

CODE OF CRIMINAL PROCEDURE
TITLE 1. CODE OF CRIMINAL PROCEDURE
CHAPTER 38. EVIDENCE IN CRIMINAL ACTIONS

Art. 38.01. TEXAS FORENSIC SCIENCE COMMISSION

Sec. 1. CREATION. The Texas Forensic Science Commission is created.

Sec. 2. DEFINITIONS. In this article:

(1) "Accredited field of forensic science" means a specific forensic method or methodology validated or approved by the commission under this article.

(2) "Commission" means the Texas Forensic Science Commission.

(3) "Crime laboratory" has the meaning assigned by Article 38.35.

(4) "Forensic analysis" means a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action, except that the term does not include the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

(4-a) "Forensic examination or test not subject to accreditation" means an examination or test described by Article 38.35(a)(4)(A), (B), (C), or (D) that is exempt from accreditation.

(5) "Office of capital and forensic writs" means the office of capital and forensic writs established under Subchapter B, Chapter 78, Government Code.

(6) "Physical evidence" has the meaning assigned by Article 38.35.

Sec. 3. COMPOSITION. (a) The commission is composed of nine members appointed by the governor as follows:

(1) two members who must have expertise in the field of forensic science;

(2) one member who must be a prosecuting attorney that the governor selects from a list of 10 names submitted by the Texas District and County Attorneys Association;

(3) one member who must be a defense attorney that the governor selects from a list of 10 names submitted by the Texas Criminal Defense Lawyers Association;

(4) one member who must be a faculty member or staff member of The University of Texas who specializes in clinical laboratory medicine that the governor selects from a list of five names submitted by the chancellor of The University of Texas System;

(5) one member who must be a faculty member or staff member of Texas A&M University who specializes in clinical laboratory medicine that the governor selects from a list of five names submitted by the chancellor of The Texas A&M University System;

(6) one member who must be a faculty member or staff member of Texas Southern University that the governor selects from a list of five names submitted by the chancellor of Texas Southern University;

(7) one member who must be a director or division head of the University of North Texas Health Science Center at Fort Worth Missing Persons DNA Database; and

(8) one member who must be a faculty or staff member of the Sam Houston State University College of Criminal Justice and have expertise in the field of forensic science or statistical analyses that the governor selects from a list of five names submitted by the chancellor of the Texas State University System.

(b) Each member of the commission serves a two-year term. The terms expire on September 1 of:

(1) each odd-numbered year, for a member appointed under Subsection (a)(1), (2), (3), or (4); and

(2) each even-numbered year, for a member appointed under Subsection (a)(5), (6), (7), or (8).

(c) The governor shall designate a member of the commission to serve as the presiding officer.

Sec. 3-a. RULES. The commission shall adopt rules necessary to implement this article.

Sec. 3-b. CODE OF PROFESSIONAL RESPONSIBILITY. (a) The commission shall adopt a code of professional responsibility to

regulate the conduct of persons, laboratories, facilities, and other entities regulated under this article.

(b) The commission shall publish the code of professional responsibility adopted under Subsection (a).

(c) The commission shall adopt rules establishing sanctions for code violations.

(d) The commission shall update the code of professional responsibility as necessary to reflect changes in science, technology, or other factors affecting the persons, laboratories, facilities, and other entities regulated under this article.

Sec. 4. DUTIES. (a) The commission shall:

(1) develop and implement a reporting system through which a crime laboratory may report professional negligence or professional misconduct;

(2) require a crime laboratory that conducts forensic analyses to report professional negligence or professional misconduct to the commission; and

(3) investigate, in a timely manner, any allegation of professional negligence or professional misconduct that would substantially affect the integrity of:

(A) the results of a forensic analysis conducted by a crime laboratory;

(B) an examination or test that is conducted by a crime laboratory and that is a forensic examination or test not subject to accreditation; or

(C) testimony related to an analysis, examination, or test described by Paragraph (A) or (B).

(a-1) The commission may initiate an investigation of a forensic analysis or a forensic examination or test not subject to accreditation, without receiving a complaint submitted through the reporting system implemented under Subsection (a)(1), if the commission determines by a majority vote of a quorum of the members of the commission that an investigation of the analysis, examination, or test would advance the integrity and reliability of forensic science in this state.

(b) If the commission conducts an investigation under Subsection (a)(3) of a crime laboratory that is accredited under

this article pursuant to an allegation of professional negligence or professional misconduct involving an accredited field of forensic science, the investigation:

(1) must include the preparation of a written report that identifies and also describes the methods and procedures used to identify:

- (A) the alleged negligence or misconduct;
- (B) whether negligence or misconduct occurred;
- (C) any corrective action required of the laboratory, facility, or entity;
- (D) observations of the commission regarding the integrity and reliability of the forensic analysis conducted;
- (E) best practices identified by the commission during the course of the investigation; and
- (F) other recommendations that are relevant, as determined by the commission; and

(2) may include one or more:

- (A) retrospective reexaminations of other forensic analyses conducted by the laboratory, facility, or entity that may involve the same kind of negligence or misconduct; and
- (B) follow-up evaluations of the laboratory, facility, or entity to review:
 - (i) the implementation of any corrective action required under Subdivision (1)(C); or
 - (ii) the conclusion of any retrospective reexamination under Paragraph (A).

(b-1) If the commission conducts an investigation under Subsection (a)(3) of a crime laboratory that is not accredited under this article or the investigation involves a forensic examination or test not subject to accreditation, the investigation may include the preparation of a written report that contains:

- (1) observations of the commission regarding the integrity and reliability of the applicable analysis, examination, or test conducted;
- (2) best practices identified by the commission during the course of the investigation; or
- (3) other recommendations that are relevant, as

determined by the commission.

(b-2) If the commission conducts an investigation of a forensic analysis under Subsection (a-1), the investigation must include the preparation of a written report that contains:

(1) observations of the commission regarding the integrity and reliability of the forensic analysis conducted;

(2) best practices identified by the commission during the course of the investigation; and

(3) other recommendations that are relevant, as determined by the commission.

(c) The commission by contract may delegate the duties described by Subsections (a)(1) and (3) and Sections 4-d(b)(1), (b-1), and (d) to any person the commission determines to be qualified to assume those duties.

(d) The commission may require that a crime laboratory investigated under this section pay any costs incurred to ensure compliance with Subsection (b), (b-1), or (b-2).

(e) The commission shall make all investigation reports completed under Subsection (b), (b-1), or (b-2) available to the public. A report completed under Subsection (b), (b-1), or (b-2), in a subsequent civil or criminal proceeding, is not prima facie evidence of the information or findings contained in the report.

(f) The commission may not make a determination of whether professional negligence or professional misconduct occurred or issue a finding on that question in an investigation initiated under Subsection (a-1) or for which an investigation report may be prepared under Subsection (b-1).

(g) The commission may not issue a finding related to the guilt or innocence of a party in an underlying civil or criminal trial involving conduct investigated by the commission under this article.

(h) The commission may review and refer cases that are the subject of an investigation under Subsection (a)(3) or (a-1) to the office of capital and forensic writs in accordance with Section [78.054\(b\)](#), Government Code.

Sec. 4-a. FORENSIC ANALYST LICENSING. (a) Notwithstanding Section 2, in this section:

(1) "Forensic analysis" has the meaning assigned by Article 38.35.

(2) "Forensic analyst" means a person who on behalf of a crime laboratory accredited under this article technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory. The term does not include a medical examiner or other forensic pathologist who is a licensed physician.

(b) A person may not act or offer to act as a forensic analyst unless the person holds a forensic analyst license. The commission by rule may establish classifications of forensic analyst licenses if the commission determines that it is necessary to ensure the availability of properly trained and qualified forensic analysts to perform activities regulated by the commission.

(c) The commission by rule may establish voluntary licensing programs for forensic examinations or tests not subject to accreditation.

(d) The commission by rule shall:

(1) establish the qualifications for a license that include:

(A) successful completion of the education requirements established by the commission;

(B) specific course work and experience, including instruction in courtroom testimony and ethics in a crime laboratory;

(C) successful completion of an examination required or recognized by the commission; and

(D) successful completion of proficiency testing to the extent required for crime laboratory accreditation;

(2) set fees for the issuance and renewal of a license; and

(3) establish the term of a forensic analyst license.

(e) The commission by rule may recognize a certification issued by a national organization in an accredited field of forensic science as satisfying the requirements established under Subsection (d)(1)(C) to the extent the commission determines the

content required to receive the certification is substantially equivalent to the content of the requirements under that subsection.

(f) The commission shall issue a license to an applicant who:

(1) submits an application on a form prescribed by the commission;

(2) meets the qualifications established by commission rule; and

(3) pays the required fee.

Sec. 4-b. ADVISORY COMMITTEE. (a) The commission shall establish an advisory committee to advise the commission and make recommendations on matters related to the licensing of forensic analysts under Section 4-a.

(b) The advisory committee consists of nine members as follows:

(1) one prosecuting attorney recommended by the Texas District and County Attorneys Association;

(2) one defense attorney recommended by the Texas Criminal Defense Lawyers Association; and

(3) seven members who are forensic scientists, crime laboratory directors, or crime laboratory quality managers, selected by the commission from a list of 20 names submitted by the Texas Association of Crime Laboratory Directors.

(c) The commission shall ensure that appointments under Subsection (b)(3) include representation from municipal, county, state, and private crime laboratories that are accredited under this article.

(d) The advisory committee members serve staggered two-year terms, with the terms of four or five members, as appropriate, expiring on August 31 of each year. An advisory committee member may not serve more than two consecutive terms. A vacancy on the advisory committee is filled by appointing a member in the same manner as the original appointment to serve for the unexpired portion of the term.

(e) The advisory committee shall elect a presiding officer from among its members to serve a one-year term. A member may serve

more than one term as presiding officer.

(f) The advisory committee shall meet annually and at the call of the presiding officer or the commission.

(g) An advisory committee member is not entitled to compensation. A member is entitled to reimbursement for actual and necessary expenses incurred in performing duties as a member of the advisory committee subject to the General Appropriations Act.

(h) Chapter 2110, Government Code, does not apply to the advisory committee.

Sec. 4-c. DISCIPLINARY ACTION. (a) On a determination by the commission that a license holder has committed professional misconduct under this article or violated this article or a rule or order of the commission under this article, the commission may:

- (1) revoke or suspend the person's license;
- (2) refuse to renew the person's license; or
- (3) reprimand the license holder.

(b) The commission may place on probation a person whose license is suspended. If a license suspension is probated, the commission may require the license holder to:

- (1) report regularly to the commission on matters that are the basis of the probation; or
- (2) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

(c) The commission shall give written notice by certified mail of a determination described by Subsection (a) to a license holder who is the subject of the determination. The notice must:

- (1) include a brief summary of the alleged misconduct or violation;
- (2) state the disciplinary action taken by the commission; and
- (3) inform the license holder of the license holder's right to a hearing before the Judicial Branch Certification Commission on the occurrence of the misconduct or violation, the imposition of disciplinary action, or both.

(d) Not later than the 20th day after the date the license

holder receives the notice under Subsection (c), the license holder may request a hearing by submitting a written request to the Judicial Branch Certification Commission. If the license holder fails to timely submit a request, the commission's disciplinary action becomes final and is not subject to review by the Judicial Branch Certification Commission.

(e) If the license holder requests a hearing, the Judicial Branch Certification Commission shall conduct a hearing to determine whether there is substantial evidence to support the determination under Subsection (a) that the license holder committed professional misconduct or violated this article or a commission rule or order under this article. If the Judicial Branch Certification Commission upholds the determination, the Judicial Branch Certification Commission shall determine the type of disciplinary action to be taken. The Judicial Branch Certification Commission shall conduct the hearing in accordance with the procedures provided by Subchapter B, Chapter 153, Government Code, as applicable, and the rules of the Judicial Branch Certification Commission.

Sec. 4-d. CRIME LABORATORY ACCREDITATION PROCESS.

(a) Notwithstanding Section 2, in this section "forensic analysis" has the meaning by Article 38.35.

(b) The commission by rule:

(1) shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; and

(2) may modify or remove a crime laboratory exemption under this section if the commission determines that the underlying reason for the exemption no longer applies.

(b-1) As part of the accreditation process established and implemented under Subsection (b), the commission may:

(1) establish minimum standards that relate to the timely production of a forensic analysis to the agency requesting the analysis and that are consistent with this article and applicable laws;

(2) validate or approve specific forensic methods or methodologies; and

(3) establish procedures, policies, standards, and practices to improve the quality of forensic analyses conducted in this state.

(b-2) The commission may require that a laboratory, facility, or entity required to be accredited under this section pay any costs incurred to ensure compliance with the accreditation process.

(b-3) A laboratory, facility, or entity that must be accredited under this section shall, as part of the accreditation process, agree to consent to any request for cooperation by the commission that is made as part of the exercise of the commission's duties under this article.

(c) The commission by rule may exempt from the accreditation process established under Subsection (b) a crime laboratory conducting a forensic analysis or a type of analysis, examination, or test if the commission determines that:

(1) independent accreditation is unavailable or inappropriate for the laboratory or the type of analysis, examination, or test performed by the laboratory;

(2) the type of analysis, examination, or test performed by the laboratory is admissible under a well-established rule of evidence or a statute other than Article 38.35;

(3) the type of analysis, examination, or test performed by the laboratory is routinely conducted outside of a crime laboratory by a person other than an employee of the crime laboratory; or

(4) the laboratory:

(A) is located outside this state or, if located in this state, is operated by a governmental entity other than the state or a political subdivision of the state; and

(B) was accredited at the time of the analysis under an accreditation process with standards that meet or exceed the relevant standards of the process established under Subsection (b).

(d) The commission may at any reasonable time enter and inspect the premises or audit the records, reports, procedures, or other quality assurance matters of a crime laboratory that is

accredited or seeking accreditation under this section.

(e) The commission may collect costs incurred under this section for accrediting, inspecting, or auditing a crime laboratory.

(f) If the commission provides a copy of an audit or other report made under this section, the commission may charge \$6 for the copy, in addition to any other cost permitted under Chapter 552, Government Code, or a rule adopted under that chapter.

Sec. 5. REIMBURSEMENT. A member of the commission may not receive compensation but is entitled to reimbursement for the member's travel expenses as provided by Chapter 660, Government Code, and the General Appropriations Act.

Sec. 6. ASSISTANCE. The Texas Legislative Council, the Legislative Budget Board, and The University of Texas at Austin shall assist the commission in performing the commission's duties.

Sec. 7. SUBMISSION. The commission shall submit any report received under Section 4(a)(2) and any report prepared under Section 4(b)(1) to the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 1 of each even-numbered year.

Sec. 8. ANNUAL REPORT. Not later than December 1 of each year, the commission shall prepare and publish a report that includes:

(1) a description of each complaint filed with the commission during the preceding 12-month period, the disposition of each complaint, and the status of any complaint still pending on December 31;

(2) a description of any specific forensic method or methodology the commission designates as part of the accreditation process for crime laboratories established by rule under this article;

(3) recommendations for best practices concerning the definition of "forensic analysis" provided by statute or by rule;

(4) developments in forensic science made or used in other state or federal investigations and the activities of the commission, if any, with respect to those developments; and

(5) other information that is relevant to

investigations involving forensic science, as determined by the presiding officer of the commission.

Sec. 9. ADMINISTRATIVE ATTACHMENT TO OFFICE OF COURT ADMINISTRATION. (a) The commission is administratively attached to the Office of Court Administration of the Texas Judicial System.

(b) The Office of Court Administration of the Texas Judicial System shall provide administrative support to the commission as necessary to enable the commission to carry out the purposes of this article.

(c) Only the commission may exercise the duties of the commission under this article. Except as provided by Subsection (b), the Office of Court Administration of the Texas Judicial System does not have any authority or responsibility with respect to the duties of the commission under this article.

Sec. 10. OPEN RECORDS LIMITATION. Information that is filed as part of an allegation of professional misconduct or professional negligence or that is obtained during an investigation of an allegation of professional misconduct or professional negligence is not subject to release under Chapter 552, Government Code, until the conclusion of an investigation by the commission under Section 4.

Sec. 11. REPORT INADMISSIBLE AS EVIDENCE. A written report prepared by the commission under this article is not admissible in a civil or criminal action.

Sec. 12. COLLECTION OF CERTAIN FORENSIC EVIDENCE. The commission shall establish a method for collecting DNA and other forensic evidence related to unidentified bodies located less than 120 miles from the Rio Grande River.

Sec. 13. TEXAS FORENSIC SCIENCE COMMISSION OPERATING ACCOUNT. The Texas Forensic Science Commission operating account is an account in the general revenue fund. The commission shall deposit fees collected under Section 4-a for the issuance or renewal of a forensic analyst license to the credit of the account. Money in the account may be appropriated only to the commission for the administration and enforcement of this article.

Sec. 14. FUNDING FOR TRAINING AND EDUCATION. The commission may use appropriated funds for the training and

education of forensic analysts.

Added by Acts 2005, 79th Leg., Ch. 1224 (H.B. [1068](#)), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 782 (S.B. [1238](#)), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 782 (S.B. [1238](#)), Sec. 2, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 782 (S.B. [1238](#)), Sec. 3, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 782 (S.B. [1238](#)), Sec. 4, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1215 (S.B. [1743](#)), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1215 (S.B. [1743](#)), Sec. 9, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1276 (S.B. [1287](#)), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1276 (S.B. [1287](#)), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1276 (S.B. [1287](#)), Sec. 3, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1276 (S.B. [1287](#)), Sec. 4, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1276 (S.B. [1287](#)), Sec. 5, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1276 (S.B. [1287](#)), Sec. 6, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1276 (S.B. [1287](#)), Sec. 7, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 212 (S.B. [1124](#)), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. [1488](#)), Sec. 24.001(4), eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1115 (S.B. [298](#)), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 574 (S.B. [284](#)), Sec. 1, eff.

September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 934 (H.B. 3774), Sec. 10.01, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 934 (H.B. 3774), Sec. 10.02, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 934 (H.B. 3774), Sec. 10.03, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 934 (H.B. 3774), Sec. 10.04, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 934 (H.B. 3774), Sec. 10.05, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 934 (H.B. 3774), Sec. 10.06, eff. September 1, 2021.

Art. 38.02. EFFECT UNDER PUBLIC INFORMATION LAW OF RELEASE OF CERTAIN INFORMATION. A release of information by an attorney representing the state to defense counsel for a purpose relating to the pending or reasonably anticipated prosecution of a criminal case is not considered a voluntary release of information to the public for purposes of Section 552.007, Government Code, and does not waive the right to assert in the future that the information is excepted from required disclosure under Chapter 552, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 630 (H.B. 1360), Sec. 1, eff. June 19, 2009.

Art. 38.03. PRESUMPTION OF INNOCENCE. All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that he has been arrested, confined, or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial.

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

Amended by Acts 1981, 67th Leg., p. 2247, ch. 539, Sec. 1, eff. June 12, 1981.

Art. 38.04. JURY ARE JUDGES OF FACTS. The jury, in all cases,

is the exclusive judge of the facts proved, and of the weight to be given to the testimony, except where it is provided by law that proof of any particular fact is to be taken as either conclusive or presumptive proof of the existence of another fact, or where the law directs that a certain degree of weight is to be attached to a certain species of evidence.

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

Art. 38.05. JUDGE SHALL NOT DISCUSS EVIDENCE. In ruling upon the admissibility of evidence, the judge shall not discuss or comment upon the weight of the same or its bearing in the case, but shall simply decide whether or not it is admissible; nor shall he, at any stage of the proceeding previous to the return of the verdict, make any remark calculated to convey to the jury his opinion of the case.

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

Art. 38.07. TESTIMONY IN CORROBORATION OF VICTIM OF SEXUAL OFFENSE. (a) A conviction under Chapter 21, Section 20A.02(a)(3), (4), (7), or (8), Section 22.011, or Section 22.021, Penal Code, is supportable on the uncorroborated testimony of the victim of the sexual offense if the victim informed any person, other than the defendant, of the alleged offense within one year after the date on which the offense is alleged to have occurred.

(b) The requirement that the victim inform another person of an alleged offense does not apply if at the time of the alleged offense the victim was a person:

(1) 17 years of age or younger;

(2) 65 years of age or older; or

(3) 18 years of age or older who by reason of age or physical or mental disease, defect, or injury was substantially unable to satisfy the person's need for food, shelter, medical care, or protection from harm.

Added by Acts 1975, 64th Leg., p. 479, ch. 203, Sec. 6, eff. Sept. 1, 1975.

Amended by Acts 1983, 68th Leg., p. 2090, ch. 382, Sec. 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5317, ch. 977, Sec. 7, eff.

Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 200, Sec. 1, eff. May 19, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 12.01, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1018, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 2.05, eff. September 1, 2011.

Art. 38.071. TESTIMONY OF CHILD WHO IS VICTIM OF OFFENSE.

Sec. 1. This article applies only to a hearing or proceeding in which the court determines that a child younger than 13 years of age would be unavailable to testify in the presence of the defendant about an offense defined by any of the following sections of the Penal Code:

- (1) Section 19.02 (Murder);
 - (2) Section 19.03 (Capital Murder);
 - (3) Section 19.04 (Manslaughter);
 - (4) Section 20.04 (Aggravated Kidnapping);
 - (5) Section 21.11 (Indecency with a Child);
 - (6) Section 22.011 (Sexual Assault);
 - (7) Section 22.02 (Aggravated Assault);
 - (8) Section 22.021 (Aggravated Sexual Assault);
 - (9) Section 22.04(e) (Injury to a Child, Elderly Individual, or Disabled Individual);
 - (10) Section 22.04(f) (Injury to a Child, Elderly Individual, or Disabled Individual), if the conduct is committed intentionally or knowingly;
 - (11) Section 25.02 (Prohibited Sexual Conduct);
 - (12) Section 29.03 (Aggravated Robbery);
 - (13) Section 43.25 (Sexual Performance by a Child);
 - (14) Section 21.02 (Continuous Sexual Abuse of Young Child or Disabled Individual);
 - (15) Section 43.05(a)(2) (Compelling Prostitution);
- or
- (16) Section 20A.02(a)(7) or (8) (Trafficking of Persons).

Sec. 2. (a) The recording of an oral statement of the child

made before the indictment is returned or the complaint has been filed is admissible into evidence if the court makes a determination that the factual issues of identity or actual occurrence were fully and fairly inquired into in a detached manner by a neutral individual experienced in child abuse cases that seeks to find the truth of the matter.

(b) If a recording is made under Subsection (a) of this section and after an indictment is returned or a complaint has been filed, by motion of the attorney representing the state or the attorney representing the defendant and on the approval of the court, both attorneys may propound written interrogatories that shall be presented by the same neutral individual who made the initial inquiries, if possible, and recorded under the same or similar circumstances of the original recording with the time and date of the inquiry clearly indicated in the recording.

(c) A recording made under Subsection (a) of this section is not admissible into evidence unless a recording made under Subsection (b) is admitted at the same time if a recording under Subsection (b) was requested prior to the time of the hearing or proceeding.

Sec. 3. (a) On its own motion or on the motion of the attorney representing the state or the attorney representing the defendant, the court may order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact. To the extent practicable, only the judge, the court reporter, the attorneys for the defendant and for the state, persons necessary to operate the equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys and the judge may question the child. To the extent practicable, the persons necessary to operate the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child and to communicate contemporaneously with his attorney

during periods of recess or by audio contact, but the court shall attempt to ensure that the child cannot hear or see the defendant. The court shall permit the attorney for the defendant adequate opportunity to confer with the defendant during cross-examination of the child. On application of the attorney for the defendant, the court may recess the proceeding before or during cross-examination of the child for a reasonable time to allow the attorney for the defendant to confer with defendant.

(b) The court may set any other conditions and limitations on the taking of the testimony that it finds just and appropriate, taking into consideration the interests of the child, the rights of the defendant, and any other relevant factors.

Sec. 4. (a) After an indictment has been returned or a complaint filed, on its own motion or on the motion of the attorney representing the state or the attorney representing the defendant, the court may order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact. To the extent practicable, only those persons permitted to be present at the taking of testimony under Section 3 of this article may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by Section 3. The court shall permit the defendant to observe and hear the testimony of the child and to communicate contemporaneously with his attorney during periods of recess or by audio contact but shall attempt to ensure that the child cannot hear or see the defendant.

(b) The court may set any other conditions and limitations on the taking of the testimony that it finds just and appropriate, taking into consideration the interests of the child, the rights of the defendant, and any other relevant factors. The court shall also ensure that:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording, the operator was competent, the quality of the recording is sufficient to allow the court and the finder of fact to assess

the demeanor of the child and the interviewer, and the recording is accurate and is not altered;

(3) each voice on the recording is identified;

(4) the defendant, the attorneys for each party, and the expert witnesses for each party are afforded an opportunity to view the recording before it is shown in the courtroom;

(5) before giving his testimony, the child was placed under oath or was otherwise admonished in a manner appropriate to the child's age and maturity to testify truthfully;

(6) the court finds from the recording or through an in camera examination of the child that the child was competent to testify at the time the recording was made; and

(7) only one continuous recording of the child was made or the necessity for pauses in the recordings or for multiple recordings is established at the hearing or proceeding.

(c) After a complaint has been filed or an indictment returned charging the defendant, on the motion of the attorney representing the state, the court may order that the deposition of the child be taken outside of the courtroom in the same manner as a deposition may be taken in a civil matter. A deposition taken under this subsection is admissible into evidence.

Sec. 5. (a) On the motion of the attorney representing the state or the attorney representing the defendant and on a finding by the court that the following requirements have been substantially satisfied, the recording of an oral statement of the child made before a complaint has been filed or an indictment returned is admissible into evidence if:

(1) no attorney or peace officer was present when the statement was made;

(2) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(3) the recording equipment was capable of making an accurate recording, the operator of the equipment was competent, the quality of the recording is sufficient to allow the court and the finder of fact to assess the demeanor of the child and the interviewer, and the recording is accurate and has not been altered;

(4) the statement was not made in response to questioning

calculated to lead the child to make a particular statement;

(5) every voice on the recording is identified;

(6) the person conducting the interview of the child in the recording is expert in the handling, treatment, and investigation of child abuse cases, present at the hearing or proceeding, called by the state, and subject to cross-examination;

(7) immediately after a complaint was filed or an indictment returned, the attorney representing the state notified the court, the defendant, and the attorney representing the defendant of the existence of the recording;

(8) the defendant, the attorney for the defendant, and the expert witnesses for the defendant were afforded an opportunity to view the recording before it is offered into evidence and, if a proceeding was requested as provided by Subsection (b) of this section, in a proceeding conducted before a district court judge but outside the presence of the jury were afforded an opportunity to cross-examine the child as provided by Subsection (b) of this section from any time immediately following the filing of the complaint or the returning of an indictment charging the defendant until the date the hearing or proceeding begins;

(9) the recording of the cross-examination, if there is one, is admissible under Subsection (b) of this section;

(10) before giving his testimony, the child was placed under oath or was otherwise admonished in a manner appropriate to the child's age and maturity to testify truthfully;

(11) the court finds from the recording or through an in camera examination of the child that the child was competent to testify at the time that the recording was made; and

(12) only one continuous recording of the child was made or the necessity for pauses in the recordings or for multiple recordings has been established at the hearing or proceeding.

(b) On the motion of the attorney representing the defendant, a district court may order that the cross-examination of the child be taken and be recorded before the judge of that court at any time until a recording made in accordance with Subsection (a) of this section has been introduced into evidence at the hearing or proceeding. On a finding by the court that the following

requirements were satisfied, the recording of the cross-examination of the child is admissible into evidence and shall be viewed by the finder of fact only after the finder of fact has viewed the recording authorized by Subsection (a) of this section if:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording, the operator of the equipment was competent, the quality of the recording is sufficient to allow the court and the finder of fact to assess the demeanor of the child and the attorney representing the defendant, and the recording is accurate and has not been altered;

(3) every voice on the recording is identified;

(4) the defendant, the attorney representing the defendant, the attorney representing the state, and the expert witnesses for the defendant and the state were afforded an opportunity to view the recording before the hearing or proceeding began;

(5) the child was placed under oath before the cross-examination began or was otherwise admonished in a manner appropriate to the child's age and maturity to testify truthfully; and

(6) only one continuous recording of the child was made or the necessity for pauses in the recordings or for multiple recordings was established at the hearing or proceeding.

(c) During cross-examination under Subsection (b) of this section, to the extent practicable, only a district court judge, the attorney representing the defendant, the attorney representing the state, persons necessary to operate the equipment, and any other person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys and the judge may question the child. To the extent practicable, the persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony

of the child and to communicate contemporaneously with his attorney during periods of recess or by audio contact, but shall attempt to ensure that the child cannot hear or see the defendant.

(d) Under Subsection (b) of this section the district court may set any other conditions and limitations on the taking of the cross-examination of a child that it finds just and appropriate, taking into consideration the interests of the child, the rights of the defendant, and any other relevant factors.

Sec. 6. If the court orders the testimony of a child to be taken under Section 3 or 4 of this article or if the court finds the testimony of the child taken under Section 2 or 5 of this article is admissible into evidence, the child may not be required to testify in court at the proceeding for which the testimony was taken, unless the court finds there is good cause.

Sec. 7. In making any determination of good cause under this article, the court shall consider the rights of the defendant, the interests of the child, the relationship of the defendant to the child, the character and duration of the alleged offense, any court finding related to the availability of the child to testify, the age, maturity, and emotional stability of the child, the time elapsed since the alleged offense, and any other relevant factors.

Sec. 8. (a) In making a determination of unavailability under this article, the court shall consider relevant factors including the relationship of the defendant to the child, the character and duration of the alleged offense, the age, maturity, and emotional stability of the child, and the time elapsed since the alleged offense, and whether the child is more likely than not to be unavailable to testify because:

(1) of emotional or physical causes, including the confrontation with the defendant; or

(2) the child would suffer undue psychological or physical harm through his involvement at the hearing or proceeding.

(b) A determination of unavailability under this article can be made after an earlier determination of availability. A determination of availability under this article can be made after an earlier determination of unavailability.

Sec. 9. If the court finds the testimony taken under Section 2

or 5 of this article is admissible into evidence or if the court orders the testimony to be taken under Section 3 or 4 of this article and if the identity of the perpetrator is a contested issue, the child additionally must make an in-person identification of the defendant either at or before the hearing or proceeding.

Sec. 10. In ordering a child to testify under this article, the court shall take all reasonable steps necessary and available to minimize undue psychological trauma to the child and to minimize the emotional and physical stress to the child caused by relevant factors, including the confrontation with the defendant and the ordinary participation of the witness in the courtroom.

Sec. 11. In a proceeding under Section 2, 3, or 4 or Subsection (b) of Section 5 of this article, if the defendant is not represented by counsel and the court finds that the defendant is not able to obtain counsel for the purposes of the proceeding, the court shall appoint counsel to represent the defendant at the proceeding.

Sec. 12. In this article, "cross-examination" has the same meaning as in other legal proceedings in the state.

Sec. 13. The attorney representing the state shall determine whether to use the procedure provided in Section 2 of this article or the procedure provided in Section 5 of this article.

Added by Acts 1983, 68th Leg., p. 3828, ch. 599, Sec. 1, eff. Aug. 29, 1983. Sec. 3 amended by Acts 1987, 70th Leg., ch. 998, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 55, Sec. 1, eff. Oct. 20, 1987; Sec. 3(a) amended by Acts 1991, 72nd Leg., ch. 266, Sec. 1, eff. Sept. 1, 1991; Sec. 1 amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.24, eff. Sept. 1, 1995; Sec. 1 amended by Acts 2001, 77th Leg., ch. 338, Sec. 1, eff. Sept. 1, 2001; Sec. 2(c) amended by Acts 2001, 77th Leg., ch. 338, Sec. 2, eff. Sept. 1, 2001; Sec. 3(a) amended by Acts 2001, 77th Leg., ch. 338, Sec. 3, eff. Sept. 1, 2001; Sec. 4(a), (b) amended by Acts 2001, 77th Leg., ch. 338, Sec. 4, eff. Sept. 1, 2001; Sec. 5(a), (b) amended by Acts 2001, 77th Leg., ch. 338, Sec. 5, eff. Sept. 1, 2001; Sec. 8(a) amended by Acts 2001, 77th Leg., ch. 338, Sec. 6, eff. Sept. 1, 2001; Sec. 9 amended by Acts 2001, 77th Leg., ch. 338, Sec. 7, eff. Sept. 1, 2001; Sec. 10 amended by Acts 2001, 77th Leg., ch. 338, Sec. 8, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.16, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 2.06, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 221 (H.B. 375), Sec. 2.11, eff. September 1, 2021.

Art. 38.072. HEARSAY STATEMENT OF CERTAIN ABUSE VICTIMS

Sec. 1. This article applies to a proceeding in the prosecution of an offense under any of the following provisions of the Penal Code, if committed against a child younger than 14 years of age or a person with a disability:

(1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);

(2) Section 25.02 (Prohibited Sexual Conduct);

(3) Section 43.25 (Sexual Performance by a Child);

(4) Section 43.05(a)(2) (Compelling Prostitution);

(5) Section 20A.02(a)(7) or (8) (Trafficking of Persons); or

(6) Section 15.01 (Criminal Attempt), if the offense attempted is described by Subdivision (1), (2), (3), (4), or (5) of this section.

Sec. 2.

Text of subsection as amended by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 1

(a) This article applies only to statements that describe the alleged offense that:

(1) were made by the child or person with a disability against whom the offense was allegedly committed; and

(2) were made to the first person, 18 years of age or older, other than the defendant, to whom the child or person with a disability made a statement about the offense.

Text of subsection as amended by Acts 2009, 81st Leg., R.S., Ch. 710

(a) This article applies only to statements that:

(1) describe:

(A) the alleged offense; or

(B) if the statement is offered during the punishment phase of the proceeding, a crime, wrong, or act other than the alleged offense that is:

(i) described by Section 1;

(ii) allegedly committed by the defendant against the child who is the victim of the offense or another child younger than 14 years of age; and

(iii) otherwise admissible as evidence under Article 38.37, Rule 404 or 405, Texas Rules of Evidence, or another law or rule of evidence of this state;

(2) were made by the child against whom the charged offense or extraneous crime, wrong, or act was allegedly committed; and

(3) were made to the first person, 18 years of age or older, other than the defendant, to whom the child made a statement about the offense or extraneous crime, wrong, or act.

(b) A statement that meets the requirements of Subsection (a) is not inadmissible because of the hearsay rule if:

(1) on or before the 14th day before the date the proceeding begins, the party intending to offer the statement:

(A) notifies the adverse party of its intention to do so;

(B) provides the adverse party with the name of the witness through whom it intends to offer the statement; and

(C) provides the adverse party with a written summary of the statement;

(2) the trial court finds, in a hearing conducted outside the presence of the jury, that the statement is reliable based on the time, content, and circumstances of the statement; and

(3) the child or person with a disability testifies or is available to testify at the proceeding in court or in any other manner provided by law.

Sec. 3. In this article, "person with a disability" means a person 13 years of age or older who because of age or physical or mental disease, disability, or injury is substantially unable to protect the person's self from harm or to provide food, shelter, or medical care for the person's self.

Added by Acts 1985, 69th Leg., ch. 590, Sec. 1, eff. Sept. 1, 1985.

Sec. 1 amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.25, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 1, eff. June 11, 2009.

Acts 2009, 81st Leg., R.S., Ch. 710 (H.B. 2846), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 710 (H.B. 2846), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 2.07, eff. September 1, 2011.

Art. 38.073. TESTIMONY OF INMATE WITNESSES. In a proceeding in the prosecution of a criminal offense in which an inmate in the custody of the Texas Department of Criminal Justice is required to testify as a witness, any deposition or testimony of the inmate witness may be conducted by a video teleconferencing system in the manner described by Article 27.18.

Added by Acts 2001, 77th Leg., ch. 788, Sec. 2, eff. June 14, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1031 (H.B. 2847), Sec. 6, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. 1233), Sec. 7, eff. June 17, 2011.

Art. 38.074. TESTIMONY OF CHILD IN PROSECUTION OF OFFENSE TESTIMONY OF CHILD IN PROSECUTION OF OFFENSE

Sec. 1. In this article:

(1) "Child" has the meaning assigned by Section 22.011(c), Penal Code.

(2) "Support person" means any person whose presence

would contribute to the welfare and well-being of a child.

Sec. 2. This article applies to the testimony of a child in any hearing or proceeding in the prosecution of any offense, other than the testimony of a child in a hearing or proceeding in a criminal case in which that child is the defendant.

Sec. 3. (a) A court shall:

(1) administer an oath to a child in a manner that allows the child to fully understand the child's duty to tell the truth;

(2) ensure that questions asked of the child are stated in language appropriate to the child's age;

(3) explain to the child that the child has the right to have the court notified if the child is unable to understand any question and to have a question restated in a form that the child does understand;

(4) ensure that a child testifies only at a time of day when the child is best able to understand the questions and to undergo the proceedings without being traumatized, including:

(A) limiting the duration of the child's testimony;

(B) limiting the timing of the child's testimony to the child's normal school hours; or

(C) ordering a recess during the child's testimony when necessary for the energy, comfort, or attention span of the child; and

(5) prevent intimidation or harassment of the child by any party and, for that purpose, rephrase as appropriate any question asked of the child.

(b) On the motion of any party, or a parent, managing conservator, guardian, or guardian ad litem of a child or special advocate for a child, the court shall allow the child to have a toy, blanket, or similar comforting item in the child's possession while testifying or allow a support person to be present in close proximity to the child during the child's testimony if the court finds by a preponderance of the evidence that:

(1) the child cannot reliably testify without the possession of the item or presence of the support person, as

applicable; and

(2) granting the motion is not likely to prejudice the trier of fact in evaluating the child's testimony.

(c) A support person who is present during a child's testimony may not:

(1) obscure the child from the view of the defendant or the trier of fact;

(2) provide the child with an answer to any question asked of the child; or

(3) assist or influence the testimony of the child.

(d) The court may set any other conditions and limitations on the taking of the testimony of a child that it finds just and appropriate, considering the interests of the child, the rights of the defendant, and any other relevant factors.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1227 (S.B. 578), Sec. 1, eff. September 1, 2011.

Art. 38.075. CORROBORATION OF CERTAIN TESTIMONY REQUIRED.

(a) A defendant may not be convicted of an offense on the testimony of a person to whom the defendant made a statement against the defendant's interest during a time when the person was imprisoned or confined in the same correctional facility as the defendant unless the testimony is corroborated by other evidence tending to connect the defendant with the offense committed. In this subsection, "correctional facility" has the meaning assigned by Section 1.07, Penal Code.

(b) Corroboration is not sufficient for the purposes of this article if the corroboration only shows that the offense was committed.

(c) Evidence of a prior offense committed by a person who gives testimony described by Subsection (a) may be admitted for the purpose of impeachment if the person received a benefit described by Article 39.14(h-1)(2) with respect to the offense, regardless of whether the person was convicted of the offense.

Added by Acts 2009, 81st Leg., R.S., Ch. 1422 (S.B. 1681), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 686 (H.B. 34), Sec. 3, eff. September 1, 2017.

Art. 38.076. TESTIMONY OF FORENSIC ANALYST BY VIDEO TELECONFERENCE. (a) In this article, "forensic analyst" has the meaning assigned by Section 4-a, Article 38.01.

(b) In a proceeding in the prosecution of a criminal offense in which a forensic analyst is required to testify as a witness, any testimony of the witness may be conducted by video teleconferencing in the manner described by Subsection (c) if:

(1) the use of video teleconferencing is approved by the court and all parties;

(2) the video teleconferencing is coordinated in advance to ensure proper scheduling and equipment compatibility and reliability; and

(3) a method of electronically transmitting documents related to the proceeding is available at both the location at which the witness is testifying and in the court.

(c) A video teleconferencing system used under this article must provide an encrypted, simultaneous, compressed full motion video and interactive communication of image and sound between the judge, the attorney representing the state, the attorney representing the defendant, and the witness.

Added by Acts 2019, 86th Leg., R.S., Ch. 978 (S.B. 1125), Sec. 1, eff. September 1, 2019.

Art. 38.08. DEFENDANT MAY TESTIFY. Any defendant in a criminal action shall be permitted to testify in his own behalf therein, but the failure of any defendant to so testify shall not be taken as a circumstance against him, nor shall the same be alluded to or commented on by counsel in the cause.

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

Art. 38.10. EXCEPTIONS TO THE SPOUSAL ADVERSE TESTIMONY PRIVILEGE. The privilege of a person's spouse not to be called as a witness for the state does not apply in any proceeding in which the person is charged with:

(1) a crime committed against the person's spouse, a minor child, or a member of the household of either spouse; or

(2) an offense under Section 25.01, Penal Code (Bigamy).

Added by Acts 1995, 74th Leg., ch. 67, Sec. 2, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 4.01, eff. September 1, 2005.

Art. 38.101. COMMUNICATIONS BY DRUG ABUSERS. A communication to any person involved in the treatment or examination of drug abusers by a person being treated voluntarily or being examined for admission to voluntary treatment for drug abuse is not admissible. However, information derived from the treatment or examination of drug abusers may be used for statistical and research purposes if the names of the patients are not revealed.

Added by Acts 1971, 62nd Leg., p. 2984, ch. 983, Sec. 2, eff. June 15, 1971.

Art. 38.11. JOURNALIST'S QUALIFIED TESTIMONIAL PRIVILEGE IN CRIMINAL PROCEEDINGS

Sec. 1. DEFINITIONS. In this article:

(1) "Communication service provider" means a person or the parent, subsidiary, division, or affiliate of a person who transmits information chosen by a customer by electronic means, including:

(A) a telecommunications carrier, as defined by Section 3, Communications Act of 1934 (47 U.S.C. Section 153);

(B) a provider of information service, as defined by Section 3, Communications Act of 1934 (47 U.S.C. Section 153);

(C) a provider of interactive computer service, as defined by Section 230, Communications Act of 1934 (47 U.S.C. Section 230); and

(D) an information content provider, as defined by Section 230, Communications Act of 1934 (47 U.S.C. Section 230).

(2) "Journalist" means a person, including a parent, subsidiary, division, or affiliate of a person, who for a

substantial portion of the person's livelihood or for substantial financial gain, gathers, compiles, prepares, collects, photographs, records, writes, edits, reports, investigates, processes, or publishes news or information that is disseminated by a news medium or communication service provider and includes:

(A) a person who supervises or assists in gathering, preparing, and disseminating the news or information; or

(B) notwithstanding the foregoing, a person who is or was a journalist, scholar, or researcher employed by an institution of higher education at the time the person obtained or prepared the requested information, or a person who at the time the person obtained or prepared the requested information:

(i) is earning a significant portion of the person's livelihood by obtaining or preparing information for dissemination by a news medium or communication service provider; or

(ii) was serving as an agent, assistant, employee, or supervisor of a news medium or communication service provider.

(3) "News medium" means a newspaper, magazine or periodical, book publisher, news agency, wire service, radio or television station or network, cable, satellite, or other transmission system or carrier or channel, or a channel or programming service for a station, network, system, or carrier, or an audio or audiovisual production company or Internet company or provider, or the parent, subsidiary, division, or affiliate of that entity, that disseminates news or information to the public by any means, including:

(A) print;

(B) television;

(C) radio;

(D) photographic;

(E) mechanical;

(F) electronic; and

(G) other means, known or unknown, that are accessible to the public.

(4) "Official proceeding" means any type of

administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant.

(5) "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if the person has not yet qualified for office or assumed the person's duties:

(A) an officer, employee, or agent of government;

(B) a juror or grand juror;

(C) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy;

(D) an attorney or notary public when participating in the performance of a governmental function; or

(E) a person who is performing a governmental function under a claim of right, although the person is not legally qualified to do so.

Sec. 2. PURPOSE. The purpose of this article is to increase the free flow of information and preserve a free and active press and, at the same time, protect the right of the public to effective law enforcement and the fair administration of justice.

Sec. 3. PRIVILEGE. (a) Except as otherwise provided by this article, a judicial, legislative, administrative, or other body with the authority to issue a subpoena or other compulsory process may not compel a journalist to testify regarding or to produce or disclose in an official proceeding:

(1) any confidential or nonconfidential unpublished information, document, or item obtained or prepared while acting as a journalist; or

(2) the source of any information, document, or item described by Subdivision (1).

(b) A subpoena or other compulsory process may not compel the parent, subsidiary, division, or affiliate of a communication service provider or news medium to disclose the unpublished information, documents, or items or the source of any information, documents, or items that are privileged from disclosure under Subsection (a).

Sec. 4. PRIVILEGE CONCERNING CONFIDENTIAL SOURCES. (a) A

journalist may be compelled to testify regarding or to disclose the confidential source of any information, document, or item obtained while acting as a journalist if the person seeking the testimony, production, or disclosure makes a clear and specific showing that the source of any information, document, or item:

(1) was observed by the journalist committing a felony criminal offense and the subpoenaing party has exhausted reasonable efforts to obtain from alternative sources the confidential source of any information, document, or item obtained or prepared while acting as a journalist;

(2) is a person who confessed or admitted to the journalist the commission of a felony criminal offense and the subpoenaing party has exhausted reasonable efforts to obtain from alternative sources the confidential source of any information, document, or item obtained or prepared while acting as a journalist;

(3) is a person for whom probable cause exists that the person participated in a felony criminal offense and the subpoenaing party has exhausted reasonable efforts to obtain from alternative sources the confidential source of any information, document, or item obtained or prepared while acting as a journalist; or

(4) disclosure of the confidential source is reasonably necessary to stop or prevent reasonably certain death or substantial bodily harm.

(b) If the alleged criminal conduct is the act of communicating, receiving, or possessing the information, document, or item, this section does not apply, and Section 5 governs the act.

(c) Notwithstanding Subsection (b), if the information, document, or item was disclosed or received in violation of a grand jury oath given to either a juror or a witness under Article [19A.202](#) or [20A.256](#), a journalist may be compelled to testify if the person seeking the testimony, production, or disclosure makes a clear and specific showing that the subpoenaing party has exhausted reasonable efforts to obtain from alternative sources the confidential source of any information, document, or item obtained. In this context, the court has the discretion to conduct

an in camera hearing. The court may not order the production of the confidential source until a ruling has been made on the motion.

(d) An application for a subpoena of a journalist under Article 24.03, or a subpoena of a journalist issued by an attorney representing the state under Article 20A.251 or 20A.252, must be signed by the elected district attorney, elected criminal district attorney, or elected county attorney, as applicable. If the elected district attorney, elected criminal district attorney, or elected county attorney has been disqualified or recused or has resigned, the application for the subpoena or the subpoena must be signed by the person succeeding the elected attorney. If the elected officer is not in the jurisdiction, the highest ranking assistant to the elected officer must sign the subpoena.

Sec. 5. PRIVILEGE CONCERNING UNPUBLISHED INFORMATION, DOCUMENT, OR ITEM AND NONCONFIDENTIAL SOURCES. (a) After service of subpoena and an opportunity to be heard, a court may compel a journalist, a journalist's employer, or a person with an independent contract with a journalist to testify regarding or to produce or disclose any unpublished information, document, or item or the source of any information, document, or item obtained while acting as a journalist, other than as described by Section 4, if the person seeking the unpublished information, document, or item or the source of any information, document, or item makes a clear and specific showing that:

(1) all reasonable efforts have been exhausted to obtain the information from alternative sources; and

(2) the unpublished information, document, or item:

(A) is relevant and material to the proper administration of the official proceeding for which the testimony, production, or disclosure is sought and is essential to the maintenance of a claim or defense of the person seeking the testimony, production, or disclosure; or

(B) is central to the investigation or prosecution of a criminal case and based on something other than the assertion of the person requesting the subpoena, reasonable grounds exist to believe that a crime has occurred.

(b) The court, when considering an order to compel testimony

regarding or to produce or disclose any unpublished information, document, or item or the source of any information, document, or item obtained while acting as a journalist, should consider the following factors, including but not limited to whether:

(1) the subpoena is overbroad, unreasonable, or oppressive;

(2) reasonable and timely notice was given of the demand for the information, document, or item;

(3) in this instance, the interest of the party subpoenaing the information outweighs the public interest in gathering and dissemination of news, including the concerns of the journalist; and

(4) the subpoena or compulsory process is being used to obtain peripheral, nonessential, or speculative information.

(c) A court may not consider a single factor under Subsection (b) as outcome-determinative in the decision whether to compel the testimony or the production or disclosure of the unpublished information, document, or item, or the source of any information, document, or item.

Sec. 6. NOTICE. An order to compel testimony, production, or disclosure to which a journalist has asserted a privilege under this article may be issued only after timely notice to the journalist, the journalist's employer, or a person who has an independent contract with the journalist and a hearing. The order must include clear and specific findings as to the showing made by the person seeking the testimony, production, or disclosure and the clear and specific evidence on which the court relied in issuing the court's order.

Sec. 7. PUBLICATION OF PRIVILEGED INFORMATION. Publication or dissemination by a news medium or communication service provider of information, documents, or items privileged under this article is not a waiver of the journalist's privilege regarding sources and unpublished information, documents, or items.

Sec. 8. PUBLISHED INFORMATION. This article does not apply to any information, document, or item that has at any time been published or broadcast by the journalist.

Sec. 9. REIMBURSEMENT OF COSTS. The subpoenaing party shall pay a journalist a reasonable fee for the journalist's time and costs incurred in providing the information, item, or document subpoenaed, based on the fee structure provided by Subchapter F, Chapter 552, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 29 (H.B. 670), Sec. 2, eff. May 13, 2009.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 469 (H.B. 4173), Sec. 2.11, eff. January 1, 2021.

Art. 38.111. NEWS MEDIA RECORDINGS. Extrinsic evidence of the authenticity of evidence as a condition precedent to the admissibility of the evidence in a criminal proceeding is not required with respect to a recording that purports to be a broadcast by a radio or television station that holds a license issued by the Federal Communications Commission at the time of the recording. The court may take judicial notice of the recording license as provided by Rule 201, Texas Rules of Evidence.

Added by Acts 2009, 81st Leg., R.S., Ch. 29 (H.B. 670), Sec. 2, eff. May 13, 2009.

Art. 38.12. RELIGIOUS OPINION. No person is incompetent to testify on account of his religious opinion or for the want of any religious belief.

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

Art. 38.14. TESTIMONY OF ACCOMPLICE. A conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense.

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

Art. 38.141. TESTIMONY OF UNDERCOVER PEACE OFFICER OR SPECIAL INVESTIGATOR. (a) A defendant may not be convicted of an offense under Chapter 481, Health and Safety Code, on the testimony of a

person who is not a licensed peace officer or a special investigator but who is acting covertly on behalf of a law enforcement agency or under the color of law enforcement unless the testimony is corroborated by other evidence tending to connect the defendant with the offense committed.

(b) Corroboration is not sufficient for the purposes of this article if the corroboration only shows the commission of the offense.

(c) In this article, "peace officer" means a person listed in Article 2.12, and "special investigator" means a person listed in Article 2.122.

Added by Acts 2001, 77th Leg., ch. 1102, Sec. 1, eff. Sept. 1, 2001.

Art. 38.15. TWO WITNESSES IN TREASON. No person can be convicted of treason except upon the testimony of at least two witnesses to the same overt act, or upon his own confession in open court.

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

Art. 38.16. EVIDENCE IN TREASON. Evidence shall not be admitted in a prosecution for treason as to an overt act not expressly charged in the indictment; nor shall any person be convicted under an indictment for treason unless one or more overt acts are expressly charged therein.

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

Art. 38.17. TWO WITNESSES REQUIRED. In all cases where, by law, two witnesses, or one with corroborating circumstances, are required to authorize a conviction, if the requirement be not fulfilled, the court shall instruct the jury to render a verdict of acquittal, and they are bound by the instruction.

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

Art. 38.18. PERJURY AND AGGRAVATED PERJURY. (a) No person may be convicted of perjury or aggravated perjury if proof that his statement is false rests solely upon the testimony of one witness other than the defendant.

(b) Paragraph (a) of this article does not apply to prosecutions for perjury or aggravated perjury involving inconsistent statements.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 973, ch. 399, Sec. 2(A), eff. Jan. 1, 1974.

Art. 38.19. INTENT TO DEFRAUD: CERTAIN OFFENSES. (a) This article applies to the trial of an offense under any of the following sections of the Penal Code:

(1) Section 32.21 (Forgery);

(2) Section 32.31 (Credit Card or Debit Card Abuse);

or

(3) Section 32.51 (Fraudulent Use or Possession of Identifying Information).

(b) In the trial of an offense to which this article applies, the attorney representing the state is not required to prove that the defendant committed the act with intent to defraud any particular person. It is sufficient to prove that the offense was, in its nature, calculated to injure or defraud any of the sovereignties, bodies corporate or politic, officers or persons, named in the definition of the offense in the Penal Code.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 291 (H.B. 2624), Sec. 2, eff. September 1, 2019.

Art. 38.20. PHOTOGRAPH AND LIVE LINEUP IDENTIFICATION PROCEDURES PHOTOGRAPH AND LIVE LINEUP IDENTIFICATION PROCEDURES

Sec. 1. In this article, "institute" means the Bill Blackwood Law Enforcement Management Institute of Texas located at Sam Houston State University.

Sec. 2. This article applies only to a law enforcement agency of this state or of a county, municipality, or other political subdivision of this state that employs peace officers who conduct photograph or live lineup identification procedures in the routine performance of the officers' official duties.

Sec. 3. (a) Each law enforcement agency shall adopt, implement, and as necessary amend a detailed written policy

regarding the administration of photograph and live lineup identification procedures in accordance with this article. A law enforcement agency may adopt:

- (1) the model policy adopted under Subsection (b); or
- (2) the agency's own policy that, at a minimum, conforms to the requirements of Subsection (c).

(b) The institute, in consultation with large, medium, and small law enforcement agencies and with law enforcement associations, scientific experts in eyewitness memory research, and appropriate organizations engaged in the development of law enforcement policy, shall develop, adopt, and disseminate to all law enforcement agencies in this state a model policy and associated training materials regarding the administration of photograph and live lineup identification procedures. The institute shall provide for a period of public comment before adopting the policy and materials.

(c) The model policy or any other policy adopted by a law enforcement agency under Subsection (a) must:

- (1) be based on:
 - (A) credible field, academic, or laboratory research on eyewitness memory;
 - (B) relevant policies, guidelines, and best practices designed to reduce erroneous eyewitness identifications and to enhance the reliability and objectivity of eyewitness identifications; and
 - (C) other relevant information as appropriate;and

(2) include the following information regarding evidence-based practices:

(A) procedures for selecting photograph and live lineup filler photographs or participants to ensure that the photographs or participants:

(i) are consistent in appearance with the description of the alleged perpetrator; and

(ii) do not make the suspect noticeably stand out;

(B) instructions given to a witness before

conducting a photograph or live lineup identification procedure that must include a statement that the person who committed the offense may or may not be present in the procedure;

(C) procedures for documenting and preserving the results of a photograph or live lineup identification procedure, including the documentation of witness statements, regardless of the outcome of the procedure;

(D) procedures for administering a photograph or live lineup identification procedure to an illiterate person or a person with limited English language proficiency;

(E) for a live lineup identification procedure, if practicable, procedures for assigning an administrator who is unaware of which member of the live lineup is the suspect in the case or alternative procedures designed to prevent opportunities to influence the witness;

(F) for a photograph identification procedure, procedures for assigning an administrator who is capable of administering a photograph array in a blind manner or in a manner consistent with other proven or supported best practices designed to prevent opportunities to influence the witness; and

(G) any other procedures or best practices supported by credible research or commonly accepted as a means to reduce erroneous eyewitness identifications and to enhance the objectivity and reliability of eyewitness identifications.

(d) A witness who makes an identification based on a photograph or live lineup identification procedure shall be asked immediately after the procedure to state, in the witness's own words, how confident the witness is in making the identification. A law enforcement agency shall document in accordance with Subsection (c)(2)(C) any statement made under this subsection.

Sec. 4. (a) Not later than December 31 of each odd-numbered year, the institute shall review the model policy and training materials adopted under this article and shall modify the policy and materials as appropriate.

(b) Not later than September 1 of each even-numbered year, each law enforcement agency shall review its policy adopted under

this article and shall modify that policy as appropriate.

Sec. 5. (a) Any evidence or expert testimony presented by the state or the defendant on the subject of eyewitness identification is admissible only subject to compliance with the Texas Rules of Evidence. Except as provided by Subsection (c), evidence of compliance with the model policy or any other policy adopted under this article is not a condition precedent to the admissibility of an out-of-court eyewitness identification.

(b) Notwithstanding Article 38.23 as that article relates to a violation of a state statute and except as provided by Subsection (c), a failure to conduct a photograph or live lineup identification procedure in substantial compliance with the model policy or any other policy adopted under this article does not bar the admission of eyewitness identification testimony in the courts of this state.

(c) If a witness who has previously made an out-of-court photograph or live lineup identification of the accused makes an in-court identification of the accused, the eyewitness identification is admissible into evidence against the accused only if the evidence is accompanied by the details of each prior photograph or live lineup identification made of the accused by the witness, including the manner in which the identification procedure was conducted.

Added by Acts 2011, 82nd Leg., R.S., Ch. 219 (H.B. 215), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 686 (H.B. 34), Sec. 4, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 686 (H.B. 34), Sec. 5, eff. September 1, 2017.

Art. 38.21. STATEMENT. A statement of an accused may be used in evidence against him if it appears that the same was freely and voluntarily made without compulsion or persuasion, under the rules hereafter prescribed.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1977, 65th Leg., p. 935, ch. 348, Sec. 1, eff. Aug. 29, 1977.

Art. 38.22. WHEN STATEMENTS MAY BE USED.

Sec. 1. In this article, a written statement of an accused means:

(1) a statement made by the accused in his own handwriting; or

(2) a statement made in a language the accused can read or understand that:

(A) is signed by the accused; or

(B) bears the mark of the accused, if the accused is unable to write and the mark is witnessed by a person other than a peace officer.

Sec. 2. No written statement made by an accused as a result of custodial interrogation is admissible as evidence against him in any criminal proceeding unless it is shown on the face of the statement that:

(a) the accused, prior to making the statement, either received from a magistrate the warning provided in Article 15.17 of this code or received from the person to whom the statement is made a warning that:

(1) he has the right to remain silent and not make any statement at all and that any statement he makes may be used against him at his trial;

(2) any statement he makes may be used as evidence against him in court;

(3) he has the right to have a lawyer present to advise him prior to and during any questioning;

(4) if he is unable to employ a lawyer, he has the right to have a lawyer appointed to advise him prior to and during any questioning; and

(5) he has the right to terminate the interview at any time; and

(b) the accused, prior to and during the making of the statement, knowingly, intelligently, and voluntarily waived the rights set out in the warning prescribed by Subsection (a) of this section.

Sec. 3. (a) No oral or sign language statement of an accused

made as a result of custodial interrogation shall be admissible against the accused in a criminal proceeding unless:

(1) an electronic recording, which may include motion picture, video tape, or other visual recording, is made of the statement;

(2) prior to the statement but during the recording the accused is given the warning in Subsection (a) of Section 2 above and the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning;

(3) the recording device was capable of making an accurate recording, the operator was competent, and the recording is accurate and has not been altered;

(4) all voices on the recording are identified; and

(5) not later than the 20th day before the date of the proceeding, the attorney representing the defendant is provided with a true, complete, and accurate copy of all recordings of the defendant made under this article.

(b) Every electronic recording of any statement made by an accused during a custodial interrogation must be preserved until such time as the defendant's conviction for any offense relating thereto is final, all direct appeals therefrom are exhausted, or the prosecution of such offenses is barred by law.

(c) Subsection (a) of this section shall not apply to any statement which contains assertions of facts or circumstances that are found to be true and which conduce to establish the guilt of the accused, such as the finding of secreted or stolen property or the instrument with which he states the offense was committed.

(d) If the accused is a deaf person, the accused's statement under Section 2 or Section 3(a) of this article is not admissible against the accused unless the warning in Section 2 of this article is interpreted to the deaf person by an interpreter who is qualified and sworn as provided in Article 38.31 of this code.

(e) The courts of this state shall strictly construe Subsection (a) of this section and may not interpret Subsection (a) as making admissible a statement unless all requirements of the subsection have been satisfied by the state, except that:

(1) only voices that are material are identified; and

(2) the accused was given the warning in Subsection (a) of Section 2 above or its fully effective equivalent.

Sec. 4. When any statement, the admissibility of which is covered by this article, is sought to be used in connection with an official proceeding, any person who swears falsely to facts and circumstances which, if true, would render the statement admissible under this article is presumed to have acted with intent to deceive and with knowledge of the statement's meaning for the purpose of prosecution for aggravated perjury under Section 37.03 of the Penal Code. No person prosecuted under this subsection shall be eligible for probation.

Sec. 5. Nothing in this article precludes the admission of a statement made by the accused in open court at his trial, before a grand jury, or at an examining trial in compliance with Articles 16.03 and 16.04 of this code, or of a statement that is the res gestae of the arrest or of the offense, or of a statement that does not stem from custodial interrogation, or of a voluntary statement, whether or not the result of custodial interrogation, that has a bearing upon the credibility of the accused as a witness, or of any other statement that may be admissible under law.

Sec. 6. In all cases where a question is raised as to the voluntariness of a statement of an accused, the court must make an independent finding in the absence of the jury as to whether the statement was made under voluntary conditions. If the statement has been found to have been voluntarily made and held admissible as a matter of law and fact by the court in a hearing in the absence of the jury, the court must enter an order stating its conclusion as to whether or not the statement was voluntarily made, along with the specific finding of facts upon which the conclusion was based, which order shall be filed among the papers of the cause. Such order shall not be exhibited to the jury nor the finding thereof made known to the jury in any manner. Upon the finding by the judge as a matter of law and fact that the statement was voluntarily made, evidence pertaining to such matter may be submitted to the jury and it shall be instructed that unless the jury believes beyond a reasonable doubt that the statement was voluntarily made, the jury shall not consider such statement for any purpose nor any evidence

obtained as a result thereof. In any case where a motion to suppress the statement has been filed and evidence has been submitted to the court on this issue, the court within its discretion may reconsider such evidence in his finding that the statement was voluntarily made and the same evidence submitted to the court at the hearing on the motion to suppress shall be made a part of the record the same as if it were being presented at the time of trial. However, the state or the defendant shall be entitled to present any new evidence on the issue of the voluntariness of the statement prior to the court's final ruling and order stating its findings.

Sec. 7. When the issue is raised by the evidence, the trial judge shall appropriately instruct the jury, generally, on the law pertaining to such statement.

Sec. 8. Notwithstanding any other provision of this article, a written, oral, or sign language statement of an accused made as a result of a custodial interrogation is admissible against the accused in a criminal proceeding in this state if:

(1) the statement was obtained in another state and was obtained in compliance with the laws of that state or this state; or

(2) the statement was obtained by a federal law enforcement officer in this state or another state and was obtained in compliance with the laws of the United States.

Sec. 9. Notwithstanding any other provision of this article, no oral, sign language, or written statement that is made by a person accused of an offense listed in Article 2.32(b) and made as a result of a custodial interrogation occurring in a place of detention, as that term is defined by Article 2.32, is admissible against the accused in a criminal proceeding unless:

(1) an electronic recording was made of the statement, as required by Article 2.32(b); or

(2) the attorney representing the state offers proof satisfactory to the court that good cause, as described by Article 2.32(d), existed that made electronic recording of the custodial interrogation infeasible.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1967,

60th Leg., p. 1740, ch. 659, Sec. 23, eff. Aug. 28, 1967; Acts 1977, 65th Leg., p. 935, ch. 348, Sec. 2, eff. Aug. 29, 1977.

Sec. 3(a) amended by Acts 1979, 66th Leg., p. 398, ch. 186, Sec. 4, eff. May 15, 1979; Sec. 3(d) added by Acts 1979, 66th Leg., p. 398, ch. 186, Sec. 5, eff. May 15, 1979; Sec. 3 amended by Acts 1981, 67th Leg., p. 711, ch. 271, Sec. 1, eff. Sept. 1, 1981; Sec. 3(a) amended by Acts 1989, 71st Leg., ch. 777, Sec. 1, eff. Sept. 1, 1989; Sec. 3(e) added by Acts 1989, 71st Leg., ch. 777, Sec. 2, eff. Sept. 1, 1989; Sec. 8 added by Acts 2001, 77th Leg., ch. 990, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 679 (H.B. [2090](#)), Sec. 1, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 686 (H.B. [34](#)), Sec. 6, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1122 (S.B. [1253](#)), Sec. 2, eff. September 1, 2017.

Art. 38.23. EVIDENCE NOT TO BE USED. (a) No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case.

In any case where the legal evidence raises an issue hereunder, the jury shall be instructed that if it believes, or has a reasonable doubt, that the evidence was obtained in violation of the provisions of this Article, then and in such event, the jury shall disregard any such evidence so obtained.

(b) It is an exception to the provisions of Subsection (a) of this Article that the evidence was obtained by a law enforcement officer acting in objective good faith reliance upon a warrant issued by a neutral magistrate based on probable cause.

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

Amended by Acts 1987, 70th Leg., ch. 546, Sec. 1, eff. Sept. 1, 1987.

Art. 38.25. WRITTEN PART OF INSTRUMENT CONTROLS. When an instrument is partly written and partly printed, the written shall control the printed portion when the two are inconsistent.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 38.27. EVIDENCE OF HANDWRITING. It is competent to give evidence of handwriting by comparison, made by experts or by the jury. Proof by comparison only shall not be sufficient to establish the handwriting of a witness who denies his signature under oath.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 38.30. INTERPRETER. (a) When a motion for appointment of an interpreter is filed by any party or on motion of the court, in any criminal proceeding, it is determined that a person charged or a witness does not understand and speak the English language, an interpreter must be sworn to interpret for the person charged or the witness. Any person may be subpoenaed, attached or recognized in any criminal action or proceeding, to appear before the proper judge or court to act as interpreter therein, under the same rules and penalties as are provided for witnesses. In the event that the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or the interpreter is not familiar with use of slang, the person charged or witness may be permitted by the court to nominate another person to act as intermediary between the person charged or witness and the appointed interpreter during the proceedings.

(a-1) A qualified telephone interpreter may be sworn to interpret for the person in any criminal proceeding before a judge or magistrate if an interpreter is not available to appear in person at the proceeding or if the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or is unfamiliar with the use of slang. In this subsection, "qualified telephone interpreter" means a telephone service that employs:

- (1) licensed court interpreters as defined by Section [157.001](#), Government Code; or
- (2) federally certified court interpreters.

(b) Except as provided by Subsection (c) of this article, interpreters appointed under the terms of this article will receive from the general fund of the county for their services a sum not to exceed \$100 a day as follows: interpreters shall be paid not less than \$15 nor more than \$100 a day at the discretion of the judge presiding, and when travel of the interpreter is involved all the actual expenses of travel, lodging, and meals incurred by the interpreter pertaining to the case the interpreter is appointed to serve shall be paid at the same rate applicable to state employees.

(c) A county commissioners court may set a payment schedule and expend funds for the services of interpreters in excess of the daily amount of not less than \$15 or more than \$100 established by Subsection (b) of this article.

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

Amended by Acts 1979, 66th Leg., p. 453, ch. 209, Sec. 1, eff. Aug. 27, 1979; Acts 1991, 72nd Leg., ch. 700, Sec. 1, eff. June 16, 1991.

Amended by:

Acts 2005, 79th Leg., Ch. 956 (H.B. 1601), Sec. 1, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 42 (S.B. 966), Sec. 2.01, eff. September 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 1182 (S.B. 1139), Sec. 8.01, eff. September 1, 2015.

Art. 38.31. INTERPRETERS FOR DEAF PERSONS. (a) If the court is notified by a party that the defendant is deaf and will be present at an arraignment, hearing, examining trial, or trial, or that a witness is deaf and will be called at a hearing, examining trial, or trial, the court shall appoint a qualified interpreter to interpret the proceedings in any language that the deaf person can understand, including but not limited to sign language. On the court's motion or the motion of a party, the court may order testimony of a deaf witness and the interpretation of that testimony by the interpreter visually, electronically recorded for use in verification of the transcription of the reporter's notes. The clerk of the court shall include that recording in the appellate record if requested by a party under Article 40.09 of this Code.

(b) Following the filing of an indictment, information, or complaint against a deaf defendant, the court on the motion of the defendant shall appoint a qualified interpreter to interpret in a language that the defendant can understand, including but not limited to sign language, communications concerning the case between the defendant and defense counsel. The interpreter may not disclose a communication between the defendant and defense counsel or a fact that came to the attention of the interpreter while interpreting those communications if defense counsel may not disclose that communication or fact.

(c) In all cases where the mental condition of a person is being considered and where such person may be committed to a mental institution, and where such person is deaf, all of the court proceedings pertaining to him shall be interpreted by a qualified interpreter appointed by the court.

(d) A proceeding for which an interpreter is required to be appointed under this Article may not commence until the appointed interpreter is in a position not exceeding ten feet from and in full view of the deaf person.

(e) The interpreter appointed under the terms of this Article shall be required to take an oath that he will make a true interpretation to the person accused or being examined, which person is deaf, of all the proceedings of his case in a language that he understands; and that he will repeat said deaf person's answer to questions to counsel, court, or jury, in the English language, in his best skill and judgment.

(f) Interpreters appointed under this Article are entitled to a reasonable fee determined by the court after considering the recommendations of the Texas Commission for the Deaf and Hard of Hearing. When travel of the interpreter is involved all the actual expenses of travel, lodging, and meals incurred by the interpreter pertaining to the case he is appointed to serve shall be paid at the same rate applicable to state employees.

(g) In this Code:

(1) "Deaf person" means a person who has a hearing impairment, regardless of whether the person also has a speech impairment, that inhibits the person's comprehension of the

proceedings or communication with others.

(2) "Qualified interpreter" means an interpreter for the deaf who holds a current legal certificate issued by the National Registry of Interpreters for the Deaf or a current court interpreter certificate issued by the Board for Evaluation of Interpreters at the Department of Assistive and Rehabilitative Services.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1967, 60th Leg., p. 195, ch. 105, Sec. 2, eff. Aug. 28, 1967.

Amended by Acts 1979, 66th Leg., p. 396, ch. 186, Sec. 1, eff. May 15, 1979; Acts 1987, 70th Leg., ch. 434, Sec. 1, eff. June 17, 1987; Subsec. (f) amended by Acts 1995, 74th Leg., ch. 835, Sec. 14, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 614 (H.B. 2200), Sec. 11, eff. September 1, 2006.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 3.006, eff. September 1, 2013.

Art. 38.32. PRESUMPTION OF DEATH. (a) Upon introduction and admission into evidence of a valid certificate of death wherein the time of death of the decedent has been entered by a licensed physician, a presumption exists that death occurred at the time stated in the certificate of death.

(b) A presumption existing pursuant to Section (a) of this Article is sufficient to support a finding as to time of death but may be rebutted through a showing by a preponderance of the evidence that death occurred at some other time.

Added by Acts 1969, 61st Leg., p. 1034, ch. 337, Sec. 1, eff. May 27, 1969.

Art. 38.33. PRESERVATION AND USE OF EVIDENCE OF CERTAIN MISDEMEANOR CONVICTIONS.

Sec. 1. The court shall order that a defendant who is convicted of a felony or a misdemeanor offense that is punishable by confinement in jail have a thumbprint of the defendant's right thumb rolled legibly on the judgment or the docket sheet in the

case. The court shall order a defendant who is placed on deferred adjudication community supervision under Subchapter C, Chapter 42A, for an offense described by this section to have a thumbprint of the defendant's right thumb rolled legibly on the order placing the defendant on deferred adjudication community supervision. If the defendant does not have a right thumb, the defendant must have a thumbprint of the defendant's left thumb rolled legibly on the judgment, order, or docket sheet. The defendant must have a fingerprint of the defendant's index finger rolled legibly on the judgment, order, or docket sheet if the defendant does not have a right thumb or a left thumb. The judgment, order, or docket sheet must contain a statement that describes from which thumb or finger the print was taken, unless a rolled 10-finger print set was taken. A clerk or bailiff of the court or other person qualified to take fingerprints shall take the thumbprint or fingerprint, either by use of the ink-rolled print method or by use of a live-scanning device that prints the thumbprint or fingerprint image on the judgment, order, or docket sheet.

Sec. 2. This article does not prohibit a court from including in the records of the case additional information to identify the defendant.

Added by Acts 1979, 66th Leg., p. 1851, ch. 751, Sec. 1, eff. Sept. 1, 1979. Sec. 1 amended by Acts 1983, 68th Leg., p. 1586, ch. 303, Sec. 7, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 721, Sec. 1, eff. Sept. 1, 1987. Sec. 1 amended by Acts 1989, 71st Leg., ch. 603, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 7.01, eff. Dec. 1, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.09, eff. January 1, 2017.

Art. 38.34. PHOTOGRAPHIC EVIDENCE IN THEFT CASES. (a) In this article, "property" means any tangible personal property.

(b) A photograph of property that a person is alleged to have unlawfully appropriated with the intent to deprive the owner of the property is admissible into evidence under rules of law governing the admissibility of photographs. The photograph is as

admissible in evidence as is the property itself.

(c) The provisions of Article 18.16 concerning the bringing of stolen property before a magistrate for examination are complied with if a photograph of the stolen property is brought before the magistrate.

(d) The defendant's rights of discovery and inspection of tangible physical evidence are satisfied if a photograph of the property is made available to the defendant by the state on order of any court having jurisdiction over the cause.

Added by Acts 1985, 69th Leg., ch. 144, Sec. 1, eff. Sept. 1, 1985.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 613 (H.B. 796), Sec. 1, eff. September 1, 2009.

Art. 38.35. FORENSIC ANALYSIS OF EVIDENCE; ADMISSIBILITY.

(a) In this article:

(1) "Crime laboratory" includes a public or private laboratory or other entity that conducts a forensic analysis subject to this article.

(2) "Criminal action" includes an investigation, complaint, arrest, bail, bond, trial, appeal, punishment, or other matter related to conduct proscribed by a criminal offense.

(3) "Commission" means the Texas Forensic Science Commission established under Article 38.01.

(4) "Forensic analysis" means a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action. The term includes an examination or test requested by a law enforcement agency, prosecutor, criminal suspect or defendant, or court. The term does not include:

(A) latent print examination;

(B) a test of a specimen of breath under Chapter 724, Transportation Code;

(C) digital evidence;

(D) an examination or test excluded by rule under Article 38.01;

(E) a presumptive test performed for the purpose of determining compliance with a term or condition of community supervision or parole and conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles; or

(F) an expert examination or test conducted principally for the purpose of scientific research, medical practice, civil or administrative litigation, or other purpose unrelated to determining the connection of physical evidence to a criminal action.

(5) "Physical evidence" means any tangible object, thing, or substance relating to a criminal action.

(b) A law enforcement agency, prosecutor, or court may request a forensic analysis by a crime laboratory of physical evidence if the evidence was obtained in connection with the requesting entity's investigation or disposition of a criminal action and the requesting entity:

- (1) controls the evidence;
- (2) submits the evidence to the laboratory; or
- (3) consents to the analysis.

(c) A law enforcement agency, other governmental agency, or private entity performing a forensic analysis of physical evidence may require the requesting law enforcement agency to pay a fee for such analysis.

(d)(1) Except as provided by Subsection (e), a forensic analysis of physical evidence under this article and expert testimony relating to the evidence are not admissible in a criminal action if, at the time of the analysis, the crime laboratory conducting the analysis was not accredited by the commission under Article 38.01.

(2) If before the date of the analysis the commission issues a certificate of accreditation under Article 38.01 to a crime laboratory conducting the analysis, the certificate is prima facie evidence that the laboratory was accredited by the commission at the time of the analysis.

(e) A forensic analysis of physical evidence under this

article and expert testimony relating to the evidence are not inadmissible in a criminal action based solely on the accreditation status of the crime laboratory conducting the analysis if the laboratory:

(A) except for making proper application, was eligible for accreditation by the commission at the time of the examination or test; and

(B) obtains accreditation from the commission before the time of testimony about the examination or test.

(f) This article does not apply to the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

Added by Acts 1991, 72nd Leg., ch. 298, Sec. 1, eff. Sept. 1, 1991; Art. heading amended by Acts 2003, 78th Leg., ch. 698, Sec. 1, eff. June 20, 2003; Subsec. (a)(1) amended by Acts 2003, 78th Leg., ch. 698, Sec. 2, eff. June 20, 2003; Subsecs. (d), (e) added by Acts 2003, 78th Leg., ch. 698, Sec. 3, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1224 (H.B. [1068](#)), Sec. 2, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1276 (S.B. [1287](#)), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1276 (S.B. [1287](#)), Sec. 9, eff. September 1, 2015.

Art. 38.36. EVIDENCE IN PROSECUTIONS FOR MURDER. (a) In all prosecutions for murder, the state or the defendant shall be permitted to offer testimony as to all relevant facts and circumstances surrounding the killing and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense.

(b) In a prosecution for murder, if a defendant raises as a defense a justification provided by Section [9.31](#), [9.32](#), or [9.33](#), Penal Code, the defendant, in order to establish the defendant's reasonable belief that use of force or deadly force was immediately necessary, shall be permitted to offer:

(1) relevant evidence that the defendant had been the victim of acts of family violence committed by the deceased, as family violence is defined by Section 71.004, Family Code; and

(2) relevant expert testimony regarding the condition of the mind of the defendant at the time of the offense, including those relevant facts and circumstances relating to family violence that are the basis of the expert's opinion.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 7.03, eff. Sept. 1, 1994. Subsec. (b) amended by Acts 2003, 78th Leg., ch. 1276, Sec. 7.002(g), eff. Sept. 1, 2003.

Art. 38.37. EVIDENCE OF EXTRANEIOUS OFFENSES OR ACTS.

Sec. 1. (a) Subsection (b) applies to a proceeding in the prosecution of a defendant for an offense, or an attempt or conspiracy to commit an offense, under the following provisions of the Penal Code:

- (1) if committed against a child under 17 years of age:
 - (A) Chapter 21 (Sexual Offenses);
 - (B) Chapter 22 (Assaultive Offenses); or
 - (C) Section 25.02 (Prohibited Sexual Conduct);

or

- (2) if committed against a person younger than 18 years of age:
 - (A) Section 43.25 (Sexual Performance by a Child);
 - (B) Section 20A.02(a)(7) or (8); or
 - (C) Section 43.05(a)(2) (Compelling Prostitution).

(b) Notwithstanding Rules 404 and 405, Texas Rules of Evidence, evidence of other crimes, wrongs, or acts committed by the defendant against the child who is the victim of the alleged offense shall be admitted for its bearing on relevant matters, including:

- (1) the state of mind of the defendant and the child;
- and
- (2) the previous and subsequent relationship between the defendant and the child.

Sec. 2. (a) Subsection (b) applies only to the trial of a defendant for:

(1) an offense under any of the following provisions of the Penal Code:

(A) Section 20A.02, if punishable as a felony of the first degree under Section 20A.02(b)(1) (Sex Trafficking of a Child);

(B) Section 21.02 (Continuous Sexual Abuse of Young Child or Disabled Individual);

(C) Section 21.11 (Indecency With a Child);

(D) Section 22.011(a)(2) (Sexual Assault of a Child);

(E) Sections 22.021(a)(1)(B) and (2) (Aggravated Sexual Assault of a Child);

(F) Section 33.021 (Online Solicitation of a Minor);

(G) Section 43.25 (Sexual Performance by a Child); or

(H) Section 43.26 (Possession or Promotion of Child Pornography), Penal Code; or

(2) an attempt or conspiracy to commit an offense described by Subdivision (1).

(b) Notwithstanding Rules 404 and 405, Texas Rules of Evidence, and subject to Section 2-a, evidence that the defendant has committed a separate offense described by Subsection (a)(1) or (2) may be admitted in the trial of an alleged offense described by Subsection (a)(1) or (2) for any bearing the evidence has on relevant matters, including the character of the defendant and acts performed in conformity with the character of the defendant.

Sec. 2-a. Before evidence described by Section 2 may be introduced, the trial judge must:

(1) determine that the evidence likely to be admitted at trial will be adequate to support a finding by the jury that the defendant committed the separate offense beyond a reasonable doubt; and

(2) conduct a hearing out of the presence of the jury for that purpose.

Sec. 3. The state shall give the defendant notice of the state's intent to introduce in the case in chief evidence described by Section 1 or 2 not later than the 30th day before the date of the defendant's trial.

Sec. 4. This article does not limit the admissibility of evidence of extraneous crimes, wrongs, or acts under any other applicable law.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 48(a), eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 4.004, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 2.08, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 387 (S.B. 12), Sec. 1, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 221 (H.B. 375), Sec. 2.12, eff. September 1, 2021.

Art. 38.371. EVIDENCE IN PROSECUTION OF OFFENSE COMMITTED AGAINST MEMBER OF DEFENDANT'S FAMILY OR HOUSEHOLD OR PERSON IN DATING RELATIONSHIP WITH DEFENDANT.

(a) This article applies to a proceeding in the prosecution of a defendant for an offense, or for an attempt or conspiracy to commit an offense, for which the alleged victim is a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code.

(b) In the prosecution of an offense described by Subsection (a), subject to the Texas Rules of Evidence or other applicable law, each party may offer testimony or other evidence of all relevant facts and circumstances that would assist the trier of fact in determining whether the actor committed the offense described by Subsection (a), including testimony or evidence regarding the nature of the relationship between the actor and the alleged victim.

(c) This article does not permit the presentation of character evidence that would otherwise be inadmissible under the

Texas Rules of Evidence or other applicable law.

Added by Acts 2015, 84th Leg., R.S., Ch. 1086 (H.B. 2645), Sec. 1, eff. September 1, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 679 (S.B. 2136), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 679 (S.B. 2136), Sec. 2, eff. September 1, 2019.

Art. 38.38. EVIDENCE RELATING TO RETAINING ATTORNEY. Evidence that a person has contacted or retained an attorney is not admissible on the issue of whether the person committed a criminal offense. In a criminal case, neither the judge nor the attorney representing the state may comment on the fact that the defendant has contacted or retained an attorney in the case.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 49, eff. Sept. 1, 1995.

Art. 38.39. EVIDENCE IN AN AGGREGATION PROSECUTION WITH NUMEROUS VICTIMS. In trials involving an allegation of a continuing scheme of fraud or theft alleged to have been committed against a large class of victims in an aggregate amount or value, it need not be proved by direct evidence that each alleged victim did not consent or did not effectively consent to the transaction in question. It shall be sufficient if the lack of consent or effective consent to a particular transaction or transactions is proven by either direct or circumstantial evidence.

Added by Acts 2001, 77th Leg., ch. 1411, Sec. 2, eff. Sept. 1, 2001.

Art. 38.40. EVIDENCE OF PREGNANCY. (a) In a prosecution for the death of or injury to an individual who is an unborn child, the prosecution shall provide medical or other evidence that the mother of the individual was pregnant at the time of the alleged offense.

(b) For the purpose of this section, "individual" has the meaning assigned by Section 1.07, Penal Code.

Added by Acts 2003, 78th Leg., ch. 822, Sec. 2.06, eff. Sept. 1, 2003.

Art. 38.41. CERTIFICATE OF ANALYSIS.

Sec. 1. A certificate of analysis that complies with this article is admissible in evidence on behalf of the state or the defendant to establish the results of a laboratory analysis of physical evidence conducted by or for a law enforcement agency without the necessity of the analyst personally appearing in court.

Sec. 2. This article does not limit the right of a party to summon a witness or to introduce admissible evidence relevant to the results of the analysis.

Sec. 3. A certificate of analysis under this article must contain the following information certified under oath:

(1) the names of the analyst and the laboratory employing the analyst;

(2) a statement that the laboratory employing the analyst is accredited by a nationally recognized board or association that accredits crime laboratories;

(3) a description of the analyst's educational background, training, and experience;

(4) a statement that the analyst's duties of employment included the analysis of physical evidence for one or more law enforcement agencies;

(5) a description of the tests or procedures conducted by the analyst;

(6) a statement that the tests or procedures used were reliable and approved by the laboratory employing the analyst; and

(7) the results of the analysis.

Sec. 4. Not later than the 20th day before the trial begins in a proceeding in which a certificate of analysis under this article is to be introduced, the certificate must be filed with the clerk of the court and a copy must be provided by fax, secure electronic mail, hand delivery, or certified mail, return receipt requested, to the opposing party. The certificate is not admissible under Section 1 if, not later than the 10th day before the trial begins, the opposing party files a written objection to the use of the certificate with the clerk of the court and provides a copy of the objection by fax, secure electronic mail, hand delivery, or certified mail, return receipt requested, to the

offering party.

Sec. 5. A certificate of analysis is sufficient for purposes of this article if it uses the following form or if it otherwise substantially complies with this article:

CERTIFICATE OF ANALYSIS

BEFORE ME, the undersigned authority, personally appeared _____, who being duly sworn, stated as follows:

My name is _____. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.

I am employed by the _____, which was authorized to conduct the analysis referenced in this affidavit. Part of my duties for this laboratory involved the analysis of physical evidence for one or more law enforcement agencies. This laboratory is accredited by _____.

My educational background is as follows: (description of educational background)

My training and experience that qualify me to perform the tests or procedures referred to in this affidavit and determine the results of those tests or procedures are as follows: (description of training and experience)

I received the physical evidence listed on laboratory report no. _____ (attached) on the ___ day of _____, 20___. On the date indicated in the laboratory report, I conducted the following tests or procedures on the physical evidence: (description of tests and procedures)

The tests and procedures used were reliable and approved by the laboratory. The results are as indicated on the lab report.

Affiant

SWORN TO AND SUBSCRIBED before me on the ___ day of _____, 20__.

Notary Public, State of Texas

Added by Acts 2003, 78th Leg., ch. 923, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 78 (S.B. 354), Sec. 4, eff. May 18, 2013.

Art. 38.42. CHAIN OF CUSTODY AFFIDAVIT.

Sec. 1. A chain of custody affidavit that complies with this article is admissible in evidence on behalf of the state or the defendant to establish the chain of custody of physical evidence without the necessity of any person in the chain of custody personally appearing in court.

Sec. 2. This article does not limit the right of a party to summon a witness or to introduce admissible evidence relevant to the chain of custody.

Sec. 3. A chain of custody affidavit under this article must contain the following information stated under oath:

- (1) the affiant's name and address;
- (2) a description of the item of evidence and its container, if any, obtained by the affiant;
- (3) the name of the affiant's employer on the date the affiant obtained custody of the physical evidence;
- (4) the date and method of receipt and the name of the person from whom or location from which the item of physical evidence was received;
- (5) the date and method of transfer and the name of the person to whom or location to which the item of physical evidence was transferred; and
- (6) a statement that the item of evidence was transferred in essentially the same condition as received except for any minor change resulting from field or laboratory testing procedures.

Sec. 4. Not later than the 20th day before the trial begins in a proceeding in which a chain of custody affidavit under this article is to be introduced, the affidavit must be filed with the clerk of the court and a copy must be provided by fax, secure electronic mail, hand delivery, or certified mail, return receipt requested, to the opposing party. The affidavit is not admissible under Section 1 if, not later than the 10th day before the trial begins, the opposing party files a written objection to the use of the affidavit with the clerk of the court and provides a copy of the

objection by fax, secure electronic mail, hand delivery, or certified mail, return receipt requested, to the offering party.

Sec. 5. A chain of custody affidavit is sufficient for purposes of this article if it uses the following form or if it otherwise substantially complies with this article:

CHAIN OF CUSTODY AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared _____, who being by me duly sworn, stated as follows:

My name is _____. I am of sound mind, over the age of 18 years, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit.

My address is _____.

On the ___ day of _____, 20____, I was employed by _____.

On that date, I came into possession of the physical evidence described as follows: (description of evidence)

I received the physical evidence from _____ (name of person or description of location) on the ___ day of _____, 20____, by _____ (method of receipt).

This physical evidence was in a container described and marked as follows: (description of container)

I transferred the physical evidence to _____ (name of person or description of location) on the ___ day of _____, 20____, by _____ (method of delivery).

During the time that the physical evidence was in my custody, I did not make any changes or alterations to the condition of the physical evidence except for those resulting from field or laboratory testing procedures, and the physical evidence or a representative sample of the physical evidence was transferred in essentially the same condition as received.

Affiant

SWORN TO AND SUBSCRIBED before me on the ___ day of _____, 20____.

Notary Public, State of Texas

Added by Acts 2003, 78th Leg., ch. 923, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 78 (S.B. 354), Sec. 5, eff. May 18, 2013.

Art. 38.43. EVIDENCE CONTAINING BIOLOGICAL MATERIAL.

(a) In this article, "biological evidence" means:

(1) the contents of a sexual assault examination kit;

or

(2) any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or any other identifiable biological material that was collected as part of an investigation of an alleged felony offense or conduct constituting a felony offense that might reasonably be used to:

(A) establish the identity of the person committing the offense or engaging in the conduct constituting the offense; or

(B) exclude a person from the group of persons who could have committed the offense or engaged in the conduct constituting the offense.

(b) This article applies to a governmental or public entity or an individual, including a law enforcement agency, prosecutor's office, court, public hospital, or crime laboratory, that is charged with the collection, storage, preservation, analysis, or retrieval of biological evidence.

(c) An entity or individual described by Subsection (b) shall ensure that biological evidence, other than the contents of a sexual assault examination kit subject to Subsection (c-1), collected pursuant to an investigation or prosecution of a felony offense or conduct constituting a felony offense is retained and preserved:

(1) for not less than 40 years, or until any applicable statute of limitations has expired, if there is an unapprehended actor associated with the offense; or

(2) in a case in which a defendant has been convicted, placed on deferred adjudication community supervision, or adjudicated as having engaged in delinquent conduct and there are

no additional unapprehended actors associated with the offense:

(A) until the inmate is executed, dies, or is released on parole, if the defendant is convicted of a capital felony;

(B) until the defendant dies, completes the defendant's sentence, or is released on parole or mandatory supervision, if the defendant is sentenced to a term of confinement or imprisonment in the Texas Department of Criminal Justice;

(C) until the defendant completes the defendant's term of community supervision, including deferred adjudication community supervision, if the defendant is placed on community supervision;

(D) until the defendant dies, completes the defendant's sentence, or is released on parole, mandatory supervision, or juvenile probation, if the defendant is committed to the Texas Juvenile Justice Department; or

(E) until the defendant completes the defendant's term of juvenile probation, including a term of community supervision upon transfer of supervision to a criminal court, if the defendant is placed on juvenile probation.

(c-1) An entity or individual described by Subsection (b) shall ensure that the contents of a sexual assault examination kit collected pursuant to an investigation or prosecution of a felony offense or conduct constituting a felony offense is retained and preserved for not less than 40 years, or until any applicable statute of limitations has expired, whichever period is longer. This subsection applies regardless of whether a person has been apprehended for or charged with committing the offense.

(d) The attorney representing the state, clerk, or other officer in possession of biological evidence described by Subsection (a) may destroy the evidence, but only if the attorney, clerk, or officer by mail notifies the defendant, the last attorney of record for the defendant, and the convicting court of the decision to destroy the evidence and a written objection is not received by the attorney, clerk, or officer from the defendant, attorney of record, or court before the 91st day after the later of the following dates:

(1) the date on which the attorney representing the state, clerk, or other officer receives proof that the defendant received notice of the planned destruction of evidence; or

(2) the date on which notice of the planned destruction of evidence is mailed to the last attorney of record for the defendant.

(e) To the extent of any conflict, this article controls over Article 2.21.

(f) The Department of Public Safety shall adopt standards and rules authorizing a county with a population less than 100,000 to ensure the preservation of biological evidence by promptly delivering the evidence to the Department of Public Safety for storage in accordance with Section 411.053, Government Code, and department rules.

(g) The Department of Public Safety shall adopt standards and rules, consistent with best practices, relating to a person described by Subsection (b), that specify the manner of collection, storage, preservation, and retrieval of biological evidence.

(h) A person described by Subsection (b) may solicit and accept gifts, grants, donations, and contributions to support the collection, storage, preservation, retrieval, and destruction of biological evidence.

(i) Before a defendant is tried for a capital offense in which the state is seeking the death penalty, subject to Subsection (j), the state shall require either the Department of Public Safety through one of its laboratories or a laboratory accredited under Article 38.01 to perform DNA testing, in accordance with the laboratory's capabilities at the time the testing is performed, on any biological evidence that was collected as part of an investigation of the offense and is in the possession of the state. The laboratory that performs the DNA testing shall pay for all DNA testing performed in accordance with this subsection.

(j) As soon as practicable after the defendant is charged with a capital offense, or on a motion by the state or the defendant in a capital case, unless the state has affirmatively waived the death penalty in writing, the court shall order the state and the defendant to meet and confer about which biological materials

collected as part of an investigation of the offense qualify as biological evidence that is required to be tested under Subsection (i). If the state and the defendant agree on which biological materials constitute biological evidence, the biological evidence shall be tested in accordance with Subsection (i). If the state and the defendant do not agree on which biological materials qualify as biological evidence, the state or the defendant may request the court to hold a hearing to determine the issue. On receipt of a request for a hearing under this subsection, the court shall set a date for the hearing and provide written notice of the hearing date to the state and the defendant. At the hearing, there is a rebuttable presumption that the biological material that the defendant requests to be tested constitutes biological evidence that is required to be tested under Subsection (i). This subsection does not in any way prohibit the state from testing biological evidence in the state's possession.

(k) If an item of biological evidence is destroyed or lost as a result of DNA testing performed under Subsection (i), the laboratory that tested the evidence must provide to the defendant any bench notes prepared by the laboratory that are related to the testing of the evidence and the results of that testing.

(l) The defendant's exclusive remedy for testing that was not performed as required under Subsection (i) or (j) is to seek a writ of mandamus from the court of criminal appeals at any time on or before the date an application for a writ of habeas corpus is due to be filed in the defendant's case under Section 4(a), Article [11.071](#). An application for a writ of mandamus under this subsection does not toll any period of limitations applicable to a habeas petition under state or federal law. The defendant is entitled to only one application for a writ of mandamus under this subsection. At any time after the date an application for a writ of habeas corpus is filed in the defendant's case under Section 4(a), Article [11.071](#), the defendant may file one additional motion for forensic testing under Chapter [64](#).

(m) A defendant may have another laboratory accredited under Article [38.01](#) perform additional testing of any biological evidence required to be tested under Subsection (i). On an ex

parte showing of good cause to the court, a defendant may have a laboratory accredited under Article 38.01 perform testing of any biological material that is not required to be tested under Subsection (i). The defendant is responsible for the cost of any testing performed under this subsection.

Added by Acts 2001, 77th Leg., ch. 2, Sec. 1, eff. April 5, 2001.

Renumbered from Code of Criminal Procedure, Art/Sec 38.39 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(8), eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1179 (H.B. 3594), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(1), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1248 (S.B. 1616), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1349 (S.B. 1292), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 4, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1276 (S.B. 1287), Sec. 10, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 408 (H.B. 8), Sec. 3, eff. September 1, 2019.

Art. 38.435. PROHIBITED USE OF EVIDENCE FROM FORENSIC MEDICAL EXAMINATION PERFORMED ON VICTIM OF SEXUAL ASSAULT. Evidence collected during a forensic medical examination conducted under Subchapter F or G, Chapter 56A, may not be used to investigate or prosecute a misdemeanor offense, or an offense under Subchapter D, Chapter 481, Health and Safety Code, alleged to have been committed by the victim from whom the evidence was collected.

Added by Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 1, eff. September 1, 2021.

Art. 38.44. ADMISSIBILITY OF ELECTRONICALLY PRESERVED DOCUMENT. An electronically preserved document has the same legal

significance and admissibility as if the document had been maintained in hard-copy form. If a party opposes admission of the document on the grounds that the document has been materially altered, the proponent of the document must disprove the allegation by a preponderance of the evidence.

Added by Acts 2005, 79th Leg., Ch. 312 (S.B. 611), Sec. 5, eff. June 17, 2005.

Art. 38.45. EVIDENCE DEPICTING OR DESCRIBING ABUSE OF OR SEXUAL CONDUCT BY CHILD OR MINOR. (a) During the course of a criminal hearing or proceeding, the court may not make available or allow to be made available for copying or dissemination to the public property or material:

(1) that constitutes child pornography, as described by Section 43.26(a)(1), Penal Code;

(2) the promotion or possession of which is prohibited under Section 43.261, Penal Code; or

(3) that is described by Section 2 or 5, Article 38.071, of this code.

(b) The court shall place property or material described by Subsection (a) under seal of the court on conclusion of the criminal hearing or proceeding.

(c) The attorney representing the state shall be provided access to property or material described by Subsection (a). In the manner provided by Article 39.15, the defendant, the defendant's attorney, and any individual the defendant seeks to qualify to provide expert testimony at trial shall be provided access to property or material described by Subsection (a).

(d) A court that places property or material described by Subsection (a) under seal may issue an order lifting the seal on a finding that the order is in the best interest of the public.

Added by Acts 2009, 81st Leg., R.S., Ch. 276 (S.B. 595), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1322 (S.B. 407), Sec. 7, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1322 (S.B. 407), Sec. 8, eff.

September 1, 2011.

Art. 38.451. EVIDENCE DEPICTING INVASIVE VISUAL RECORDING OF CHILD. (a) During the course of a criminal hearing or proceeding concerning an offense under Section 21.15, Penal Code, that was committed against a child younger than 14 years of age, the court shall not make available or allow to be made available the copying or dissemination to the public property or material that constitutes or contains a visual image, as described by Section 21.15(b), Penal Code, of a child younger than 14 years of age and that was seized by law enforcement based on a reasonable suspicion that an offense under that subsection has been committed.

(b) The court shall place property or material described by Subsection (a) under seal of the court on the conclusion of the hearing or proceeding.

(c) The attorney representing the state shall be provided access to the property or material described by Subsection (a). In the manner provided by Article 39.151, the defendant, the defendant's attorney, and any individual the defendant seeks to qualify to provide expert testimony at trial shall be provided access to the property or material provided by Subsection (a).

(d) A court that places property or material described by Subsection (a) under seal may issue an order lifting the seal on a finding that the order is in the best interest of the public.

Added by Acts 2015, 84th Leg., R.S., Ch. 955 (S.B. 1317), Sec. 3, eff. June 18, 2015.

Art. 38.46. EVIDENCE IN PROSECUTIONS FOR STALKING. (a) In a prosecution for stalking, each party may offer testimony as to all relevant facts and circumstances that would aid the trier of fact in determining whether the actor's conduct would cause a reasonable person to experience a fear described by Section 42.072(a)(3)(A), (B), or (C), Penal Code, including the facts and circumstances surrounding any existing or previous relationship between the actor and the alleged victim, a member of the alleged victim's family or household, or an individual with whom the alleged victim has a dating relationship.

(b) This article does not permit the presentation of character evidence that would otherwise be inadmissible under the Texas Rules of Evidence or other applicable law.
Added by Acts 2011, 82nd Leg., R.S., Ch. 591 (S.B. 82), Sec. 3, eff. September 1, 2011.

Art. 38.47. EVIDENCE IN AGGREGATION PROSECUTION FOR FRAUD OR THEFT COMMITTED WITH RESPECT TO NUMEROUS MEDICAID OR MEDICARE RECIPIENTS. In trials involving an allegation of a continuing scheme of fraud or theft that involves Medicaid or Medicare benefits and is alleged to have been committed with respect to a large class of Medicaid or Medicare recipients in an aggregate amount or value, the attorney representing the state is not required to prove by direct evidence that each Medicaid or Medicare recipient did not consent or effectively consent to a transaction in question. It is sufficient if the lack of consent or effective consent to a particular transaction or transactions is proven by either direct or circumstantial evidence.

Added by Acts 2011, 82nd Leg., R.S., Ch. 104 (S.B. 1680), Sec. 1, eff. September 1, 2011.

Redesignated from Code of Criminal Procedure, Art/Sec 38.46 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(6), eff. September 1, 2013.

Art. 38.471. EVIDENCE IN PROSECUTION FOR EXPLOITATION OF CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (a) In the prosecution of an offense under Section 32.53, Penal Code, evidence that the defendant has engaged in other conduct that is similar to the alleged criminal conduct may be admitted for the purpose of showing the defendant's knowledge or intent regarding an element of the offense.

(b) Rule 403, Texas Rules of Evidence, applies to this article. This article does not permit the presentation of character evidence that would otherwise be inadmissible under the Texas Rules of Evidence or other applicable law.

Added by Acts 2019, 86th Leg., R.S., Ch. 679 (S.B. 2136), Sec. 3, eff. September 1, 2019.

Art. 38.48. EVIDENCE IN PROSECUTION FOR TAMPERING WITH WITNESS OR PROSPECTIVE WITNESS INVOLVING FAMILY VIOLENCE.

(a) This article applies to the prosecution of an offense under Section 36.05, Penal Code, in which:

(1) the underlying official proceeding involved family violence, as defined by Section 71.004, Family Code; or

(2) the actor is alleged to have violated Section 36.05, Penal Code, by committing an act of family violence against a witness or prospective witness.

(b) In the prosecution of an offense described by Subsection (a), subject to the Texas Rules of Evidence or other applicable law, each party may offer testimony or other evidence of all relevant facts and circumstances that would assist the trier of fact in determining whether the actor's conduct coerced the witness or prospective witness, including the nature of the relationship between the actor and the witness or prospective witness.

Added by Acts 2013, 83rd Leg., R.S., Ch. 165 (S.B. 1360), Sec. 3, eff. September 1, 2013.

Art. 38.49. FORFEITURE BY WRONGDOING. (a) A party to a criminal case who wrongfully procures the unavailability of a witness or prospective witness:

(1) may not benefit from the wrongdoing by depriving the trier of fact of relevant evidence and testimony; and

(2) forfeits the party's right to object to the admissibility of evidence or statements based on the unavailability of the witness as provided by this article through forfeiture by wrongdoing.

(b) Evidence and statements related to a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of a witness or prospective witness are admissible and may be used by the offering party to make a showing of forfeiture by wrongdoing under this article, subject to Subsection (c).

(c) In determining the admissibility of the evidence or statements described by Subsection (b), the court shall determine,

out of the presence of the jury, whether forfeiture by wrongdoing occurred by a preponderance of the evidence. If practicable, the court shall make the determination under this subsection before trial using the procedures under Article 28.01 of this code and Rule 104, Texas Rules of Evidence.

(d) The party offering the evidence or statements described by Subsection (b) is not required to show that:

(1) the actor's sole intent was to wrongfully cause the witness's or prospective witness's unavailability;

(2) the actions of the actor constituted a criminal offense; or

(3) any statements offered are reliable.

(e) A conviction for an offense under Section 36.05 or 36.06(a), Penal Code, creates a presumption of forfeiture by wrongdoing under this article.

(f) Rule 403, Texas Rules of Evidence, applies to this article. This article does not permit the presentation of character evidence that would otherwise be inadmissible under the Texas Rules of Evidence or other applicable law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 165 (S.B. 1360), Sec. 3, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 848 (S.B. 923), Sec. 1, eff. September 1, 2015.

Art. 38.50. RETENTION AND PRESERVATION OF TOXICOLOGICAL EVIDENCE OF CERTAIN INTOXICATION OFFENSES. (a) In this article, "toxicological evidence" means a blood or urine specimen that was collected as part of an investigation of an alleged offense under Chapter 49, Penal Code.

(b) This article applies to a governmental or public entity or an individual, including a law enforcement agency, prosecutor's office, or crime laboratory, that is charged with the collection, storage, preservation, analysis, or retrieval of toxicological evidence.

(c) An entity or individual described by Subsection (b) shall ensure that toxicological evidence collected pursuant to an

investigation or prosecution of an offense under Chapter 49, Penal Code, is retained and preserved, as applicable:

(1) for the greater of two years or the period of the statute of limitations for the offense, if the indictment or information charging the defendant, or the petition in a juvenile proceeding, has not been presented or has been dismissed without prejudice;

(2) for the duration of a defendant's sentence or term of community supervision, as applicable, if the defendant is convicted or placed on community supervision, or for the duration of the commitment or supervision period applicable to the disposition of a juvenile adjudicated as having engaged in delinquent conduct or conduct indicating a need for supervision; or

(3) until the defendant is acquitted or the indictment or information is dismissed with prejudice, or, in a juvenile proceeding, until a hearing is held and the court does not find the child engaged in delinquent conduct or conduct indicating a need for supervision.

(d) A person from whom toxicology evidence was collected and, if the person is a minor, the person's parent or guardian, shall be notified of the periods for which evidence may be retained and preserved under this article. The notice must be given by:

(1) an entity or individual described by Subsection (b) that collects the evidence, if the entity or individual collected the evidence directly from the person or collected it from a third party; or

(2) the court, if the records of the court show that the person was not given the notice described by Subdivision (1) and the toxicological evidence is subject to the retention period under Subsection (c)(2) or (3).

(e) The entity or individual charged with storing toxicological evidence may destroy the evidence on expiration of the applicable retention period:

(1) described by Subsection (c)(1); or

(2) described by Subsection (c)(2) or (c)(3), provided that:

(A) notice was given in accordance with this

article; and

(B) if applicable, the prosecutor's office gives written approval for the destruction under Subsection (h).

(f) To the extent of any conflict between this article and Article 2.21 or 38.43, this article controls.

(g) Notice given under this article must be given:

(1) in writing, as soon as practicable, by hand delivery, e-mail, or first class mail to the person's last known e-mail or mailing address; or

(2) if applicable, orally and in writing on requesting the specimen under Section 724.015, Transportation Code.

(h) A prosecutor's office may require that an entity or individual charged with storing toxicological evidence seek written approval from the prosecutor's office before destroying toxicological evidence subject to the retention period under Subsection (c)(2) or (c)(3) for cases in which the prosecutor's office presented the indictment, information, or petition.

Added by Acts 2015, 84th Leg., R.S., Ch. 286 (H.B. 1264), Sec. 1, eff. September 1, 2015.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 840 (S.B. 335), Sec. 1, eff. September 1, 2021.