

CODE OF CRIMINAL PROCEDURE
TITLE 1. CODE OF CRIMINAL PROCEDURE
CHAPTER 44. APPEAL AND WRIT OF ERROR

Art. 44.01. APPEAL BY STATE. (a) The state is entitled to appeal an order of a court in a criminal case if the order:

(1) dismisses an indictment, information, or complaint or any portion of an indictment, information, or complaint;

(2) arrests or modifies a judgment;

(3) grants a new trial;

(4) sustains a claim of former jeopardy;

(5) grants a motion to suppress evidence, a confession, or an admission, if jeopardy has not attached in the case and if the prosecuting attorney certifies to the trial court that the appeal is not taken for the purpose of delay and that the evidence, confession, or admission is of substantial importance in the case; or

(6) is issued under Chapter 64.

(b) The state is entitled to appeal a sentence in a case on the ground that the sentence is illegal.

(c) The state is entitled to appeal a ruling on a question of law if the defendant is convicted in the case and appeals the judgment.

(d) The prosecuting attorney may not make an appeal under Subsection (a) or (b) of this article later than the 20th day after the date on which the order, ruling, or sentence to be appealed is entered by the court.

(e) The state is entitled to a stay in the proceedings pending the disposition of an appeal under Subsection (a) or (b) of this article.

(f) The court of appeals shall give precedence in its docket to an appeal filed under Subsection (a) or (b) of this article. The state shall pay all costs of appeal under Subsection (a) or (b) of this article, other than the cost of attorney's fees for the defendant.

(g) If the state appeals pursuant to this article and the defendant is on bail, he shall be permitted to remain at large on

the existing bail. If the defendant is in custody, he is entitled to reasonable bail, as provided by law, unless the appeal is from an order which would terminate the prosecution, in which event the defendant is entitled to release on personal bond.

(h) The Texas Rules of Appellate Procedure apply to a petition by the state to the Court of Criminal Appeals for review of a decision of a court of appeals in a criminal case.

(i) In this article, "prosecuting attorney" means the county attorney, district attorney, or criminal district attorney who has the primary responsibility of prosecuting cases in the court hearing the case and does not include an assistant prosecuting attorney.

(j) Nothing in this article is to interfere with the defendant's right to appeal under the procedures of Article 44.02. The defendant's right to appeal under Article 44.02 may be prosecuted by the defendant where the punishment assessed is in accordance with Subchapter C, Chapter 42A, as well as any other punishment assessed in compliance with Article 44.02.

(k) The state is entitled to appeal an order granting relief to an applicant for a writ of habeas corpus under Article 11.072.

(l) The state is entitled to appeal an order entered under:

(1) Subchapter G or H, Chapter 62, that exempts a person from complying with the requirements of Chapter 62; and

(2) Subchapter I, Chapter 62, that terminates a person's obligation to register under Chapter 62.

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

Amended by Acts 1981, 67th Leg., p. 812, ch. 291, Sec. 123, eff. Sept. 1, 1981; Acts 1987, 70th Leg., ch. 382, Sec. 1; Subsec. (a) amended by Acts 2003, 78th Leg., ch. 13, Sec. 7, eff. Sept. 1, 2003. Subsec. (k) added by Acts 2003, 78th Leg., ch. 587, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1008 (H.B. 867), Sec. 1.04, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1038 (H.B. 1801), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.18,

eff. January 1, 2017.

Art. 44.02. DEFENDANT MAY APPEAL. A defendant in any criminal action has the right of appeal under the rules hereinafter prescribed, provided, however, before the defendant who has been convicted upon either his plea of guilty or plea of nolo contendere before the court and the court, upon the election of the defendant, assesses punishment and the punishment does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his attorney may prosecute his appeal, he must have permission of the trial court, except on those matters which have been raised by written motion filed prior to trial. This article in no way affects appeals pursuant to Article 44.17 of this chapter. Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1977, 65th Leg., p. 940, ch. 351, Sec. 1, eff. Aug. 29, 1977.

Art. 44.04. BOND PENDING APPEAL. (a) Pending the determination of any motion for new trial or the appeal from any misdemeanor conviction, the defendant is entitled to be released on reasonable bail.

(b) The defendant may not be released on bail pending the appeal from any felony conviction where the punishment equals or exceeds 10 years confinement or where the defendant has been convicted of an offense listed under Article 42A.054(a), but shall immediately be placed in custody and the bail discharged.

(c) Pending the appeal from any felony conviction other than a conviction described in Subsection (b) of this section, the trial court may deny bail and commit the defendant to custody if there then exists good cause to believe that the defendant would not appear when his conviction became final or is likely to commit another offense while on bail, permit the defendant to remain at large on the existing bail, or, if not then on bail, admit him to reasonable bail until his conviction becomes final. The court may impose reasonable conditions on bail pending the finality of his conviction. On a finding by the court on a preponderance of the evidence of a violation of a condition, the court may revoke the bail.

(d) After conviction, either pending determination of any motion for new trial or pending final determination of the appeal, the court in which trial was had may increase or decrease the amount of bail, as it deems proper, either upon its own motion or the motion of the State or of the defendant.

(e) Any bail entered into after conviction and the sureties on the bail must be approved by the court where trial was had. Bail is sufficient if it substantially meets the requirements of this code and may be entered into and given at any term of court.

(f) In no event shall the defendant and the sureties on his bond be released from their liability on such bond or bonds until the defendant is placed in the custody of the sheriff.

(g) The right of appeal to the Court of Appeals of this state is expressly accorded the defendant for a review of any judgment or order made hereunder, and said appeal shall be given preference by the appellate court.

(h) If a conviction is reversed by a decision of a Court of Appeals, the defendant, if in custody, is entitled to release on reasonable bail, regardless of the length of term of imprisonment, pending final determination of an appeal by the state or the defendant on a motion for discretionary review. If the defendant requests bail before a petition for discretionary review has been filed, the Court of Appeals shall determine the amount of bail. If the defendant requests bail after a petition for discretionary review has been filed, the Court of Criminal Appeals shall determine the amount of bail. The sureties on the bail must be approved by the court where the trial was had. The defendant's right to release under this subsection attaches immediately on the issuance of the Court of Appeals' final ruling as defined by Tex.Cr.App.R. 209(c).

(i) Notwithstanding any other law, pending the determination of a defendant's motion for new trial or the defendant's appeal from a misdemeanor conviction, the defendant is entitled to be released after completion of a sentence of confinement imposed for the conviction. The trial court may require the defendant to give a personal bond but may not, either instead of or in addition to the personal bond, require:

- (1) any condition of the personal bond;
- (2) another type of bail bond; or
- (3) a surety or other security.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1977, 65th Leg., p. 636, ch. 234, Sec. 1, eff. Aug. 29, 1977.

Secs. (b), (c) amended by Acts 1981, 67th Leg., p. 707, ch. 268, Sec. 17, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 813, ch. 291, Sec. 125, eff. Sept. 1, 1981. Secs. (b), (c) amended by Acts 1983, 68th Leg., p. 2416, ch. 425, Sec. 26, eff. Aug. 29, 1983; Sec. (h) amended by Acts 1983, 68th Leg., p. 1104, ch. 249, Sec. 2, eff. Aug. 29, 1983; Acts 1985, 69th Leg., ch. 968, Sec. 1, eff. Aug. 26, 1985; Sec. (b) amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(50), eff. Sept. 1, 1991; Secs. (b), (c) amended by Acts 1999, 76th Leg., ch. 546, Sec. 1, eff. Sept. 1, 1999; Sec. (a) amended by Acts 2003, 78th Leg., ch. 942, Sec. 3, eff. June 20, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. [2299](#)), Sec. 2.19, eff. January 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1011 (H.B. [1442](#)), Sec. 1, eff. September 1, 2017.

Art. 44.041. CONDITIONS IN LIEU OF BOND. (a) If a defendant is confined in county jail pending appeal and is eligible for release on bond pending appeal but is financially unable to make bond, the court may release the defendant without bond pending the conclusion of the appeal only if the court determines that release under this article is reasonable given the circumstances of the defendant's offense and the sentence imposed.

(b) A court that releases a defendant under this article must require the defendant to participate in a program under Article [42.033](#), [42.034](#), [42.035](#), or [42.036](#) during the pendency of the appeal. A defendant required to participate in a program may receive credit toward completion of the defendant's sentence while participating in the program in the same manner and to the same extent provided by Article [42.033](#), [42.034](#), [42.035](#), or [42.036](#), as applicable.

Added by Acts 1989, 71st Leg., ch. 785, Sec. 4.15, eff. Sept. 1, 1989.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 854 (S.B. 2340), Sec. 5, eff. June 19, 2009.

Art. 44.07. RIGHT OF APPEAL NOT ABRIDGED. The right of appeal, as otherwise provided by law, shall in no wise be abridged by any provision of this Chapter.

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

Art. 44.10. SHERIFF TO REPORT ESCAPE. When any such escape occurs, the sheriff who had the prisoner in custody shall immediately report the fact under oath to the district or county attorney of the county in which the conviction was had, who shall forthwith forward such report to the State prosecuting attorney. Such report shall be sufficient evidence of the fact of such escape to authorize the dismissal of the appeal.

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

Art. 44.12. PROCEDURE AS TO BAIL PENDING APPEAL. The amount of any bail given in any felony or misdemeanor case to perfect an appeal from any court to the Court of Appeals shall be fixed by the court in which the judgment or order appealed from was rendered. The sufficiency of the security thereon shall be tested, and the same proceedings had in case of forfeiture, as in other cases regarding bail.

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

Amended by Acts 1981, 67th Leg., p. 815, ch. 291, Sec. 130, eff. Sept. 1, 1981.

Art. 44.15. APPELLATE COURT MAY ALLOW NEW BOND. When an appeal is taken from any court of this State, by filing a bond within the time prescribed by law in such cases, and the court to which appeal is taken determines that such bond is defective in form or substance, such appellate court may allow the appellant to amend such bond by filing a new bond, on such terms as the court may

prescribe.

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

Art. 44.16. APPEAL BOND GIVEN WITHIN WHAT TIME. If the defendant is not in custody, a notice of appeal as provided in Article 44.13 shall have no effect whatever until the required appeal bond has been given and approved. The appeal bond shall be given within ten days after the sentence of the court has been rendered, except as provided in Article 27.14 of this code.

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

Amended by Acts 1979, 66th Leg., p. 451, ch. 207, Sec. 3, eff. Sept. 1, 1979.

Art. 44.17. APPEAL TO COUNTY COURT, HOW CONDUCTED . In all appeals to a county court from justice courts and municipal courts other than municipal courts of record, the trial shall be de novo in the trial in the county court, the same as if the prosecution had been originally commenced in that court. An appeal to the county court from a municipal court of record may be based only on errors reflected in the record.

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

Amended by Acts 1987, 70th Leg., ch. 641, Sec. 3, eff. Sept. 1, 1987.

Art. 44.18. ORIGINAL PAPERS SENT UP. In appeals from justice and corporation courts, all the original papers in the case, together with the appeal bond, if any, and together, with a certified transcript of all the proceedings had in the case before such court shall be delivered without delay to the clerk of the court to which the appeal was taken, who shall file the same and docket the case.

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

Art. 44.181. DEFECT IN COMPLAINT. (a) A court conducting a trial de novo based on an appeal from a justice or municipal court may dismiss the case because of a defect in the complaint only if the defendant objected to the defect before the trial began in the

justice or municipal court.

(b) The attorney representing the state may move to amend a defective complaint before the trial de novo begins.

Added by Acts 1995, 74th Leg., ch. 478, Sec. 2, eff. Sept. 1, 1995.
Subsec. (a) amended by Acts 1999, 76th Leg., ch. 1545, Sec. 4, eff. Sept. 1, 1999.

Art. 44.19. WITNESSES NOT AGAIN SUMMONED. In the cases mentioned in the preceding Article, the witnesses who have been summoned or attached to appear in the case before the court below, shall appear before the court to which the appeal is taken without further process. In case of their failure to do so, the same proceedings may be had as if they had been originally summoned or attached to appear before such court.

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

Art. 44.20. RULES GOVERNING APPEAL BONDS. The rules governing the taking and forfeiture of bail shall govern appeal bonds, and the forfeiture and collection of such appeal bonds shall be in the court to which such appeal is taken.

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

Art. 44.25. CASES REMANDED. The courts of appeals, other than the Court of Appeals of the Fifteenth Court of Appeals District, or the Court of Criminal Appeals may reverse the judgment in a criminal action, as well upon the law as upon the facts.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 459 (S.B. [1045](#)), Sec. 2.03, eff. September 1, 2023.

Art. 44.251. REFORMATION OF SENTENCE IN CAPITAL CASE. (a) The court of criminal appeals shall reform a sentence of death to a sentence of confinement in the Texas Department of Criminal Justice for life without parole if the court finds that there is legally insufficient evidence to support an affirmative answer to an issue submitted to the jury under Section 2(b), Article [37.071](#), or Section 2(b), Article [37.072](#).

(b) The court of criminal appeals shall reform a sentence of death to a sentence of confinement in the Texas Department of Criminal Justice for life without parole if:

(1) the court finds reversible error that affects the punishment stage of the trial other than a finding of insufficient evidence under Subsection (a); and

(2) within 30 days after the date on which the opinion is handed down, the date the court disposes of a timely request for rehearing, or the date that the United States Supreme Court disposes of a timely filed petition for writ of certiorari, whichever date is later, the prosecuting attorney files a motion requesting that the sentence be reformed to confinement for life without parole.

(c) If the court of criminal appeals finds reversible error that affects the punishment stage of the trial only, as described by Subsection (b) of this article, and the prosecuting attorney does not file a motion for reformation of sentence in the period described by that subsection, the defendant shall receive a new sentencing trial in the manner required by Article 44.29(c) or (d), as applicable.

(d) The court of criminal appeals shall reform a sentence of death imposed under Section 12.42(c)(3), Penal Code, to a sentence of imprisonment in the Texas Department of Criminal Justice for life without parole if the United States Supreme Court:

(1) finds that the imposition of the death penalty under Section 12.42(c)(3), Penal Code, violates the United States Constitution; and

(2) issues an order that is not inconsistent with this article.

Added by Acts 1981, 67th Leg., p. 2673, ch. 725, Sec. 2, eff. Aug. 31, 1981. Amended by Acts 1991, 72nd Leg., ch. 838, Sec. 3, eff. Sept. 1, 1991. Subsec. (a) amended by Acts 1993, 73rd Leg., ch. 781, Sec. 3, eff. Aug. 30, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 787 (S.B. 60), Sec. 10, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.18, eff.

September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.036, eff. September 1, 2009.

Art. 44.2511. REFORMATION OF SENTENCE IN CAPITAL CASE FOR OFFENSE COMMITTED BEFORE SEPTEMBER 1, 1991. (a) This article applies to the reformation of a sentence of death in a capital case for an offense committed before September 1, 1991. For purposes of this subsection, an offense is committed before September 1, 1991, if every element of the offense occurred before that date.

(b) The court of criminal appeals shall reform a sentence of death to a sentence of confinement in the Texas Department of Criminal Justice for life if the court finds that there is legally insufficient evidence to support an affirmative answer to an issue submitted to the jury under Section 3(b), Article 37.0711.

(c) The court of criminal appeals shall reform a sentence of death to a sentence of confinement in the Texas Department of Criminal Justice for life if:

(1) the court finds reversible error that affects the punishment stage of the trial other than a finding of insufficient evidence under Subsection (b); and

(2) within 30 days after the date on which the opinion is handed down, the date the court disposes of a timely request for rehearing, or the date that the United States Supreme Court disposes of a timely filed petition for writ of certiorari, whichever date is later, the prosecuting attorney files a motion requesting that the sentence be reformed to confinement for life.

(d) If the court of criminal appeals finds reversible error that affects the punishment stage of the trial only, as described by Subsection (c), and the prosecuting attorney does not file a motion for reformation of sentence in the period described by that subsection, the defendant shall receive a new sentencing trial in the manner required by Article 44.29(c).

Added by Acts 2005, 79th Leg., Ch. 787 (S.B. 60), Sec. 11, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.037,

eff. September 1, 2009.

Art. 44.28. WHEN MISDEMEANOR IS AFFIRMED. In misdemeanor cases where there has been an affirmance, no proceedings need be had after filing the mandate, except to forfeit the bond of the defendant, or to issue a capias for the defendant, or an execution against his property, to enforce the judgment of the court, as if no appeal had been taken.

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

Art. 44.281. DISPOSITION OF FINES AND COSTS WHEN MISDEMEANOR AFFIRMED. In misdemeanor cases affirmed on appeal from a municipal court, the fine imposed on appeal and the costs imposed on appeal shall be collected from the defendant, and the fine of the municipal court when collected shall be paid into the municipal treasury.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Renumbered from Vernon's Ann.C.C.P. art. 45.11 and amended by Acts 1999, 76th Leg., ch. 1545, Sec. 65, eff. Sept. 1, 1999

Text of article effective until January 01, 2025

Art. 44.2811. RECORDS RELATING TO CERTAIN FINE-ONLY MISDEMEANORS COMMITTED BY A CHILD. All records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a criminal case for a fine-only misdemeanor, other than a traffic offense, that is committed by a child and that is appealed are confidential and may not be disclosed to the public except as provided under Article [45.0217\(b\)](#).

Added by Acts 2011, 82nd Leg., R.S., Ch. 731 (H.B. [961](#)), Sec. 1, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1257 (H.B. [528](#)), Sec. 1, eff. January 1, 2014.

Reenacted and amended by Acts 2021, 87th Leg., R.S., Ch. 345 (H.B. [2669](#)), Sec. 1, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. [4504](#)), Sec. 2.029,

eff. January 1, 2025.

Text of article effective on January 01, 2025

Art. 44.2811. RECORDS RELATING TO CERTAIN FINE-ONLY MISDEMEANORS COMMITTED BY A CHILD. All records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a criminal case for a fine-only misdemeanor, other than a traffic offense, that is committed by a child and that is appealed are confidential and may not be disclosed to the public except as provided under Article [45A.462\(c\)](#).

Added by Acts 2011, 82nd Leg., R.S., Ch. 731 (H.B. [961](#)), Sec. 1, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1257 (H.B. [528](#)), Sec. 1, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1319 (S.B. [394](#)), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1407 (S.B. [393](#)), Sec. 3, eff. September 1, 2013.

Reenacted and amended by Acts 2021, 87th Leg., R.S., Ch. 345 (H.B. [2669](#)), Sec. 1, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. [4504](#)), Sec. 2.029, eff. January 1, 2025.

Art. 44.2812. CONFIDENTIAL RECORDS RELATED TO FINE-ONLY MISDEMEANOR.

Text of subsection effective until January 01, 2025

(a) Except as provided by Subsection (b) and Article [45.0218\(b\)](#), following the fifth anniversary of the date of a final conviction of, or of a dismissal after deferral of disposition for, a misdemeanor offense punishable by fine only, all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, that are held or stored by or for an appellate court and relate to the person who was

convicted of, or who received a dismissal after deferral of disposition for, the offense are confidential and may not be disclosed to the public.

Text of subsection effective on January 01, 2025

(a) Except as provided by Subsection (b) and Article [45A.055\(b\)](#), following the fifth anniversary of the date of a final conviction of, or of a dismissal after deferral of disposition for, a misdemeanor offense punishable by fine only, all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, that are held or stored by or for an appellate court and relate to the person who was convicted of, or who received a dismissal after deferral of disposition for, the offense are confidential and may not be disclosed to the public.

(b) This article does not apply to:

(1) an opinion issued by an appellate court; or

(2) records, files, and information described by Subsection (a) that relate to an offense that is sexual in nature, as determined by the holder of the records, files, or information. Added by Acts 2017, 85th Leg., R.S., Ch. 811 (H.B. [681](#)), Sec. 1, eff. September 1, 2017.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. [4504](#)), Sec. 2.030, eff. January 1, 2025.

Art. 44.29. EFFECT OF REVERSAL. (a) Where the court of appeals or the Court of Criminal Appeals awards a new trial to the defendant on the basis of an error in the guilt or innocence stage of the trial or on the basis of errors in both the guilt or innocence stage of the trial and the punishment stage of the trial, the cause shall stand as it would have stood in case the new trial had been granted by the court below.

(b) If the court of appeals or the Court of Criminal Appeals awards a new trial to a defendant other than a defendant convicted of an offense under Section [19.03](#), Penal Code, only on the basis of an error or errors made in the punishment stage of the trial, the cause shall stand as it would have stood in case the new trial had

been granted by the court below, except that the court shall commence the new trial as if a finding of guilt had been returned and proceed to the punishment stage of the trial under Subsection (b), Section 2, Article 37.07, of this code. If the defendant elects, the court shall empanel a jury for the sentencing stage of the trial in the same manner as a jury is empaneled by the court for other trials before the court. At the new trial, the court shall allow both the state and the defendant to introduce evidence to show the circumstances of the offense and other evidence as permitted by Section 3 of Article 37.07 of this code.

(c) If any court sets aside or invalidates the sentence of a defendant convicted of an offense under Section 19.03, Penal Code, and sentenced to death on the basis of any error affecting punishment only, the court shall not set the conviction aside but rather shall commence a new punishment hearing under Article 37.071 or Article 37.0711 of this code, as appropriate, as if a finding of guilt had been returned. The court shall empanel a jury for the sentencing stage of the trial in the same manner as a jury is to be empaneled by the court in other trials before the court for offenses under Section 19.03, Penal Code. At the new punishment hearing, the court shall permit both the state and the defendant to introduce evidence as permitted by Article 37.071 or Article 37.0711 of this code.

(d) If any court sets aside or invalidates the sentence of a defendant convicted of an offense punishable as a capital felony under Section 12.42(c)(3), Penal Code, and sentenced to death on the basis of any error affecting punishment only, the court shall not set the conviction aside but rather shall commence a new punishment hearing under Article 37.072, as if a finding of guilt had been returned. The court shall empanel a jury for the sentencing stage of the trial in the same manner as a jury is to be empaneled by the court in other trials before the court for the offense of which the defendant was convicted. At the new punishment hearing, the court shall permit both the state and the defendant to introduce evidence as permitted by Article 37.072.

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

Amended by Acts 1981, 67th Leg., p. 817, ch. 291, Sec. 137, eff.

Sept. 1, 1981; Acts 1987, 70th Leg., ch. 179, Sec. 1, eff. Aug. 31, 1987. Subsecs. (b), (c) amended by Acts 1991, 72nd Leg., ch. 838, Sec. 2, eff. Sept. 1, 1991; Subsec. (c) amended by Acts 1993, 73rd Leg., ch. 781, Sec. 4, eff. Aug. 30, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.19, eff. September 1, 2007.

Art. 44.33. HEARING IN APPELLATE COURT. (a) The Court of Criminal Appeals shall make rules of posttrial and appellate procedure as to the hearing of criminal actions not inconsistent with this Code. After the record is filed in the Court of Appeals or the Court of Criminal Appeals the parties may file such supplemental briefs as they may desire before the case is submitted to the court. Each party, upon filing any such supplemental brief, shall promptly cause true copy thereof to be delivered to the opposing party or to the latter's counsel. In every case at least two counsel for the defendant shall be heard in the Court of Appeals if such be desired by defendant. In every case heard by the Court of Criminal Appeals at least two counsel for the defendant shall be permitted oral argument if desired by the appellant.

(b) Appellant's failure to file his brief in the time prescribed shall not authorize a dismissal of the appeal by the Court of Appeals or the Court of Criminal Appeals, nor shall the Court of Appeals or the Court of Criminal Appeals, for such reason, refuse to consider appellant's case on appeal.

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

Amended by Acts 1981, 67th Leg., p. 817, ch. 291, Sec. 139, eff. Sept. 1, 1981.

Art. 44.35. BAIL PENDING HABEAS CORPUS APPEAL. In any habeas corpus proceeding in any court or before any judge in this State where the defendant is remanded to the custody of an officer and an appeal is taken to an appellate court, the defendant shall be allowed bail by the court or judge so remanding the defendant, except in capital cases where the proof is evident. The fact that such defendant is released on bail shall not be grounds for a

dismissal of the appeal except in capital cases where the proof is evident.

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

Art. 44.39. APPELLANT DETAINED BY OTHER THAN OFFICER. If the appellant in a case of habeas corpus be detained by any person other than an officer, the sheriff receiving the mandate of the appellate court, shall immediately cause the person so held to be discharged; and the mandate shall be sufficient authority therefor.

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

Amended by Acts 1981, 67th Leg., p. 818, ch. 291, Sec. 144, eff. Sept. 1, 1981.

Art. 44.41. WHO SHALL TAKE BAIL BOND. When, by the judgment of the appellate court upon cases of habeas corpus, the applicant is ordered to give bail, such judgment shall be certified to the officer holding him in custody; and if such officer be the sheriff, the bail bond may be executed before him; if any other officer, he shall take the person detained before some magistrate, who may receive a bail bond, and shall file the same in the proper court of the proper county; and such bond may be forfeited and enforced as provided by law.

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

Amended by Acts 1981, 67th Leg., p. 819, ch. 291, Sec. 146, eff. Sept. 1, 1981.

Art. 44.42. APPEAL ON FORFEITURES. An appeal may be taken by the defendant from every final judgment rendered upon a personal bond, bail bond or bond taken for the prevention or suppression of offenses, where such judgment is for twenty dollars or more, exclusive of costs, but not otherwise.

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

Art. 44.43. WRIT OF ERROR. The defendant may also have any such judgment as is mentioned in the preceding Article, and which may have been rendered in courts other than the justice and corporation courts, reviewed upon writ of error.

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

Art. 44.44. RULES IN FORFEITURES. In the cases provided for in the two preceding Articles, the proceeding shall be regulated by the same rules that govern civil actions where an appeal is taken or a writ of error sued out.

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

Art. 44.45. REVIEW BY COURT OF CRIMINAL APPEALS. (a) The Court of Criminal Appeals may review decisions of the court of appeals on its own motion. An order for review must be filed before the decision of the court of appeals becomes final as determined by Article 42.045.

(b) The Court of Criminal Appeals may review decisions of the court of appeals upon a petition for review.

(1) The state or a defendant in a case may petition the Court of Criminal Appeals for review of the decision of a court of appeals in that case.

(2) The petition shall be filed with the clerk of the court of appeals which rendered the decision within 30 days after the final ruling of the court of appeals.

(3) The petition for review shall be addressed to "The Court of Criminal Appeals of Texas," and shall state the name of the petitioning party and shall include a statement of the case and authorities and arguments in support of each ground for review.

(4) Upon filing a petition for review, the petitioning party shall cause a true copy to be delivered to the attorney representing the opposing party. The opposing party may file a reply to the petition with the Court of Criminal Appeals within 30 days after receipt of the petition from the petitioning party.

(5) Within 15 days after the filing of a petition for review, the clerk of the court of appeals shall note the filing on the record and forward the petition together with the original record and the opinion of the court of appeals to the Court of Criminal Appeals.

(6) The Court of Criminal Appeals shall either grant the petition and review the case or refuse the petition.

(7) Subsequent to granting the petition for review, the Court of Criminal Appeals may reconsider, set aside the order granting the petition, and refuse the petition as though the petition had never been granted.

(c) The Court of Criminal Appeals may promulgate rules pursuant to this article.

(d) Extensions of time for meeting the limits prescribed in Subdivisions (2) and (4) of Subsection (b) of this article may be granted by the Court of Criminal Appeals or a judge thereof for good cause shown on timely application to the Court of Criminal Appeals. Added by Acts 1981, 67th Leg., p. 819, ch. 291, Sec. 147, eff. Sept. 1, 1981. Sec. (d) added by Acts 1983, 68th Leg., p. 1103, ch. 249, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 5.02(3), eff. Sept. 1, 1987.

Art. 44.46. REVERSAL OF CONVICTION ON THE BASIS OF SERVICE ON JURY BY A DISQUALIFIED JUROR. A conviction in a criminal case may be reversed on appeal on the ground that a juror in the case was absolutely disqualified from service under Article 35.19 of this code only if:

(1) the defendant raises the disqualification before the verdict is entered; or

(2) the disqualification was not discovered or brought to the attention of the trial court until after the verdict was entered and the defendant makes a showing of significant harm by the service of the disqualified juror.

Added by Acts 1993, 73rd Leg., ch. 372, Sec. 1, eff. Sept. 1, 1993.