Clerk should also check to be certain that all instruments to be recorded in the criminal minutes

have been so recorded and indexed.

6. Bonds

More likely than not a defendant will have been arrested, jailed, and released on bond before the case is filed with the Clerk. If this is the case, the Clerk should file the bond in the case file.

At other times, the defendant will be in jail or arrested on the Clerk's capias and will desire to make bond after the case is filed with the Clerk. Only the judge can set the amount of bond and authorize its issuance, but the Clerk should receive the bond for safekeeping.

There are 3 types of bond: personal bond, surety bond, and cash bond. All three types must contain the following requisites: ***CCP*** *Art. 17.08*

- The bond is payable to the State of Texas;
- The defendant and any sureties bind themselves that the defendant will appear before the proper court and answer the accusations against him;
- The bond must state whether the defendant is charged with a felony or a misdemeanor;
- The defendant and any sureties must sign the bond, and each must provide their mailing address;
- The bond must state the time, place, and court before which the defendant is to appear, and that the defendant is bound to appear at subsequent times and places as may be required; and
- The bond is conditioned upon the principal and any sureties paying necessary and reasonable expenses incurred in re-arresting the defendant should he fail to appear.

A personal bond is essentially the defendant's word that he will appear as required. *Art. 17.04* No surety or security is required. The term "own recognizance" is often used when referring to this type of bond. In addition to the requirements of Article 17.08, a personal bond must also show the defendant's place of employment, date and place of birth, height, weight, color of hair and eyes, driver's license number and state of issuance, and nearest relative's name and address. The defendant must also sign an oath swearing he will appear as required unless the magistrate makes a determination under Article 16.22 that the defendant has a mental illness or is a person with an intellectual disability, the defendant is released on personal bond under Article 17.032, or the defendant is found incompetent to stand trial under Chapter 46B.

A surety bond is one in which a third-party pledges assets as security for the bond. The *Art. 17.11* party pledging the security is known as the surety. The security, at a minimum, must be worth twice the amount of the bond, exclusive of property exempted from execution (e.g., homestead property) and of debts or other encumbrances. A surety must be a resident of Texas and cannot be in default on another surety bond. A person is disqualified to sign as a surety so long as the person remains in default on the other bond. The Clerk must provide written notice to the sheriff, chief of police, or other peace officer when a surety is in default of a bond. The Clerk must also send notice of the default by certified mail to the last known address of the surety, if the bond was issued for a Class B misdemeanor or higher category of offense.

A surety is considered to be in default from the time execution may be issued on a final judgment in a bond forfeiture proceeding under the Texas Rules of Civil Procedure, unless the final judgment is superseded by the posting of a supersedeas bond.

CCP Art. 17.02

The final type of bond is a cash bond, where cash in the amount of the bond is posted. The Clerk receives and holds the cash in safekeeping. The Clerk or other person receiving the cash must issue a receipt upon deposit.

The sheriff may deliver the bond to the Clerk, or the defendant may be brought before the Clerk, who will complete the bond form according to the judge's instructions. In either case, the Clerk collects the money, issues a receipt, and posts the amount in the criminal record as with other court costs. The judge then signs the bond. The bond is processed and filed in the case folder.

When the case has been disposed, the judge must enter an order authorizing the Clerk to refund the cash. The order will state to whom the refund is to be made and in what amount. The Clerk may subtract the administrative fee authorized by Local Government Code §117.055, if applicable, from the cash deposited before issuing a refund to the person whose name is on the receipt, or to the defendant, if no one produces a receipt for the funds.

7. Entry of Bond Conditions in Certain Cases Involving Violent Offenses

Art. 17.50

As soon as practicable but not later than the next day after the date a magistrate issues an order imposing a condition of bond on a defendant for a violent offense as defined in Art. 17.50(a)(3) or for an offense under Section 42.072, Penal Code (Stalking), the magistrate shall notify the sheriff of the condition and provide to the sheriff the following information:

- the information listed in Government Code §411.042(b)(6) as that information relates to an order described by Art. 17.50(b);
- the name and address of any named person the condition of bond is intended to protect, and if different and applicable, the name and address of the victim of the alleged offense;
- the date the order releasing the defendant on bond was issued; and
- the court that issued the order releasing the defendant on bond.

As soon as practicable but not later than the next day after the date a magistrate, in a case described by Art. 17.50(b) revokes a bond that contains a condition, modifies the terms of or removes a condition of bond, or disposes of the underlying criminal charges, the magistrate shall notify the sheriff and provide the sheriff with information that is sufficient to enable the sheriff to modify or remove the appropriate record in the database.

The clerk of a court that issues an order described by Art. 17.50(b) shall send a copy of the order to any named person the condition of bond is intended to protect, and if different and applicable, the victim of the alleged offense at the person's last known address not later than the next business day after the date the court issues the order.

Art. 17.51

As soon as practicable but not later than the next business day after the date a magistrate issues an order imposing a condition of release on bond for a defendant or modifying or removing a condition previously imposed, the clerk of the court shall send a copy of the order to:

- the appropriate attorney representing the state; and

- either:
    - the chief of police in the municipality where the defendant resides, if the defendant resides in a municipality; or
    - the sheriff of the county where the defendant resides, if the defendant does not reside in a municipality.

A clerk of the court may delay sending a copy of the order only if the clerk lacks information necessary to ensure service and enforcement. If an order prohibits a defendant from going to or near a child care facility or school, the clerk must send a copy of the order to the child care facility or school.

8. Criminal Court Docket Notice

If a Clerk does not provide online access to the criminal case records, the Clerk must post notice of the criminal courts' docket settings in a designated public place in the courthouse as soon as the court notifies the Clerk of the setting.

CCP
Art. 17.085

9. Bond Forfeiture

When a defendant is bound by bail to appear, the defendant promises to appear in court at any time the defendant is required by law or court to appear. If the defendant does not appear as promised, the defendant's name shall be called distinctly at the courthouse door (within a reasonable distance from the courthouse door- substantial compliance is required). If the defendant does not appear within a reasonable time after the defendant's name is called, certain actions are initiated that could lead to the forfeiture of the defendant's bond.

Art. 22.01
Art. 22.02

Upon the defendant's failure to appear, the court shall enter judgment that the State of Texas recover the amount of the bond from the defendant. This judgment, known as a "judgment nisi," is not a final judgment but rather an interlocutory, conditional judgment. The judgment nisi will be made final unless good cause is shown for the defendant's failure to appear. The Clerk should record the judgment nisi in the criminal minutes of the court.

Art. 22.02

A bail bond forfeiture proceeding is a criminal law matter governed by the rules of civil proceeding after entry of judgment nisi. For some time, a question has existed as to whether civil filing fees should be assessed in bond forfeiture cases. *Dees v. State* and *Ranger Insurance Co. v. State* appear to resolve the issue. Both cases held that civil court costs may be assessed in a bail bond forfeiture proceeding after entry of the judgment nisi.

AG Op.
GA-0486 (2006)

Dees v. State*, 865 SW2d 461 (Tex. Crim. App. 1993)*

Ranger Insurance Co. v. State*, 312 S. W. 3d 266 (Tex. App. –Dallas 2010, no pet.)*

The Clerk must issue and serve a citation (with a copy of the forfeited bond attached) notifying the defendant's sureties that the bond has been forfeited due to the defendant's failure to appear and requiring the sureties to appear and show cause as to why the judgment forfeiting the bond should not be made final. A citation to a surety who is an individual shall be served at the address shown on the face of the bond or the last known address of the individual. A citation to a surety that is a corporation shall be served on the attorney designated to receive service on behalf of the corporation. A surety may waive service of citation or designate another person to receive service of citation by filing a written waiver with the Clerk. Notice to the defendant is required only if he or she has provided a contact address on the bond. Notice to the defendant is to be made by regular United State mail. A copy of the judgment nisi must be attached to the citation

CCP
Art. 22.03
Art. 22.05

If the defendant posted a cash bond, the Clerk must serve the defendant with the citation at the address shown on the face of the bond or the last known address of the defendant.

Art. 22.035

A judgment nisi does not resolve the underlying criminal charge. Criminal proceedings will resume after the defendant is apprehended.

***NOTE**: A district attorney does not have to pay a fee to the County Clerk to file an abstract of judgment issued against a principal or surety in a bond forfeiture proceeding.*

AG Op.
JM-779 (1987)

a. Release of Surety

A surety on a bond may wish to be released from his or her responsibility if he feels that the defendant may not appear as specified.

CCP
Art. 17.19

The surety must file an affidavit with the Clerk that gives notice of the surety's intention to surrender the defendant.

- If the judge finds that cause exists for the surety to surrender the defendant, the Clerk shall issue a capias and give it to the sheriff for execution and return.
- The Clerk does not release the bond until the defendant has been placed in custody by the sheriff.
- When the defendant is in custody, the Clerk releases the bond to the surety and files the release of surety in the case folder.

10. Court Costs and Fees

Upon conviction, the defendant becomes liable for applicable court costs and reimbursement fees and any fine ordered paid. It is the Clerk's responsibility to collect the costs, fees, and any fine at the termination of the case. If the defendant is acquitted or the charges are dismissed, no costs or fees are owed.

A defendant does not have to pay a cost or fee until a written bill (a.k.a. bill of costs) containing the items of costs is produced, signed by the officer charging or receiving the costs, and provided to the defendant. The statute does not define "provided," so the word should be construed according to its plain meaning in the English language. One appellate court interpreted it to mean to *supply* or at least *make available for use*.

Art. 103.001(b)

Bonds v. State*, 503 S.W.3d 622, 624 (Tex. App. -Houston [14th Dist.] 2016)*

Clerks, not the trial judge, are responsible for preparing and producing the bill of costs. The bill of costs must be certified and signed by the officer who charged the costs or who is entitled to receive the costs. It does not list *all* of the financial obligations imposed on a defendant. Rather, it lists only the court costs and reimbursement fees. Court costs and reimbursement fees include fees and costs intended by the Legislature as a nonpunitive "recoupment of the costs of judicial resources expended in connection with the trial of the case." *See Weir v. State*, 278 S.W.3d 364, 366-67 (Tex. Crim. App. 2009). ***Fines and restitution should not be listed on the bill of costs.***

Johnson v. State*, 423 S.W.3d 385 (Tex. Crim. App. 2014)*

There are mandatory and optional fees and costs. Both should be listed on the bill of costs. A mandatory fee or cost is a predetermined, legislatively mandated fee or cost that a court must impose if a certain condition exists, such as a conviction occurred or services were performed. An optional fee or cost is a legislatively mandated fee or cost, but it is imposed at the court's discretion. Attorney fees is a good example of an optional fee because the fee is imposed only if the judge determines that the defendant has sufficient financial resources to reimburse, in part or in whole, the county for the costs of his or her court appointed attorney.

See Johnson*, 423 S.W.3d at 386*

CCP
Art. 26.05(g)

Ideally, the statute authorizing a fee or cost should be listed next to the fee or cost on

the bill of costs. For example, the fee for executing an arrest warrant should be listed on the bill as follows: "Fee for Service of Peace Officer - Execute Arrest Warrant [Code of Crim. Proc. Art. 102.011(a)(2)] . . . $50.00."

> *NOTE: With respect to fees imposed for the services of a peace officer, the best practice is to document the services performed on a sheriff's fee record and attach the record to the bill of costs to support the assessment of the fees.*

When the defendant appears before the Clerk to pay the fine, the Clerk should have the judge's docket sheet, the record of criminal actions, and a bill of costs available. The Clerk should then:

CCP
Art. 103.001
Art. 103.003
Art. 103.010
Art. 103.009

- Check the docket sheet to see that a judgment and sentence have been rendered and that the sentence was executed or the defendant was placed on community supervision, including deferred adjudication community supervision;
- Prepare a written itemized bill of costs, including the case number, style of case, court designation, and judgment rendered;
- Transfer each item of court cost or fee by all county offices from the criminal record to the bill of costs; however,

  Do not enter the fine(s) or restitution, if any, on the bill of costs;
- Sign, or have the appropriate officer sign, the bill of costs, affix the Clerk's seal, and give the bill to the defendant;
- Issue a detailed receipt to the defendant for payment received and note payment in the criminal record; and
- Enter the payment into the office's accounting system or fee record.

Court costs and fees are paid upon conviction. No other event triggers the assessment of these costs and fees.

Loc. Gov't Code
Sec. 133.101

CCP
Art. 101.004

For purposes of assessing court costs, a defendant is considered to have been "convicted" if:

- A judgment, sentence, or both a judgment and a sentence are imposed on the defendant;
- The defendant receives community supervision, including deferred adjudication community supervision, or deferred disposition; or
- The court defers final disposition of the case or imposition of the judgment and sentence.

The defendant has not been convicted for purposes of assessing court costs and fees if the ***prosecuting attorney*** defers prosecution of the case, even if the court places the case on the docket. The key difference between deferred disposition and deferred prosecution is in what is being deferred. Deferred disposition defers the finding of guilt or imposition of the sentence, and the matter is deferred by the court, not the ***prosecuting attorney***. Deferred prosecution defers prosecution of the case. Deferred prosecution is an agreement between the defendant and the prosecutor. The court is not involved and does not have to approve the agreement. However, the court may have to approve the continuance if the case is on the docket at the time of the deferral of the prosecution.

Detailed information on the court costs and fees that must or may be charged upon conviction is on OCA's website.

> ***NOTE**: The defendant's obligation to pay a fine, cost, or fee as ordered by a judge exists independently of any requirement that the defendant pay the fine, cost, or fee as a condition of community supervision. A defendant remains obligated to pay any unpaid fine, cost, or fee expiration of the defendant's period of community supervision.*

D. CRIMINAL — SPECIAL CIRCUMSTANCES

1. Posting Attorney Qualification Standards — Death Penalty Cases

CCP
Art. 26.052

The procedures for appointment and payment of court appointed counsel in death penalty cases is established in Code of Criminal Procedure Article 26.052. The procedures apply for appointment of counsel at trial, on direct appeal, and to apply for a writ of certiorari. However, if a county has a public defender's office, counsel may be appointed in accordance with the guidelines established by the public defender's office. A local selection committee, created in each Administrative Judicial Region and comprised of judges and lawyers, adopts standards for the qualification of attorneys to be appointed to represent indigent defendants in capital cases in which the death penalty is sought. The article establishes the minimum standards that a local committee must adopt. In any event, the committee must prominently post the standards in each district clerk's office in the region, along with a list of attorneys qualified for appointment.

2. Change of Venue

a. Clerk's Duties on Change of Venue

Art. 31.05,
effective until 1-1-2025

If the court enters an order changing venue, the Clerk of the court of original venue shall make a certified copy of the court's order directing the change and the defendant's bail or personal bond. The Clerk shall transmit the certified copies and all original papers in the case to the Clerk of the receiving court. The Clerk shall certify under official seal that the original papers are all the original papers on file in said court. However, if the Clerk of the original venue is expected to perform the duties of the clerk of the court in the receiving county, the Clerk is not required to forward the order, bond, and original papers as required by Article 31.05.

b. Return to County of Original Venue

Art. 31.08, Sec. 1,
effective until 1-1-2025

On completion of a trial in which a change of venue was ordered and after the jury has been discharged, the court, with the consent of counsel for the State and the defendant, may return the case to the county of original venue. All subsequent and ancillary proceedings, including the pronouncement of sentence after appeals have been exhausted, must be heard in the county of original venue. However, a motion for new trial alleging jury misconduct must be heard in the county where the case was tried. The county of original venue must pay the costs of the prosecution of the motion for a new trial.

Art. 31.08, Sec. 2,
effective until 1-1-2025

On an order returning the case to the county of original venue, the Clerk of the receiving county shall:

- Make a certified copy of the court's order directing the return of the case;
- Make a certified copy of the defendant's bail bond, personal bond, or appeal

bond;

- Gather all the original papers in the case and certify under official seal that the papers are all the original papers on file in the court; and
- Transmit the above listed items to the clerk of the court of original venue.

Code of Criminal Procedure Article 31.08, Section 2 does not apply to a proceeding in which the clerk of the court of original venue traveled to the receiving county to perform the duties of the clerk of the receiving court as authorized under Code of Criminal Procedure Article 31.09, which is discussed immediately below.

c. Use of Existing Services

CCP *Art. 31.09(a), effective until 1-1-2025*

If a change of venue is ordered, the judge issuing the order may, with the written consent of the prosecuting attorney, the defense attorney, and the defendant, maintain the case on its own docket, preside over the case, and use the services of its court reporter, court coordinator, and clerk in the receiving county. In addition, the receiving county must allow the court of original venue to use the receiving county's courtroom facilities and any other services or facilities of the receiving county. However, if a jury is required, the jury must consist of residents of the receiving county.

Art. 31.09(b), effective until 1-1-2025

If the original judge maintains the case on the court's docket and presides over the case at the change of venue location, despite the mandates of Article 31.05, the Clerk of the court of original venue must:

- Maintain the original papers of the case, including the defendant's bail bond or personal bond;
- Make the papers available for trial; and
- Act as the Clerk in the case.

3. Cases Transferred to Inferior Court

Art. 21.26

Art. 21.28

If the indictment in a felony case charges an offense over which the district court has no jurisdiction, the judge must enter an order transferring the case to the appropriate inferior court. The order must state the reason for the transfer. In such case, the Clerk must deliver the indictment, together with all the papers in the case, to the proper court or as directed in the order of transfer. The Clerk must also deliver a certified copy of all the proceedings and a bill of the costs that have accrued in the district court.

E. CIVIL

1. Initial Proceedings

TRCP *45*

Civ. Prac. & Rem. Code *Sec. 11.103*

The initiation of a civil suit is always at the option of the plaintiff. There are no indictments or complaints in civil cases. The plaintiff files with the Clerk an original petition, which sets out the identity of the defendant(s) and what actions have allegedly been done by the defendant(s) that caused harm to the plaintiff. Before filing a pro se petition, the Clerk should first verify that the plaintiff is not a vexatious litigant who is subject to a prefiling order. New individuals are added regularly to the list maintained by the Office of Court Administration at http://www.txcourts.gov/judicial-data/vexatious-litigants.aspx. A Clerk is prohibited from filing pro se litigation presented by a vexatious litigant subject to a prefiling order unless the litigant has obtained an order from the appropriate local administrative judge which permits the filing. Clerks can find more detailed information about these litigants and

the restrictions placed upon them in the Vexatious Litigants section of this chapter.

After the original petition has been filed, the Clerk, when requested, will issue a citation and deliver the citation as directed by the plaintiff or plaintiff's attorney. The attorneys for the parties prepare all instruments in a civil case, except for the Clerk's processes. The role of the Clerk is to file and/or record these instruments, make them available to the court as requested, and to issue appropriate processes. ***TRCP** 99*

2. Initial Filing Procedures

As in criminal cases, a civil case may not be heard in district court unless it has been filed for record in the District Clerk's office. In district courts, attorneys must electronically file ("e-file") all civil case documents. Unrepresented parties may e-file civil case documents but are not required to do so. ***TRCP** 22* ***TRCP** 21(f)* ***TRCP** 21(f)(1)*

For more information on the e-file process, see Part E.3 and E.4 of this chapter. For more information on eFileTexas (the statewide e-filing system), please visit efiletexas.gov.

A civil case begins after the petition is filed with the Clerk. The following procedures must be followed before the case can go forward: ***TRCP** 22* ***TRCP** 24*

- The original petition is filed-marked by the Clerk showing the date and time of filing.
- Documents are considered filed when they are tendered to the Clerk. The Clerk should file-mark the document even if a signature is missing from the pleading. Any copies of the original petition presented to the Clerk should also be file-marked and the correct case number endorsed; otherwise, the Clerk should not add to or delete anything from the copies furnished by a party. ***AG Op.** JM-727 (1987)*
- The Clerk must collect the fee for filing a suit at the time the suit is filed. The Clerk issues a receipt for the fee paid. ***Gov't Code** Sec. 51.317(a)*
- The petition is assigned a unique and sequential identifying number for filing purposes. This number is stamped or written on the petition and on all subsequent documents filed. ***TRCP** 23*
- Next, the Clerk prepares the "Clerk's Court Docket," which is placed in the pending docket of the court assigned to hear the case. (See Part E.7 for detail on what must be included in a civil docket.) ***TRCP** 26*
- The case is now entered into the civil file docket, also called "Clerk's File Docket" (see Part E.7, below). ***TRCP** 25*
- A citation is issued to each defendant as requested by the plaintiff. One copy of the original petition accompanies each citation (See "Issuance of Process," Chapter 4).
- The party requesting the citation is responsible for having it served. The plaintiff may request that a sheriff or constable serve the citation. In that case, the Clerk may deliver the citation directly to the sheriff or constable for service and return. Otherwise, the Clerk returns the citation to the party requesting issuance. (Practically speaking, if service is not done by the sheriff or constable, it is usually done by a private process server at the plaintiff's expense.) Once the citation is served, the authorized party must file a return of ***TRCP** 99* ***TRCP** 103* ***TRCP** 107*

service.

- The Clerk must collect the fee for issuing a citation at the time the citation is issued, or at the time the citation is requested.

Gov't Code *Sec. 51.318(a)*

- The Clerk may NOT require an advance deposit of fees for service of process in a case pending in the county where the sheriff or constable is to serve process.

TRCP *17*

AG Op. *DM-382 (1996)*

- A permanent case folder in which to store all instruments filed in the case is prepared. The file number of the case is marked on the case folder, the original petition is put in the jacket, and the jacket is filed in numerical sequence with the other civil cases.

The Clerk's initial processing in the case is now completed. The case is now on record with the district court, and the defendant has been notified that a suit is in progress.

3. E-Filing: Filing, Service, and Notice

Unless an exception exists, attorneys must electronically file documents in courts where electronic filing has been mandated. Attorneys practicing in courts where electronic filing is available but not mandated and unrepresented parties may electronically file documents, but it is not required. For good cause, a court may permit a party to file other documents in paper form in a particular case.

TRCP *21(f)(1)*

TRCP *21(f)(4)(C)*
TRCP *21(f)(1)*

There are several exceptions to the e-filing mandate:

TRCP *21(f)(4(A)*
TRCP *21(f)(4)(B)*

- Juvenile cases under Family Code Title 3, as well as truancy cases under Family Code Title 3A, are not subject to the e-filing mandate.
- Wills are not required to be filed electronically.
- Documents filed under seal or presented to the court in camera, and documents to which access is otherwise restricted by law or court order, **CANNOT** be e-filed.

Electronic filing must be done through the electronic filing manager established by the Office of Court Administration and an electronic filing service provider certified by the Office of Court Administration. The email address of an attorney or unrepresented party who electronically files a document must be included on the document.

TRCP *21(f)(3)*

TRCP *21(f)(2)*

Unless a document must be filed by a certain time of day, a document is considered timely filed if it is electronically filed at any time before midnight (in the court's time zone) on the filing deadline. An electronically filed document is deemed filed when transmitted to the filing party's electronic filing service provider, except: (A) if a document is transmitted on a Saturday, Sunday, or legal holiday, it is deemed filed on the next day that is not a Saturday, Sunday, or legal holiday; and (B) if a document requires a motion and an order allowing its filing, the document is deemed filed on the date that the motion is granted.

TRCP *21(f)(5)*

If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from the court. If the missed deadline is one imposed by these rules, the filing party must be given a reasonable extension of time to complete the filing.

TRCP *21(f)(6)*

A document that is electronically served, filed, or issued by a court or clerk is considered signed if the document includes: (A) a "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or (B) an electronic image or scanned image of the signature.

TRCP *21(f)(7)*

An electronically filed document must: (A) be in text-searchable portable document format (PDF); (B) be directly converted to PDF rather than scanned, if possible; (C) not be locked; and (D) otherwise comply with the Technology Standards set by the Judicial Committee on Information Technology and approved by the Supreme Court. Unless required by local rule, a party need not file a paper copy of an electronically filed document.

***TRCP** 21(f)(8)*

***TRCP** 21(f)(9)*

The clerk must send orders, notices, and other documents to the parties electronically through the electronic filing manager established by the Office of Court Administration and an electronic filing service provider certified by the Office of Court Administration. A court seal may be electronic.

***TRCP** 21(f)(10)*

The clerk may not refuse to file a document that fails to conform with this rule. But the clerk may identify the error to be corrected and state a deadline for the party to resubmit the document in a conforming format.

***TRCP** 21(f)(11)*

The clerk may designate an electronically filed document or a scanned paper document as the official court record. The clerk is not required to keep both paper and electronic versions of the same document unless otherwise required by local rule. But the clerk must retain an original will filed for probate in a numbered file folder.

***TRCP**(f)(13)*

4. E-Filing: Method of Service

A document filed electronically under TRCP 21 must be served electronically through the electronic filing manager if the email address of the party or attorney to be served is on file with the electronic filing manager. If the email address of the party or attorney to be served is not on file with the electronic filing manager, the document may be served on that party or attorney in person, by mail, by commercial delivery service, by fax, by email, or by such other manner as the court in its discretion may direct.

Electronic service is complete on transmission of the document to the serving party's electronic filing service provider. The electronic filing manager will send confirmation of service to the serving party.

5. Subsequent Filing Procedures

In a civil action, each party, or the party's attorney, must provide the Clerk with written notice of the party's name and current residence or business address. The notice must be provided at the time of initial filing, or not later than the seventh day after the Clerk requests the information. However, the notice cannot be required of a defendant until that party has appeared or answered. If any party's address changes during the action, that party or the party's attorney must provide written notice of the change to the Clerk.

***Civ. Prac. & Rem. Code** Sec. 30.015*

Parties may submit additional instruments to the Clerk for filing as the case moves toward disposition. Some common documents filed in civil cases include:

- Citations
- Orders
- Answers
- Judgments

- Amended petitions
- Subpoenas
- Amended answers
- Affidavits
- Dismissals
- Interventions
- Motions
- Exhibits
- Writs
- Verdicts

The citations, writs and subpoenas mentioned above are issued by the Clerk and are filed for record after the sheriff's service and return. All other documents are prepared by the attorneys and filed directly with the Clerk.

The following procedures are followed to insure proper filing of all documents:

***TRCP** 24*

- File-mark the instrument to show the date and time received. Be sure the case number is on all documents.

***TRCP** 25*
***TRCP** 25*
***TRCP** 26*

- Collect the appropriate fee and issue a receipt.
- Enter the type of instrument, date of receipt, and fee collected into the civil file docket.
- If the instrument is an order or judgment, record it in the civil minutes. Enter the volume and page number in the defendant's index, plaintiff's index, civil file docket, and judge's docket sheet.
- Place the instrument in the file folder and note the type of instrument and date filed on the outside of the folder.

6. Special Pleadings and Filing Procedures

a. Answers and Amended Petitions

***TRCP** 83*
***TRCP** 84*
***TRCP** 85*

The defendant's original answer is the defendant's first explanation to the court of his side of the case. The defendant's answer may include as many matters as a defendant deems necessary to his defense. No filing fee is required; however, the Clerk must examine the answer closely to determine whether the defendant is requesting a citation or other process to be issued. If this is the case, the Clerk must collect the required fees.

***TRCP** 63*
***TRCP** 64*

Petitions and answers may be amended and filed several times in the course of a case. This occurs as new facts or parties to the case arise. Amended petitions and answers are usually served by the filing party's attorney. When new defendants are added, citation is usually requested, and the Clerk must collect fees for citation and any other processes.

b. Counterclaims, Cross-Claims, and Interventions

***TRCP** 97*

A counterclaim is an instrument filed by one party that maintains that the other party

is actually the party in the wrong. Some counterclaims are mandatory; most are permissive. The most common counterclaim is filed by a defendant against a plaintiff.

Likewise, a cross-claim is an instrument filed by one party that maintains that another party is actually the party in the wrong. The difference between a counterclaim and a cross-claim is that counterclaims are filed against opposing parties, and cross-claims are filed against parties on the same side of the civil action. A defendant may file a cross-claim against another defendant as part of its defense against the plaintiff's allegations.

Counterclaims and cross-claims are heard as part of the original suit and are not given a new case number. Some process will usually be requested of the Clerk in such cases, most commonly issuance of citation.

An intervention is the entry into the case of a third party, called the intervenor. The intervenor will file a petition in intervention with the court and is bound by the same rules as the plaintiff and defendant. As with counterclaims and cross-claims, the intervention is part of the original suit.

***TRCP** 60*

c. Motions to Transfer Venue

A motion to transfer venue is an application to transfer a case from one county to another. The contents of the motion, grounds for transfer, and mandatory venue provisions are found in TRCP 86 and TRCP 257.

> ***NOTE**: There are special procedures for transfer of venue in a suit affecting the parent-child relationship. These are discussed in detail in "Family Law," Chapter 10.*

***Family Code** Chapter 155*

If the motion is denied, no special action is required on the Clerk's part; the motion, any supporting documents and order are docketed as usual and the case proceeds in the court assigned. If the motion is granted, the procedures are as follows:

- The judge issues an order for change of venue.

Sec. 155.207(a)

- Not later than the 10th working day after the date an order of transfer is signed, the clerk of the court transferring a proceeding shall send, using the electronic filing system established under Government Code §72.031, to the proper court to which transfer is being made: (1) a transfer certificate and index of transferred documents; (2) a copy of each final order; (3) a copy of the order of transfer signed by the transferring court; (4) a copy of the original papers filed in the transferring court; (5) a copy of the transfer certificate and index of transferred documents from each previous transfer; and (6) a bill of any costs that have accrued in the transferring court. The clerk of the transferring court shall use the standardized transfer certificate and index of transferred documents form created by the Office of Court Administration under Government Code §72.037 when transferring a proceeding. The clerk of the transferring court shall keep a copy of the documents transferred under §155.207(a). The Clerk in the original county of venue must retain all original orders. The clerk of the transferee court shall (1) accept documents transferred; docket the suit; and (3) notify, using the electronic filing system established under Government Code §72.031, all parties, the clerk of the transferring court, and, if appropriate, the transferring court's local registry that the suit has been docketed. The clerk of the transferee court shall physically or

Sec. 155.207(a-1)

Sec. 155.207(b)

***TRCP** 89*

***Family Code** Sec. 155.207(c) Sec. 155.207(c-1)*

electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance, but may not physically or electronically mark or stamp any other document transferred under Family Code §155.207(a).

- However, where there are multiple defendants in a severable case and the court has ordered the case to be transferred as to one or more of the defendants but not as to all, the Clerk, instead of sending the original papers, makes certified copies of the filed papers as directed by the court and forwards the certified copies to the Clerk of the court to which venue has been changed. ***TRCP** 89*

***NOTE**: A District Clerk may charge a "reasonable" fee for making certified copies of the filed papers as directed by the court in cases severed as to some but not all defendants. The costs for such services are taxed against the plaintiff. The Clerk has no discretion to delay the transfer of a case under TRCP 89 by refusing to transfer the case file, even where the plaintiff fails to pay the fee for the Clerk's services in making certified copies.* ***AG L.O.** 92-87 (1992)*

- The Clerk of the transferring court should include a bill of costs for any fees remaining due. The costs incurred prior to the time the suit is filed in the court to which the cause is transferred are taxed against the plaintiff. ***TRCP** 89*
- The Clerk of the transferring court should prepare a transmittal certificate in duplicate, which itemizes all instruments filed for record in the transferring court and that are being transferred. The certificate should include a receipt for the Clerk of the receiving court to sign and return, which acknowledges the receipt of the transcript. The Clerk of the transferring court should date, sign and seal the transmittal certificate, and attach it to the transcript. ***TRCP** 89*
- The Clerk of the court receiving the transfer should file-stamp and docket the transferred case. The Clerk should then check the index to verify that all documents are included in the transcript.
- To acknowledge receipt of the transcript, the Clerk of the court receiving the transfer should sign and return a copy of the receipt included on the transmittal certificate to the Clerk of the transferring court. The Clerk of the transferring court should file the receipt in the case file folder.
- After the case has been transferred, the Clerk of the receiving court mails notification to the plaintiff or his attorney. The notification must state that the transfer of the case has been completed, that the filing fee in the proper court is due and payable within 30 days from the mailing of the notification, and that the case may be dismissed if the filing fee is not timely paid. ***TRCP** 89*
- If the filing fee is timely paid, the case will be subject to trial at the expiration of 30 days after the mailing of notification to the parties or their attorneys by the Clerk that the papers have been filed in the court to which the case was transferred. ***TRCP** 89*
- If the filing fee is not timely paid, any court of the receiving county to which the case might have been assigned may, upon its own motion or the motion of ***TRCP** 89*

a party, dismiss the case without prejudice.

***NOTE**: Cases transferred under a change of venue need not be assigned and docketed in the receiving county until the filing fee is paid.*

***AG Op.** JM-216 (1984)*

d. Depositions

Under the Rules of Civil Procedure, depositions are not filed with the court. The rules place much of the burden concerning depositions on the deposition officer and the lawyers. ***TRCP** 203*

The deposition officer (usually, a court reporter) must file a duly sworn certificate with the court, serve it on all parties, and attach the certificate as part of the deposition transcript or recording. The certificate includes the following statements and information: ***TRCP** 203.2*

- The witness was duly sworn by the officer.
- Any deposition transcripts were submitted to the witness or to the witness's attorney for examination and signature. This statement should include the date on which the transcript was submitted, whether the witness returned the transcript, and if so, the date on which it was returned.
- Any changes made by the witness are attached to the deposition transcript.
- The deposition officer delivered the deposition in accordance with Rule 203.3.
- States the amount of time used by each party at the deposition.
- States the amount of the deposition officer's charges for preparing the original deposition transcript, which the Clerk of the court must tax as costs.
- A copy of the certificate was served on all parties. This statement should include the date of service.

The deposition officer must also deliver the original deposition, including exhibits, to the party or attorney who requested the deposition be taken, and serve notice on all parties that this has been done. The original deposition transcript is kept by that party or attorney until time of trial, when it will be introduced as an exhibit. ***TRCP** 203.3*

e. Injunctions

An injunction is an equitable remedy granted by a court that directs a party to do or refrain from doing a specific act. Ordinarily, a party is entitled to an injunction only if he or she has no adequate remedy at law.

There are three types of injunctions: temporary restraining orders, temporary injunctions, and permanent injunctions. A temporary restraining order is intended to give emergency relief and to preserve the status quo of the subject matter in controversy until a hearing may be held on a temporary injunction. A temporary injunction serves to preserve the status quo of the subject matter in controversy pending the trial on the merits. The purpose of a permanent injunction is to give permanent relief after a trial on the merits.

To obtain a temporary restraining order, the party seeking relief files an application for temporary restraining order with the Clerk.

A temporary restraining order may be issued without notice and hearing when the applicant demonstrates that he or she is threatened with immediate and irreparable injury, loss, or damage. Every temporary restraining order granted without notice and hearing must ***TRCP** 680*

be endorsed with the date and hour of issuance. It must also be filed immediately in the Clerk's office and entered of record. Every temporary restraining order must include an order setting a date for hearing on the temporary or permanent injunction sought.

A party seeking a temporary injunction files a petition with the Clerk. A temporary injunction is often sought at the expiration of a temporary restraining order. A temporary injunction can be granted only after notice to the adverse party and a hearing. Every order granting a temporary injunction must include an order setting the cause for trial on the merits with respect to the ultimate relief sought. ***TRCP** 681-683*

In the order granting a temporary restraining order or temporary injunction, the court must fix the amount of security to be given by the applicant. The bond to the adverse party must name two or more sureties and is conditioned upon the applicant agreeing to abide by the decision made in the case and to pay all money and costs that may be adjudged against the applicant. The bond must be on file with the Clerk before the temporary restraining order or temporary injunction is issued. Because they are granted after trial and are, for all intents and purposes, court orders, no bond is required for permanent injunctions. ***TRCP** 684*

When a temporary restraining order or an order fixing time for a hearing on an application for a temporary injunction is granted, the applicant must file a petition with the Clerk for a temporary injunction (if it has not already been filed). If the petition does not pertain to a pending suit, the Clerk collects the appropriate fees and dockets the case showing the party applying for the injunctive relief as the plaintiff and the adverse party as the defendant. ***TRCP** 685*

When the petition does not pertain to an already pending suit, the Clerk issues a citation to the defendant as in other civil cases. However, when a temporary restraining order has been issued and is accompanied by a copy of the petition, the citation does not need to contain a statement of the nature of plaintiff's demand. It is sufficient for the citation to refer to the plaintiff's petition, which accompanied the temporary restraining order. ***TRCP** 686*

Once the petition, order and bond are on file, the Clerk issues the temporary restraining order or temporary injunction. The Clerk delivers the following for service on the defendant to the sheriff or any constable in the county of the residence of the person enjoined, or to the applicant, as the applicant directs: the temporary restraining order or temporary injunction, a copy of the petition, a copy of the order, and the citation. If more than one person is enjoined and they reside in different counties, the Clerk issues additional copies of the writs as requested by the applicant. The Clerk must collect the appropriate fee for issuing the writ of injunction. ***TRCP** 688*
***TRCP** 689*

The writ of injunction must be dated and signed by the Clerk, the official seal affixed, and the date of issuance written on it. ***TRCP** 687(f)*

The officer serving the writ of injunction will fill out the return information on the original process and return it to the court for filing. ***TRCP** 689*

The defendant in an injunction proceeding may answer as in other civil actions. ***TRCP** 690*

As a general rule, once an injunction is dissolved, a bond is no longer required. However, in the case of an injunction restraining the collection of money, if the injunction is dissolved prior to trial, the court will require the defendant to post a bond. The bond must have two or more sureties, be approved by the Clerk of the court, be payable to the plaintiff, and be for twice the sum enjoined. ***TRCP** 691*

7. Dockets

The Clerk is required by statute to maintain two dockets for each civil case filed: the file docket and the court docket. Proper maintenance of each docket will facilitate the record keeping for each case. ***TRCP** 25* ***TRCP** 26*

The Clerk's file docket, also called the fee docket or file docket, is the Clerk's master reference to all instruments filed in the individual case. A separate docket is created for each case at the time a suit is filed. The file docket must contain the following information: ***TRCP** 25*

- File number of the case;
- Date of filing;
- Court of jurisdiction;
- Names of the parties to the suit;
- Names of the attorneys of record; and
- Nature of the suit.

As the case progresses, the Clerk must keep a record of all instruments filed. These include all processes issued by the Clerk and date of issuance; all returns of processes and date of return; all instruments filed for record and date of filing; and all orders and judgments and dates rendered.

While not required by statute, most Clerks find it convenient to incorporate a listing of all fees charged and the disbursement of such fees in the file docket. Other Clerks prefer to maintain a separate fee record for each case in another form.

The other required docket is the Clerk's court docket, sometimes referred to as the judge's docket. This is also prepared when a case is filed. The court docket officially places the case in the jurisdiction of the court that is to hear the case. ***TRCP** 26*

This docket provides the judge with all the basic information of the case and should be in his possession whenever the proceedings of the case are being heard. The court docket becomes the official record of all pleas, motions, and rulings in the case. The judge should note all these actions on the docket as they occur. Often, docket sheet entries are typed by the Clerk or a deputy as dictated by the judge.

Information recorded on the court docket should include the file number of the case; the date of filing; court of jurisdiction; names of the parties; names of the attorneys of record; nature of the suit; all pleas, motions and rulings; the volume and page number of the permanent record of all rulings, orders, and judgments; and a notation of the payment of the jury fee, which is to be entered promptly and shows the date and by whom paid.

In addition to maintaining the file docket and the court docket, the Clerk is also responsible for maintaining the case file folder. The case file folder serves as the permanent depository for all instruments filed in a case. The folders are filed in numerical sequence according to file number.

The folder is made available to the judge and attorneys each time some proceeding is being heard in court. For the convenience of the court, the attorneys, and the Clerk, most Clerks make it a practice to note all processes and instruments filed for record on the outside of the folder. The folder may be used as a file docket in the courtroom.

At the conclusion of each case, the Clerk should examine the contents of the case

folder to insure that all instruments noted on the file docket are in the file. The Clerk should also ensure that all orders and judgments have been indexed.

8. Multidistrict Litigation

Gov't Code
Sec. 74.162
Sec. 74.1625

Rules of Jud. Adm.
13.3(a-c)
13.3(f)
13.2

The judicial panel on multidistrict litigation (MDL Panel) may transfer civil actions involving one or more common questions of fact that are pending in the same or different county courts or district courts for consolidated pretrial proceedings (such as summary judgment) but not for trial on the merits. Such a transfer may be (1) in response to a motion by a party in a case; (2) in response to a request by a trial court or by the presiding judge of an administrative judicial region; or (3) on the MDL Panel's own initiative. The MDL Panel cannot transfer any action brought by the Consumer Protection Division of the Attorney General's Office under Business & Commerce Code Chapter 17, Subchapter E or an action brought under Human Resources Code Chapter 36. Any motions, requests, responses to the motions or requests, and replies to the responses are to be filed with the MDL Panel Clerk. The MDL Panel Clerk is the Clerk of the Supreme Court of Texas.

Rules of Jud. Adm.
13.3(i)

District Clerks become involved in this process in that any party filing a motion for a case to be transferred is required to file a notice in the trial court that a motion for transfer has been filed. When a request for a transfer has been filed with the MDL Clerk by a judge, the MDL Clerk must cause a notice of this event to be filed with the trial court.

Rules of Jud. Adm.
13.5(a)
13.5(b)

If the MDL Panel decides to transfer a case, the MDL Panel will file a notice of transfer with both the trial court and the pretrial court (*i.e.,* the district court that will hear the consolidated pretrial proceedings). After notice of transfer is filed in the trial court, the trial court is generally to take no further action in the transferred case.

Rules of Jud. Adm.
13.5(c)

If the trial court and the pretrial court are in the same county, then the trial court must transfer the case file to the pretrial court in accordance with the local rules governing the courts of that county. If the trial court and the pretrial court are not in the same county, then the trial court Clerk must transmit the case file to the pretrial court Clerk.

Rules of Jud. Adm.
13.7

At the conclusion of the pretrial court's work, cases may or may not be remanded to the trial court. If the pretrial court has rendered a final and appealable judgment (such as a summary judgment) in a case, the case will not be remanded to the trial court. On the other hand, the pretrial court may order remand of one or more cases, or separable triable portions of cases, when pretrial proceedings have been completed to such a degree that the purposes of the transfer have been fulfilled or no longer apply. When a case is remanded to the trial court, the Clerk of the pretrial court will send the case file to the trial court. The parties may file in the remanded case copies of any pleadings or orders from the pretrial court's master file. The Clerk of the trial court must reopen the trial court file under the cause number of the trial court without assessing any new filing fees.

9. Civil Filing Fees

The Office of Court Administration (OCA) has published a list of District Clerk Civil Filing Fees. The list details the separate filing fees District Clerks may assess in civil suits. Some of the fees are applicable only in certain types of suits and in certain counties. As an aid in determining the particular fees that must or may be charged in any given type of civil suit, OCA has also prepared a Schedule of District Court Civil Suits and Actions. These resources may be accessed here: https://www.txcourts.gov/publications-training/publications/filing-fees-courts-costs/.

a. Indigent Petitioners

In lieu of paying filing fees, a petitioner may file Statement of Inability to Afford Payment of Court Costs. When the affidavit is filed, the Clerk must docket the action, issue citation, and provide any other normal services the Clerk provides when a party pays the filing fee. The declarant must use the form Statement approved by the Supreme Court, or the Statement must include the information required by the Court-approved form. The Clerk must make the form available to all persons for free without request.

***TRCP** 145*

> ***NOTE**: The Statement must say that the declarant cannot afford to pay costs, and the declarant should provide in the Statement evidence of the declarant's inability to afford costs. TRCP 145(d) includes examples of prima facie evidence of inability to afford costs.*

The Clerk may refuse to file a Statement that is not sworn to before a notary or made under penalty of perjury. No other defect, including the failure to attach evidence, is a ground for refusing to file a Statement or requiring the party to pay costs.

The Clerk or any party may move the court to require the declarant to pay costs only if the motion contains sworn evidence, not merely on information or belief that (1) the Statement was materially false when it was made, or (2) that because of changed circumstances, the Statement is no longer true in material respects.

F. SPECIFIC CASE TYPES

1. Probate

In most counties, the constitutional county court has original probate jurisdiction. In counties with county courts at law, the constitutional county court and county court(s) at law share original probate jurisdiction. Statutory Probate Courts have been created to serve ten of the State's largest counties. These courts have original and exclusive jurisdiction over their counties' probate matters, including guardianships and mental illness commitments.

***Estates Code** Sec. 32.002*

District courts' original jurisdiction is limited to contested probate matters. In those counties with statutory probate courts, those courts have concurrent jurisdiction with district courts in all personal injury, survival, or wrongful death actions by or against a person in that person's capacity as a personal representative, in all actions by or against a trustee, in all matters relating to inter vivos, charitable and testamentary trusts, and in all actions involving a personal representative of an estate in which each other party aligned with the personal representative is not an interested person in that estate.

When a contested matter arises in a county where there is no statutory probate court or county court at law, there are two options. First, the judge may on his own motion or must on the motion of a party to the case, request the assignment of a statutory probate judge to hear the contested matter. A judge so assigned has the jurisdiction, powers and duties given to statutory probate judges by general law.

Sec. 32.003

Second, the judge may on his own motion or must on the motion of a party, transfer the contested portion of the proceeding to district court. In this case, the district court and county court have concurrent jurisdiction while the matter is in controversy. The court to which the proceeding is transferred may hear the proceeding as if originally filed in that court. While the contested matter is pending in district court, the District Clerk may perform any function a County Clerk would perform in the same type of action.

Sec. 32.003

In all contested probate proceedings, the parties are entitled to a trial by jury as in other civil actions.

Estates Code
Sec. 55.002

Upon resolution of the contested matter, the District Clerk transfers the resolved portion of the case back to the originating court for further proceedings not inconsistent with the orders of the district court.

Sec. 32.003(f)

Any final order in a probate proceeding is appealable to the court of appeals.

Sec. 32.001(c)

2. Condemnation Proceeding

A condemnation proceeding (also known as an eminent domain proceeding) is one in which a government entity seeks to exercise its right to acquire real property for a public use. If the government entity makes an offer to the owner of the property and it is accepted, then there is no court intervention. Condemnation suits are also filed to clear a cloud on title to real property or if the owner of the property is seeking an injunction against the government entity pursuing condemnation. Clerks should review Government Code Chapter 2206, Subchapter B (the Truth in Condemnation Procedures Act), which outlines the procedures a governmental entity must follow before it initiates a condemnation proceeding.

Gov't Code
Ch. 2206, Subch. B

District courts and county courts at law have concurrent jurisdiction in condemnation cases. The suit may be filed in district court when the State, a political subdivision of the State, an association or a corporation is a party. If an eminent domain case is pending in a county court at law and the court determines there are issues it cannot adequately address, the judge will transfer the case to district court. In counties where there are no county courts at law, the suit must be filed in district court. Court Clerks are to assign condemnation cases in equal numbers in rotation to all judges.

Property Code
Sec. 21.001
Sec. 21.002
Sec. 21.003
Sec. 21.013(c)
Sec. 21.013(d)

If the government entity wants to acquire property and cannot reach agreement with the owner regarding the amount of damages to be paid, the entity may begin a condemnation proceeding by filing a petition in the proper court. The petition must describe the property to be condemned; state with specificity the public use for which the property will be used; state the name of the owner of the property (if known); state that the entity and owner cannot agree on damages; and, if applicable, state that the entity provided the property owner with the landowner's bill of rights statement in accordance with §21.0112. The petition must also state that the entity made a bona fide offer to acquire the property from the property owner voluntarily as provided by §21.0113. Also, an entity that files a petition under §21.012 must concurrently provide a copy of the petition to the property owner by certified mail, return receipt requested, and first class mail. If the entity has received written notice that the property owner is represented by counsel, the entity must also concurrently provide a copy of the petition to the property owner's attorney by first class mail, commercial delivery service, fax, or email.

Sec. 21.012

There are additional required statements when the government entity is filing a condemnation suit to acquire water rights.

Sec. 21.0121

The petition for condemnation is served as in all other civil actions. Alternative pleadings, by parties to the suit or third parties, may be filed.

Sec. 21.017

The judge to whom the case is assigned appoints special commissioners, who must serve notice of the special hearing to determine if the property in question is to be condemned. Assuming it is, the commissioners issue an award of damages, which must be filed with the court.

Sec. 21.014-016
Sec. 21.048

The judge must inform the Clerk of the special commissioners' decision no later than

the next working day after the decision is filed. The Clerk is required to give notice of the award, by certified mail, no later than the working day following the filing of the decision, to all parties or their attorneys of record.

Property Code *Sec. 21.049*

Any party who is dissatisfied with the findings of the special commissioners may object by filing a written statement with the court. When such objection is filed, the Clerk cites the adverse party, and the case is tried as other civil cases.

Sec. 21.018

Condemnation cases may be appealed as any other civil case.

Sec. 21.063

G. OTHER CIVIL MATTERS

1. Occupational Driver's License

When a person files a petition under Transportation Code §521.242 to obtain an occupational driver's license following conviction under Penal Code §§49.04 - 49.08 (intoxication-related offenses), the Clerk should charge the fee for filing an original civil suit. A new case number is also assigned. The suit is filed in the criminal court in which the person was convicted.

AG L.O. *96-131(1996)*

2. Inmate Litigation

The following applies only to a suit brought by an inmate in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate. It does not apply to an action brought under the Family Code.

Civ. Prac. & Rem. Code *Sec. 14.002*

A court may dismiss a claim, either before or after service of process, if the court finds that the allegation of poverty is false, the claim is frivolous or malicious, or the inmate filed an affidavit or unsworn declaration that the inmate knew was false. On motion of the court, a party, or the Clerk of the court, a court may hold a hearing to determine whether a claim should be dismissed.

Sec. 14.003

A court that dismisses a claim brought by a person housed in a facility operated by or under contract with the Texas Department of Criminal Justice (the "Department") may notify the Department of the dismissal and, on the court's own motion or the motion of any party or the Clerk of the court, may advise the Department that a mental health evaluation of the inmate may be appropriate.

Sec. 14.003

A court may order an inmate who has filed such claim to pay court fees, court costs, and other costs. The Clerk of the court will mail a copy of the court's order and a certified bill of costs to the Department or jail, as appropriate. On receipt of the court's order, the Department or jail will withdraw money from the inmate's trust account in accordance with the court's order, hold the money in a separate account, and then forward the money to the court Clerk on the date the total amount to be forwarded equals the amount of court fees and costs that remains unpaid or the date the inmate is released, whichever is earlier.

Sec. 14.006

On receipt of an order assessing fees and costs that indicates that the court made a finding that the inmate has previously filed an action that was dismissed as frivolous or malicious, a Clerk of the court may not accept another such filing from that inmate until all outstanding costs are paid. The fees and costs assessed include costs incurred by the court and the inmate's facility, including service of process, postage, and transportation, housing and medical care incurred in connection with the appearance of the inmate in court for any proceeding. However, a court may allow such inmate to file a claim for injunctive relief seeking to enjoin an act or failure to act that creates a substantial threat of irreparable injury or serious physical harm to the inmate.

Sec. 14.007

Sec. 14.011

3. Vexatious Litigants

Black's Law Dictionary defines vexatious lawsuits as suits "instituted maliciously and without good grounds, meant to create trouble and expense for the party being sued." Civil Practice and Remedies Code Chapter 11 outlines the processes by which a defendant may seek a court order determining a plaintiff is a vexatious litigant. **Chapter 11 does not apply to municipal courts and Chapter 11 does not apply to an attorney licensed to practice law in Texas <u>unless</u> the attorney proceeds pro se.**

Black's Law Dictionary, 10th Ed., p.1796

Civ. Prac. & Rem. Code Ch. 11 Sec 11.002

a. Motion for Order Determining Plaintiff a Vexatious Litigant

A defendant who wishes to move the court for an order determining that the plaintiff is a vexatious litigant and requiring the plaintiff to furnish security for the defendant's litigation expenses **must file the motion on or before the 90th day after the date the defendant files the original answer or makes a special appearance.** Note that if there is more than one defendant, defendants other than the one who files the motion are not automatically included.

Sec. 11.051

If the motion is filed before the trial starts, the litigation is stayed and the moving defendant is not required to plead:

Sec. 11.052

- If the motion is denied, before the 10th day after the date the motion is denied; or
- If the motion is granted, before the 10th day after the date the moving defendant receives written notice that the plaintiff has furnished the required security.

If the motion is filed on or after the date the trial starts, the litigation is stayed and the moving defendant is not required to plead for a period the court determines.

The court shall, after notice to all parties, conduct a hearing to determine whether to grant the motion. The court may consider any evidence material to the ground of the motion, including written or oral evidence and evidence presented by witnesses or by affidavit.

Sec. 11.053

b. Criteria for Finding Plaintiff a Vexatious Litigant

For the court to enter an order determining that a plaintiff is a vexatious litigant, the moving defendant must first show that there is not a reasonable probability that the plaintiff will prevail in the litigation and:

Sec. 11.054

- "**Option One**" – That the plaintiff, in the seven-year period immediately preceding the date the moving defendant makes the motion under §11.051, has commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in a small claims court and each of these litigations has been either finally determined adversely to the plaintiff or permitted to remain pending at least two years without having been brought to trial or hearing or has been determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure; **<u>or</u>**

- "**Option Two**" – That after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, either the validity of the determination against the same defendant as to whom the litigation was finally determined or the cause of action, claim, controversy, or any of the issues

of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined; **or**

- "**Option Three**" – That the plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence.

c. Order for Security; Prefiling Order

Civ. Prac. & Rem. Code
Sec. 11.055

If the court, after hearing the evidence on the motion, determines that the plaintiff is a vexatious litigant, the court shall order the plaintiff to furnish security for the benefit of the moving defendant. The court shall provide that the security is an undertaking by the plaintiff to assure payment to the moving defendant of the moving defendant's reasonable expenses incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees. The court shall dismiss a litigation as to a moving defendant if a plaintiff ordered to furnish security does not furnish the security within the time set by the order. If the litigation is dismissed on its merits, the moving defendant has recourse to the security furnished by the plaintiff in an amount determined by the court.

Sec. 11.056
Sec. 11.057

Sec. 11.101

If the court makes a finding that a person is a vexatious litigant, the court may enter a prefiling order requiring the vexatious litigant to obtain permission from the appropriate local administrative judge before the vexatious litigant can file new litigation pro se in the court covered by the prefiling order. A person who disobeys the prefiling order is subject to contempt of court. A litigant may appeal a prefiling order entered under Subsection (a) designating the person a vexatious litigant.

Sec. 11.101(d)

***NOTE**: A vexatious litigant prefiling order entered by a **justice or constitutional county court** applies only to the court that entered the order.*

Sec. 11.101(e)

***NOTE**: A vexatious litigant prefiling order entered by a **district or statutory county court** applies to each court in Texas.*

d. Requesting Permission to File Litigation with Local Administrative Judge

Sec. 11.102(a)

If a vexatious litigant intends to file:

- In a justice or constitutional county court:
  - Permission must be sought from the local administrative district judge of the county in which the vexatious litigant intends to file;
- In a court other than a justice or constitutional county court:
  - Permission must be sought from the local administrative judge of the type of court in which the vexatious litigant intends to file.

Sec. 11.102(b)

The vexatious litigant must provide a copy of the request to all defendants named in the proposed litigation.

Sec. 11.102(c)

The local administrative judge may make a determination on the request with or without a hearing. If the judge determines that a hearing is necessary, the judge may require that the vexatious litigant provide notice of the hearing to all defendants named in the proposed litigation.

The local administrative judge may grant the vexatious litigant permission to file the litigation only if it appears to the judge that the litigation has merit and has not been filed for the purposes or harassment or delay. The local administrative judge may condition permission to file on the furnishing of security for the benefit of the defendant.

Civ. Prac. & Rem. Code
Sec. 11.102(d)
Sec. 11.102(e)

A decision by the appropriate local administrative judge denying a vexatious litigant permission to file new litigation or conditioning permission to file litigation on the furnishing of security is not grounds for appeal, except that the litigant may apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision. The denial of a writ of mandamus by the court of appeals is not grounds for appeal to the supreme court or court of criminal appeals.

Sec. 11.102(f)

e. Mistaken Filings

If the clerk mistakenly files litigation presented, pro se, by a vexatious litigant subject to a prefiling order without an order from the appropriate local administrative judge, any party may file with the clerk and serve on the plaintiff and the other parties to the litigation a notice stating that the plaintiff is a vexatious litigant required to obtain permission to file litigation.

Sec. 11.1035(a)

No later than the next business day after the date the clerk receives notice that a vexatious litigant subject to a prefiling order has filed, pro se, litigation without obtaining an order from the appropriate local administrative judge, the clerk shall notify the court that the litigation was mistakenly filed. On receiving notice from the clerk, the court shall immediately stay the litigation and shall dismiss the litigation unless the plaintiff, not later than the 10th day after the date the notice is filed, obtains an order from the appropriate local administrative judge permitting the filing of the litigation. An order dismissing litigation that was mistakenly filed by a clerk may not be appealed.

Sec. 11.1035(b)

Sec. 11.1035(c)

f. Notice to Office of Court Administration and List of Vexatious Litigants Subject to Prefiling Order on Office of Court Administration Website

A clerk of a court must provide OCA a copy of any prefiling order not later than the 30th day after the date the order is signed. OCA must post on its website a list of vexatious litigants subject to prefiling orders. Upon the request of a person designated a vexatious litigant, the list must indicate whether that person has filed an appeal of the designation. The list can be found here: http://www.txcourts.gov/judicial-data/vexatious-litigants.aspx.

Sec. 11.104(a)
Sec. 11.104(b)

OCA may not remove the name of a vexatious litigant subject to a prefiling order from the agency's website unless OCA receives a written order from the court that entered the prefiling order or from an appellate court. An order of removal affects only a prefiling order entered under §11.101 by the same court. A court of appeal decision reversing a prefiling order entered under §11.101 affects only the validity of an order entered by the reversing court.

Sec. 11.104(c)

Clerks may email a copy of a prefiling order to OCA at JudInfo@txcourts.gov. Clerks may fax a prefiling order to OCA at (512)-436-1865. Clerks may mail a prefiling order to OCA at Office of Court Administration, Attn: Judicial Information, P. O. Box 12066, Austin, Texas 78711-2066. Questions concerning the list should be submitted to: Margie Johnson, Assistant General Counsel, Office of Court Administration at Margie.Johnson@txcourt.gov or (512)-463-1625.

4. Uniform Enforcement of Foreign Judgments Act

A foreign judgment is a judgment, decree, or order issued by a court of the United States or of any other state. A copy of any foreign judgment duly authenticated (three-way certification attached) may be filed in the office of the Clerk of any court of competent jurisdiction of this State. The Clerk will treat the foreign judgment in the same manner as a judgment of the local court. A case number should be assigned to the judgment, and the case should be indexed. A filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying as a judgment of the local court.

Civ. Prac. & Rem. Code
Sec. 35.001-.008

At the time the foreign judgment is filed, the judgment creditor or his attorney must mail notice to the judgment debtor. The creditor then files a "proof of notice" with the Clerk to be placed with the docket sheet.

Sec. 35.004

The fee for filing a foreign judgment is the same as for filing a new civil suit. Fees for other enforcement proceedings in the case are also as provided in the Clerk's fee schedule.

Sec. 35.007

5. Filing Fraudulent Court Records or Liens

If a Clerk believes in good faith that a document submitted for filing or a document previously filed is fraudulent, the Clerk must notify in writing the persons affected by the document no later than the second business day after the document is offered for filing. If the document has already been filed, the written notice must be provided no later than the second business day after the Clerk becomes aware the document may be fraudulent.

Gov't Code
Sec. 51.901

AG L.O.
98-016

A document is presumed to be fraudulent if it is issued by a purported court of judicial entity not created by the constitution or laws of a state of the United States or if it is from a purposed judicial officer of such court.

Any action to enjoin the filing of a fraudulent court record or lien must be filed in a district court in the county in which the document is recorded or the affected property is located. The fee for filing an action is the fee that generally applies to the filing of a civil case. A plaintiff who is unable to pay the filing fee and fee for service of notice may file with the court an affidavit of inability to pay under the TRCP.

Civ. Prac. & Rem. Code
Sec. 12.004
Sec. 12.005

The Clerk must post a sign in letters at least one-inch high that is clearly visible to the public in or near the Clerk's office. The sign must state that it is a crime to intentionally or knowingly file a fraudulent court record or instrument with the Clerk.

Gov't Code
Sec. 51.904

CHAPTER 4

ISSUANCE OF PROCESSES

A. INTRODUCTION

In a broad sense, a "process" can be described as a legal notice. There are many different types of processes (*i.e.*, there are many different types of legal notices). Generally, a process is directed to a particular individual and commands that individual to perform a certain action.

Often, however, a process is thought of in a narrower sense. Specifically, a process is often considered to be the same thing as a citation. A citation is a legal notice informing the defendant in a civil lawsuit that he or she has been sued and directing the defendant to file an answer. ***TRCP*** *99*

Rather than thinking of a citation as being synonymous with a process, one would be more accurate in thinking of a citation as a particular type of process. This chapter will discuss the many different types of processes, including, of course, that specific type of process known as a citation.

The issuance of processes is an important function of the District Clerk in supporting the court system. The processes issued by the Clerk constitute the written instructions of the court. Issuance of processes facilitates a structured and orderly system of justice.

B. ISSUANCE OF PROCESSES — CRIMINAL

The District Clerk is required to issue a variety of processes on behalf of the court. Most of the processes are for the purpose of bringing people or things before the court. ***CCP*** *Art. 2.21, effective until 1-1-2025*

1. Capias or Summons

The capias is a common form of process. It is a writ directing any peace officer of the State of Texas to arrest a person accused of an offense and bring him or her before the court immediately or as directed in the capias. A capias issued by a court having jurisdiction of a case after commitment or bail but before trial, or by a clerk at the direction of a judge, is controlled by Code of Criminal Procedure Chapter 23. A capias issued after judgment and sentence in a case is controlled by Code of Criminal Procedure Chapter 43. A capias may be issued in electronic form. *Art.23.01* *Art. 43.015* *Art. 23.031*

The District Clerk is required to issue a capias for each felony indictment after bail has been set or denied and if the defendant is not in custody or under bond. The following procedures are generally followed when issuing a capias. *Art. 23.03*

- Secure a blank capias form. *Art. 23.02*
- From the indictment, fill out the defendant's name, type of offense, name of the court, and the time the capias is returnable.
- Enter the date of issuance and the name of the Clerk issuing the capias. The capias must be attested officially by the issuing authority.
- Affix the seal of the court and sign it.
- Deliver or mail the capias to the sheriff of the county where the defendant resides or is to be found. *Art. 23.03*

- Instead of issuing a capias, the District Clerk should issue a "summons" upon a request from the attorney representing the state. If a defendant fails to appear in response to the summons, a capias should be issued. *CCP Art. 23.13*
- 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.
- A capias must be returned to the court that issued it. If it has been executed, the return should state the result (e.g., defendant committed to county jail). If the capias has not been executed, the return should state the reason for the failure to execute it. If the defendant has not been found, the return should state what efforts were made to locate the defendant and any information as to the defendant's whereabouts. *Art. 23.17*

***NOTE**: If the attorney for the State requested a summons instead of a capias, the summons shall be in the same form as the capias, except that it shall summon the defendant to appear before the court at a stated time and place, and it shall be served on the defendant by delivering a copy to him personally, by leaving it at his residence or usual place of abode with someone of suitable age and discretion residing therein, or by mailing it to the defendant's last known address. **Additionally, a summons must prominently state the following language in English and Spanish**:*

"It is an offense for a person to intentionally influence or coerce a witness to testify falsely or to elude legal process. It is also a felony offense to harm or threaten to harm a witness or prospective witness in retaliation for or on account of the service of the person as a witness or to prevent or delay the person's service as a witness to a crime."

2. Capias or Arrest Warrant After Surrender, Forfeiture, or Violation

In some cases, a defendant may need to be arrested after the original capias has been executed and returned. This can arise: (1) if the court finds that there is cause for a surety to surrender the defendant (i.e., the surety's principal); (2) after a bond forfeiture; or (3) upon the filing of a motion to revoke community supervision or a motion to adjudicate. The court issues a capias or arrest warrant. A capias issued incident to surrender of the defendant or bond forfeiture must be issued no later than the 10th business day after the issuance of the order permitting the surrender or bond forfeiture. *Art. 17.19(b) Art. 23.05 Art. 42A.108 Art. 42A.751*

3. Capias Pro Fine

A capias pro fine is a writ issued by a court having jurisdiction of a case after judgment and sentence for unpaid fines and costs and is directed "To any peace officer of the State of Texas" and commands the officer to arrest a person convicted of an offense and bring the arrested person before that court immediately. A court may have to hold an ability to pay hearing before issuing a capias pro fine. *Art. 43.015(2), 43.05(a-1)*

Upon a defendant's arrest pursuant to a capias pro fine, if the court that issued the capias pro fine is unavailable, the arresting officer may, in lieu of placing the defendant in jail, take the defendant to: (1) another court in the same county with jurisdiction over Class A and Class B misdemeanors or a county criminal law *Art. 43.05(c)*

magistrate court in the same county, if the court that issued the capias pro fine was a county court or a statutory county court with Class A and Class B misdemeanor jurisdiction; or (2) another court in the same county with jurisdiction over felony cases or a county criminal law magistrate court in the same county, if the court that issued the capias pro fine was a district court with felony jurisdiction.

4. Bill of Costs

CCP
Art. 103.001

Although a defendant is liable for the costs and any fine imposed by the court, the defendant does not have to pay the costs and fine until a signed bill of costs is produced and provided or made available to the defendant. The bill of costs is simply a written bill containing or detailing the items of cost. The bill of costs should contain the case number, style of the case, judgment, and a list of costs due. The Clerk must sign and affix the court's seal on the bill of costs, then give it to the defendant or the sheriff for service. A person who is entitled to receive payment for the costs may sign the bill of costs in lieu of the clerk signing it. A bill of costs should be included, as supporting documentation, in the pen packet delivered to the Texas Department of Criminal Justice.

5. Subpoena

Art. 24.01
Art. 24.03

A subpoena is used to summons a person, usually a witness, to appear before a court to testify in a criminal trial or hearing. Before the Clerk is required or permitted to issue a subpoena, the prosecutor or the defense must file an application requesting the issuance of a subpoena. The application must state the name of each witness desired, the location and vocation of the witness, if known, and that the testimony of said witness is material to the State or the defense. The Clerk shall place the application with the papers of the case and make it available to both the State and defense. The court or Clerk must sign the subpoena and include the date of issuance on it.

Art. 24.01(d)

Art. 24.03(b)

If possible, the Clerk shall include the names of all witnesses on one subpoena, and that subpoena shall indicate that the witnesses are summoned for the State or for the defense. However, if the defendant is a member of a combination, that is, three or more persons who collaborate in carrying on criminal activities, as defined by Penal Code §71.01, the Clerk shall issue each witness a subpoena that does not list the names of the other witnesses.

Art. 24.01
Art. 24.04(a)

The person charged with serving the subpoena must be a peace officer or a person who is at least 18 years of age and not a participant in the case. A subpoena may be served in a variety of ways. The most common methods are by personal service and certified mail. However, service by certified mail may not be used if the applicant requested in writing that the subpoena not be served by certified mail or the proceeding for which the witness is being subpoenaed is set to begin within 7 business days of the proposed mailing date.

Art. 24.04(b)

Art. 24.17

The officer or person tasked with serving the subpoena must complete a return of service, showing the time and manner of service and an acknowledgement of receipt of service or the return receipt, whichever is appropriate depending on the type of service. If the subpoena is not served, the return shall state why the subpoena was not executed, the diligence used to find such witness, and any information as to the whereabouts of the witness.

If the application is for an out-of-county witnesses, the subpoenas should be made in duplicate. The Clerk sends the original and copy to the sheriff of the county in which the witness resides. The sheriff will make return on the original.

6. Subpoena Duces Tecum

The subpoena duces tecum is similar to the subpoena except that it commands the witness to bring a record, document, or other thing desired as evidence with him or her to court. The application will specify whether the witness needs to produce anything.

CCP
Art. 24.02

7. Writs of Attachment

A writ of attachment commands a peace officer to physically bring a witness before a court, magistrate, or grand jury proceeding. It is most commonly issued when a witness fails to obey a subpoena to appear. The attorney desiring the issuance of a writ of attachment must file a written request with the Clerk and include an affidavit stating that he or she has good reason to believe, and does believe, that the witness is a material witness. The Clerk should issue the writ ***only*** if the court, after conducting a hearing, determines that issuance of the writ is in the best interest of justice. A magistrate and a foreman of a grand jury may also issue a writ. The officer issuing the writ must sign and date it.

Art. 24.11

Art. 24.12
Art. 24.011

Art. 24.111

A writ of attachment is also used to bring a prisoner who is confined in a Texas prison before the court to testify. If the prisoner is released on bail or the charges on which the prisoner was convicted and for which the prisoner is serving time are dismissed before the prisoner is returned to the Texas Department of Criminal Justice (TDCJ), the county must immediately notify the officer designated by TDCJ of the release on bail or the dismissal. Having issued the writ, the Clerk or court may be ultimately responsible for notifying TDCJ.

Art. 24.13
Art. 24.131

Writs of attachment are also issued to guarantee attendance by material witnesses, whether they have disobeyed a subpoena or not. If the defense or the prosecution believes a witness is material, and that the witness is about to leave the county of prosecution, counsel may file an affidavit requesting the writ. The affidavit must include a statement that the applicant has good reason to believe, and does believe, that the witness is about to move out of the county. The Clerk should issue the writ ***only*** if the court, after conducting a hearing, determines that issuance of the writ is in the best interest of justice.

Art. 24.14
Art. 24.111

A writ of attachment may also be issued to bring a witness before a grand jury, if the attorney representing the state files an application for the writ, along with a sworn statement that he or she has reason to believe the witness is about to move out of the county. The writ of attachment for this purpose may be used against individuals who about to move out of the county of prosecution. The court does not have to hold a hearing before the Clerk issues a writ to secure the witness's presence. If the witness fails or refuses to appear as summoned or attached, a fine of not more than $500 may be imposed and collected in the same manner as any other fine or cost is imposed and collected in a criminal case.

Art. 24.15

> ***NOTE****: Not later than the 30th day after the date a writ of attachment is issued in a district court, the Clerk shall report to the Texas Judicial Council: (1) the date the attachment was issued; (2) whether the attachment was issued in connection with a grand jury investigation, criminal trial, or other criminal proceeding; (3) the names of the person requesting and the judge issuing the attachment; and (4) the statutory authority under which the attachment was issued.*

Art. 2.212
effective until 1-1-2025

8. Reimbursement of Expenses of Nonresident Witnesses

Every person subpoenaed by either party or otherwise required or requested in writing by the district attorney to appear and testify in a criminal proceeding who resides outside the state or county in which the prosecution is pending shall be reimbursed by the State for his reasonable and necessary transportation, meal, and lodging expenses incurred by reason of his attendance as a witness. Witnesses who reside outside the State of Texas are subject to the provisions of Code of Criminal Procedure Article 24.28, Section 4(a) and (b) (Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Proceedings).

CCP
Art. 35.27, Sec. 1

A witness, when attached and conveyed by a sheriff or other officer, is not eligible to receive reimbursement of transportation, meal, or lodging expenses while in the custody of the officer.

Art. 35.27, Sec. 9

A witness must complete an affidavit setting out the transportation, meal, and lodging 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 he was absent from his residence.

Art. 35.27, Sec. 2

A copy of a witness fee claim form must be filed with the Clerk of the court, setting out the facts showing entitlement to reimbursement. No fee shall be required of any witness for the processing of his claim for reimbursement.

Art. 35.27, Sec. 4

The District Clerk or the witness may complete the form. The witness must swear to and sign the claim before the Clerk. The claim is then presented to the judge before whom the criminal proceeding was pending for approval.

If the judge approves the claim, the claim form is returned to the Clerk for the Clerk's certification. If the claim has been assigned, then the assignment located on the back of the claim form must be completed. The assignment is sworn to and signed by the witness before the Clerk or a notary public. If both an assignee and a witness are to be reimbursed, the amount due to each must be itemized on the claim form.

The Clerk, the witness, or anyone acting on behalf of the witness mails the claim form to the State Comptroller's Office. A witness claim form must be filed with the State Comptroller's Office within twelve months from the date the witness is released from further court attendance. Any claim submitted after that date is barred by statute.

Art. 35.27, Sec. 5

AG Op.
WC-0637 (1966)

9. Bench Warrants

A bench warrant is a warrant for arrest issued from the bench or otherwise by the judge. It is used to compel attendance in cases of contempt committed out of court, and in similar cases. The Court of Criminal Appeals has held that a bench warrant is the proper method to bring persons in custody in another location back to court on other charges.

Ex Parte Lowe, *251 S.W. 506 (1923)*

To prepare such a warrant, the Clerk must have received an application for the process either from the defense attorney or the prosecutor. The warrant is filled out in duplicate with the original going to the peace officer who will transport the prisoner and the copy to the file folder.

10. Writ of Habeas Corpus

A writ of habeas corpus is a court order directing a sheriff (or other person

Const.
Art. 1, Sec. 12

holding a prisoner in custody) to produce the prisoner and show why the prisoner is being held. The first step for a prisoner attempting to obtain a writ of habeas corpus is to file an application for the writ with the Clerk of an appropriate court. Any judge of the Court of Criminal Appeals, the district courts, or the county courts has power to issue a writ of habeas corpus and, in fact, must do so upon receipt of a proper application. No filing fee may be charged for filing an application for a writ of habeas corpus.

CCP
Art. 11.01
Art. 11.05
Art. 11.051

Next, the Clerk must determine whether the writ application is being made "pre" or "post" conviction and whether the judgment imposes the penalty of death. The distinguishing factor between types of applications for writs of habeas corpus is whether there has been a conviction. While the practice has almost always been to distinguish between "pretrial" and "post-conviction" writs, the Code of Criminal Procedure distinguishes primarily between writ applications in cases in which no conviction is entered and applications in cases where there is a final felony conviction without the death penalty.

Art. 11.07

a. Pre-Conviction Application for Writ of Habeas Corpus

For pre-conviction applications, it is suggested that a numerical extension, such as a dash and a "1" (i.e., "-1"), be added after the case number to designate the first writ, a "-2" for the second writ, etc. The Clerk should proceed as indicated below.

1. Determine in which case to file the application (i.e., deciding which case number to assign to the application). Ideally, the District Clerk will maintain a separate "writ" docket for the purpose of assigning case numbers to applications which pertain to confinement for an offense which has not yet been charged in the district court:

   If the applicant (defendant) is being confined pursuant to a charging instrument which is already filed in the district court, the application may be filed either in the pending case or as a new case on the writ docket (each District Clerk's office should formulate its own policy).

   If the applicant is **not** being confined pursuant to a charging instrument which is already filed in the district court, the application should be filed as a new case on the writ docket. If a separate writ docket is not maintained, the application should just be filed as a new felony case.

2. File the original application and file-mark two copies of the application.

   When the applicant or his attorney files the original application, the applicant or his attorney should also furnish the District Clerk with two copies of the application. The Clerk will file-mark the two copies. If the application is made *pro se*, copies may not be demanded; however, if the applicant is not confined and presents the application in person, the District Clerk may require that an original and two copies be presented (the Code of Criminal Procedure neither authorizes nor forbids this — each District Clerk's office should formulate its own policy). If the application is made *pro se* and the applicant is confined, the Clerk should make two copies of the application and file-mark them.

3. Mail or deliver some form of acknowledgment of filing to the applicant (a postcard or a file-marked copy noting the date of the filing of the application should suffice).

4. Mail or deliver a file-marked copy of the application to the district attorney's office.

5. If the application is made *pro se*, presume that the applicant intended it to be presented to the district judge. Mail or deliver a file-marked copy of the application to the judge's office.

6. After the writ application has been filed, the applicant has been delivered an acknowledgment, and the district attorney and district judge have received copies, there are no further requirements of the District Clerk unless the trial court acts upon the writ, and then **only** in the event that notice of appeal is given.

TRAP
Rule 31.1

When a written notice of appeal from a judgment or an order in habeas corpus proceedings is filed, the appellate procedures are the same as any criminal case, except that the District Clerk has only 15 days to prepare, certify, and forward the Clerk's record to the Court of Appeals. If the appellant requests, the court reporter must also prepare and certify the reporter's record and forward it to the Court of Appeals within fifteen days after the notice of appeal is filed. On reasonable explanation, the appellate court may shorten or extend the time to file the record.

TRAP
Rule 34

The Clerk's record and reporter's record shall be prepared as in any criminal case.

b. Post-Conviction Application for Writ of Habeas Corpus/Non-Death Penalty Cases

CCP
Art. 11.07, Sec. 3

For post-conviction applications, it is suggested that a letter extension, such as a dash and an "A" (i.e., "-A"), be added after the case number to designate the first writ, a "-B" for the second writ, etc. When the writ application is a post-conviction application in which the applicant seeks relief from a felony judgment imposing a penalty other than death, the Clerk should:

1. Determine whether the application is invoking Code of Criminal Procedure Article 11.07, Section 3 or the Texas Constitution. If the application invokes neither or is unclear, presume that the application is made pursuant to Article 11.07, Section 3.

   If the application is made pursuant to Article 11.07, Section 3, the writ must be filed with the Clerk of the court in which the conviction occurred. The Clerk shall then assign the application to that court. The Clerk should assign a case number ancillary to that of the conviction being challenged.

2. Forward a copy of the application by certified mail, return receipt requested, by electronic mail, or by personal service to the attorney representing the State in the particular trial court. Obtain a signed acknowledgment of delivery of the application from the attorney, in the event of personal service.

3. The attorney representing the State shall answer the application not later than the 30th day after the date the application is received.

   Art. 11.07, Sec. 3(b)

   If the attorney for the State files an answer, motion, or other pleading related to the application, the Clerk must mail or deliver to the applicant a copy of the answer, motion, or other pleading.

   Art. 11.07, Sec. 7

4. The trial court has 20 days in which to act upon the application after the State

   Art. 11.07, Sec. 3(c)

has had its opportunity to respond.

If the trial court finds that there are no previously unresolved facts material to the applicant's confinement, the Clerk shall immediately transmit to the Court of Criminal Appeals a copy of the application, any answers filed, and a certificate reciting the date upon which the finding was made. The Clerk's transmission, also known as the writ transcript, should have a cover sheet which lists the applicant's name, the county, the date of conviction, the offense, the sentence, the Court of Appeals' case number or South Western Reporter citation (if appeal was taken from the conviction), the designation of the convicting court and the name of the present presiding judge.

5. If the trial court enters an order designating the issues of fact to be resolved, the District Clerk has no further duties until the trial court resolves such factual issues. The Clerk must mail or deliver a copy of any order relating to a writ of habeas corpus to the applicant.

6. When the trial court enters findings of fact or approves the findings of a person designated to make them, the District Clerk is required to immediately forward a transcript, under one cover, to the Court of Criminal Appeals.

   The writ transcript must include a copy of the application for the writ, 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 trial court in resolving the factual issues.

   CCP *Art. 11.07, Sec. 3(d)*

   The transcript should have a cover sheet which lists the applicant's name, the county, the date of conviction, the offense, the sentence, the Court of Appeals' case number or South Western Reporter citation (if appeal was taken from the conviction), the designation of the convicting court, and the name of the present presiding judge.

   Art. 11.07, Sec. 7

   Art. 11.07, Sec. 3(d)

c. Post-Conviction Application for Writ of Habeas Corpus/Death Penalty Cases

Code of Criminal Procedure Article 11.071 establishes the procedure for an application for a writ of habeas corpus in which the applicant seeks relief from a judgment imposing a penalty of death.

Art. 11.071

Representation by Counsel. An applicant shall be represented by competent counsel unless the court allows the applicant to proceed *pro se.* If the convicting court appoints counsel, the court shall immediately notify the Court of Criminal Appeals of the appointment and include in its notice a copy of the judgment and the name, address, and telephone number of the appointed counsel. The court may order the Clerk to notify the Court of Criminal Appeals.

Art. 11.071, Sec. 2

Filing of Application. An application for a writ of habeas corpus, returnable to the Court of Criminal Appeals, must be filed in the convicting court not later than the 180th day after the convicting court appoints counsel for purposes of the writ, or not later than the 45th day after the State files its original brief on direct appeal with the Court of Criminal Appeals, whichever date is later. Under certain circumstances, the court may grant one 90-day extension upon request.

Art. 11.071, Sec. 4(a)

Art. 11.071, Sec. 4(b)

An application filed after the appropriate filing date is presumed untimely.

Art. 11.071, Sec. 4(c)

Untimely Application or No Application/Convicting Court. If the convicting court receives an untimely application or determines that after the expiration of the applicable filing date, no application has been filed, the convicting court shall immediately, but in any event within 10 days, send the following to the court of criminal appeals and to the attorney representing the state: a copy of the untimely application, with a statement of the convicting court that the application is untimely, or a statement of the convicting court that no application was filed within the prescribed period; and any order the judge of the convicting court determines should be attached to an untimely application or its statement.

CCP
Art. 11.071, Sec. 4(d)

A failure to file an application before the applicable filing date constitutes a waiver of all grounds for relief that were available to the applicant before the deadline, unless the Court Of Criminal Appeals grants relief under Article 11.071, Section 4A. If a new filing deadline is established and/or new counsel is appointed, the Court of Criminal Appeals shall notify the convicting court.

Art. 11.071, Sec. 4(e), Sec. 4A

Subsequent Application. If the convicting court receives a subsequent application, the Clerk of the court shall: attach a notation that the application is a subsequent application; assign to the case a file number that is ancillary to that of the conviction being challenged; and immediately send the Court of Criminal Appeals a copy of the application, the notation, the order scheduling the applicant's execution, if scheduled, and any order the judge of the convicting court directs to be attached to the application.

Art. 11.071, Sec. 5(b)

Issuance of Writ. If a timely application for a writ of habeas corpus is filed in the convicting court, a writ of habeas corpus, returnable to the Court of Criminal Appeals, shall issue by operation of law. If the convicting court receives notice that the requirements for consideration of a subsequent application have been met, a writ of habeas corpus, returnable to the Court of Criminal Appeals, shall issue by operation of law.

Art. 11.071, Sec. 6(a) Sec. 6(b)

The Clerk of the convicting court shall make an appropriate notation that a writ of habeas corpus was issued; assign to the case a file number that is ancillary to that of the conviction being challenged; and send a copy of the application by certified mail, return receipt requested, or by secure electronic mail to the attorney representing the state in that court.

Art. 11.071, Sec. 6(c)

The Clerk of the convicting court shall promptly deliver copies of documents submitted to the Clerk to the applicant and the attorney representing the state.

Art. 11.071, Sec. 6(d)

Answer to Application. The state shall file an answer to the application. The Clerk's role is to file the appropriate documents and send copies as required.

Art. 11.071, Sec. 7(a)

Findings of Fact Without Evidentiary Hearing. Not later than the 20th day after the last date the state answers the application, the convicting court shall determine whether controverted, previously unresolved factual issues material to the legality of the applicant's confinement exist and shall issue a written order of the determination.

Art. 11.071, Sec. 8(a)

If the convicting court determines the issues do not exist, the parties shall file proposed findings of fact and conclusions of law for the court to consider on or before a date set by the court that is not later than the 30th day after the date the order is issued.

Art. 11.071, Sec. 8(b)

After argument of counsel, if requested by the court, the convicting court shall make appropriate written findings of fact and conclusions of law not later than the 15th

Art. 11.071, Sec. 8(c)

day after the date the parties filed proposed findings or not later than the 45th day after the date the court's determination is made, whichever occurs first.

The Clerk of the court shall immediately send to the Court of Criminal Appeals a copy of the application, answer, orders entered by the convicting court, proposed findings of fact and conclusions of law, and findings of fact and conclusions of law. ***CCP*** *Art. 11.071, Sec. 8(d)(1)*

The Clerk of the court shall immediately send to counsel for the applicant or, if the applicant is proceeding *pro se*, to the applicant, a copy of orders entered by the convicting court, proposed findings of fact and conclusions of law and findings of fact and conclusions of law entered by the court. *Art. 11.071, Sec. 8(d)(1)*

Evidentiary Hearing. If the convicting court determines that controverted, previously unresolved factual issues material to the legality of the applicant's confinement exist, the court shall enter an order, not later than the 20th day after the last date the state answers the application, designating the issues of fact to be resolved and the manner in which the issues shall be resolved. *Art. 11.071, Sec. 9(a)*

The convicting court shall hold the evidentiary hearing not later than the 30th day after the court enters the order designating issues under Section 9(a). The convicting court may grant a motion to postpone the hearing, but not for more than 30 days, and only if the court states, on the record, good cause for delay. The presiding judge of the convicting court shall hold the hearing, unless another judge conducted the trial. Then that judge may preside over the evidentiary hearing, provided he meets the qualifications under Government Code §§74.054 and 74.055. *Art. 11.071, Sec. 9(b) Sec. 9(c)*

The court reporter shall prepare a transcript of the hearing not later than the 30th day after the date the hearing ends and file the transcript with the Clerk of the convicting court. *Art. 11.071, Sec. 9(d)*

The parties shall file proposed findings of fact and conclusions of law for the convicting court to consider on or before a date set by the court that is not later than the 30th day after the date the transcript is filed. If the court requests argument of counsel, after argument the court shall make written findings of fact that are necessary to resolve the previously unresolved facts and make conclusions of law not later than the 15th day after the date the parties file proposed findings or not later than the 45th day after the date the court reporter files the transcript, whichever occurs first. *Art. 11.071, Sec. 9(e)*

The Clerk of the convicting court shall immediately transmit to the Court of Criminal Appeals a copy of the application; the answers and motions filed; the court reporter's transcript; the documentary exhibits introduced into evidence; the proposed findings of fact and conclusions of law; the findings of fact and conclusions of law entered by the court; the sealed materials such as a confidential request for investigative expenses; and any other matters used by the convicting court in resolving issues of fact. *Art. 11.071, Sec. 9(f)*

The Clerk of the convicting court shall immediately transmit to counsel for the applicant or, if the applicant is proceeding *pro se*, to the applicant, a copy of orders entered by the convicting court; proposed findings of fact and conclusions of law; and findings of fact and conclusions of law entered by the court.

The Clerk of the convicting court shall forward an exhibit that is not documentary to the Court of Criminal Appeals on request of the court. *Art. 11.071, Sec. 9(g)*

Review by Court of Criminal Appeals. The Court of Criminal Appeals shall expeditiously review all applications. *Art. 11.071, Sec. 11*

d. Post-Conviction Application for Writ of Habeas Corpus/Community Supervision Cases

CCP Art. 11.072, 4(b)

For applications under Code of Criminal Procedure Article 11.072, the Clerk must assign a case number ancillary to the original case number. It is suggested that a letter extension, such as a dash and an "A", be used for the first writ; a dash and a "B" for the second, etc.

Art. 11.072, Sec. 2(a) Sec. 3(a)

An application for a writ of habeas corpus in a felony or misdemeanor case seeking relief from an order or judgment of conviction ordering community supervision is filed with the Clerk of the court in which the community supervision was imposed. An application may not be filed under this section if the requested relief could be obtained under Code of Criminal Procedure Article 44.02 or Texas Rule of Appellate Procedure 25.2.

Art. 11.072, Sec. 5

The applicant is required to serve a copy of the application on the attorney representing the state. The state has 30 days in which to answer, but no answer is required. The court may grant the state one 30-day extension to answer on a showing of good cause. Any answer filed by the state must be served on the applicant by certified mail, return receipt requested, or by personal service.

Art. 11.072, Sec. 6

No later than 60 days after the day the state's answer is filed, the court shall enter a written order granting or denying the application. The court may order a hearing, but one is not required. If a hearing is ordered, it cannot be held before the eighth day after the state and the applicant are provided notice of the hearing.

Art. 11.072 Sec 7(b)

When the order is entered, the Clerk must immediately send a copy of the order to the applicant and to the state by certified mail, return receipt requested.

11. Commitments

Art. 16.20

A "commitment" is a court order directing that a person be taken to and placed in the care or custody of a hospital, mental health facility, prison, or similar institution. In criminal cases when a defendant is already in the care and custody of the county sheriff, many district courts will issue a commitment to the sheriff to take and place the defendant in the care and custody of the Texas Department of Criminal Justice Institutional Division for incarceration or the state's mental health hospital for a mental health evaluation or treatment. Generally, the Clerk prepares the commitment after the judge has signed and handed down a sentence (order of commitment) or ordered the defendant's transferred to a mental health facility.

A commitment must satisfy the following requirements, if applicable: (1) it must run in the name of "The State of Texas"; (2) it must be addressed to the sheriff having care and custody of the defendant; (3) it must state the defendant's name, or contain an accurate description of the defendant, if the defendant's name is unknown, and the offense for which the defendant is being committed; (4) it must state to what court and at what time the defendant is to be held to answer; (5) if the defendant will be sent to another county, it must state that there is no safe jail in the county where the defendant is currently being held (in most cases, this will be the county where the convicting court is located); and (6) if bail has been granted, it must state the amount of bail

> ***NOTE**: The type of commitment may control what requirements the commitment must satisfy. For instance, if the defendant is committed to TDCJ to begin his or her punishment, the commitment may not contain a bail amount unless the defendant*

can be released on bail pending disposition of an appeal.

***CCP** Art. 42.09, Sec. 3*

If a defendant who has been convicted of a felony is sentenced to death or life in prison, or is ineligible for release on bail pending appeal under Code of Criminal Procedure Article 44.04(b) and has given notice of appeal, the defendant must be transferred to the Texas Department of Criminal Justice on a commitment pending a mandate from the court of appeals or the Court of Criminal Appeals.

Art. 42.09, Sec. 8

The court does not have to sign a separate commitment order, if the standardized felony judgment form is used and delivered, along with other required documents, with the defendant to the Texas Department of Criminal Justice. The standardized felony judgment form contains language that authorizes the sheriff to take and place the defendant in the care and custody of the Texas Department of Criminal Justice. Clerks and courts are required by law to use the standardized judgment forms when entering a felony judgment. The standardized felony judgment forms are available on the Office of Court Administration's Rules and Forms page at https://www.txcourts.gov/rules-forms/forms.aspx. Use of a nonconventional form could delay the defendant's processing times or acceptance upon arrival at the Texas Department of Criminal Justice. The Office of Court Administration is a state agency that operates under the direction and supervision of the Texas Supreme Court. For a list of the standardized felony judgment forms available, see Chapter 3, Part C.4(c).

A pen packet document checklist must also accompany every prisoner transferred to the Texas Department of Criminal Justice. The checklist and instructions are available on the Texas Department of Criminal Justice at https://www.tdcj.texas.gov/divisions/cid/supt_ops_class_pen_packet.html.

The checklist names those documents that must be attached to the standardized felony judgment form, if the document is available. Each document on the list should be checked off or shown to be unavailable or inapplicable.

***AG Op.** GA-0220 (2004)*

> ***NOTE:** An attorney general opinion states that a felony judgment must contain the information specified in Code of Criminal Procedure Article 42.01, Section 1. This information includes the crime victim's name and address. However, the crime victim information must be redacted before the judgment can be made public.*

The Clerk may have to obtain some of the required documents, such as the victim impact statement, the criminal history information, the presentence investigation report, any psychological or psychiatric evaluation, a copy of any detainer, or a copy of any mental health record, mental health screening report, or similar information from the attorney for the state, sheriff's office, or other appropriate office, agency, or person. The Clerk must provide copies of the indictment and standardized judgment form in every case and, if applicable, the order revoking community service or change of venue statement. If applicable, the Clerk should include the order of deferred adjudication with the judgement adjudicating guilt.

When issuance of commitment is completed, the date of issuance should be noted in the criminal file and on the file folder.

C. ISSUANCE OF PROCESSES – CIVIL

***TRCP** 15*

The District Clerk, as an officer of the court, is to issue all processes necessary for proper disposition of each civil case. Most processes will be requested by the

parties to the suit and in some cases approval of the judge is necessary. All processes must carry the signature of the Clerk, the seal of the court and the date of issuance.

Civ. Prac. & Rem. Code *Sec. 17.027*

The plaintiff or his attorney may prepare the appropriate citation for the defendant. The citation must be in the form required and must be served as prescribed by the Rules of Civil Procedure. The Clerk may charge a fee for the issuance of a citation; however, merely affixing the court seal shall not constitute issuance. The Clerk shall not charge for signing his or her name and affixing the seal to a citation prepared by a plaintiff or the plaintiff's attorney.

1. Citation

TRCP *99*
TRCP *38*
TRCP *97*

A citation is an official notice of legal action. It is issued to defendants in civil lawsuits (including third-party defendants and defendants sued pursuant to counterclaims and cross-claims) notifying them that a case has been filed. The citation does not usually require personal appearance but does demand a written answer filed "on or before the Monday next after the expiration of twenty days after the date of service" of the citation.

Procedurally, the citation is issued in the following manner:

TRCP *99*

- On a blank citation form, enter the defendant's name, court of jurisdiction, date original petition was filed, case file number, style of the case, name and address of the attorney for the plaintiff (otherwise the address of the plaintiff), address of the Clerk, and the date of issuance of citation. The defendant's name is obtained from the petition.

TRCP *99(c)*

- The citation must include the following notice to the defendant: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."
- A copy of the relevant pleading is attached to the citation.
- Affix the seal of the court and sign the citation both inside and out.
- A separate citation is issued to each defendant named in the petition.
- The citation and the attached copy of the relevant pleading are given to the sheriff, constable or other authorized person for service and return of the original.
- Both the issuance of the citation and its return are noted in the civil file docket and on the case jacket. After the return, the citation is stored in the case folder.
- The Clerk is entitled to collect the standard fee for every citation issued. The fee should be noted in the civil file docket.

2. Citation for Delinquent Taxes

TRCP *117a(4)*

Citations for tax suits are issued on a different form from standard citations. The form must list the taxing unit(s) initiating the suit, the amount of taxes due (by year), and a description of the property in question. The citation must also show the names of all taxing units which assess and collect taxes on said property not made parties to the suit. All other procedures are the same as for regular citations. A copy of the

original petition need not be attached or served.

3. Citation by Publication (Newspaper and Website)

When the defendant in a case cannot be located for personal service, a citation by publication may be substituted. The plaintiff should submit an affidavit swearing that the defendant's whereabouts are unknown and that the plaintiff has attempted to obtain personal service but has been unable to do so. The citation should contain the names of the parties, a brief statement of the nature of the suit, a description of any property involved, and the interest of the named or unknown defendant(s). Several defendants can be named in one citation. The citation should command the defendant(s) to appear in court before 10:00 a.m. of the first Monday after the expiration of 42 days from the date of issuance. This is in contrast to the 20 days appearance period for a regular citation.

***TRCP** 109*
***TRCP** 114*
***TRCP** 116*

a. Where to Publish

Except in certain circumstances (see below), the citation must be served by both publication in a newspaper and on the Office of Court Administration's "public information internet website" (referred to in this subdivision as "the website"). Clerks may access the website directly at https://courtal.txcourts.gov/. Clerks may also access the website at https://www.txcourts.gov/judicial-data/citation-by-publication/ under the "Clerk Information & Instructions" tab.

***TRCP** 116(b)*

***Gov't Code** Sec. 72.034*

The citation need not be published in a newspaper if:

- the party requesting the citation files an affidavit of indigency under TRCP Rule 145; or
- Publishing in the local paper would exceed $200 per week; or
- No newspaper publication exists in the county.

***Civ. Prac. & Rem. Code** Sec. 17.032*

b. Newspaper Publication

For newspaper publication, the citation must be served by the sheriff or constable or by the Clerk by having it published in the newspaper once a week for at least 28 days. In suits that involve the title to land or partition of real estate, the citation must be published in a newspaper in the county where the land or a portion thereof is situated. In all other suits, citation must be published in a newspaper in the county where suit is pending.

***TRCP** 116(c)*

c. Website Publication

For citations published on the website, the citation must be served by the clerk of the court in which the case is pending and the citation must be published for at least 28 days before the return is filed.

***TRCP** 116(d)*

> ***NOTE**: Additional information on the Office of Court Administration's citation by publication website, including **instructional guides, relevant laws and rules, general and technical FAQs, and website support contact information** can be located at https://www.txcourts.gov/judicial-data/citation-by-publication/. Clerks are strongly encouraged to refer to the instructional guide and FAQs when troubleshooting citation by publication website questions.*

d. Return of Citation

If the citation was served by newspaper, the return must state how the citation was published, specify the dates of publication, be signed by the officer who served the citation, and be accompanied by an image of the publication. ***TRCP** 117*

If the citation was served by website publication, the return must specify the dates of publication and be generated by the Office of Court Administration.

> ***NOTE**: The Office of Court Administration suggests that clerks both send a copy of the return to the filer and place a copy of the return in the case file.*

4. Subpoenas

Civil subpoenas are issued in duplicate with the name of only one party on each instrument. It is suggested that a local rule of court be adopted by the court(s) in the Clerk's county which requires that a sworn, written application for the issuance of a civil subpoena be filed with the Clerk, as is required for a criminal subpoena. ***TRCP** 176.1*

Note that the subpoena range in a civil case is 150 miles, measured from the county of prosecution to the witness' residence or place of service. Depositions and requests for production are exempted from this requirement. However, they must be conducted in the county in which the witness resides, is employed, or regularly conducts business in person. The witness' appearance may be compelled under TRCP 199.3 and 200.2. ***TRCP** 176.3*
***TRCP** 199.2*
***TRCP** 199.3*
***TRCP** 200.2*

a. Witness Fees

A witness, other than a witness summoned by a state agency, is entitled to $10 dollars for each day the witness attends court. This fee includes the entitlement for travel and the witness is not entitled to any reimbursement for mileage traveled. ***Civ. Prac. & Rem. Code** Sec. 22.001(a)*

The party who summons the witness must pay that witness's fee for one day, at the time the subpoena is served on the witness. *Sec. 22.001(b)*

The witness fee must be taxed in the bill of costs as other costs. *Sec. 22.001(c)*

b. Fees for Witnesses Summoned by a State Agency

A witness summoned by a state agency is entitled to receive from the agency: *Sec. 22.003(b)*

- One dollar for each day the witness attends court;
- Mileage at the rate provided by law for state employees if the witness uses the witness's personally owned or leased motor vehicle to attend court;
- Reimbursement of the witness's transportation expenses if the witness does not use the witness's personally owned or leased motor vehicle to attend court; and
- Reimbursement of the witness's meal and lodging expenses while attending court if the court is at least 25 miles from the witness's place of residence.

A state agency may not pay a commercial transportation company or a commercial lodging establishment or reimburse a witness for transportation, meal, or *Sec. 22.003(d)*

lodging expenses at a rate that exceeds the maximum rates provided by law for state employees.

After receiving the witness's affidavit, the court Clerk shall issue a certificate showing the fees incurred. *Civ. Prac. & Rem. Code Sec. 22.003(e)*

The witness fees must be taxed in the bill of costs as other costs. *Sec. 22.003(f)*

5. Depositions in Foreign Jurisdictions

In general, a party may take a deposition on oral examination or written questions of any person or entity located in another state or a foreign country for use in proceedings in this State. The deposition may be taken by notice; letter rogatory**,** letter of request, or other such device; agreement of the parties; or court order. ***TRCP** 201.1*

By Notice. The same procedures are followed for taking depositions within the state of Texas, except the deposition officer may be a person authorized to administer oaths in the place where the deposition is taken.

By Letter Rogatory. On motion by a party, the court in which an action is pending must issue a letter rogatory on terms that are just and appropriate, regardless of whether any other manner of obtaining the deposition is impractical or inconvenient. The letter must:

- be addressed to the appropriate authority in the jurisdiction in which the deposition is to be taken;
- request and authorize that authority to summon the witness before the authority at a time and place stated in the letter for examination on oral or written questions; and
- request and authorize that authority to cause the witness's testimony to be reduced to writing and returned, together with any items marked as exhibits, to the party requesting the letter rogatory.

By Letter of Request or Other Such Device. On motion by a party, the court in which an action is pending, or the Clerk of that court, must issue a letter of request or other such device in accordance with an applicable treaty or international convention on terms that are just and appropriate. The letter or other device must be issued regardless of whether any other manner of obtaining the deposition is impractical or inconvenient. The letter or other device must:

- be in the form prescribed by the treaty or convention under which it is issued, as presented by the movant to the court or Clerk; and
- must state the time, place and manner of the examination of the witness.

Objections to Form of* Letter Rogatory, *Letter of Request, or Other Such Device. In issuing a letter rogatory**,** letter of request, or other such device, the court must set a time for objecting to the form of the device. A party must make any objection to the form of the device in writing and serve it on all other parties by the time set by the court, or the objection is waived.

Admissibility of Evidence. Evidence obtained in response to a letter rogatory, letter of request, or other such device is not inadmissible merely because it is not a verbatim transcript, or the testimony was not taken under oath, or for any similar departure from the requirements for depositions taken within this State under the Texas Rules of Civil Procedure.

Deposition by Electronic Means. A deposition in another jurisdiction may be taken by telephone, videoconference, teleconference, or other electronic means under the provisions of Rule 199.

6. Bill of Costs

The successful party to a suit shall recover all costs incurred from the opposing party(ies). ***TRCP** 131*

Since civil fees are prepaid, a bill of costs is not normally needed. In two instances, however, the instrument may be required. First, when the final judgment states that the defendant shall pay all court costs, the Clerk, if requested, may submit a bill of costs to the defendant. When the defendant pays the costs, the Clerk will refund the plaintiff's deposit. ***TRCP** 89*

Second, in situations involving motions to transfer venue, the Clerk prepares a bill of costs showing that costs have been collected in the original court. Costs incurred prior to the transfer are taxed against the plaintiff. ***TRCP** 89*

When an execution is issued by the Clerk, a correct copy of the bill of costs taxed against the defendant must be attached to the writ. (See "Execution" in Chapter 8.) ***TRCP** 622* ***TRCP** 629*

7. Notice of Default Judgment

If the defendant does not answer the plaintiff's petition or contest the suit, then a default judgment may be rendered against the defendant after the citation with proof of service has been on file with the Clerk of the court 10 days, not including the day of filing and the day of judgment. The Clerk must mail a notice to the defendant at his last known address advising him of this judgment. The last known email address and mailing address of the defendant must be certified in writing by the attorney for the plaintiff. ***TRCP** 239* ***TRCP** 239a* ***TRCP** 107*

The notice contains the case number, case style, court in which the case is pending, names of the parties, and the date the judgment was signed. The Clerk must note that the notice was mailed on the docket. Like notice is to be mailed to all parties upon the signing and filing of a final judgment or other appealable order. ***TRCP** 239a*

8. Notice of Final Judgment or Other Appealable Order

When the final judgment or other appealable order is signed, the Clerk must immediately send the judgment or order to the parties as provided in Rule 21(f)(10). Texas Rule of Civil Procedure 306a requires certain language in the notice where the judgment awards monetary damages. The date the judgment or order is signed, not the day it was mailed, determines the periods of time for motions for new trial, motions to modify judgments, motions to vacate judgment and other such motions as may be filed following the judgment or other final order. ***TRCP** 306a*

D. SPECIAL TYPES OF SERVICE – CIVIL

Process in civil cases may be served by a sheriff or constable, by any person authorized by law or court order, and by any person certified under order of the Supreme Court. Private process servers must be certified by the Judicial Branch Certification Commission, whose members are appointed by the Supreme Court. Further information is available from the Judicial Branch Certification Commission website at http://www.txcourts.gov/jbcc.aspx.

The processes issued by the Clerk are commonly served by the sheriff or constable, but this is not mandatory.

***TRCP** 103*
***TRCP** 106(a)*

1. Service by Registered or Certified Mail

Unless the citation or an order of the court otherwise directs, the citation must be served by be served by delivering to the defendant, in person, a copy of the citation showing the delivery date of the petition or mailing to the defendant by registered or certified mail, return receipt requested, a copy of the citation and of the petition. When service is by registered or certified mail, the return by the officer or authorized person must also contain the return receipt with the addressee's signature.

***TRCP** 106(a)*
***TRCP** 107(c)*

2. Service by Authorized Persons Other than Sheriffs or Constables

Courts are permitted to authorize persons (who are not less than 18 years of age) other than sheriffs or constables to serve citations as well as other processes. No person who is a party to or interested in the outcome of a suit shall serve any process. The order authorizing a person to serve processes may be made without written motion and no fee shall be imposed for issuance of such order. Included among those authorized are private process servers certified by the Process Server Review Board.

***TRCP** 103*

3. Substitute Service Generally

Upon motion supported by a sworn statement listing any location where the defendant can probably be found, and stating specifically the facts showing that service has been attempted under TRCP 106(a) at a location named in the statement but has not been successful, the court may authorize substitute service by leaving a copy of the citation and of the petition with anyone older than 16 at the location specified in the statement. This action is authorized by the judge when the party to be sued cannot be found for regular service. A copy of the court's order is attached to the process and the process is given to the sheriff for his service and return.

***TRCP** 106(b)(1)*

4. Substitute Service Through Social Media

Effective December 31, 2020, a court may, in proper circumstances, permit substituted service of citation electronically by social media, email, or other technology. In determining whether to permit electronic service of process, a court should consider whether the technology actually belongs to the defendant and whether the defendant regularly uses or recently used the technology.

***TRCP** 106(b)(2)*

5. Serving the Secretary of State

When the need arises to serve process on a business concern having no registered representative in the State of Texas, the Secretary of State is served instead. The original and 2 copies of the process may be forwarded to the sheriff of Travis County who in turn gives them to the Secretary of State for final service. Service may also be made on the Secretary of State by the Clerk of the court or by the party or the representative of the party.

Civ. Prac. & Rem. Code
Sec. 17.026
Secs. 17.041-17.045

The Secretary of State's address is:

Office of the Secretary of State
Citations Unit
P.O. Box 12079
Austin, Texas 78711-2079

The telephone number is 512-463-5560. Information is also available at www.sos.state.tx.us/statdoc/index.shtml (select "Service of Process").

Gov't Code *Sec.405.031(a)(4)*

The secretary of state charges a $40.00 fee for maintaining a record of service of any process, notice, or demand authorized to be made upon the secretary of state as agent, and for forwarding the process.

Civ. Prac. & Rem. Code *Sec. 17.045*

1 ***TAC*** *§71.21*

When there is substituted service on the Secretary of State, two copies of the process are delivered to the Secretary of State. The plaintiff must provide a correct home, home office or principal place of business address for the defendant.

The Texas Supreme Court has held that for a valid default judgment to be entered against a defendant, there must be a showing in the record that the Secretary of State served the defendant. The Supreme Court of Texas also held that service on an employee of the Secretary of State is sufficient to effect service on the Secretary of State. *See, e.g., Whitney v. L & L Realty Corp*., 500 SW 2d 94 (Tex. 1973); C*apitol Brick, Inc. v. Fleming Mfg.*, 722 S.W.2d 399 (Tex. 1986).

Gov't. Code *Sec. 405.031(a)(1)*

Upon request, the Secretary of State, for a fee of $15.00, will return a certificate of service stating that the process was forwarded to the defendant.

6. Out-of-State Service

TRCP *108*

The form of notice to a defendant who is absent from the state, or is a nonresident of the state, is the same as for citation to a resident defendant and may be served by any disinterested person competent to serve a resident defendant. The return of service should be endorsed on or attached to the original notice and shall be in the same form as the return of service for a resident defendant. It should be signed and sworn to by the party making such service before some officer authorized by laws of this state to take affidavits.

7. Service of Process in Foreign Countries

TRCP *108a*

Effective December 31, 2020, service may be effected on a party in a foreign country if the citation and petition is served: as prescribed by the foreign country's laws; as the foreign authority directs in response to a letter rogatory or letter of request; as provided by TRCP Rule 106(a); pursuant to the terms and provisions of any applicable international agreement; by diplomatic or consular officials when authorized by the U.S. State Department; or by other means not prohibited by international agreement or the foreign country's law, as the court orders.

Whatever method is used, it must be reasonably calculated to give actual notice of the proceedings to the defendant in time to answer and defend the suit. A defendant served under this rule must appear and answer in the same manner and time, and under the same penalties, as if he or she had been personally served in Texas.

Proof of service may be made as prescribed by the foreign country's law, by order of the court, by TRCP 107, or by a method provided in any applicable international agreement.

8. Out-of-State Service/Non-Resident Motor Vehicle Operators

Civ. Prac. & Rem. Code *Sec. 17.062*

To serve nonresident motor vehicle operators, the chairman of the Texas Transportation Commission may be served.

9. Out-of-County Service

TRCP 103

Service by sheriffs and constables is no longer restricted to service in their county; therefore, the sheriff or constable may serve process in a neighboring county or elsewhere that it is economically feasible. Process may still be mailed to a sheriff or constable in the county in which service is required.

10. Essential Need (Occupational) License

Transp. Code *Sec. 521.243*

Unless the petition is dismissed under Transportation Code §521.2421(f), the clerk of the court shall send by certified mail to the attorney representing the state a copy of the petition and notice of the hearing if the petitioner's license was suspended, revoked, or canceled following a conviction for an offense under Penal Code §19.05 or §§49.04 – 49.08, or an offense to which §521.342 applies.

Sec. 521.249

If, after the hearing on the petition, the court enters an order finding an essential need for operating a motor vehicle, the Clerk must send a certified copy of the petition and the court order setting out the judge's findings and driving privilege restrictions to the Department of Public Safety. The person may use a copy of the order as a restricted license until the 45th day after the date on which the order takes effect.

11. Serving the Commissioner of Insurance

Ins. Code *Sec. 804.201*

If service of legal process is to be effected on a company or organization by serving the commissioner of insurance, the process may be served personally as set out in Insurance Code §3(a) or by certified or registered mail. The address of the Commissioner of Insurance is 1110 San Jacinto, Austin, Texas 78701-1988. A fee of not more than $50.00, payable by check or money order to the Texas Department of Insurance, must be provided for each legal process served on the commissioner, and the fee must accompany each service of process.

CHAPTER 5

INDEXING AND RECORDING OF MINUTES

A. INTRODUCTION

CCP
Art. 2.21
Art. 33.07

Gov't Code
Sec. 51.303

The indexing and recording of court minutes are the very first duties of the District Clerk mentioned in both the criminal and civil statutes of the State of Texas. Indeed, at the time these statutes were first adopted, the Clerk's responsibilities to the court consisted of little more than preserving a record of the court's actions. Even today, while the Clerk's duties have grown tremendously more complex, the indexing and recording of the court's minutes remain of basic importance to the judicial process.

In light of changing technologies, the law no longer requires that minutes and indexes be kept in record books or well-bound books. Therefore, if the Clerks minutes are kept on microfilm and/or the indexes are computerized, the remaining paragraphs of this chapter should be adapted to the office's particular system. For additional information on microfilming records, see "Records Management," Chapter 12.

B. CRIMINAL MINUTES

1. Index

CCP
Art. 33.07

Gov't Code
Sec. 51.303

The index is the key to access the criminal minutes. There should be a least one entry in the index to criminal minutes for every case filed with the clerk. Where there is more than one defendant in a case, the name of each defendant should be indexed. The sequence of the index is alphabetical by last name of the defendant. In criminal cases there is no need to keep a cross-index of plaintiffs because the plaintiff is always the State of Texas. If the county has more than one court hearing criminal cases, a separate index may be kept for the minutes of each court.

The format of the index is not set by law but has been standardized somewhat by convention to contain the following information:

- Date filed
- Case number — Inclusion of the case number is important because all of the Clerk's case records will be filed in numerical sequence rather than alphabetically.
- Surname and given name of the defendant — Many cases are originally filed using the defendant's alias. The case will be prosecuted using the defendant's real name when that becomes known, and the Clerk must re-index the case.
- Offense
- Volume and page of minutes - Make an entry each time a minute is recorded. When a minute mentions more than one defendant, cross-index the minute for each defendant concerned.
- Penalty - Enter fine, sentence, and/or commitment. If the case is dismissed, state so and enter the date of dismissal.
- Date convicted - Enter time of conviction.

2. Preparation and Recording

The preparation of criminal minutes differs greatly from the preparation of probate and civil minutes. In civil cases, attorneys prepare all documents that eventually become case minutes. The clerk merely has to file and record them. For criminal minutes, no such service is available. Judges, as a rule, do not actually prepare the written orders and judgments that are verbally handed down in open court. The usual practice is for the judge to note the judgment, punishment, and other pertinent data on the docket and for the clerk or the prosecuting attorney to actually prepare the instrument.

a. Preparation of Minutes

Rather than trying to type each item of minutes, most District Clerks have adopted the use of forms. Working from the judge's docket sheet, the clerk determines what form is needed, fills in the requisite data, and returns the completed form to the judge for his signature. In practice, a clerk may prepare a variety of forms, orders, and judgments ahead of time.

Exactly what constitutes the "criminal minutes" varies from office to office. At a minimum, judgments and dismissals must be recorded. Some clerks prefer to record all instruments signed by the judge, and a few clerks record all instruments filed for record so that the minutes are a duplication of the case jacket. Consultation between the clerk, judge, and prosecuting attorney will determine what documents become minutes in each county.

b. Recording of Minutes

As in all of the clerk's recording processes, the objective is to transcribe or copy essential instruments into a permanent record book. A set of criminal minutes may be kept for each district court that hears criminal cases. In practice, most courts operate in continuous session, hearing cases year-round. Technically, however, court sessions may be divided into terms and the minutes for each term will have to be bound together. The clerk should check local procedure on this matter.

To record the minutes, the clerk:

- Receives the instrument and sees that all blanks are filled out and that the judge's signature is present.
- Determines what volume will be used and assigns the next unused page number to the instrument. (Write or stamp the volume and page number on the instrument.)
- Copies or transcribes the instrument.
- Inserts either the original instrument or the copy into the minute volume (practice varies).
- Notes the volume and page number in the index to criminal minutes, judge's docket sheet, criminal file docket, and case jacket.
- Files the instrument (or the copy) in the case jacket.

C. CIVIL MINUTES

1. Index

There should be an entry in the index to civil minutes for every party to a civil case. Separate indexes are maintained for the names of plaintiffs and the names of defendants. In cases where there is no defendant (ex parte suits), the case is indexed in the plaintiff's index.

Each index is created at the time a suit is filed. The sequence of the index is alphabetical by the party's last name. The index must cross-reference the other parties to the suit.

Gov't Code *Sec. 51.303*

The index for each party in the suit should contain the following information:

- Name of the party (whether an individual or a business firm). The name should be exactly as stated on the original petition. The names of additional parties to the suit are indexed as they enter the case.
- Name of the opposing party
- Date of filing
- Nature of the case
- Volume and page number of all minutes of the case

2. Preparation and Recording

The District Clerk may wish to record other instruments in the case minutes as well. The Clerk should consult with the judge in determining exactly what documents should be included in the civil minutes.

The recording process for civil minutes is similar to that for all other instruments recorded:

- The Clerk examines the instrument to see that it is complete and that the judge's signature is present.
- The volume and page number is determined and is written or stamped on each page of the instrument.
- The instrument is transcribed or copied.
- The copy is inserted into the current volume of the minutes.
- The volume and page number of the first page of the minutes is recorded in the index to civil minutes (for all parties), the civil file docket, the court docket, and on the outside of the case folder.
- The original instrument is filed in the case folder.

CHAPTER 6

ADMINISTRATIVE SUPPORT FOR DISTRICT COURTS

A. INTRODUCTION

Depending upon the custom in the local jurisdiction, the Clerk may be called upon to perform clerical duties for the district court other than the major responsibilities outlined elsewhere in this manual. In the smaller jurisdictions, this support may be limited because the Clerk does not have extra staff. In the larger counties, where the caseload for judges can be overwhelming, it is not uncommon for the Clerk to assign one or more deputies to each district judge to act as court administrators or administrative assistants.

B. ADMINISTRATIVE SUPPORT IN THE COURTROOM

The Clerk may provide a variety of services to the judge in the courtroom to facilitate proceedings. A few of these services are outlined below:

Gov't Code
Sec. 51.303

- Provide all records from the Clerk's office necessary for courtroom proceedings. Before each case, the Clerk should present to the judge all pertinent documents, which may include the file folder, the judge's docket sheet, depositions, pleas, and new motions to be acted upon.
- Accept (and later file) all instruments introduced into open court by the attorneys.
- Impanel and swear in juries.
- Swear in witnesses.
- Take minutes of proceedings on the judge's docket sheet.

C. ADMINISTRATIVE SUPPORT OUTSIDE THE COURTROOM

The Clerk may facilitate the expeditious administration of justice by assisting the judge with some of his or her non-judicial tasks. A few examples are listed below:

- Arrange all docket settings for the court. The Clerk must be familiar with which cases are ready for trial and how much of the judge's time may be required for each type of case. It is wasteful of the judge's time to prepare for a case when the attorneys are not ready to present it. Likewise, the judge will not need all day for an uncontested civil case but may need weeks for a serious criminal case. Effective scheduling of the judge's case load by the Clerk will make the court more efficient.
- Notify attorneys, bondsmen, and the sheriff of all scheduled proceedings. This will insure that attorneys and defendants are in the courtroom as scheduled and will prevent unnecessary delays.
- Arrange for juries when necessary.
- Arrange for the dismissal of cases. Much of the backlog of both civil and criminal matters are cases that will never be tried for one reason or another. To clear these cases from the docket, the Clerk should periodically contact the attorneys of record and request that either motions for dismissal be entered or prosecution be initiated.

CHAPTER 7

REGISTRY OF THE COURT

A. GENERAL PROVISIONS

Each District and County Clerk must maintain a registry of the court to receive payments ordered tendered into the court's registry. In addition to money, the court may also order property to be held in the court's registry for the benefit of whomever it is ultimately adjudged to belong. According to the Attorney General, any money or property deposited with the court to "satisfy the result of a legal proceeding or to await the result of a legal proceeding" falls under the definition of funds and property to be held in the registry of court.

Loc. Gov't Code *Sec. 117.001*

AG Op. *JM-1162 (1990)*

AG L.O. *96-023 (1996)*

The funds held in the registry of court do not belong to the county; rather, they are essentially held in trust by the Clerk to satisfy the result of a legal pleading or to await the outcome of a legal proceeding. For purposes of the registry of court, the Attorney General has defined a trust as "an equitable obligation under which the trustee is required to deal with the trust property for the benefit of the beneficiaries who have a vested interest in the trust funds."

Although the funds in the registry of court are construed as trust funds, the Clerk acts only in a custodial capacity in relation to funds held in the registry of court. A Clerk is not a trustee for the beneficial owner and does not assume the duties, obligations, or liabilities of a trustee for a beneficial owner.

Loc. Gov't Code *Sec. 117.0521*

While there are no specific requirements in the code, the Clerk should keep a detailed record of the funds in the registry of court. The record should include the cause number, style of the case, instructions regarding the investment or disbursement of funds, and an accounting of all deposits and withdrawals.

By far the most common way of holding money in the registry of court is through a bank account, at a depository selected by the commissioners court. Types of accounts, whether they are interest-bearing, responsibilities of the Clerk, and withdrawal and transfer of funds are covered in detail in Part C of this chapter.

NOTE: Liability for Deposits Pending Suit

A District Clerk who has custody of a sum of money, a debt, an instrument or other property paid to or deposited with a court pending the outcome of a cause of action must seal the property in a secure package in a safe or bank vault that is accessible to the court.

Civ. Prac. & Rem. Code *Sec. 7.002(a)*

The Clerk must keep an itemized inventory of property deposited with the court. The inventory is kept in the Clerk's office as part of his or her records. The inventory must list the disposition of the property and the account for which the property was received.

Sec. 7.002(b)

B. TYPES OF FUNDS

There are many types of funds that are deposited into the registry of court.

They include:

- Civil court deposits
- Probate court deposits, including funds of minors and incompetent persons
- Child support payments paid through the Clerk's office
- Interpleader funds
- Funds paid in satisfaction of a judgment
- Cash bonds
- Cash bail bonds
- Supersedeas bonds
- Money recovered by plaintiff in a suit in which minor or incapacitated person has no legal guardian
- Eminent domain deposits
- Funds from execution sales
- Excess funds from tax sales

Loc. Gov't Code
Sec. 117.052(c)

AG Op
JM-1162 (1990)

AG L.O.
96-023 (1996)

Property Code
Sec. 142.004(a)
Sec. 21.021

TRCP *712*

Tax Code
Sec. 34.03

Some of the more common types of funds are discussed in more detail below.

1. Payment from Judgment

When a judgment is rendered, the judge may order that the amount of the judgment be paid into the registry of the court. This provides a court record that proper payment has been made. It is also common for funds to be held in the registry of court pending appeal.

The judgment debtor may request to pay a judgment into the registry even though not ordered to do so. The judgment debtor then has a record of payment in compliance with the judgment.

Once a payment is in the registry of court, the judgment creditor must have a court order to withdraw it.

2. Payment of Unclaimed Judgment

A judgment debtor may pay a judgment into the registry of court when the location of the judgment creditor is unknown. The payment must be made without offset or reduction for any claims of the debtor.

Civ. Prac. & Rem. Code
Sec. 31.008(a)

The judgment debtor must prepare a recordable release of the judgment, which must recite the cause number, the court, the parties, the date of judgment, the amount of judgment, the amount paid into the court, and the date of release. The judge or the Clerk of court must execute the release on behalf of the creditor and issue the release to the debtor. The Clerk may not charge fees in connection with the execution or preparation of a release of judgment.

AG Op.
DM-174 (1992)

Before being entitled to pay a judgment to a court under Civil Practice Remedies Code §31.008(a) the judgment debtor must send a letter notifying the judgment creditor

Civ. Prac. & Rem. Code
Sec. 31.008(b)

of the judgment, by registered or certified mail, return receipt requested, to all of the following:

- The judgment creditor's last known address
- The address appearing in the judgment creditor's pleadings or other court record, if different from the creditor's last known address
- The address of the judgment creditor's last attorney, as shown in the creditor's pleadings or other court record
- The address of the judgment creditor's last attorney, as shown in the records of the State Bar of Texas, if that address is different from the address shown in the creditor's pleadings or other court record

Civ. Prac. & Rem. Code
Sec. 31.008(c)

If the judgment creditor does not respond to notice on or before the 15th day after the date on which the notice was sent, the judgment debtor may file an affidavit with the court stating the judgment debtor has provided the required notice, that the judgment creditor has not responded to the notice, and that the location of the judgment creditor is not known to the judgment debtor.

Sec. 31.008(d)

The court holds the amount paid to it by the judgment debtor under §31.008(a), as well as interest earned on that amount in trust for the judgment creditor.

Sec. 31.008(e)

The Clerk of the court must deposit the trust funds and any interest earned by the funds in the Clerk's trust fund account. The Clerk must pay the funds and any interest earned by the funds to the judgment creditor or to the successors to the rights of the judgment creditor. The Clerk may presume that the funds are payable to the judgment creditor unless the Clerk is furnished with a written assignment of the judgment.

Sec. 31.008(f)

Funds held in the Clerk's trust fund account are subject to escheat under Property Code Chapter 72.

Sec. 31.008(g)

On occasion, the judgment creditor may refuse to accept payment of the judgment or may accept payment and refuse to sign a release of judgment. If the judgment debtor has complied with sections (b) and (c) noted above, the court, on its own motion or motion of either party, will hold a hearing to determine if the release should be filed. The court may direct the judgment debtor to prepare and file a recordable release with the Clerk if the court finds that either:

- The amount under the judgment has been paid into the registry of the court.
- The judgment creditor has accepted payment under the judgment but has refused to execute a release of judgment.

3. Payment of Judgment/Investment Trusts

Property Code
Sec. 142.004

In nearly all cases where the recipient of the judgment is a minor child or an incapacitated person, the judge will order all funds paid into the registry for the Clerk to administer. In such cases, the funds will be invested by the Clerk, on written order of the court, in one of the following:

- A higher education savings plan established under Education Code Chapter 54, Subchapter G, a prepaid tuition program established under Education Code Chapter 54, Subchapter H, or an ABLE account established in

accordance with the Texas Achieving a Better Life Experience (ABLE) Program under Education Code Chapter 54, Subchapter J;

- Interest-bearing deposits in a financial institution doing business in this state and insured by the Federal Deposit Insurance Corporation;
- U.S. treasury bills;
- An eligible interlocal investment pool, that meets the requirements of Government Code §§2256.016, 2256.017 and 2256.019; or
- A no-load money-market mutual fund that is regulated by the SEC, has a dollar-weighted average stated maturity of 90 days or less, and includes in its investment objectives the maintenance of a stable net asset value of $1 per share.

Property Code *Sec. 142.008*

Sec. 142.009

The court may order such funds to be paid as a structured settlement. In such a case, the funds must be invested in an obligation guaranteed by the U.S. government or an annuity contract that meets the requirements set forth in Property Code §142.009. The party obligated to fund a structured settlement must provide a copy of the instrument that provides the funding or an affidavit from an independent financial consultant that specifies the present value of the structured settlement and the method by which the value is calculated.

A structured settlement under this section is not subject to interest payment calculations as set forth in Local Government Code §117.054.

These funds are placed in separate depository accounts, on order of the court. Interest earned on such funds is paid in the same manner as interest earned on the special registry account.

4. Specific Performance Bond Forfeiture

The proceeds of forfeited specific performance bonds are paid into the registry of court. The proceeds from such payment may be withdrawn by the damaged party upon order of the court.

5. Proceeds from Executions

TRCP 712

When a judgment is enforced by sheriff's execution, the proceeds of such executions are usually paid into the registry if return is made to the Clerk. This rule covers regular executions, orders of sale, sequestrations, and garnishments.

6. Cash Bonds

CCP *Art. 17.02*

AG Ops. *DM-282 (1994)* *JC-195 (2000)*

Cash bonds are usually received by the sheriff or other arresting officer, and are receipted by the officer receiving them. The Attorney General has stated that these cash funds must be placed into the registry of the court once a case has actually been filed. Until a case is filed, the funds are not "pending the outcome of a legal proceeding" and thus are not subject to Local Government Code Chapter 117. The Attorney General has further opined that cash bonds are subject to the same portion of interest as any other funds held in the registry of court.

CCP *Art. 17.02*

Any cash funds deposited under Code of Criminal Procedure Article 17.02 shall be

receipted for by the officer receiving the funds and, on order of the court, be refunded, in the amount shown on the face of the receipt less the administrative fee authorized by Local Government Code §117.055, IF APPLICABLE, after the defendant complies with the conditions of the defendant's bond, to: any person in the name of whom a receipt was issued, including the defendant if a receipt was issued to the defendant; or the defendant, if no other person is able to produce a receipt for the funds.

7. Excess Funds

Tax Code
Sec. 34.03

The sale of property for delinquent taxes may generate excess funds over and above the amount of judgment. These funds must be turned over to the Clerk of the court issuing the order of sale for safekeeping. The Clerk is required to send notice to the former owner of the property that there are excess funds, and the retention period is two years from the date of sale. The Clerk must keep the excess proceeds paid into court as provided by Tax Code §34.02(d) for a period of two years after the date of the sale unless otherwise ordered by the court. Regardless of the amount of excess proceeds paid into court, the Clerk must send to the attorney general notice of the deposit and amount of excess proceeds if the attorney general or a state agency represented by the attorney general is named as an in rem defendant in the underlying suit for seizure of the property or foreclosure of a tax lien on the property.

C. DEPOSITORIES FOR REGISTRY FUNDS

Loc. Gov't Code
Sec. 117.025

Sec. 117.027

By far the most common way of holding registry funds is to deposit them in special accounts in financial institutions selected by the commissioners court. If for some reason the commissioners court does not select a depository, the funds and/or property in the registry must be secured in an iron safe or a bank vault.

Sec. 117.001

Sec. 117.052

A "special account" is defined as an account in a depository in which registry funds are placed. If a depository has been selected, funds in the Clerk's custody for more than three days must be deposited into the special account. A "separate account" consists of funds transferred from a special account into a separate interest-bearing account. The accounts are held in the name of the Clerk depositing the funds.

Sec. 117.021

The code does not require that the special account earn interest, but the Clerk may certainly elect to have the special account bear interest. If the Clerk wishes to have an interest-bearing account for registry funds, he or she must make a written request to the commissioners court. The bank at which the funds will be held in an interest-bearing account must submit a certified check or a cashier's check in an amount equal to one half of one percent of the average daily balance of the registry funds held by the Clerk during the preceding year.

Sec. 117.003(a)

If any funds deposited into the court registry are placed into an interest-bearing account, any person with a taxable interest in the funds must submit appropriate tax forms and provide correct information to the Clerk so that the interest earned on such funds can be reported to the Internal Revenue Service. The information and forms provided to the Clerk are not subject to public disclosure except to the extent necessary to comply with federal tax law requirements.

As a general rule, once funds are deposited into a special account, they may not be withdrawn except to pay the person entitled to the funds, upon court order. There are a

few exceptions to the rule.

If the commissioners court selects a new depository, when the depository qualifies, the District Clerk must transfer the funds in a special account from the old depository to the new depository, and the Clerk may draw checks on the account(s) for this purpose.

Loc. Gov't Code *Sec. 117.053(a)*

Similarly, the Clerk must withdraw funds to transfer them to a separate account when directed to do so by a written order of a court. The separate account must be in one of the locations set out in Local Government Code §117.053(c).

An appeal bond will be paid without a written order of the court on receipt of mandate or dismissal. Also, funds deposited under Estates Code Chapter 1355 may be paid without a written order of the court. Funds considered abandoned are turned over to the State Comptroller without any further order of the court.

Sec. 117.053(b)

Sec. 117.002

The Clerk is authorized to pay any or all of the interest earned on funds deposited in the registry, without court order, to the Internal Revenue Service to satisfy tax withholding requirements.

Sec. 117.003(b)

A depository selected under Local Government Code Chapter 117, Subchapter B must pay a check drawn by a District Clerk against funds deposited in the Clerk's name on presentment of the check at the county seat if the funds subject to the check are in the possession of the depository. If the depository is not located at the county seat, the depository must file a statement with the County Clerk of the county designating a place at the county seat where, and a person by whom, deposits by the Clerks will be received and checks drawn on the depository will be paid.

Sec. 117.056(a)

Sec. 117.056(b)

A District Clerk is not responsible for a loss of registry funds resulting from the failure or negligence of a depository. However, a District Clerk is not released from: liability for a loss of registry funds resulting from the Clerk's official misconduct, negligence, or misappropriation of the funds; or responsibility for keeping the registry funds safe until the Clerk deposits them in a depository selected under Local Government Code Chapter 117, Subchapter B. After a District Clerk deposits the registry funds, the Clerk is relieved of the responsibility for keeping the funds secure.

Sec. 117.081(a)

Sec. 117.081(b)

Sec. 117.081(c)

D. DISBURSEMENT OF REGISTRY FUNDS

Unless otherwise provided for by statute or rule, registry funds are disbursed only by court order. Usually, although not always, funds are disbursed at the conclusion of a case.

When the Clerk receives an order from the court under whose jurisdiction the funds were deposited, the Clerk should disburse the funds to the proper party. The Clerk may be able to deduct a fee to compensate the county for the cost of administering the account. Be sure the funds are not exempt from this requirement (e.g., funds deposited under Property Code §142.008; funds generated from a case arising under the Family Code).

Loc. Gov't Code *Sec. 117.054*

Sec. 117.055(a), (a-1), (a-2)

AG Op. *JM-434 (1986)*

If a special or separate account earns interest, the Clerk pays the interest upon withdrawal. Ninety percent of the interest is paid to the special account, and 10 percent is paid into the general fund of the county.

Loc. Gov't Code *Sec. 117.054*

AG Op. *DM-282 (1994)*

If registry funds do not earn interest, including funds in a special or separate account, then the Clerk may be able to deduct 5 percent or $50, whichever is less, of the amount withdrawn (except in a withdrawal of funds generated by the collection of a cash bond or cash bail bond in certain circumstances). This fee is deposited into the general fund of the county. The Clerk should pay close attention to when a refund may be due to a person to whom withdrawn funds generated by the collection of a cash bond or cash bail bond were disbursed.

Loc. Gov't Code *Sec. 117.055*

The 10 percent of earned interest or the 5 percent of funds withdrawn cannot be collected at the time of deposit but are collected only when the registry funds are withdrawn.

AG Op. *DM-174 (1992)*

1. Distribution of Excess Funds

Property sold for delinquent taxes may generate excess funds over and above those necessary to satisfy the judgment. Such funds are held in the registry of the court in trust for the former owner of the property.

Before the 31st day after the funds are received by the Clerk, the Clerk is required to notify the former owner of the property if the funds held are in excess of $25. The Clerk must send the notice by certified mail, return receipt requested, to the former owner of the property, at the former owner's last known address according to the records of the court or any other source reasonably available to the court. The notice must:

Tax Code *Sec. 34.03(a)*

- State the amount of the excess proceeds.
- Inform the former owner of that owner’s right to claim the excess proceeds under §34.04.
- Include a copy of the complete text of §§34.03 and 34.04.

Regardless of the amount, the Clerk must keep the excess proceeds paid into court as provided by §34.02(d) for a period of two years after the date of the sale unless otherwise ordered by the court.

Any party, including a taxing unit and the Title IV-D agency, may file a petition setting forth a claim to the excess proceeds from a tax sale.

Sec. 34.04

The petition must be filed before the second anniversary of the date of the sale of the property. A copy of the petition must be served on all parties to the underlying action, as prescribed in TRCP 21a not later than the 20th day before the hearing date, as shown on the petition.

Each party that establishes a claim to the proceeds will be paid, as ordered by the court, in the following order of priority:

1. The tax sale purchaser if the tax sale has been adjudged to be void and the purchaser prevailed in an action against the taxing units under §34.07(d) by final judgment;
2. A taxing unit for any taxes, penalties, or interest that have become due or delinquent on the subject property subsequent to the date of the judgment or that were omitted from the judgment by accident or mistake;

3. Any other lienholder, consensual or otherwise, for the amount due under a lien, in accordance with the priorities established by applicable law;

4. A taxing unit for any unpaid taxes, penalties, interest, or other amounts adjudged due under the judgment that were not satisfied from the proceeds from the tax sale;

5. Each former owner of the property, as the interest of each may appear, provided that the former owner: (A) was a defendant in the judgment; (B) is related within the third degree by consanguinity or affinity to a former owner that was a defendant in the judgment; or (C) acquired by will or intestate succession the interest in the property of a former owner that was a defendant in the judgment.

Except as provided by Subsections (c)(5)(B) and (C), a former owner of the property that acquired an interest in the property after the date of the judgment may not establish a claim to the proceeds. For purposes of this subsection, a former owner of the property is considered to have acquired an interest in the property after the date of the judgment if the deed by which the former owner acquired the interest was recorded in the real property records of the county in which the property is located after the date of the judgment.

An order under this section directing that all or part of the excess proceeds be paid to a party is appealable.

A person may not take an assignment or other transfer of an owner's claim to excess proceeds unless the requirements of Tax Code §34.04(f) are met.

Interest and costs are not allowed under this section. Because the petition is filed as part of the underlying tax suit, a separate filing fee may not be charged.

Tax Code
Sec. 34.03(b)

If no claimant establishes entitlement to the proceeds within two years, the Clerk distributes the excess proceeds to each taxing unit that establishes its claim to the proceeds according to the priorities established in Tax Code §34.04(c). The Clerk should note the date and amount distributed in both the execution docket and the ledger of the registry of the court.

Sec. 34.03(c)

Sec. 34.03(d)

The clerk may deduct from the amount of the excess proceeds the cost of postage for sending to the former owner of the property a notice under §34.03(a)(1).

2. Unclaimed/Abandoned Funds

Property Code
Sec. 72.101

Except as provided by §§72.101, 72.102, 72.104, 72.1016, and 72.1017, personal property is considered abandoned if, for longer than three years: the location of the owner of the property is unknown to the holder of the property, and according to the knowledge and records of the holder of the property, a claim to the property has not been asserted or an act of ownership of the property has not been exercised. Property and funds held in the registry of court are considered personal property.

Sec. 72.104

Tangible personal property that is found on county land or in a county park, facility, or right-of-way is presumed abandoned if, for longer than 120 days: the personal property is held by the county; the existence and location of the owner of the personal property is

unknown to the county; and according to the knowledge and records of the county, a claim to the personal property has not been asserted or an act of ownership of the personal property has not been exercised.

Any funds or property, except cash bail bonds, that are considered abandoned and exceed $100 in value must be turned over to the Comptroller without further order of the court. The dormancy period begins on the later of:

Loc. Gov't Code
Sec. 117.002

AG Op.
DM-348 (1995)

- The date of entry of final judgment or order of dismissal in the action in which the funds were deposited
- The 18th birthday of the minor for whom funds were deposited
- A reasonable date established by rule by the Comptroller to promote the public interest in disposing of unclaimed funds

The dormancy period must be reached as of March 1 before turning over Chapter 74-designated abandoned or unclaimed property. The Clerk is required to file a report with the Comptroller every year, describing the dormant funds to escheat. This report must be filed on or before July 1.

Property Code
Sec. 74.001
Sec. 74.101
Sec. 74.301

E. ACCOUNTING FOR AND DISBURSING REGISTRY FUNDS IN COUNTIES WITH POPULATIONS OF 190,000 OR MORE

If the commissioners court provides a depository for registry funds in a county with a population over 190,000, the Clerk must make periodic reports to the county auditor about funds received and disbursed by the Clerk. The county auditor must establish procedures for issuing checks from the registry fund.

Loc. Gov't Code
Sec. 117.058

F. SPECIAL PROVISIONS APPLYING TO FUNDS PAID INTO COURT REGISTRY IN COUNTIES WITH POPULATION OF MORE THAN 2.4 MILLION

Special provisions applying to funds paid into a court registry in a county with a population of more than 2.4 million can be found in Local Government Code Chapter 117, Subchapter E. Many of the provisions are the same as the general rules that apply to all counties. However, for continuity and ease of reference for those Clerks affected, the entire subchapter is discussed here.

Loc. Gov't Code
Sec. 117.111

1. Money Affected

The following list shows the kinds of money paid into the registry of any court for which the Clerk is, or may become, responsible:

Sec. 117.112

- Funds of minors or incapacitated persons
- Funds tendered in connection with a bill in interpleader
- Any other funds

2. Depository Contract

The commissioners court of the county collecting the funds may contract with one or more banks in the county for the deposit of the funds in a special account to be called the "registry fund."

Sec. 117.113

3. Deposit of Funds

Money paid into the registry of the court must be deposited by a Clerk into the registry fund at the special depository.

Loc. Gov't Code *Sec. 117.119*

4. Custodianship

A Clerk must act only in a custodial capacity regarding the registry fund, is not considered to be a trustee for the beneficial owner, and is not considered to have assumed the duties, obligations, or liabilities of a trustee for the beneficial owner.

Sec. 117.120

5. Disbursement of Funds

Sec. 117.121

Money may be paid from the registry fund only on checks or drafts signed by the Clerk on the written order of the court with proper jurisdiction. An exception exists: the Clerk may make a payment without court order for unpaid court costs from a cash bond deposited in connection with an appeal after the appellate court issues its mandate in the appeal if the costs remain unpaid for 45 days after the mandate is issued.

All checks or drafts issued for the disbursement of the registry fund must be submitted to the county auditor for the auditor's countersignature before delivery or payment. The county auditor may countersign the checks only on written evidence of the order of the judge of the court authorizing the disbursement of the funds.

A disbursement under an order of a court in which registry funds have been deposited may be made by electronic transfer if all of the following occur:

- The designated recipient of the money submits a written request for the transfer to the Clerk.
- The Clerk gives written approval for the transfer.
- A county auditor countersigns the approval.

A Clerk may charge a reasonable fee, subject to the approval of the recipient of the money, for an electronic transfer of a disbursement from a registry fund.

6. Interest

The interest derived from money on deposit in the registry fund must be paid as earned as follows:

Sec. 117.122

- A sum equal to 10 percent of the interest will be paid into the general fund of the county to reimburse the county for the expenses of maintaining the registry fund.
- The remaining 90 percent of the interest will be credited to the registry fund.

For each withdrawal, a Clerk pays out the original amount deposited in the registry of the court and 90 percent of the interest earned on that amount at the time and in the manner directed by the court with proper jurisdiction.

7. Audit

Loc. Gov't Code Sec. 117.123

The registry funds shall be audited at the end of each county fiscal year by the county auditor or by an independent certified public accountant or a firm of independent certified public accountants of recognized integrity and ability selected by the commissioners court.

A written report of the audit shall be delivered to the county judge, each county commissioner, and a clerk not later than the 180th day after the last day of the fiscal year. A copy of the audit shall be kept at the clerk's office and shall be open to inspection by any interested person during normal office hours. The cost of the audit shall be paid by the county.

8. Liability of Clerk

Sec. 117.124

A Clerk is not responsible for a loss of funds resulting from the failure or negligence of a depository or the safety of funds after deposit in a depository selected under Local Government Code Chapter 117, Subchapter E.

However, a Clerk is responsible for a loss of funds resulting from the Clerk's official misconduct, negligence, or misappropriation of funds. Additionally, a Clerk is responsible for the safety of funds before deposit in a depository selected and authorized by the commissioners court.

9. Transfer of Money

Sec. 117.125

In the absence of a contrary order from a court having jurisdiction over the registry fund, a Clerk may transfer money deposited in the fund into a separate account. A Clerk will transfer all money deposited in a registry fund under Estates Code Chapter 1355 into a separate account. Money transferred into a separate account under this law must be both:

- Transferred into an account authorized for investment under Government Code Chapter 2256 by a local government or investment pool; and
- Invested according to the investment officer designated under Government Code §2256.005 by the investing entity of which the county is a member.

A transfer of money into a separate account under this section is exempt from the requirements prescribed by §117.121 for disbursements from registry funds. An investment of money transferred from a registry fund under this law is subject to the limitations, policies, and standards of care provided by Government Code Chapter 2256.

CHAPTER 8

ANCILLARY PROCEEDINGS

A. INTRODUCTION

Certain instruments are issued by the Clerk after a judgment has been rendered in a civil case. Because these proceedings are subsequent to the case itself, they are called ancillary proceedings. A few of the most common ancillary proceedings are discussed in this chapter.

B. ABSTRACT OF JUDGMENT

Property Code
Sec. 52.001

An abstract of judgment is a summary of pertinent facts contained in a judgment, including the amount of judgment, the date the judgment was rendered, and the identity of the parties. The abstract may be issued at any time after judgment is rendered. When recorded and indexed, the abstract of judgment constitutes a lien on the defendant's real property.

Sec. 52.0011

A recorded abstract of judgment does not constitute a lien when the defendant has appealed the judgment and has posted the proper bond. Likewise, a lien is not created when the court issues a finding against creation of a lien. Such finding must be recorded in each county where the abstract was recorded.

Sec. 52.002

An abstract of judgment may be prepared by either the Clerk or the person in whose favor the judgment is rendered, or by that person's agent or attorney. If the abstract is prepared by someone other than the Clerk, the person preparing it must also verify it.

If the Clerk prepares the abstract, the applicant for the abstract must pay the appropriate fee.

Sec. 52.003

An abstract of a judgment must show the following:

- Names of the plaintiff and defendant
- Birthdate, last three numbers of the driver's license number, and last three numbers of the social security number of the defendant, if available
- Number of the suit in which the judgment was rendered
- Defendant's address, or if the address is not shown in the suit, the nature of citation and the date and place of service of citation
- Date on which the judgment was rendered
- Amount for which the judgment was rendered and the balance due
- Amount of the balance due, if any, for child support arrearage
- Rate of interest specified in the judgment

Sec. 52.0041

Property Code §52.003 further states that an abstract may show the mailing address for each plaintiff or judgment creditor. However, if the judgment was abstracted after September 1, 1993, it must show the plaintiff's or judgment creditor's mailing address. If the address is not included, a penalty filing fee of $25 or twice the recording fee for the abstract, whichever is greater, must be paid.

A judgment lien continues for 10 years after the date of recording, unless it is a judgment in favor of the State, in which case the lien can continue for 20 years. It is the responsibility of the judgment creditor to renew the lien, if the judgment has not been paid. When the judgment is paid, it is likewise the responsibility of the judgment creditor to release the lien as provided in Property Code §52.005.

Property Code *Sec. 52.006* *Sec. 52.005*

Special rules for discharging and canceling a judgment lien apply when the person against whom the judgment is rendered files bankruptcy. If the abstract was recorded before September 1, 1993, a court order must be issued regarding the cancellation of the judgment lien. The Clerk's only role is to perform the ministerial duties required relating to the hearing and the order.

Secs. 52.021-52.025

For abstracts recorded on or after September 1, 1993, no further action by any court is required to discharge and cancel a judgment lien. Application of these laws and any exceptions to cancellation of the judgment lien is strictly between the bankrupt debtor and the judgment creditor; the Clerk has no role in these proceedings.

Secs. 52.041-52.043

C. WRITS OF EXECUTION

A writ of execution (often termed an "execution") is a process issued by the Clerk that orders the sheriff to collect a judgment against a defendant. The sheriff either collects money or sells property belonging to the defendant for as much of the judgment as possible. The execution is returnable in 30, 60, or 90 days, as requested by the plaintiff or the plaintiff's attorney.

TRCP *622* ***TRCP*** *621*

The Clerk issues the execution after the expiration of thirty days from the time the court signs the final judgment. Exceptions are:

TRCP *627*

- If a supersedeas bond or notice of appeal has been filed by a party appealing the judgment and has been approved, no execution is issued.

- If a timely motion for new trial or motion in arrest of judgment is filed, the Clerk issues the execution after the expiration of thirty days from the time the order is overruled. Naturally, no execution is issued if the motion for new trial is granted, because the judgment would not be final in that case.

- If the plaintiff files an affidavit that the defendant is about to remove or dispose of property subject to execution, then execution may be issued before the thirtieth day after final judgment.

TRCP *628*

An execution can be issued only if the judgment on which the execution is based is a valid final judgment. A judgment is not final unless it disposes of all the parties and the issues in a suit.

An execution cannot be issued if the party against whom a judgment has been entered has filed bankruptcy.

The procedure for issuing an execution is as follows:

TRCP *621* ***TRCP*** *629*

- The plaintiff or his attorney submits a request for the execution.

- The Clerk collects the fee and posts the request and fee in the file docket.

- From the case minutes, the Clerk enters the amount of judgment, the interest rate, and any court costs due on the execution form. From the registry of the court and the file docket, the Clerk notes any payments made on the judgment and subtracts these payments from the amount to be collected.
- The Clerk completes the execution form by filling out the case number, style of case and date of issuance.
- The execution is then recorded in the execution docket and the volume and page number of the docket record is noted on the execution.

When the sheriff makes his return, it is recorded in the execution docket along with the amount collected.

There are several specific types of execution. The requirements set forth are in addition to those covered above.

1. Judgment for Money

When the judgment requires the judgment debtor to pay a sum of money, the writ of execution must state the amount due and any interest to be paid. The writ must also require that the judgment and costs be paid out of the property of the judgment debtor subject to execution.

***TRCP** 630*

2. Sale of Particular Property

This type of writ of execution lists specific items of the defendant's property (real or personal) to be sold to satisfy judgment. The items to be sold must be described in the writ of execution. Notice of the sale must be given in accordance with TRCP 646a through TRCP 650.

***TRCP** 631*

3. Delivery of Certain Property

The writ of execution must describe the property to be delivered and the party to whom the judgment awards possession. The writ must also require the officer to deliver possession of the property to the party entitled to receive the property.

***TRCP** 632*

4. Possession of Value of Personal Property

This kind of writ is issued when it is presumed the officer will not be able deliver certain property. By this writ, the officer is authorized to levy and collect the value of the judgment from any property of the judgment debtor which is liable to execution.

***TRCP** 633*

As mentioned above, TRCP 627 states that an execution shall not issue when a supersedeas bond is filed when a case is appealed. If the supersedeas bond is filed within the time allowed by law, and an execution has already been issued, the Clerk must immediately issue a writ of supersedeas. The writ of supersedeas suspends all proceedings under the execution.

***TRCP** 634*

D. TURNOVER ORDERS

A turnover order is a post-judgment remedy designed to aid a judgment creditor to obtain satisfaction of a judgment where the judgment debtor owns property that is not

***Civ. Prac. & Rem. Code** Sec. 31.002(a)*

exempt from execution for the satisfaction of liabilities. Some examples are property owned outside Texas, accounts receivable, and instruments of ownership (e.g., stock certificates, negotiable instruments, securities, etc.). These kinds of property can easily be secreted by the judgment debtor so that they cannot be found for execution by the sheriff or constable.

Generally, the turnover order remedy will be used by a judgment creditor when the traditional methods of reaching nonexempt property of a judgment debtor (i.e., writs of execution, attachment, and garnishment) have not been successful.

A judgment creditor may move for the court's assistance under the "turnover" statute in the same proceeding in which the judgment is rendered or in an independent proceeding.

Civ. Prac. & Rem. Code *Sec. 31.002(d)*

If the court enters a turnover order, it may do one of the following:

- Order the judgment debtor to turn over nonexempt property that is in the debtor's possession or is subject to the debtor's control, together with all documents or records related to the property, to a designated sheriff or constable for execution. *Sec. 31.002(b)*
- Otherwise apply the property to the satisfaction of the judgment.
- Appoint a receiver with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment.

With respect to turnover of property held by a financial institution in the name of or on behalf of the judgment debtor as customer of the financial institution, the rights of a receiver do not attach until the financial institution receives service of a certified copy of the order of receivership in the manner specified by Finance Code §59.008. *Sec. 31.002(g)*

A court may enter or enforce an order under Civil Practice and Remedies Code §31.002 that requires the turnover of nonexempt property without identifying in the order the specific property subject to turnover. *Sec. 31.002(h)*

Wages, before they are actually paid to the judgment debtor, cannot be subject to a turnover order. This prohibition applies to wages in any form. It also applies to the judgment debtor and any other party. *Sec. 31.0025*

E. WRITS OF GARNISHMENT

Garnishment is defined as money or property in the hands of a third party, belonging to a defendant, which is attached by the plaintiff. The third party holding the defendant's money or property is called the garnishee. Funds in a bank account are a very common subject of a garnishment action.

Writs of garnishment may not be issued before final judgment in a case unless the court so orders. Certain requirements, which do not apply for writs issued after final judgment, must be met for pre-judgment garnishments. General rules applying to all garnishments will be discussed first, then the specific rules for pre-judgment garnishments. ***TRCP*** *658*

1. General Rules

The garnishment action must be docketed separately from the underlying action. The Clerk collects all fees charged for filing a new case. Clerks should familiarize themselves with Government Code §51.318(b) which sets the fees due when service is performed or requested. The District Clerk may not charge United States Immigration and Customs Enforcement or United State Citizenship and Immigration Services a fee for a copy of any document on file or of record in the Clerk's office relating to an individual's criminal history, regardless of whether the document is certified. In the garnishment action, the plaintiff is listed as the plaintiff, and the garnishee is listed as the defendant. The writ of garnishment is issued by the Clerk. It includes the cause number, court, and names of plaintiff(s) and defendant(s) in the original lawsuit. It states the time for the garnishee to answer. It also orders the garnishee to include in its answer what, if anything, it is indebted to the defendant for both at the time of service and on the date of the answer. The garnishee's answer must be made under oath.

***TRCP** 659*

Gov't Code
Sec. 51.318(b), (e)

Sec. 51.318

Civ. Prac. & Rem. Code
Sec. 63.002

***TRCP** 659*
***TRCP** 661*

The Clerk then delivers the writ to either the sheriff or constable, or to the plaintiff, for service on the garnishee. Most plaintiffs prefer the Clerk deliver the writ to the sheriff or constable, because those officers are required by statute to execute the writ immediately.

***TRCP** 662*
***TRCP** 663*

Once the garnishee has been served with the writ, the garnishee is prohibited from paying any money or releasing any property to the defendant. The exception is the payment of current wages, which are generally exempt from garnishment.

Civ. Prac. & Rem. Code
Sec. 63.003
Sec. 63.004

Service of a writ of garnishment on a financial institution is governed by Finance Code §59.008.

Sec. 63.008

As soon as practicable after service of the writ on the garnishee, the defendant must be served as provided for in TRCP 21a or TRCP 501.4, as applicable. The defendant must be served with a copy of the writ of garnishment, the application, accompanying affidavits and any orders of the court as soon as applicable after service of the writ on the garnishee. The face of the writ must display, in at least 12-point type and in a manner calculated to advise a reasonably attentive person of its contents, the garnishment notice required by Rule 663a.

***TRCP** 663a*

2. Pre-Judgment Garnishments

A pre-judgment writ of garnishment is available if an original attachment has been issued or if a plaintiff has sued for a debt. In the latter case, the application for the writ must be accompanied by an affidavit stating that the debt is just, due and unpaid; that the defendant does not have property in Texas subject to execution that would be sufficient to satisfy the debt; and that the garnishment is not sought to injure the defendant or the garnishee.

Civ. Prac. & Rem. Code
Sec. 63.001

A pre-judgment writ can be issued only upon order of the court, after a hearing. The court in its order granting the writ must make specific findings of fact supporting the granting of the order. The order must also state the maximum value of property or indebtedness that may be garnished. The order must further state the amount of bond required from the plaintiff, and the amount of bond required of the defendant should he or she choose to replevy.

***TRCP** 658*

The writ of execution will not be issued until the plaintiff has filed the bond as required by the order authorizing the writ. The defendant or the plaintiff may file a motion to reduce or increase the amount of the bond, after notice to the other party. The court will issue its order on this issue only after a hearing.

***TRCP** 658a*

3. Post-Judgment Garnishments

A writ of garnishment is available after final judgment if the plaintiff has a valid, subsisting judgment. The application for the writ is accompanied by an affidavit from the plaintiff stating that, as far as the plaintiff knows, the defendant does not possess property in Texas subject to execution sufficient to satisfy the judgment. As with pre-judgment garnishments, the application must state the grounds for issuing the writ and the specific facts upon which the plaintiff is relying.

***TRCP** 658*

***Civ. Prac. & Rem. Code** Sec. 63.001*

The judgment must be final as to all parties before the writ will be issued. If it is not, the pre-judgment procedures and rules apply.

F. WRITS OF SEQUESTRATION

Sequestration is a remedy in equity. It is the act of taking possession of property belonging to the judgment debtor and holding it until the profits have paid the demand for which it was taken.

The plaintiff may, at any time during a suit, file an application for writ of sequestration. The application describes the property sued for, including the value of each article of property and the county where located. The plaintiff must also state his or her interest in the property. Affidavits of any persons having knowledge of relevant facts must be filed with the plaintiff's application.

***TRCP** 696*
***TRCP** 697*

***Gov't Code** Sec. 51.318*

The court will then conduct a hearing on whether to issue the writ of sequestration. If the court does grant the application, its order will state why the court decided as it did and describe the property involved, including its value and location. A bond will be required of the plaintiff sufficient to pay all damages and costs if the plaintiff ultimately loses the suit. The order will also set out the amount of bond required of the defendant if he or she decides to replevy or take back the property. This bond is usually equal to the value of the property plus interest, if allowable, and court costs. If the property sued for was in several counties the order may allow several writs to be issued at the same time or in succession.

***TRCP** 696*
***TRCP** 698*

Following the hearing and the issuance of the writ, the defendant (that is, the property owner) must be served with the writ as provided in TRCP 21a. The defendant must be served with the writ, a copy of the application, the accompanying affidavits, and court orders. The defendant must also be advised of the right to replevy.

***TRCP** 699*

By definition, a writ of sequestration is a pre-judgment procedure. What ultimately happens to the property sequestered depends on the final outcome of the underlying suit. The various procedures for disposition of property following final judgment are covered in TRCP 704 through TRCP 734. The Clerk has only a limited, ministerial role in these proceedings; for example, docketing the returns of bonds as described in TRCP 723.

CHAPTER 9

APPEALS, EXPUNCTION AND REMOVAL

A. APPEALS OF CIVIL CASES

The courts of appeals have jurisdiction of appeals in civil cases from county and district courts in which the judgment or amount in controversy exceeds $250. A party may take a writ of error or an appeal from a final judgment to the courts of appeals.

Civ. Prac. & Rem. Code *Sec. 51.012*

The 14 intermediate courts of appeals in Texas have appellate jurisdiction in civil and criminal cases appealed from trial courts. Each court has jurisdiction over a geographical district, consisting of certain counties. The Clerk should determine which court of appeals has jurisdiction over the local county.

There are two appellate courts with statewide jurisdiction. The Supreme Court of Texas has statewide, final appellate jurisdiction in civil cases and original jurisdiction to issue writs. The Court of Criminal Appeals has statewide, final appellate jurisdiction in criminal cases and original appellate jurisdiction over automatic appeals in death penalty cases. Like the Supreme Court, it has the power to issue writs. Additionally, both the Supreme Court and Court of Criminal Appeals have rule-making power governing the practice and procedure in Texas courts.

TRCP *21(f)*
TRAP *9.2(c)*

E-filing is **mandatory** in the Texas Supreme Court and in all civil matters in Texas appellate, district, statutory county, constitutional county, and statutory probate courts. See the following link for more information: https://www.txcourts.gov/All_Archived_Documents/SupremeCourt/AdministrativeOrders/miscdocket/12/12920600.pdf.

1. Appeals Procedures

The Clerk, the judge, the parties, and their attorneys all have roles in the process of perfecting an appeal. The primary responsibility for preparing the appeal, however, falls upon the Clerk. There are specific rules relating to both the time periods for perfecting appeals and the procedures for doing so. The Clerk should become thoroughly familiar with these procedures so that the appeals process is not interrupted. In determining the period within which the various steps of an appeal must be taken, the date the trial judge signs the order or judgment shall determine the beginning of the time periods prescribed for filing an appeal.

TRCP *306a*

TRAP *26.1*

2. Timetables for Civil Cases

a. Ordinary Appeal WITHOUT Motion for New Trial or Request for Findings of Fact and Conclusions of Law

Days	Event	
0	Judgment Signed	***TRCP*** 306a
30	File written notice of appeal	***TRAP*** 26.1
60	File Clerk's record and reporter's record with court of appeals	***TRAP*** 35.1

b. Ordinary Appeal WITH Motion for New Trial, Motion to Modify Judgment, Motion to Reinstate under TRCP 165a, or Request for Findings of Fact and Conclusions of Law

Days	Event	
0	Judgment Signed	***TRCP*** 306a
20	Request for Finding of Fact and Conclusion of Law	***TRCP*** 296
30	Motion for new trial or to modify judgment	***TRCP*** 329b(a) ***TRCP*** 329b(g)
	(Trial court's action or inaction on motion does not affect time for appeal unless motion is granted, and then time runs from new judgment. Does not apply if judgment modified to correct clerical errors under TRCP 316.)	***TRCP*** 329b(h)
90	File written notice of appeal	***TRAP*** 26.1(a)
120	File Clerk's record and reporter's record with court of appeals	***TRAP*** 35.1(a)

c. Accelerated Appeal (Quo Warranto and Interlocutory Appeals)

Days	Event	
0	Order or judgment signed	***TRCP*** 306a
20	File written notice of appeal	***TRAP*** 26.1(b)
30	File Clerk's record and reporter's record with court of appeals (must be within 10 days after notice of appeal is filed)	***TRAP*** 35.1(b)

d. Restricted Appeal

Days	Event	
0	Judgment signed	***TRCP*** 306a
180	File written notice of appeal (6 months)	***TRAP*** *26.1*
194	Another party may file written notice of appeal within 14 days of first filing, or 180 days (six months), whichever is later	***TRAP*** 26.1(d)
210	File Clerk's record and reporter's record with court of appeals (within 30 days of filing of first notice of appeal)	***TRAP*** *35.1(c)*

e. Interlocutory Appeal

Unlike the other appeals listed above, an interlocutory appeal is one that appeals an order of the court that is not a final judgment. The party filing an interlocutory appeal usually does so to prevent some court-ordered action from taking place. The effects of an

Civ. Prac. & Rem. Code *Sec. 51.014(b)*

interlocutory appeal on the particular court action will be discussed in more detail in Part A.7, Effect of Appeal on Judgment or Court Action. An interlocutory appeal under Civil Practice and Remedies Code §51.014(a), other than an appeal under §51.014(a)(4), or in a suit brought under the Family Code, stays the commencement of a trial in the trial court pending resolution of the appeal. An interlocutory appeal under §51.014(a)(3), (5), (8), or (12) also stays all other proceedings in the trial court pending resolution of that appeal.

Civ. Prac. & Rem. Code *Sec. 51.014(d)* *Sec. 51.014(d-1)*

On a party's motion or on its own initiative, a trial court in a civil action may, by written order, permit an appeal from an order that is not otherwise appealable if the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion and an immediate appeal from the order may materially advance the ultimate termination of the litigation. Civil Practice & Remedies Code §51.014(d) does not apply to an action brought under the Family Code.

3. Notice of Appeal

TRAP *25.1*

A written notice of appeal, filed with the trial court Clerk, is a prerequisite to an appeal in a civil case. Any party seeking to alter the trial court's judgment, or an appealable order, must file a notice of appeal, (although parties whose interests are aligned may file a joint notice of appeal). If a notice is mistakenly filed with the appellate court, the notice is deemed to have been filed the same day with the trial court Clerk. The appellate Clerk must immediately send the trial court Clerk a copy of the notice. The filing of a notice of appeal immediately invokes the appellate court's jurisdiction.

a. Contents of Notice

TRAP *25.1(d)*

The notice of appeal must:

- identify the trial court and state the case's trial court number and style;
- state the date of the judgment or order appealed from;
- state that the party desires to appeal;
- state the court to which the appeal is taken, unless the appeal is to either the First or Fourteenth Court of Appeals, in which case the notice must state that the appeal is to either of those courts;
- state the name of each party filing the notice;
- in an accelerated appeal, state that the appeal is accelerated and state whether it is a parental termination or child protection case or an appeal from an order certifying a child to stand trial as an adult, as defined in TRAP 28.4;
- in a restricted appeal:
    - state that the appellant is a party affected by the trial court's judgment but did not participate - either in person or through counsel - in the hearing that resulted in the judgment complained of;
    - state that the appellant did not timely file either a post-judgment motion, request for findings of fact and conclusions of law, or

notice of appeal; and

- be verified by the appellant if the appellant does not have counsel.

b. Notice of Notice

The notice of appeal must be served on all parties to the trial court's final judgment. In the case of an interlocutory appeal, the notice of appeal must be served on all parties to the trial court proceeding. A copy of the notice of appeal must be filed with the appellate court Clerk. At or before the time the notice of appeal's filing, the filing party must also deliver a copy of the notice of appeal to each court reporter responsible for preparing the reporter's record. ***TRAP** 25.1(e)*

4. Motion for New Trial

Generally, a motion for new trial is not a prerequisite to an appeal. However, one must file a motion for new trial in order to preserve certain complaints for appeal. These 5 specific complaints are listed in TRCP 324(b). A motion for new trial may be filed by any party. ***TRCP** 324*

A motion for new trial, if filed, shall be filed within 30 days after the judgment or other order complained of is signed. One or more amended motions for new trial may be filed without leave of court before any preceding motion for new trial is overruled and within 30 days after the judgment is signed. ***TRCP** 329b(a)* ***TRCP** 329b(b)*

If the original or amended motion for new trial is not determined by written order of the court signed within 75 days after the judgment is signed, the motion for new trial shall be considered to be overruled by operation of law. ***TRCP** 329b(c)*

5. Request for Findings of Fact and Conclusions of Law

In any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law. Such request must be filed within 20 days after judgment is signed with the Clerk of the court, who shall immediately call such request to the attention of the judge who tried the case. The party making the request shall serve the request on all other parties. ***TRCP** 296*

The court must file its findings of fact and conclusions of law within 20 days after a timely request is filed. A copy of the findings and conclusions must be mailed to each party in the suit. ***TRCP** 297*

If the court fails to file timely findings of fact and conclusions of law, the party making the request shall, within thirty days after filing the original request, file with the Clerk a "Notice of Past Due Findings of Fact and Conclusions of Law" which shall be immediately called to the attention of the court by the Clerk. Such notice must state the date the original request was filed and the date the findings and conclusions were due. Upon filing this notice, the time for the court to file findings of fact and conclusions of law is extended to forty days from the date the original request was filed. ***TRCP** 297*

After the court files original findings of fact and conclusions of law, any party may file with the Clerk a request for specified additional or amended findings or conclusions. The request for these findings must be made within 10 days after the filing of the original findings and conclusions by the court. The court must file any additional or amended ***TRCP** 298*

findings and conclusions within ten days after such request is filed. No findings or conclusions are to be deemed or presumed by any failure of the court to make any additional findings or conclusions.

6. Restricted Appeal

***TRAP** 30*

A party who did not participate, either in person or through counsel, in the hearing that resulted in the judgment complained of and who did not timely file a post-judgment motion or request for findings of fact and conclusions of law, or a notice of appeal within the 90 days provided by TRAP 26.1(a), may file a notice of appeal within 6 months after the judgment or order is signed as provided by TRAP 26.1(c).

Restricted appeals replace "writ of error" appeals to the court of appeals. Statutes pertaining to writ of error appeals apply equally to restricted appeals.

7. Effect of Appeal on Judgment or Court Action

***TRAP** 24.1*

The appellant may supersede (*i.e.*, suspend a judgment creditor's right to enforce) a judgment pending appeal by doing any <u>one</u> of the following:

- filing with the Clerk a written agreement with the judgment creditor for suspending enforcement;
- filing with the Clerk a good and sufficient bond (called a supersedeas bond);
- making a deposit with the Clerk in lieu of a bond;
- providing alternate security ordered by the court.

***TRAP** 24.1(b)(2)*
***TRAP** 24.1(c)(3)*

The Clerk must review and approve all bonds, ensuring they meet the requirements set forth in TRAP 24.2. If cash is deposited in lieu of a bond, the Clerk follows the appropriate procedures for depositing the funds into the registry of court.

***TRAP** 24.1(f)*

Enforcement of a judgment must be suspended when the judgment has been superseded. If any enforcement actions have begun, they must cease when the judgment is superseded. If execution has been issued, the Clerk will promptly issue a writ of supersedeas when the judgment is superseded.

***Civ. Prac. & Rem. Code** Sec. 51.014(b)*

An interlocutory appeal under Civil Practice and Remedies Code §51.014(a) other than an appeal under §51.014(a)(4), or in a suit brought under the Family Code, stays the commencement of a trial in the trial court pending resolution of the appeal. An interlocutory appeal under §51.014(a)(3), (5), (8), or (12) also stays all other proceedings in the trial court pending resolution of that appeal.

An interlocutory appeal of an order certifying or refusing to certify a class, of a denial of a motion for summary judgment based on immunity asserted by a government employee or officer, or of an order granting or denying a plea to the jurisdiction by a governmental agency also stays all other proceedings in the trial court pending resolution of that appeal.

Sec. 51.014(c)

An interlocutory appeal of an order denying certain motions for summary judgment, granting or denying a special appearance and granting or denying a plea to the

jurisdiction by a governmental unit is not subject to the stay UNLESS the appellant files the appeal by certain times set out in Civil Practice and Remedies Code §51.014(c).

An appeal under Civil Practices and Remedies Code §51.014(d) does not stay proceedings in the trial court unless the parties agree to a stay or the trial or appellate court orders a stay of the proceedings pending appeal.

Civ. Prac. & Rem. Code *Sec. 51.014(e)*

8. Filing the Record

The Clerk's record (formerly known as the "transcript") and, if necessary to the appeal, the reporter's record (formerly known as the "statement of facts") comprise the record on appeal. The trial and appellate courts are jointly responsible for ensuring that the appellate record is timely filed. The appellate court must allow the record to be filed late when the delay is not the appellant's fault, and may do so when the delay is the appellant's fault. The appellate court may enter any order necessary to ensure the timely filing of the appellate record.

TRAP *34.1*
TRAP *35.3*

The party filing the appeal must file the following documents with the District Clerk:

- Notice of appeal;
- Affidavit of indigence, if applicable; and
- A written designation specifying items to be included in the Clerk's record.

TRAP *25.1(a)*
TRAP *9.2*
TRAP *20.1(c)*
TRAP *34.5*

A party who filed a Statement of Inability to Afford Payment of Court Costs in the trial court is not required to pay costs in the appellate court unless the trial court overruled the party's claim of indigence. To establish the right to proceed without payment of costs, a party must communicate to the appellate court clerk in writing that the party is presumed indigent under TRAP 20.1. In any appeal from a trial court's judgment or orders, the applicability of the presumption should be stated in the notice of appeal and in the docketing statement.

TRAP *20.1(b)*
TRCP *145*

a. The Clerk's Record

An order of the Supreme Court, adopted pursuant to TRAP 34.4, sets out the form of the Clerk's record in civil cases. The order, entitled "Order Directing the Form of the Appellate Record in Civil Cases" is set out in Appendix C to the Texas Rules of Appellate Procedure.

TRAP *34.4*

The parties may, by written stipulation filed with the trial court, agree on the contents of the record on appeal. Unless the parties have so designated the contents of the Clerk's record under TRAP 34.2, the Clerk's record must include copies of the following:

TRAP *34.2*
TRAP *34.5(a)*

- all pleadings on which the trial was held;
- the court's docket sheet;
- the court's charge and the jury's verdict, or the court's findings of fact and conclusions of law;
- the court's judgment or other order that is being appealed;
- any request for findings of fact and conclusions of law, any post-judgment

motion, and the court's order on the motion;

- the notice of appeal;
- any formal bill of exception;
- any request for a reporter's record, including any statement of points or issues provided for under TRAP 34.6(c);
- any request for preparation of the Clerk's record;
- a certified bill of costs including the cost of preparing the Clerk's record, showing credits for payments made;
- any supersedeas bond or certificate of cash deposit in lieu of a bond; and
- any filing that a party designates to have included in the record.

b. The Clerk's Responsibility

The trial court Clerk is responsible for preparing, certifying, and timely filing the Clerk's record when a notice of appeal has been filed and the party responsible for paying for the preparation of the Clerk's record has paid the Clerk's fee, has made satisfactory arrangements with the Clerk to pay the fee, or is entitled to appeal without paying the fee. ***TRAP** 35.3(a)*

c. The Reporter's Record

Unlike the Clerk's record, the reporter's record is not always required in order to file an appeal, but may be in some cases. However, it is common practice to file both records in order to have as complete a record as possible before the court of appeals. ***TRAP** 34.1*

At or before the time for perfecting the appeal, the appellant must make a request in writing to the official court reporter to prepare the reporter's record. The request must designate the exhibits to be included, and which portion of the proceedings are to be included. The appellant must file a copy of the request with the trial court Clerk. ***TRAP** 34.6(b)*

If the court proceedings were stenographically recorded, the reporter's record consists of the court reporter's transcription of the proceedings and any exhibits, as designated. If the proceedings were electronically recorded, then the reporter's record consists of certified copies of the tapes, the exhibits designated, and certified copies of the logs prepared by the court reporter under TRAP 13.2. ***TRAP** 34.6(a)*

At the court reporter's request, the Clerk must turn over original exhibits for use in preparing the reporter's record. The reporter will return the originals to the Clerk after copying them for inclusion in the record. ***TRAP** 34.6(g)(1)*

Any party to the action, the trial court, or the court of appeals may request that the court of appeals receive the original exhibits for review. The trial court must make an order for the safekeeping, transportation and return of the exhibits. The order must list and briefly describe the exhibits. ***TRAP** 34.6(g)(2)*

d. The Reporter's Responsibility

The official or deputy reporter is responsible for preparing, certifying, and timely filing the reporter's record if: ***TRAP** 35.3(b)*

- a notice of appeal has been filed;
- the appellant has requested that the reporter's record be prepared; and
- the party responsible for paying for the preparation of the reporter's record has paid the reporter's fee, or has made satisfactory arrangements with the reporter to pay the fee, or is entitled to appeal without paying the fee.

9. Mandate Received

When a mandate is returned on the appeal, it is recorded as part of the case minutes in the lower court. If the judgment is affirmed, the appellant pays the costs of appeal and the judgment may be executed. If the judgment is reversed, the appellee pays the costs of appeal and the judgment is set aside.

TRAP *18.1*
TRAP *43.4*

B. APPEALS OF CRIMINAL CASES

Electronic filing (e-filing) - is mandatory in the Texas Court of Criminal Appeals and in appellate, district, statutory county, and constitutional county courts. Non-attorney filers are **not** required to e-file. Clerks should familiarize themselves with the Statewide Rules Governing Electronic Filing (SRGEF) in Criminal Cases, available at https://www.txcourts.gov/rules-forms/rules-standards/, which govern e-filing of documents with the District Clerk in criminal cases.

1. Jurisdiction

The jurisdiction for appeals of all criminal cases from the district or county court is with the court of appeals within the particular district, except in those cases in which the death penalty has been assessed. Jurisdiction of cases in which the death penalty has been assessed is with the Court of Criminal Appeals. It is the responsibility of the Clerk in all appeals to prepare the Clerk's record and forward it to the court of appeals or the Court of Criminal Appeals.

CCP
Art. 4.03

Art. 4.04

2. Right to Appeal

A defendant in any criminal action has the right to appeal; however, this right is restricted in plea bargain cases. When the defendant pleads guilty or nolo contendere, and the punishment does not exceed that recommended by the prosecutor, the defendant may appeal only: (1) those matters that were raised by written motion filed and ruled on before the trial; or (2) after getting the trial court's permission to appeal. The trial court must enter a certification of the defendant's right to appeal each time it enters a judgment of guilt or other appealable order. Death penalty cases are automatically appealed to the Court of Criminal Appeals.

Art .44.02

TRAP *25.2(a)(2)*

The State may appeal a court's order in circumstances set forth in Code of Criminal Procedure Article 44.01.

CCP
Art. 44.01

3. Perfecting Appeal in Criminal Cases

An appeal is perfected by timely filing a notice of appeal, unless it is a death-penalty case. In death-penalty cases, the clerk of the trial court files a notice of conviction with the Court of Criminal Appeals within 30 days after the death sentence is imposed. A defendant has to file a written notice of appeal within 30 days of the imposition or

TRAP *25.2(b)*
TRAP *26.2*

suspension of the sentence in the case. However, if the defendant timely files a motion for new trial, he or she must file a written notice of appeal within 90 days of the imposition or suspension of the sentence. The state has to file a notice of appeal within 20 days of the imposition or suspension of the sentence.

a. Notice of Appeal

The notice must be filed with the clerk of the trial court. If the State is the appellant, the notice must comply with Code of Criminal Procedure Article 44.01. If the defendant is the appellant, the trial court's certification of the defendant's right of appeal must be part of the record when the notice is filed.

TRAP *25.2(c)*

CCP *Art. 44.01*

b. Clerk's Responsibilities

The clerk of the trial court must note the case number and date of filing on the copies of the notice of appeal and the trial court's certification of the defendant's right of appeal. The clerk must then immediately send one copy of each to the clerk of the appropriate court of appeals and, if the defendant is the appellant, one copy of each to the State's attorney.

TRAP *25.2(e)*

c. Effect of Appeal

Once the record has been filed in the appellate court, all further proceedings in the trial court, except as provided otherwise by law or by these rules, are suspended until the trial court receives the appellate-court mandate. The Court of Criminal Appeals prescribes the form of the appellate record and has done so in Appendix C of the Texas Rules of Appellate Procedure. However, the parties may alter the prescribed format by filing a written stipulation to do so with the trial court.

TRAP *25.2(g)*

TRAP *34.4*
TRAP *34.5*

4. The Appellate Record

The appellate record consists of the clerk's record and, if necessary to the appeal, the reporter's record. Even if more than one notice of appeal is filed, there should be only one appellate record in a case.

TRAP *34.1*

The trial and appellate courts are jointly responsible for ensuring that the appellate record is timely filed. The appellate court must allow the record to be filed late when the delay is not the appellant's fault. However, if the delay is the appellant's fault, the court can use its discretion in deciding whether to allow a late filing.

TRAP *35.3*

If, within the time for perfecting the appeal, an appellant, who is unable to pay for the appellate record, files a motion and affidavit asking the trial court to have the appellate record furnished without charge, the court must hold a hearing to determine whether the appellant can pay or give security for the appellate record. If the court finds that the appellant cannot pay or give security for the appellate record, the court must order the court reporter to transcribe the proceedings, and the county in which the offense was committed must pay the court reporter for the transcription when the court certifies that the appellate record has been furnished to the appellant. The court will set the amount to be paid.

TRAP *20.2*

a. The Clerk's Record

Unless the parties filed a written stipulation with the trial court, the clerk's record must include copies of the following: ***TRAP** 34.2*

- the indictment or information, any special plea or defense motion that was presented to the court and overruled, any written waiver, any written stipulation, and, in cases in which a plea or guilty or nolo contendere was entered, any documents executed for the plea; ***TRAP** 34.5(a)*
- the court's docket sheet;
- the court's charge and the jury's verdict, or the court's findings of fact and conclusions of law;
- the court's judgment or other order that is being appealed;
- any request for findings of fact and conclusions of law, any post-judgment motion, and the court's order on the motion;
- the notice of appeal;
- any formal bill of exception;
- any request for a reporter's record, including any statement of points or issues provided for under TRAP 34.6(c);
- any request for preparation of the Clerk's record;
- the trial court's certification of the defendant's right of appeal under TRAP 25.2; and
- any filing that a party designates to have included in the record.

If a relevant item has been omitted from the clerk's record, the trial court, the appellate court, or any party may direct the clerk of the trial court to prepare, certify, and file in the appellate court a supplement containing the omitted item. ***TRAP** 34.5(c)(1)*

The appellate court may direct the trial court to prepare and file findings of fact and conclusions of law, or to prepare a certification of the defendant's right of appeal. The clerk must then prepare, certify and file in the appellate court such findings and conclusions or certificate as a supplemental record. ***TRAP** 34.5(c)(2)*

b. The Clerk's Responsibility

The clerk of the trial court is responsible for preparing, certifying, and timely filing the clerk's record if: (1) a notice of appeal has been filed and the trial court has certified the defendant's right of appeal; and (2) the party responsible for paying for the preparation of the clerk's record has paid the clerk's fee, has made satisfactory arrangements with the clerk to pay the fee, or is entitled to appeal without paying the fee. ***TRAP** 35.3(a)*

c. The Reporter's Record

Unlike the clerk's record, the reporter's record is required only if it is "necessary to the appeal." However, in practice, both the clerk's record and the reporter's record are filed in order to have as complete a record as possible before the court of appeals. ***TRAP** 34.1*

At or before the time for perfecting the appeal, if the reporter's record is required or needed, the appellant must request in writing that the official reporter prepare the reporter's record. The request must designate the exhibits to be included in the reporter's record, and, if the proceedings were recorded by a court reporter, the portions of the proceedings to be transcribed. The appellant must file a copy of the request with the clerk of the trial court. ***TRAP** 34.6(b)*

The reporter's record consists of any transcription of the proceedings, if the proceedings were recorded by a court reporter, and any of the exhibits that the parties to the appeal designate. If the proceedings were recorded electronically, the reporter's record consists of certified copies of the tapes or other audio-storage devices on which the proceedings were recorded, any of the exhibits that the parties to the appeal designate, and certified copies of the logs prepared by the court reporter under TRAP 13.2. ***TRAP** 34.6(a)*

At the court reporter's request, the Clerk must turn over original exhibits for use in preparing the reporter's record. The reporter will return the originals after copying them for inclusion in the record. ***TRAP** 34.6(g)(1)*

Any party to the action, the trial court, or the court of appeals may request that the court of appeals receive the original exhibits for review. The trial court must make an order for the safekeeping, transportation and return of the exhibits. The order must list and briefly describe the exhibits. ***TRAP** 34.6(g)(2)*

d. The Reporter's Responsibility

The official or deputy reporter is responsible for preparing, certifying, and timely filing the reporter's record if: ***TRAP** 35.3(b)*

- a notice of appeal has been filed;
- the appellant has requested that the reporter's record be prepared; and
- the party responsible for paying for the preparation of the reporter's record has paid the reporter's fee, or has made satisfactory arrangements with the reporter to pay the fee, or is entitled to appeal without paying the fee.

5. Important Timelines and Procedures in Criminal Appeals

In criminal appellate matters, in computing a designated period of time prescribed or allowed by the Texas Rules of Appellate Procedure, a court order or statute does not include the day of the act, event, or default. For instance, if computing the time for appeal, do not include the day the sentence was imposed or suspended. The last day of the period is to be included, but if that day is a Saturday, Sunday, or legal holiday, the period of time is extended to the next day that is not a Saturday, Sunday, or legal holiday. If the clerk's office is closed or inaccessible ***during the regular hours*** on the day that a filing is due, the period for filing the document is extended to the end of the next day when the clerk's office is open and accessible. ***TRAP** 4.1*

If required, a motion for new trial must be filed no later than 30 days after the trial court imposes or suspends the sentence in open court. Generally, a motion for new trial is not a prerequisite to presenting a point of error on appeal, unless the motion is based on facts that cannot be adduced from the record. A defendant can amend his or her motion for new trial, as long as the defendant does so before the court rules on the motion and ***TRAP** 21.2* ***TRAP** 21.4* ***TRAP** 21.8*

the time for filing the motion has not expired. The court must rule on the motion within 75 days before it is deemed denied.

***TRAP** 22*

A motion in arrest of judgment is the defendant's oral or written suggestion that judgment rendered against him is contrary to law. A defendant must file a motion in arrest of judgment no later than 30 days after the trial court imposes or suspends sentence in open court. The court has 75 days to rule on the motion before it is deemed denied.

***TRAP** 33.2*

To complain on appeal about a matter that does not otherwise appear in the record, a party must file a formal bill of exception with the clerk of the trial court no later than 60 days after the trial court pronounces or suspends the sentence, or if a motion for new trial has been timely filed, no later than 90 days after pronouncement or suspension of the sentence. If a formal bill of exception was filed, the Clerk should include it in the clerk's record or supplemental record.

***CCP** Art. 44.42 Art. 44.43*

A defendant may appeal a bond forfeiture by filing a writ of error. If a defendant files this type of writ, the Clerk should notify the judge and the prosecution and execute the same appellate procedures used for civil actions when an appeal is taken.

***TRAP** 18.4* ***TRAP** 51.2*

After the appellate court renders a judgment, it will issue a mandate in accordance with the judgment and send it to the clerk of the trial court and all of the parties to the proceeding. When a mandate is returned, the Clerk must file it with the case's other papers and note it on the docket. The Clerk must also send an acknowledgment to the appellate clerk of the mandate's receipt.

***TRAP** 51.2*

Upon receipt of a mandate affirming the judgment in a case where the defendant is not in jail, the Clerk shall issue a capias for the defendant's arrest if the judgment contains a sentence of confinement or imprisonment that has not been suspended. No bail shall be taken on the capias. The capias must: (1) recite the fact of the conviction; (2) set forth the offense and the court's judgment and sentence; (3) state that the judgment was appealed from and affirmed, and that the mandate has been filed; and (4) command the sheriff to arrest and take the defendant into custody, and to place and keep the defendant in custody until the defendant is delivered to the proper authorities as directed by the sentence. The sheriff will notify the Clerk when the mandate has been carried out.

C. BILL OF REVIEW

Caldwell v. Barnes, 154 S.W. 3d 93, 96 (Tex. 2004) (per curiam)

***Civ. Prac. & Rem. Code** Sec. 16.051*

A bill of review is an equitable proceeding to set aside a judgment that is no longer appealable or subject to a motion for new trial. A bill of review is a separate suit and should be given a new docket number. Since the original judgment has become final, the action in which it was entered has passed out of the jurisdiction of the court, and accordingly an order purporting to consolidate the bill of review suit with the original action is of no effect.

A bill of review must be filed in the same court that entered the judgment. As in other civil actions, service on the adverse party is required. The Clerk must collect all appropriate filing fees.

D. EXPUNCTION OF CRIMINAL RECORDS

1. Right to Expunction

CCP Arts. 55.01, 55.011, both effective until 1-1-2025

Certain persons are entitled to have all records and files related to their arrest expunged, and under certain circumstances, a person may seek an expunction on behalf of a deceased relative who would have been entitled to it.

Art. 55.01, effective until 1-1-2025

Generally, a person is entitled to an expunction if the person was acquitted, pardoned, granted relief on the basis of actual innocence, never convicted, arrested but not charged, or the victim of identity theft.

2. Procedure for Expunction

a. Expunction Based on Acquittal by Trial Court

Art. 55.02, Sec. 1 effective until 1-1-2025

At the request of the acquitted person or the attorney for the state, the district court that presided over the case must enter an order of expunction no later than the 30th day after the acquittal. If the acquittal occurred in a county level court, a district court must enter the order of expunction. The requesting party must provide the court with the information normally required in a petition for the expunction. The attorney for the acquitted person or the attorney for the state will prepare the expunction order for the court's signature.

b. Expunction Based on Actual Innocence

Art. 55.02, Sec. 1a effective until 1-1-2025

The district court that presided over the case must enter an order of expunction no later than the 30th day after the court receives notice of a pardon or grant of relief on the basis of actual innocence. If the conviction occurred in a county level court, a district court must enter the order of expunction. The person pardoned or granted relief must provide the information normally required in a petition. The attorney for the state will prepare the expunction order for the court's signature and notify the Texas Department of Criminal Justice if the person is in the custody of the department. The court must retain certain documents received from the Texas Department of Criminal Justice in response to the order until the statute of limitations has run for any civil case or proceeding for the wrongful imprisonment of the person pardoned or granted relief on the basis of actual innocence.

c. Expunction Based on Another Cause under Article 55.01, or More than 31 Days have Passed Since Acquittal by Trial Court

Art. 55.02 Sec. 2(a), 2(b) effective until 1-1-2025

A person otherwise entitled to an expunction under Article 55.01 may file an ex parte petition for expunction in a district court for the county in which the person was arrested or the offense occurred. The petition must contain the information set forth in Article 55.02, Section 2(b). A person is otherwise entitled to an expunction if the person meets the requirements for an order of expunction under Article: 55.01(a)(1)(A) – more than 31 days have passed since acquittal by trial court; 55.01(a)(1)(B)(i) – the person is pardoned for a reason other than actual innocence; 55.01(a)(1)(c) – conviction of an offense committed before September 1, 2021 under Penal Code Section 46.02(a), as that section existed before that date; 55.01(a)(2) – under certain circumstances when the

indictment or information was not presented or was dismissed or quashed, or when the statute of limitations has expired; or 55.01(b) - under certain circumstances when the person is acquitted by the court of criminal appeals, the period of discretionary review by the appellate court has expired, or the state recommends the expunction to the court.

CCP *Art. 55.02, Sec. 2(c), (d), effective until 1-1-2025*

The court shall set a hearing of the petition no sooner than 30 days after the filing of the petition and give reasonable notice of the hearing to each official, agency, or other entity named in the petition by certified mail, return receipt requested, or by secure e-mail, electronic transmission, or fax. If the court finds that the person is entitled to the expunction, the court will enter an order directing expunction.

Under certain circumstances, the Texas Department of Public Safety (DPS) is authorized to file an ex parte petition for an order of expunction on behalf of a person who is entitled to an expunction. If this occurs, DPS will file the petition in the district court for the county in which the person was arrested or the offense occurred.

Art. 55.02, Sec. 2(e), effective until 1-1-2025

The ex parte petition must be verified, and it must contain the information set forth in Article 55.02, Section 2(f).

Art. 55.02, Sec. 2(f), effective until 1-1-2025

3. Order Directing Expunction

If the court grants the order of expunction, the court will require any state agency that sent information regarding the arrest to a central federal depository to request the depository to return all records and files subject to the order of expunction. The person who is the subject of the expunction order or an agency protesting the expunction may appeal the court's decision regarding the order in the same manner as in other civil cases.

Art. 55.02, Sec. 3(a), effective until 1-1-2025

The order of expunction must incorporate by reference and attachment a copy of the judgment of acquittal, if any, and shall include the information listed in Article 55.02, Section 3(b), including:

Art. 55.02, Sec. 3(b), effective until 1-1-2025

- the personal information on the person who is the subject of the expunction order (full name, sex, race, date of birth, driver's license and social security numbers);
- the offense charged;
- the date the person was arrested;
- the case number and court of offense; and
- the tracking incident number (TRN) assigned to the individual incident of arrest under Article 66.251(b) (1) by the Texas Department of Public Safety.

When the order of expunction is final, the Clerk must send a certified copy of it to the Crime Record Service of the Texas Department of Public Safety and each official, agency, or governmental entity named in the order. The certified copy of the order must be sent by secure electronic mail, electronic transmission, or facsimile transmission, or by certified mail, return receipt requested. In sending a copy of the order to a governmental entity, the Clerk may hand deliver the copy instead of sending it by certified mail. The Clerk must receive a receipt for the hand-delivery.

Art. 55.02, Sec. 3(c), 3(d), effective until 1-1-2025

The Clerk must place any returned receipts received from notices of the hearing and copies of the order in the file for the expunction proceedings.

CCP *Art. 55.02, Sec. 3(d),* effective until 1-1-2025

The court may allow certain officials, agencies or entities to retain records subject to an expunction order. If retention is authorized, the order must indicate so.

Art. 55.02, Sec. 4, effective until 1-1-2025

Upon receipt of an expunction order, each official, agency, and entity in possession of records and files that are subject to the order must: (1) return all affected records and files to the court or in cases where removal is impracticable, obliterate all portions of the records and files that identify the person who is the subject of the order 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 order. However, if the expunction is based on the misuse of a person's identifying information (i.e., the expunction is granted under Article 55.01(d)), instead of returning or deleting the affected records and files, the official, agency, or entity must obliterate all portions of the records and files that contain misinformation and replace with accurate information. Officials, agencies, entities and courts may retain receipts, invoices, vouchers, or similar records of financial transactions that arose from the expunction proceeding or prosecution of the underlying criminal case, but all identifying information must be obliterated and all items must be retained in accordance with internal financial control procedures. The court may return records and files received in response to the order to the petitioner.

Art. 55.02, Sec. 5(a), (b), (f) & (g), effective until 1-1-2025

Generally, court records concerning an expunction are not open to inspection. However, there are a few exceptions to this general rule. The petitioner or subject of the order and any person or agency designated by the court or order may inspect the records. If in doubt as to whether records may be retained or disclosed, consult with the county's legal counsel.

Art. 55.02, Sec. 5(c), effective until 1-1-2025

Unless the court ordered the records and files returned to the petitioner, or the expunction order issued on the basis of an acquittal or the misuse of identifying information under Article 55.01(d), the Clerk must destroy all records and files in his or her possession on or after the 60th day after the expunction order issued but no later than the first anniversary of the issuance date. The Clerk must give 30 days' notice to the prosecuting attorney before destroying the records and files, and if the prosecuting attorney objects no later than 20 days after receiving the notice, the Clerk may not destroy the files and records until the first anniversary of the order's issuance date. The Clerk must certify to the court that he or she destroyed the records and files.

Art. 55.02, Sec. 5(b), (d), (d-1), (e), effective until 1-1-2025

4. Appeal of Order of Expunction

The petitioner or an agency protesting the order may appeal in the same manner as in other civil cases.

Art. 55.02, Sec. 3(a), effective until 1-1-2025

5. Effect of Order of Expunction

Once the order is final, the release, dissemination or use of the expunged records and files for any purpose is prohibited.

Art. 55.03, effective until 1-1-2025

A person who knowingly fails to return or to obliterate identifying portions of a record or file ordered expunged commits a Class B misdemeanor.

Art. 55.04, effective until 1-1-2025

6. Fees

The Clerk should charge the fee for filing an ex parte petition in a civil action in district court, unless the petitioner files an affidavit of inability to pay court costs or requests the order no later than the 30th day after his or her acquittal. Each notice of hearing sent by certified mail is $1.00 plus postage. Each certified mailing of a certified copy of the order of expunction is $2.00 plus postage.

CCP *Art. 102.006*

E. REMOVAL OF CASE FROM STATE TO FEDERAL COURT

A notice of removal must be filed in the appropriate district court of the United States within 30 days of notification to the defendant of the action pending in a civil suit. Similarly, the notice must be filed within 30 days after arraignment or up to any time before trial, whichever is earlier, in a criminal action. The U.S. District Court may grant an extension of time in criminal cases. A copy of the notice of removal is generally filed in the state court, as well as the U.S. District Court, by the removing party. The removing party is required to give notice of removal to adverse parties and file a copy of the notice of removal with the state court Clerk. If removal is permitted, the U.S. District Court Clerk notifies the state court in which the case was pending. The Clerk files the notice with the other papers in the case.

28 ***USC*** *Sec. 1446*

28 ***USC*** *Sec. 1447*

For civil suits, all action is halted on the proceedings unless and until the case is remanded back to the state court. In criminal actions, the state may continue with the proceedings, except that a judgment of conviction shall not be entered unless the case is remanded. If the defendant(s) is in custody or process has been served by the state court, the U.S. District Court shall issue a writ of habeas corpus after which the marshal shall take the defendant(s) into custody and deliver a copy of the writ to the Clerk of the state court.

The district court of the United States may request copies of all records and proceedings filed in the state court. The request may be made to the removing party to provide such copies to the U.S. District Court, or it may issue a writ of certiorari to the state court to provide the copies.

An order remanding a case back to the state court from which it was removed is not reviewable on appeal or otherwise unless it was removed pursuant to United States Code Title 28 §1443 (civil rights cases). The case may be remanded upon receipt by the U.S. District Court (called summary remand), upon the motion of a party, or at any time during the case when it appears the U.S. court lacks subject matter jurisdiction.

If the case is remanded, a certified copy of the order of remand shall be mailed to the Clerk of the state court. In civil cases, the plaintiff is required to file a certified copy of the order of remand with the state court Clerk and is also required to give written notice to the adverse parties. Upon receipt of the order of remand, the state court may then proceed with the case.

TRCP *237a*

CHAPTER 10

FAMILY LAW AND PARENT-CHILD RELATIONSHIP CASES

INTRODUCTION

Family law matters are generally heard in the district courts. In some counties, the county courts at law are authorized by statute to hear family law matters. ***Family Code*** *Chapter 201*

Some family law matters are heard by child protection courts or by child support courts.

- Child Protection Courts
    - The specialty child protection courts in Texas, which are administered by the Office of Court Administration (OCA), were created to assist trial courts in the rural areas in managing their child abuse and neglect dockets.
- Child Support Courts
    - Child support courts, which are administered by OCA, were created in response to the federal requirement that states create expedited processes to resolve child support cases. Child support courts hear child support cases prosecuted by the Office of the Attorney General, which is Texas' designated Title IV-D agency. Child support courts are sometimes called Title IV-D Courts. This reference comes from the section of the United States Code which authorizes the program: U.S.C. Title 42, Chapter 7, Subchapter IV, Part D.

A. DISSOLUTION OF MARRIAGE

1. Filing and Fees

Pleadings in a suit for dissolution of marriage are styled "In the Matter of the Marriage of _____ and _____." If the petition relies on statutory language to state the grounds for dissolution, underlying facts need not be specified. The requirement for a statement regarding alternative dispute resolution to appear on the initial pleading has been repealed (former Family Code §6.404). ***Family Code*** *Sec. 6.401* *Sec. 6.402*

In addition, at the time the petition is filed, the petitioner must file a completed report that may be used by the District Clerk in complying with Health and Safety Code §194.002. *Sec. 6.410*

The fees charged by the Clerk for the filing and processing of a family law case or a suit affecting the parent-child relationship are slightly lower than the fees charged in other civil cases.

2. Indigent Petitioners

A party who files a Statement of Inability to Afford Payment of Court Costs cannot be required to pay costs except by order of the court as provided in TRCP 145. The Statement, which must either use the form approved by the Supreme Court or include the information required by the Court-approved form, must say that the declarant cannot afford ***TRCP*** *145*

to pay costs.

> ***NOTE**: The commentary to the 2016 change to TRCP 145 stresses that "the issue is not merely whether a person can pay costs, but whether the person can afford to pay costs. A person may have sufficient cash on hand to pay filing fees, but the person cannot afford the fees if paying them would preclude the person from paying for basic essentials, like housing or food."*

"Costs" mean any fee charged by the court or an officer of the court that could be taxed in a bill of costs, including, but not limited to, filing fees, fees for issuance and service of process, fees for court-appointed professional, and fees charged by the clerk or court reporter for preparation of the appellate record. The Statement must be either sworn before a notary or made under penalty of perjury.

The court may order the party filing the Statement to pay costs notwithstanding the Statement on the motion by the Clerk or a party, but only if the motion contains sworn evidence (not merely on information or belief) (1) that the Statement was materially false when made or (2) that because of changed circumstances, the Statement is no longer true in material aspects. A similar motion can be made by the court reporter or on the court's own motion.

The judgment cannot require the party filing the Statement to pay costs and a provision in the judgment to do so is void unless the court has issued an order under TRCP 145(f), or the party filing the Statement has obtained a monetary recovery and the court orders the recovery be applied toward payment of costs.

3. Citation

***Family Code** Sec. 6.409(a)*

Citation in a suit for divorce or annulment may be by publication as in other civil cases, except that notice is published **one** time only.

***TRCP** 109*

The citation, whether for personal service or by publication, must contain the following quotes:

***Family Code** Sec. 6.409(b)*

> "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you. The petition of _____, Petitioner, was filed in the _____Court of _____ County, Texas, on the _____ day of _____, against _____ Respondent(s), numbered _____, and entitled "In the Matter of Marriage of _____ and ." The suit requests _____ (statement of relief).
>
> **AND**
>
> "The Court has authority in this suit to enter any judgment or decree dissolving the marriage and providing for the division of property which will be binding on you."

4. Waiver of Service

A party to a suit for dissolution of marriage may waive issuance or service of process after the suit is filed by filing with the Clerk a waiver acknowledging receipt of a copy of the filed petition. The respondent must be provided a file-marked copy of the petition prior to signing the waiver. The waiver must contain the mailing address of the party who executed the waiver. The waiver must be sworn before a notary public who is not an attorney in the suit, unless the party is incarcerated. The party signing the waiver may not use a digitized signature. Additionally, the Texas Rules of Civil Procedure do not apply to a waiver executed under this section.

Family Code *Sec. 6.4035*

If a party waives service, the Clerk must mail a notice of the signing of the final decree of dissolution of a marriage to that party by mailing the copy to the mailing address contained in the waiver or to the office of the party's attorney of record. The notice must state that a copy of the decree is available at the office of the Clerk of the court and include the physical address of that office.

Sec. 6.710

5. Report of Divorce or Annulment

In divorces or annulments, the Clerk mails a notice of the signing of the final decree or order of dismissal to the party signing a waiver of issuance of service of process under Family Code §6.4035 at the mailing address contained in the waiver or the office of the party's attorney of record.

Sec. 6.710

The Clerk also files, not later than the ninth day of each month, with the Vital Statistics Unit a report for each divorce or annulment granted during the preceding calendar month. The report may be returned to the District Clerk for correction by the Vital Statistics Unit, if there is no attorney of record in the case. The Clerk is responsible for completing all required information before submitting it to the Vital Statistics Unit, even if the petitioner or attorney did not provide it.

Health & Safety Code *Sec. 194.002(d), (f)*

At the time the petition is filed, the petitioner must file a completed report that may be used by the District Clerk to comply with the reporting requirements in the preceding paragraph.

Family Code *Sec. 6.410*

A Clerk may not transmit to the Vital Statistics Unit the pleadings, papers, studies, and records relating to a suit for divorce or annulment or to declare a marriage void.

Sec. 108.002

6. Change of Name of Party to Divorce Suit

In a decree of divorce or annulment, the court must change the name of a party specifically requesting the change to a name previously used unless the court states in the decree a reason for denying the change of name. A person whose name is changed under this section may apply for a change of name certificate from the Clerk of the court.

Sec. 6.706

On the final disposition of a suit for divorce, annulment, or to declare a marriage void, the court must enter a decree changing the name of a party specially praying for the change to a prior used name unless the court states in the decree a reason for denying the change of name. A person whose name is changed under this section may apply for a change of name certificate from the Clerk of the court.

Sec. 45.105

A change of name certificate constitutes proof of the change of name of the person named in the certificate. It is a one-page document that includes: ***Family Code*** *Sec. 45.106*

- Name of the person before the change of name was ordered
- Name to which the person's name was changed by the court
- Date on which the name change was made
- Person's social security number and driver's license number, if any
- Name of the court in which the name change was ordered
- Signature of the Clerk of the court that issued the certificate

An applicant for a change of name certificate must pay a $10 fee to the Clerk of the court for issuance of the certificate.

7. Protective Order in a Suit for Dissolution of Marriage

On the motion of a party to a suit for dissolution of a marriage, the court may render a protective order as provided by Family Code Title 4, Subtitle B. Such an order is appealable, but only after the decree of dissolution becomes a final, appealable order. *Sec. 6.504* *Sec. 81.009*

A person who is a party to a pending suit for the dissolution of a marriage or a suit affecting the parent-child relationship and who wishes to apply for a protective order with respect to the person's spouse must file an application for the order as required by Family Code Chapter 85, Subchapter D. *Sec. 82.005*

A protective order rendered under Family Code Chapter 85 is valid and enforceable, pending further action by the court that rendered the order, until it is properly superseded by another court with jurisdiction over the order. The court may not render one order that applies to both parties. *Sec. 85.009* *Sec. 85.003*

> ***NOTE:*** *An application for a protective order filed under Family Code Chapter 82 and any protective order issued under Family Code Chapter 83 or 85 must be entered into OCA's Internet-based protective order registry.* ***Gov't Code*** *Ch. 72, Subch. F*

The requirements of service of notice under Family Code §82.043 do not apply if the application is filed as a motion in a suit for the dissolution of a marriage. Notice is given in the same manner as in any other motion in a suit for the dissolution of a marriage. ***Family Code*** *Sec. 82.043(e)*

A protective order in a suit for dissolution of a marriage must be in a document separate from other orders or temporary orders and must be entitled "PROTECTIVE ORDER." *Sec. 85.004*

> ***NOTE:*** *Special confidentiality provisions apply to applications for protective orders in counties with a population of 3.4 million or more.* *Sec. 82.010*

> ***NOTE:*** *Special confidentiality provisions also apply to all pleadings and other documents filed in a suit for dissolution of marriage in counties with a population of 3.4 million or more.* *Sec. 6.411*

B. ADOPTION

1. Filing of Adoption Suit

Filing procedures for adoptions are identical to other civil cases. An adoption case should be filed as a new case with the customary fees and in a new file having a new docket number.

Family Code *Sec. 102.013(b)*

2. Sealing of File

The court, on the motion of a party or on the court's own motion, may order the sealing of the file and the minutes of the court, or both, in a suit requesting an adoption. Rendition of an order sealing the file does not relieve the Clerk from the duty to send information regarding adoption to the Vital Statistics Unit.

Sec. 162.021

3. Confidentiality Maintained by Clerk

The records concerning a child that are maintained by the District Clerk after entry of an order of adoption are confidential. No person is entitled to access to the records or may obtain information from the records except for good cause under an order of the court that issued the order.

Sec. 162.022
Sec. 108.003(b)

4. Transmission of Information Regarding Adoption to Vital Statistics Unit

The Clerk of a court that renders a decree of adoption shall, not later than the 10th day of the first month after the month in which the adoption is rendered, transmit to the central registry of the Vital Statistics Unit a certified report of adoption that includes:

Sec. 108.003(a)

Health & Safety Code *Sec. 192.009*

- Name of the adopted child after adoption as shown in the adoption order
- Birth date of the adopted child
- Docket number of the adoption suit
- Identity of the court rendering the adoption
- Date of the adoption order
- Name and address of each parent, guardian, managing conservator, or other person whose consent to adoption was required or waived under Chapter 162, or whose parental rights were terminated in the adoption suit
- Identity of the licensed child placing agency, if any, through which the adopted child was placed for adoption
- Identity, address, and telephone number of the registry through which the adopted child may register as an adoptee

If the report requires correction, the Vital Statistics Unit sends it to the attorney of record in the adoption case. If there is no attorney of record, the Vital Statistics Unit sends the report to the Clerk for correction and return.

Sec. 192.009(d)

After an adoption, the state registrar prepares and files a new birth certificate showing the facts as established by adoption. A copy of the new certificate is sent to the

Family Code *Sec. 108.003(c)*

County Clerk of the county of birth. The original birth certificate is pulled from the files of the County Clerk and sent to the Vital Statistics Unit. The index entry to the original certificate is obliterated. The new birth certificate, containing the child's new name, is then recorded and indexed.

5. Foreign Adoptions

An adoption order from a foreign country, granted to a Texas resident, is granted full force and effect, providing certain conditions are met. ***Family Code*** *Sec. 162.023(a)*

The foreign adoption order may be registered by filing a petition for registration, which may be combined with a petition for name change. The usual filing fees apply. *Sec. 162.023(b)*

If the court finds the foreign adoption order complies with the conditions set forth in subsection (a), it orders the state registrar to register the order and file a birth certificate. *Sec. 162.023(b)* ***Health & Safety Code*** *Sec. 192.006*

C. TERMINATION OF THE PARENT-CHILD RELATIONSHIP

Termination suits may be either voluntary or involuntary. A termination suit may arise in several different contexts, such as:

- Private termination between one parent and the other, usually to facilitate a stepparent adoption;
- Intervention by the state to terminate allegedly culpable parents on grounds of abuse or neglect of the child; or
- Termination by an adoption agency to facilitate the adoption of an infant.

1. Docketing Requirements

A suit for the termination of the parent-child relationship may be filed before the birth of the child. If the suit is filed before the birth of the child, the petition must be styled "In the Interest of an Unborn Child." ***Family Code*** *Sec. 161.102*

After the birth, the Clerk shall change the style of the case to "In the Interest of _____, a Child." If adoption of the child is also requested, the name of the child may be omitted. *Sec. 102.008(a)*

> ***NOTE:*** *Special confidentiality provisions apply in counties with a population of more than 3.4 million.* *Sec. 102.0086*

> ***NOTE:*** *Family Code §161.005 contains provisions governing situations of mistaken paternity.* *Sec. 161.005*

D. ESTABLISHMENT OF PATERNITY

A father may voluntarily acknowledge paternity of a child by signing an acknowledgment of paternity with the intent to establish the man's paternity. It must be in writing and must be signed by both the mother and the man claiming to be the biological father. The record is filed with the Vital Statistics Unit, which may not charge a fee for its filing. A parent-child relationship is thus established, which applies for all purposes. The Vital Statistics Unit also may not charge a fee for filing a denial of paternity or a rescission ***Family Code*** *Sec. 160.301* *Sec. 160.302* *Sec. 160.306* *Sec. 160.203*

of an acknowledgment of paternity or denial of paternity.

A man may register with the Vital Statistics Unit to be notified of an adoption or termination of parental rights proceeding concerning any child he may have fathered. A man is entitled to notice regardless of whether he has registered with the Vital Statistics Unit if a parent-child relationship has been established or if he commences a proceeding to adjudicate paternity before the court has terminated his parental rights. Notice is given in the manner prescribed for service of process in a civil action.

Family Code
Sec. 160.402
Sec. 160.411
Sec. 160.403

A civil proceeding may be filed to adjudicate the parentage of a child. The proceeding is governed by the Texas Rules of Civil Procedure, except as provided by Family Code Chapter 233. The mother of the child and the man whose paternity is to be adjudicated must be parties to the suit. Proceedings, papers and records are open to the public as in other civil cases.

Sec. 160.601
Sec. 160.603
Sec. 160.633

If the court has issued an order relating to an earlier born child of the same parents, the Clerk must file the suit and all other papers under the same docket number as the prior action. For all other purposes, including the assessment of fees and other costs, the suit is a separate suit.

Sec. 102.013(c)

The court adjudicates paternity without a jury. Once a determination has been made, the court issues appropriate orders concerning assessment of fees, the child's birth certificate, and child support.

Sec. 160.632
Sec. 160.636

A report of each determination of paternity in this state must be filed with the state registrar.

Health & Safety Code
Sec. 192.0051(a)

On a determination of paternity, the petitioner must provide the Clerk of the court in which the order was rendered the information necessary to prepare the report of determination of paternity. The Clerk then must:

Family Code
Sec. 108.008

- Prepare the report of determination of paternity on a form provided by the Vital Statistics Unit; and
- Complete the report immediately after the decree becomes final.

On completion of the report, the Clerk of the court forwards to the state registrar a report for each order that became final in that court.

E. GESTATIONAL AGREEMENTS

Family Code Chapter 160, Subchapter I sets forth very specific requirements for gestational agreements entered into between prospective parents and the surrogate mother. It also sets forth requirements for validating the gestational agreement. Only those sections that trigger an action by the Clerk are discussed here.

The intended parents and the gestational mother file a petition to validate the gestational agreement. A copy of the gestational agreement must be attached to the petition.

Family Code
Sec. 160.755

If the court finds that all requirements are met, it issues an order validating the gestational agreement and declaring the intended parents will be the parents of the child born under the agreement. The intended parents are required to give notice to the court of the birth of the child.

Sec. 160.756(c)

Sec. 160.760(a)

If the intended parents fail to file the required notice, the gestational mother or an appropriate state agency may file it. Upon showing that an order validating the gestational agreement was rendered, the court must order that the intended parents are the child's parents and are financially responsible for the child.

Family Code
Sec. 160.760(d)

After receipt of notice of the birth, the court issues an order confirming that the intended parents are the parents of the child, requiring the gestational mother to surrender the child to the intended parents, and requiring the Vital Statistics Unit to issue a birth certificate naming the intended parents as the child's parents.

Sec. 160.760(b)

Before the gestational mother becomes pregnant using assisted reproductive means, she, her husband, or either intended parent may terminate the gestational agreement. The party terminating the agreement must give written notice to each other party, and must file the notice with the court. Upon receipt of the notice of termination, the court vacates the order validating the agreement.

Sec. 160.759

Any gestational agreement that is not validated as provided by Family Code Chapter 160, Subchapter I is not enforceable.

Sec. 160.762

F. SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

1. Commencement of Action

A suit is begun by the filing of a petition. The suit may be filed by a parent of the child; the child through an authorized representative; a governmental entity; an authorized agency; or any of several categories of people having care, custody and control of the child, including foster parents and guardians. A suit may also be filed by a prospective adoptive parent, pursuant to an executed statement to confer standing, or by a person who is an intended parent of a child or unborn child under a gestational agreement.

Family Code
Sec. 102.002
Sec. 102.003
Sec. 102.0035

2. Docketing Requirements

In a suit for modification or a motion for enforcement, the Clerk must file the petition or motion and all related papers under the same docket number as the prior proceeding without additional letters, digits, or special designations.

Sec. 102.013(a)

3. Citation

Citation in a suit affecting the parent-child relationship may be served to persons entitled to service of citation who cannot be notified by personal service or registered or certified mail and to persons whose names are unknown by publication on the public information Internet website maintained by the Office of Court Administration for the purpose of providing citation by publication, and in a newspaper of general circulation published in the county in which the petition was filed. Citation by publication must be published not later than the 20th day before the date set for the hearing. If service is by publication, a statement of the evidence of service, approved and signed by the court, must be filed with the papers of the suit as a part of the record.

Sec. 102.010(a)
Sec. 102.010(b)
Sec. 102.010(d)

Gov't Code
Sec. 72.034

The citation, whether for personal service or by publication, must contain the following information:

Family Code
Sec. 102.010(c)

"You have been sued. You may employ an attorney. If you or your attorney do (does) not file a written answer with the Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you. The petition of ___ _____, Petitioner, was filed in the _____Court of _____ County, Texas, on the ___ day of _____, against _____, Respondent(s), numbered _____, and entitled 'In the interest of _____, a child (or children).' The suit requests (statement of relief requested, e.g., 'terminate the parent-child relationship'). The date and place of birth of the child (children) who is (are) the subject of the suit: _____.

"The court has authority in this suit to render an order in the child's (children's) interest that will be binding on you, including the termination of the parent-child relationship, the determination of paternity, and the appointment of a conservator with authority to consent to the child's (children's) adoption."

4. Motions to Enforce

Family Code
Sec. 157.001(a)

A motion for enforcement may be filed to enforce any provision of a temporary or final order rendered in a suit. The Clerk must file the motion and all related papers under the same docket number as the prior proceeding without additional letters, digits, or special designations.

Sec. 102.013(a)

Sec. 157.065

If a party has been ordered to provide the court and the state case registry with the party's current mailing address, notice of a motion for enforcement or on a request for a court order implementing a post-judgment remedy for the collection of child support may be served by mailing a copy of the notice and the motion to the respondent by first-class mail to the last mailing address of the respondent on file with the court and the registry. The Clerk, the attorney for the movant or party requesting a court order, or any person entitled to the address information as provided in Family Code Chapter 105 may send this notice. A person who sends the notice must file of record a certificate of service showing the date of mailing and the name of the person who sent the notice.

Sec. 157.066

If a respondent who has been personally served with notice to appear at a hearing on a motion for enforcement does not appear, the court may not hold the respondent in contempt but may grant a default judgment and issue a capias for the arrest of the respondent. The capias is to be treated by law enforcement officials in the same manner as an arrest warrant in criminal cases. The fee for issuing a capias is currently $8.00 and the fee for service is the same as the fee for service of a writ in civil cases generally. Note that the amount of a fee may change, and clerks should insure that the amount being charged is still correct.

Sec. 157.102
Sec. 157.103

5. Transmission of Records

Sec. 108.001(a)

The Clerk is required to send to the Vital Statistics Unit a certified record of the order rendered in a suit affecting the parent-child relationship, together with the name and all prior names, birth date, and place of birth of the child prepared by the petitioner on a form

provided by the bureau.

6. Transmission of Files on Loss of Jurisdiction

Family Code Sec. 108.004

On the loss of continuing, exclusive jurisdiction of a court over a child under Family Code Chapter 155, the Clerk of the court must transmit to the central registry of the Vital Statistics Unit a certified record, on a form provided by the bureau, stating that jurisdiction has been lost, the reason for the loss of jurisdiction, and the name and all previous names, date of birth, and place of birth of the child.

Sec. 155.003
Sec. 155.004

Under Family Code Chapter 155, a court of this state loses its continuing, exclusive jurisdiction to modify its order regarding managing conservatorship, possessory conservatorship, possession of and access to the child, and support of the child if one of the following occurs:

- An order of adoption is rendered by another court in an original suit filed as described by Family Code §103.001(b);
- The parents of the child have remarried each other after the dissolution of a previous marriage between them and file a suit for the dissolution of their subsequent marriage combined with a suit affecting the parent-child relationship as if there had not been a prior court with continuing, exclusive jurisdiction over the child; or
- Another court assumed jurisdiction over a suit and rendered a final order based on incorrect information received from the Vital Statistics Unit that there was no court of continuing, exclusive jurisdiction.

Sec. 155.005

During the transfer of a suit from a court with continuing, exclusive jurisdiction, the transferring court retains jurisdiction to render temporary orders. The jurisdiction of the transferring court terminates on the docketing of the case in the transferee court.

7. Transfer of Continuing, Exclusive Jurisdiction

Sec. 155.207(a)

Not later than the 10th working day after the date an order of transfer of continuing, exclusive jurisdiction in a suit affecting the parent-child relationship is signed, the Clerk of the court transferring a proceeding must send, using the electronic filing system established under Government Code §72.031, all of the following to the proper court to which transfer is being made:

- A transfer certificate and index of transferred documents;
- A copy of each final order;
- A copy of the order of transfer signed by the transferring court;
- A copy of the original papers filed in the transferring court;
- A copy of the transfer certificate and index of transferred documents from each previous transfer; and
- A bill of any costs that have accrued in the transferring court.

Sec. 155.207(a-1)

The clerk of the transferring court shall use the standardized transfer certificate and index of transferred documents form created by the Office of Court Administration under

Government Code §72.037 when transferring a proceeding under this Family Code §155.207.

The Clerk of the transferring court must keep a copy of the transferred under §155.207(a). ***Family Code*** *Sec. 155.207(b)*

The Clerk of the transferee court must accept documents transferred under Section 155.207(a), docket the suit, and notify, using the electronic filing system established under Government Code §72.031, all parties, the Clerk of the transferring court, and, if appropriate, the transferring court's local registry that the suit has been docketed. *Sec. 155.207(c)*

The Clerk of the transferring court must send a certified copy of the order directing payments to the transferee court, to any party affected by the order, and, if appropriate, to the local registry of the transferee court using the electronic filing system established under Government Code §72.031. *Sec. 155.207(d)*

The Clerks of both the transferee and transferring court may each produce under Government Code Ch. 51 certified or uncertified copies of documents transferred under §155.207(a) and must also include a copy of the transfer certificate and index of transferred documents with each document produced. *Sec. 155.207(e)*

Government Code §§80.001 and 80.002 do not apply to the transfer of documents under Family Code §155.207. *Sec. 155.207(f)*

In a case filed under Family Code Chapter 262, the order of transfer must include: (1) the date of any future hearings in the case that have been scheduled by the transferring court; (2) any date scheduled by the transferring court for the dismissal of the suit under Family Code §263.401; and (3) the name and contact information of each attorney ad litem or guardian ad litem appointed in the suit. *Sec. 262.203(d)*

G. CHILD SUPPORT

Support payments may only be authorized by judgment of the court. The judgment should clearly set out the amount of support, who is to pay, the required payment dates and the interval, who is to receive payment, where the payment is to be made, and the duration of the payment period. ***Family Code*** *Sec. 154.001*

Child support payments may be ordered in several different kinds of cases filed under the Family Code, including divorce cases, suits to determine parentage, protective orders, and child abuse or neglect cases.

For parents whose parental rights have been terminated and whose children are placed in substitute care, the court may order parents who are financially able to do so to support the child. The support terminates when the child is adopted, turns 18, has his/her disabilities of a minor removed, or dies. If the child is disabled, support may continue for an indefinite period of time. *Sec. 154.001(a-1)*

> ***NOTE:*** *The US Department of Health and Human Services Office of Child Support Services has developed a standardized form to be used by attorneys for income withholding in Tribal, intrastate, interstate, and non-governmental cases. It is called the Income Withholding for*

Support (IWO) and there are instructions for completing this form.

1. Posting Guidelines

Guidelines for child support and possession of a child are set by the Legislature. (See Family Code Chapters 153 and 154.) A copy of the guidelines for child support and for possession of and access to a child must be prominently displayed at or near the entrance to the courtroom of every court having jurisdiction over child support and possession suits.

Family Code
Sec. 111.002
Sec. 111.003

2. Withholding from Earnings for Child Support

a. Income Withholding

In every proceeding in which periodic payments of child support are ordered, modified, or enforced, the court must order that income be withheld from the disposable earnings of the obligor. Except in Title IV-D cases, if good cause is found by the court, the withholding order need not be delivered to the employer until one of the following occurs:

Sec. 154.007
Sec. 158.002

- The obligor has been in arrears for an amount due for more than 30 days.
- The amount of the arrearages is an amount equal to or greater than the amount due for a one-month period.
- Any other violation of the child-support order has occurred.

An order or writ for income withholding remains in effect until all current support and in arrears support, interest, and fees and costs have been paid. This includes any ordered attorney's fees.

Sec. 158.102

However, attorney's fees and certain other costs may be withheld from income only for an order or writ enforcing a child support obligation, not one establishing it.

A.G. Op.
JC-0346 (2001)

b. Issuance and Delivery of Order or Writ of Income Withholding

A request for issuance of an order or judicial writ of withholding may be filed by the prosecuting attorney, the Title IV-D agency, the friend of the court, the obligor, the obligee, a domestic relations office, or an attorney representing the obligor or obligee. The Clerk of the court causes a certified copy of the order or writ withholding income from earnings to be delivered to the obligor's current employer or to any subsequent employer of the obligor. The Clerk must issue and deliver the certified copy of the order or writ not later than the fourth working day after the date the order is signed or the request is filed, whichever is later. Delivery of the order or writ to the employer must be by certified or registered mail, return receipt requested, by electronic transmission (including e-mail or fax), or by service of citation to the person authorized to receive service of process for the employer in civil cases generally or a person designated by the employer, by written notice to the Clerk, to receive orders or notices of withholding.

Family Code
Sec. 158.104
Sec. 158.105

The Clerk may deliver an order or judicial writ of withholding by electronic mail if the employer has an e-mail address, or by fax if the employer can receive documents in that manner. If the Clerk uses e-mail, the Clerk must request acknowledgment of receipt from the employer, or the Clerk must use an electronic mail system with a read receipt capability. If delivery is accomplished by fax, the Clerk's fax machine must create a

delivery confirmation receipt.

The Title IV-D agency (the Office of the Attorney General in Texas) may issue an administrative writ of withholding for enforcement of an existing order of child support. A domestics relations office may issue an administrative writ of withholding when the office is providing child support enforcement services. (All provisions that apply to the Title IV-D agency apply to a domestic relations office.)

Family Code
Sec. 158.501 -158.507

c. Voluntary Withholding by Obligor

An obligor may file with the Clerk of the court a notarized or acknowledged request signed by the obligor and the obligee for the issuance and delivery to the obligor's employer of a writ of withholding. Such a request may be filed regardless of whether a writ or order has been served on any party or of the existence or amount of an arrearage. On receipt of such a request, the Clerk issues and delivers a writ of withholding in the manner described above.

Sec. 158.011

A writ of withholding may not reduce the total amount of child support, including arrearages, owed by the obligor.

An employer that receives a writ of withholding or an obligor whose employer receives a writ of withholding may request a hearing. An obligee may contest a writ of withholding by requesting a hearing not later than the 180th day after the date on which the obligee discovers that the writ has been issued.

d. Fee for Issuing and Delivering Writ

The Clerk of the court may charge the requestor a fee in a reasonable amount set by the Clerk, not to exceed $15.00, for **each** writ of income withholding issued and delivered to an employer.

Sec. 110.004

e. Notice of Termination of Employment and of New Employment

If an obligor terminates employment with an employer who has been withholding income, both the obligor and the employer must notify the court or the Title IV-D agency, and the obligee of that fact not later than the seventh day after the date employment terminated and must provide the obligor's last known address and the name and address of the obligor's new employer, if known. The obligor has a continuing duty to inform any subsequent employer of the order or writ of withholding after obtaining employment.

Sec. 158.211

f. Notice of Application for Judicial Writ of Withholding

If a delinquency occurs in child support payments in an amount equal to or greater than the total due for one month or income withholding was not ordered at the time child support was ordered, the Attorney General's Office, attorney representing the local domestic relations office, attorney appointed friend of the court, the obligor or obligee, or a private attorney representing the obligor or obligee may file a notice of application for judicial writ of withholding. This notice must, among other things, state the amount of monthly support due and the arrearages, contain a statement that withholding applies to each current or subsequent employer or period of employment, and contain a statement

Sec. 158.301(a)

Sec. 158.302

that if the obligor does not contest the withholding within 10 days after receipt, the employer will be notified to begin withholding.

If the obligor does not file a motion to stay issuance of the writ of withholding within the time limits specified in Family Code §158.307 of the (*i.e.*, not later than the 10th day after the date the notice of withholding was received), the party who filed the application for judicial writ of withholding must file with the Clerk a request for issuance of a writ of withholding. If the obligor files a motion to stay, this prohibits the Clerk of the court from delivering the judicial writ of withholding to any employer of the obligor before a hearing is held.

Family Code
Sec. 158.312(a)

Sec. 158.308

The request for issuance of a writ of withholding may not be filed before the 11th day after the date of receipt of the notice of application for judicial writ of withholding by the obligor.

Sec. 158.312(b)

On the filing of a request for issuance of a writ of withholding, the Clerk of the court issues the writ. The writ must be delivered to the employer as provided by Family Code Chapter 158. The Clerk must issue and mail the writ not later than the second working day after the date the request is filed.

Sec. 158.313(a)
Sec. 158.105
Sec. 158.313(b)
Sec. 158.313(c)

The judicial writ of withholding must direct that the employer or a subsequent employer withhold from the obligor's disposable income for current child support, including medical support and dental support, and child support arrearages an amount that is consistent with the provisions of Family Code Chapter 158 regarding orders of withholding.

Sec. 158.314

g. Issuance and Delivery of Writ of Withholding to Subsequent Employer

After the issuance of a judicial writ of withholding by the Clerk, a party authorized to file a notice of application for judicial writ of withholding may issue the judicial writ of withholding to a subsequent employer of the obligor by delivering to the employer by certified mail a copy of the writ.

Sec. 158.319

The judicial writ must include the name, address, and signature of the party and clearly indicate that the writ is being issued to a subsequent employer.

The party must file a copy of the judicial writ with the Clerk not later than the third working day following delivery of the writ to the subsequent employer.

The party must file the postal return receipt from the delivery to the subsequent employer not later than the third working day after the party receives the receipt.

h. Modification, Reduction, or Termination of Withholding

I. Modifications to or Termination of Withholding by the Title IV-D Agency

The Title IV-D agency establishes procedures for the reduction in the amount of or termination of withholding from income on the liquidation of an arrearages or the termination of the obligation of support in Title IV-D cases. The procedures must provide that the payment of overdue support may not be used as the sole basis for terminating

Sec. 158.401

withholding.

At the request of the Title IV-D agency, the Clerk of the court issues a judicial writ of withholding to the obligor's employer reflecting any modification or changes in the amount to be withheld or the termination of withholding.

II. Effect of Agreement by Parties

Family Code Sec. 158.402

An obligor and obligee may agree on a reduction in or termination of income withholding for child support under very limited circumstances (such as when the child turns 18, marries, or dies). The obligor and obligee may file a notarized or acknowledged request with the Clerk of the court under Family Code §158.011 for a revised judicial writ of withholding including the termination of withholding. The Clerk must issue and deliver to the obligor's employer a judicial writ of withholding that reflects the agreed revision or the termination of withholding.

III. Modifications to or Termination of Withholding in Voluntary Withholding Cases

Sec. 158.403

If an obligor initiates voluntary withholding under Family Code §158.011, the obligee or an agency providing child support services may file with the Clerk of the court a notarized request signed by the obligor and the obligee or agency, as appropriate, for the issuance and delivery to the obligor of either of the following:

- Modified writ of withholding that reduces the amount of withholding; or
- Notice of termination of withholding.

On receipt of such a request, the Clerk shall issue and deliver a modified writ of withholding or notice of termination to the obligor's employer.

Sec. 158.403

An obligee may contest a modified writ of withholding or notice of termination that has been issued by requesting a hearing not later than the 180th day after the date the obligee discovers that the writ or notice has been issued.

IV. Delivery of Order of Reduction or Termination of Withholding

Sec. 158.404

If a court has rendered an order that reduces the amount of child support to be withheld or terminates withholding for child support, any person or governmental entity may deliver to the employer a certified copy of the order without the requirement that the Clerk of the court deliver the order.

3. Child Support Liens

Sec. 157.312 -157.322

A child support lien arises against an obligor's real and personal property for all child support due and owing. To enforce the lien, the claimant may file a child support lien notice with the appropriate County Clerk and copies with other parties, as set forth in the statute. The lien then attaches to all nonexempt personal and real property, and remains in effect (subject to the new and amended Family Code sections discussed hereinafter) until payment in full is made. The types of property to which a child support lien may attach include the proceeds of an insurance policy, including the proceeds from a life insurance

policy or annuity contract and the proceeds from the sale or assignment of life insurance or annuity benefits, a claim for compensation, or a settlement or award for the claim for compensation, due to or owned by the obligor; and, property seized and subject to forfeiture under Code of Criminal Procedure Chapter 59.

Family Code §157.3171 provides a procedure for securing the release of a child support lien on property which the obligor asserts is homestead property.

Except as noted above, the release of a child support lien is accomplished by the claimant filing a release of lien with the appropriate County Clerk and notifying all parties who were originally served with the lien notice.

Typically, other than filing the notice of lien and notice of release of lien in the case file, the District Clerk has no specific duties in connection with child support liens.

Family Code
Sec. 157.314(b)(1)
Sec. 157.322(b)(2)

4. Clerk's Duties

a. When Local Registry in District Clerk's Office

Each county in Texas has a registry (known as the "local registry") for the collection and distribution of child support. In most counties, the registry is in the District Clerk's office. A local registry receives child support payments; maintains records of child support payments; distributes child support payments as required by law; and maintains custody of the records of official child support payments. A private entity may perform the duties and functions of a local registry either under a contract with a county commissioners court or domestic relations office, or under an appointment by a court.

Sec. 101.018

Family Code §110.006 distinguishes between procedures to follow if an initial operations fee is adopted under §203.005(a)(1) versus procedures to follow if an initial child support service fee under §203.005(a)(2) is adopted. If an administering entity of a domestic relations office adopts an initial operations fee under §203.005(a)(1), the Clerk of the court shall collect the operations fee at the time the original suit, motion for modification, or motion for enforcement, as applicable, is filed and shall send the fee to the domestic relations office. If an administering entity of a domestic relations office adopts an initial child support service fee under §203.005(a) (2), the Clerk of the court shall collect the child support service fee at the time the original suit is filed and shall send the fee to the domestic relations office. The revised statute also provides that the fees described by §110.006(a) and (b) are not filing fees for purposes of §§110.002 or 110.003.

Sec. 110.006

A local registry receives a court-ordered child support payment or a payment otherwise authorized by law and forwards the payment, as appropriate, to the Title IV-D agency, local domestic relations office, or obligee within two working days after the date the local registry receives the payment. (The Office of the Attorney General is designated as the state's Title IV-D agency.)

Sec. 154.241(a)
Sec. 231.001

A local registry may not require an obligor, obligee, or other party or entity to furnish a certified copy of a court order as a condition of processing child support payments and must accept as sufficient authority to process the payments a photocopy, facsimile copy, or conformed copy of the court's order.

Sec. 154.241(b)

A local registry must include with each payment it forwards to the Title IV-D agency

Sec. 154.241(c)

the date it received the payment and the withholding date furnished by the employer.

A local registry will accept child support payments made by personal check, money order, or cashier's check. A local registry may refuse payment by personal check if a pattern of abuse regarding the use of personal checks has been established. Abuse includes checks drawn on insufficient funds and other actions that delay or disrupt the registry's operation.

Family Code
Sec. 154.241(d)

Subject to Family Code §154.004, which requires that the Clerk forward to the Title IV-D agency all payments received in a Title IV-D case, at the request of an obligee, a local registry must redirect and forward a child support payment to an address and in care of a person or entity designated by the obligee. A local registry may require that the obligee's request be in writing or be made on a form provided by the local registry for that purpose, but may not charge a fee for receiving the request or redirecting the payment as requested.

Sec. 154.241(e)

A local registry may accept child support payments made by credit card, debit card, or automatic teller machine card.

Sec. 154.241(f)

> ***NOTE:*** *Unless a new court order has been issued to change the recipient of child support payments, a District Clerk must pay child support payments to the person designated in the existing child support order or in that portion of a divorce decree providing for child support. The child support obligee may not modify the court's order by asking the Clerk to send payments to another person or entity. Thus, a District Clerk must continue to pay the obligee designated in the court order even though the obligee has filed with the Clerk a limited power of attorney assigning the child's right to child support payments to a corporation and a request that the Clerk send the child support payments to that corporation.*
>
> ***AG Op.***
> *DM-222 (1993)*
>
> *A District Clerk may, however honor a change of address request, even if the new address is "in care of" a child support collection agency. Thus, a child support obligee who has properly completed and submitted the change of address request may do so without a court order modifying the original order to reflect the address change.*
>
> ***AG Op.***
> *DM-296 (1994)*

b. Place of Payment

The court orders the payment of child support, medical support, and dental support to the state disbursement unit, as provided by Family Code Chapter 234.

Family Code
Sec. 154.004

In a Title IV-D case, the court or the Title IV-D agency orders that income withheld for child support, medical support, and dental support be paid to the Texas state disbursement unit, or if appropriate, to the state disbursement unit of another state.

This does not apply to child support orders that were initially rendered by a court prior to January 1, 1994, or that are not being enforced by the Title IV-D agency.

c. Payment or Transfer of Child Support Payments by Electronic Funds Transfer

Family Code Sec. 154.242(a)

A child support payment may be made by electronic funds transfer to the Title IV-D agency, a local registry if the registry agrees to accept electronic payment, or the state disbursement unit.

Sec. 154.242(b)

A local registry may transmit child support payments to the Title IV-D agency by electronic funds transfer. Unless support payments are required to be made to the state disbursement unit, an obligor may make payments, with the approval of the court entering the order, directly to the bank account of the obligee by electronic transfer and provide verification of the deposit to the local registry. A local registry in a county that makes deposits into personal bank account by electronic funds transfer as of April 1, 1995, may transmit a child support payment to an obligee by electronic funds transfer if the obligee maintains a bank account and provides the local registry with the necessary bank account information to complete electronic payment.

d. Record of Child Support Payments

The accounting system for the local registry is relatively simple and most Clerks employ only two ledgers: a ledger card for each case and a master list.

The ledger card (either a hard copy or electronic version) for each individual case should contain the following:

- Name and address of the person making support payments
- Name and address of the person receiving support payments
- Case number of the civil action leading to the support judgment
- Entry for every receipt of payment and its subsequent disbursement

Ledger cards should be kept alphabetically by the last name of the person making support payments.

A master ledger should be kept showing all payments received and disbursed. The master ledger should always show receipts equal to disbursements because all money received is immediately passed on to the recipient. The exact format of the master ledger will vary depending on the accounting and reporting system of the local Clerk's office.

e. Production of Child Support Payment Record

Sec. 154.243

The Title IV-D agency, a local registry, or the state disbursement unit may comply with a subpoena or other order directing the production of a child support payment record by sending a certified copy of the record or an affidavit regarding the payment record to the court that directed production of the record.

f. Processing Child Support Payments

In processing child support payments, the Clerk merely acts as a middleman for the person making the payment and the person receiving the payment. Some Clerks require that all support payments be in the form of a check or money order made out to the recipient. In this case, the Clerk notes the receipt of the payment to the recipient. Other

Clerks prefer to deposit all payments into a support fund checking account and issue checks to the recipients from that account. Either method is acceptable, so long as it is consistent within the county.

While the Clerk is responsible for keeping track of all support payments, the Clerk is not responsible to enforce such payments. The Clerk may, however, be called upon to testify as to the contents of the support account.

If the Clerk is designated to receive child support under a court order, the Clerk will, if ordered by the court, report on a monthly basis to the court, or a friend of the court if one is appointed, any delinquency and arrearage in child support payments, and any violation of an order relating to possession of or access to the child.

Family Code
Sec. 202.003

In Title IV-D cases, the Clerk may not charge the Title IV-D agency certain fees. These include a judicial fund fee, a court reporter fee, except as provided by Family Code §231.209, a fee for a child support registry, enforcement office, or a domestic relations office, or a statewide electronic filing system fund fee. A fee for processing the support payment may not be collected from the Title IV-D agency, or a managing or possessory conservator in a Title IV-D case.

Sec. 231.204
Sec. 231.206

g. Transfer of Child Support Registry

On rendition of an order transferring continuing, exclusive jurisdiction of a suit affecting the parent-child relationship to another court, the transferring court will also order that all future payments of child support be made to the local registry of the transferee court, or, if payments have been previously directed there, the state disbursement unit. The transferring court's local registry, or the state disbursement unit shall continue to receive, record and forward child support payments to the payee until it receives notice that the transferred case has been docketed by the transferee court. After receiving notice of docketing from the transferee court, the transferring court's local registry must send a certified copy of the child support payment record to the Clerk of the transferee court and must forward any payments received to the transferee court's local registry or to the state disbursement unit, as appropriate.

Sec. 155.205

5. Accrual of Interest on Child Support

Interest accrues on the portion of delinquent child support that is greater than the amount of the monthly periodic support obligation at the rate of six (6) percent simple interest per year from the date the support is delinquent until the date the support is paid or the arrearages are confirmed and reduced to money judgment. Interest accrues on child support arrearages that have been confirmed and reduced to money judgments at the rate of six (6) percent simple interest per year from the date the order is rendered until the date the judgment is paid. Interest accrues on a money judgment for retroactive or lump sum child support at the annual rate of six (6) percent simple interest from the date the order is rendered until the judgment is paid.

Sec. 157.265(a)-(c)

The above calculations apply to obligations, arrearages and money judgments in effect on or after January 1, 2002. Arrearages in existence as of that date, which had not been reduced to a money judgment, accrue interest at the rate in that applied to arrearages before that date; the cumulative total of arrearages and interest as of January 1, 2002, are

Sec. 157.265(d)-(f)

subject to the calculations described above. Money judgments rendered before January 1, 2002, are governed by the law in effect on the date the judgment was rendered.

Interest begins to accrue on the date the judge signs the order for the judgment unless the order contains a statement that the order is rendered on another specific date. ***Family Code*** *Sec. 157.261(b)*

A child support payment is delinquent for the purpose of accrual of interest if the payment is not received before the 31st day after the payment date stated in the order by the local registry, the Title IV-D agency, the state disbursement unit, or the obligee or entity specified in the order, if payments are not made through a registry. *Sec. 157.266*

If a payment date is not stated in the child support order, a child support payment is delinquent if payment is not received by the obligee, registry, or entity specified in the order on the date that an amount equal to the support payment for one month becomes past due.

Accrued interest is part of the child support obligation and may be enforced by any means provided for the collection of child support. Child support collected will be applied in the following order of priority: *Sec. 157.267* *Sec. 157.268*

a. Current child support

b. Non-delinquent child support owed

c. The principal amount of child support that has not been confirmed and reduced to money judgment;

d. The principal amount of child support that has been confirmed and reduced to money judgment

e. Interest on the principal amounts specified in (c) and (d), and

f. The amount of any ordered attorney's fees or costs, or Title IV-D service fees authorized under Family Code §231.103 for which the obligor is responsible.

6. Friend of the Court

After an order for child support or possession of or access to a child has been rendered, a court on its own motion or on the request of a person alleging that the order has been violated may appoint a friend of the court. The purpose of the friend of the court is to assist the court in monitoring and enforcing its orders. In the execution of a friend of the court's duties, a friend of the court must represent the court to ensure compliance with the court's order. *Sec. 202.001*

A friend of the court may coordinate nonjudicial efforts to improve compliance with a court order relating to child support, possession or access. A friend of the court must report to the court or monitor reports made to the court on the amount of child support collected as a percentage of the amount ordered and on efforts to ensure compliance with orders relating to possession of or access to a child; and institute actions to enforce, clarify, or modify orders relating to child support or possession of or access to a child. *Sec. 202.002*

If ordered by the court, the local domestic relations office, local registry, or court official designated to receive child support must report to the court or friend of the court *Sec. 202.003*

on a monthly basis, any delinquency and arrearage in child support payments; and any violation of an order relating to possession of or access to a child.

A friend of the court is entitled to compensation for services rendered and for expenses incurred in rendering the services. The court may assess the amount that the friend of the court receives in compensation against a party to the suit in the same manner as it awards court costs under Family Code Chapter 106.

Family Code
Sec. 202.005(a), (b)

7. Uniform Interstate Family Support Act

The National Conference of Commissioners on State Laws adopted the Uniform Interstate Family Support Act (UIFSA) in 1996 to address the interstate enforcement and establishment of child support obligations. The Texas Legislature enacted UIFSA under Chapter 159 of the Family Code; all states had adopted the UIFSA by May of 1998.

A UIFSA case involves the establishment, enforcement and modification of child support where the parents of the child live in different states or countries. When a petition is received from a court, agency, or individual in another state or country, it is docketed as any other case. The petition must be accompanied by a copy of any known support order and must specify the relief sought. The petitioner is to be notified where and when the petition was filed. Citation should be served on the respondent as in other civil cases. The out-of-state or out-of-country petitioner may be represented by private counsel. The out-of-state or out-of-country petitioner may be provided services by a support enforcement agency or the Attorney General.

Sec. 159.305
Sec. 159.309
Sec. 159.311
Sec. 159.307
Sec. 159.308

When a UIFSA case is filed by a resident of the Clerk's county, the Clerk must forward it to the responding tribunal or appropriate enforcement agency in the responding state or country; or, if the identity of the responding tribunal is unknown, to the state information agency of the responding state or country with a request that the case be forwarded to the appropriate tribunal and that receipt be acknowledged. The petition and its accompanying documents are to be forwarded to the responding tribunal or appropriate support enforcement agency in the responding state.

Sec. 159.304

If requested by the responding tribunal, a Texas tribunal must issue a certificate or other document as required by the laws of the other state or country. If the responding tribunal is in a foreign country, upon request, the Texas tribunal must specify the amount of support sought, convert that amount into the foreign currency, and provide any documents necessary to satisfy the requirements of the responding country.

8. Registration of Foreign Support Orders or Income Withholding Orders

Sec. 159.602(a)

Except as otherwise provides by Family Code §159.706, a foreign support order or income-withholding order may be registered in Texas by sending the following records to the appropriate Texas tribunal:

- Letter of transmittal to the tribunal requesting registration and enforcement;
- Two copies, including one certified copy, of the order to be registered, including any modification of an order;
- A sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any

arrearage;

- Name of the obligor and, if known:
  - Obligor's address and social security number
  - Name and address of the obligor's employer and any other source of income of the obligor
  - Description of and the location of property of the obligor in this state not exempt from execution; and
- Name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

On receipt of a request for registration, the registering tribunal causes the order to be filed as an order of a tribunal of another state or a foreign judgment, together with one copy of the documents and information, regardless of their form. ***Family Code*** *Sec. 159.602(b)*

If two or more orders are in effect, the person requesting registration must provide a copy of each support order and its accompanying documents, identify the controlling order, if there is one, and state the amount of any consolidated arrearages.

A request for a determination of which order controls may be filed separately from or with a request for registration. The person requesting registration must give notice of the request for each party whose rights may be affected by the determination. *Sec. 159.602(d)* *Sec. 159.602(e)*

When a support order or income-withholding order issued in another state or a foreign support order is registered, the Clerk of the registering tribunal of this state notifies the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order. *Sec. 159.605(a)*

The notice must inform the nonregistering party of all of the following: *Sec. 159.605(b)*

- A registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state.
- A hearing to contest the validity or enforcement of the registered order must be requested within 30 days unless the registered order is under Family Code §159.707.
- Failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages.
- State the amount of any alleged arrearages.

If the registering party asserts that two or more orders are in effect, the notice must also do all of the following: *Sec. 159.605(c)*

- Identify the two or more orders, including the order alleged by the registering party to be the controlling order, and the consolidated arrearages, if any.
- Notify the nonregistering party of the right to a determination of which order controls.
- State that the procedures provided in Family Code §159.605(b) apply to the

determination of which order controls.

- State that failure to contest the validity or enforcement of the order alleged to be controlling may result in confirmation that the alleged controlling order does control.

On registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal must notify the obligor's employer under Family Code Chapter 158.

Family Code
Sec. 159.605(d)

A nonregistering party seeking to contest the validity or enforcement of a registered order in Texas must request a hearing within the time required by Family Code §159.605. If the obligor does not so contest, the registered support order is confirmed, and is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

Sec. 159.606

9. Statewide Integrated System for Child Support, Medical Support, and Dental Support Enforcement

The Title IV-D agency, in conjunction with other entities, develops and implement a statewide integrated system for child support, medical support, and dental support enforcement to do the following:

Sec. 231.0011

- Unify child support registry functions.
- Record and track all child support orders entered in the state.
- Establish an automated enforcement process which will use delinquency monitoring, billing, and other enforcement techniques to ensure payment of current support.
- Incorporate existing enforcement resources into the system to obtain maximum benefit from state and federal funding.
- Ensure accountability for all participants in the process, including state, county, and local officials, private contractors, and the judiciary.

The clerk of the court of a county participating in the unified enforcement system must use a record of support order form described by Family Code §105.008(b) that includes an option for the obligee or obligor to apply for child support services provided by the Title IV-D agency.

Sec. 231.0011(c)

Participation in the statewide integrated system for child support, medical support, and dental support enforcement by a county is **voluntary**.

Sec. 231.0011(g)

As a duty of office, the District Clerks serving counties and courts that participate in the statewide integrated system for child support, medical support, and dental support enforcement must report monthly the information as may be required by the Office of Court Administration. This information must include the time required to enforce cases from date of delinquency, from date of filing, and from date of service until date of disposition. Information necessary to complete the report and not directly within the control of the District Clerk, such as date of delinquency, will be provided to the Clerk by the child support registry or by the enforcement agency providing Title IV-D enforcement services in the court. The monthly report must be transmitted to the Office of Court

Gov't Code
Sec 71.035(a-1)

Administration no later than the 20th day of the month following the month reported, in the form and manner prescribed by the Office of Court Administration, which may include electronic data transfer. Copies of the monthly reports must be maintained in the office of the appropriate District Clerk for at least two years and must be available to the public for inspection and reproduction.

H. CHILD SUPPORT REVIEW PROCESS TO ESTABLISH OR ENFORCE SUPPORT OBLIGATIONS IN TITLE IV-D CASES

Family Code *Sec. 233.001*

An administrative child support review process is authorized by statute to enable the Title IV-D agency to take expedited administrative actions to establish and enforce child support obligations and to determine parentage. A child support review order issued under Family Code Chapter 233 and confirmed by the court constitutes an order of the court and is enforceable by any means available for enforcement of child support obligations under the law.

Sec. 233.019

If the parties to a Title IV-D suit reach an agreement in their case, the Title IV-D agency files the agreed child-support review order and a waiver of service signed by the parties. If applicable, an acknowledgment of paternity or results of paternity testing and any other documentary evidence relied upon is filed with the agreed order. The agreed order is filed with the Clerk of court having continuing jurisdiction over the child who is the subject of the order, or if there is no such court, then with the Clerk of court having jurisdiction under this title. If a party timely files a motion for a new trial for reconsideration of an agreed review order and the court grants the motion, the agreed review order filed with the Clerk constitutes a sufficient pleading by the Title IV-D agency for relief on any issue addressed in the order.

Sec. 233.024

Upon filing of an agreed child support review order signed by all parties, together with waiver of service, the court must sign the order not later than the seventh day after its filing. It may be signed before it is filed, in which case the signed order must be filed immediately. The Title IV-D agency must immediately deliver a copy of the signed agreed order to each party.

Sec. 233.020

If the parties do not agree to the outcome of their case, the IV-D agency must file a petition for confirmation of a child support review order that has been issued by the agency.

A petition for confirmation of a child support review order not agreed to by the parties must include the final review order as an attachment to the petition and may include a waiver of service executed under Family Code §233.018 and an agreement to appear in court for a hearing. Documentary evidence relied on by the Title IV-D agency, including, if applicable, an acknowledgment of paternity or a written report of a parentage testing expert, must be filed with the Clerk as exhibits to the petition, but are not required to be served on the parties. The petition must identify the exhibits that are filed with the Clerk.

Sec. 233.021(a)

On the filing of an agreed child support review order or a petition for confirmation of a non-agreed order, the Clerk of the court must endorse on the order or petition the date and time the order or petition is filed.

Sec. 233.021(b)

In an original action, the Clerk endorses the appropriate court and cause number on the agreed child support review order or on the petition for confirmation.

The Clerk delivers by personal service or, if court-ordered, a method of substituted service, a copy of the petition for confirmation of a non-agreed review order and a copy of the order, to each party entitled to service who has not waived service. *Family Code Sec. 233.021(c)*

A Clerk of a district court is entitled to collect in a child support review case the fees authorized in a Title IV-D case by Family Code Chapter 231. *Sec. 233.021(d)*

A court must consider any responsive pleading that is intended as an objection to confirmation of a child support review order not agreed to by the parties, including a general denial, as a request for a court hearing. *Sec. 233.022(a)*

The Title IV-D agency will do both of the following: *Sec. 233.022(b)*

- Make available to each Clerk of the court copies of the form to request a court hearing on a non-agreed review order.
- Provide the form to request a court hearing to a party to the child support review proceeding on request of the party.

The Clerk furnishes the form to a party to a child support review proceeding on the request of the party.

1. Authorized Costs and Fees in Title IV-D Cases

In a Title IV-D (child support or establishment) case, the Title IV-D agency pays the following: *Sec. 231.202*

- Filing fees and fees for issuance and service of process as provided by Family Code Chapter 110 and by Government Code §§51.318(b)(2) and 51.319(2);
- Fees for transfer as provided by Family Code Chapter 110;
- Fees for the issuance and delivery of orders and writs of income withholding in the amounts provided by Family Code Chapter 110;
- The fee that sheriffs and constables are authorized to charge for serving process under Local Government Code §118.131 for each item of process to each individual on whom service is required, including service by certified or registered mail, to be paid to a sheriff, constable, or Clerk whenever service of process is required;
- The fee for filing an administrative writ of withholding under Family Code §158.503(d); and
- The fee for issuance of a subpoena as provided by Government Code §51.318(b)(1).

Family Code Chapter 231, Subchapter C does not affect, nor is it affected by, the exemption for state and certain federal agencies from bond for court costs or appeal provided by Civil Practice and Remedies Code §6.001. *Sec. 231.203*

Except as provided by Family Code Chapter 231, Subchapter C, a District or County Clerk, sheriff, constable, or other government officer or employee may not charge the Title IV-D agency or a private attorney or political subdivision that has entered into a contract to provide Title IV-D services any fees or other amounts otherwise imposed by law for *Sec. 231.204*

services rendered in, or in connection with, a Title IV-D case, including all of the following:

- A fee payable to a District Clerk for performing services related to the estates of deceased persons or minors, certifying copies, or comparing copies to originals
- A court reporter fee, except as provided by Family Code § 231.209
- A judicial fund fee
- A fee for a child support registry, enforcement office, or domestic relations office
- A fee for alternative dispute resolution services
- A filing fee or other costs payable to a Clerk of an appellate court
- A statewide electronic filing system fund fee.

Family Code
Sec. 231.206

A District Clerk may not assess or collect fees for processing child support payments or for child support services from the Title IV-D agency, a managing conservator, or a possessory conservator in a Title IV-D case, except as provided by Family Code Chapter 231, Subchapter C.

Sec. 231.207

To be entitled to reimbursement for court costs in Title IV-D cases, the Clerk of the court must submit one monthly billing for the Title IV-D agency. The monthly billing must be in the form and manner prescribed by the Title IV-D agency and approved by the Clerk.

Sec. 231.208

The Title IV-D agency and a qualified county may enter into a written agreement under which reimbursement for salaries and certain other actual costs incurred by the Clerk in Title IV-D cases is provided to the county. A county may not enter into an agreement for reimbursement under this section unless the Clerk providing service has at least two full-time employees each devoted exclusively to providing services in Title IV-D cases. Reimbursement made under this section is in lieu of all costs and fees provided by Family Code Chapter 231, Chapter C.

Sec. 231.209

The Title IV-D agency must also pay the costs for the following:

- The services of an official court reporter for the preparation of the reporter's record (formerly known as the statement of facts);
- The costs for the publication of citation served by publication; and
- Mileage or other reasonable travel costs incurred by a sheriff or constable when traveling out of the county to execute an outstanding warrant or capias, to be reimbursed at a rate not to exceed the rate provided for mileage or other costs incurred by state employees in the General Appropriations Act.

I. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

In 1999, the *Uniform Child Custody Jurisdiction Act* was replaced by the *Uniform Child Custody Jurisdiction and Enforcement Act* (UCCJEA), which took effect September 1, 1999. This law applies to an original Suit Affecting Parent-Child Relationships

(SAPCR). Suits filed prior to September 1, 1999, are governed by the former law. Any suit filed on or after September 1, 1999, is governed by the new law.

In short, the UCCJEA combines child custody jurisdiction and enforcement, and incorporates some standards from the federal Parental Kidnapping Prevention Act (PKPA). The UCCJEA revises the child custody jurisdiction law to prioritize home state jurisdiction. It also clarifies emergency jurisdiction and addresses a state's exclusive continuing jurisdiction in a child custody case. From the enforcement aspect, the UCCJEA is entirely new and implements a procedure for registering a child custody determination in another state and provides for a warrant to take physical possession of the child if a court believes that a custodial parent may flee or harm the child. The UCCJEA also establishes a role for public authorities in the enforcement process. What follows are some procedural aspects of the new UCCJEA that affects how a suit is processed.

1. Cooperation Between Courts and Preservation of Records

A court of this state may request the appropriate court of another state to: ***Family Code*** *Sec. 152.112*

- Hold an evidentiary hearing.
- Order a person to produce or give evidence pursuant to procedures of that state.
- Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding.
- Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request.
- Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

A court of this state must preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court must forward a certified copy of those records.

A record of all of the proceedings under this chapter relating to a child custody determination made in a foreign country or to the enforcement of an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction shall be made by a court reporter or as provided by Family Code §201.009. *Sec. 152.105(d)*

2. Registration of Child Custody Determination

A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate court in this state all of the following: *Sec. 152.305*

- A letter or other document requesting registration;
- Two copies, including one certified copy, of the determination sought to be registered and a statement under penalty of perjury that to the best of the

knowledge and belief of the person seeking registration the order has not been modified; and

- Except as otherwise provided in Family Code §152.209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

On receipt of the documents required above, the registering court will do the following:

- Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and
- Serve notice upon the persons named and provide them with an opportunity to contest the registration in accordance with this section.

The notice required must state that:

- A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state.
- A hearing to contest the validity of the registered determination must be requested within 20 days after service of notice.
- Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court will confirm the registered order unless the person contesting registration establishes one of the following:

- The issuing court did not have jurisdiction under Subchapter C of the UCCJEA.
- The child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under this law.
- The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Family Code §152.108.

If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

3. Expedited Enforcement of Child Custody Determination

Family Code
Sec. 152.308

A petition under the UCCJEA must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A

copy of a certified copy of an order may be attached instead of the original.

Upon the filing of a petition, the court must issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court must hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

An order must state the time and place of the hearing and advise the respondent that at the hearing the court will award the petitioner immediate physical custody of the child and order the payment of fees, costs, and expenses under Family Code §152.312.

4. Service of Petition and Order

Except as otherwise provided by law, the petition and order must be served upon the respondent and any person who has physical custody of the child by any method authorized by the law of this state.

Family Code
Sec. 152.309

5. Costs, Fees, and Expenses

The court will award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party. The expenses include costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

Sec. 152.312

The court may not assess fees, costs, or expenses against a state unless authorized by law other than this chapter.

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law enforcement officers under Family Code §§152.315 or 152.316.

Sec. 152.317

J. PROTECTION OF THE FAMILY

1. Application for Protective Order

An application for a protective order may be filed in the county where the applicant resides, the county where the respondent resides, or any county in which the family violence is alleged to have occurred. A fee cannot be required of the applicant.

Family Code
Sec. 82.003
Sec. 81.002

> ***NOTE:*** *An application for a protective order filed under Family Code Chapter 82 and any protective order issued under Family Code Chapter 83 or 85 must be entered into OCA's Internet-based protective order registry.*

Gov't Code
Ch. 72, Subch. F

A person filing an application under Chapter 82 must use the protective order application form created by the Office of Court Administration that is available on the Office of Court Administration's website, and must include in the application:

Family Code
Sec. 82.004

- Name and county of residence of each applicant;

- Name and county of residence of each person alleged to have committed family violence;
- The relationship(s) between the applicant(s) and the person(s) alleged to have committed family violence;
- A request for one or more protective orders; and
- Whether an applicant is receiving services from the Title IV-D agency in connection with a child support case and, if known, the agency case number for each open case.

Family Code *Sec. 71.0021(a)*

The Family Code definition of "dating violence" includes acts committed against an individual who is the new spouse or dating partner of the perpetrator's former spouse or dating partner and authorizes such a victim to file an application for a protective order.

Sec. 82.002

An adult member of the family or household may file an application for a protective order under Family Code §§71.004(1) or (2) to protect the applicant or any member of the applicant's family or household. A member of the dating relationship may file for a protective order to protect the applicant under Family Code §71.004(3) regardless of whether the member is an adult or a child. Any adult may apply for a protective order to protect a child from family violence.

Sec. 82.002(d)

In addition, a prosecuting attorney or the Department of Family and Protective Services may file an application for the protection of any person alleged to be a victim of family violence.

Sec. 82.002(e)

The person alleged to be the victim of family violence in an application filed under Family Code §§82.002(c) or 82.002(d) is considered to be the applicant for the protective order.

Sec. 82.006
Sec. 82.007

If the applicant is a former spouse, a copy of the divorce decree must be attached to the application or filed with the court before the hearing. If the application is for the protection of a child, or a child is alleged to have committed the violence, and the child is subject to the continuing jurisdiction of a court, a copy of all court orders affecting the child must be attached to the application or filed with the court before the hearing.

Sec. 82.022
Sec. 85.003

A respondent to an application who wishes to apply for a protective order must file a separate application. If a protective order applies to both parties, the court must issue separate documents that reflect the appropriate conditions for each party.

Sec. 82.009
Sec. 83.001
Sec. 83.002
Sec. 83.003

An application requesting a temporary ex parte order must contain full details of the allegations and be signed under oath by the applicant. If the court finds a clear and present danger of family violence, it may enter a temporary ex parte order without hearing. The order is valid for the period specified in the order, not to exceed 20 days, and may be extended for additional 20-day periods. The court may dispense with the necessity of a bond for a temporary ex parte order.

Sec. 82.008

An application for a protective order that is filed after a previously rendered protective order has expired must include a copy of the expired protective order attached to the application or, if a copy of the expired protective order is unavailable, a statement that the order is unavailable to the applicant and that a copy of the order will be filed with

the court before the hearing on the application. It must also contain a description of either:

- The violation of the expired protective order, if the application alleges that the respondent violated the expired protective order by committing an act prohibited by that order before the order expired
- The threatened harm that reasonably places the applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault

If a violation of the expired order is alleged, it must also contain a statement that the violation of the expired order has not been grounds for any other order protecting the applicant that has been issued or requested under this law.

2. Application Filed Before Expiration of Previously-Rendered Protective Order

Family Code
Sec. 82.0085

If an application for a protective order alleges that an unexpired protective order applicable to the respondent is due to expire not later than the 30th day after the date the application was filed, the application for the subsequent protective order must include a copy of the previously rendered protective order attached to the application or, if a copy of the previously rendered protective order is unavailable, a statement that the order is unavailable to the applicant and that a copy of the order will be filed with the court before the hearing on the application. It must also include a description of the threatened harm that reasonably places the applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault.

The procedural requirements for an original application for a protective order apply to a protective order requested under this section.

3. Duration of Protective Order

Sec. 85.025(a)

Except as provided by Family Code §85.025, a protective order issued under this law is effective for the period stated in the order, not to exceed two years, or if a period is not stated in the order, until the second anniversary of the date the order was issued.

Sec. 85.025(a-1)

The court may render a protective order sufficient to protect the applicant and members of the applicant's family or household that is effective for a period that exceeds two years if the court finds that the person who is the subject of the protective order: (1) committed an act constituting a felony offense involving family violence against the applicant or a member of the applicant's family or household, regardless of whether the person has been charged with or convicted of the offense; (2) caused serious bodily injury to the applicant or a member of the applicant's family or household; or (3) was the subject of two or more previous protective orders rendered: (A) to protect the person on whose behalf the current protective order is sought; and (B) after a finding by the court that the subject of the protective order: (i) has committed family violence; and (ii) is likely to commit family violence in the future.

Sec. 85.025(b)
Sec. 85.025(b-3)

A person who is the subject of a protective order may file a motion not earlier than the first anniversary of the date on which the order was rendered requesting that the court review the protective order and determine whether there is a continuing need for the order. This provision does not apply to a protective order issued under Code of Criminal Procedure Chapter 7B.

Following the filing of a motion under Family Code §85.025(b), a person who is the subject of a protective order issued under §85.025(a-1) that is effective for a period that exceeds two years may file not more than one subsequent motion requesting that the court review the protective order and determine whether there is a continuing need for the order. The subsequent motion may not be filed earlier than the first anniversary of the date on which the court rendered an order on the previous motion by the person.

Family Code
Sec. 85.025(b-1)

After a hearing on a motion under Family Code §§85.025(b) or (b-1), if the court does not make a finding that there is no continuing need for the protective order, the protective order remains in effect until the date the order expires under this section. Evidence of the movant's compliance with the protective order does not by itself support a finding by the court that there is no continuing need for the protective order. If the court finds there is no continuing need for the protective order, the court shall order that the protective order expires on a date set by the court.

Sec. 85.025(b-2)

If a person who is the subject of a protective order is confined or imprisoned on the date the protective order would expire under Family Code §85.025(a) or (a-1), or if the protective order would expire not later than the first anniversary of the date the person is released from confinement or imprisonment, the period for which the order is effective is extended, and the order expires on: (1) the first anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for more than five years; or (2) the second anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for five years or less.

Sec. 85.025(c)

If an applicant is the party to a pending divorce action, see Part A of this Chapter.

4. Service of Notice of Application for Protective Order

Each respondent to an application for protective order is entitled to service of notice of an application for a protective order when an application for the protective order is filed. The Clerk issues a notice of an application for a protective order and delivers the notice as directed by the applicant. Upon request, the Clerk issues a separate or additional notice.

Family Code
Sec. 82.043
Sec. 82.042(a)
Sec. 82.042(b)

> ***NOTE:*** *The Family Code and Code of Criminal Procedure contain additional notice procedures applicable to circumstances involving family violence or other criminal conduct by a person who is a member of the state military forces or who is serving in the United States armed forces in an active-duty status.*

Sec. 85.042

CCP
Art. 42.0183

A notice of an application for a protective order must:

Family Code
Sec. 82.041(a)

- Be styled "The State of Texas";
- Be signed by the Clerk under seal of court;
- Contain the name and location of the court;
- Show the date of filing of the application;

- Show the date of issuance of the notice of the application for protective order;
- Show the date, time and, place of the hearing;
- Show the file number;
- Show the name of each applicant and each person alleged to have committed family violence;
- Be directed to each person alleged to have committed family violence;
- Show the name and address of the attorney for the applicant, or if the applicant is not represented by an attorney, show the mailing address of the applicant or, if applicable, the name and mailing address of the person designated under Family Code §82.011; and
- Contain the address of the Clerk.

The notice of an application for a protective order must state:

Family Code
Sec. 82.041(b)

"An application for a protective order has been filed in the court stated in this notice alleging that you have committed family violence. You may employ an attorney to defend yourself against this allegation. You or your attorney may, but are not required to, file a written answer to the application. Any answer must be filed before the hearing on the application. If you receive this notice within 48 hours before the time set for the hearing, you may request the court to reschedule the hearing not later than 14 days after the date set for the hearing. If you do not attend the hearing, a default judgment may be taken and a protective order may be issued against you."

An applicant for a protective order must furnish the Clerk with a sufficient number of copies of the application for service on each respondent. *Sec. 82.043(b)*

A notice of an application for a protective order must be served in the same manner as a citation under the Texas Rules of Civil Procedure, except that service by publication is not authorized. *Sec. 82.043(c)*

Service of notice of an application for protective order is not required before the issuance of a temporary ex parte order under Family Code Chapter 83. *Sec. 82.043(d)*

A respondent served with notice of an application for a protective order may, but is not required to, file an answer any time before a hearing. *Sec. 82.021*

5. Fees and Costs

An applicant for a protective order or an attorney representing an applicant may not be assessed any fee, cost, charge, or expense by a Clerk of the court, a sheriff, constable, or other public official or employee in connection with the filing, serving, or entering of the protective order. An applicant may not be charged a fee to dismiss, modify, or withdraw a protective order, and may not be charged a fee for certifying copies, comparing copies to originals, transferring a protective order, or for any other service. *Sec. 81.002*

Except on a showing of good cause or indigency, a court must require in a protective order that the party against whom an order is rendered pay the protective order fee of $16, the standard fees charged by the Clerk of the court as in a general civil proceeding for the *Sec. 81.003*

cost of service of the order, the costs of court, and all other fees, charges, or expenses incurred in connection with the protective order.

A party who is ordered to pay fees and costs who does not pay before the date specified by the order may be punished for contempt of court. If a date is not specified by the court, payment of costs is required before the 60th day after the date the order was rendered. ***Family Code*** *Sec. 81.004*

The court may assess a reasonable attorney's fee as compensation for the services of a private or prosecuting attorney or an attorney employed by the Department of Protective and Regulatory Services representing an applicant against the party who is found to have committed family violence or a party against whom an agreed protective order is rendered. In setting the amount of the fee, the court must consider the income and ability to pay of the person against whom the fee is assessed. *Sec. 81.005*

The amount of such fees collected as compensation for the fees of a prosecuting attorney will be paid to the credit of the county fund from which the salaries of employees of the prosecuting attorney are paid or supplemented and the fees collected as compensation for an attorney employed by the Department of Protective and Regulatory Services shall be deposited in the general revenue fund to the credit of the Department of Protective and Regulatory Services. The fees collected as compensation for a private attorney shall be paid to the private attorney, who may enforce the order in the attorney's own name. *Sec. 81.006*

6. Hearing

The court must set a date and time for the hearing on the application not later than 14 days after it is filed, unless a later date is requested by the applicant. On the request of a prosecuting attorney in a county with a population of more than 2.5 million or in a county in a judicial district that is composed of more than one county, the court must set the hearing not later than 20 days after the application is filed. *Sec. 84.001* *Sec. 84.002*

If the notice is received by a respondent within 48 hours prior to the hearing, the court may reschedule the hearing, but additional service on a rescheduled hearing is not required. *Sec. 84.004*

If a proceeding for which a legislative continuance is sought under Civil Practice and Remedies Code §30.003 includes an application for a protective order, the continuance is discretionary with the court. *Sec. 84.005*

7. Appeal

A protective order may be appealed. However, a protective order rendered in a suit for dissolution of marriage may not be appealed until the final decree becomes a final, appealable order. A protective order rendered in a suit affecting the parent-child relationship may not be appealed until the time an order providing for support, possession of or access to the child becomes a final, appealable order. *Sec. 81.009*

8. Confidentiality of Certain Information

On request of the person or a member of the family or household of the person *Sec. 85.007(a)*

protected by the order, the court may exclude from the protective order:

- The address, county of residence, and telephone number of:
    - A person protected by the order; or
- The address and telephone number of:
    - The place of employment or business of a person protected by the order; or
    - The child-care facility or school a child protected by the order attends or in which the child resides.

Family Code Sec. 85.007(b)

On granting a request for confidentiality, the court must order the Clerk to strike the information described above from the public records, and maintain a confidential record of this information for use only by the court or by a law enforcement agency for purposes of entering the information required by Government Code §411.042(b)(6) into the statewide law enforcement information system maintained by the Department of Public Safety.

Sec. 87.004

If the above information is not confidential, the person protected by the order may file a notification of change of address or telephone number with the court that rendered the order to modify the information contained in the order. The Clerk shall attach the notification of change to the protective order and delivery a copy of the notification to: (1) the respondent by registered or certified mail, and (2) any other person entitled to a copy of the order under Family Code §85.042. The filing of a change of address or telephone number does not affect the validity of the order.

9. Warning on Protective Order

Sec. 85.026

Each protective order issued under Family Code Title 4, including a temporary ex parte order, must contain the following prominently displayed statements in bold-faced type, capital letters, or underlined:

> **"A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS $500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH.**
>
> **"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.**
>
> **"IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT**

TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION.

"IF A PERSON SUBJECT TO A PROTECTIVE ORDER IS RELEASED FROM CONFINEMENT OR IMPRISONMENT FOLLOWING THE DATE THE ORDER WOULD HAVE EXPIRED, OR IF THE ORDER WOULD HAVE EXPIRED NOT LATER THAN THE FIRST ANNIVERSARY OF THE DATE THE PERSON IS RELEASED FROM CONFINEMENT OR IMPRISONMENT, THE ORDER IS AUTOMATICALLY EXTENDED TO EXPIRE ON: "(1) THE FIRST ANNIVERSARY OF THE DATE THE PERSON IS RELEASED, IF THE PERSON WAS SENTENCED TO CONFINEMENT OR IMPRISONMENT FOR A TERM OF MORE THAN FIVE YEARS; OR "(2) THE SECOND ANNIVERSARY OF THE DATE THE PERSON IS RELEASED, IF THE PERSON WAS SENTENCED TO CONFINEMENT OR IMPRISONMENT FOR A TERM OF FIVE YEARS OR LESS."

"A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS $4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS."

10. Copies of Orders

Family Code Sec. 85.041

A protective order must be delivered to the respondent in accordance with TRCP Rule 21a, served in the same manner as a writ of injunction, or served in open court at the close of the hearing.

If the order is served in open court, the order must be served as follows. If the respondent is present at the hearing and the order has been reduced to writing, the judge or master signs the order and gives a copy of the order to the respondent. A certified copy of the signed order is given to the applicant at the time the order is given to the respondent. If the applicant is not in court at the conclusion of the hearing, the Clerk of the court must mail a certified copy of the order to the applicant not later than the third business day after the date the hearing is concluded.

If the respondent is present at the hearing but the order has not been reduced to writing, the judge or master must give notice orally to the respondent of the part of the order that contains prohibitions under Family Code §85.022 or any other part of the order that contains provisions necessary to prevent further family violence. The Clerk of the court will mail a copy of the order to the respondent and a certified copy of the order to the applicant not later than the third business day after the date the hearing is concluded.

If the respondent is not present at the hearing and the order has been reduced to writing at the conclusion of the hearing, the Clerk of the court must immediately provide a certified copy of the order to the applicant and mail a copy of the order to the respondent not later than the third business day after the date the hearing is concluded.

Family Code
Sec. 85.042(a)

Not later than the next business day after the date the court issues the order, the Clerk of the court issuing an original or modified protective order must send a copy of the order along with the information provided by the applicant that is required under Government Code §411.042(b)(6) to the Department of Public Safety on the date the order is issued and to the chief of police of the city where the person protected by the order resides, if the person resides in a city, or to the appropriate constable and the sheriff of the county where the person resides, if the person does not reside in a city, and to the Title IV-D agency, if the application for the protective order indicates that the applicant is receiving services from the Title IV-D agency.

Sec. 85.042(a-1)

If the respondent, at the time of issuance of an original or modified protective order under this subtitle, is a member of the state military forces or is serving in the armed forces of the United States in an active-duty status, then the Clerk of the court must, in addition to complying with Family Code §85.042(a), also provide a copy of the protective order and the information described by that subsection to the staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which the respondent is assigned (provided the address is provided to the Clerk by the applicant or applicant's attorney) with the intent that the commanding officer will be notified, as applicable.

Sec. 85.042(c)

The clerk of a court that vacates an original or modified protective order under this subtitle shall notify each individual or entity who received a copy of the original or modified order from the clerk under this section that the order is vacated. The Clerk of a court that vacates an original or modified protective order under this subtitle must notify each individual or entity who received a copy of the original or modified order from the Clerk under this section that the order is vacated.

Sec. 85.042(d)

The applicant or the applicant's attorney to provide to the Clerk of the court the name and address of each law enforcement agency, child-care facility, school, and other individual or entity to which the Clerk is required to mail a copy of the order.

CCP
Art. 42.0183

In cases where the defendant is a member of the state military forces or is serving in the US armed forces in active-duty status, and where the defendant is convicted of or granted deferred adjudication on an offense that constitutes family violence (as defined by Family Code §71.004) or an offense under Penal Code Title 5 (Offenses Against the Person), as soon as possible after the date on which the defendant is convicted or granted deferred adjudication the Clerk of the court in which the conviction or deferred adjudication is entered must provide written notice of the conviction or deferred adjudication to the staff judge advocate general or the provost marshal of the military installation to which the defendant is assigned with the intent that the commanding officer will be notified, as applicable.

Family Code
Sec. 85.042(b)

If a protective order prohibits a respondent from going to or near a child-care facility or school, the Clerk of the court must send a copy of the order to the child care facility or school.

A clerk of the court may transmit the order and any related information electronically or in another manner that can be accessed by the recipient. A clerk of the court may delay sending a copy of the order only if the clerk lacks information necessary to ensure service and enforcement.

Family Code
Sec. 85.042(f), (g)

The Clerk of the court issuing an original or modified protective order under Family Code §85.022 that suspends a license to carry a handgun will send a copy of the order to the Department of Public Safety at its Austin headquarters.

Sec. 85.042(e)

11. Duty to Enter Information into Statewide Law Enforcement Information System

On receipt of an original or modified protective order from the Clerk of the issuing court, or on receipt of information pertaining to the date of confinement or imprisonment or date of release of a person subject to the protective order, a law enforcement agency must immediately, and not later than the next business day after the date the order or information is received, enter the information required by Government Code §411.042(b)(6) into the statewide law enforcement information system maintained by the Department of Public Safety.

Sec. 86.0011

K. REMOVAL OF THE DISABILITY OF MINORITY

1. Requirements

A minor may petition to have the disabilities of minority removed for limited or general purposes if the minor is:

Family Code
Sec. 31.001

- a resident of this state;
- 17 years of age, or at least 16 years of age and living separate and apart from the minor's parents, managing conservator, or guardian; and
- self-supporting and managing the minor's own financial affairs.

A minor may file suit under Family Code Chapter 31 in the minor's own name. The minor need not be represented by next friend.

Sec. 31.003

The petitioner must file the petition in the county in which the petitioner lives.

2. The Petition and Verification

The petition for removal of disabilities of minority must state:

Sec. 31.002

- the name, age, and place of residence of the petitioner;
- the name and place of residence of each living parent;
- the name and place of residence of the guardian of the person and the guardian of the estate, if any;
- the name and place of residence of the managing conservator, if any;
- the reasons why removal would be in the best interest of the minor; and
- the purposes for which removal is requested.

A parent of the petitioner must verify the petition, except that if a managing conservator or guardian of the person has been appointed, the petition must be verified by that person. If the person who is to verify the petition is unavailable or that person's whereabouts are unknown, the amicus attorney or attorney ad litem shall verify the petition.

3. Order and Effect

The court by order, or the Texas Supreme Court by rule or order, may remove the disabilities of minority of a minor, including any restriction imposed by Family Code Chapter 32, if the court or the Texas Supreme Court finds the removal to be in the best interest of the petitioner. The order or rule must state the limited or general purposes for which disabilities are removed.

Family Code *Sec. 31.006*

Except for specific constitutional and statutory age requirements, a minor whose disabilities are removed for general purposes has the capacity of an adult, including the capacity to contract. Except as provided by federal law, all educational rights accorded to the parent of a student, including the right to make education decisions under Family Code §151.001(a)(10), transfer to the minor whose disabilities are removed for general purposes.

Sec. 31.006

4. Registration of Order of Another State or Nation

A nonresident minor who has had the disabilities of minority removed in the state of the minor's residence may file a certified copy of the order removing disabilities in the deed records of any county in this state.

Sec. 31.007

When a certified copy of the order of a court of another state or nation is filed, the minor has the capacity of an adult, except as provided by Family Code §31.006 and by the terms of the order.

5. Waiver of Citation

A party to a suit under this chapter may waive the issuance or service of citation after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the party acknowledging receipt of a copy of the filed petition.

Sec. 31.007

The party executing the waiver may not sign the waiver using a digitized signature. The waiver must contain the mailing address of the party executing the waiver. Notwithstanding Civil Practice and Remedies Code §132.001, the waiver must be sworn before a notary public who is not an attorney in the suit. This subsection does not apply if the party executing the waiver is incarcerated.

The Texas Rules of Civil Procedure do not apply to a waiver executed under this section. For purposes of waiver of citation, "digitized signature" has the meaning assigned by Family Code §101.0096.

CHAPTER 11

JUVENILE LAW

A. INTRODUCTION

The Juvenile Justice Code (Family Code Title 3, Chapters 51-61 and Title 3A, Chapter 65) is the basis for juvenile law in Texas.

The provisions of the Juvenile Justice Code apply to children. For purposes of the Juvenile Justice Code, a "child" is defined as a person who is:

Family Code
Sec. 51.02(2)

- 10 years of age or older and under 17 years of age; or
- 17 years of age or older and under 18 years of age 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 years of age.

It is important to note that married persons under the age of 18 are still subject to the provisions of the Juvenile Justice Code. The statutory definition makes no provision for married persons and the Attorney General has stated that all rules and procedures must be followed for married as well as unmarried persons subject to the Juvenile Justice Code.

AG Op.
MW-298 (1981)

1. Courts Hearing Juvenile Cases

The juvenile court of a county, as designated by the county's juvenile board, has jurisdiction for cases dealing with juvenile delinquents. There must be at least one juvenile court designated for each county. The juvenile court may be a district court, county court, or county court at law. If the county court is designated as a juvenile court, at least one other court must be designated as the juvenile court. If the judge of the court designated as a juvenile court is not an attorney licensed in this state, a court with a judge who is an attorney licensed to practice in Texas must be designated an alternate court. A court that has jurisdiction over proceedings under Title 5 may be designated by the county juvenile board as a juvenile court.

Family Code
Sec. 51.04

2. Jurisdiction

With certain exceptions, juvenile courts have exclusive original jurisdiction over all alleged offenders under the age of 18. There are four situations in which a criminal court, not a juvenile court, has jurisdiction even though the offender is under 18: perjury, traffic violations, violation of statutes or ordinances punishable by fines only, and alcohol violations. These will be discussed in more detail in Part C, Transferring to Other Courts.

Sec. 51.04

It is important to note that Title 3A grants a truancy court exclusive original jurisdiction over cases involving allegations of truant conduct. Truancy Courts will be discussed in more detail in Part G.

Sec. 65.003

B. PROCEEDINGS

Before proceedings commence, two determinations must be made:

Family Code
Sec. 51.02(2)

- that the person referred to juvenile court is a "child" as defined in the Family Code; and

- that there is probable cause to believe the child engaged in delinquent conduct or conduct indicating a need for supervision.

Next, the type of conduct in which the child engaged must be determined: delinquent conduct or conduct indicating a need for supervision. Delinquent conduct and conduct indicating a need for supervision are defined in Family Code §§51.03(a) and 51.03(b), respectively.

Family Code
Sec. 51.03(a), (b)

- A child adjudicated of delinquent conduct can be placed on probation or, if certain conditions are met, be committed to the Texas Juvenile Justice Department.
- A child adjudicated for conduct indicating a need for supervision cannot be committed to the Texas Juvenile Justice Department.

Cases for delinquent conduct and conduct indicating a need for supervision require separate handling from criminal cases. The Clerk reserves a special judge's docket, file docket, index, minutes, and case jacket file for juvenile cases.

Procedures for filing and issuance of processes in juvenile cases are as follows:

- The prosecuting attorney files with the Clerk a petition for an adjudication or transfer hearing. The petition must state the time, place, and manner of the acts alleged and the penal law or standard of conduct allegedly violated by the acts. *Sec. 53.04*
- The Clerk issues a summons with a copy of the petition attached to the child and to the child's parent, guardian, or custodian to advise them of the charge and the hearing date. *Sec. 53.06*
- The court may endorse on the summons an order directing the person having the physical custody or control of the child to bring the child to the hearing. The juvenile court may issue a writ of attachment for a person who violates this order. The writ of attachment is executed in the same manner as in a criminal proceeding. *Sec. 53.06* *Sec. 53.08*
- If the child is taken into custody prior to the hearing on the petition, the intake officer must immediately investigate and determine if detention is warranted. The child can be detained only if: *Sec. 53.02*
  - the child is likely to abscond or be removed from the jurisdiction of the court;
  - the child is not being adequately cared for and supervised;
  - there is no adult to ensure the child's appearance in court;
  - the child is a danger to him/herself or others; or
  - the child has previously been found to be delinquent or has previously been convicted of a penal offense punishable by a term in jail.

Detention is mandatory if the child used, possessed or exhibited a firearm during the commission of the offense. *Sec. 53.02(f)*

If the child is not released, an informal detention hearing is held pursuant to the provisions of Family Code Chapter 54. The child must be released unless one of the reasons listed above for detention exists.

Family Code *Sec. 54.01*

The next step in the process is an adjudication hearing. A child may be found to have engaged in delinquent conduct or conduct indicating a need for supervision only after an adjudication hearing.

Sec. 54.03(a)

The adjudication hearing is conducted as a trial by jury unless a jury is waived under Family Code §51.09. If the hearing is on a charge approved by the grand jury, the jury must consist of 12 persons and be selected in accordance with the requirements in criminal cases. If the hearing is on a charge classified as a misdemeanor, the jury must consist of 6 persons. The jury's verdict must be unanimous.

Sec. 54.03(c)

If the court or jury finds the child did not engage in delinquent conduct or conduct indicating a need for supervision, the case is dismissed with prejudice. If an affirmative finding is made, the court sets a date for a disposition hearing.

Sec. 54.03(g), (h)

The disposition hearing is separate and distinct from, and must be held subsequent to, the adjudication hearing. Generally, there is no right to a jury at the disposition hearing. No disposition may be made unless the child needs rehabilitation, or the protection of the public or the child requires that disposition be made.

Sec. 54.04

At the conclusion of the disposition hearing, the court must inform the child of his or her right to appeal and the procedures for sealing records. Sealing of records is covered in detail in Part D of this chapter.

Sec. 54.04(h)

C. TRANSFERRING TO OTHER COURTS

1. Mandatory Transfers

Depending on the nature of the case, the juvenile court may waive its exclusive original jurisdiction and transfer a child to another court.

In some cases, transfer to a district court or criminal district court (if such courts exist in the child's county) is mandatory. Transfer is mandatory if the child is alleged to have committed a felony and the child has previously been transferred to a district or criminal district court, unless, in the matter previously transferred:

Family Code *Sec. 54.02(m)*

- the child was not indicted by a grand jury;
- the child was found not guilty;
- the matter was dismissed with prejudice; or
- the child was convicted, the matter was reversed on appeal, and the appeal is final.

When transfer is mandatory, the required summons must provide notice that the purpose of the hearing is to consider mandatory transfer to criminal court. Likewise, the study which must be conducted in discretionary transfers is not required in mandatory transfers.

Sec. 54.02(n)

2. Discretionary Transfers

Family Code
Sec. 54.02(a)

The juvenile court may waive its original exclusive jurisdiction and transfer a matter to a district court for regular criminal proceedings if the child is alleged to have committed particular felonies at certain ages, no adjudication hearing has been conducted, and the court determines there is probable cause to believe the child committed the offense and that because of the seriousness of the offense or the background of the child or the welfare of the community criminal proceedings are required. The petition and notice requirements of Family Code §§53.04, 53.05, 53.06 and 53.07 must be met, and the summons must state that the purpose of the hearing is to consider a discretionary transfer to criminal court.

Sec. 54.02(c), (d)

The court must conduct a hearing without a jury to consider the transfer of the proceedings to district court. Prior to the hearing, the court must order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his or her circumstances, and the circumstances of the alleged offense.

Sec. 54.02(g)
Sec. 54.02(g-1)

If the petition alleges multiple offenses that constitute more than one criminal transaction, the court must either retain or transfer all offenses relating to a single transaction. A child cannot be subject to criminal prosecution at any time for any offense arising out of a transaction for which the juvenile court maintains jurisdiction, except that a child may be subject to criminal prosecution for an offense committee under Chapter 19 or Penal Code §49.08 if the offense arises out of a criminal transaction for which the juvenile court retained jurisdiction over other offenses relating to the criminal transaction, and if on or before the date the juvenile court retained jurisdiction, one or more of the elements of the offense under Chapter 19 or Penal Code §49.08 had not occurred.

Sec. 54.02(h), (i)

In its order transferring the case to a criminal court, the juvenile court must state its reasons for waiver and certify its action. Upon transfer, the child is dealt with as an adult and in accordance with the Code of Criminal Procedure, except that if detention in a certified juvenile detention facility is authorized under Human Resources Code §152.0015, the juvenile court may order the person to be detained in the facility pending trial or until the criminal court enters an order under Code of Criminal Procedure Article 4.19. If the juvenile court orders a person detained in a certified juvenile detention facility under Subsection (h), the juvenile court shall set or deny bond for the person as required by the Code of Criminal Procedure and other law applicable to the pretrial detention of adults accused of criminal offenses. A transfer of custody made under this subsection is an arrest. Once the matter is transferred, the criminal court may not remand the child to the jurisdiction of the juvenile court.

Sec. 54.02 (h-1)

Sec. 51.04(h)

A judge exercising jurisdiction over a child in a suit instituted under Family Code Title 5, Subtitle E (Protection of the Child) may refer any aspect of a suit involving a dual status child that is instituted under the Juvenile Justice Code to the appropriate associate judge appointed under Chapter 201, Subchapter C, serving in the county and exercising jurisdiction over the child under Title 5, Subtitle E if the associate judge consents to the referral. The scope of an associate judge's authority over a suit referred under this subsection is subject to any limitations placed by the court judge in the order of referral.

Sec. 51.0414

The juvenile court may transfer a dual status child's case, including transcripts of records and documents for the case, to a district or statutory county court located in

another county that is exercising jurisdiction over the child in a suit instituted under Title 5, Subtitle E (Protection of the Child). A case may only be transferred to combine proceedings with the consent of the judge of the court to which the case is being transferred. A district or statutory county court to which a case is transferred to combine proceedings has jurisdiction over the transferred case regardless of whether the court is a designated juvenile court or alternative juvenile court in the county. If the court exercising jurisdiction over the child under Title 5, Subtitle E consents to a transfer to combine proceedings, then the juvenile court must file the transfer order with the clerk of the transferring court. On receipt and without a hearing or further order from the juvenile court, the clerk of the transferring court must transfer the files, including transcript of records and documents for the case as soon as practicable but not later than the 10th day after the date an order of transfer is filed. On receipt of the pleadings, documents, and orders from the transferring court, the clerk of the receiving court must notify the judge of the receiving court, all parties, and the clerk of the transferring court.

D. RECORDS

1. Confidentiality and Restricted Access

Family Code
Sec. 58.251

Juvenile records — that is, any documentation related to a juvenile matter, including information contained in a document — are confidential and subject to restricted access. Common examples would be offense or incident reports, witness statements and lab reports. Such records must be maintained in paper or electronic format on a local basis and must be kept separate from adult files and records.

Sec. 58.007(b)

The records and files (whether physical or electronic) of a juvenile court or a clerk of court relating to a child who is a party to a proceeding under Family Code Title 3 are open to inspection and copying ONLY by:

- the judge, probation officers, and professional staff or consultants of the juvenile court;
- a juvenile justice agency that has custody or control over a juvenile offender;
- an attorney representing the child's parent in a Title 3 proceeding;
- an attorney representing the child;
- a prosecuting attorney;
- an individual or entity to whom the child is referred for treatment or services, including assistance in transitioning the child to the community after the child's release or discharge from a juvenile facility;
- a public or private agency or institution providing supervision of the child by arrangement of the juvenile court or having custody of the child under juvenile court order; or
- with the juvenile court's permission, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

Sec. 58.007(b-1)

A person who is the subject of the records is also entitled to access the records to

prepare and present a motion or application to seal the records.

An individual or entity that receives confidential information cannot disclose the information unless otherwise authorized by law. ***Family Code*** *Sec. 58.007(c)*

Not all records are subject to the above confidential provisions. The following records are still subject to public inspection:

- Motor vehicle records; municipal and justice court records of criminal cases involving juveniles; sex offender records maintained under Code of Criminal Procedure Chapter 62; records required to be provided to the FBI under §411.052, Government Code, for use with the National Instant Criminal Background Check System; records required to be forwarded to DPS under §411.0521, Government Code; *Sec. 58.007(a)* *Sec. 58.007(b)*
- Records that must be released under Code of Criminal Procedure Article 15.27 (notification of arrest to school) and under Family Code §54.051 (determinate sentence probation to appropriate district court); and *Sec. 54.02(s)*
- The petition for discretionary transfer, the transfer order, and the commitment order, if any, transferred under Family Code §54.02 (waiver of jurisdiction by juvenile court and discretionary transfer to criminal court).

The juvenile court may disseminate the following information to the public relating to a child who is the subject of a directive to apprehend or a warrant of arrest and who cannot be located for the purpose of apprehension: *Sec. 58.007(h)*

- the child's name, including other names by which the child is known;
- the child's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;
- a photograph of the child; and
- a description of the conduct the child is alleged to have committed, including the level and degree of the alleged offense.

2. Sealing the Records

The sealing of juvenile records is controlled by Family Code Chapter 58, Subchapter C-1. Records are considered sealed if they are not destroyed but are stored in a manner that allows access to the records only by the records custodian for the entity possessing the records. Records related to criminal gangs and records related to sex offender registration are exempt from Subchapter C-1's records sealing provisions. Subchapter C-1's provisions do not encompass justice court or municipal court records related to fine-only misdemeanors. *Sec. 58.259(b)* *Sec. 58.252*

When a record is sealed, all adjudications relating to the person are vacated and the proceedings are dismissed and treated, for all purposes, as though they never happened. When the record is sealed, the clerk must seal all court records relating to the proceedings, including records created in the clerk's case management system. The clerk must also send copies of the order to any entity listed in the sealing order by any reasonable method, including certified mail or secure electronic means. *Sec. 58.258*

If the clerk that received an order sealing a record relating to a person later receives an inquiry about that person or the matter contained in the records, the clerk must respond that no records relating to that person or matter exist.

Family Code
Sec. 58.259(c)

The juvenile court may, by order, allow the inspection of a sealed record only by:

Sec. 58.260

- a person named in the order, on petition of the person who is the subject of the records;
- a prosecutor, on the prosecutor's petition, to review the records for possible use in a capital prosecution or enhancing punishment for repeat and habitual felony offenders; and
- a court, TDCJ, or TJJD, to determine a person's sex offender risk level.

When a child is referred to juvenile probation, and again upon final discharge or upon the last official action in the matter if there is no adjudication, a child must receive an explanation describing the sealing process and eligibility for records sealing.

Sec. 58.262

Records subject to sealing can be split into two categories: records sealed without application and records sealed with application.

- Records Sealing without Application
  - Finding of Not True

    Sec. 58.2551
    - A juvenile court, on the court own motion and without a hearing, must immediately order the sealing of all records related to the alleged conduct if the court enters a finding that the allegations are not true.
  - Delinquent Conduct
    - A person referred for delinquent conduct, but not adjudicated as having engaged in delinquent conduct or adjudicated for a misdemeanor but not a felony, and who does not have any pending delinquent conduct matters, who has not been transferred by a juvenile court to a criminal court for prosecution, and who does not have any pending felony charges or misdemeanor charges punishable by confinement, will have that person's records sealed without application to the court when that person turns 19.

      Sec. 58.253
    - Eligibility for sealing without application must be certified to a juvenile probation department, which must in turn notify the juvenile court. The juvenile court must issue an order sealing all records related to the person's juvenile matter within 60 days of receiving the notice.

      Sec. 58.254
  - Conduct Indicating Need for Supervision
    - A person referred to a juvenile court for conduct indicating need for supervision and who has records relating to the conduct filed with the court clerk, who has not been

      Sec. 58.255

referred to juvenile probation for delinquent conduct, who has not been convicted of a felony as an adult, and who does not have any pending charges as an adult for a felony or a misdemeanor punishable by confinement, will have that person's records sealed without application to the court when that person turns 18.

  - Juvenile probation must give notice to a court of person's eligibility for sealing, and the court must issue an order sealing all records related to the person's juvenile matter within 60 days of receiving the notice.

- Records Sealing with Application

  - If a person does not qualify for sealing without application to the court, a person may file an application for records sealing. **A court cannot charge a fee for this filing, regardless of the application's form**. Upon receipt of the application, the court can order the sealing immediately or hold a hearing to determine whether to order the sealing. A court cannot order records sealed for certain persons. An application filed under Family Code §58.256 may be sent to the juvenile court by any reasonable method authorized under TRCP Rule 21, including secure electronic means.

Family Code *Sec. 58.256*

3. Destruction of Records

The destruction of juvenile records is controlled by Family Code Chapter 58, Subchapter C-1. Records related to criminal gangs and records related to sex offender registration are exempt from Subchapter C-1's records destruction provisions.

If a clerk has questions about whether a juvenile record can be destroyed, it is strongly advised that the clerk contact the Texas Juvenile Justice Department's Legal Help Desk and/or the Texas State Archives and Library Commission for guidance.

For juvenile courts and court clerks, the destruction of juvenile records falls into two categories:

- "No Probable Cause" Destruction

  - The court must order the destruction of the records relating to the conduct for which a child is taken into custody or referred to juvenile court without being taken into custody if a determination is made, either by juvenile intake or by the prosecutor (after referral to the prosecutor by intake), that no probable cause exists to believe that a child engaged in illegal conduct.

Family Code *Sec. 58.263*

- "Spring Cleaning" Destruction of Records

  - Courts and clerks can destroy physical copies of juvenile records, regardless of when created, following the conversion of the physical record into an electronic record. "Electronic record" here

Sec. 58.264(e), (f)

Sec. 58.251(1)

means an entry in a computer file, or information on microfilm, microfiche, or any other electronic storage media. Once converted to an electronic record, however, the electronic version must be retained and maintained permanently. **NOTE**: **if the court or the clerk cannot PERMANENTLY retain and maintain the electronic record, the physical record <u>should not</u> be destroyed**.

4. Expunction of Records

Family Code
Sec. 58.265

Juvenile records are NOT subject to an order of expunction issued by any court.

5. Local Juvenile Justice Information Systems

Sec. 58.301(4)
Sec. 58.307

A local juvenile justice information system (JJIS) is a county or multicounty computerized database of information concerning children, with data entry and access by partner agencies that are members of the system. Information in a local JJIS is non-public, is confidential, and is subject to the sealing and destruction provisions listed above.

Sec. 58.305

A local system must, to the extent possible, include several partner agencies, including the juvenile court and the court clerk. A local JJIS exists, in part, to:

- Provide for the efficient transmission of juvenile records from justice and municipal courts to county juvenile probation departments and the juvenile court, and from the county juvenile probation departments and juvenile court to the state JJIS; *Sec. 58.302(4)*
- Provide efficient computerized case management resources to juvenile courts and court clerks, among other partner agencies; *Sec. 58.302(5)* *Sec. 58.306(7)*
- Provide an efficient means for municipal and justice courts to report filing of charges, adjudications, and dispositions of juveniles to the juvenile court as required by law.

Sec. 58.303-58.306

Clerks should familiarize themselves with the component parts of and types of information contained in their local JJIS, as well as the level of access to which each partner agency is entitled. The juvenile court and court clerk are entitled to Level 3 Access, which includes access to Level 1 and Level 2 information. Level 3 information is that which relates to a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision. The court and the clerk may also access certain information about a child obtained to diagnose, examine, evaluate, treat, or refer for treatment.

6. Sex Offender Registration

Code of Criminal Procedure Chapter 62, Subchapter H details exemptions from sex offender registration for certain juveniles. The subchapter covers hearings to determine the need for sex offender registration of a juvenile, the appeal of a decision, and the judicial discretion to exempt a juvenile from sex offender status registration.

CCP
Art. 62.351

A person who has registered as a sex offender for an adjudication of delinquent conduct may file a motion in the adjudicating juvenile court seeking to be excused from registration or seeking an order that the registration become nonpublic. If the motion is granted, the Clerk must send a copy of the order by certified mail, return receipt requested,

Art. 62.353(a), (f)

to the Department of Public Safety and each local law enforcement agency that the person has proven to the court has registration information about him or her. The Clerk must also send notice to any public or private agency or organization that the court determines may have registration information pertaining to the person. The Clerk also must send a copy of the order to any other agency or organization designated by the person who is the subject of the order. The person provides the address (es) to the Clerk, and pays a fee of $20 for each agency or organization designated.

E. REPORTS TO DPS IN CONNECTION WITH THE JUVENILE JUSTICE INFORMATION SYSTEM

Family Code
Sec. 58.102
Sec. 58.103

The Texas Department of Public Safety ("DPS") is responsible for maintaining a database for a juvenile justice information system (JJIS) that serves as the statewide tracking system for juvenile record information.

A juvenile court clerk must:

Sec. 58.108(a)

- compile and maintain records needed for reporting data required by DPS;
- transmit data required by DPS to DPS;
- give DPS or its accredited agents access to the court for the purpose of inspection to determine the completeness and accuracy of data reported; and
- cooperate with DPS to enable DPS to perform its duties.

A Clerk of a court must retain the documents related to these duties.

Sec. 58.108(b)

Sec. 58.110(c)

The juvenile court clerk must report the disposition of the case to DPS, and the clerk may make alternative arrangements for reporting the required information including combined reporting or electronic reporting, if the alternative reporting is approved by the Juvenile Board and DPS.

Sec. 58.110(d)

Sec. 58.110(e)

The clerk must report the information no later than 30 days after the date the clerk receives the information, except that a juvenile offender's custody or detention without previous custody must be reported to DPS no later than seven days after the date of the custody or detention.

F. RIGHTS AND RESPONSIBILITIES OF PARENTS

All Clerks whose courts handle juvenile law matters should be familiar with the provisions in Chapter 61. A brief summary of the three subchapters follows.

Family Code
Sec. 61.001-61.004

Subchapter A defines circumstances in which a "juvenile court order" will be entered against the parent or other responsible adult. A "juvenile court order" is defined as an order by a juvenile court requiring a parent or other eligible person (e.g., a guardian) to act or refrain from acting. For example, a parent may be ordered to pay restitution or court costs. A parent may also be ordered to participate in counseling or to refrain from doing any act injurious to a particular child's welfare. The parent or other adult must be provided notice of the proposed order and must be given an opportunity to be heard concerning it. A parent or other adult may appeal the order as in other civil cases.

Subchapter B details the procedures for enforcing juvenile court orders, and remedies for contempt. A motion to enforce is filed, and a hearing is set. The court is required to issue a written notice, served by personal service or certified mail, of the hearing on the motion to enforce. If incarceration is a possible punishment upon the motion being granted, the court must also inform the person who is subject to the motion to enforce of his or her right to an attorney. An indigent person must also be informed of his or her right to have an attorney appointed, and the court shall appoint an attorney if the person so requests. Punishment on a finding of contempt in an enforcement proceeding can include up to six months in jail and a fine of up to $500, or both.

Family Code *Sec. 61.051 – 61.057*

Subchapter C sets forth the right of parents in connection with procedures in juvenile court. Parents have the right to be informed of proceedings, the right of access to their child, and the right to make written and oral statements concerning the matter in juvenile court. The failure to exercise any of these rights may not be used as a ground for appeal, for a post-adjudication writ of habeas corpus, or exclusion of evidence against the child in any proceeding.

Sec. 61.101 – 61.107

G. TRUANCY COURT

Family Code Title 3A details the civil truancy court system that hears cases involving a child's failure to attend school. The definition of child in Title 3A is different from the definition used in Title 3 of the Family Code. In Title 3A, "child" means a person who is 12 years of age or older and younger than 19 years of age. Truant conduct may be prosecuted only as a civil case in a truancy court.

Family Code *Sec. 65.002(1)*

Sec. 65.003(b)

Title 3A grants a truancy court exclusive original jurisdiction over cases involving allegations of truant conduct, which is defined as the failure to attend school on 10 or more days or parts of days within a six-month period in the same school year where the child is required to attend school.

Sec. 65.003(a)

The following courts are designated as truancy courts:

- Justice Courts;
- Municipal Courts; and
- In counties with a population of 2.1 million or more, the constitutional county court.

Sec. 65.004

A child, the child's parent or guardian, or the State may appeal any order of a truancy court to a juvenile court. A truancy court appeal is tried de novo, and Chapter 65 applies to the de novo trial in the juvenile court. On appeal, the judgment of the truancy court is vacated.

Sec. 65.151
Sec. 65.153

If a child fails to obey a remedial order issued by a truancy court or if the child is in direct contempt of court and the child has failed to obey an order or has been found in direct contempt on two or more occasions, the truancy court can refer the child to juvenile probation which may on review of the child's truancy court information, refer the child to a juvenile court for proceedings. Enforcement of order proceedings in juvenile court on referral from a truancy court are governed by Family Code Chapter 65, Subchapter F.

Sec. 65.251
Sec. 65.252

CHAPTER 12

NOTICE OF AND CONSENT TO ABORTION

A. INTRODUCTION

In 1999, the Texas Legislature enacted legislation requiring parental notification or judicial approval before a minor could have an abortion. As of January 2000, minors must obtain approval by a judge to have an abortion without notifying a parent. Many of these cases will be filed in district court.

Family Code *Chapter 33*

B. CONFIDENTIAL, PRIVILEGED, AND SENSITIVE NATURE OF THESE CASES

These cases are legally confidential and of a sensitive nature. Family Code Chapter 33 and the Texas Supreme Court Parental Notification Rules ("SCR") require that the process for obtaining a court order authorizing a minor to consent to an abortion without notice to, or the consent of a parent, managing conservator, or guardian be conducted in a manner that ensures the minor's confidentiality and anonymity.

Family Code *Sec. 33.003(k)*

SCR *1.3(a)*

The Clerk may not divulge to anyone, except essential court personnel, anything about the minor's application, including the fact that the minor was ever in the Clerk's office. The Clerk may not divulge to anyone that the minor is or ever has been pregnant or wants or ever wanted an abortion.

SCR *1.4(a)*

The application and all other court documents pertaining to the proceeding, and all information contained therein, are confidential and privileged. The documents are not subject to disclosure under Government Code Chapter 552, nor are they subject to discovery, subpoena, or other legal process. They may be disclosed only when expressly authorized by Supreme Court rule. An order, ruling, or opinion may be released only to the minor; her guardian ad litem; her attorney; the physician who is to perform the abortion; a person specifically designated in writing by the minor to receive the information; a governmental agency in connection with a proceeding seeking to assert or protect the minor's interest; or another court, judge, or clerk in the same or related proceedings.

SCR *1.4(b)*

Family Code *Sec. 33.003(k)*

The Attorney General has issued several open records rulings regarding what information may be released without impairing confidentiality. Identification of the trial court, amounts paid to a specific trial court, information regarding attorneys appointed and amounts paid to them, and a list of attorneys who have received payments have all been held to be confidential. This type of information, as well as any other information that may serve to identify a trial court or any participant in a proceeding, are exempt from disclosure under Government Code Chapter 552.

OR *2001-2485*
OR *2002-2558*
OR *2002-3007*

A ruling of a court of appeals or the Supreme Court issued under Family Code Chapter 33 is also confidential and privileged. However, the courts may publish their opinions if they are written in such a way to preserve the confidentiality of the identity of the pregnant minor.

Family Code *Sec. 33.004(d)*

In re Doe, *19 S.W.3d 249 (Tex. 2000)*

C. FILING THE APPLICATION

Except in the case of a medical emergency in which a minor requires an abortion

and the physician certifies this in writing to the Department of State Health Services and provides other required notice, a minor must have judicial approval to have an abortion without parental notification. A minor who wishes to have an abortion without notifying one of her parents or legal guardian may file an application for a court order authorizing the minor to get an abortion without notifying one of her parents.

Family Code *Sec. 33.002*

The application must be filed in a county court at law, a court having probate jurisdiction, or a district court, including a family district court. Except under certain circumstances, the application must be filed in one of the designated courts located in the minor's county of residence. If the minor's parent, managing conservator, or guardian is a presiding judge of a court in which these cases may be filed, the application may be filed in a contiguous county or in the county in which the facility where the minor intends to have the abortion is located. If the minor resides in a county with a population of less than 10,000 then the application may be filed in the minor's county of residence, a contiguous county, or in the county in which the facility where the minor intends to have the abortion is located. If the minor is not a resident of the state, the application must be filed in the county in which the facility where the minor intends to have the abortion is located. No filing fees or court costs may be assessed or charged to the minor.

Sec. 33.003(b)
Sec. 33.003(n)
***SCR** 1.9(a)*
***SCR** 2.1(a)*

There may be no reference to the minor's identity anywhere in the proceedings, except on the separate verification page, discussed below. In all other court documents, the minor is referred to as "Jane Doe." To preserve her anonymity, all notices and communication from the court must be to the minor's attorney with a copy to the guardian ad litem. This requirement takes effect when an attorney appears for the minor or when the Clerk has notified the minor that an attorney ad litem or guardian ad litem has been appointed for her.

***SCR** 1.3(b)*
***SCR** 1.3(c)*

1. Application Requirements

To further ensure confidentiality, the rules promulgated by the Supreme Court require that the application be in two parts: the cover page and the verification page. The cover page must be styled "In re Jane Doe" and must not contain any identifying information about the minor.

***SCR** 2.1(c)(1)*

The cover page must state:

- that the minor is pregnant;
- that the minor is unmarried, is under 18 years of age, and has not had her disabilities of minority removed;
- a statement that the minor wishes to have an abortion without notifying either of her parents or a managing conservator or guardian;
- whether the minor has retained an attorney and, if she has retained an attorney, the name, address, and telephone number of her attorney; and
- whether the minor has filed a Confidential Application for Waiver of Parental Notification other than this one.

The separate verification page must be signed under oath by the person completing it and must state:

***SCR** 2.1(c)(2)*

- the minor's full name and date of birth;

- the name, address, telephone number, and relationship to the minor of any person the minor requests the court to appoint as her guardian ad litem;
- a telephone number or pager number, whether hers or someone else's, at which the minor can be contacted immediately and confidentially until an attorney is appointed for her; and
- that all the information contained in the application is true.

2. Filing, Hearings, and Records

Documents may NOT be filed through the State's e-filing system. Documents may be filed in paper form, by fax or by email. The Clerk must designate an email address or a fax number for the filings of documents in these proceedings and must take all reasonable steps to maintain the confidentiality of the filings. Attorneys should notify the Clerk by telephone before filing documents by email or fax.

SCR 1.5

The Clerk may transmit orders, rulings, notices, and other documents by fax or email. But before the transmission is initiated, the Clerk must take all reasonable steps to maintain the confidentiality of the transmission.

Family Code
Sec. 33.003(g-1)

With the court's permission, any witnesses may appear by video conferencing, telephone, or other remote electronic means. However, the minor must appear before the court in person.

SCR 1.5(e)

If a court reporter is unavailable at the time of the hearing, a record of the hearing may be made by audio recording or other electronic means. If the decision is appealed, the recording must be transcribed, if possible. The person transcribing the recording must certify the accuracy of the transcription. Both the recording and the transcription must be included in the record on appeal that the Clerk sends to the court of appeals.

3. Clerk's Duties

The Clerk must give prompt and courteous assistance to persons seeking to file an application and is required to provide a copy of the Supreme Court Parental Notification Rules as well as the relevant forms promulgated by the Supreme Court (such as the application form) to any person without charge. The forms must be in both English and Spanish. The Supreme Court's rules, instructions and forms are available from the following links:

SCR 1.7
SCR 2.2(a)

- In English: https://www.txcourts.gov/media/1454841/parental-notification-forms.pdf
- In Spanish: https://www.txcourts.gov/media/1454999/formularios-de-notificaci%C3%B3n-a-los-padres.pdf

The Clerk should ensure that both the cover page and the verification page of the application are completed in full. If requested, the Clerk must administer the oath required for the verification page, or provide a person authorized to do so.

SCR 2.2(a)

Because of the confidentiality requirements, the Clerk should not enter information about the case in case management software or docket the application as a regular case. The Clerk must redact from the cover page any information identifying the minor. The Clerk must assign a case number and write it on the cover page and the verification page,

SCR *2.2(b)*

then provide a certified copy of the verification page to the applicant. The verification page must be filed under seal in a secure place, with access limited to essential court personnel.

Judges may be assigned in accordance with a county's local rules, which require approval by the Supreme Court of Texas. If there is no local rule, the Clerk receiving the application (whether District Clerk or County Clerk) assigns it to a district court, if a judge is in the county. If not, the case is then assigned to a statutory county court or probate court. If one of these judges is not available, then the case is assigned to a constitutional county court, if the court has probate jurisdiction and if the judge is in the county. If the case cannot be assigned under any of these requirements, then it is assigned to the district court.

***SCR** 2.1(b)(3)*
***SCR** 2.1(b)(4)*

The Clerk must immediately determine if the judge of the court to which the application is assigned is available to hear the application within the prescribed time period. If that judge is not available, the Clerk must immediately inform the local administrative judge or judges and the presiding judge of the administrative judicial region and must send them any information requested, including the cover page and verification page, so the case may be reassigned.

***SCR** 2.2(d)*

D. JUDICIAL PROCEEDINGS

1. Before the Hearing

The Clerk of the court must deliver a copy of the application (the cover page and the verification page) to the judge who is to hear the application and inform the judge if a specific guardian ad litem has been requested.

***SCR** 2.2(c)*

***Family Code** Sec. 33.003(d)*

The court is required to appoint a guardian ad litem for the minor. If the minor has not retained an attorney, the court is required to appoint an attorney to represent the minor.

Sec. 33.003(e)

These proceedings shall be given precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly. The court must fix a time for a hearing on an application filed and shall keep a record of all testimony and other oral proceedings in the action. The Clerk must give notice of the time and place of the hearing and must notify the persons appointed as guardian ad litem and attorney ad litem of their appointments, as well as the time and place of the hearing. A court coordinator, or other court personnel, may give notice instead of the Clerk.

Sec. 33.003(g)

***SCR** 1.2(a)*
***SCR** 2.2(e)*

A minor may object to the assignment of a judge or file a motion to recuse or disqualify the judge. The objection or motion must be filed before 10:00 a.m. of the first business day following the filing of the application, or promptly after the assignment of a judge to hear the case is made known to the minor or her attorney, whichever is later. Such objection or motion does not extend the deadline for ruling on a minor's application. The minor may object to or file a motion to recuse or disqualify the judge only once in the proceeding.

***SCR** 1.6(a)*
***SCR** 1.6(d)*

A judge may recuse himself voluntarily, and must do so immediately, if that is his choice. If the judge does not remove himself voluntarily, then the judge must immediately refer the matter to the appropriate judge or justice under rule or statute, pursuant to local rule. That judge or justice must rule on the objection or motion as soon as possible, and

***SCR** 1.6(b), (c)*

may do so with or without a hearing. If the motion is granted, the judge or justice who made the ruling must assign a new judge immediately.

Any judge involved in a proceeding in any capacity may have access to all information (including the verification page) in the proceeding or any related proceeding, such as a prior filing by the minor. A minor's attorney and guardian ad litem must have access to the case file to the extent necessary to perform their respective duties.

*Comment No. 3 to **SCR** 1 (2001)*

To assist the court in making its determination, amicus briefs may be submitted to the court. These briefs are not to be filed with the Clerk and are subject to all anonymity and confidentiality provisions contained in the Supreme Court Rules and Family Code Chapter 33.

***SCR** 1.10*

2. After the Hearing

The court must enter judgment on the application immediately after the hearing is concluded. The court must rule on an application and issue written findings of fact and conclusions of law not later than 5 p.m. on the fifth business day after the date the application is filed with the court. The Clerk must provide a copy of the order, including the findings of fact and conclusions of law, to the minor's attorney and her guardian ad litem.

***Family Code** Sec. 33.003(h)*

***SCR** 2.5(f)*
***SCR** 2.2(f)*

The time to issue an order may be extended only upon request by the minor. If a request for an extension is made, the court shall rule on an application and shall issue written findings of fact and conclusions of law not later than 5 p.m. on the fifth business day after the date the minor states she is ready to proceed to hearing.

***Family Code** Sec. 33.003(h)*

***SCR** 2.4(a)*
***SCR** 2.5(g)*

If the court fails to rule on the application within the period specified by Family Code §33.003(h), the application is deemed to be denied.

***Family Code** Sec. 33.003(h)*

An order of the court issued under Family Code §33.003 is confidential and privileged and is not subject to disclosure under Government Code Chapter 552, or discovery, subpoena, or other legal process. The order may not be released to any person but the minor, the minor's guardian ad litem, the minor's attorney, another person designated to receive the order by the minor, or a governmental agency or attorney in a criminal or administrative action seeking to assert or protect the interest of the minor.

Sec. 33.003(l)

3. Payment of Fees and Costs

The court may order the State to pay the cost of any guardian ad litem and attorney ad litem appointed for the minor. The court may also order the State to pay associated court fees, costs and any court reporter's fees certified by the Clerk. Court costs include the expenses of an interpreter and an evaluation by a licenses mental health counselor, but not witness fees or fees which must be remitted to the state treasury.

Sec. 33.007

***SCR** 1.9(b)*

The order must be directed to the Comptroller of Public Accounts but should be sent by the Clerk to the Director, Fiscal Division, Texas Department of Health.

***SCR** 1.9(b)(2)*

E. CERTIFICATE

As discussed above, if the relevant judge fails to rule on an application within the time required by Family Code §33.003(h) of the then the application is deemed to be

***SCR** 2.2(g)*

denied. Upon the request of the minor or her attorney, the Clerk must immediately issue a certificate stating that the court failed to rule timely and the application is deemed to be denied.

F. APPEAL

A minor whose application has been denied may appeal to the court of appeals with jurisdiction over civil matters in the county in which the application was filed. When the application is denied, the court must inform the minor of her right to appeal and furnish her with the appropriate appeal form.

SCR 2.5(h)

Family Code *Sec. 33.004*

Upon receipt of a notice of appeal, the Clerk of the court that denied the application shall deliver to the appellate court a copy of the notice of appeal and the Clerk's record. The Clerk will include the reporter's record if it has been provided and is in the file. (Court reporter's notes, in any form, may be filed with other court documents in these proceedings to preserve confidentiality.) The verification page is not included in the record on appeal.

Sec. 33.004

SCR 1.4(c)
SCR 3.2(b)

The trial court Clerk must not send the record to the Clerk of the court of appeals by mail but must, deliver the record by hand or transmit it by facsimile or email.

SCR 3.2(b)

The minor or her attorney is responsible for filing a notice of appeal with the appropriate court of appeals, and for notifying the court of appeals by telephone that the appeal is being taken under Family Code §33.003.

SCR *3.1*

It is the Clerk's responsibility to give prompt assistance to persons seeking to file an appeal. Such assistance includes assuring that the notice of appeal is sent to the proper court of appeals, and that no identifying information is disclosed. A filing fee is not required and costs may not be assessed to the minor for filing an appeal.

SCR *3.2(a)*

Family Code *Sec. 33.004(e)*

A minor may appeal to the Supreme Court of Texas if her appeal is denied by the court of appeals. The Clerk has no role in this proceeding, except to inform the minor of the availability of this remedy and provide whatever assistance the minor may request.

SCR *4*

CHAPTER 13

RECORDS RETENTION AND MANAGEMENT

A. INTRODUCTION

This chapter provides a synopsis of the duties and responsibilities of District Clerks under the Local Government Records Act (Local Government Code Chapters 201 - 205). The Act applies to all local governments and elected county officials. This chapter does not discuss all the provisions of the Act, but only those that District Clerks should know to fulfill their records management obligations.

The Act requires that all District Clerks establish programs for the efficient and cost-effective management of the records of their offices. It also requires that the records of the office of District Clerk be retained for minimum periods of time set by the Texas State Library and Archives Commission before they are eligible for disposal.

B. STATE AGENCY CONTACT

If a Clerk has questions regarding the Local Government Records Act or would like to request assistance in establishing a records management program, the Clerk should contact the Texas State Library, State and Local Records Management Division, by mail at P.O. Box 12927, Austin, Texas 78711-2927, or by phone at 512-463-7610.

Information is also available on the Texas State Library's website at https://www.tsl.texas.gov/slrm/contact/index.html, including a link to contact the library by e-mail at slrminfo@tsl.texas.gov.

C. RECORDS MANAGEMENT, GENERAL PROVISIONS

1. Definitions

Custodian: District Clerks are the "custodians" of the records of their respective offices. *Loc. Gov't Code Sec. 201.003(2)*

Essential Record: Records that are necessary for the resumption or continuation of operations in an emergency or disaster to recreate the office's legal and financial status or to fulfill the office's legal obligations to the public. *Sec. 201.003(5)*

Local Government Record: Any information created or received by a District Clerk pursuant to law or in the transaction of public business is a local government record, regardless of whether it is a document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or any other type of information recording medium and regardless of whether it is an open or closed record. *Sec. 201.003(8)*

For the purposes of the Local Government Records Act, the following are **not** local government records:

- Extra identical copies of documents created for the convenience of an employee or official;
- Notes, journals, diaries, and similar documents created for the convenience of an employee or official (e.g., telephone message pads and desk calendars);

- Blank forms (e.g., superseded cash receipt forms);
- Stocks of publications;
- Library and museum materials acquired solely for the purpose of display or reference (e.g., law books);
- Copies of documents in any media furnished to members of the public to which they are entitled under Government Code Chapter 552, commonly known as the Public Information Act; or
- Any records, correspondence, notes, memoranda or documents, other than a final written agreement described by Government Code §2009.054(c), associated with a matter conducted under an alternative dispute resolution procedure to which a government entity was a party, facilitated as an impartial third party, or facilitated as the administrator of a dispute resolution system or organization.

2. Declaration of Records as Public Property

Local government records are public property and no official has any personal property right in them.

Loc. Gov't Code *Sec. 201.005*

3. Records to be Delivered to Successor in Office

A custodian of local government records must deliver to his or her successor all records of the office.

Sec. 201.006

4. Alienation of Records Prohibited

A District Clerk may transfer custody of a local government record to any public institution of higher education, public museum, public library, or other public entity with the approval of the local government's records management officer after the expiration of the records retention period under the local government's records control schedule.

Sec. 202.004(a)

A District Clerk may not transfer custody of any of his or her local government records to a private organization or individual without the consent of the Director and Librarian of the Texas State Library. This prohibition does not apply to records that are temporarily transferred for the purpose of microfilming, conversion to electronic media, restoration, or other records management activities or when records are to be destroyed by sale or donation to a recycler.

Sec. 202.004(b), (c)

5. Personal Liability

A District Clerk who destroys records in compliance with the Local Government Records Act and rules adopted under it is not personally liable for the records destruction.

Sec. 202.007

6. Penalty for Destruction or Alienation of Records

A District Clerk who knowingly or intentionally destroys or alienates local government records or fails to deliver the records of his or her office to a successor, contrary to the provisions of the Local Government Records Act or rules adopted under it, commits a Class A misdemeanor.

Sec. 202.008

D. RECORDS MANAGEMENT IN THE OFFICE OF THE DISTRICT CLERK

1. Administration, Duties, and Support

a. District Clerk as Records Management Officer

The Texas State Library and Archives Commission has published a retention schedule for District Clerks (Revised Third Edition, effective March 25, 2019), which may be viewed, or downloaded at https://www.tsl.texas.gov/slrm/recordspubs/dc.html. This website also provides a document which lists the changes.

*13 **TAC** §7.125(a)(4)*

A District Clerk is automatically designated as the records management officer for his or her office.

***Loc. Gov't Code** Sec. 203.001*

A District Clerk may, at the Clerk's discretion, designate the person appointed by the commissioners court to serve as records management officer for the non-elective offices of the county to serve as records management officer for the office of District Clerk. It is important to note that in doing so, a District Clerk does not relinquish legal custody of records to the county records management officer but rather chooses to participate in one or more specific components of a countywide records management program and to have the county records management officer assist the Clerk in meeting the requirements of the Local Government Records Act.

Sec. 203.005(g)

A District Clerk may not be designated as records management officer for the non-elective offices of the county without the Clerk's consent.

Sec. 203.025(g)

b. Duties of District Clerk as Records Management Officer

A District Clerk, as the records management officer for his or her office, is responsible for all the following:

Sec. 203.002

- Developing a records management program;
- Administering the records management program efficiently and effectively;
- Preparing and filing with the Director and Librarian of the Texas State Library a records control schedule;
- Preparing requests for authorization to destroy records not on an approved control schedule and the originals of microfilmed permanent records;
- Preparing requests to store records electronically;
- Identifying and ensuring the preservation of records of permanent value;
- Identifying and ensuring the preservation of essential records;
- Ensuring that records management activities (e.g., destruction, preservation, and microfilming) are conducted in accordance with the requirements of the Local Government Records Act and rules adopted under it; and
- Cooperating with the Texas State Library in records management surveys.

c. Duties of Commissioners Court

The commissioners court of each county is required to support sound records management for all elected county offices and to enable elected county officers to meet the requirements of the Local Government Records Act. The commissioners court also must establish a records management and preservation account for the records management and preservation fees authorized under Local Government Code §§ 135.101 and 135.102.

Loc. Gov't Code
Sec. 203.003

Government Code §51.319(4) allows District Clerks to collect fees for performing services related to matters filed in statutory county courts, in the same amount as fees allowed for services performed at a district court. District Clerks should note the provisions of the Local Government Code relating to any fees for which the District Clerk performs services related to matters filed in statutory county courts.

Gov't Code
Sec. 51.319(4)

Loc. Gov't Code
Sec. 135.101
Sec. 133.151

2. Planning the Records Management Program

a. The Records Management Plan

Each District Clerk must prepare a written records management plan for his or her office that sets out policies and procedures that will enable the Clerk to fulfill his or her responsibilities as a records management officer. The plan must be filed with the Director and Librarian of the Texas State Library within 30 days after its adoption.

Sec. 203.005

b. Model Plan Available

The Texas State Library has prepared a model plan that can be used by District Clerks to meet the requirement of the Local Government Records Act that a written records management plan be prepared and filed. A model plan is available on the library's website: https://www.tsl.state.tx.us/slrm/recordspubs/localretention.html.

c. Deadlines and Determining Status

The deadline for filing a written plan was January 1, 1991. A District Clerk who has recently assumed office and is uncertain whether his or her predecessor fulfilled this requirement of the Act should contact the Texas State Library.

3. Scheduling Records

a. The Records Control Schedule

Each District Clerk must prepare a records control schedule that lists the records of his or her office and how long the Clerk will retain the records listed before disposing of them and file with the Director and Librarian of the Texas State Library a written certification of compliance that the records retention schedule complies with the Commission's minimum retention requirements.

Sec. 203.041(a)

The schedule must list all records, by records series, created and maintained in the office and all records no longer created or received that the Texas State Library has determined must be retained permanently or for periods that have not yet expired at the time the Clerk prepares the schedule.

Schedules may be prepared on an office-by-office or department-by-department

Sec. 203.041(f)

basis. A County Clerk may, for instance, submit one schedule for administrative records, a second for court records, and a third for all other records.

The Clerk must review the record control schedule and prepare amendments to the records control schedule as needed to reflect new records created or received by the Clerk's office or revisions to retention periods established in a records retention schedule issued by the State Library and Archives Commission. The Clerk must file a written certification of compliance with the Director and Librarian of the Texas State Library that Clerk amended the records retention schedule to comply with the Commission's minimum retention requirements.

Loc. Gov't Code *Sec. 203.041(d)*

b. Retention Periods

The retention periods chosen by the District Clerk for the records of his or her office may not be less than the minimum retention periods established by the Texas State Library and any other retention period established by state or federal law for the various records of the office of District Clerk.

Sec. 203.042(b)

The Texas State Library minimum retention periods for District Clerks' records are available electronically at http://www.tsl.state.tx.us/slrm/recordspubs/dc.html.

4. Not Scheduling Records

a. Declaring Intention to Keep All Records Permanently

A District Clerk who wishes to keep all records of his or her office permanently or wishes to destroy only those for which the Texas State Library has not set minimum retention periods is not required to prepare and file records control schedules.

Sec. 203.041(g)

b. How to Make the Declaration

The model plan prepared by the Texas State Library has a section in which the decision to prepare a records control schedule or to declare permanent retention can be made.

c. What the Declaration Means

Remember that a declaration of intention to keep all records permanently means even such records as cash receipts would have to be retained indefinitely.

5. Microfilming Records

a. Records that May Be Filmed

Any record of a District Clerk may be filmed and retained on microfilm either as the sole recording media or in addition to paper or other media.

Sec. 204.002

b. Microfilming Standards

Any filming of records must be in accordance with microfilming standards and procedures established by the Texas State Library and Archives Commission. These standards are contained in the Texas Administrative Code, or are available on request from the Texas State Library.

Sec. 204.004

13 ***TAC*** *Ch. 7, Sub. B*

All microfilm produced before June 1, 1990, under prior law is validated to the extent the microfilm was produced in the manner and according the standards prescribed by prior law. The Texas State Library and Archives Commission may establish procedures for the retrospective certification of uncertified or improperly certified microfilm produced before April 1, 1990, that otherwise meets the standards prescribed by law.

Loc. Gov't Code *Sec. 204.003*

c. Indexing

An index to a microfilmed record must show the same information that state law requires for the same record if not microfilmed.

Sec. 204.006

d. Destruction of Records

The original of a record that has been microfilmed may be destroyed before the expiration of its retention period, and permission from the Texas State Library is not required for destruction. A list of the originals destroyed must be filed with the Clerk. The microfilmed record must be retained until the expiration of its retention period for the record, and the microfilm must be retained until the expiration of the retention period for the original record.

Sec. 204.007

e. Effect as an Original Record

Microfilm records produced in accordance with the standards of the Texas State Library and Archives Commission or in accordance with prior law if filmed before June 1, 1990, are to be accepted by state agencies and courts as certified copies of original records.

Sec. 204.011

6. Storing Records Electronically

a. Records that May Be Stored Electronically

Any record of a District Clerk may be stored electronically (e.g., on computer hard disk, magnetic tape, optical disk, or similar machine-readable medium) in addition to or in lieu of any other medium.

Sec. 205.002

b. Electronic Storage Standards

The electronic storage of any record whose minimum retention period is set by the Texas State Library as 10 years or more must be stored in accordance with standards and procedures established by the Texas State Library and Archives Commission. These standards are contained in the Texas Administrative Code or are available on request from the Texas State Library.

Sec. 205.003

13 ***TAC*** *Ch. 7, Sub. C*

c. Destruction of Source Documents

The source document for an electronically stored record may be destroyed or returned to the person who filed it for record. If the minimum retention period set for a source document is less than 10 years, the source document may be destroyed after the information in it is stored electronically.

Loc. Gov't Code *Sec. 205.008(a)*

In either case, the electronic recording medium and the software and hardware necessary to read it must be kept until the retention period for all source documents has

Sec. 205.008(b)

expired.

A District Clerk may also destroy electronically stored records if the source documents have been retained or if a paper or microfilm copy of the data has been generated from the electronic media.

Loc. Gov't Code *Sec. 205.008(c)*

d. Indexing

An index to records stored electronically must show the same information that state law requires for the source document.

Sec. 205.006

e. Denial of Access Prohibited

Persons under contract with a District Clerk to provide electronic services or equipment may not refuse to provide the Clerk timely access to the records of the office in a usable format.

Sec. 205.009

7. Destruction of Records

a. When Lawful Destruction Can Occur

A District Clerk may lawfully destroy a record if:

Sec. 202.001(a)

- the record is listed on a valid records control schedule and either its retention period on the schedule has expired or it has been microfilmed or stored electronically in accordance with Local Government Code Chapters 204 and 205, respectively, including administrative rules of the Texas State Library and Archives Commission adopted under those chapters;
- the record appears on a list of obsolete records as provided by §203.044; or
- the record is not listed on a records retention scheduled issued by the Texas State Library and Archives Commission and the Clerk provides notice to the Commission at least 10 days before destroying the record.

A District Clerk may lawfully destroy the following records without meeting the conditions of Local Government Code §202.001(a):

Sec. 202.001(b)

- Records destroyed pursuant to an expunction order issued by a court pursuant to state law; and
- Records defined as exempt from scheduling or filing requirements by the Texas State Library and Archives Commission.

b. Litigation and Open Records Requests

A District Clerk may not destroy any records the Clerk knows to be a subject of litigation or for which there is an open records request until the matter is resolved.

Sec. 202.002

c. Method of Destruction

Normally a Clerk may destroy records by burning, shredding, pulping, burial in a landfill, or sale or donation for recycling. A Clerk who sells or donates records for recycling is required to establish procedures to ensure that the records are rendered unrecognizable as local government records by the recycler.

Sec. 202.003

Records designated as exempt from public disclosure by the Open Records Act or any other state law may be destroyed only by burning, shredding, or pulping. Extra, identical copies of these closed records must be destroyed in the same manner.

Loc. Gov't Code
Sec. 202.006

CHAPTER 14

OTHER DUTIES

A. INTRODUCTION

The major duties of the District Clerk have been covered in previous parts of this manual. There remain, however, some duties that can only be classified as miscellaneous. Some of these duties are applicable to all Clerks while some may be applicable only to individual Clerks on a local basis. Individual Clerks may wish to add pages to this manual to further explain procedures for miscellaneous duties.

B. COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENTS

Community supervision and corrections departments ("CSCD"), formerly known as probation departments, are operated differently from county to county. A CSCD may collect fees with the written approval of the Clerk of the court or fee officer. In all counties, it is good practice for the Clerk to set up a community supervision file record showing the defendant's name, case number, term of community supervision, and costs and fines to be paid.

CCP
Art. 103.003(b)

Part B covers the most common types of community supervision, and focuses on duties of the District Clerk.

1. Upon Conviction, Plea of Guilty, or Plea of Nolo Contendere

The judge has authority under certain circumstances to suspend the imposition of the sentence and place the defendant on community supervision (formerly known as probation). Placement on community supervision means the defendant will not be committed (that is, confined to jail or prison) as long as he or she observes the conditions set for community supervision.

Art. 42A.053
Art. 42A.054

The jury may recommend community supervision in its verdict. The judge shall place the defendant on community supervision upon the jury's recommendation.

Art. 42A.055

The jurisdiction of a court imposing a sentence of imprisonment in the institutional division of the Texas Department of Criminal Justice (*i.e.,* upon a felony conviction) continues for 180 days from the date the sentence actually begins. The judge may suspend further execution of the sentence during that time frame and place the defendant on community supervision. The judge may do so on his or her own motion, the motion of the attorney representing the state, or the defendant's motion. When the defendant files such a motion, he or she must give a copy to the state's attorney.

Art. 42A.202(a)-(c)

Upon filing of a motion by the state's attorney or the defendant, and if the judge so requests, the Clerk shall request a copy of the defendant's record while imprisoned from the TDCJ, or from the sheriff if the defendant is confined in a county jail.

Art. 42A.202(d)

The judge may deny the motion without a hearing. However, the motion may not be granted unless a hearing is held and the defendant and the state's attorney are both given the opportunity to present evidence. Similar provisions and procedures apply for misdemeanor convictions.

Art. 42A.202(e)
Art. 42A.201

The court may alter or modify the conditions of community supervision at any time. Generally, only the court in which the defendant was tried may grant, revoke or modify conditions of community supervision. The court may transfer jurisdiction to another court with the transferee court's consent.

CCP
Art. 42A.051

Only the sentencing judge may place the defendant on community supervision under Article 42A.202 (discussed above). If a motion is received and the sentencing judge is deceased, disabled, or the office is vacant, the Clerk must promptly forward a copy of the motion to the presiding judge for the administrative judicial region for that court. The presiding judge may deny the motion without hearing, or may appoint a judge to hold a hearing.

Art. 42A.203

After a defendant is placed on community supervision, the court may transfer jurisdiction to another court of the same rank having geographical jurisdiction where the defendant resides or where a violation of conditions occurs. Upon transfer, the Clerk of the original court must forward a transcript of portions of the record to the transferee court as directed by the transferring judge. Thereafter, the transferee court proceeds as though trial and conviction had occurred in that court.

Art. 42A.151

As discussed above, community supervision officers have limited authority to modify conditions of community supervision. The officer must deliver a copy of the modified conditions to the defendant, file a copy with the sentencing court, and note the date of delivery in defendant's file. If the defendant agrees to the modification in writing, the officer files a copy of the modified conditions with the District Clerk. If the defendant does not agree, the case is referred to the sentencing judge for modification under Article 42A.752, which is discussed below.

Art. 42A.052(c)

The terms of community supervision include a reimbursement fee of at least $25 and not more than $60 per month to be paid as a supervision fee. The judge may waive or reduce the fee, or suspend monthly payment of the fee, if such payment would cause a significant financial hardship. Fees are deposited into the special fund of the county treasury. A judge may not require a defendant to pay the fixed monthly fee under for any month after the period of community supervision has been terminated by the judge.

Art. 42A.652

In addition to the above fee, a person placed on community supervision who was convicted of certain sexual offenses, domestic violence, or public indecency is required to pay a fine of $5 per month.

Art. 42A.653

If a substance abuse program is required as a condition of community service, the judge may order the defendant to pay a reimbursement fee for aftercare. The Clerk collects this reimbursement fee and deposits it for remittance to the Comptroller as provided by Local Government Code Chapter 133. If no reimbursement fee is required, the Clerk is not obligated to file any report relating to collection of the reimbursement fee.

Art. 42A.303(d)

When the defendant has completed community supervision, the judge shall discharge the defendant. The judge may set aside the verdict or permit the defendant to withdraw his plea. The judge shall dismiss the accusation, complaint, information or indictment, and the defendant is released from all penalties and disabilities resulting from the conviction. There are two exceptions:

Art. 42A.701

- If the defendant is again convicted of any criminal offense, the proof of conviction or guilty plea shall be made known to the judge; and
- If the defendant applies for a license relating to provision of child-care services under Human Resources Code Chapter 42, the Texas Department of Human Services may consider the fact of previous community supervision in issuing, renewing, denying or revoking a license.

Article 42A.701 does not apply to defendants convicted of certain intoxication offenses (Penal Code §§49.04-49.08); defendants required to register as sex offenders (Code of Criminal Procedure Chapter 62); or defendants convicted of an offense punishable as a state jail felony.

CCP
Art. 42A.751

The judge may issue a warrant at any time during the period of community supervision for violation of any of the conditions of community supervision. Upon arrest, the defendant may be confined until he or she can be taken before the judge. A hearing is held to determine if community supervision should be revoked, continued, extended or modified. The defendant has a right to counsel at any such hearing. The court retains jurisdiction to hold a hearing even if the community supervision period has expired, providing the state's attorney has filed a motion to revoke, modify or continue community service before the period expires, and a capias has been issued for the defendant's arrest.

Art. 42A.752

If community supervision is continued, extended or modified, the judge may impose additional conditions as he or she determines are appropriate.

Art. 42A.755

If community supervision is revoked, the judge may dispose of the case as if there were no community supervision, or he or she may reduce the original term of confinement. However, time spent on community supervision is not considered as any part of the time the defendant will be sentenced to serve. The right to appeal the conviction and punishment is given to the defendant at the time he or she is placed on community supervision. The defendant also has the right to appeal the revocation. If restitution or reparations are owed by the defendant on the date of revocation, the judge enters the amount in the judgment of the case.

2. Deferred Adjudication

Art. 42A.101
Art. 42A.102
Art. 42A.103

Except as provided by Article 42A.102(b), if in the judge's opinion the best interest of society and the defendant will be served, the judge may, after receiving a plea of guilty or 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 deferred adjudication community supervision. Consult Article 42A.102 and Article 42A.103 for more information on deferred adjudication eligibility and supervision period.

After placing the defendant on deferred adjudication community supervision under Article 42A.101(a), the judge shall inform the defendant orally or in writing of the possible consequences under Articles 42A.108 and 42A.110 of a violation of a condition of deferred adjudication community supervision. If the information is provided orally, the judge must record and maintain the judge's statement to the

defendant. The failure of a judge to inform a defendant of possible consequences under Articles 42A.108 and 42A.110 is not a ground for reversal unless the defendant shows that the defendant was harmed by the failure of the judge to provide the information.

CCP
Art. 42A.104(a)

The judge may impose a fine applicable to the offense and require any reasonable condition of deferred adjudication community supervision that a judge could impose on a defendant placed on community supervision for a conviction that was probated and suspended, including:

(1) confinement; and

(2) mental health treatment under Article 42A.506.

Art. 42A.108

If the defendant violates a condition of community supervision, the defendant may be arrested and detained as in any other community supervision revocation case. The defendant will then be entitled to a hearing limited to the question of whether the court should proceed to a formal adjudication on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings continue as if the adjudication of guilt had not been deferred. A court assessing punishment after an adjudication of guilt of a defendant charged with a state jail felony may suspend the imposition of the sentence and place the defendant on community supervision or may order the sentence to be executed, regardless of whether the defendant has previously been convicted of a felony.

Art. 42A.109

When the defendant's alleged violation under Article 42A.108 is failure to report, he or she has an affirmative defense if the community supervision officer failed to contact or did not attempt to contact the defendant before starting the violation process.

Art. 42A.111(a) – (c)

On expiration of a community supervision period, if an adjudication of guilt has not occurred, the proceedings must be dismissed and the defendant discharged. The judge may dismiss the proceedings and discharge the defendant, other than a defendant charged with an offense requiring the defendant to register as a sex offender under Code of Criminal Procedure Chapter 62, prior to the expiration of the term of community supervision if in the judge's opinion the best interest of society and the defendant will be served. The judge may <u>not</u> dismiss the proceedings and discharge a defendant charged with an offense requiring the defendant to register under Code of Criminal Procedure Chapter 62. Except as provided by Penal Code §12.42(g), a dismissal and discharge pursuant to the deferred adjudication statute is not a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense.

Art. 42A.105

If a court places a certain defendant on deferred adjudication community supervision, the court must also make an affirmative finding of fact and file that statement with the papers of the case. Consult Article 42A.105 for the relevant offenses.

Art. 42A.108(c)

A court retains jurisdiction to hold a hearing and proceed with an adjudication of guilt, even if the period of community supervision imposed has expired, so long as the state's attorney files a motion to proceed with adjudication and a capias is issued for the defendant's arrest prior to the expiration of the community service period.

Art. 42A.106

A record in the custody of a court Clerk regarding a case in which a person is granted deferred adjudication is <u>not</u> confidential.

3. Nondisclosure

Prior to September 1, 2017, the date of the offense determined what law applied and forms to use when petitioning a court for an order of nondisclosure. The current nondisclosure laws as set forth in Government Code Chapter 411, Subchapter E-1 now apply to all persons seeking an order of nondisclosure, regardless of the date of offense.

Gov't Code
Sec. 411.074(a)

Generally, a person may file a "petition for an order of nondisclosure" under Government Code Chapter 411, Subchapter E-1 only if the person is not subsequently convicted of or placed on deferred adjudication community supervision for another offense, excluding traffic offenses punishable by fine only, before completing the sentence or term of community supervision (including deferred adjudication community supervision) for the offense for which the order of nondisclosure is requested, or the waiting period required, if any, before the person may file a petition for an order of nondisclosure.

Sec. 411.0745(a), (b)

A person may file a petition for an order of nondisclosure in person, electronically, or by mail. A person must pay fees and costs that generally apply to the filing of a civil petition. However, SB 41 (87th Legislature, R.S., 2021) eliminated the $28.00 fee that a petitioner had to pay before the order of nondisclosure issued. *[EXCEPTION: The $28 fee is still required for automatic orders of nondisclosure. The fee remains with the county.]*

Sec. 411.072(c)

Sec. 411.0745(c), (d)

The Office of Court Administration has created forms for the filing of a petition electronically or by mail, plus an instructional overview of the nondisclosure application process, which can be accessed at http://www.txcourts.gov/rules-forms/orders-of-nondisclosure. Each District Clerk office that maintains an Internet website must include on that website a link to the electronic application and printable application form available on the Office of Court Administration's website.

Sec. 411.075(a)

Not later than the 15th business day after the date an order of nondisclosure is issued under Subchapter E-1, the Clerk must send all relevant criminal history record information contained in the order or a copy of the order by certified mail, return receipt requested, or secure electronic mail, electronic transmission, or facsimile to the Department of Public Safety's Crime Records Service.

Sec. 411.076(b)

The Clerk of the court issuing an order of nondisclosure under Subchapter E-1 must seal any court records containing information that is the subject of the order as soon as practicable after the date the Clerk sends all relevant criminal history record information contained in the order or a copy of the order to the Department of Public Safety under Government Code §411.075(a).

C. BOOKKEEPING

Each District Clerk must maintain an accounting system which adequately reports all receipts of money and its subsequent disbursement. Accounting systems vary greatly. It is suggested that the county auditor be consulted regarding any questions about or changes to the accounting system.

D. PASSPORTS

Gov't Code
Sec. 51.3031(a)

The United States Department of State, Bureau of Consular Affairs, designates the Clerk of a state court of record as passport acceptance agent. In Texas, this duty is given to District Clerks. This duty is entirely optional with the individual Clerk.

22 U.S.C.
Sec. 211a-218

If the District Clerk does perform this duty, the Clerk's role is to accept the applications and forward them to the U.S. Passport Agency for actual issuance of a passport. The laws governing passports may be found in United States Code Title 22, Chapter 4. Clerks accepting passport applications should be familiar with the general rules regarding passport issuance and eligibility.

Gov't Code
Sec. 51.3031(b), (c)

A District Clerk may also perform all duties necessary to process an application for a United States passport, including taking passport photographs. To recover the costs of taking passport photographs, a District Clerk may collect a reasonable fee in an amount set by the commissioners court. (This is in addition to the fees set out below.)

The District Clerks, as passport acceptance agents, are authorized to charge the Execution Fee of $35.00 for their services for each application for a passport book or a passport card. Passport processing fees (that is, the execution fee and any fee charged for photographs) collected shall be paid to the county treasurer, or to an official who discharges the duties of the county treasurer, for deposit into the general fund of the county.

The US Department of State periodically adjusts the application fees for passport books and cards for adults and children (under age 16). Clerks should consult https://travel.state.gov/content/travel/en/passports/requirements/fees.html for the most up-to-date passport application fees. Applicants with U.S. Government or military authorization for a no-fee passport may not be not charged any fees except the execution fee.

Special conditions apply to passport applications for children under age 16. Both parents or the legal guardian(s), and the minor child, must appear in person. The parents or guardian(s) must provide proof of the child's U.S. citizenship, evidence of the child's relationship to the parents or guardian(s) and parental identification. If only one parent appears, he or she must also submit one of the following:

- second parent's written statement consenting to passport issuance for the child;
- evidence of sole authority to apply; or
- a written statement, made under penalty of perjury, explaining the second parent's unavailability.

For routine processing, passports are to be sent for routine processing to:

National Passport Processing Center
Post Office Box 640155
Irving, Texas 75064-0155

For expedited processing, write "EXPEDITE" on the outside of the mailing envelope and mail to:

National Passport Processing Center
Post Office Box 90955
Philadelphia, PA 19190-0955

Further information regarding the issuance of passports may be obtained from the State Department's website at: https://travel.state.gov/content/travel/en/passports.html. Alternatively, the National Passport Information Center is available to answer passport questions and can be reached at the following number: 877-487-2778.

E. NAME CHANGE

The procedures covered here apply to name changes for other reasons other than divorce. Clerks cannot, of course, give legal advice to people seeking a name change. They should, however, be familiar with the procedures to accurately file and process the petitions.

1. Children

A petition requesting a name change is filed in the county in which the child resides. It can be filed by a parent, managing conservator or guardian. The petition must be verified and include the following:

Family Code
Sec. 45.001
Sec. 45.002(a)

- the present name and residence of the child;
- the reason a change of name is requested;
- the full name requested for the child;
- whether the child is subject to the continuing exclusive jurisdiction of a court under Family Code Chapter 155; and
- whether the child is subject to the registration requirements of Code of Criminal Procedure Chapter 62.

In addition, if the child is 10 years old or older, his or her written consent to the name change must be attached to the petition.

Sec. 45.002(b)

Citation is issued and served on a parent whose parental rights have not been terminated, on any managing conservator, and on any guardian of the child. Service is accomplished in the same manner as in any other civil case.

Sec. 45.003

The court will order the name change if it determines the change is in the best interest of the child. For a child subject to the registration requirements of Code of Criminal Procedure Chapter 62, the court must also determine that the name change is in the interest of the public. The person petitioning on behalf of the child is required to provide the court with proof that the appropriate local law enforcement authority has been notified of the proposed name change. If the child is subject to the continuing jurisdiction of a court under Family Code Chapter 155, the Clerk shall send a copy to the central record file as provided in Family Code Chapter 108.

Sec. 45.004

People who adopt a child in a foreign country may register the adoption order in Texas. A petition for name change may be combined with the petition for registration of a foreign adoption.

Sec. 162.023(b)

A change of name does not release a child from liability incurred under the child's previous name, or defeat any right the child had in the child's previous name.

Family Code *Sec. 45.005*

2. Adults

An adult may file a petition requesting a change of name in the county of the adult's place of residence. The petition must be verified and include the following:

Sec. 45.101

Sec. 45.102

- the present name and place of residence of the petitioner;
- the full name requested for the petitioner;
- the reason the change of name is requested;
- whether the petitioner has been the subject of a final felony conviction;
- whether the petitioner is subject to the registration requirements of Code of Criminal Procedure Chapter 62; and
- a legible and complete set of petitioner's fingerprints, on a format card acceptable to the Texas Department of Public Safety and the Federal Bureau of Investigation.

The petition must also include, or give an explanation for not including, the petitioner's full name, sex, race, date of birth, driver's license number, social security number, and any criminal history reference number. Also, the petitioner must identify any offense above a grade C misdemeanor for which petitioner has been charged, and, if a warrant was issued or a charging instrument filed, the cause number and the court.

A petitioner is not required to provide the street address of the petitioner's place of residence or the petitioner's reason for the requested change of name if the petitioner provides a copy of an authorization card certifying in accordance with Code of Criminal Procedure Article 58.059 that the petitioner is a participant in the address confidentiality program administered by the attorney general under Code of Criminal Procedure Chapter 58, Subchapter B.

Sec. 45.102(c)

Unless the petitioner has been convicted of a felony or is subject to the registration requirements of Code of Criminal Procedure Chapter 62, the court will order the name change if it determines the change is to the benefit or in the interest of the petitioner and in the interest of the public. It is presumed that a change of name is in the interest or to the benefit of the petitioner and in the interest of the public if the petitioner provides a copy of an authorization card certifying in accordance with Code of Criminal Procedure Article 58.059 the petitioner is a participant in the address confidentiality program administered by the attorney general under Code of Criminal Procedure Chapter 58, Subchapter B.

Sec. 45.103

A person whose name is changed under Family Code §6.706 or §45.105 may apply to the Clerk of the court ordering the name change for a change of name certificate. This certification is a one-page document that includes:

Sec. 45. 106

- the name of the person before the change of name was ordered;
- the name to which the person's name was changed by the court;
- the date on which the name change was made;

- the person's social security number and driver's license number, if any;
- the name of the court in which the name change was ordered; and,
- the signature of the Clerk of the court that issued the certificate.

An applicant for a change of name certificate must pay a $10 fee to the Clerk of the court for issuance of the certificate. A change of name certificate issued under Family Code §45.106 constitutes proof of the change of name of the person named in the certificate.

F. TESTIFYING IN DISTRICT COURT

The Clerk, at times, may be called upon to testify in court as to some aspect of the Clerk's records and minutes in a case. The testimony usually relates to the presence, contents, and date of filing of one or more of the instruments filed for record with the Clerk or child support payments which have been made through the registry of the court.

G. PAYMENTS TO COUNTY TREASURER

Loc. Gov't Code
Sec. 113.022

AG Op.
JM-397 (1985)

A county officer (this includes the District Clerk) is directed by statute to deposit any funds received with the county treasurer on or before the next regular business day after the date on which the funds are received. If this deadline is not met, the county official is required to "deposit the funds, without exception, on or before the fifth business day after the day on which the funds are received." However, in a county with fewer than 50,000 inhabitants, the commissioners court may extend the period during which the funds must be deposited with the county treasurer, but the period may not exceed 15 days after the date the funds are received. In determining the population of a county for purposes of this provision, a commissioners court may use any reasonable method. The phrase "15 days" means calendar days, not business days.

AG Op.
GA-0636

County officers who collect fees for the county must deposit the funds with the county treasurer or in the county treasury as required by Local Government Code Chapter 113 or 133, absent a specific statute providing for a different disposition.

H. REPORTING REQUIREMENTS

The District Clerk reporting requirement list identifies the various reporting requirements imposed upon District Clerks. The list can be found at: http://www.txcourts.gov/reporting-to-oca/other-reporting-resources/. It includes the entity to which the report must be made, the statutory authority, and the address to which to send the report.

1. Bail and Pretrial Release Information

Gov't Code
Sec. 71.0351

As a component of the official monthly report submitted to the Office of Court Administration under Government Code Section 71.035, the clerk of each court setting bail in criminal cases must report: (1) the number of defendants for whom bail was set after arrest, including: (A) the number for each category of offense; (B) the number of personal bonds; and (C) the number of surety or cash bonds; (2) the number of defendants released on bail who subsequently failed to appear; (3) the number of defendants released on bail who subsequently violated a condition of release; and (4) the number of defendants who committed an offense while released on bail or

community supervision.

I. NONRESIDENT ATTORNEYS

Gov't Code
Sec. 82.0361

Clerks should be aware of the law permitting a nonresident attorney to participate in a Texas court proceeding. A nonresident attorney is defined as a person who resides in and is licensed to practice law in another state but who is not a member of the State Bar of Texas. A nonresident attorney who participates in a Texas court appears *pro hac vice*. This phrase refers to a lawyer who has not been admitted to practice in a particular jurisdiction but who is admitted to the jurisdiction temporarily for the purpose of participating in a particular case.

A nonresident attorney who wishes to participate in a Texas court proceeding must first pay a fee of $250 to the Texas Board of Law Examiners for each case in which he or she requests to participate. Then the attorney must file a motion with the applicable court requesting permission to participate in the particular proceeding in that court. The attorney must provide the court with proof of payment of the $250 fee.

J. NOTICE OF SELF-HELP RESOURCES

Gov't Code
Sec. 51.808

The Clerk must post a link to TexasCourtHelp.org on the court's Internet website and must post a conspicuous sign in a location frequently accessed by the public in the Clerk's office that contains information found on the Texas Court Help website (https://www.texascourthelp.gov/).

K. PROTECTIVE ORDERS

Gov't Code
Ch. 72, Subch. F

Clerks must enter certain protective order application and order information into the Office of Court Administration's Internet-based protective order application and order registry. Clerks can access the registry here: https://courtal.txcourts.gov/.

Clerks should bookmark the registry's authorized user information and instructions page, available at https://www.txcourts.gov/judicial-data/protective-order-registry/authorized-user-information-instructions/, which contains background information on the registry, user instructions, relevant registry laws and rules, and an FAQ.

Sec. 72.151(3)

Here, "protective order" means an order issued by a court in Texas under Family Code Chapters 83 or 85 to prevent family violence (as defined by Family Code §71.004), or issued by a court in Texas under Code of Criminal Procedure Chapter 7B, Subchapter A to prevent sexual assault or abuse, stalking, trafficking, or other harm to the applicant, or a magistrate's order for emergency protection issued under Code of Criminal Procedure Article 17.292, with respect to a person who is arrested for an offense involving family violence.

Registry entry applies only to:

Sec. 72.152

- An application for protective order filed under Family Code Chapter 82, Code of Criminal Procedure Chapter 7B, Subchapter A, or Code of Criminal Procedure Article 17.292 with respect to a person who is arrested for an offense involving family violence; and
- A protective order issued under Family Code Chapters 83 or 85, Code of

Criminal Procedure Chapter 7B, Subchapter A, or Code of Criminal Procedure Article 17.292 with respect to a person who is arrested for an offense involving family violence.

Except where delay is permissible:

- The clerk of the court must enter a copy of a protective order application into the registry as soon as possible but not later than 24 hours after the time the application is filed; and

Gov't Code *Sec. 72.156*

- The clerk of the court must enter into the registry a copy of a protective order and if applicable a notation regarding any modification or extension of the order, and the information required under Government Code §72.154(b), as soon as possible but not later than 24 hours after the time a court issues an original or modified protective order or extends the duration of a protective order.

Sec. 72.157(a)

Sec. 72.157(c)

Except as allowed by Government Code § 72.157(b-1), for a protective order that is vacated or that has expired the clerk must modify the record of the order in the registry to reflect the order's status as vacated or expired. The clerk must ensure that a record of a vacated order is not accessible by the public. For a protective order that is vacated as the result of an appeal or bill of review from a district or county court, the clerk must notify the Office of Court Administration not later than the end of the next business day after the date the protective order was vacated.

Sec. 72.157(b)

Sec. 71.157(b-1)

CHAPTER 15

REQUESTS FOR RECORDS

A. INTRODUCTION

District Clerks often receive requests to inspect or copy records. The law that applies to requests for records depends on the type of record that is requested. In general, records held by District Clerks are court case records.

> ***NOTE: Open Government Training.*** *Elected and appointed officials are required to complete Open Government Training not later than 90 days after taking the oath of office or assuming the duties of the office.*

Gov't Code
Sec. 552.012

More information, including frequently asked questions and resource materials, can be obtained from the Open Government section of the Attorney General's website at: https://www.texasattorneygeneral.gov/og/open-government-related-publications.

B. REQUESTS FOR COURT CASE RECORDS

District Clerks frequently receive requests for records related to proceedings in the courts they serve. For example, a Clerk may receive a request to see the file in a civil case. Another possible request might be for a copy of a particular felony case. The requests a Clerk may receive for court case records are as wide and varied as the universe of documents that may be filed in any court proceeding handled by a district court.

A.G. Op.
DM-166 (1992)
H-826 (1976)

A District Clerk holds court case records on behalf of the judges of the courts served by the Clerk. Therefore, **court case records maintained by District Clerks are records of the judiciary**.

Gov't Code
Sec. 552.003(1)(B)

The Public Information Act (PIA) **does not apply** to records of the judiciary. The Texas Legislature has expressly excluded the judiciary and its records from the PIA. *Accordingly, when dealing with a request for court case records, District Clerks need not concern themselves with the PIA.* The PIA is not relevant to a request for court case records.

Texas Rules of Jud. Admin.
Rule 12.2(d)

Similarly, Rule 12 of the Texas Rules of Judicial Administration does not apply to court case records. Rule 12 deals only with public access to "judicial records." A **judicial record** is a record made or maintained by or for a court in its regular course of business but not pertaining to its adjudicative function. *A record that is filed in connection with any matter that is or has been before a court would be a record pertaining to a court's adjudicative function and would not be a judicial record*. Examples of judicial records might include a judge's calendar, a court's security plan, personnel records, and written materials obtained in connection with an educational seminar.

> ***NOTE:*** *Judicial records are almost always maintained by judges themselves and not by Clerks. If a District Clerk receives a request for a judicial record, the Clerk should refer the requestor to the*

relevant judge.

Correspondingly, a judge may receive a request for court case records. Because court case records are maintained by Clerks, the judge should refer the person making such a request to the Clerk.

Like court case records judicial records are records of the judiciary, but the two types of records are entirely separate. **A record cannot be both a court case record *and* a judicial record**.

Gov't Code
Sec. 552.0035

The fact that neither the PIA nor Rule 12 apply to requests for court case records does not mean there are no laws controlling requests for court case records. Many statutes address the right of access to court case records. Public access to certain court case records is controlled by judicial rules such as the Texas Rules of Civil Procedure. If there are no applicable statutes or rules regarding the release of a particular type of court case record, then access to such a record is controlled by common law.

1. General Rule – Court Case Records are Open to the Public

a. Statutes Controlling Access to Court Case Records

Certain statutes make particular types of documents public information.

I. Arrest Warrants and Supporting Affidavits

CCP
Art. 15.26
Art. 18.01(b)

The Texas Legislature has specifically stated that arrest warrants and affidavits in support thereof are "public information." The Clerk of the magistrate who issued the arrest warrant is required to make a copy of both the warrant and the supporting affidavit available for public inspection.

Similarly, affidavits in support of search warrants become public information when the search warrant is executed, and the Clerk must copy and make the affidavit available for public inspection. The statute does not say that search warrants themselves are public information, but this does not mean the public should not be granted access to search warrants under other law.

II. Indictments

Art. 20A.304

Code of Criminal Procedure Article 20A.304 distinguishes between when the presentment of an indictment can and cannot be made public. If the defendant is in custody or under bond at the time the indictment is presented, the facts of the presentment must be entered in to the court's record. On the other hand, if the defendant is not in custody or under bond at the time the indictment is presented, the indictment cannot be made public and entry in the court's records relating to the indictment must be delayed until the capias is served and the defendant is placed in custody or under bond.

III. Deferred Adjudication

Art. 42A.106(a)

The fact that a criminal defendant is granted deferred adjudication does not serve to make his or her criminal file confidential. Rather, the Code of Criminal Procedure affirmatively states that, except for the existence of a nondisclosure order, a record in

the custody of the court Clerk regarding a case in which a person is granted deferred adjudication is not confidential.

IV. Parentage Cases

Papers and records in proceedings to adjudicate parentage (*i.e.*, paternity suits) are available for public inspection.

Family Code *Sec. 160.633*

b. Court Rules Controlling Access to Court Case Records

Records filed in connection with any matter before any civil court are presumed to be open, other than documents filed in actions originally arising under the Family Code, documents filed with a court in camera solely for the purpose of obtaining a ruling on their discoverability, and documents to which access is otherwise restricted by law.

TRCP *76a*

Clear Channel Communications v. United States Auto Ass'n, *195 S.W.3d 129 (Tex. App.—San Antonio 2006, no pet.).*

This presumption may be overcome, and the court case records may accordingly be sealed, only in certain limited situations in which the judge finds that (1) a specific, serious and substantial interest clearly outweighs the presumption of openness and any probable adverse effect that sealing will have upon the general public health or safety; and (2) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted. The sealing of court records without compliance with TRCP Rule 76a is improper.

Attorneys have a special right of access to the records of cases in which they are involved, and each attorney at law practicing in any court must be allowed, at all reasonable times, to inspect the papers and records relating to any suit or other matter in which the attorney may be interested.

TRCP *76*

c. Common Law Principles Controlling Access to Court Records

In the absence of a statute or court rule, access to court case records is controlled by common law.

AG Op. *DM-166 (1992)*

The United States Supreme Court has observed that the courts of this country recognize a general right to inspect and copy court case records, but this right is not absolute.

Nixon v. Warner Communications, *435 U.S. 589, 597-98 (1978)*

Ashpole v. Millard, *778 S.W. 2d 169 (Tex. App. – Houston [1st Dist.] 1989, no writ)*

Built on the Supreme Court's reasoning, a Texas appellate court clarified that the public's right to inspect and copy court case records is subject to the court's inherent power to control access to its records. But a court's power to limit access to its records ends when the court no longer has jurisdiction over the case.

2. Exceptions to General Rule that Court Case Records are Open

TRCP Rule 76a specifically states that the court records presumed to be open do not include "documents in court files to which access is otherwise restricted by law." The laws which serve to create "exceptions" to Rule 76a's general rule of openness are delineated below.

TRCP *76a*

a. Juvenile Case Records

Juvenile records — any documentation that is related to a juvenile matter, including information contained in a document — are confidential and subject to restricted access. Common examples would be offense or incident reports, witness statements and lab reports. Such records must be maintained in paper or electronic format on a local basis and must be kept separate from adult files and records.

Family Code
Sec. 58.251

The records and files (whether physical or electronic) of a juvenile court or a clerk of court relating to a child who is a party to a proceeding under Family Code Title 3 are open to inspection and copying ONLY by:

Sec. 58.007(b)

- the judge, probation officers, and professional staff or consultants of the juvenile court;
- a juvenile justice agency as that term is defined by Family Code §58.101;
- an attorney representing the child's parent in a proceeding under Family Code Title 3, an attorney representing the child, or a prosecuting attorney;
- an individual or entity to whom the child is referred for treatment or services, including assistance in transitioning the child to the community after the child's release or discharge from a juvenile facility;
- a public or private agency or institution providing supervision of the child by arrangement of the juvenile court or having custody of the child under juvenile court order; or
- with the juvenile court's permission, any other individual, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

A person who is the subject of the records is also entitled to access the records to prepare and present a motion or application to seal the records.

Sec. 58.007(b-1)

Not all records are subject to the above confidential provisions. The following records are still subject to public inspection:

- Motor vehicle records relating to a child; municipal and justice court records of criminal cases relating to a child; sex offender records relating to a child maintained under Code of Criminal Procedure Chapter 62; records required to be provided to the FBI under §411.052, Government Code, for use with the NICS system; or records required to be forwarded to DPS under §411.0521, Government Code;

Sec. 58.007(a)

- Records that must be released under Code of Criminal Procedure Article 15.27 (notification of arrest to school) and under Family Code §54.051 (determinate sentence probation to appropriate district court); and

Sec. 58.007(b)

Sec. 54.02(s)

- The petition for discretionary transfer, the transfer order, and the commitment order, if any, transferred under Family Code §54.02 (waiver of jurisdiction by juvenile court and discretionary transfer to criminal court).

b. Juror Information Sheets in Criminal Cases

CCP
Art. 35.29

Information about a person who serves as a juror in a criminal case, such as the juror's home address, home telephone number, social security number, and driver's license number, and other personal information is confidential and may not be disclosed absent an order of the court in which the juror served. There are two exceptions to this prohibition:

- a good cause for disclosure exception that requires court permission for disclosure (applicable to a party in the trial and to a bona fide member of the news media acting in that capacity); and
- a defense counsel successor exception (applicable only in a Code of Criminal Procedure Article 11.071 case).

AG Op.
GA-0422 (2006)

Jury lists are not confidential. Petit jury lists in a criminal matter are not the type of information made confidential by Article 35.29. That statute does not impose a duty on a Clerk or a judge to keep jury lists confidential (after the point in time when the case is called for trial and the names of those summoned as jurors have been called).

c. Juror Questionnaire

Gov't Code
Sec. 62.0132(f)

The information contained in a juror questionnaire is confidential. The information contained in a completed questionnaire may be disclosed only to:

- a judge assigned to hear a cause of action in which the respondent to the questionnaire is a potential juror;

Sec. 62.0132(g)

- court personnel;
- a litigant and a litigant's attorney in a cause of action in which the respondent to the questionnaire is a potential juror; and
- other than information provided that is related to a misdemeanor theft or a felony conviction or accusation, the voter registrar of the county in connection with any matter of voter registration or election administration.

d. Exceptions Applicable Only in a County with a Population of 3.4 Million or More

Family Code
Sec. 6.411

If a county has a population of 3.4 million or more:

Sec. 82.010

Sec. 102.0086

- the pleadings and documents filed in a court for the dissolution of marriage are confidential and may not be released to a person who is not a party to the suit until after the date of service of citation or the 31st day after the date of filing suit, whichever date is sooner;
- an application for a protective order is confidential and may not be released to a person who is not a respondent to the application until after the date of service of notice of the application or the date of the hearing on the application, whichever date is sooner; and
- the pleadings and documents filed in a suit affecting the parent-child relationship are confidential and may not be released to a person who is

not a party to the suit until after the date of service of citation or the 31st day after the date of filing the suit, whichever date is sooner.

e. Suits for Adoption

Family Code *Sec. 162.022*

The records concerning a child maintained by the Clerk after entry of an order of adoption are confidential. No person may access the records except for good cause under an order of the court that issued the order of adoption.

f. Sealed Records

TRCP *76a(1), (2)*

Fox v. Anonymous, *869 S.W. 2d 499 (Tex. App.-San Antonio 1993, writ denied)*

Court orders and opinions cannot be sealed. Other civil court records are presumed to be open to the public and may be sealed only when certain criteria are met. This presumption of openness does not extend to certain documents filed in camera, documents in court files to which access is otherwise restricted by law, and documents filed in an original action arising under the Family Code. The presumption of openness notwithstanding, certain information may be ordered to be redacted from an otherwise open judgment.

TRCP *76a(3), (6)*

Court records may be sealed only upon a party's written motion, which must be open to public inspection, and a motion to seal records must be decided by a written order that is open to the public.

Family Code *Sec. 162.021*

Civ. Prac. & Rem. Code *Sec. 144.005*

Courts may order the sealing of a file in a suit requesting an adoption. Courts must seal records concerning orders issued under Civil Practice and Remedies Code Chapter 144, which deals with certain court orders dealing with certain former mental health patients.

The law is silent as to the exact meaning of "sealing a record." However, the general understanding appears to be that a judge's order that a Clerk seal a record requires something more than merely not making the record publicly accessible. The recommended practice is that the Clerk place an actual seal around the record or records in question and physically place the records in a special area. The physical seal is not to be broken until the records are ordered to be unsealed.

g. Parental Notification Case Records

Family Code *Sec. 33.003(k)*

SCR *1.3*
SCR *1.4*

In re Jane Doe, *19 S.W. 3d 249 (Texas 2000)*

All court documents pertaining to a minor's application for judicial approval to undergo an abortion are confidential and privileged. Not only are the documents confidential but the Clerk may not divulge to anyone (except essential court personnel) that the minor was ever in the Clerk's office, was ever pregnant, and ever sought to have an abortion. Even the disclosure of the trial court in which a proceeding was held is in violation of the rule of confidentiality.

h. Forms and Information Provided to Clerk so That Interest Earned on Registry Funds Can be Reported to the Internal Revenue Service

Loc. Gov't Code *Sec. 117.003*

If any funds deposited into the court registry are placed into an interest-bearing account, any person with a taxable interest in the funds must submit appropriate tax forms and provide correct information to the Clerk so that the interest earned on such funds can be reported to the Internal Revenue Service. The information and forms

provided to the Clerk are not subject to public disclosure except to the extent necessary to comply with federal tax law requirements.

i. Expunction Proceedings

CCP
Art. 55.02, Sec. 5(c)

Generally, the records and files of expunction proceedings are not public record and may not be inspected by anyone other than the person who is the subject of the expunction order. There are two exceptions to this rule:

- If the basis for the expunction was an entitlement under Code of Criminal Procedure Article 55.01(d).
- If the order of expunction provides that the records are to be retained pursuant to Code of Criminal Procedure Article 55.02, Sec. 4(a).

The District Clerk must obliterate all public references to the expunction proceeding and must maintain the files or other records in an area not open to inspection.

C. REDACTION OF INFORMATION FROM RECORDS

Several laws prohibit the release of certain information contained within records that are open to the public. This section explores these laws.

1. Redaction Process

To redact information from a document means to remove confidential references from the document. There is no specific statute detailing the proper method of redacting information from a document, but the general and recommended practice is to make a copy of the original document and remove the confidential references from the copy of the document. The original document should remain unaltered.

The confidential references are usually removed from the copy of the document via blackening. Sometimes the confidential references can still be ascertained even after the relevant area of the document is blackened. If this is the case, a copy of the altered copy should be made so that the references cannot be ascertained. This copy of the copy is the document that is presented to the document requestor. The requestor does not view the original document or the first blackened copy.

2. Information Contained in Victim Impact Statements

Gov't Code
Sec. 552.1325

Certain information contained in a victim impact statement or submitted to prepare a victim impact statement is confidential. This includes the name, social security number, address, and telephone number of a crime victim, as well as any other information that if disclosed would identify or tend to identify the crime victim. Accordingly, any documents (not just victim impact statements) that contain this type of confidential information must have the confidential information redacted from the documents prior to any release of the documents. This rule applies to criminal judgments. Crime victim information contained in a criminal judgment must be redacted before the criminal judgment can be made public.

AG Op.
GA-220 (2004)

3. Biometric Identifiers

A biometric identifier is a retina or iris scan, fingerprint, voiceprint, or record of

hand or face geometry. A District Clerk who possesses an individual's biometric identifier, whether as part of a court case record or public record, may not disclose the identifier to another person unless:

Gov't Code
Sec. 560.001

Sec. 560.002

- the individual consents to the disclosure;
- the disclosure is required or permitted by a federal statute or a Texas statute other than the Public Information Act; or
- the disclosure is made to a law enforcement agency for a law enforcement purpose.

A biometric identifier in the possession of a governmental body is exempt from disclosure under Government Code Chapter 552.

Sec. 560.003

4. Protective Orders

Generally, the information contained in protective orders is open to the public. However, in response to a request from the person protected by an order (or from a member of the family or household of the person protected by an order), the court may exclude from a protective order:

Family Code
Sec. 85.007

- the address, county of residence, and telephone number of a person protected by the order; or
- the address and telephone number of:
  - the place of employment or business of a person protected by the order; or
  - the child-care facility or school a child protected by the order attends or in which the child resides.

If the court grants the request for confidentiality, the court will order the Clerk to strike the information from the public records of the court and maintain a confidential record of the information for use only by the court or by a law enforcement agency to enter information into the Texas Crime Information Center.

5. Writ of Withholding

A writ of withholding is a document issued by the Clerk and delivered to an employer directing that earnings be withheld for payment of spousal maintenance.

Sec. 8.001

A writ of withholding must state, among other things, the name, address and (if available) the social security number of both the obligor and the obligee. Upon the request of an obligee, the court may exclude from the writ the obligee's address and social security number if the obligee or a member of the obligee's family or household is a victim of family violence and is the subject of a protective order to which the obligor is also subject. If the court grants the obligee's request, the Clerk must strike the address and social security number from the writ and maintain a confidential record of the obligee's address and social security number to be used only by the court.

Sec. 8.152

6. E-Mail Addresses

The law described here applies only to public records and does not apply to court

case records. An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body (including the District Clerk) is confidential. However, the e-mail address may be disclosed if the member of the public affirmatively assents to the release of the e-mail address.

Gov't Code *Sec. 552.137*

An e-mail address is not confidential if the e-mail address is:

- provided by a person who has a contractual relationship with the governmental body or by the vendor's agent;
- provided by a vendor who seeks to contract with the governmental body or by the vendor's agent;
- contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided in the course of negotiating the terms of a contract or potential contract; or
- provided on a letterhead, coversheet, printed document, or other document made available to the public;
- provided to a governmental body for the purpose of providing public comment on or receiving notices related to an application for a license as defined by Government Code §2001.003(2), or receiving orders or decisions from a governmental body.

The District Clerk may disclose an e-mail address to another governmental body or to a federal agency.

Any record that contains a confidential e-mail address must have the e-mail address redacted from the record before the record may be released to the public.

7. Social Security Numbers

Federal law provides as follows:

> Social security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such social security account number or related record.

42 ***U.S.C.*** *Sec. 405(c)(2)(C)(viii)(I)*

After conducting extensive research on this issue, OCA advises Clerks of our belief that 42 U.S.C. §405(c)(2)(C)(viii)(I) does <u>not</u> apply to court Clerks because court Clerks do <u>not</u> meet the statutory definition of "authorized persons" who obtain or maintain social security numbers "pursuant to any provision of law enacted on or after October 1, 1990." Accordingly, this federal law does not appear to require District Clerks to keep social security numbers confidential.

The social security number of a living person is excepted from disclosure under the Public Information Act but is not necessarily confidential and does not always require redaction. However, on written request from an individual or an individual's representative, a Clerk must redact all but the last four digits of the individual's social

Gov't Code *Sec. 552.147*

security number from information maintained in the Clerk's records. This includes the District Clerk's court case records. In this instance, the word "redact" really means "delete." In other words, the actual original record will be altered so as not to include the first five digits of the individual's social security number.

There is an exception that states that this redaction is not to be performed if "another law requires a social security number to be maintained in a government document." For example, Family Code §8.152 requires Clerks to maintain a confidential record of a child support obligee's address and social security number that is contained in a writ of withholding.

Family Code
Sec. 8.152

D. RESPONDING TO RECORDS REQUESTS

The Public Information Act (PIA) details relevant procedures in responding to records requests. These procedures are directly relevant only to requests for records to which the PIA is applicable. However, the procedures comprise a helpful (but not mandatory) guideline for responding to requests for court case records.

Gov't Code
Ch. 552, Subch. E

1. Time in Which to Respond to Records Requests

In response to a request for records that are open to the public, the records should be produced promptly. "Promptly" means as soon as possible under the circumstances, that is, within a reasonable time, without delay.

Sec. 552.221(a)

If the requested records are unavailable at the time of the request because the record is in active use or in storage, the Clerk would be well-advised to put this fact in writing to the requestor and set a date and hour within a reasonable time when the records will be made available for inspection or duplication.

Sec. 552.221(c)

2. Permissible Inquiries in Response to Records Requests

In regard to requests for records, the District Clerk should not make any inquiry of a requestor except to establish proper identification or to clarify the request. If a large amount of information has been requested, the Clerk may discuss with the requestor how the scope of the request might be narrowed but the Clerk should not make inquiry as to the purpose for which the information will be used. These rules are also good guidelines for records that are open under other statutes, rules or common law principles.

Sec. 552.222

The Clerk should treat all requests for information uniformly without regard to the position or occupation of the requestor, the person on whose behalf the request is made, or the status of the individual as a member of the media.

Sec. 552.223

3. Providing Copies of Requested Records

The Public Information Act does not allow requestors to remove original records from the Clerk's office. Clerks should provide copies of requested records within a reasonable period of time following the request.

Sec. 552.226

Sec. 552.228

If the requested information exists in an electronic or magnetic medium, the requestor may request a copy in an electronic medium, such as on diskette or on

magnetic tape. The Clerk should provide a copy in the requested medium if:

- the Clerk has the technological ability to produce a copy of the requested information in the requested medium;
- the Clerk is not required to purchase any software or hardware to accommodate the request; and
- provision of a copy of the information will not violate the terms of any copyright agreement between the Clerk (or county) and a third party.

If the Clerk is unable to comply with a request to produce a copy of information in a requested medium, the Clerk should provide or a copy in another medium that is acceptable to the requestor.

E. FEES IN CONNECTION WITH RECORDS REQUESTS

The charge for providing a paper copy of records made by a District Clerk's office shall be the charge provided by Government Code Chapter 51 or other applicable law. *Gov't Code Sec. 552.265*

1. Fees for Copies of Records on Paper

a. Certified Copies Generally

Often, District Clerks are asked to provide not only a copy of a particular record but a "certified copy" of the record. A certified copy is a duplicate of an original document that is certified by the District Clerk as an exact reproduction of the original document.

Through December 31, 2023, the fee for a certified copy of a record, judgment, order, pleading, or paper on file or of record in the District Clerk's office, printed on paper, including certificate and seal is $5; for each page or part of a page, $1.00. *Sec. 51.318(b)(7)*

Beginning January 1, 2024, the fee for a certified copy of a record, judgment, order, pleading, or paper on file or record in the District Clerk's office:

- including certificate and seal: $5; and
- for each page or part of a page:
  - printed on paper: $1;
  - that is a paper document converted to electronic format: $1; and
  - that is an electronic copy of an electronic document:
    - for a document up to 10 pages: $1; and
    - for each page or part of a page over 10 pages: $.10.

The Clerk is to collect the fee at the time the copy is requested or at the time the copy is provided. The Clerk is not to charge any additional amount for labor, materials, or overhead, no matter how many pages are in the document.

b. Noncertified Copies Generally

The fee for issuing a noncertified copy of a record, printed on paper, is $1.00 per page or part of a page. The fee for a noncertified copy that is a paper document converted to electronic format is $1 for each page or part of a page. The fee for a noncertified copy that is an electronic copy of an electronic document is $1 for each *Sec. 51.318(b)(8)*

document up to 10 pages in length and $.10 for each page or part of a page over 10 pages. As is the case with certified copies, the Clerk is not to charge any additional amount for labor, materials, or overhead. The fee must be paid at the time the order for the noncertified copy is placed or at the time the copy is provided.

2. Fees for Copies of Records on a Format Other Than Paper

A District Clerk who provides a copy of a court case record in a format other than paper is not bound to charge any particular amount. However, the District Clerk may wish to charge the amount set by the Attorney General for copies of public information, as detailed in Texas Administrative Code Title 1, Chapter 70: *1 **TAC** §70.10(2)*

- diskette ..... $ 1.00
- magnetic tape ..... actual cost
- data cartridge ..... actual cost
- tape cartridge ..... actual cost
- CD
  Rewritable (CD-RW) ..... $ 1.00
  Non-rewritable (CD-R) ..... $ 1.00
- Digital video disk (DVD) ..... $ 3.00
- JAZ drive ..... actual cost
- other electronic media ..... actual cost
- VHS video cassette ..... $ 2.50
- audio cassette ..... $ 1.00
- oversize paper copy ..... $ .50
  (excluding maps or photos)
- Specialty paper ..... actual cost
  (e.g., Mylar, blueprint, map, photo)

These charges are to cover the cost of materials only. The rules state that personnel costs involved in locating, compiling, and reproducing the non-paper copies of records may be charged at a rate of $15 per hour per person. However, the rules state that if the services of programming personnel were required to comply with the request, then those programming personnel charges should be billed at the rate of $28.50 per hour. *1 **TAC** §70.10(3)*

Whenever any personnel charge is applicable to a request for non-paper copies of records, the Clerk may also wish to include direct and indirect overhead costs in the charges. These charges may cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead. The rules state that the overhead charge should be 20 percent of any labor charge. *1 **TAC** §70.10(4)*

If the Clerk already has the requested information on microfiche or microfilm and has copies available for sale or distribution, the charge for a copy should not exceed the cost of its reproduction. If no copies are available and the information on the microfiche or microfilm can be released in its entirety, then the Clerk should make a copy of the microfiche or microfilm and should not exact a charge that is greater than the cost of reproduction. If the Clerk cannot reproduce microfiche or microfilm in-house, then the *1 **TAC** §70.10(5)*

Clerk may wish to charge the actual costs of having the reproduction made commercially.

The Clerk may also wish to charge additional fees in connection with providing non-paper copies of requested documents such as remote document retrieval charges, computer resource charges, miscellaneous supplies charges, and postal or shipping expenses.

1 ***TAC*** *§70.10(7) – (13)*

If a requested page contains confidential information that must be edited from the record before the information can be made available for inspection, the District Clerk may wish to charge for the cost of making a photocopy of the page from which confidential must be edited.

Gov't Code
Sec. 552.271

APPENDIX A

TEXAS ATTORNEY GENERAL OPINIONS, LETTER OPINIONS AND OPEN RECORD DECISIONS

Attorney General Opinions

An attorney general opinion is a written interpretation of existing law. Attorney general opinions cannot create new provisions in the law or correct unintended, undesirable effects of the law. Attorney general opinions do not necessarily reflect the attorney general's personal views, nor does the attorney general in any way "rule" on what the law should say. Attorney general opinions cannot resolve factual disputes.

Who Can Request an Attorney General Opinion?

Government Code §§402.042 and 402.043 set out the state and local officials who are authorized to request formal Attorney General opinions on questions of law. The Attorney General is prohibited by statute from giving a written opinion to anyone other than an authorized requestor. The Attorney General must also advise a district or county attorney in certain instances in which the State is interested, and certain requirements are met. Additionally, the Attorney General must advise the proper authorities regarding the issuance of bonds that by law require the Attorney General's approval.

How Does Someone Request an Attorney General Opinion?

If the law authorizes you to request an attorney general opinion, you may send a request letter in writing in one of two ways:

- Email: opinion.committee@oag.texas.gov
- Certified or registered mail, with return receipt requested:

  Office of the Attorney General
  Attention Opinion Committee
  P.O. Box 12548
  Austin, Texas 78711-2548

No specific formatting requirements exist to submit a request, but it should include any relevant background information and known legal authorities significant to the subject matter.

Legal Effect of Opinions

The appellate courts of Texas have consistently held that attorney general opinions, although not binding on the courts, are entitled to "great weight." An opinion of the Attorney General should be deemed to state the law correctly, unless or until the opinion is modified or overruled by statute, judicial decision, or subsequent attorney general opinion.

Open Records Decisions

Open Records Decisions are formal opinions relating to the Public Information Act (formerly the Open Records Act). These decisions usually address novel or problematic legal questions and are signed by the Attorney General. Open Records Decisions (ORD) may be cited as precedent in

briefing to the Open Records Division. ORDs may be accessed on the Attorney General's website at https://www.texasattorneygeneral.gov/opinions.

Letter Opinions

In most cases, an opinion that is designated by the initials of the attorney general addresses issues that are or may be of interest to persons throughout the state. A Letter Opinion generally addresses issues that are local in nature or that affect the interests of a person or group. The "LO" designation does not mean that a document is any less authoritative than one denominated by the attorney general's initials. On January 4, 1999, Attorney General John Cornyn discontinued the practice of issuing letter opinions. All attorney general opinions are now issued under the Attorney General's initials; i.e., Attorney General Ken Paxton's opinions would be named KP-0001, KP-0002, etc. LOs may be accessed on the Attorney General's website at https://www2.texasattorneygeneral.gov/opinion/information-on-letter-opinions.

Open Records Letter Rulings

Unlike Open Records Decisions, Open Records Letter Rulings (ORs) are limited to the particular information at issue in each particular request and limited to the facts as presented to the Attorney General. Unless explicitly stated otherwise in the ruling, a ruling must not be relied upon as a previous determination regarding any other information or any other circumstances. ORs may be accessed on the Attorney General's website at https://www2.texasattorneygeneral.gov/open/index_orl.php.

Appendix A Materials

As in previous versions of this manual, the Office of Court Administration is not providing copies of the opinions or decisions cited. The summaries below show the opinion or decision number, the year of the opinion or decision, and the issue presented.

There are several other ways to obtain a copy of an Attorney general opinion. You may obtain an electronic copy directly from the Office of the Attorney General's website (https://www.texasattorneygeneral.gov/attorney-general-opinions). If you do not have internet access, or, if you would like a copy of an opinion that is not online, you may call the Opinions Library at the Attorney General's Office at 512-463-2110. You may also subscribe to the Notification of Opinions subscription list to receive an e-mail alert regarding newly issued Attorney General Opinions by following the directions online here: https://www.texasattorneygeneral.gov/about-office/email-subscriptions-center.

OPINION	ISSUE PRESENTED
C-637 (1966)	Whether an appropriation could be made for the payment of certain witness fees, if the claims therefore are not filed in the Comptroller's Office within 12 months from the date they became due, under the provisions of Art. 35.27, Vernon's Code of Criminal Procedure, and related questions.
DM-26 (1991)	Fees payable to county and district clerks in eminent domain cases and when fees are payable by state agency.
DM-34 (1991)	Division of authority over the selection of prospective jurors between a district clerk and a jury administrator.
DM-166 (1991)	Whether charges for uncertified copies of records of judiciary in district clerk's office are set by section 9(d) of article 6252-17a, V.T.C.S.
DM-174 (1992)	Authority of county clerk to charge fees under section 31.008, Civil Practice and Remedies Code, and related questions.
DM-222 (1993)	Whether a child support obligee may modify a child support order by filing with a district clerk a limited power of attorney authorizing a corporation to receive child support payments paid through the district clerk's office along with a request that the clerk send the child support payments to that corporation.
DM-282 (1994)	Whether a county must maintain a special and separate account for cash bail bond funds that the county receives pursuant to article 17.02 of the Code of Criminal Procedure and related questions.
DM-283 (1994)	Whether section 291.007 of the Local Government Code authorizes a county commissioner’s court to set a security fee of not more than five dollars to be taxed as court costs in each civil case filed in a probate court, as well as in a county court, county court at law, and district court, and related questions.
DM-295 (1994)	Whether the district clerk filing fees provided for in section 51.317 of the Government Code apply to the filing of an application for a pre-indictment writ of habeas corpus, and related questions.
DM-296 (1994)	Whether a district clerk may honor a change of address request from a child support obligee to remit child support payments to the care of a collection agency.
DM-342 (1995)	Whether witness fees under section 22.001, Texas Civil Practice and Remedies Code, must be paid to a person who is subpoenaed to appear and give testimony at a location other than the courthouse.
DM-348 (1995)	Validity and constitutionality of section 117.002 of the Local Government Code, which concerns the turnover of abandoned funds held by the county of district clerk to the State of Texas.
DM-382 (1996)	Whether a district clerk may require an advance deposit of fees for service of process by a sheriff or constable; whether deferred collection of the fee for service of civil process by a sheriff or constable constitutes a loan of credit under article III, section 52, or article XI, section 3, of the Texas Constitution.

OPINION	ISSUE PRESENTED
DM-407 (1996)	Whether a trial judge who, in accordance with the Code of Criminal Procedure article 42.12, places a defendant on community supervision may allocate money the defendant is to pay as fees, costs, and fines as the judge chooses and related questions.
DM-459 (1997)	Whether the State of Texas is exempted from paying filing fees and other court costs prior to judgment; reconsideration of Attorney General Opinion MW-447A (1982).
DM-464 (1997)	Constitutionality of SB 1417, Acts 1997, 75th Leg., R.S., ch. 1327, and related questions. Time payment fee.
GA-0220 (2004)	Whether a standard felony judgment form should contain the name and address of a crime victim.
GA-0396 (2006)	Whether the state may continue to collect fines and court costs where no motion to adjudicate has been filed and the term of deferred adjudication has expired.
GA-0398 (2006)	Eligibility of former and retired judges to sit by assignment.
GA-0404 (2006)	Whether the seal placed on certified copies of documents recorded in the county clerk's office must be raised.
GA-0413 (2006)	Payment of uncollected fines, fees and court costs by defendants who have been administratively released from community supervision.
GA-0422 (2006)	Confidentiality of grand and petit jury lists.
GA-0436 (2006)	Whether a county or district clerk is required to charge an administrative fee for the return of funds deposited with the clerk as a cash bail bond; reconsideration of Attorney General Opinion JC-1063 (1999).
GA-0446 (2006)	Conflict of interest disclosure requirements for local government officers and persons who contract with local governmental entities.
GA-0461 (2006)	Whether an indigent parent is entitled to receive a free transcript of hearings and depositions in cases where the state initiates proceedings under chapter 262 of the Family Code.
GA-0486 (2006)	Whether the $37 filing fee authorized by House Bill 11, 79th Legislature, Second Called Session, may be collected in bond forfeiture matters.
GA-0488 (2006)	Whether a part-time deputy district clerk may be simultaneously employed by a private attorney.
GA-0489 (2006)	Amendments made in 2003 to Family Code chapter 107 and the circumstances related to those changes in which a county may pay for the services of an amicus attorney, attorney ad litem, or guardian ad litem appointed in a private suit affecting the parent-child relationship.
GA-0491 (2006)	Whether a district clerk must collect filings fees under both section 133.151 and section 133.152 of the Texas Local Government Code.
GA-0503 (2007)	Whether a county commissioner's court may delegate non-statutorily assigned duties to other elected county officials.
GA-0515 (2007)	Whether a bail bond may be accepted in a Texas county for a person jailed in another state.

OPINION	ISSUE PRESENTED
GA-0519 (2007)	Release and redaction of social security numbers under the Public Information Act, Section 552.147, Government Code.
GA-0521 (2007)	Whether funds collected by a county clerk as part of the records management and preservation fee may be used to purchase certain archival records.
GA-0566 (2007)	Authority of the El Paso County District or County Clerk to establish an online electronic database accessible to the public.
GA-0569 (2007)	Whether certain county officers and employees may hold additional county positions.
GA-0588 (2007)	A law enforcement agency's authority concerning money seized as contraband pending a court's rendition of final judgment.
GA-0620 (2008)	Procedures that a commissioner's court must follow in the annual budget process in regard to salaries and personal expenses for each elected county and precinct officer.
GA-0636 (2008)	Whether county officials who collect funds for the county may establish individual bank accounts in their own names.
GA-0638 (2008)	Whether, without the approval of the commissioner's court, a county clerk may supplement her deputies' salaries with money from the clerk's records management and preservation fund.
GA-0661 (2008)	Whether a county is authorized to pay a performance-based bonus to elected officials.
GA-0680 (2008)	Whether the Texas Department of Insurance may access criminal history record information that is subject to nondisclosure order under Government Code section 411.081(d).
GA-0714 (2009)	Authority of a county to contract with a private entity for the collection of delinquent fines, fees, and court costs.
GA-0773 (2010)	Whether a district clerk may accept assignment of a cash bail bond refund as payment of the defendant's fines and costs.
GA-0778 (2010)	Whether a commissioner's court may amend the county budget to reduce salaries for the county clerk's office because the clerk closed her office temporarily for a weather-related emergency.
GA-0834 (2011)	Whether a local governmental body subject to the Public Funds Investment Act, chapter 2256, Government Code, may invest in money market and other demand accounts.
GA-0835 (2011)	Constitutionality of Texas Transportation Code section 251.053, concerning a commissioner's court's declaration of a public road.
GA-0839 (2011)	Authority of a county judge to unilaterlly grant access to count financial records to a volunteer financial consultant.
GA-0857 (2011)	Authority of a commissioner's court with regard to working hours, overtime and compensatory time, and timekeeping by county employees.
GA-0863 (2011)	Information that must be furnished to a respondent against whom a complaint is filed with the Texas Ethics Commission.
GA-0865 (2011)	Deadline for initiating a salary grievance proceeding by a county or precinct officer.

OPINION	ISSUE PRESENTED
GA-0869 (2011)	Whether a county auditor is responsible for oversight of a constable's continuing education funds allocated under section 1701.157, Occupations Code.
GA-0872 (2011)	Authority of a commissioner's court and a county auditor with regard to county budget amendments.
GA-0875 (2011)	Use of the judicial fund created by section 21.006 of the Government Code.
GA-1017 (2013)	Whether Family Code section 58.0071 authorizes the custodian of physical records and files in a juvenile case to destroy hard copies in particular instances. (RQ-1119-GA) Family Code subsection 58.0071(b) authorizes the custodian of physical records and files in a juvenile case to destroy hard-copy, original paper records and files at any time if the custodian electronically duplicates and stores the information in the records and files. Family Code subsection 58.0071(c) authorizes a juvenile board, law enforcement agency, or prosecuting attorney to permanently destroy paper-based and electronic records and files of closed juvenile cases subject to the restrictions of subsections 58.0071(d) and (e).
GA-1021 (2013)	The appropriate court for a surety to file a release of surety for the surrender of a bond principal. (RQ-1121-GA) For purposes of Code of Criminal Procedure articles 17.16 and 17.19, after a person is released on a bond but before a formal charging instrument is filed in the county, county court-at-law or district court, prosecution is pending before the magistrate who properly received a complaint against the accused.
GA-1034 (2014)	Whether Government Code section 51.608, which requires that court costs imposed on a defendant in a criminal proceeding be the amount required on the date the defendant is convicted, violates federal and state constitutional prohibitions of ex post facto laws. (RQ-1135-GA) A Texas court would likely conclude that section 51.608 of the Texas Government Code does not violate the ex post facto clauses of the United States or Texas Constitutions.
GA-1035 (2014)	Confidentiality of records in juvenile misdemeanor cases (RQ-1136-GA) Senate Bill 393, Senate Bill 394, and House Bill 528, enacted by the Eighty-third Texas Legislature, do not irreconcilably conflict. Senate Bills 393 and 394 became effective on September 1, 2013. House Bill 528 will become effective on January 1, 2014. A court would likely conclude that the enactment of House Bill 528 will not require that the proceedings of nontraffic, fine-only misdemeanor cases involving children in justice and municipal courts must be closed to the public.

OPINION	ISSUE PRESENTED
KP-0134 (2017)	Access to clerk's records, criminal history record information subject to a nondisclosure order. Pursuant to section 411.076 of the Government Code, a court may disclose criminal history record information subject to an order of nondisclosure only to criminal justice agencies for criminal justice or regulatory licensing purposes, to the person who is the subject of the order, or to an agency or entity listed in section 411.0765(b) of the Government Code. Such criminal history record information may not be disclosed to employees of a district or county clerk except as necessary for statutorily authorized purposes. The adequacy of measures necessary to seal criminal history record information involves questions of fact that cannot be determined in an attorney general opinion.
KP-0257 (2019)	Section 604A.0021 of the Business and Commerce Code prohibits imposing a surcharge for the use of a credit card in certain instances. Although a recent judicial decision held section 604A.0021 unconstitutional as applied to specific facts, it remains enforceable in some contexts. But it does not apply to a county imposing a surcharge on a payee using a credit card for the payment of money owed to the county. Section 103.0031 of the Code of Criminal Procedure authorizes a county to contract with a private attorney or a public or private vendor for the provision of collection services for fees. If a county is entitled to impose a surcharge fee for credit card use, a court would likely conclude that a private attorney or collections agency acting as agent for the county could collect that surcharge on behalf of the county when collecting other fees, taxes, or other charges.
KP-0263 (2019)	Under article 102.0121 of the Code of Criminal Procedure, the commissioners court, not the prosecuting attorney, ultimately determines the authorized uses of the county pretrial intervention program fund. The statute authorizes the commissioners court to use the pretrial intervention fund for an employee's salary, salary supplement, or a benefit only to the extent the use of the fund is solely for the administration of the program.
H-826 (1976)	Whether court records pertaining to certain types of cases affecting the parent-child relationship are confidential.
JC-163 (1999)	Whether a county or district clerk may withhold fee from funds deposited as cash bail bond.
JC-195 (2000)	Whether a county sheriff is authorized to manage and dispose of cash bail bond money for unfiled criminal cases, and related questions.
JC-259 (2000)	Whether a recent amendment to article 42.01, section 2 of the Code of Criminal Procedure precludes a court clerk from preparing a judgment.
JC-346 (2001)	Whether a statute that permits a court to order income withholding to collect certain attorney's fees and costs associated with establishing or enforcing a child support obligation violates art. XVI, section 28 of the Texas Constitution.

OPINION	ISSUE PRESENTED
JM-216 (1984)	Whether a district clerk may docket a transferred case before the filing fee is paid.
JM-358 (1985)	Whether a separate docket sheet is required for the criminal docket kept by district clerks.
JM-373 (1985)	Authority of a county and/or district clerk to affix a judge's signature to a judgment on a criminal case.
JM-384 (1985)	Whether certain fees may be charged by a district clerk.
JM-397 (1985)	When a county treasurer is required to deposit funds under art. 1709a, V.T.C.S., and related questions.
JM-434 (1986)	Whether a county clerk is entitled to receive a fee in connection with administration of trust funds under art. 2558a, section 4c(a), V.T.C.S.
JM-727 (1987)	Duty of district clerk to file and docket improperly tendered documents.
JM-757 (1987)	Right of an individual to copy and reproduce public records in a district or county clerk's office.
JM-779 (1987)	Whether a district attorney is required to reimburse a county clerk for services rendered pursuant to a bond forfeiture proceeding.
JM-1162 (1990)	Regarding the status of trust funds held by a district clerk.
L.O. 92-087	Whether a district clerk may charge a fee for making certified copies of papers in a cause of action transferred to another court pursuant to rule 89 of the Texas Rules of Civil Procedure and related questions.
L.O. 93-089	Authority of a district clerk to impose certain fees in a proceeding for the forfeiture of contraband.
L.O. 93-094	Fees for issuing and "serving" a writ of income withholding for child support.
L.O. 94-042	Whether section 291.007 of the Local Government Code authorizes El Paso County to collect as a court cost a security fee for cases filed in the county probate court and related questions.
L.O. 94-085	Whether the district clerk may file an abstract of judgment for nonpayment of court costs.
L.O. 96-023	Investment of county funds governed by chapter 117, Local Government Code, and related questions.
L.O. 96-072	Fees for filing petition for preindictment writ of habeas corpus and a related question.
L.O. 96-131	Fee for filing verified petition for occupational driver's license following conviction for driving while intoxicated.
L.O. 97-009	Whether, in a civil case in which the litigants have agreed to fund an increase, jurors may receive a jury fee different from that the commissioner’s court has set and related questions.
L.O. 97-044	The legality of a district clerk collecting the initial operations fee on behalf of the domestic relations office.
L.O. 97-082	Computer signature on arrest warrants and affidavits.
L.O. 98-016	Instruments that the county clerk may accept for filing and recording.
MW-298 (1981)	Whether section 53.06 of the Family Code requires service of summons on the parents of a married juvenile.

OPINION	ISSUE PRESENTED
OR 2000-1914	Whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code.
ORD 2001-2485	Whether certain information regarding minors receiving abortions without parental notification through the judicial approval process is subject to public disclosure.
ORD 2002-2558	Whether certain information regarding appointment of attorneys to represent minors under the Parental Notification Act is subject to public disclosure.
ORD 2002-3007	Whether certain information regarding payment to attorneys in cases under the Parental Notification Act is subject to public disclosure.
ORD No. 411 (1984)	Whether the names of individuals subpoenaed before a grand jury are available to the public under Open Records Act.
ORD No. 433 (1986)	Whether an indigent is entitled to an exemption from the cost provisions of the Open Records Act, article 6252-17a, V.T.C.S., whether the names of grand jurors are subject to required disclosure under the act, and related questions.
ORD No. 434 (1986)	Whether information in investigative files may be withheld under the Open Records Act.
ORD No. 513 (1988)	Whether records of an investigation into alleged criminal activity at the Dallas/Ft. Worth International Airport are subject to required disclosure under the Open Records Act, article 6252-17a, V.T.C.S.

DISTRICT CLERK PROCEDURE MANUAL

FORMS

Form II-1 — Request for Exemption Due to Physical Impairment

Form II-2 — Request for Exemption Due to Mental Impairment

Form II-3 — Request for Exemption Due to English Language Inability

Form II-4 — Order Granting Juror Exemption

Form II-5 — List of Jurors Names Drawn from Jury Wheel

Form II-6 — Defendant's Jury List

Form II-7 — State's/Plaintiff's Jury List

Form II-8 — List of Jury Chosen

Form II-9 — Juror Donation Form

DISTRICT CLERK REPORTING REQUIREMENTS†

2023

† The following list of reporting requirements should not be considered an exhaustive list, and the following information is intended only to assist clerks in educating themselves about certain reporting requirements. Although the Office of Court Administration makes every effort to ensure the accuracy of the information below, clerks retain the responsibility to stay up to date on statutory and rule-based reporting requirements.

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
1	**Adoption** Decree	Certificate of Adoption	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-160 www.dshs.state.tx.us/vs/reqproc/forms/vs160.pdf (888) 963-7111	Not later than the 10th day of the first month after the month in which the adoption is rendered.	Family Code, § 108.003 Health & Safety Code § 192.009	Clerk to transmit a certified report of adoption using a VS-160 form.
2	Appeal of decision of the Texas **Workers' Compensation** Commission (TWCC) where one of the parties is the State of Texas or a listed Texas state actor		Texas Workers' Compensation Commission–Hearing Division 7551 Metro Center Dr. #100 Austin, TX 78744	(512) 804-4055	Not later than the 20th day after the date the suit is filed must send the notice Not later than the 20th day after the date the judgment is rendered must send certified copy of the judgment	Labor Code §§ 501.022, 501.050, 502.069, 503.069, 505.059	Clerk must mail a "notice" to the TWCC giving the case style, case number, and date the case was filed. The listed Texas state actors (in addition to the State of Texas itself) are: (1) Texas A & M University System; (2) University of Texas System; (3) Texas Tech University System; (4) State Employees' Workers' Compensation Fund; and (5) Texas Department of Transportation. The clerk may not assess any fee for making the notification. A clerk who does not comply with this notice requirement commits a misdemeanor offense.
3	Appointments by Court for Attorney Ad Litem, Guardian Ad Litem, Guardian, Mediator, or Competency Evaluator		Office of Court Administration P.O. Box 12066 Austin, TX 78711	http://www.txcourts.gov/reporting-to-oca/appointments-and-fees/district-county/ 512-463-1625 judinfo@txcourts.gov	Not later than the 15th day of each month for the preceding month's report	Gov't Code §§36.004, 36.005 Gov't Code §71.035	Clerk of each court must prepare a report on court appointments for an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluation for a case before the court in the preceding month. For a court that does not make an appointment in the preceding month, the clerk must file a report indicating that no appointments were made during the month. Reports here focus on appointments as attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case by the court. The report must include: (1) the name of each person appointed by the; (2) the name of the judge and the date of the order approving compensation to be paid to the appointed person; (3) the number and style of each case in which a person was appointed; (4) the number of cases each person was appointed by the court to serve and (5) the total amount of compensation paid; and (6) if the total compensation paid to a person for one appointed case exceeds $1,000, any information related to that case that is available to the court on the number of hours billed to the court for the work performed by the appointee (including paralegals) and billed expenses. NOTE: courts not complying with reporting requirement not eligible for ANY grant funds from the State.
4	**Child Support** Order	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Vital Statistics 1100 W. 49th Street Austin, TX 78756-3191	VS-165 www.dshs.state.tx.us/vs/sapcr/default.shtm (888) 963-7111 ext. 2549 registrar@dshs.state.tx.us	No stated time frame	Family Code § 105.008	Clerk shall provide a record of a court order for child support. VS-165 form must be used. To the extent possible, the Title IV-D agency is to reimburse the clerk for costs incurred in providing the record.
5	Court Closure / Reopening Reports		Office of Court Administration P.O. Box 12066 Austin, TX 78711	http://www.txcourts.gov/media/524139/CourtClosureReportREVISED.pdf			The Court Closure and Court Reopening forms may be submitted by email to CourtClosures@txcourts.gov.

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
				http://www.txcourts.gov/media/883044/courtreopeningreportrevised.pdf 512-463-1642			Report only closures due to an emergency or "special circumstances." An emergency includes the following: hurricane, flooding, fire, ice or snow storm, bombing, etc. "Special circumstances" include the closure of a courthouse due to repairs. Do not report court closures due to holidays, personal emergencies, vacation, sick leave, etc. If reopening information is not reported to OCA office, OCA will assume each court and clerk's office was only closed during the time initially reported and will remove the closure information posted on the OCA website. .
6	Court Order – Chemical Dependency Treatment **And** Expiration of Order of Involuntary Treatment of a Chemically-Dependent Person		Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0361	(512) 424-5720	Before the 10th day after the date the court enters the order Before the 10th day after the date of the expiration of the order.	Transportation Code § 521.319 Transportation Code § 521.319	Clerk must notify DPS of the court order so that DPS may revoke the driver's license of the person who is the subject of the order. Clerk must notify DPS that order of involuntary treatment for chemical dependency has expired.
7	Court Order – Incapacitation to Act as the Operator of a Motor Vehicle or Judgment of Total Incapacitation		Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0361	(512) 424-5720	Before the 10th day after the date the court renders the order or judgment.	Transportation Code § 521.319	Clerk must notify DPS of court's order/judgment so that DPS may revoke the driver's license of the person who is the subject of the order/judgment.
8	Court Order – Restoring a Person's Capacity		Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0361	(512) 424-5720	Before the 10th day after the date the person is restored to capacity.	Transportation Code § 521.319	Clerk must notify DPS of the fact that a person has had his or her capacity restored so that DPS will know that the revocation of the person's driver's license has expired.
9	Court Order – Person Released from Hospital for the Mentally Incapacitated		Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0361	(512) 424-5720	Before the 10th day after the release of the person from the hospital.	Transportation Code § 521.319	Clerk must notify DPS of release of person from hospital for the mentally incapacitated on a certificate of the superintendent or administrator that the person has regained capacity
10	Court Order – **releasing defendant sentenced to TDCJ on community supervision** before the 180th day after execution of sentence begins when offender is under bench warrant and not physically imprisoned in Institutional Division		Texas Department of Criminal Justice Correctional Institutions Division P.O. Box 99 Huntsville, TX 77342	(936) 437-2169 Fax: (936) 437-6325	Not later than the 7th day after the date of the defendant's release	Code of Criminal Procedure, art. 66.252(f)	The clerk is to "report" the release. No specific manner of reporting is mandated.
11	Court Order – **releasing person acquitted by reason of insanity** from mental hospital on regimen of outpatient		Crime victim or the victim's guardian or close relative		No stated time frame, but implication is immediately after the issuance of the order.	Code of Criminal Procedure, art. 46C.003	Clerk is to notify the victim or the victim's guardian or the victim's close relative of the release of the person's release from the mental hospital.

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
	care or on discharge from mental hospital						
12	**Criminal Case** Disposition	Criminal History Reporting Form	Texas Department of Public Safety Crime Record Service P.O. Box 4143 Austin, TX 78765-4143	CR-4345	Not later than the 30th day after the date on which the clerk receives the case disposition	Code of Criminal Procedure, art. 66.252(c)	The clerk shall report the disposition of the case to the DPS. The DPS provides training on how to complete this form.
13	Criminal Conviction - **automatic suspension of driver's license** required and license surrendered to court	Notice of Convictions	Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0001	DIC-17 (512) 424-5720	Not later than the 10th day after the date on which the driver's license is surrendered to the court	Transportation Code § 521.347(a)	The court in which a person is convicted of an offense requiring automatic suspension of the person's driver's license "may" require the person to surrender his or her license to the court. If the license is surrendered to the court, then the clerk must send the license to the DPS along with completed Form DIC-17.
14	Criminal Conviction – Juvenile Adjudication, Deferred Disposition or Acquittal – Alcoholic Beverage Code Chapter 106 offense (minors and alcohol)		Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0001	(512) 424-5720	No stated time frame	Alcoholic Beverage Code § 106.117	Clerk is to send to DPS a notice of each conviction of an offense under Chapter 106 of the Alcoholic Beverage Code which deals with offenses involving alcohol and minors. Clerk is also to send DPS a notice of each juvenile adjudication, deferred disposition order or acquittal of an offense under Chapter 106.
15	Criminal Conviction - negligent homicide or other felony in which **vehicle was used**	Notice of Convictions	Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0001	DIC-17	Not later than the 7th day after the date of conviction	Transportation Code §§ 543.202, 543.203	Clerk is to submit to the DPS a written record of the case containing the information set out in Transportation Code § 543.202. Use DPS form.
16	Criminal Conviction (or grant of deferred adjudication) for certain offenses committed by certified **teacher**		Texas State Board for Educator Certification 1701 North Congress Ave WBT 5-100 Austin, TX 78701-1494		Not later than the fifth day after the date the teacher is convicted or is granted deferred adjudication	Code of Criminal Procedure, art. 42.018(b), (c)	Clerk is to provide the State Board for Educator Certification and the chief administrative officer of the private school at which the person is employed with written notice of the teacher's conviction or deferred adjudication.
17	Criminal Conviction (or grant of deferred adjudication) for certain offenses committed by licensed **nurse**		Texas Board of Nurse Examiners 333 Guadalupe 3-460 Austin, TX 78701	(512) 305-7400	Not later than the 30th day after conviction	Occupations Code § 301.409	Attorney representing the State "shall cause the clerk" to prepare and forward to the Board "a certified true and correct abstract of the court record of the case."
18	Criminal Conviction (or grant of deferred adjudication) for certain offenses committed by **person licensed by Texas Department of Insurance**		Texas Department of Insurance Agent Licensing Division Mail Code 107-1A P.O. Box 149104 Austin, TX 78714-9104		Not later than the fifth day after the conviction or grant of deferred adjudication	Code of Criminal Procedure, art. 42.0181	Clerk is to provide the Department of Insurance with written notice of the person's conviction of, or deferred adjudication for, an offense under Penal Code Chapters 31 (theft), 32 (fraud), 34 (money laundering), or 35 (insurance fraud).
19	Criminal Conviction (or grant of deferred adjudication) for certain offenses committed by **physician**		Texas Department of Public Safety Crime Records Service PO Box 4143 Austin, TX 78765-4143		Not later than the 30th day after the conviction or grant of deferred adjudication	Occupations Code § 160.101(b)	Clerk is to prepare and forward the information required by Chapter 66, Code of Criminal Procedure. *See* Article 66.252.
20	Criminal Conviction (or grant of deferred adjudication) for felony		Immigration and Naturalization Service (INS)		No stated time frame	Code of Criminal Procedure, art. 2.25	"Judge" is to report to INS. As a practical matter, however, the clerk should make this report. In some counties the sheriff's department or the CSCD make this report –if this is not ideal.

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	by **"illegal criminal alien"**						
21	Criminal Conviction (or grant of deferred adjudication) for offense constituting family violence or offense under Title 5, Penal Code (criminal homicide, kidnapping, human trafficking, sexual offenses and assaultive offenses in certain circumstances		Staff Judge Advocate General or the provost marshal of the military installation to which the defendant is assigned.		No stated time frame, but implication is immediately after issuance of the order.	Code of Criminal Procedure, art. 42.0183	This reporting requirement applies only if the respondent is a member of the state military forces or is serving in the U.S. armed forces in an active duty status.
22	Criminal Conviction (or grant of deferred adjudication) or juvenile adjudication for offense requiring **registration as a sex offender**		Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0001	(512) 424-5720	No stated time frame	Code of Criminal Procedure, art. 42.016	Clerk is to send to DPS a copy of the record of conviction, a copy of the order granting deferred adjudication, or a copy of the juvenile adjudication, and a copy of the court order requiring the DPS to include sex offender information in a driver's license record, and, if applicable, an indication that the person is subject to registration because the person was convicted of an offense involving human trafficking under Chapter 20A, Penal Code.
23	Criminal Conviction (or placement on community supervision) -felony committed by **law enforcement officer** licensed by the Texas Commission on Law Enforcement		Texas Commission on Law Enforcement 6330 U.S. Hwy. 290 E. Austin, TX 78723		No stated time frame, but basically upon the order being received by the clerk	Code of Criminal Procedure, art. 42.011	Clerk is to send (either electronically or by mail) the person's license number and a certified copy of the judgment. Article 42.022 refers to individuals licensed under Occupations Code, Chapter 1701.
24	**Daily Deposit** of Funds		County Treasurer		Daily	Local Government Code 113.022	The Clerk must on or before the next regular business day after the date on which the funds are received deposit with the County Treasurer.
25	**Divorce** or Annulment granted	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-165 www.dshs.state.tx.us/vs/sapcr/default.shtm (888) 963-7111 ext. 2549 registrar@dshs.state.tx.us	Not later than the 9th day of the month after the month the divorce or annulment was granted	Health & Safety Code § 194.002	Clerk must file a completed report for each divorce or annulment granted in the district court. For each report that is filed, the clerk may collect $1 as costs in the case in which the divorce or annulment was granted.
26	**DNA Test Results** – when court has ordered DNA testing of evidence containing biological material of person already convicted		Texas Department of Public Safety Crime Record Service P.O. Box 4143 Austin, TX 78765-4143	(512) 424-2105	Not later than the 30th day after the conclusion of a proceeding wherein a convicted defendant seeks DNA testing under Chapter 64 of the Code of Criminal Procedure.	Code of Criminal Procedure, art. 64.03	Clerk is to forward DNA test results to the DPS in cases where the testing is conducted by a laboratory other than a DPS laboratory or a laboratory operating under a contract with the DPS.
27	Exemplary Damage Award against a **nursing home** or		Director of Central Operations, Long Term Regulatory		No stated time frame. The presumption is that this notice	Health & Safety Code § 242.051	Clerk is to notify the Texas Department of Human Services if exemplary damages are awarded against a nursing home (or an officer, employee or agent of a nursing home) pursuant to Civil Practice & Remedies Code, Chapter 41.

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	nursing home officer, employee or agent		Texas Department of Aging and Disability Services (Mail Code E-341) P.O. Box 149030 Austin, TX 78714		should occur shortly after the award of exemplary damages.		
28	**Expunction** Order		Texas Department of Public Safety PO Box 4143 Austin, TX 78765-4143 Attn: Expunctions	expunctions@dps.texas.gov	When the order of expunction is final	Code of Criminal Procedure, art 55.02, Sec. 3(c)	Clerk must send certified copy of an expunction order to the director of DPS, to the Crime Records Service of DPS, and to each official or agency or other governmental entity or political subdivision designated by the person who is the subject of the order. Must be sent by secure electronic mail, electronic transmission, fax or certified mail, return receipt requested.
29	**Federal Prohibited Person** Information		Texas Department of Public Safety		Not later than the 30th day after the relevant court order	Government Code §§ 411.052, 411.0521	Clerk must prepare and forward to DPS certain information in Government Code § 411.0521(b) when the court: (1) orders a person to receive inpatient mental health services; (2) acquits a person in a criminal case by reason of insanity or lack of mental responsibility; (3) commits a person determined to have mental retardation; (4) Appoints a guardian for an incapacitated adult; (5) determines a person is incompetent to stand trial; or (6) finds a person is entitled to relief from a firearms disability. NOTE: Not later than 09/01/10, clerk shall forward information for court orders issued between 09/01/89 and 08/31/09.
30	Fees ordered to be paid to **court-appointed individuals** in civil cases	Official District Court Appointments and Fees Report	Supreme Court of Texas Office of Court Administration P.O. Box 12066 Austin, TX 78711	(512) 463-1625	Monthly. Not later than the 20th day of the month following the month reported	Supreme Court Order No. 94-9143 Government Code § 71.035(b)	Clerk is to report each fee of $500 or more approved or paid during the month. Fees of less than $500 may be reported, but are not required to be reported.
31	**Forfeiture of Bail** where defendant is charged with negligent homicide or other felony where vehicle was used	Notice of Convictions	Texas Department of Public Safety Driver Improvement Bureau P.O, Box 4087 Austin, TX 78773-0001	DR-18	Not later than the 7th day after forfeiture of bail	Transportation Code §§ 543.201, 543.202, 543.203	Clerk is to submit to DPS a written record of the case containing the information set out in Transportation Code § 543.202. Use DPS form.
32	**Forfeiture of Corporation's Charter** – order forfeiting, appeal of order & disposition of appeal		Texas Secretary of State of Texas Administrative Unit P.O. Box 12887 Austin, TX 78711		"promptly" after the relevant court action	Tax Code § 171.304	If a district court forfeits a corporation's charter, the clerk is to mail a certified copy of the judgment to the Secretary of State. If an appeal is perfected, the clerk is to certify that fact to the Secretary of State. The clerk shall also certify any disposition of an appeal to the Secretary of State.
33	**Guardians – Private Professional Guardians and Public Guardians Certification Requirement**		Judicial Branch Certification Commission c/o Office of Court Administration P.O. Box 12066 Austin, TX 78711		No stated time frame but implication is immediately on discovering the fact	Estates Code § 1104.256	Court must notify guardianship certification program of the Judicial Branch Certification Commission if it finds an individual in noncompliance with certification terms, standards and rules regarding individuals who must be certified in order to serve as a guardian (i.e. a person serving as a guardian who is supposed to be certified but is not).
34	**Guardians – Programs Reporting To The County Clerk** **NOTE: The County Clerk does not send a copy of the report to the GCB because the program has already done so.**				The report which must be sent to the guardianship certification program of the Judicial Branch Certification Commission is due not later than January 31st of each year.	Estates Code § 1104.257	Each guardianship program operating in a county shall submit to the County Clerk a copy of the report that the program submitted to the guardianship certification program of the Judicial Branch Certification Commission under Section 155.105, Government Code. NOTE: The report must contain the name, address, and telephone number of individuals employed by, volunteering with, or contracting with each program to provide guardianship services to a ward or proposed ward.

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
					The copy which must be sent to the County Clerk should be sent at the same time the original report is sent to the GCB.		
35	**Guardians – Registered Private Professional Guardians**		Judicial Branch Certification Commission c/o Office of Court Administration P.O. Box 12066 Austin, TX 78711			Estates Code § 1104.306	Clerk must annually submit to the guardianship certification program of the Judicial Branch Certification Commission the names and business addresses of all private professional guardians who have satisfied the registration requirements set out in Estates Code Section 1104.306.
36	**Hate Crime** – request for affirmative finding	Report of a Request for a Hate Crime finding	Office of Court Administration P.O. 12066 Austin, TX 78711	www.courts.state.tx.us/oca/required.asp (512) 463-1625	Not later than the 30th day after the date judgment is entered in the case	Code of Criminal Procedure, art. 2.211	This report concerning requests for affirmative hate crime findings is part of the Official District Court Monthly Report that is sent to OCA. No other report is required.
37	**Interest** earned		Internal Revenue Service	1099-INT (866) 455-7438	File Copy A with IRS by March. Furnish Copy B to the Recipient by February. Keep Copy C for your file.	Local Government Code 117.003	If any funds deposited in the registry of the court are placed into an interest-bearing account, any person with a taxable interest in funds deposited to such account must submit appropriate tax forms and provide correct information to the district or county clerk so that the interest earned on such funds can be timely and appropriately reported to the IRS.
38	**Judgment of Mental Incompetency**		County Voter Registrar		Not later than the 10th day of the month in which the abstract is prepared	Election Code § 16.002	Each month the clerk must prepare an abstract of each final judgment of a court adjudging a Texas resident who is 18 years of age or older to be mentally incompetent.
39	Judgment rendered in case appealing a decision of the Texas **Workers' Compensation** Commission (TWCC) where one of the parties is the State of Texas or a listed Texas state actor		Texas Workers' Compensation Commission – Hearing Division 7551 Metro Center Dr. #100 Austin, TX 78711-2757	(512) 804-4055	Not later than the 20th day after the date the judgment is rendered	Labor Code §§ 501.022; 501.050; 502.069; 503.069; 505.059	Clerk must mail a certified copy of the judgment to the TWCC. The listed Texas state actors (in addition to the State of Texas itself) are: (1) Texas A & M University System; (2) University of Texas System; (3) Texas Tech University or Texas Tech University Health Sciences Center; (4) State Employees' Workers' Compensation Fund; and (5) Texas Department of Transportation. The clerk may not assess any fee for making the notification. A clerk who does not comply with this notice requirement commits a misdemeanor offense
40	**Judicial Bypass Suit** – Order for State to pay ad litems, court costs, and court reporters		Accounting Division Attn: Staff Service Officer Texas Department of State Health Services P.O. Box 149347 Austin, TX 78714-9347	(512)458-7111 ext. 3945	Not later than the 90th day after the date of a final ruling	Family Code § 33.007 Texas Parental Notification Rule 1.9(b)(2), (4)	Clerk must "direct" copy of court order to Comptroller who shall pay the amount ordered from funds appropriated to the Texas Department of State Health Services. But copy of order is actually sent to the Texas Department of State Health Services instead of to the Comptroller.
41	Jury charge and sentence in **capital case**		Office of Court Administration P.O. Box 12066 Austin, TX 78711	(512) 936-1358 www.courts.state.tx.us/oca/pdf/jury-instructions.pdf	Not later than the 30th day after the date the judgment of acquittal or conviction is entered	Government Code § 72.087	Clerk shall submit a written record of the case containing the contents of the trial court's charge to the jury and the sentence issued.
42	Jury Service -		County Voter Registrar		On the third business day of each month	Government Code § 62.114	Clerk shall maintain list of the name and address of each person who is excused or disqualified from jury service because the person is not a resident of the county.

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
	Disqualification because potential **juror not county resident**						On the third business day of each month, the clerk sends a copy of the list to the voter registrar.
43	Jury Service - Disqualification because potential **juror not U.S. citizen**		County Voter Registrar, secretary of state, and county attorney or district attorney		On the third business day of each month	Government Code § 62.113	Clerk shall maintain list of the name and address of each person who is excused or disqualified from jury service because the person is not a citizen of the United States. On the third business day of each month, the clerk sends a copy of the list to the voter registrar, the secretary of state, and the county or district attorney, as applicable, for an investigation of whether the person committed an offense under Section 13.007, Election Code, or other law.
44	**Jury Service - Exemption** ordered by District Court		County Voter Registrar		"promptly"	Government Code § 62.109	Clerk is to notify county voter registrar of the name and address of a person exempted from jury service because of a physical or mental impairment or because of an inability to comprehend or communicate in English.
45	**Jury Service – Permanent Exemption Claimed by Person Over 70**		County Voter Registrar		"promptly"	Government Code § 62.107	Clerk shall have a copy of the statement claiming a permanent exemption on the basis of age promptly delivered to the county voter registrar.
46	**Juvenile** Court Case Disposition		Department of Public Safety Crime Records Service P.O. Box 4143 Austin, TX 78765-4143		Not later than 30 days after the date the clerk receives notice of the disposition	Family Code § 58.110(c)	Clerk is to report disposition of juvenile case to DPS.
47	**Mental Incompetency – Nurse found to be mentally incompetent by court**		Texas Board of Nurse Examiners 333Guadalupe Street Suite 3-460 Austin, TX 78701	(512) 305-7400	Note later than 30 days after the date the nurse is found to be mentally incompetent	Occupations Code § 301.409	Clerk to prepare and forward to the Board a certified true and correct abstract of the court record of the case.
48	**Mental Incompetency – Physician found to be mentally incompetent by court**		Texas State Board of Medical Examiners P.O. Box 2018 Austin, TX 78768-2018		Not later than the 30th day after the date a court finds that a physician is mentally ill or mentally incompetent	Occupations Code § 160.102	Clerk to prepare and forward to the Board a certified abstract of the record.
49	**Monthly Court Activity**	Official District Court Monthly Report	Office of Court Administration P.O. Box 12066 Austin, TX 78711	http://www.txcourts.gov/reporting-to-oca/judicial-council-trial-court-activity-reports/ (512) 463-1625	No later than the 20th day of the month following the month reported	Government Code § 71.035	Includes certain case-level information on amount and character of business transacted by trial courts. Reporting may be done either on paper or electronically.
50	**Name Change** for Minor		Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040			Family Code § 45.004(b)	If a child who is subject to the continuing jurisdiction of a court, the clerk is to transmit a copy of the minor's name change order.
51	**Occupational Driver's License** Granted or Revoked		Texas Department of Public Safety Safety Responsibility P.O. Box 15999 Austin, TX 78761-5999		No stated time frame, but implication is immediately after issuance of the order	Transportation Code § 521.249	Clerk is to send certified copy of the petition and court order granting the occupational driver's license. The order is to set out the judge's findings and restrictions in regard to issuance of the license. Similarly, if the court that granted the license subsequently revokes the license, the clerk must send a certified copy of the order.
52	Order of **Nondisclosure**		Texas Department of Public Safety P.O. Box 4143 Austin, TX 78765-4143 Attn: Nondisclosures	nondisclosures@dps.texas.gov	Not later than the 15th business day after the date an order of nondisclosure is issued	Government Code § 411.075	Clerk is to send to DPS all relevant criminal history record information contained either in (1) the order; or (2) a copy of the order. Clerk is to send the material by certified mail, return receipt requested, or secure electronic mail, electronic transmission, or fax.

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
53	Order **Vacating a Protective Order**		Each individual who received a copy of the original protective order		No stated time frame, but implication is immediately after issuance of the order.	Family Code § 85.042 (c)	Notice must be given that the protective order has been vacated to each individual or entity who received a copy of the original or modified protective order from the clerk.
54	**Paternity** Determination	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-165 www.dshs.state.tx.us/vs/sapcr/default.shtm registrar@dshs.state.tx.us (888) 963-7111 ext. 2549	Immediately after order becomes final	Family Code § 108.008 Health & Safety Code § 192.0051	Clerk prepares report of each order determining paternity on designated form and sends to Vital Statistics.
55	Petition Filed – **occupational driver's license** sought where driver's license has been suspended for certain criminal offenses		Attorney representing the State		No stated time frame, but best practice would be immediately after petition is filed	Transportation Code § 521.243	Unless dismissed under Sec. 521.2421(f), the Clerk must send a copy of petition and any notice of hearing "by certified mail" to attorney representing the state if the petitioner's license was suspended, revoked, or canceled following a conviction for an offense under Sections 19.05, 49.04, 49.07 or 49.08 of the Penal Code or an offense to which Section 521.342 of the Transportation Code applies.
56	Petition or Motion **Challenging the Constitutionality** of a Texas Statute		Attorney General of Texas Const_claims@texasattorneygeneral.gov OCA form referenced in Subsection (a-1) http://www.txcourts.gov/media/687731/constitutionality.pdf		No stated time frame, but implication is immediately after petition or motion is filed.	Government Code, § 402.010	In an action in which a party to the litigation files a petition, motion, or other pleading challenging the constitutionality of a Texas statute, the party shall file the form required by Subsection (a-1) which is a form adopted by OCA. If the Attorney General is not a party to or counsel involved in the suit, the court shall serve notice of the constitutional challenge on the Attorney General by either certified or registered mail or electronically to an e-mail address designated by the Attorney General for the purpose of this section along with a copy of the petition, motion or other pleading that raises the challenge.
57	**Protective Order**		See Notes		No stated time frame, but implication is immediately after issuance of the order.	Family Code § 85.042 (a), (a-1)	Clerk shall send a copy of the order, along with the information provided by the applicant or the applicant's attorney that is required under Section 411.042(b) (6), Government Code, to the chief of police of the municipality in which the person protected by the order resides, if the person reside in a municipality; to the appropriate constable and the sheriff of the county in which the person resides, if the person does not reside in a municipality; and to the Title IV-D agency, if the application for the protective order indicates that the applicant is receiving services from the Title IV-D agency. If the respondent is a member of the state military forces or is serving in the U.S. armed forces in an active-duty status and the applicant or the applicant's attorney provides to the clerk the mailing address of the staff judge advocate or provost marshal, as applicable, then the clerk shall also send a copy of the order and required information to the staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which the respondent is assigned with the intent that the commanding officer will be notified.
58	Protective Order based on criminal defendant's commission of offense because of **bias or prejudice**		Regulatory Licensing Service MSC 0245 Texas Department of Public Safety PO Box 4087 Austin TX 78773-0245	chl@txdps.state.tx.us (512) 424-7293 (512) 424-7294 Helpline: (800) 224-5744		Code of Criminal Procedure, art. 7B.103(3)	Clerk is to forward a copy of the order to the DPS "with a designation indicating that the order was issued to prevent offenses committed because of bias or prejudice."
59	**Protective Order** issued by court other than court where		Clerk of Court where SAPCR and/or marriage dissolution suit is pending		No stated time frame, but implication is	Family Code § 85.062	Clerk is to send a copy of the protective order to the court in which the suit is pending.

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	SAPCR and/or marriage dissolution suit is pending				immediately after the issuance of the order		
60	Protective Order prohibiting respondent from going near a child-care facility or a **school**		Child-care facility and/or school		No stated time frame but implication is immediately after the issuance of the order	Family Code § 85.042	If the protective order prohibits the respondent from going near a child-care facility or a school, clerk is to send a copy of the protective order to the child-care facility or school.
61	Protective Order suspending a license to carry a **concealed handgun**		Regulatory Licensing Service MSC 0245 Texas Department of Public Safety PO Box 4087 Austin TX 78773-0245	chl@txdps.state.tx.us (512) 424-7293 or (512) 424-7294 Helpline: (800) 224-5744	No stated time frame; but implication is immediately after the issuance of the order	Family Code § 85.042	Clerk is to send a copy of the order to the DPS.
62	**SAPCR** –Court Order	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-165 www.dshs.state.tx.us/vs/sapcr/default.shtm registrar@dshs.state.tx.us (888) 963-7111 ext. 2549	No stated time frame	Family Code § 108.001(a), (d)	This reporting requirement applies to any orders in SAPCR's that are not covered by a more specific reporting requirement. Clerk is to provide a certified record of any SAPCR order on a VS-165 form.
63	**SAPCR** –loss of court's jurisdiction	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-165 http://www.dshs.state.tx.us/vs/sapcr/default.shtm registrar@dshs.state.tx.us (888) 963-7111 ext. 2549	Upon the loss of continuing, exclusive jurisdiction	Family Code § 108.004	The report is to be made if the court has lost continuing, exclusive jurisdiction of the case for any reason. The reason for the loss of jurisdiction is to be noted on the form. Clerk must transmit a certified record on the VS-165, stating that jurisdiction has been lost, the reason for the loss, the name and all previous names of child, and date and place of birth of the child.
64	**Suspension of license** for failure to pay child support or vacation or stay of suspension		Appropriate State licensing agency – all licensing agencies are subject to this requirement unless otherwise exempted		No stated time frame, but implication is immediately after the issuance of the order. If order is one of vacation or stay then "promptly."	Family Code §§ 232.002; 232.008; 232.013	Clerk is to forward a copy of the final order suspending a license to the appropriate licensing authority (*e.g.*, Texas Board of Barber Examiners, Texas State Board of Pharmacy). The clerk is to collect a fee of $5 from the child support obligor for each order mailed.
65	Unclaimed **Cash Bail Bonds**		Texas Comptroller of Public Accounts Unclaimed Property Division P.O. Box 12019 Austin, Texas 78711-2019	Elaine Walker, (512) 463-2059	The report must be made on or before July 1st following the Clerk's annual March 1st review.	Property Code §§ 72.101, 74.101 Melton v. State, 993 S.W.2d 95 (1999).	The clerk must review all cash bail bonds held by clerk each March 1st. Any cash bail bonds that have been "dormant" for three years or more are considered to be abandoned property. The dormancy period begins to run three years from the date of entry of final judgment or order of dismissal in the action in which the funds were deposited. The clerk must report all cash bail bonds that are considered to be dormant to the Comptroller.
66	**Unclaimed Funds** other than cash bail bonds		Texas State Comptroller Unclaimed Property Division Holder Reporting Section P.O. Box 12019 Austin, TX 78711-2019	Form 53-119 (800) 321-2274, ext. 6-6246 or in Austin, call (512) 936-6246	The report and the delivery must be made on or before July 1st following the Clerk's annual March 1st review.	Property Code §§ 72.101, 74.101, 74.301 Local Government Code § 117.002	Any funds deposited in the registry of the court, except cash bail bonds, that are presumed abandoned under Chapter 72, 73, or 75, Property Code, shall be reported and delivered to the comptroller without further action by any court. Property is presumed to be abandoned if, the property has remained unclaimed for 3 years and the owner has not communicated during the abandonment period and the location of the owner is unknown. The clerk must review property in the registry of the court on March 1 to find property that is presumed to have been abandoned.
67	**Vexatious Litigant** prohibited from filing		Office of Court Administration P.O. Box 12066 Austin, TX 78711	(512) 463-1625	Not later than 30 days after the date the	Civil Practice & Remedies Code § 11.104	Clerk is to provide a copy of any pre-filing order issued under Section 11.101 of the Civil Practice & Remedies Code. These pre-filing orders prohibit individuals found to be vexatious litigants from filing, in propria persona, new litigation.

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	new litigation (Pre-Filing Order)		Attention: Judicial Information		prefiling order is signed.		
68	**Writs of Attachment**		Office of Court Administration P.O. Box 12066 Austin, TX 78711	http://www.txcourts.gov/media/1438748/writs-of-attachment-report-instructions_08232017.pdf	No later than 30 days of issuance	Code of Criminal Procedure, art. 2.212	Clerk is to report to Texas Judicial Council the date attachment issued, whether attachment issued in connection with a grand jury investigation/criminal trial/other criminal proceeding, the names of the person requesting and the judge issuing attachment, and the statutory authority under which attachment issued. Reports can be entered in OCA's Court Activity Reporting Database at https://card.txcourts.gov/Secure/login.aspx
69	**Monies Spent on Court-Ordered Interpretation Services**		Office of Court Administration P.O. Box 12066 Austin, TX 78711	"In the manner prescribed by" OCA	"In the manner prescribed by" OCA	Gov't Code § 57.002	Each "county auditor, or other individual designated by the commissioners court of a county, in consultation with the district and county clerk" must submit information on the money the county spent during the preceding fiscal year to provide court-ordered interpretation services in civil and criminal proceedings. The statute lists the information that must, at a minimum, be reported.