



## **Planting Error**

### **Making Your Record for Appeal**

\*\* Attached are two “cheat sheet[s]” to take to trial. One is specific to voir dire. The other covers issues from the Code of Criminal Procedure and the Rules of Evidence.

It hopefully includes most errors, how to preserve them, and case law to support your objections.

As an introductory note, always make your objection under any Constitutional provision as well as statutory authority. For appellate purposes, this makes the argument infinitely easier. In every objection, argue that there besides being a constitutional violation, the error affects the defendant’s “substantial rights.” Remember to bring your objection to an adverse ruling. Object, and if sustained, ask for a limiting instruction. If the instruction is given, move for a mistrial.

Only when the defendant’s objection has received an adverse ruling, is error preserved.

Jani Maselli Wood  
Harris County Public Defender’s Office  
Jani.Maselli@pdo.hctx.net  
713.274.6700

## Preserving Error

1. **Tex. R. App. P. 33.1**

**Timely  
Specific  
Obtain A Ruling**

2. **Your Objections must be constitutional.**

### **44.2. Reversible Error in Criminal Cases**

**(a) Constitutional Error. If the appellate record in a criminal case reveals constitutional error that is subject to harmless error review, the court of appeals must reverse a judgment of conviction or punishment unless the court determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment.**

**(b) Other Errors. Any other error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.**

3. **Prepare for all of this pretrial. None of this should be a surprise.**

**A. What does the State have to prove?**

**B. What will the jury charge look like?**

**C. What evidence do you want in?**

**D. What evidence do you want out?**

## Planting Error Top Ways to Make Your case for an Appeal

### 1. It is up to you.

A. *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020); *Sharp v. Murphy*, 140 S.Ct. 2412 (2020).

### 2. Voir Dire and Jury Charge error are fertile grounds for reversal

A Time limits with voir dire

A two-part test applies when a party complains of an inability to address proper questions to the whole venire panel: (1) whether the complaining party attempted to prolong the voir dire, and (2) whether the questions that the party was not permitted to ask were proper voir dire questions. *McCarter v. State*, 837 S.W.2d 117, 119-20 (Tex.Crim.App.1992). A third prong is added when a party is not permitted to ask questions of individual jurors: (3) whether the party was not permitted to examine prospective jurors who actually served on the jury. *Id.* at 120.

B. Jury charge requests.

If you do not ask - you will not receive.

Texas Pattern Jury Charges vs. what we receive: "...a six-page impenetrable forest of legal "argle-bargle" *Reeves v. State*, 420 S.W.3d 812, 817 (Tex. Crim. App. 2013).

C. Jury charge objections

Article 36.14 of the Texas Code of Criminal Procedure states in part: [I]n each felony case ... tried in a court of record, the judge shall, before the argument begins, deliver to the jury...a written charge distinctly setting forth the law applicable to the case.

D. How do we extend *Batson* and *J.E.B.*? Religion?

*Batson v. Kentucky*, 476 U.S. 79 (1986), *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994).

*Batson* challenge based on race involves a three-step inquiry:

(1) the defendant must make a prima facie showing that a venire member was peremptorily excluded because of race;

(2) the State must provide race-neutral reasons for the challenged peremptory strike; and

(3) the defendant must rebut the State's explanations. *See Tex.Code Crim. Proc. Ann. art. 35.261(a)* (Vernon 1989); *Simpson v. State*, 119 S.W.3d 262, 268 (Tex.Crim.App.2003).

*Batson* challenges may also be based on gender or ethnicity. *See J.E.B. v. Alabama*, 511 U.S. 127, 146 (1994); *Hernandez v. New York*, 500 U.S. 352, 370-72 (1991); *Guzman v. State*, 85 S.W.3d 242, 245 (Tex.Crim.App.2002). However, article 35.261 applies only to race-based peremptory challenges. *See Tex.Code Crim. Proc. Ann. art. 35.261.*

Why is this still the law:

Litigants may use peremptory challenges to exclude persons from service on juries in individual cases on basis of their religious affiliation. *Casarez v. State*, 913 S.W.2d 468 (Tex. Crim. App. 1994), on reh'g (Dec. 13, 1995)

### 3. Reread the Constitutions.

Tex. Const. Art. I, sec. 10

Sec. 10. RIGHTS OF ACCUSED IN CRIMINAL PROSECUTIONS. In all criminal prosecutions **the accused shall have a speedy public trial by an impartial jury**. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and **shall have compulsory process for obtaining witnesses in his favor**, except that when the witness resides out of the State and the offense charged is a violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger.

U.S. Constitution Amends. V, VI

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

In all criminal prosecutions, **the accused shall enjoy the right to a speedy and public trial**, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; **to have compulsory process for obtaining witnesses in his favor**, and to have the assistance of counsel for his defense.

### 4. Reread the law.

A. Identify your law issues early in the case.

Arrest - TEX. CODE CRIM. PROC. ART. 15 ET SEQ.

Search - TEX. CODE CRIM. PROC. ART. 18 ET SEQ.

Statements/Confession - TEX. CODE CRIM. PROC. ART. 38.22

Suppression - TEX. CODE CRIM. PROC. ART. 38.23

Accomplices/Law of parties - Tex. Penal Code

Complaint or indictment - TEX. CODE CRIM. PROC. ARTS. 21, 28 ET SEQ

Elements of the offense - TEXAS PENAL CODE CH. 7

Limitations - TEX. CODE CRIM. PROC. ARTS. 12.01 AND 12.02

Lesser-included offenses - TEX. CODE CRIM. PROC. ART. 37.09

Justifications - TEXAS PENAL CODE CH. 9

Defenses - TEXAS PENAL CODE CH. 8

Enhancements - finality, sequencing, proof - TEXAS PENAL CODE § 12.42

A. The PSI

The Statute: Have you read it?

Does your probation office comply with the statute?

Did they comply in this case?

Texas Code Criminal Procedure Art. 42A.253. Contents of Presentence Report

(a) A presentence report must be in writing and include:

- (1) the circumstances of the offense with which the defendant is charged;
- (2) the amount of restitution necessary to adequately compensate a victim of the offense;
- (3) the criminal and social history of the defendant;
- (4) a proposed supervision plan describing programs and sanctions that the community supervision and corrections department will provide the defendant if the judge suspends the imposition of the sentence or grants deferred adjudication community supervision;
- (5) if the defendant is charged with a state jail felony, recommendations for conditions of community supervision that the community supervision and corrections department considers advisable or appropriate based on the circumstances of the offense and other factors addressed in the report;
- (6) the results of a psychological evaluation of the defendant that determines, at a minimum, the defendant's IQ and adaptive behavior score if the defendant:
  - (A) is convicted of a felony offense; and
  - (B) appears to the judge, through the judge's own observation or on the suggestion of a party, to have a mental impairment;
- (7) information regarding whether the defendant is a current or former member of the state military forces or whether the defendant currently serves or has previously served in the armed forces of the United States in an active-duty status and, if available, a copy of the defendant's military discharge papers and military records;
- (8) if the defendant has served in the armed forces of the United States in an active-duty status, a determination as to whether the defendant was deployed to a combat zone and whether the defendant may suffer from post-traumatic stress disorder or a traumatic brain injury; and
- (9) any other information relating to the defendant or the offense as requested by the judge.

(b) A presentence report is not required to contain a sentencing recommendation.

**5. Offers of proof.**

“Mr. Smith make an offer of proof regarding the testimony of \_\_\_\_\_. I would like to put on the record the testimony that the witness would have given or we can have the jury out and call the witness and do the testimony in question/answer format.”

“The Court has excluded testimony by \_\_\_\_\_ about \_\_\_\_\_. The witness \_\_\_\_\_ would have testified that \_\_\_\_\_.”

“Judge, this evidence is admissible, relevant, and needed for \_\_\_\_\_. Without this evidence, Mr. Smith is not able to defend his case in violation of due process and the right to a fair trial. We are harmed from this exclusion because \_\_\_\_\_. No other witness can present this exact testimony and Mr. Smith needs it for his constitutional right to a fair trial.”

**6. Reread ALL the rules of evidence.**

**7. Handle pretrial evidentiary issues as necessary.**

Provide briefing to the court. Discern what evidence the State has that you want excluded. What evidence do you have that the State may object to. All these issues should be fully briefed with case law for the court.

## 8. State's experts.

Have your *Daubert* hearing.

### Quick Check

Cutting-edge AI combined with Westlaw's editorial excellence delivers relevant authority traditional research might miss.

#### What would you like to do today?



##### Check your work

- Examine an early draft of a brief or opinion to finish research much faster
- Double-check your work before filing to see if you missed anything important
- Update an older brief that may cite outdated law or require newer authority

Check your work



##### Analyze an opponent's work

- Review KeyCite information to identify potential weaknesses in opponent's authority
- See the most relevant law that the opponent chose not to cite (there could be a reason)

Analyze an opponent's work

New



##### Quick Check Judicial

- See analysis of the issues and citations in the briefs filed by both parties to a matter
- Review the most relevant authority for the legal issues that neither party cited
- Discover issues with the citations and quotations relied upon by the parties

Quick Check Judicial

“under the regime of *Daubert* a district judge asked to admit scientific evidence must determine whether the evidence is genuinely scientific, as distinct from being unscientific speculation offered by a genuine scientist.” *Coble v. State*, 330 S.W.3d 253, 277 (Tex. Crim. App. 2010).

*Brantley v. State*, 606 S.W.3d 328 (Tex. App.--Houston [1st Dist.] 2020, no pet.). “The test for reliability of an expert’s opinion differs depending on whether the testimony is based on hard science or soft science. Hard sciences are ‘areas in which precise measurement, calculation, and prediction are generally possible,’ and ‘include mathematics, physical science, earth science, and life science.’ Soft sciences, on the other hand, ‘are generally thought to include such fields as psychology, economics, political science, anthropology, and sociology.’ ‘The distinctions between hard and soft sciences may be blurred, and the reliability inquiry is flexible.’

The test for reliability of soft-science expert testimony ... ‘centers on the principles and methodology, and not on conclusions an expert generates by using those principles or methodology.’ An expert’s opinion is inadmissible if it is ‘connected to existing data only by the expert’s own assertions.’ If an analytical gap exists between the data and the expert’s opinion, the opinion should be excluded as unreliable.”

*Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 592-93 (1993). Faced with a proffer of expert scientific testimony, ... the trial judge must determine at the outset, pursuant to [FRE] 104(a), whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to

understand or determine a fact in issue.

*Paredes v. State*, 462 S.W.3d 510, 517-18 (Tex.Crim.App.2015). “[S]everal general principles [regarding the Confrontation Clause and lab reports] are clear, assuming a defendant was afforded no prior opportunity to cross-examine.

*Hall v. State*, 297 S.W.3d 294, 297 (Tex.Crim.App.2009). TRE 101 “specifically provides that the [TREs], with the exception of those that concern privileges, do not apply to suppression hearings. Thus, evidence that is otherwise inadmissible at trial under the [TREs] may well be admissible at a suppression hearing. So in this case, because [TRE] 702’s requirements, as set out in *Kelly v. State*, 824 S.W.2d 568 (Tex.Crim.App.1992)], do not apply to suppression hearings, there is no threshold admissibility determination under the [TREs].

*Vela v. State*, 209 S.W.3d 128, 130 (Tex.Crim.App.2006). TRE 104(a), 401, 402, and 702 “set out three separate conditions regarding admissibility of expert testimony. At 131: These rules require a trial judge to make three separate inquiries, which must all be met before admitting expert testimony: (1) the witness qualifies as an expert by reason of his knowledge, skill, experience, training, or education; (2) the subject matter of the testimony is an appropriate one for expert testimony; and (3) admitting the expert testimony will actually assist the fact-finder in deciding the case. These conditions are commonly referred to as (1) qualification, (2) reliability, and (3) relevance.

## 9. Defense experts.

Have one. Even if you are hired counsel, if your client is indigent they are entitled to expert assistance.

*Ex parte Briggs*, 187 S.W.3d 458, 469 (Tex. Crim. App. 2005). If any reasonable attorney appointed to represent an indigent defendant would be expected to investigate and request expert assistance to determine a deceased infant's cause of death, a privately retained attorney should be held to no lower standard. As the Supreme Court has explained, “The vital guarantee of the Sixth Amendment would stand for little if the often uninformed decision to retain a particular lawyer could reduce or forfeit the defendant's entitlement to constitutional protection.... [W]e see no basis for drawing a distinction between retained and appointed counsel that would deny equal justice to defendants who must choose their own lawyers.”

## 10. Watch for trends in the law.

A. Pending PDRs. Pending writ issues. Cert petitions granted.

<https://www.txcourts.gov/media/1451624/pdr-issues.pdf>

<https://www.txcourts.gov/media/1450086/article-1107-filed-and-set-writ-issues.pdf>

<https://www.scotusblog.com/>

Preservation of Error in Voir Dire -  
By Jani Maselli Wood

*General Rule*

Tex. R. App. P. 33.1 **Preservation; How Shown**

- (a) In General. As a prerequisite to presenting a complaint for appellate review, the record must show that:
- (1) the complaint was made to the trial court by a timely request, objection, or motion that:
    - (A) stated the grounds for the ruling that the complaining party sought from the trial court with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context; and
    - (B) complied with the requirements of the Texas Rules of Civil or Criminal Evidence or the Texas Rules of Civil or Appellate Procedure; and
  - (2) the trial court:
    - (A) ruled on the request, objection, or motion, either expressly or implicitly; or
    - (B) refused to rule on the request, objection, or motion, and the complaining party objected to the refusal.

**Request Voir Dire Be Recorded**

Without a transcript of voir dire, no error can be presented. *Villarreal v. State*, 617 S.W.2d 703 (Tex. Crim. App. 1981).

**Erroneous Denial of Challenge for Cause**

*\*\*Special Rules for Preservation\*\**

To preserve error on appeal regarding a trial court's denial of a challenge for cause, "an appellant **must**:

- (1) assert a clear and specific challenge for cause;
  - (2) use a peremptory strike on the complained-of veniremember;
  - (3) exhaust his peremptory strikes;
  - (4) request additional peremptory strikes;
  - (5) identify an objectionable juror; and
  - (6) claim that he would have struck the objectionable juror with a peremptory strike if he had one to use."
- Allen v. State*, 108 S.W.3d 281, 282-83 (Tex. Crim. App.2003).

Upon a challenge for cause, the examination is not confined to the answers of the juror, but *other evidence may be heard for or against the challenge*.

Tex. Code Crim. P. art. 35.18, *Prewitt v. State*, 167 S.W.2d 194 (Tex. Crim. App. 1942); *Garnder v. State*, 306 S.W.3d 274 (Tex. Crim. App. 2009).

**Erroneous Granting State's Challenge for Cause**

Object under TRAP 33.1,

Object to final compilation of jury,

Exhaust peremptory strikes

Request an additional peremptory strike

Make record that jury actually selected was *not* composed of qualified persons

*Ford v. State*, 73 S.W.3d 923, 925 (Tex.Crim.App.2002).

**Shuffle**

Object to denial of right to shuffle

Make bill showing “that the listing of the panel members was not random.”

*Ford v. State*, 73 S.W.3d 923, 924-26 (Tex.Crim.App.2002)

A defendant has an absolute right to have the jury venire shuffled upon timely demand. *Tex.Code Crim. Proc. Ann. art 35.11*.

The parties have the right to view the entire venire in proper sequence before having the names shuffled, and a defendant cannot be deemed to have exercised his right to a jury shuffle without having had the opportunity to present the motion for a shuffle to the judge. *Johnson v. State*, 977 S.W.2d 137, 138 -139 (Tex.Crim.App.1998).

### **Improper Comments to the Venire**

*by Judge*

The general rule is that counsel must object to the trial judge's comments during trial in order to preserve error. *See Tex.R.App. P. 33.1(a); Blue v. State*, 41 S.W.3d 129, 131 (Tex. Crim. App.2000) (plurality op.) *But see Jasper v. State*, 61 S.W.3d 413, 421 (Tex. Crim. App. 2001)(*Blue* not necessarily binding precedent).

- Object under Sixth Amendment, *See Livingston v. State*, 782 S.W.2d 12 (Tex. App. – Dallas 1989)

- Object under *Tex.Code Crim. Proc. Ann. art 38.05*:

*Judge shall not discuss evidence*

In ruling upon the admissibility of evidence, the judge shall not discuss or comment upon the weight of the same or its bearing in the case, but shall simply decide whether or not it is admissible; nor shall he, at any stage of the proceeding previous to the return of the verdict, make any remark calculated to convey to the jury his opinion of the case.

*By State*

When appellant complains about an improper remark by the prosecutor during voir dire, appellant must object when the remark is made. *Beltran v. State*, 99 S.W.3d 807, 811 (Tex.App.-Houston [14th Dist.] 2003, pet. ref'd); *Herring v. State*, 758 S.W.2d 849 (Tex. App. – Corpus Christi, 1983, no pet.).

### **Limitations on Questions**

To preserve error as to the improper limitation of voir dire, an appellant “must show that he was prevented from asking particular questions that were proper.” *Sells v. State* , 121 S.W.3d 748, 755 -756 (Tex.Crim.App.2003).

Make bill of exceptions to show questions you would have asked . *See Easterling v. State*, 710 S.W.2d 569, 575-76 (Tex.1986) (“Before we can determine if the trial court has abused its discretion by improperly restricting the voir dire examination, it is necessary for the record to reflect what questions the defendant desired to ask the jury panel”)

A two-part test applies when a party complains of an inability to address proper questions to the whole venire panel: (1) whether the complaining party attempted to prolong the voir dire, and (2) whether the questions that the party was not permitted to ask were proper voir dire questions. *McCarter v. State*, 837 S.W.2d 117, 119-20 (Tex.Crim.App.1992). A third prong is added when a party is not permitted to ask questions of individual jurors: (3) whether the party was not permitted to examine prospective jurors who actually served on the jury. *Id.* at 120.

### **Right to Ask Questions Previously Asked by State or Court**

Object Under TRAP 33.1

“Defense counsel may not be precluded from the traditional voir dire examination because the questions asked are repetitious of those asked by the court and prosecutor.” *E.g., McCarter*, 837 S.W.2d at 121.

Defendant has the right to question the prospective jurors in her own individual manner “to emphasize a point or uncover a hidden bias and [should] not be forced to rely on other parties to ask similar questions.” *Williams v. State*, 804 S.W.2d 95, 107 (Tex.Crim.App.1991).

### **Improper Voir Dire Questions**

Object under 33.1. Must object before juror answers question. *See, Montgomery v. State* 198 S.W.3d 67, 74 (Tex.App.-Fort Worth 2006)

### **Time Limits on Voir Dire**

To preserve error when the trial court limits the time for voir dire, the objecting party must identify the specific questions it was not allowed to ask. *Godine v. State*, 874 S.W.2d 197, 200-01 (Tex. App.-Houston [14th Dist.] 1994, no pet.). Identifying general topics for questions is insufficient. *S.D.G. v. State*, 936 S.W.2d 371, 380 (Tex.App.-Houston [14th Dist.] 1996, writ denied); *Godine*, 874 S.W.2d at 200-01.

Limitations must be in the record and defense counsel must request additional time. *Little v. State*, 758 S.W.2d 551 (Tex. Crim. App. 1988); *Guerra v. State*, 760 S.W.2d 681 (Tex. App. – Corpus Christi 1988).

Court will consider, had counsel adequately managed his time during voir dire, he would have had sufficient time to question the venire members. *Wappler v. State* 183 S.W.3d 765, 772 -775 (Tex.App.-Houston [1st Dist.] 2005, pet. ref'd.).

### **Commitment Questions**

General Rule: “[A]n attorney cannot attempt to bind or commit a prospective juror to a verdict based on a hypothetical set of facts.” A question is a commitment question if one or more of the possible answers is that the prospective juror would resolve or refrain from resolving an issue in the case on the basis of one or more facts contained in the question. *Standefer v. State*, 59 S.W.3d 177, 180 (Tex.Crim.App. 2001). All commitment questions are not improper. So long as the law requires a particular type of commitment from jurors—for example, to follow the particular law applicable to the case—then counsel may examine potential jurors concerning their ability to make that commitment.

Preservation of Error: Object under TRAP 33.1. To determine whether the question is a proper commitment question, the court first inquires whether one of the possible answers to the question gives rise to a valid challenge for cause.

If it does not, then the question is not proper and should be disallowed by the trial court.

If the commitment question gives rise to a valid challenge for cause, then the court must determine whether the question contains only those facts necessary to test whether a prospective juror is challengeable for cause. Additional facts supplied beyond what is necessary to sustain a challenge for cause render improper what otherwise would have been a proper question. *Standefer v. State*, 59 S.W.3d 177, 181 (Tex. Crim. App.2001).

### **Judicial Bias**

Object under TRAP 33.1 and See U.S. Const. amends. V, VI, XIV; Tex. Const. art. 1 § 19; *Abdygapparova v. State* 243 S.W.3d 191, 206 -207 (Tex. App.-San Antonio 2007, pet. ref'd)(holding violation for judge and state to engage in *ex parte* communications).

### **Batson and J.E.B.**

A *Batson* challenge based on race involves a three-step inquiry:

- (1) the defendant must make a prima facie showing that a venire member was peremptorily excluded because of race;
- (2) the State must provide race-neutral reasons for the challenged peremptory strike; and
- (3) the defendant must rebut the State's explanations. *See Tex.Code Crim. Proc. Ann. art. 35.261(a)* (Vernon 1989); *Simpson v. State*, 119 S.W.3d 262, 268 (Tex.Crim.App.2003).

*Batson* challenges may also be based on gender or ethnicity. *See J.E.B. v. Alabama*, 511 U.S. 127, 146 (1994); *Hernandez v. New York*, 500 U.S. 352, 370-72 (1991); *Guzman v. State*, 85 S.W.3d 242, 245 (Tex.Crim.App.2002). However, article 35.261 applies only to race-based peremptory challenges. *See Tex.Code Crim. Proc. Ann. art. 35.261*.

### **Alternate Juror (present during deliberations)**

Object under *TRAP 33.1* and *Tex.Code.Crim. Proc. Ann. art. 33.011(b)*. However, alternates are allowed in the jury room as long as they do not vote on the verdict. *See Castillo v. State*, 319 S.W.3d 966 (Tex. App. – Austin 2010, pet. ref'd).

### **Challenge to the Array**

*Tex.Code.Crim. Proc. Ann. art 35.06* Challenge to array first heard

The court shall hear and determine a challenge to the array *before* interrogating those summoned as to their qualifications. *See Esquivel v. State*, 595 S.W.2d 516 (Tex. Crim App. 1980).

### **Transcription Voir Dire**

Object under *TRAP 33.1*; *See Jones v. State*, 942 S.W.2d 1, 2 (Tex.Crim.App.1997) (objection required to preserve error stemming from failure to transcribe voir dire proceedings).

### **Juror Withholding Information**

Object Under *TRAP 33.1* and “describe to the trial court what questions he would ask the juror to establish misconduct or bias.” *See Kelly v. State*, 60 S.W.3d 299, 304 (Tex.App.-Dallas 2001, no pet.); *Cuellar v. State*, 943 S.W.2d 487, 490-91 (Tex.App.-Corpus Christi 1996, pet. ref'd).

### **Juror Misconduct**

“To preserve error caused by juror misconduct, the defendant must either move for a mistrial or file a motion for new trial supported by affidavits of a juror or other person in a position to know the facts alleging misconduct.” *Castillo v. State*, 319 S.W.3d 966, 970 (Tex. App.—Austin 2010, pet. ref'd)

### **Alternate Jurors**

The trial court has discretion to determine whether a juror has become disabled and to seat an alternate juror. Article 36.29 requires that a disabled juror suffer from a “ ‘physical illness, mental condition, or emotional state that would hinder or inhibit the juror from performing his or her duties as a juror,’ or that the juror was suffering from a condition that inhibited him from ‘fully and fairly performing the functions of a juror.’ ” When dismissing a juror, the trial court must not dismiss a juror for reasons related to that juror's evaluation of the sufficiency of the evidence. *Scales v. State*, 380 S.W.3d 780, 783 (Tex. Crim. App. 2012)

## **Replacing Jurors**

Before charge is read:

“Article 36.29 of the Texas Code of Criminal Procedure contemplates that a jury in a felony case must begin with twelve members. Tex. Code Crim. Proc. Ann. art. 36.29(a) ... If a juror becomes disabled after the jury is impaneled and sworn, article 36.29(a) gives the remaining eleven jurors the power to render the verdict.” *Castro v. State*, 233 S.W.3d 46, 49 (Tex. App.—Houston [1st Dist.] 2007, no pet.)

After Charge is read:

*Tex. Code Crim. P. art. 36.29 (c)* provides for the trial to proceed with 11 jurors if a juror becomes sick and no alternate is available.

## **Disabled Juror**

*Tex. Code Crim. P. art. 36.29*

Whether a juror has become “disabled” and cannot continue is a matter of discretion for the court.

## **Challenges for Cause**

*Tex. Code Crim. P. art. 35.16* Reasons for challenge for cause

(a) A challenge for cause is an objection made to a particular juror, alleging some fact which renders the juror incapable or unfit to serve on the jury. A challenge for cause may be made by either the state or the defense for any one of the following reasons:

1. That the juror is not a qualified voter in the state and county under the Constitution and laws of the state; provided, however, the failure to register to vote shall not be a disqualification;
2. That the juror has been convicted of misdemeanor theft or a felony;
3. That the juror is under indictment or other legal accusation for misdemeanor theft or a felony;
4. That the juror is insane;
5. That 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 that the juror is legally blind and the court in its discretion is not satisfied that the juror is fit for jury service in that particular case;
6. That the juror is a witness in the case;
7. That the juror served on the grand jury which found the indictment;
8. That the juror served on a petit jury in a former trial of the same case;
9. That the juror has a bias or prejudice in favor of or against the defendant;
10. That from hearsay, or otherwise, there is established in the mind of the juror such a conclusion as to the guilt or innocence of the defendant as would influence the juror in finding a verdict. To ascertain whether this cause of challenge exists, the juror shall first be asked whether, in the juror's opinion, the conclusion so established will influence the juror's verdict. If the juror answers in the affirmative, the juror shall be discharged without further interrogation by either party or the court. If the juror answers in the negative, the juror shall be further examined as to how the juror's conclusion was formed, and the extent to which it will affect the juror's action; and, if it appears to have been formed from reading newspaper accounts, communications, statements or reports or mere rumor or hearsay, and if the juror states that the juror feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that the juror is impartial and will render such verdict, may, in its discretion, admit the juror as competent to serve in such case. If the court, in its discretion, is not satisfied that the juror is impartial, the juror shall be discharged;
11. That the juror cannot read or write.

No juror shall be impaneled when it appears that the juror is subject to the second, third or fourth grounds of challenge for cause set forth above, although both parties may consent. All other grounds for challenge may be waived by the party or parties in whose favor such grounds of challenge exist.

In this subsection "legally blind" shall mean having not more than 20/200 of visual acuity in the better eye with correcting lenses, or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(b) A challenge for cause may be made by the State for any of the following reasons:

1. That the juror has conscientious scruples in regard to the infliction of the punishment of death for crime, in a capital case, where the State is seeking the death penalty;
2. That he is related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code, to the defendant; and
3. That he has a bias or prejudice against any phase of the law upon which the State is entitled to rely for conviction or punishment.

(c) A challenge for cause may be made by the defense for any of the following reasons:

1. That he is related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code, to the person injured by the commission of the offense, or to any prosecutor in the case; and
2. That he has a bias or prejudice against any of the law applicable to the case upon which the defense is entitled to rely, either as a defense to some phase of the offense for which the defendant is being prosecuted or as a mitigation thereof or of the punishment therefor.

*Tex. Code Crim. P. art. 35.16*

### **Harm Analysis**

*Tex. R. App.Proc. 44.2 Reversible Error in Criminal Cases*

(a) Constitutional Error. If the appellate record in a criminal case reveals constitutional error that is subject to harmless error review, the court of appeals must reverse a judgment of conviction or punishment unless the court determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment.

(b) Other Errors. Any other error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.

PRESERVATION OF ERROR  
or Object, Object, Object

Issues	Statute/Constitution	Case Law	Helpful Info
<b>PRETRIAL</b>	Texas Code Crim. Proc. art. 28.01	<i>State v. Velasquez</i> , 539 S.W.3d 289 (Tex. Crim. App. 2018)	Must be filed 7 days before pretrial hrg - and must give 10 days to prepare.
Motion to Suppress Statements	Texas Code Crim. Proc. art. 38.22  U.S. CONT. AMEND. IV TEX. CONST. ART. 1, sec. 9	<i>Dowthitt v. State</i> , 931 S.W.2d 244 (Tex.Crim. App. 1996); <i>Vasquez v. State</i> , 411 S.W.3d 918 (Tex. Crim. App. 2013) <i>Miranda v. Arizona</i>	File pretrial -request hearing with live testimony
Racial Profiling	Texas Code Crim. Proc. art. 2.132/38.23 U.S. CONT. AMEND. IV, XIV TEX. CONST. ART. 1, sec. 9, 19	<i>Ex parte Brooks</i> , 97 S.W.3d 639 (Tex. App. – Waco 2002)	File under Texas Code Crim. Proc. art. 38.23 motion to suppress
Statute of Limitations	Texas Code Crim. Proc. art. 12.01 et. seq.	<i>Ex parte Heilman</i> , 456 S.W.3d 159 (Tex. Crim. App. 2015)	File Motion to Dismiss under Texas Code Crim. Proc. art. 27.08; may be raised by pretrial writ of habeas corpus. Can be waived.
Invalid Warrant - arrest	Texas Code Crim. Proc. art. 15.01-15.03	<i>State v. Martin</i> , 833 S.W.2d 129 (Tex.Crim. App. 1992); <i>State v. Toone</i> , 872 S.W.2d 750 (Tex.Crim. App. 1994); <i>Franks v. Delaware</i> , 438 U.S. 154 (1978)	File Motion for <i>Franks v. Delaware</i> hearing; run with trial as well;
Invalid Warrant - search	Texas Code Crim. Proc. art. 18.01 et. seq.  U.S. CONT. AMEND. IV TEX. CONST. ART. 1, sec. 9	<i>Swearingen v. State</i> , 143 S.W.3d 808 (Tex.Crim. App. 2004); <i>Groh v. Ramirez</i> , 540 U.S. 551 (2004); <i>Massey v. State</i> , 933 S.W.2d 141 (Tex. Crim. App. 1996)	File pretrial; can also be re-litigated at trial if testimony differs
Competency to stand trial	Texas Code Crim. Proc. art. 46B et seq.	<i>Turner v. State</i> , 422 S.W.3d 676 (Tex. Crim. App. 2013).	File pretrial motion - but “a suggestion of incompetency” is the standard and can be raised by any credible person.
Insanity	Texas Code Crim. Proc. art. 46C et. seq.  U.S. CONT. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Defreece v. State</i> , 848 S.W.2d 150 (Tex.Crim. App. 1993)	Must file motion 20 days pretrial or at pretrial hearing, if set.
Jurisdiction	Texas Penal Code and Texas Code Crim. Proc. Art. 27.08 TEX. CONST. ART. 5, et seq.	<i>Puente v. State</i> , 71 S.W.3d 340 (Tex. Crim. App. 2002)	File pretrial - jurisdiction can never be waived and is preserved for app. Review w/out objection

Venue	Texas Code Crim. Proc. art. 13.01 et. seq.  U.S. CONT. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Stewart v. State</i> , 44 S.W.3d 582 (Tex.Crim. App. 2001); <i>Schmutz v. State</i> , 440 S.W.3d 29 (Tex. Crim. App. 2014); <i>Wilson v. State</i> , 825 S.W.2d 155 (Tex. App. – Dallas 1992)	By pretrial motion or by proper objection at trial, but it can be waived. Not an element of the offense, so it does not affect sufficiency.
Grand Jury	Texas Code Crim. Proc. art. 19.01 et. seq.  U.S. CONT. AMEND. V TEX. CONST. ART. 1, sec. 10	<i>Campbell v. Louisiana</i> , 523 U.S. 392, 398 (1998); <i>Gentry v. State</i> , 770 S.W.2d 780 (Tex.Crim. App. 1988)	Due Process violation/motion to quash
Indictment	Texas Code Crim. Proc. art. 21.01 et. seq.  U.S. CONT. AMEND. V TEX. CONST. ART. 1, sec. 10	<i>Studer v. State</i> , 799 S.W.2d 263 (Tex. Crim. App. 1990); <i>Teal v. State</i> , 230 S.W.3d 172 (Tex. Crim. App. 2007)	Motions to quash - must be filed pretrial
Ten Days to Prepare	Texas Code Crim. Proc. art. 27.11  U.S. CONT. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Roberts v. State</i> , 93 S.W.3d 528 (Tex. App. – Houston [14 <sup>th</sup> Dist.] 2002); <i>Ashcraft v. State</i> , 900 S.W.2d 817, 830 (Tex. App. – Corpus Christi 1995, pet. ref'd).	Make objection on record
Amendment to Indictment	Texas Code Crim. Proc. art. 28.10	<i>Puente v. State</i> , 320 S.W.3d 352, 353 (Tex. Crim. App. 2010)	object if proper when indictment is amended
Misjoinder Election	Texas Code Crim. Proc. art. 21.24  U.S. CONT. AMEND. V, XIV TEX. CONST. ART. 1, sec. 10, 19	<i>Martinez v. State</i> , 225 S.W.3d 550, 554 (Tex. Crim. App. 2007); <i>Mallett v. State</i> , 28 S.W.3d 603, 606-07 (Tex.App.-Corpus Christi 2000), <i>rev'd on other grounds</i> , 65 S.W.3d 59 (Tex. Crim. App.2001)	Motion to quash for misjoinder/motion for election at trial
Motion for Continuance	Texas Code Crim. Proc. art. 29.01 et. seq.  U.S. CONT. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Heiselbetz v. State</i> , 906 S.W.2d 500 (Tex. Crim. App. 1995)	29.08 - must be in writing & verified/establish specific prejudice on record if denied
Disqualification of judge	Texas Code Crim. Proc. art. 30.01 U.S. CONT. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Gamez v. State</i> , 737 S.W.2d 315 (Tex. Crim. App. 1987); <i>Metts v. State</i> , 510 S.W.3d 1, 4-5 (Tex. Crim. App. 2016)	Review consanguinity rules in Gov't Code Chapter 573
Change of Venue	Texas Code Crim. Proc. art. 31.01 et. seq. U.S. CONT. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Brimage v. State</i> , 918 S.W.2d 466, 508 (Tex.Crim. App. 1996); <i>Gonzalez v. State</i> , 222 S.W.3d 446 (Tex. Crim. App. 2007)	Must include def. affidavit + at least two more credible persons that are residents of the county

Special Plea	Texas Code Crim. Proc. art. 27.05 U.S. CONST. AMEND. V TEX. CONST. ART. 1, sec. 14	<i>Ex parte Apolinar</i> , 820 S.W.2d 792 (Tex. Crim. App. 1991)	Decided by jury whether prior jeopardy attaches; 27.06 requires def. verification
Ake/funding	U.S. CONST. AMEND. VI TEX. CONST. ART. 1, sec. 19	<i>Rey v. State</i> , 897 S.W.2d 333 (Tex. Crim. App. 1995); <i>Ex parte Briggs</i> , 187 S.W.3d 458 (Tex. Crim. App. 2005)	File motion pretrial <i>ex parte</i> Funding available if counsel is hired upon proper request

## TRIAL

Challenge to the array	Texas Code Crim. Proc. art. 35.07  U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10, 15, 19	<i>Pondexter v. State</i> , 942 S.W.2d 577 (Tex.Crim. App. 1996); <i>Garcia v. State</i> , 919 S.W.2d 370, 392 (Tex. Crim. App. 1996)	Must be in writing and supported by affidavit
Erroneous denial of valid challenge for cause	Texas Code Crim. Proc. art. 35.15  U.S. CONST. AMEND. VI TEX. CONST. ART. 1, sec. 10, 15	<i>Green v. State</i> , 934 92 (Tex.Crim. App. 1996); <i>Comeaux v. State</i> , 445 S.W.3d 745, 752 (Tex. Crim. App. 2014); <i>Webb v. State</i> , 232 S.W.3d 109, 112 (Tex. Crim. App. 2007)	To preserve error with respect to a trial court's denial of a challenge for cause, you must: (1) assert a clear and specific challenge for cause, (2) use a peremptory strike on the complained-of veniremember, (3) exhaust your peremptory strikes, (4) request additional peremptory strikes, (5) identify an objectionable juror, and (6) claim that you would have struck the objectionable juror with a peremptory strike if you had had one to use.
Erroneous grant of a State's challenge for cause will call for reversal only if the record shows that the error deprived the defendant of a lawfully constituted jury.		<i>Jones v. State</i> , 982 S.W.2d 386 (Tex.Crim.App.1998).	
Batson, 476 U.S. 79 (1986); J.E.B. 511 U.S. 127 (1994)	Texas Code Crim. Proc. art. 35.261 U.S. CONST. AMEND. VI TEX. CONST. ART. 1, sec. 10, 19	<i>Guzman v. State</i> , 85 S.W.3d 242 (Tex.Crim. App. 2002)	Must be done before jury is empaneled, make prima facie showing on record.

## Evidence

Rulings	Tex. R. Evid. 103  U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Warner v. State</i> , 969 S.W.2d 1 (Tex.Crim. App. 1998); <i>Tatum v. State</i> , 798 S.W.2d 569 (Tex.Crim. App. 1990); <i>Bonilla v. State</i> , 452 S.W.3d 811, 817 (Tex. Crim. App. 2014); <i>Layton v. State</i> , 280 S.W.3d 235 (Tex. Crim.App. 2009).	Error requires objection/and offer of proof - Must be Specific, Timely, and must reach an adverse ruling to preserve error
---------	--	---	--

---

Preservation	Tex. R. Evid. 103(a)(1) U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Mack v. State</i> , 872 S.W.2d 36 (Tex. App. – Fort Worth 1994); <i>Saldano v. State</i> , 70 S.W.3d 873, 888-90 (Tex. Crim. App. 2002); <i>Ethington v. State</i> , 819 S.W.2d 854, 858-59 (Tex. Crim. App. 1991)	Objections made outside presence of jury and preserved do not require objection in front of jury (not limine!) Must be (1) Timely, (2) Specific and (3) Get a ruling. Running objections preferred. Be careful of not letting evidence in elsewhere.
Offer of proof	Tex. R. Evid. 103(a)(2) U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Zillender v. State</i> , 557 S.W.2d 515 (Tex. Crim. App. 1977); <i>Mays v. State</i> , 285 S.W.3d 884, 889-90 (Tex. Crim. App. 2009)	If evidence is excluded, make a bill/take witness on voir dire/make record clear
Admissibility Generally	Tex. R. Evid. 104 U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Bartlett v. State</i> , 270 S.W.3d 147 (Tex. Crim. App. 2008); <i>State v. Petropoulos</i> , 346 S.W.3d 346 S.W.3d 525, 529 (Tex. 2011).	standard is typically abuse of discretion; objecting party has duty to notice whether the conditions of admissibility are met
Relevancy Conditioned on Fact	Tex. R. Evid. 104(b) U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Nguyen v. State</i> , 21 S.W.3d 609 (Tex. App. – Houston [1 <sup>st</sup> Dist.] 2000); <i>Harrell v. State</i> , 884 S.W.2d 154, 159-60 (Tex. Crim. App. 1994)	May be struck if not properly established by later evidence- must object
Hearing of Jury	Tex. R. Evid. 104(c) U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Alvarado v. State</i> , 912 S.W.2d 199 (Tex.Crim. App. 1995); <i>Simmons v. U.S.</i> , 390 U.S. 377 (1968)	Mandatory hearing outside presence of jury on voluntariness of def.'s statement and when accused testifies on prelim. matter
Limiting Instruction	Tex. R. Evid. 105(a) U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Kirsch v. State</i> , 306 S.W.3d 738, 747 (Tex. Crim. App. 2010); <i>Beham v. State</i> , 559 S.W.3d 474, 484 (Tex. Crim. App. 2018).	Proper request requires court to instruct jury on limited purpose of evidence
Offering Evidence for Limited Purpose	Tex. R. Evid. 105(b) U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Wright v. State</i> , 776 S.W.2d 763 (Tex. App. – Corpus Christi 1989)	Must make express showing of what your limited evidence would have shown
Remainder of or Related Writings	Tex. R. Evid. 106 U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Reece v. State</i> , 772 S.W.2d 198 (Tex. App. – Houston [14 <sup>th</sup> Dist.] 1989)	Must object or it is waived - allows intro of remainder at time other evidence is presented
Rule of Optional Completeness	Tex. R. Evid. 107 U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Walters v. State</i> , 247 S.W.3d 204, 205 (Tex. Crim. App. 2007); <i>Allridge v. State</i> , 762 S.W.2d 146 (Tex.Crim. App. 1988)	“Opening the door” to prevent the jury receiving a false impression

---

Judicial Notice	Tex. R. Evid. 201  U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Watts v. State</i> , 99 S.W.3d 604 (Tex. Crim. App. 2003); <i>Kubosh v. State</i> , 241 S.W.3d 60, 64 (Tex. Crim. App. 2007)	Objection required - watch for judicial notice vs. fact issue for jury
Relevancy	Tex. R. Evid. 401, 402  U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Morale v. State</i> , 557 S.W.3d 569, 573 (Tex. 2018); <i>Blackburn v. State</i> , 820 S.W.2d 824, 825–26 (Tex. App. —Waco 1991, pet. ref'd);	Two provisions construed in harmony, make objection, abuse of discretion standard
Exclusion of Relevant Evidence	Tex. R. Evid. 403  U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Montgomery v. State</i> , 810 S.W.2d 372 (Tex.Crim. App. 1991); <i>Wheeler v. State</i> , 67 S.W.3d 879 (Tex.Crim. App. 2002)	Test whether prejudicial effect substantially outweighs probative value under 403
Character Evidence	Tex. R. Evid. 404(a)  U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Stitt v. State</i> , 102 S.W.3d 845 (Tex. App, — Texarkana 2003); <i>Santellan v. State</i> , 939 S.W.2d 155 (Tex. Crim. App. 1997)	A pertinent character trait is one that relates to a trait involved in the offense charged or a defense raised
Character Evidence	Tex. R. Evid. 404(b)  U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Bass v. State</i> , 270 S.W.3d 557, 563 (Tex. Crim. App. 2008); <i>Casey v. State</i> , 215 S.W.3d 870, 879 (Tex. Crim. App. 2007); <i>Johnston v. State</i> , 145 S.W.3d 215, 219 (Tex. Crim. App. 2004); <i>Page v. State</i> , 137 S.W.3d 75 (Tex. Crim. App. 2004)	Request notice pretrial from state for 404(b); 609; and Texas Code Crim. Proc. art. 37.07 evidence – do not file motion/request triggers notice requirements.
Method of Proving Character	Tex. R. Evid. 405  U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Turner v. State</i> , 805 S.W.2d 423 (Tex. Crim. App. 1991); <i>Thomas v. State</i> , 669 S.W.2d 420, 423 (Tex. App.—Houston [1st Dist.] 1984, pet. ref'd)	Reputation - “Have you heard?” Opinion - “Do you know?” - although really no distinction within the rule
Habit: Routine Practice	Tex. R. Evid. 406  U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>U.S. v. Angwin</i> , 271 F.3d 786 (9th Cir. 2001); <i>Miller v. State</i> , 882 S.W.2d 936 (Tex. App. – Beaumont 1994)	Examples of admissible habit and routine practice admissible.
Inadmissibility of Pleas & Plea Discussions	Tex. R. Evid. 410  U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Abdel-Sater v. State</i> , 852 S.W.2d 671 (Tex. App. – Houston [14 <sup>th</sup> Dist.] 1993); <i>Jenkins v. State</i> , 493 S.W.3d 583, 607 (Tex. Crim. App. 2016)	While inadmissible - be wary of evidence coming in other way; rule is silent on whether D can offer the evidence.

Evidence of Previous Sexual Conduct in Criminal Case	Tex. R. Evid. 412 U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Boyle v. State</i> , 820 S.W.2d 122 (Tex. Crim. App. 1989) <i>overruled on other grounds</i> , <i>Gordon v. State</i> , 801 S.W.2d 899 (Tex. Crim. App. 1990); <i>Todd v. State</i> , 242 S.W.3d 126, 129 (Tex. App.—Texarkana 2007, pet. ref'd)	Preserve through bill any excluded evidence to establish why it relates to any of the exceptions under 412(b)(2)(a)-(e).
Husband-Wife Privilege	Tex. R. Evid. 504 U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10, 19	<i>Colburn v. State</i> , 966 S.W.2d 511 (Tex. Crim. App. 1998)	Many exceptions; common law marriage applies
Competency of Juror as Witness	Tex. R. Evid. 606 U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10, 19	<i>Colyer v. State</i> , 428 S.W.3d 117, 123–24 (Tex. Crim. App. 2014).	Juror misconduct almost impossible to establish - try through evidence from one other than juror.(outside influence)
Who May Impeach	Tex. R. Evid. 607 U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Hughes v. State</i> , 4 S.W.3d 1 (Tex. Crim. App. 1999); <i>Ramirez v. State</i> , 987 S.W.2d 938 (Tex. App. – Austin 1999)	Object under 403 if State uses impeachment evidence primarily to get otherwise inadmissible evidence before jury.
Evidence of Character & Conduct of a Witness	Tex. R. Evid. 608 U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Schutz v. State</i> , 957 S.W.2d 52 (Tex. Crim. App. 1997)	Witness called to impeach truthfulness of another witness - cannot be used for general moral character - no specific instances of lying allowed
Impeachment by Evidence of Conviction of Crime	Tex. R Evid. 609 U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Lopez v. State</i> , 253 S.W.3d 680, 682 (Tex. Crim. App. 2008); <i>James v. State</i> , 102 S.W.23d 162 (Tex. App. – Fort Worth 2003)	Watch for opening of door/ allowing in crimes not admissible under 609
Writing Used to Refresh Memory	Tex. R. Evid. 612 U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10, 19	<i>Powell v. State</i> , 5 S.W.3d 369 (Tex. App. – Texarkana 1999)	Timely request
Prior Statements of Witnesses	Tex. R. Evid. 613(a) U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10, 19	<i>Goodman v. State</i> , 665 S.W.2d 788 (Tex. Crim. App. 1984)	Request jury be instructed evidence is for impeachment purposes only
Impeachment & Support	Tex. R. Evid. 613(b) U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10, 19	<i>Gannaway v. State</i> , 823 S.W.2d 675 (Tex. App. – Dallas 1991)	Common forms of impeachment include racial prejudice, family relationship, personal friendship or enmity, prior “bad blood”, etc.

Opinion Testimony by Lay Witness	Tex. R. Evid. 701  U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10, 19	<i>Osborn v. State</i> , 92 S.W.2d 531 (Tex. Crim. App. 2002); <i>Hughes v. State</i> , 787 S.W.2d 193 (Tex. App. – Corpus Christi 1990)	The opinion of a witness is not admissible to interpret the “meaning” of the acts, conduct, or language
Testimony by Experts	Tex. R. Evid. 702  U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10, 19	<i>Vela v. State</i> , 209 S.W.3d 128, 130 (Tex. Crim. App. 2006); <i>Weatherred v. State</i> , 15 S.W.3d 540 (Tex. Crim. App. 2000)	To get yours in - evidence must be sufficiently reliable and relevant; to keep out - reverse
Hearsay	Tex. R. Evid. 801, 802  U.S. CONST. AMEND. VI TEX. CONST. ART. 1, sec. 10	<i>Graham v. State</i> , 643 S.W.2d 920 (Tex. Crim. App. 1981)	Timely objection/remember to include constitutional violation of confrontation!
Present Sense Impression	Tex. R. Evid. 803(1)  U.S. CONST. AMEND. VI TEX. CONST. ART. 1, sec. 10	<i>Rabbani v. State</i> , 847 S.W.2d 555 (Tex. Crim. App. 1992)	Statement must be made, if not simultaneous, immediately thereafter
Excited Utterance	Tex. R. Evid. 803(2)  U.S. CONST. AMEND. VI TEX. CONST. ART. 1, sec. 10	<i>McCarty v. State</i> , 257 S.W.3d 238, 238 (Tex. Crim. App. 2008); <i>Bondurant v. State</i> , 956 S.W.2d 762 (Tex. App. – Fort Worth 1997)	Three requirements - statement must have 1) occurred; 2) been a spontaneous reaction to the event; and 3) must relate to the event
Then existing mental, emotional or physical condition	Tex. R. Evid. 803(3)  U.S. CONST. AMEND. VI TEX. CONST. ART. 1, sec. 10	<i>Dorsey v. State</i> , 24 S.W.3d 921 (Tex. App. – Beaumont 2000)	Must be statement of “present” bodily condition
Statement for purpose of medical diagnosis or treatment	Tex. R. Evid. 803(4)  U.S. CONST. AMEND. VI TEX. CONST. ART. 1, sec. 10	<i>Taylor v. State</i> , 268 S.W.3d 571, 580 (Tex. Crim. App. 2008)	Two part test - statement made for purpose of receiving treatment and content must be reasonably relied upon by a physician
Recorded Recollection	Tex. R. Evid. 803(5)  U.S. CONST. AMEND. VI TEX. CONST. ART. 1, sec. 10	<i>Johnson v. State</i> , 967 S.W.2d 410 (Tex. Crim. App. 1998)	Four prerequisites - 1) W lacks some degree of memory; 2) statement must have been made or adopted by W; 3) recollection must have correctly reflected prior knowledge; must have been recorded when fresh
Records of Regularly conducted activity	Tex. R. Evid. 803(6)  U.S. CONST. AMEND. VI TEX. CONST. ART. 1, sec. 10	<i>Johnston v. State</i> , 959 S.W.2d 230 (Tex. App. – Dallas 1997); <i>Garcia v. State</i> , 126 S.W.3d 921, 967 (Tex. Crim. App. 2004)	Four foundation requirements - 1) regularly kept; 2) personal knowledge; 3) made close in time to event 4) foundation laid by custodian of records
Absence of entry in records	Tex. R. Evid. 803(7)  U.S. CONST. AMEND. VI TEX. CONST. ART. 1, sec. 10	<i>Young v. State</i> , 891 S.W.2d 945 (Tex. Crim. App. 1994)	Foundation similar to 803(6) - proponent must show record would have been there had it existed

Public Records and reports	Tex. R. Evid. 803(8) U.S. CONST. AMEND. VI TEX. CONST. ART. 1, sec. 10	<i>Perry v. State</i> , 957 S.W.2d 894 (Tex. App. – Texarkana 1997)	Law enforcement exception - possible reliability issues
Reputation Evidence	Tex. R. Evid. 803(19) U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10, 19	<i>Jones v. State</i> , 950 S.W.2d 386 (Tex. App. – Fort Worth 1997)	Must have personal knowledge of family history
Statements against interest	Tex. R. Evid. 803(24) U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10, 19	<i>Lilly v. Virginia</i> , 527 U.S. 116 (1999); <i>Dewberry v. State</i> , 4 S.W.3d 735 (Tex. Crim. App. 1999)	Statement must be inculpatory with corroborating circumstances
Hearsay Exceptions/Declarant Unavailable	Tex. R. Evid. 804 U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10	<i>Wall v. State</i> , 184 S.W.3d 730, 734 (Tex. Crim. App. 2006); <i>Caldwell v. State</i> , 916 SW.2d 674 (Tex. App. – Texarkana 1996); <i>Reyes v. State</i> , 845 S.W.2d 328 (Tex. App. – El Paso 1992)	Unavailability of W is prereq/but that is <i>not</i> the exception - merely the first inquiry
Former Testimony	Tex. R. Evid. 804(b)(1) U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10	<i>Coffin v. State</i> , 885 S.W.2d 140 (Tex. Crim. App. 1994)	Key is the prior “opportunity to develop the testimony.”
Dying declaration	Tex. R. Evid. 804(b)(2) U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10	<i>Gardner v. State</i> , 306 S.W.3d 274 (Tex. Crim. App. 2009)	Three requirements: 1) declarant unavailable; 2) declarant must have believed he was dying when making statement; 3) statement must concern cause or circumstances of impending death
Hearsay within hearsay	Tex. R. Evid. 805 U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10, 19	<i>Philpot v. State</i> , 897 S.W.2d 848 (Tex. App. – Dallas 1995)	To admit multiple level hearsay, each statement must be independently admissible
Requirement of Authentication or Identification	Tex. R. Evid. 901 U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10, 19	<i>Angleton v. State</i> , 971 S.W.2d 65 (Tex. Crim. App. 1985); <i>Maldonado v. State</i> , 998 S.W.2d 239 (Tex. Crim. App. 1999)	Condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims
Self-Authentication	Tex. R. Evid. 902 U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10, 19	<i>Reed v. State</i> , 811 S.W.2d 582 (Tex. Crim. App. 1991)	Authentication allowed under either 901 or 902.
“Best Evidence Rule”	Tex. R. Evid. 1001 et. seq. U.S. CONST. AMEND. XIV TEX. CONST. ART. 1, sec. 19	<i>Ali v. State</i> , 26 S.W.3d 82 (Tex. App. — Waco 2000)	Not applied rigidly/abuse of discretion standard
Requirement of Originals	Tex. R. Evid. 1002 U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10, 19	<i>Menefee v. State</i> , 928 S.W.2d 274 (Tex. App. – Tyler 1996)	Objection must assert that the copy or reproduction is inadequate

Admissibility of other evidence of contents	Tex. R. Evid. 1004 U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10, 19	<i>Coleman v. State</i> , 760 S.W.2d 356 (Tex. App. – Houston [1 <sup>st</sup> Dist. 1988)	If proponent has original, should be offered upon proper objection
Jury charge error	Texas Code Crim. Proc. art. 36.14 U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10, 19	<i>Posey v. State</i> , 966 S.W.2d 57 (Tex. Crim. App. 1998)	Must object in writing to “commission and omission” to preserve error or egregious harm standard used under <i>Almanza</i> .
Requested Special Charges	Texas Code Crim. Proc. art. 36.15 U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10, 19	<i>Vasquez v. State</i> , 919 S.W.2d 433 (Tex. Crim. App. 1996)	Written request with ruling by trial court preserves error.
Jury may have witness re-examined or testimony read	Texas Code Crim. Proc. art. 36.28 U.S. CONST. AMEND. VI, XIV TEX. CONST. ART. 1, sec. 10, 19	<i>DeGraff v. State</i> , 962 S.W.2d 596 (Tex. Crim. App. 1998)	Must be a disagreement before testimony read back

## THE TEXAS CONSTITUTION

### ARTICLE 1. BILL OF RIGHTS

That the general, great and essential principles of liberty and free government may be recognized and established, we declare:  
Sec. 1. FREEDOM AND SOVEREIGNTY OF STATE. Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States.

Sec. 2. INHERENT POLITICAL POWER; REPUBLICAN FORM OF GOVERNMENT. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

Sec. 3. EQUAL RIGHTS. All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

Sec. 3a. EQUALITY UNDER THE LAW. Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative.

(Added Nov. 7, 1972.)

Sec. 4. RELIGIOUS TESTS. No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

Sec. 5. WITNESSES NOT DISQUALIFIED BY RELIGIOUS BELIEFS; OATHS AND AFFIRMATIONS. No person shall be disqualified to give evidence in any of the Courts of this State on account of his religious opinions, or for the want of any religious belief, but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

Sec. 6. FREEDOM OF WORSHIP. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Sec. 7. APPROPRIATIONS FOR SECTARIAN PURPOSES. No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.

Sec. 8. FREEDOM OF SPEECH AND PRESS; LIBEL. Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Sec. 9. SEARCHES AND SEIZURES. The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

Sec. 10. RIGHTS OF ACCUSED IN CRIMINAL PROSECUTIONS. In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is a violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in

actual service in time of war or public danger.

(Amended Nov. 5, 1918.)

Sec. 11. BAIL. All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

Sec. 11a. MULTIPLE CONVICTIONS; DENIAL OF BAIL. (a) Any person (1) accused of a felony less than capital in this State, who has been theretofore twice convicted of a felony, the second conviction being subsequent to the first, both in point of time of commission of the offense and conviction therefor, (2) accused of a felony less than capital in this State, committed while on bail for a prior felony for which he has been indicted, (3) accused of a felony less than capital in this State involving the use of a deadly weapon after being convicted of a prior felony, or (4) accused of a violent or sexual offense committed while under the supervision of a criminal justice agency of the State or a political subdivision of the State for a prior felony, after a hearing, and upon evidence substantially showing the guilt of the accused of the offense in (1) or (3) above, of the offense committed while on bail in (2) above, or of the offense in (4) above committed while under the supervision of a criminal justice agency of the State or a political subdivision of the State for a prior felony, may be denied bail pending trial, by a district judge in this State, if said order denying bail pending trial is issued within seven calendar days subsequent to the time of incarceration of the accused; provided, however, that if the accused is not accorded a trial upon the accusation under (1) or (3) above, the accusation and indictment used under (2) above, or the accusation or indictment used under (4) above within sixty (60) days from the time of his incarceration upon the accusation, the order denying bail shall be automatically set aside, unless a continuance is obtained upon the motion or request of the accused; provided, further, that the right of appeal to the Court of Criminal Appeals of this State is expressly accorded the accused for a review of any judgment or order made hereunder, and said appeal shall be given preference by the Court of Criminal Appeals.

(b) In this section:

(1) "Violent offense" means:

(A) murder;

(B) aggravated assault, if the accused used or exhibited a deadly weapon during the commission of the assault;

(C) aggravated kidnapping; or

(D) aggravated robbery.

(2) "Sexual offense" means:

(A) aggravated sexual assault;

(B) sexual assault; or

(C) indecency with a child.

(Added Nov. 6, 1956; amended Nov. 8, 1977; Subsec. (a) amended and (b) added Nov. 2, 1993.)

Sec. 11b. VIOLATION OF CONDITION OF RELEASE PENDING TRIAL; DENIAL OF BAIL. Any person who is accused in this state of a felony or an offense involving family violence, who is released on bail pending trial, and whose bail is subsequently revoked or forfeited for a violation of a condition of release may be denied bail pending trial if a judge or magistrate in this state determines by a preponderance of the evidence at a subsequent hearing that the person violated a condition of release related to the safety of a victim of the alleged offense or to the safety of the community.

(Added Nov. 8, 2005; amended Nov. 6, 2007.)

Sec. 11c. VIOLATION OF AN ORDER FOR EMERGENCY PROTECTION INVOLVING FAMILY VIOLENCE. The legislature by general law may provide that any person who violates an order for emergency protection issued by a judge or magistrate after an arrest for an offense involving family violence or who violates an active protective order rendered by a court in a family violence case, including a temporary ex parte order that has been served on the person, or who engages in conduct that constitutes an offense involving the violation of an order described by this section may be taken into custody and, pending trial or other court proceedings, denied release on bail if following a hearing a judge or magistrate in this state determines by a preponderance of the evidence that the person violated the order or engaged in the conduct constituting the offense.

(Added Nov. 6, 2007.)

Sec. 12. HABEAS CORPUS. The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.

Sec. 13. EXCESSIVE BAIL OR FINES; CRUEL AND UNUSUAL PUNISHMENT; REMEDY BY DUE COURSE OF LAW. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Sec. 14. DOUBLE JEOPARDY. No person, for the same offense, shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offense after a verdict of not guilty in a court of competent jurisdiction.

Sec. 15. RIGHT OF TRIAL BY JURY. The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury.

(Amended Aug. 24, 1935.)

Sec. 15-a. COMMITMENT OF PERSONS OF UNSOUND MIND. No person shall be committed as a person of unsound mind except on competent medical or psychiatric testimony. The Legislature may enact all laws necessary to provide for the trial, adjudication of insanity and commitment of persons of unsound mind and to provide for a method of appeal from judgments rendered in such cases. Such laws may provide for a waiver of trial by jury, in cases where the person under inquiry has not been charged with the commission of a criminal offense, by the concurrence of the person under inquiry, or his next of kin, and an attorney ad litem appointed by a judge of either the County or Probate Court of the county where the trial is being held, and shall provide for a method of service of notice of such trial upon the person under inquiry and of his right to demand a trial by jury.

(Added Nov. 6, 1956.)

Sec. 16. BILLS OF ATTAINDER; EX POST FACTO OR RETROACTIVE LAWS; IMPAIRING OBLIGATION OF CONTRACTS. No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

Sec. 17. TAKING, DAMAGING, OR DESTROYING PROPERTY FOR PUBLIC USE; SPECIAL PRIVILEGES AND IMMUNITIES; CONTROL OF PRIVILEGES AND FRANCHISES. (a) No person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person, and only if the taking, damage, or destruction is for:

(1) the ownership, use, and enjoyment of the property, notwithstanding an incidental use, by:

(A) the State, a political subdivision of the State, or the public at large; or

(B) an entity granted the power of eminent domain under law; or

(2) the elimination of urban blight on a particular parcel of property.

(b) In this section, "public use" does not include the taking of property under Subsection (a) of this section for transfer to a private entity for the primary purpose of economic development or enhancement of tax revenues.

(c) On or after January 1, 2010, the legislature may enact a general, local, or special law granting the power of eminent domain to an entity only on a two-thirds vote of all the members elected to each house.

(d) When a person's property is taken under Subsection (a) of this section, except for the use of the State, compensation as described by Subsection (a) shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities shall be made; but all privileges and franchises granted by the Legislature, or created under its authority, shall be subject to the control thereof.

(Amended Nov. 3, 2009.)

Sec. 18. IMPRISONMENT FOR DEBT. No person shall ever be imprisoned for debt.

Sec. 19. DEPRIVATION OF LIFE, LIBERTY, ETC.; DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Sec. 20. OUTLAWRY OR TRANSPORTATION FOR OFFENSE. No citizen shall be outlawed. No person shall be transported out of the State for any offense committed within the same. This section does not prohibit an agreement with another state providing for the confinement of inmates of this State in the penal or correctional facilities of that state.

(Amended Nov. 5, 1985.)

Sec. 21. CORRUPTION OF BLOOD; FORFEITURE; SUICIDES. No conviction shall work corruption of blood, or forfeiture of estate, and the estates of those who destroy their own lives shall descend or vest as in case of natural death.

Sec. 22. TREASON. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court.

Sec. 23. RIGHT TO KEEP AND BEAR ARMS. Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.

Sec. 24. MILITARY SUBORDINATE TO CIVIL AUTHORITY. The military shall at all times be subordinate to the civil authority.

Sec. 25. QUARTERING SOLDIERS IN HOUSES. No soldier shall in time of peace be quartered in the house of any citizen without the consent of the owner, nor in time of war but in a manner prescribed by law.

Sec. 26. PERPETUITIES AND MONOPOLIES; PRIMOGENITURE OR ENTAILMENTS. Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State.

Sec. 27. RIGHT OF ASSEMBLY; PETITION FOR REDRESS OF GRIEVANCES. The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

Sec. 28. SUSPENSION OF LAWS. No power of suspending laws in this State shall be exercised except by the Legislature.

Sec. 29. PROVISIONS OF BILL OF RIGHTS EXCEPTED FROM POWERS OF GOVERNMENT; TO FOREVER REMAIN INVIOLEATE. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

Sec. 30. RIGHTS OF CRIME VICTIMS. (a) A crime victim has the following rights:

- (1) the right to be treated with fairness and with respect for the victim's dignity and privacy throughout the criminal justice process; and
  - (2) the right to be reasonably protected from the accused throughout the criminal justice process.
- (b) On the request of a crime victim, the crime victim has the following rights:
- (1) the right to notification of court proceedings;
  - (2) the right to be present at all public court proceedings related to the offense, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial;
  - (3) the right to confer with a representative of the prosecutor's office;
  - (4) the right to restitution; and
  - (5) the right to information about the conviction, sentence, imprisonment, and release of the accused.
- (c) The legislature may enact laws to define the term "victim" and to enforce these and other rights of crime victims.
- (d) The state, through its prosecuting attorney, has the right to enforce the rights of crime victims.
- (e) The legislature may enact laws to provide that a judge, attorney for the state, peace officer, or law enforcement agency is not liable for a failure or inability to provide a right enumerated in this section. The failure or inability of any person to provide a right or service enumerated in this section may not be used by a defendant in a criminal case as a ground for appeal or post-conviction writ of habeas corpus. A victim or guardian or legal representative of a victim has standing to enforce the rights enumerated in this section but does not have standing to participate as a party in a criminal proceeding or to contest the disposition of any charge.

(Added Nov. 7, 1989.)

Sec. 31. COMPENSATION TO VICTIMS OF CRIME FUND; COMPENSATION TO VICTIMS OF CRIME AUXILIARY FUND; USE OF FUND MONEY. (a) The compensation to victims of crime fund created by general law and the compensation to victims of crime auxiliary fund created by general law are each a separate dedicated account in the general revenue fund.

(b) Except as provided by Subsection (c) of this section and subject to legislative appropriation, money deposited to the credit of the compensation to victims of crime fund or the compensation to victims of crime auxiliary fund from any source may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance.

(c) The legislature may provide by law that money in the compensation to victims of crime fund or in the compensation to

victims of crime auxiliary fund may be expended for the purpose of assisting victims of episodes of mass violence if other money appropriated for emergency assistance is depleted.

(Added Nov. 4, 1997.)

Sec. 32. MARRIAGE. (a) Marriage in this state shall consist only of the union of one man and one woman.  
(b) This state or a political subdivision of this state may not create or recognize any legal status identical or similar to marriage.

(Added Nov. 8, 2005.)

Sec. 33. ACCESS AND USE OF PUBLIC BEACHES. (a) In this section, "public beach" means a state-owned beach bordering on the seaward shore of the Gulf of Mexico, extending from mean low tide to the landward boundary of state-owned submerged land, and any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico to which the public has acquired a right of use or easement to or over the area by prescription or dedication or has established and retained a right by virtue of continuous right in the public under Texas common law.  
(b) The public, individually and collectively, has an unrestricted right to use and a right of ingress to and egress from a public beach. The right granted by this subsection is dedicated as a permanent easement in favor of the public.  
(c) The legislature may enact laws to protect the right of the public to access and use a public beach and to protect the public beach easement from interference and encroachments.  
(d) This section does not create a private right of enforcement.

(Added Nov. 3, 2009.)

Sec. 34. RIGHT TO HUNT, FISH, AND HARVEST WILDLIFE. (a) The people have the right to hunt, fish, and harvest wildlife, including by the use of traditional methods, subject to laws or regulations to conserve and manage wildlife and preserve the future of hunting and fishing.  
(b) Hunting and fishing are preferred methods of managing and controlling wildlife.  
(c) This section does not affect any provision of law relating to trespass, property rights, or eminent domain.  
(d) This section does not affect the power of the legislature to authorize a municipality to regulate the discharge of a weapon in a populated area in the interest of public safety.

(Added Nov. 3, 2015.)

## U.S. Constitution - portion of Bill of Rights

### Amendment 1

#### Freedom of Religion, Speech, and the Press

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

### Amendment 2

#### The Right to Bear Arms

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

### Amendment 3

#### The Housing of Soldiers

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

### Amendment 4

#### Protection from Unreasonable Searches and Seizures

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

### Amendment 5

#### Protection of Rights to Life, Liberty, and Property

No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

### Amendment 6

#### Rights of Accused Persons in Criminal Cases

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

### Amendment 8

#### Excessive Bail, Fines, and Punishments Forbidden

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

### Amendment 14

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.