

CODE OF CRIMINAL PROCEDURE
TITLE 1. CODE OF CRIMINAL PROCEDURE
CHAPTER 36. THE TRIAL BEFORE THE JURY

Art. 36.01. ORDER OF PROCEEDING IN TRIAL. (a) A jury being impaneled in any criminal action, except as provided by Subsection (b) of this article, the cause shall proceed in the following order:

1. The indictment or information shall be read to the jury by the attorney prosecuting. When prior convictions are alleged for purposes of enhancement only and are not jurisdictional, that portion of the indictment or information reciting such convictions shall not be read until the hearing on punishment is held as provided in Article 37.07.

2. The special pleas, if any, shall be read by the defendant's counsel, and if the plea of not guilty is also relied upon, it shall also be stated.

3. The State's attorney shall state to the jury the nature of the accusation and the facts which are expected to be proved by the State in support thereof.

4. The testimony on the part of the State shall be offered.

5. The nature of the defenses relied upon and the facts expected to be proved in their support shall be stated by defendant's counsel.

6. The testimony on the part of the defendant shall be offered.

7. Rebutting testimony may be offered on the part of each party.

8. In the event of a finding of guilty, the trial shall then proceed as set forth in Article 37.07.

(b) The defendant's counsel may make the opening statement for the defendant immediately after the attorney representing the State makes the opening statement for the State. After the defendant's attorney concludes the defendant's opening statement, the State's testimony shall be offered. At the conclusion of the presentation of the State's testimony, the defendant's testimony shall be offered, and the order of proceedings shall continue in the manner described by Subsection (a) of this article.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1987, 70th Leg., ch. 519, Sec. 1, eff. Sept. 1, 1987.

Art. 36.02. TESTIMONY AT ANY TIME. The court shall allow testimony to be introduced at any time before the argument of a cause is concluded, if it appears that it is necessary to a due administration of justice.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.03. INVOCATION OF RULE. (a) Notwithstanding Rule 614, Texas Rules of Evidence, a court at the request of a party may order the exclusion of a witness who for the purposes of the prosecution is a victim, close relative of a deceased victim, or guardian of a victim only if the witness is to testify and the court determines that the testimony of the witness would be materially affected if the witness hears other testimony at the trial.

(b) On the objection of the opposing party, the court may require the party requesting exclusion of a witness under Subsection (a) to make an offer of proof to justify the exclusion.

(c) Subsection (a) does not limit the authority of the court on its own motion to exclude a witness or other person to maintain decorum in the courtroom.

(d) In this article:

Text of subdivision effective until January 01, 2021

(1) "Close relative of a deceased victim" and "guardian of a victim" have the meanings assigned by Article [56.01](#).

Text of subdivision effective on January 01, 2021

(1) "Close relative of a deceased victim" and "guardian of a victim" have the meanings assigned by Article [56A.001](#).

(2) "Victim" means a victim of any criminal offense.

(e) At the commencement of a trial, the court shall admonish each witness who is to testify as to those persons whom the court determines the witness may talk to about the case before the trial ends and those persons whom the witness may not talk to about the

case. The court may punish as contempt a witness who violates the admonishment provided by the court.

Added by Acts 2001, 77th Leg., ch. 1034, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 469 (H.B. 4173), Sec. 2.10, eff. January 1, 2021.

Art. 36.05. NOT TO HEAR TESTIMONY. Witnesses under rule shall be attended by an officer, and all their reasonable wants provided for, unless the court, in its discretion, directs that they be allowed to go at large; but in no case where the witnesses are under rule shall they be allowed to hear any testimony in the case.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.06. INSTRUCTED BY THE COURT. Witnesses, when placed under rule, shall be instructed by the court that they are not to converse with each other or with any other person about the case, except by permission of the court, and that they are not to read any report of or comment upon the testimony in the case while under rule. The officer who attends the witnesses shall report to the court at once any violation of its instructions, and the party violating the same shall be punished for contempt of court.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.07. ORDER OF ARGUMENT. The order of argument may be regulated by the presiding judge; but the State's counsel shall have the right to make the concluding address to the jury.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.08. NUMBER OF ARGUMENTS. The court shall never restrict the argument in felony cases to a number of addresses less than two on each side.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.09. SEVERANCE ON SEPARATE INDICTMENTS. Two or more defendants who are jointly or separately indicted or complained

against for the same offense or any offense growing out of the same transaction may be, in the discretion of the court, tried jointly or separately as to one or more defendants; provided that in any event either defendant may testify for the other or on behalf of the state; and provided further, that in cases in which, upon timely motion to sever, and evidence introduced thereon, it is made known to the court that there is a previous admissible conviction against one defendant or that a joint trial would be prejudicial to any defendant, the court shall order a severance as to the defendant whose joint trial would prejudice the other defendant or defendants.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1967, 60th Leg., p. 1739, ch. 659, Sec. 21, eff. Aug. 28, 1967.

Art. 36.10. ORDER OF TRIAL. If a severance is granted, the defendants may agree upon the order in which they are to be tried, but if they fail to agree, the court shall direct the order of the trial.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.11. DISCHARGE BEFORE VERDICT. If it appears during a trial that the court has no jurisdiction of the offense, or that the facts charged in the indictment do not constitute an offense, the jury shall be discharged. The accused shall also be discharged, but such discharge shall be no bar in any case to a prosecution before the proper court for any offense unless termination of the former prosecution was improper.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 971, ch. 399, Sec. 2(A), eff. Jan. 1, 1974.

Art. 36.12. COURT MAY COMMIT. If the want of jurisdiction arises from the fact that the defendant is not liable to prosecution in the county where the indictment was presented, the court may in felony cases order the accused into custody for a reasonable length of time to await a warrant for his arrest from the proper county; or if the offense be bailable, may require him to enter into recognizance to answer before the proper court; in which case a

certified copy of the recognizance shall be sent forthwith to the clerk of the proper court, to be enforced by that court in case of forfeiture.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.13. JURY IS JUDGE OF FACTS. Unless otherwise provided in this Code, the jury is the exclusive judge of the facts, but it is bound to receive the law from the court and be governed thereby.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.14. CHARGE OF COURT. Subject to the provisions of Article 36.07 in each felony case and in each misdemeanor case tried in a court of record, the judge shall, before the argument begins, deliver to the jury, except in pleas of guilty, where a jury has been waived, a written charge distinctly setting forth the law applicable to the case; not expressing any opinion as to the weight of the evidence, not summing up the testimony, discussing the facts or using any argument in his charge calculated to arouse the sympathy or excite the passions of the jury. Before said charge is read to the jury, the defendant or his counsel shall have a reasonable time to examine the same and he shall present his objections thereto in writing, distinctly specifying each ground of objection. Said objections may embody errors claimed to have been committed in the charge, as well as errors claimed to have been committed by omissions therefrom or in failing to charge upon issues arising from the facts, and in no event shall it be necessary for the defendant or his counsel to present special requested charges to preserve or maintain any error assigned to the charge, as herein provided. The requirement that the objections to the court's charge be in writing will be complied with if the objections are dictated to the court reporter in the presence of the court and the state's counsel, before the reading of the court's charge to the jury. Compliance with the provisions of this Article is all that is necessary to preserve, for review, the exceptions and objections presented to the charge and any amendment or modification thereof. In no event shall it be necessary for the defendant to except to the

action of the court in over-ruling defendant's exceptions or objections to the charge.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1975, 64th Leg., p. 617, ch. 253, Sec. 1, eff. Sept. 1, 1975.

Amended by Acts 1981, 67th Leg., p. 2244, ch. 537, Sec. 1, eff. June 12, 1981.

Art. 36.15. REQUESTED SPECIAL CHARGES. Before the court reads his charge to the jury, counsel on both sides shall have a reasonable time to present written instructions and ask that they be given to the jury. The requirement that the instructions be in writing is complied with if the instructions are dictated to the court reporter in the presence of the court and the state's counsel, before the reading of the court's charge to the jury. The court shall give or refuse these charges. The defendant may, by a special requested instruction, call the trial court's attention to error in the charge, as well as omissions therefrom, and no other exception or objection to the court's charge shall be necessary to preserve any error reflected by any special requested instruction which the trial court refuses.

Any special requested charge which is granted shall be incorporated in the main charge and shall be treated as a part thereof, and the jury shall not be advised that it is a special requested charge of either party. The judge shall read to the jury only such special charges as he gives.

When the defendant has leveled objections to the charge or has requested instructions or both, and the court thereafter modifies his charge and rewrites the same and in so doing does not respond to objections or requested charges, or any of them, then the objections or requested charges shall not be deemed to have been waived by the party making or requesting the same, but shall be deemed to continue to have been urged by the party making or requesting the same unless the contrary is shown by the record; no exception by the defendant to the action of the court shall be necessary or required in order to preserve for review the error claimed in the charge.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1979,

36th Leg., p. 1109, ch. 525, Sec. 1, eff. Sept. 1, 1979.

Amended by Acts 1981, 67th Leg., p. 2245, ch. 537, Sec. 1, eff. June 12, 1981.

Art. 36.16. FINAL CHARGE. After the judge shall have received the objections to his main charge, together with any special charges offered, he may make such changes in his main charge as he may deem proper, and the defendant or his counsel shall have the opportunity to present their objections thereto and in the same manner as is provided in Article 36.15, and thereupon the judge shall read his charge to the jury as finally written, together with any special charges given, and no further exception or objection shall be required of the defendant in order to preserve any objections or exceptions theretofore made. After the argument begins no further charge shall be given to the jury unless required by the improper argument of counsel or the request of the jury, or unless the judge shall, in his discretion, permit the introduction of other testimony, and in the event of such further charge, the defendant or his counsel shall have the right to present objections in the same manner as is prescribed in Article 36.15. The failure of the court to give the defendant or his counsel a reasonable time to examine the charge and specify the ground of objection shall be subject to review either in the trial court or in the appellate court.

Acts 1965, 56th Leg., vol. 2, p. 317, ch. 722.

Art. 36.17. CHARGE CERTIFIED BY JUDGE. The general charge given by the court and all special charges given or refused shall be certified by the judge and filed among the papers in the cause.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.18. JURY MAY TAKE CHARGE. The jury may take to their jury room the charges given by the court after the same have been filed. They shall not be permitted to take with them any charge or part thereof which the court has refused to give.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.19. REVIEW OF CHARGE ON APPEAL. Whenever it appears by the record in any criminal action upon appeal that any requirement of Articles 36.14, 36.15, 36.16, 36.17 and 36.18 has been disregarded, the judgment shall not be reversed unless the error appearing from the record was calculated to injure the rights of defendant, or unless it appears from the record that the defendant has not had a fair and impartial trial. All objections to the charge and to the refusal of special charges shall be made at the time of the trial.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.21. TO PROVIDE JURY ROOM. The sheriff shall provide a suitable room for the deliberation of the jury and supply them with such necessary food and lodging as he can obtain. No intoxicating liquor shall be furnished them. In all cases wherein a jury consists partly of male jurors and partly of female jurors, the sheriff shall provide facilities for the female jurors separate and apart from the facilities provided for the male jurors.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.215. RECORDING OF JURY DELIBERATIONS. A person may not use any device to produce or make an audio, visual, or audio-visual broadcast, recording, or photograph of a jury while the jury is deliberating.

Added by Acts 2003, 78th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2003.

Art. 36.22. CONVERSING WITH JURY. No person shall be permitted to be with a jury while it is deliberating. No person shall be permitted to converse with a juror about the case on trial except in the presence and by the permission of the court.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.23. VIOLATION OF PRECEDING ARTICLE. Any juror or other person violating the preceding Article shall be punished for contempt of court by confinement in jail not to exceed three days or by fine not to exceed one hundred dollars, or by both such fine and imprisonment.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.24. OFFICER SHALL ATTEND JURY. The sheriff of the county shall furnish the court with a bailiff during the trial of any case to attend the wants of the jury and to act under the direction of the court. If the person furnished by the sheriff is to be called as a witness in the case he may not serve as bailiff.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.25. WRITTEN EVIDENCE. There shall be furnished to the jury upon its request any exhibits admitted as evidence in the case.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.26. FOREMAN OF JURY. Each jury shall appoint one of its members foreman.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.27. JURY MAY COMMUNICATE WITH COURT. When the jury wishes to communicate with the court, it shall so notify the sheriff, who shall inform the court thereof. Any communication relative to the cause must be written, prepared by the foreman and shall be submitted to the court through the bailiff. The court shall answer any such communication in writing, and before giving such answer to the jury shall use reasonable diligence to secure the presence of the defendant and his counsel, and shall first submit the question and also submit his answer to the same to the defendant or his counsel or objections and exceptions, in the same manner as any other written instructions are submitted to such counsel, before the court gives such answer to the jury, but if he is unable to secure the presence of the defendant and his counsel, then he shall proceed to answer the same as he deems proper. The written instruction or answer to the communication shall be read in open court unless expressly waived by the defendant.

All such proceedings in felony cases shall be a part of the record and recorded by the court reporter.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.28. JURY MAY HAVE WITNESS RE-EXAMINED OR TESTIMONY READ. In the trial of a criminal case in a court of record, if the jury disagree as to the statement of any witness they may, upon applying to the court, have read to them from the court reporter's notes that part of such witness testimony or the particular point in dispute, and no other; but if there be no such reporter, or if his notes cannot be read to the jury, the court may cause such witness to be again brought upon the stand and the judge shall direct him to repeat his testimony as to the point in dispute, and no other, as nearly as he can in the language used on the trial.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.29. IF A JUROR DIES OR BECOMES DISABLED. (a) Not less than twelve jurors can render and return a verdict in a felony case. It must be concurred in by each juror and signed by the foreman. Except as provided in Subsection (b), however, after the trial of any felony case begins and a juror dies or, as determined by the judge, becomes disabled from sitting at any time before the charge of the court is read to the jury, the remainder of the jury shall have the power to render the verdict; but when the verdict shall be rendered by less than the whole number, it shall be signed by every member of the jury concurring in it.

(b) If alternate jurors have been selected in a capital case in which the state seeks the death penalty and a juror dies or becomes disabled from sitting at any time before the charge of the court is read to the jury, the alternate juror whose name was called first under Article [35.26](#) of this code shall replace the dead or disabled juror. Likewise, if another juror dies or becomes disabled from sitting before the charge of the court is read to the jury, the other alternate juror shall replace the second juror to die or become disabled.

(c) After the charge of the court is read to the jury, if a juror becomes so sick as to prevent the continuance of the juror's duty and an alternate juror is not available, or if any accident or circumstance occurs to prevent the jury from being kept together under circumstances under which the law or the instructions of the

court requires that the jury be kept together, the jury shall be discharged, except that on agreement on the record by the defendant, the defendant's counsel, and the attorney representing the state 11 members of a jury may render a verdict and, if punishment is to be assessed by the jury, assess punishment. If a verdict is rendered by less than the whole number of the jury, each member of the jury shall sign the verdict.

(d) After the jury has rendered a verdict on the guilt or innocence of the defendant and, if applicable, the amount of punishment, the court shall discharge an alternate juror who has not replaced a juror.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1981, 67th Leg., p. 2264, ch. 545, Sec. 2, eff. June 12, 1981; Subsec. (b) amended by Acts 1991, 72nd Leg., ch. 652, Sec. 8, eff. Sept. 1, 1991; Subsec. (c) amended by Acts 1997, 75th Leg., ch. 866, Sec. 1, eff. Sept. 1, 1997; Art. heading amended by Acts 2001, 77th Leg., ch. 1000, Sec. 1, eff. Sept. 1, 2001; Subsec. (a) amended by Acts 2001, 77th Leg., ch. 1000, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 846 (H.B. [1086](#)), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 627 (H.B. [1321](#)), Sec. 1, eff. September 1, 2009.

Art. 36.30. DISCHARGING JURY IN MISDEMEANOR. If nine of the jury can be kept together in a misdemeanor case in the district court, they shall not be discharged. If more than three of the twelve are discharged, the entire jury shall be discharged.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.31. DISAGREEMENT OF JURY. After the cause is submitted to the jury, it may be discharged when it cannot agree and both parties consent to its discharge; or the court may in its discretion discharge it where it has been kept together for such time as to render it altogether improbable that it can agree.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.32. RECEIPT OF VERDICT AND FINAL ADJOURNMENT. During the trial of any case, the term shall be deemed to have been extended until such time as the jury has rendered its verdict or been discharged according to law.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 36.33. DISCHARGE WITHOUT VERDICT. When a jury has been discharged, as provided in the four preceding Articles, without having rendered a verdict, the cause may be again tried at the same or another term.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.