

Equal Justice Under the Law

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INTRODUCTION

Both the U.S. and Texas Constitutions seek to ensure justice by requiring the government to follow due process of the law. Following due process prevents arbitrary, unreasonable decisions by assuring that all of the steps required for a fair trial are afforded to all individuals before the court. Likewise, equal protection of law protects citizens from unlawful government discrimination.

Because more Texans come into contact with the municipal courts than courts at any other level, it is important that they be fair, open, and accessible to all. Judges and court support personnel must make a conscious effort to eliminate any unnecessary barriers to the justice system, be they physical, economic, psychological, or procedural. Municipal courts must operate free of bias on the basis of race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status. Canon 3(B)(6), Code of Judicial Conduct.

Each participant in the criminal justice system, including the victim, has certain rights. Witnesses are entitled to protection and accommodation by the court. Jurors as citizens and court participants have constitutional and statutory entitlements. The accused defendant has the greatest number of rights and also the greatest risk.

All courts in our nation derive their power from the consent of the governed channeled through the U.S. and Texas Constitutions and statutes enacted by the legislative branch, found primarily for municipal courts in the Code of Criminal Procedure and the Government Code. Municipal courts are also governed by interpretation of these constitutional and statutory provisions by the U.S. Supreme Court and Texas Court of Criminal Appeals, as well the courts of appeals.

PART 1 RIGHTS

A. The Accused

Under our American system of criminal justice, all persons are presumed innocent until proven guilty and have certain guaranteed rights.

U.S. Constitution

Amendment V

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

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the

accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

1. Rights upon Arrest

Defendants have certain rights upon arrest and at magistration. All arrested persons must be taken without unnecessary delay before a magistrate. The judge and clerk must have a set of procedures for handling calls from the city or county jail for requests to magistrate prisoners.

The magistrate must inform the defendant in accordance with Article 15.17, C.C.P., of the:

- charges against him or her;
- right to counsel;
- right to remain silent, and if the defendant decides to waive that right, that any statement made by the person arrested can be used against him or her;
- right to have an attorney present during interrogation;
- right to terminate any interrogation;
- right to the appointment of counsel if indigent or the procedures for requesting appointed counsel; and
- right to an examining trial to determine whether probable cause exists.

If allowed by law, the magistrate then sets bail. As a general rule, bail may not be denied. There are five exceptions to this general rule (Tex. Const., Art. I, Sec. 11):

- capital cases where “proof is evident;”
- a felony case when the defendant has twice been previously convicted of a felony;
- a felony case committed while on bail for a prior indicted felony;
- a felony case involving the use of a deadly weapon when the defendant has been previously convicted of a felony; or
- a violent or sexual offense committed while under the supervision of a criminal justice agency. *Criner v. State*, 878 S.W.2d 162 (Tex. Crim. App.1994).

Bail is “the security given by the accused that he will appear and answer before the proper court the accusation brought against him” Art. 17.15, C.C.P. The magistrate determines the amount of bail and may consider the following factors:

- the bail shall be sufficiently high to give reasonable assurance that the accused will return;
- the bail is not to be used as an instrument of oppression;
- the nature of the offense and the circumstances under which it was committed are to be considered;
- evidence of the accused’s ability to post bail is to be considered. And evidence of ability to make bail proof may be taken at this point; and
- the future safety of the victim of the alleged offense and the community shall be considered.

Bail may be secured through a bail bond, cash bond, or a personal bond. In addition to setting the amount of bail, the magistrate may place certain conditions upon the defendant, such as a curfew or counseling. (Art. 17.02, C.C.P.)

2. Rights in Criminal Trials

In all criminal trials, the burden of proof to find a defendant guilty is “beyond a reasonable doubt.” The defendant has the right to representation of counsel and the right to remain silent and may not be compelled to give evidence against himself or herself. On pleas of not guilty, a trial must be held.

Upon conclusion of the original trial, the defendant has a statutory right to request a new trial. If the case was heard in a non-record court and the defendant is found guilty, the defendant may make an oral or written motion to the court for a new trial. The motion must be made within five days after a judgment of guilt has been rendered. The judge may grant a new trial if the judge is persuaded that justice has not been obtained in the defendant’s trial. Only one new trial may be granted for each offense. Note: Article 45.037, C.C.P. was amended, effective September 1, 2011, to extend the time period for the making of the motion for new trial from one day to five days.

Defendants have a statutory right to appeal a conviction if the defendant is not satisfied with the judgment of the court. In non-record municipal courts, the defendant must file an appeal bond with the municipal court within 10 days of the judgment after an appearance in open court. If the defendant appeals pursuant to a plea under Article 27.14(b), C.C.P., the defendant has up to 31 days from the time the certified notice from the court was received. Municipal courts of record have specific rules regarding appeals in Chapter 30, G.C., which provides for different timelines for appeal procedures in the municipal courts of record.

The Texas Constitution

Article 1 - Bill of Rights

Section 10 – Rights of Accused in Criminal Prosecutions

In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is a violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger. (Amended Nov. 5, 1918.)

Section 13 – Excessive Bail or Fines; Cruel and Unusual Punishment; Remedy by Due Course of Law

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Section 15 – Right of Trial by Jury

The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury. (Amended Aug. 24, 1935.)

Section 18 – Imprisonment for Debt

No person shall ever be imprisoned for debt.

Section 19 – Deprivation of Life, Liberty, Etc.; Due Course of Law

No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

a. Due Process

The U.S. and Texas Constitutions provide that the accused in a criminal case is entitled to due process of law. Due process of law is a broad concept. Often it is discussed as procedural due process and substantive due process. Procedural due process is the right of the accused to the benefits of constitutional and statutory criminal procedures. Substantive due process is a concept that is more difficult to define. It addresses the issues of basic fairness, misconduct, and outrageous results. One such area is prosecutorial misconduct. Reversible error may be found if the conduct objected to by the defense was deliberate and was so blatant as to border on being contumacious (stubbornly deliberate). *Landry v. State*, 706 S.W.2d 105 (Tex. Crim. App. 1985); *Stokes v. State*, 788 S.W.2d 1 (Tex. Crim. App. 1990).

Procedural due process can be divided into three broad areas:

- the right to notice of the charges against the accused;
- the right to fair trial; and
- the right to a neutral and fair magistrate.

The right to a fair trial includes:

- the right to a speedy trial;
- the right to a public trial;
- the right to a fair and impartial jury;
- the right to counsel;
- the right to remain silent and to not give evidence against one's self;
- the right to the presumption of innocence; and
- the right to have the State prove each element of an offense beyond a reasonable doubt.

A fair trial must also include the right to confront and cross-examine witnesses, the right to be present during all aspects of the trial, the right to call witnesses, and the right to question and challenge witnesses.

True or False	
Q. 1.	In municipal courts all persons are presumed guilty until proven innocent. ____
Q. 2.	Only when arrested without a warrant must a defendant appear before a magistrate without unnecessary delay. ____
Q. 3.	Bail is the security given by an accused to guarantee the appearance of the accused before the proper court. ____
Q. 4.	Bail may be secured only through a bail bond or a cash bond. ____
Q. 5.	If a defendant requests a trial, the State must prove the defendant guilty beyond a reasonable doubt of an offense charged in a complaint. ____
Q. 6.	A municipal judge may grant a new trial if the judge is persuaded that justice has not been done in a specific case. ____
Q. 7.	Defendants have a right to appeal a conviction in municipal court. ____
End True/False	
Q. 8.	List the three broad areas of procedural due process. _____ _____ _____
Q. 9.	What does the right to a fair trial include? _____ _____ _____

b. Notice

In municipal court, notice of charges is provided by a sworn affidavit called the complaint. A complaint alleges the act the defendant is said to have committed and that the particular act is unlawful. Art. 45.019(a)(4), C.C.P. Under Texas law, the defendant can only be brought to trial after a sworn complaint is filed against him or her. Art. 45.018, C.C.P. The defendant, however, may waive the right to have a complaint made and may plead to or proceed to trial on the citation. Art. 27.14(d), C.C.P.

The defendant has a right to service of the complaint at least one day before trial. If the defendant does not receive a copy of a complaint at least one day before trial, he or she is entitled to a continuance of at least one day. The defendant may waive notice or insist on it.

Article 45.018, C.C.P. – Complaint

- (a) For purposes of this chapter, a complaint is a sworn allegation charging the accused with the commission of an offense.
- (b) A defendant is entitled to notice of a complaint against the defendant not later than the day before the date of any proceeding in the prosecution of the

defendant under the complaint. The defendant may waive the right to notice granted by this subsection.

The complaint must use plain and intelligible language to establish all of the elements of an offense. *Bynum v. State*, 767 S.W.2d 769 (Tex. Crim. App. 1989). Usually, language tracking the law or ordinance is sufficient. The factual aspects of the complaint must be specific enough to avoid double jeopardy; the defendant can only be tried once for what is alleged in the complaint. Stated differently, the complaint must identify the conduct clearly enough that the defendant could defend himself or herself against another charge for the same violation of the law. There are many statutory requirements of the complaint contained in Article 45.019, C.C.P.

Article 45.019, C.C.P. – Requisites of Complaint

(a) A complaint is sufficient, without regard to its form, if it substantially satisfies the following requisites:

- (1) it must be in writing;
- (2) it must commence "In the name and by the authority of the State of Texas;"
- (3) it must state the name of the accused, if known, or if unknown, must include a reasonably definite description of the accused;
- (4) it must show that the accused has committed an offense against the law of this state, or state that the affiant has good reason to believe and does believe that the accused has committed an offense against the law of this state;
- (5) it must state the date the offense was committed as definitely as the affiant is able to provide;
- (6) it must bear the signature or mark of the affiant; and
- (7) it must conclude with the words "Against the peace and dignity of the State" and, if the offense charged is an offense only under a municipal ordinance, it may also conclude with the words "Contrary to the said ordinance".

(b) A complaint filed in justice court must allege that the offense was committed in the county in which the complaint is made.

(c) A complaint filed in municipal court must allege that the offense was committed in the territorial limits of the municipality in which the complaint is made.

(d) A complaint may be sworn to before any officer authorized to administer oaths.

(e) A complaint in municipal court may be sworn to before:

- (1) the municipal judge;
- (2) the clerk of the court or a deputy clerk;
- (3) the city secretary; or
- (4) the city attorney or a deputy city attorney.

(f) If the defendant does not object to a defect, error, or irregularity of form or substance in a charging instrument before the date on which the trial on the merits commences, the defendant waives and forfeits the right to object

to the defect, error, or irregularity. Nothing in this article prohibits a trial court from requiring that an objection to a charging instrument be made at an earlier time.

(g) In a county with a population of more than two million that does not have a county attorney, a complaint for an offense under Section 32.41, Penal Code, must be approved by the district attorney, regardless of whether a collection proceeding is initiated by the district attorney under Section 32.41(e), Penal Code. (Sec. 32.41, Penal Code is the offense of Issuance of Bad Check.)

If the defendant wants to object to any defects in the complaint, the defendant must do so before trial or any error is waived. Art. 45.019(f), C.C.P. The motion challenging the complaint is called a motion to quash.

c. Fair Hearing

Due process is generally associated with the concept of a fair trial. The Sixth Amendment to the U.S. Constitution requires trials be “speedy and public.” Secrecy and needless delay obviously create unfairness. The public and the press should never be directly excluded from any trial or other court proceeding. The court should avoid excluding the public by holding court at unusual places or times. The defendant has the right to a trial before memories fade and are hampered by the passage of time. A complaint must be filed within two years of the commission of an offense or the prosecution is barred by the statute of limitations. Art. 12.02, C.C.P. Further, a general due process right exists to a speedy trial. The court should consider four factors in determining whether the defendant’s rights are violated:

- length of delay from accusation to trial;
- State’s reasons for delay;
- effort made by the defendant to obtain a speedy trial; and
- prejudice to the defendant’s ability to defend him or herself.

Mandatory deadlines set out by the Legislature to assure speedy trial in Chapter 32A, C.C.P., have been declared unconstitutional. *Barker v. Wingo*, 407 U.S. 514 (1972); *Phillips v. State*, 650 S.W.2d 396 (Tex. Crim. App. 1983). The court need only consider the issue if raised by the defendant.

Article 1.05, C.C.P., provides that the defendant has the right to be heard. Although the State has the right to argue first and last, the total time allotted for argument must be the same. Courts must allow the making of objections and cannot foreclose the defendant from making objections.

d. Neutral and Detached Judge

In order for a trial to be fair, the judge presiding must be neutral and detached. A fair referee is necessary to a fair game. Article 30.01, C.C.P., provides instances in which the judge is disqualified regardless of the judge’s discretion. The judge is disqualified as a matter of law when a judge:

- is the injured party;
- has been counsel for the State or the accused; or

- is connected to the accused or the party injured by consanguinity or affinity within the third degree as determined by Chapter 573 of the Government Code.

Judges must recuse themselves if they feel they have a conflict of interest that would affect their ability to be fair and impartial. Disqualification is mandatory, while recusal lies in the court's honest appraisal of the individual situation.

The procedures for replacing a judge that has been disqualified or recused have changed significantly and it is critical that the court becomes familiar with the new law. In 1999, the Legislature passed Section 29.012, G.C., which provided that a municipal judge that is disqualified or recused can have a judge from another municipal court located in an adjacent city to sit for that judge. The 82nd Legislature repealed Sec. 29.012, G.C., and replaced in with a comprehensive set of procedures found in the newly-enacted Subchapter A-1 of Chapter 29 of the Government Code. These new procedures went into effect on June 17, 2011.

e. Right to a Jury Trial

The right to a trial by an impartial jury is found in the U.S. Constitution, the Texas Constitution, and is applied through the Code of Criminal Procedure. While federal law may limit the right to cases in which incarceration is a potential punishment, Texas law extends the right to all criminal proceedings, including proceedings in municipal court.

A failure to request a jury trial is not a waiver. If a jury trial is not desired, a written waiver of jury trial must accompany any plea before the court. Special rules apply to defendants who plead by mail: tendering the fine to the court by mail constitutes a plea and written waiver of a jury trial. Art. 27.14(c), C.C.P. If the defendant fails to properly waive a jury trial, a jury trial must be held. Art. 45.027(a), C.C.P.

True or False

- Q. 10. A complaint provides notice to a defendant of charges against him or her. ____
- Q. 11. A defendant cannot waive the right to proceed to trial on a complaint. ____
- Q. 12. A defendant has a right at least 10 days before trial to notice of a complaint filed against him or her. ____
- Q. 13. If a complaint uses plain and intelligible language, it does not have to establish all the elements of the offense. ____
- Q. 14. For a hearing to be fair, it must be conducted publicly and without needless delay. ____
- Q. 15. Although the speedy trial provision was declared unconstitutional, there is still a general due process right to a speedy trial. ____
- Q. 16. If a judge is disqualified, only a judge from an adjacent municipality or an appointed judge of the city may hear the case. ____
- Q. 17. A failure to request a jury trial is a waiver of the right to a jury trial. ____

End True/False

- Q. 18. What is the statute of limitations for filing a misdemeanor charge? _____

Q. 19. When is a judge disqualified from hearing a case? _____

f. Right to Counsel

Two distinct issues are raised by the grant of the right to counsel by the U.S. and Texas Constitutions. The first part of the right to counsel is the defendant's right to have an attorney in court and to have the advice and assistance of that attorney. The second part is to have counsel appointed by the court if a person cannot afford counsel.

A defendant in a criminal case in which the punishment is only a fine, however, has no right to appointment of counsel under federal or state law. *Scott v. Illinois*, 440 U.S. 367 (1979); Art. 1.051(c), C.C.P. This, of course, includes all cases over which the municipal court has jurisdiction. The court may appoint counsel if it concludes the interest of justice requires representation. As a practical matter, this provision is underused by trial courts of limited jurisdiction, like municipal courts.

The first part of the right to counsel is the right to have an attorney appear and assist. This right cannot be denied even in the trial of fine-only misdemeanors, and is even recognized in the rules specifically governing trial in municipal court. Art. 45.020, C.C.P. The defendant may waive the right to counsel, but must do so intelligently and knowingly. This means that the court must make sure the defendant understands his or her right to counsel and the disadvantage of proceeding pro se. *Johnson v. State*, 760 S.W.2d 277 (Tex. Crim. App. 1988). The court has the obligation to make sure a waiver of counsel is voluntarily and intelligently made by providing admonitions and questioning the defendant. *Blankenship v. State*, 673 S.W.2d 578 (Tex. Crim. App. 1984). Presuming waiver from a failure to request counsel is not permitted.

The right to counsel does not extend to assistance or representation by an individual who is not an attorney licensed by the State Bar of Texas. To allow a non-attorney to assist a defendant or advise him or her at trial violates the law against unauthorized practice of law.

g. Other Trial Rights

The defendant's rights at trial include:

- the right to confront witnesses; and
- the right to call witnesses.

Confrontation necessitates the presence of the defendant at trial, the right to question witnesses, and the right to impeach witnesses. The right to call witnesses includes the right to compel witnesses to attend trial.

(1) Right to Confront Witnesses

The right to confront witnesses is found in the U.S. Constitution, the Texas Constitution, and the Code of Criminal Procedure. Essential to the right to confront witnesses is the right to be present in trial. In the trial of all cases, except fine-only misdemeanors, the defendant must be present. Art. 33.03, C.C.P. The exception to the rule requiring the defendant's presence is when the defendant appears and then is voluntarily absent during trial. In that instance, the trial may continue. In fine-only misdemeanors, the defendant still has the right to be present, but can waive

that right and appear by counsel alone if the prosecutor agrees to the defendant's absence. Art. 33.04, C.C.P. The defendant can also lose the right to be present by disrupting the proceedings and being held in contempt of court. Even when the defendant is removed for misbehavior, he or she may be entitled to readmission on the promise to behave properly. *Illinois v. Allen*, 397 U.S. 337 (1970).

The defendant's right to be present also includes the right to be competent at trial. *Pate v. Robertson*, 383 U.S. 375 (1966). The defendant must have the ability to consult with a lawyer or have a rational and factual understanding of the proceedings. If incompetence is raised by evidence to support such a finding by the defendant, the prosecutor, or the court, the court must proceed to a jury on the issue of present competency to proceed to trial. Art. 46.03, C.C.P.

The right to confront also means the right to cross-examine the State's witnesses. Cross-examination tests the witnesses through application of the principles of the adversary process. Evidence subjected to cross-examination tends to be more credible than evidence not subject to cross. Confrontation is usually satisfied by the indicia of reliability established through exceptions to the hearsay rule. *Ohio v. Roberts*, 488 U.S. 56 (1980). But the scope of the law of hearsay and its exceptions is not always the same as the constitutional right to confrontation, or vice-versa. *California v. Green*, 399 U.S. 149 (1970).

(2) Right to Call Witnesses and Present Evidence

In addition to the right to confront witnesses, a defendant has the right to call competent witnesses. Competence is based on being able to appreciate and take the oath and having personal knowledge of relevant evidence as required by the Code of Criminal Procedure and the Rules of Evidence. The evidentiary rules apply equally to defense witnesses. The procedures for obtaining witnesses in court are the same as the State's procedure. The law of subpoenas, subpoenas duces tecum, and attachment are available to the defense. The court should make sure that law enforcement gives equal consideration to serving legitimate defense subpoenas.

(3) Right to Object

The defendant has the right to make objections to evidence and to obtain a ruling from the court. Failure to object will cause any error to be waived during appellate review. *Gutierrez v. State*, 36 S.W.3d 509 (Tex. Crim. App. 2001); Rule 33.1(a), Rules of Appellate Procedure. The court may require objections be made outside of the jury's hearing and may limit the time that an offer of proof is made.

h. Right to Remain Silent

A criminal defendant has the right to remain silent and not be a witness against oneself or to give evidence against oneself. Invoking the right against self-incrimination is often called "pleading the 5th," in reference to the 5th Amendment. Some minor differences exist between the federal and state protections and they can be interpreted differently. It is inappropriate to call the defendant to the stand and make him or her invoke the privilege before a jury. This privilege can also be invoked by a witness. No party should be able to call a witness before the jury knowing that they will plead the 5th. Further, a defendant should be warned of his or her rights and expressly waive them outside of the jury's presence before being able to testify at trial.

Defendants do not need to invoke their right to remain silent; the State may not call the defendant as a witness. Witnesses must invoke their rights not to answer questions after being

sworn, but if the witness voluntarily testifies about a matter, he or she may not plead the 5th during cross-examination on the same issue.

Jurors should be instructed that the defendant’s silence in a trial cannot be used against him or her as evidence of his or her guilt, and the prosecutor should not be allowed to argue that it indicates guilt in any way. *Sanchez v. State*, 707 S.W.2d 575 (Tex. Crim. App. 1986).

i. Presumption of Innocence and Proof Beyond a Reasonable Doubt

No defendant may be convicted of a criminal offense unless the State proves every element of the case beyond a reasonable doubt. Since the State must prove each element, it necessarily follows that every defendant must be presumed innocent until proven guilty. It is important not only that the court religiously adheres to this mandate, but also sees that juries follow it as well.

A court must instruct the jury to presume a defendant innocent until proven guilty and to find a defendant guilty only if persuaded by the evidence beyond a reasonable doubt. It is not proper for the court to attempt to define reasonable doubt to the jury over an objection of either party.

3. Rights Under the 4th Amendment

The 4th Amendment to the U.S. Constitution guarantees protection against “unreasonable searches and seizures.” The Texas Constitution and state law also make the same guarantee.

a. Suppression

In order to uphold the promise against unreasonable searches and seizures, federal courts have created a rule excluding the fruits of unreasonable searches from evidence. The courts enforce this “Exclusionary Rule” in order to deter police from making unreasonable searches and arrests. The right to be free from unreasonable searches and arrests is protected not by dismissal of the prosecution, but by exclusion of the evidence gathered by the unreasonable search or seizure.

b. Standing

In order to claim the benefits of the Exclusionary Rule, defendants must first establish that they were personally subjected to unreasonable police conduct. A defendant must establish his or her interest, or standing, in order to object to the legality or reasonableness of the search or arrest. The defendant must show that he or she had a reasonable expectation of privacy in the property or person searched or seized to establish standing. Standing must also be established to invoke the statutory Exclusionary Rule found in Article 38.23, C.C.P.

True or False

- Q. 20. Defendants in municipal court have the right to a court appointed attorney. ____
- Q. 21. If a defendant does not request counsel, the defendant is presumed to have waived the right to counsel. ____
- Q. 22. The municipal court can allow friends and family members to assist defendants at trial. ____
- Q. 23. In municipal court, defendants can waive being present at trial and appear by counsel only if the prosecutor agrees. ____
- Q. 24. Before defendants can be tried in municipal court, they must be competent and have the ability to consult with an attorney. ____
- Q. 25. In municipal court, the defendant can ask the court to subpoena witnesses. ____

Q. 26. The defendant has both the right to testify and the right to choose not to testify. ____
End True/False

Q. 27. What rules govern the presentation of evidence? _____

Q. 28. What does it mean when a defendant “pleads the 5th?” _____

Q. 29. What must the State prove for a jury or a judge to find a defendant guilty? _____

Q. 30. What does the 4th Amendment to the U.S. Constitution guarantee? _____

Q. 31. What is the “Exclusionary Rule?” _____

Q. 32. What is the principle of “standing?” _____

4. Equal Protection

The 14th Amendment to the U.S. Constitution provides that all persons be afforded equal protection of the law. Two major applications of this principle have developed since its adoption. Any law that applies unequally to the governed must have a rational basis. Any law that has a disparate impact on a suspect group (racial minorities, religious groups, and other recognized protected classes) must satisfy a compelling state interest.

Finally, the rights and recourses of the law cannot be denied to any person based on his or her belonging to a protected class of individuals.

a. Bias or Prejudice

Many people believe that bias or prejudice against minorities pervades the entire legal system and, consequently, do not trust the court system to resolve their disputes or to administer justice even-handedly. The following is a list of the most common complaints:

- in criminal proceedings, minorities receive disparate treatment and harsher sentences;
- a lack of uniformity exists in prosecutorial decision-making in criminal cases involving minority persons;
- some law enforcement officials treat minorities with disrespect and engage in offensive behavior towards them;
- those working in the judicial system believe the quality of justice delivered to minority litigants who require interpreters for legal proceedings is adversely impacted by the lack of sufficient competent and trained interpreters in the court system;
- minorities are underrepresented on most juries;
- some judges, lawyers, and other officers of the court and court staff members make offensive remarks and demonstrate biased attitudes toward minorities appearing in court;

- minorities do not have access to rehabilitative programs as readily as non-minority defendants; and
- the criminal justice system provides inadequate protection, access, support, and services to minority victims of crime.¹

Although perceptions of bias neither confirm nor disprove the actual existence of bias, all municipal courts should examine their policies and practices for evidence of bias. Court personnel can formally or informally conduct court assessments of how minorities are treated in the following areas:

- wait time at the window;
- pre-trial detention, bail, and charging decisions;
- sentencing decisions, such as the use of deferred disposition and time payments;
- composition of juries; and
- ethnic make-up of court employees.

Customer service questionnaires or interviews can be used to determine if patterns of courtroom interaction reflect the same degree of courtesy to all that appear before the court. Exit interviews with employees may reveal perceptions or incidents of bias in the court.

If a problem involving racial, cultural, or ethnic biases exists in your court, any of the following steps may be appropriate:

- offer cultural awareness seminars for court personnel;
- establish a community public education program on bias;
- let people know if you find a racial slur or joke to be offensive, and report it if it continues;
- report violations of the Code of Judicial Conduct to the State Commission on Judicial Conduct; and/or
- recruit more minority personnel by advertising in minority newspapers or post jobs at neighborhood community centers.

In addition to awareness and sensitivity regarding cultural or ethnic bias, court personnel should also be aware of language used in references to persons with disabilities. Certain terms and phrases traditionally used to refer to persons with disabilities are now considered by some to be demeaning and hurtful. Terms such as “disabled” or “mentally ill” should be replaced with language that puts the person first, such as “person with a disability” or “person with a mental illness.” The 82nd Legislature passed the Person First Respectful Language Initiative, effective September 1, 2011. The Respectful Language Initiative is something for judges, court administrators, and city attorneys to keep in mind in their communications in court and with the public.

Judges and court personnel must protect the court from the appearance of impropriety as well as actual disparate treatment. Canon 3 of the Texas Code of Judicial Conduct prescribes the elimination of biased behavior in court.

Normally, the court should play a low-key role in trials, ruling or intervening only when objections are made. Expressions of bias may be an exception. The court must be careful not to

¹ Excerpt from *Minority and Justice Task Force Report*, State of Washington, 1990.

comment on the evidence or influence the jury. Part of maintaining decorum, however, is correcting inappropriate language and actions, including expressions of bias. If the court fails to correct biased behavior, the courtroom audience might presume the court condones such behavior. The Commission on Judicial Conduct has publicly sanctioned a Texas judge for racially biased statements made during a trial. Judges and court personnel must protect the court from the appearance of impropriety as well as actual disparate treatment. Canon 3(B) of the Texas Code of Judicial Conduct prescribes the elimination of biased behavior in court.

- Canon 3, Sec. 5. A judge shall perform judicial duties without bias or prejudice.
- Canon 3, Sec. 6. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socio-economic status, and shall not knowingly permit staff, court officials, and others subject to the judge's direction and control to do so.
- Canon 3, Sec. 7. A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status against parties, witnesses, counsel, or others. This requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding.

Q. 33. What does the 14th Amendment to the U.S. Constitution guarantee? _____

Q. 34. List four perceptions regarding bias or prejudice in the justice system that are reportedly held by some people in this country today. _____

Q. 35. What policies or practices should be evaluated either formally or informally for evidence that bias is occurring in the courts? _____

Q. 36. List the categories protected from biased behavior by Canon 3 of the Code of Judicial Conduct. _____

True or False

Q. 37. The Commission on Judicial Conduct has sanctioned a judge for making racially biased statements during trial. _____

Q. 38. Under the Code of Judicial Conduct, a judge is responsible for ensuring the ethical conduct of clerks in his or her court. _____

Q. 39. While the Canons for Judicial Conduct caution judges about making biased comments in court, there is no reference to lawyers or court support personnel. _____

b. Indigents and Those Unable to Pay

The fundamental rule is that a judge should never confine a defendant, cause a defendant to be confined, deny a defendant an attorney, or deny release on bail simply because the defendant does not have the money to pay all or part of a fine. *Tate v. Short*, 401 U.S. 395 (1971). Municipal courts are also directly prohibited from committing indigent defendants to jail for failure to pay fines and costs. Art. 45.046, C.C.P. Jailing poor defendants while the wealthy pay and suffer no incarceration is unequal and unconstitutional. Yet, if the poor defendant faces no consequence, this too is unfair. Indigence, or a person's inability to pay, is different than refusal to pay a fine or court costs. The court must find alternative ways for the indigent defendant to satisfy the judgment. Alternative methods of discharge include delayed payment, time payments, and community service. In some cases where the defendant cannot pay and cannot do community service, the only alternative is waiver of payment. Art. 45.0491, C.C.P.

The role of the clerk is to assist the judge with all documentation regarding indigence. For example, if the judge offers the defendant the opportunity to use community service credit to pay the fine, the clerk may be asked to provide the defendant with a list of approved non-profit organizations where the community service can be fulfilled. Or, if the defendant requests to pay over time, the clerk will assist with the documentation needed for the transmittal of monthly or weekly payments. Judicial orders, the defendant's requests, and any other documentation should be placed in the case file so that if a question arises, the record is well documented.

Approving or extending a time payment plan is a judicial duty, not a ministerial one that can be done by the clerk. If a defendant defaults on a payment agreement, he or she should be given an opportunity to explain the situation to the judge. The judge and clerk should develop a consistent plan to process persons who are indigent and must satisfy a judgment by a payment plan or community service. Judges should not, however, have a schedule of payments that apply to all defendants who are indigent. Each case must be decided on its own facts and merits.

c. Defendants with Disabilities

(1) Interpreters for Deaf and Hard of Hearing

Over 35 million Americans have some form of hearing disability that ranges from mild hearing loss to profound deafness. This group of persons constitutes the largest group of Americans with disabilities. Judges and court personnel need to be educated about the wide variety of communication methods used by these individuals so that barriers to effective communication can be reduced in court. Individuals who are deaf and cannot speak and those with hearing impairments have a wide variety of needs as generally outlined below.

There are several recognized methods or modes of communication used by individuals who are deaf and hard of hearing. These include speech reading (lip-reading), gesturing, written communication including computer-aided real-time transcription, and several kinds of sign language.

In this country, there is a community of persons who are deaf who use American Sign Language (ASL) as their visual language. Most members of this community suffered hearing loss before

the end of adolescence,² and may be suspicious and wary of persons who can hear. This distrust is reinforced too often when people who can hear stigmatize this group as unintelligent or mentally defective.³

Others, despite being deaf or hard of hearing, maintain a primary visual language and a cultural affiliation with the speaking community. Usually these individuals developed their hearing impairment or deafness later in life or were raised by hearing parents who did not expose them extensively to the deaf community. This group does not necessarily consider themselves a part of the deaf community, and adapts to living in the hearing environment with hearing aids, cochlear (inner ear) implants, and intensive training in lip-reading. People in this group often prefer to call themselves hearing impaired or hearing disabled.

Sign language is the use of visual signs to convey information and ideas. There are three basic categories of sign language:

- independent languages such as American Sign Language (ASL);
- speech-equivalent signing systems; and
- finger-spelling systems.

These vary in complexity and range of utility. ASL, for example, uses 4,000 signs and has a completely different vocabulary, grammar, idiom, and syntax from English. ASL's linguistic units and structure consist of facial expressions, body posture, and the shape and movements of hands, arms, eyes, and head. Judges and court personnel should, for example, allow an interpreter's use of facial grammar or body shifting in court, as these are part of the grammatical structure of ASL. A verbatim or "word for word" translation is neither necessary nor possible and might lead to a distortion of meaning. However, the interpreter should preserve the meaning of the speaker's statement without omissions and additions. This includes the style and register of the speaker (tones, emotions, and language used).

Hearing-impaired individuals who prefer speech reading as their chosen mode of communication may require "oral interpreters" who are trained to present information through mouth movements only. Only about 26 percent of speech is visible on the lips for those who rely on lip-reading.⁴ If lip-reading is relied upon in court, a clear line of vision between the speaker and listener must be maintained. The distances between speakers and listeners should be between three and six feet.

Minimally language competent refers to individuals who are deaf and have never made meaningful ties with either the culturally deaf or the oral language cultures. They have no systematic way of communicating ideas or feelings, but use idiosyncratic gestures often only understood by their family. In these instances, the court should contact relay or intermediate interpreters who are familiar with these individuals' home signs or are specially trained to interpret such communication.

² Paul C. Higgins, "Outsiders in a Hearing World," *Urban Life*, Volume 8, Number 1, April 1979, Sage Press.

³ William E. Hewitt, *Court Interpretation: Model Guides for Policy and Practice in State Courts*, National Center for State Courts, 1995.

⁴ "Deafness and Interpreting," New Jersey Department of Human Services, Division of the Deaf and Hard of Hearing, October 1991.

Practical Techniques

- Purchase a text telephone (TDD or TTY) to permit people with hearing impairments to call the court.
- When persons who are hard of hearing appear in court, reduce environmental noise from fans, air conditioners, outside traffic or construction, and conduct any typing in an adjacent room, if at all possible.
- Make sure that assisted listening devices are fully charged and an extra set of batteries is available.
- When remodeling the court, consider using carpeting and padded walls to reduce noise in the courtroom.
- Suggest to the judge the adoption of a local rule requiring that attorneys who know that a witness or party has a special communication need contact the court well in advance. A similar note can be placed on jury notices and witness subpoenas.
- If your court is small and there are budget constraints, locate a source to rent or borrow the equipment when needed.
- Writing out instructions for an individual who is hearing impaired is a simple, interim solution until the necessary equipment arrives.

Larger cities may adopt a computer-aided real-time transcription (CART) device that requires skilled court reporters to key shorthand notes of the spoken language into a stenotype machine. This process concurrently translates the spoken words in court into English text. CART systems send the shorthand output from the stenotype machine directly into a personal computer that translates the shorthand instantaneously and displays it on a monitor or large screen where it can be read.

The court must appoint an interpreter at all court proceedings if notified that the defendant is deaf. Art. 38.31(a), C.C.P. An interpreter must be appointed to translate between counsel and the defendant. The court should establish a clear set of policies and procedures for how the court interpreter will be appointed for defendants and witnesses who do not understand or speak the English language or who are unable to hear. If a defendant or witness is deaf or hearing impaired, the court is required to appoint a qualified interpreter and provide the auxiliary aids and services of their choice. The interpreter must be able to use the language or means of communication used by the defendant. Art. 38.31(a), C.C.P. The interpreter must be sworn in by the judge, or by the clerk if so directed by the judge, before performing interpretation. Rule 604, Rules of Evidence. A court procedure brochure will assist deaf persons, but it does not substitute for the services of an interpreter.

The interpreter is entitled to a fee determined by the court in consultation with the Texas Department of Assistive and Rehabilitative Services. If the interpreter is required to travel, actual expenses of travel, lodging, and meals incurred must be paid at the same rate as state reimbursement.

Chapter 57, G.C., requires the court to appoint only interpreters certified by the Texas Department of Assistive and Rehabilitative Services. Violating that requirement is a Class A misdemeanor. Sec. 57.050, G.C.

True or False

- Q. 40. The court must find alternative ways for an indigent defendant to pay fines and court costs. ____
- Q. 41. All persons who are deaf and hearing impaired learn American Sign Language. ____
- Q. 42. Court interpreters should always offer verbatim translations. ____
- Q. 43. All persons who are deaf learn how to read lips. ____
- Q. 44. A court procedure brochure and signs explaining a defendant's rights are a proper substitute for the services of an interpreter. ____

End True/False

- Q. 45. What group constitutes the largest group of Americans with disabilities? _____

- Q. 46. What are the three basic categories of sign language? _____

- Q. 47. Why is an oral interpreter sometimes needed for defendants who read lips? _____

- Q. 48. Define minimally language competent persons. _____

- Q. 49. Give three examples of environmental noise that should be reduced when hard of hearing persons appear in court. _____

- Q. 50. Explain how CART works. _____

- Q. 51. Who has the authority to swear in the interpreter? _____

- Q. 52. What state commission can assist the court in locating qualified interpreters and determining the appropriate fees? _____

(2) Language Interpreters

The court is required to appoint an interpreter when a defendant does not understand the English language. Art. 38.30, C.C.P. The need for an interpreter may be raised by a motion of either party or by the court. The interpreter is required at any court proceeding. The interpreter is subject to subpoena or attachment like any other witness, but must be paid for interpreting. Art. 38.30, C.C.P. The defendant is not responsible for paying for an interpreter. The interpreter is paid by the city. The role of the interpreter is to translate and explain the proceedings and to give the defendant a voice in the proceedings. Interpreters must be sworn in before performing

interpretation. Telephone interpreters may be sworn in to interpret for persons in Class C misdemeanor trials or magistrate proceedings in certain situations. Art. 38.30, C.C.P.

Chapter 57, G.C., provides for a state-operated licensing program for foreign language court interpreters by the Texas Department of Licensing and Regulation. Municipal courts must appoint only licensed court interpreters. An exception to this rule is made for counties with a population of less than 50,000. Sec. 57.002(c), G.C. Under this exception, the interpreter must still be qualified under the Rules of Evidence, over 18 years of age, and not a party to the cause. The rules regarding licensed interpreters apply to court proceedings when a defendant or a witness does not understand the English language, or a defendant, witness, or juror is deaf or hard of hearing. Trial judges in counties with populations over 50,000 may appoint non-licensed interpreters when the language is one other than Spanish and there are no licensed interpreters within 75 miles of the court. Sec. 57.002(d), G.C.

A license may be suspended or revoked if the individual made a material misstatement in an application for a license; willfully disregarded or violated a provision in Subchapter C, G.C. or a rule adopted under the subchapter; has been convicted of a felony or any crime in which an essential element of the offense is misstatement, fraud, or dishonesty; or engaged in dishonorable or unethical conduct likely to deceive, defraud, or harm the public or a person for whom the interpreter interprets. If a person violates a provision of Subchapter C or a rule adopted under the subchapter, he or she commits a Class A misdemeanor. Sec. 57.050, G.C. For more information about licensed court interpreters or to find an interpreter in your area, go to:
<http://www.license.state.tx.us/court/court.htm>.

True or False

- Q. 53. Defendants must pay the costs of an interpreter. ____
- Q. 54. Interpreters must be appointed by the court if a defendant or witness cannot understand English. ____
- Q. 55. A family member or friend can be a language interpreter as long as he or she knows both English and the other language that requires interpreting. ____

(3) Mental Illness and Mental Retardation

Special protections are afforded persons with mental illness and retardation because too often they forfeit their rights because of misplaced trust, limited vocabulary, difficulty reading or recalling facts, undue influence of authority figures, and a desire to avoid being labeled mentally retarded. Large print brochures or pictures to describe court services are recommended, as well as an ombudsman to help identify their needs.

The Code of Criminal Procedure allows for special treatment of persons with mental illness or retardation. A magistrate who has reasonable cause to believe a defendant has a mental illness or retardation must order a mental examination during magistration. A magistrate is required to release, on personal bond, a mentally ill defendant if the defendant has not been charged with or previously convicted of a violent offense, such as murder or kidnapping, and has been examined by a mental health expert. The expert must conclude that the defendant is mentally ill, competent to stand trial, and make a recommendation for mental health treatment. The magistrate then determines if appropriate health services are available. The magistrate may require as a condition

of release on personal bond that the defendant submit to outpatient or inpatient mental health treatment if the illness is chronic in nature or the ability to function independently will continue to deteriorate if the defendant is not treated. Art. 17.032, C.C.P.

(4) Physical Disabilities (ADA)

The Americans with Disabilities Act (ADA) was enacted on July 26, 1990 to protect qualified individuals with disabilities from discrimination solely on the basis of their disability. 42 U.S.C, Sec. 12131, *et seq.* Its passage increased awareness of disability issues and reduced stereotypes and misrepresentations of the past. People living with disabilities continue to desire accurate portrayals that present a respectful, positive view of them as active participants of society.

As part of the effort to end discrimination and segregation in employment, education, government services, and communities, “People First Language” was developed to eliminate prejudicial speech. The Texas Legislature adopted the Person First Respectful Language Initiative in 2011. The language objectively acknowledges, communicates, and reports about disabilities without generalizations, assumptions, and stereotypes. Its purpose is to secure focus on the person rather than the disability. Ask yourself if the disability is relevant and needs mentioning when referring to a specific individual; if not, then the individual should be referred to before the disability. For example, say “persons with disabilities” rather than “the disabled.”

Shown below are guidelines suggested by mental health professionals.⁵

- Recognize that people with disabilities are ordinary people with common goals for a home, a job, and a family. Talk about people in ordinary terms.
- Never equate a person with a disability, such as referring to someone as retarded, an epileptic, or quadriplegic. These labels are simply medical diagnoses. Use “People First Language” to tell what a person HAS, not what a person IS.
- Emphasize abilities—not limitations. Say, for example, “A man walks with crutches,” not “He is a cripple.”
- Avoid negative words that imply tragedy, such as “afflicted with,” “suffers,” “victim,” “prisoner,” and “unfortunate.”
- Recognize that a disability is not a challenge to be overcome, and do not say that people succeed in spite of a disability. Ordinary things and accomplishments do not become extraordinary just because a person with a disability does them. What is extraordinary are the great lengths people with disabilities have to go through and the barriers they have to overcome to do the most ordinary things.
- Use the word “handicap” to refer to a barrier created by people or the environment. Use the word “disability” to indicate a functional limitation that interferes with a person’s mental, physical, or sensory abilities, such as walking, talking, hearing, or learning. For example, “people with disabilities who use wheelchairs are handicapped by stairs.”
- Do not refer to a person as “bound” or “confined” to a wheelchair. Wheelchairs are liberating to people with disabilities because they provide mobility.

⁵ Texas Mental Health Association newsletter *Highlights*, reprinted with permission in Volume 6, Number 4, *TMCEC Recorder*, May 1997.

- Do not use “special” to mean segregated, such as separate schools or buses for people with disabilities, or to suggest that a disability itself makes someone special.
- Avoid euphemisms, such as “physically challenged,” “inconvenienced,” or “differently-abled.”
- Promote understanding, respect, dignity, and a positive outlook for all persons.

People First Language Use	Labels that Stereotype and Devalue
• people with disabilities	• the handicapped; the disabled
• people with mental retardation	• the mentally retarded
• people with a mental illness	• the mentally ill
• someone with Down’s syndrome	• a Mongol; a Mongoloid
• a person who walks with crutches	• a cripple
• accessible buses bathrooms	• handicapped buses bathrooms

The following are key terms and provisions that one must know to understand the ADA.

- *A person with a disability.* 1) an individual has a physical or mental impairment that substantially limits one or more of the individual’s major life activities (such as walking, talking, or caring for oneself); 2) has a record of such an impairment; or 3) is regarded as having such an impairment. 42 U.S.C., Sec. 12102(2). Excluded from this definition are persons currently engaging in the illegal use of drugs. 42 U.S.C., Sec.12111(8).
- *A qualified individual with a disability.* An individual who regardless of their disability meets the essential requirements for the receipt of services or participation provided by the public entity. This includes defendants, witnesses, attorneys, and spectators.
- Title II prohibits state and local government from policies and practices that have the effect of barring persons who are disabled from participation in or access to public services, programs, and activities. These provisions cover all courts, regardless of size.
- Title III focuses on public accommodations and services operated by public entities.
- The ADA provisions are enforceable under the remedies set forth in the earlier enacted Section 505 of the Rehabilitation Act of 1973.

Title II went into effect in 1992 and requires state and local entities, including courts, to modify policies, practices, and procedures to prevent disability discrimination, remove architectural and communications barriers, and provide accessible services. Each program or service, when viewed in its entirety, must be readily accessible. Physical barriers must be removed, if necessary, to make services accessible. Extensive remodeling, however, is not necessary if programs can be made available in other ways. Alternatives include relocating services to other areas; providing an aide or personal assistant; moving services to an individual’s home or other accessible site; and giving information by audiovisual means. Action is not required if it demands undue financial or administrative burden.

Court managers should examine closely the following physical and communication barriers in their courts.

- Access to the building—inaccessible parking spaces, high curb cuts, slippery exterior steps, lack of or poor ramps, and areas accessible only through service areas.
- Use of facilities—interior stairs; a lack of accessible elevators; slippery floors; high public counters; water fountains and telephones; narrow hallways; poor lighting; and inaccessible restrooms or law libraries.
- Participation in court—judge’s benches, jury boxes, witness boxes, counsel table, and public seating too often cannot accommodate wheelchairs. Often there is an absence of technology to help persons with vision, hearing, and cognitive impairments.
- Train staff in eliminating stereotypes and biased language towards persons with disabilities.
- Appoint a staff person to serve as the accessibility ombudsman to assist in arranging individualized accommodations.
- Make sure all court employees understand how to receive a relay call, where a person who is deaf calls a relay operator who serves as the speaker to the recipient of the call.

The National Center for State Courts (800.532.0204) serves as a clearinghouse on these issues and has a grant to assist courts with ADA implementation.

Local, state, and national groups are available to help courts become accessible. Contact local or state disability groups such as protection and advocacy agencies, mental health associations, elderly advocacy groups, and Alzheimer’s associations to form a multi-disciplinary planning committee.

True or False

Q. 56. The law requires that a person with mental illness or retardation be treated the same as those without disabilities when bond is set. ____

Q. 57. A municipal court must only comply with ADA requirements if it employs more than 15 persons. ____

Q. 58. The ADA protects jurors and witnesses, as well as court employees. ____

Q. 59. Even if it costs an excessive amount and poses an administrative hardship, a municipal court must accommodate the needs of one employee with a disability. ____

End True/False

Q. 60. How does federal law define a person with a disability? _____

Q. 61. Explain the rule behind “People First Language.” _____

Q. 62. In the clerk’s area and the court’s window or counter, what accessibility problems often exist? _____

- Q. 63. Within the courtroom, what areas must be accessible? _____

- Q. 64. Give four examples of what an accessibility ombudsman might do in your court.

- Q. 65. Where can you call to get assistance for your court in complying with the ADA?

B. Juveniles and Their Parents

Under Texas law, juveniles are generally treated differently than adults. Title 3 of the Family Code creates juvenile courts that have jurisdiction over children ages 10 to 17. Usually, a juvenile enters the justice system for delinquent conduct or conduct in need of supervision. Delinquent conduct generally involves violations of the penal laws that are punishable by imprisonment or jail. Conduct in need of supervision refers to the lower grade of penal offenses and behaviors such as running away from home. Juvenile court proceedings are hybrid proceedings combining substantive criminal law with procedural civil law. The terminology is different. For example, an adjudication hearing for a juvenile is the equivalent of the sentencing phase for an adult. Thus, when examining the rights of juveniles, one must look both to the Family Code and, in the case of Class C misdemeanors, to the Code of Criminal Procedure, Penal Code, and other applicable codes. See TMCEC Study Guide Level II, *Juveniles and Minors* for further discussion.

C. Victims

1. Victim's Bill of Rights

Victims' assistance programs in criminal justice agencies ensure that victims are afforded their rights from the reporting of the crime through the final disposition of the offenders. Both Article I of the Texas Constitution and Chapter 56 of the Code of Criminal Procedure outline the rights provided them.

The Texas Constitution
Article 1 - Bill of Rights

Section 30 - Rights of Crime Victims

(a) A crime victim has the following rights:

- (1) the right to be treated with fairness and with respect for the victim's dignity and privacy throughout the criminal justice process; and
- (2) the right to be reasonably protected from the accused throughout the criminal justice process.

(b) On the request of a crime victim, the crime victim has the following rights:

- (1) the right to notification of court proceedings;
- (2) the right to be present at all public court proceedings related to the offense, unless the victim is to testify and the court determines that the

victim's testimony would be materially affected if the victim hears other testimony at the trial;

(3) the right to confer with a representative of the prosecutor's office;

(4) the right to restitution; and

(5) the right to information about the conviction, sentence, imprisonment, and release of the accused.

(c) The legislature may enact laws to define the term "victim" and to enforce these and other rights of crime victims.

(d) The state, through its prosecuting attorney, has the right to enforce the rights of crime victims.

(e) The legislature may enact laws to provide that a judge, attorney for the state, peace officer, or law enforcement agency is not liable for a failure or inability to provide a right enumerated in this section. The failure or inability of any person to provide a right or service enumerated in this section may not be used by a defendant in a criminal case as a ground for appeal or post-conviction writ of habeas corpus. A victim or guardian or legal representative of a victim has standing to enforce the rights enumerated in this section but does not have standing to participate as a party in a criminal proceeding or to contest the disposition of any charge. (Added Nov. 7, 1989.)

A "victim" under Article 56.01, C.C.P., is defined as "a person who is the victim of a sexual assault, kidnapping, or aggravated robbery or who has suffered personal injury or death as a result of the criminal conduct of another."

Article 56.02(a), C.C.P., provides that a victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:

- The right to receive adequate protection from law enforcement agencies from harm and threats of harm arising from cooperation with prosecution efforts.
- The right to have a magistrate take the safety of the victim or victim's family into consideration as an element in fixing the amount of bail for the accused.
- The right, if requested, to be informed of relevant court proceedings and to be informed if those court proceedings have been canceled or rescheduled prior to the event.
- The right to be informed, if requested, by a peace officer concerning the defendant's right to bail and the procedures in criminal investigations and by the district attorney's office concerning the general procedures in the criminal justice system, including general procedures in guilty plea negotiations, restitution, and the appeal and parole.
- The right to provide pertinent information to a probation department conducting a pre-sentencing investigation concerning the impact of the offense on the victim and victim's family by testimony, written statement, or any other manner prior to sentencing.
- The right to receive information regarding compensation to victims of crime as provided by Subchapter B, Chapter 56, including information related to the costs that may be compensated under that Act and the amount, eligibility for, and procedures for application for compensation; payment for a medical examination for a victim of a sexual assault; and, when requested, referral to available social service agencies that may offer additional assistance.

- The right to be informed, upon request, of parole procedures; to participate in the parole process; to be notified, if requested, of parole proceedings concerning a defendant in the victim's case; to provide to the Board of Pardons and Parole for inclusion in the defendant's file information to be considered by the board prior to parole, and to be notified, if requested, of the defendant's release.
- The right to be provided with a waiting area, separate or secure from other witnesses, including the offender and relatives of the offender, before testifying in any proceeding concerning the offender; if a separate waiting area is unavailable, other safeguards should be taken to minimize the victim's contact with the offender and the offender's relatives and witnesses, before and during court proceedings.
- The right to prompt return of any property of the victim that is held by a law enforcement agency or attorney for the State as evidence when the property is no longer required for that purpose.
- The right to have the prosecutor notify the employer of the victim, if requested, of the necessity of the victim's cooperation and testimony in a proceeding that may require the absence of the victim from work.
- The right to counseling, on request, regarding acquired immune deficiency syndrome and human immunodeficiency virus infection and testing for acquired immune deficiency syndrome, human immunodeficiency infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, if the offense is an offense under Sections 21.11(a)(1), 22.011, or 22.021, Penal Code.

The law provides that a victim is also entitled to be present at all public court proceedings related to the offense, subject to the approval of the judge in the case. Art. 56.02(b), C.C.P.

The office of the attorney representing the State, sheriff, police, and other law enforcement agencies shall ensure to the extent practicable that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted by Article 56.02, C.C.P., and, on request, an explanation of those rights. Art. 56.02(c), C.C.P.

A judge, attorney for the State, peace officer, or law enforcement agency is not liable for failure or inability to provide a right enumerated under the Victim's Bill of Rights. The failure or inability of any person to provide a right or service enumerated in this article may not be used by a defendant in a criminal case as a ground for appeal, a ground to set aside the conviction or sentence, or a ground in a *habeas corpus* petition. Art. 56.02(d), C.C.P. A victim, guardian of a victim, or close relative of a deceased victim does not have standing to participate as a party in a criminal proceeding or to contest the disposition of any charge. Victims of juvenile crime have a similar set of rights under the Texas Family Code. Sec. 57.002, F.C.

The victim also has the right to exclude his or her address from court files unless needed to identify the place of the crime. The telephone number of the victim may not be part of the court file. Art. 56.09, C.C.P.

The Crime Victims' Compensation Fund can give support and services to persons affected by crime. For example, the Crime Victims' Compensation Fund can pay the medical bills for treating the injuries suffered by an abused spouse. It can pay for counseling for the

The Texas Attorney General's Office has brochures, applications, and posters in English and Spanish that may be ordered free of charge (800.983.9933).

direct victim of the abuse and assist with counseling for members of that person's immediate family. Counseling is also available for household members who are related to the victim by blood or marriage, such as stepparents. The Crime Victims' Compensation Fund is a secondary source that provides compensation after other collateral resources have been tapped, such as insurance or Medicaid. Any out-of-pocket expenses related to health care co-pays or deductibles may be reimbursed.

2. Notice vs. Control

It is important to note that these rights generally amount to notice and not a power to veto. In all criminal cases, the prosecutor represents the interest of the State. The prosecutor's role is to see that justice is done, not that the victim's position is advocated. Control of the criminal case is through the representative of the State of Texas, not the victim.

3. Retaliation and Security

Victims have the right to be secure in court and in the courthouse. Special attention should be paid to victims so that they are not re-victimized in the place they seek protection. Occasionally, it is also important to protect the accused from the victim and his or her family or supporters. The law provides that victims are entitled to a separate waiting area from the offender and his or her witnesses. Art. 56.02(a)(8), C.C.P.

Threats or actual harm to victims in or around court may constitute the offense of Obstruction or Retaliation and should be immediately reported to and investigated by law enforcement, even if the threats or violence occurs in courts.

True or False

- Q. 66. The word "victim" only refers to victims and close relatives of deceased victims, not to guardians. ____
- Q. 67. The magistrate cannot take into consideration the safety of the victim of a domestic dispute as an element of setting bail because this is not relevant specifically to the alleged crime. ____
- Q. 68. A victim of a violent crime has the right to a separate and secure waiting room from the offender. ____
- Q. 69. The victim of a crime has the right to be present at all public court proceedings related to the offense if the judge approves. ____
- Q. 70. The victim has a right to privacy. If practical, the address of the victim will not become a part of the court file unless needed to identify the place of the crime. ____

End True/False

- Q. 71. Give two examples of what expenses can be paid out of the Crime Victims' Compensation Fund. _____

- Q. 72. Where can you obtain information on the Crime Victims' Compensation Fund? ____

D. Special Issues in Domestic Violence

All participants of the criminal justice system, including police, prosecutors, clerks, and judges have a critical role to play in deterring domestic violence. Unfortunately, the system's traditional response has been one of nonintervention unless severe injury or death results. Reflecting the general attitudes held by society, the system has viewed domestic violence as a private family matter and not a criminal issue. In the past, offenders were rarely arrested or convicted of their crimes, and victims were given little, if any, protection or support. Typically, a preoccupation existed with the victim's choices and responsibilities rather than those of the perpetrator.

In recent years, the trend has shifted to a tougher stance against domestic violence. In fact, the definition of "domestic violence" is expanding beyond the definition of spouses, to include former partners in a marriage or dating relationship. Sec. 71.0021, F.C. Arrests and prosecution of offenders are more common. Increasingly, prosecutors are encouraging women to proceed with their cases, and fewer misdemeanor cases are being dismissed. Victim advocates serve as a link between the system and the victim.

What Can the Court Do?

- Provide brochures on personal safety plans.
- Explain how the criminal justice system works, specifically emergency protection orders, if issued.
- Be aware of community resources for referrals - victims' advocates, crisis centers, battering intervention, anger resolution, and private counseling.
- Distribute literature in your court about location of shelters.
- Provide leadership in the court to ensure that family violence is effectively managed and the necessary resources are made available.
- Develop a system of priority docketing and disposition.
- Provide the victim with a secure area while waiting for case to be called.

Most of the cases involving domestic violence seen by municipal judges involve them in their capacity as magistrates. In this capacity, judges handle the warnings and clerks process the accompanying paperwork for the following offenses associated with family violence: assault; sexual assault; aggravated assault; aggravated sexual assault; kidnapping; injury to a child, elderly individual, or invalid; abandoning or endangering a child; and violation of protective orders.

In 2001, Section 71.004, F.C., was amended to include "dating violence" into the definition of "family violence."

If an individual has been arrested for a family violence offense, the magistrate may issue an order for emergency protection at the detention hearing. The order prohibits the arrestee from committing family violence or a stalking-related act; communicating directly with a member of the family or household in a threatening or harassing manner; posing a threat to a member of the family or household; or going near the residence, place of employment, business, child care facility, or school where the person protected under the order attends or resides. As of September 1, 2011, pets or assistance animals can be included in the protection order. Sec. 85.021, F.C. Only a magistrate may sign such an order, although it may be initiated on the motion of the judge, prosecutor, victim, or law enforcement. If a victim is not present when an emergency

protection order is issued, the clerk is required to send a copy of the emergency protection order to the victim. Emergency protection orders may last between 31 to 61 days, or in cases of assault involving a deadly weapon, up to 91 days. Art. 17.292(j), C.C.P.

Court support personnel must be careful to maintain a neutral and detached role in family violence situations. They are in the precarious position of providing assistance and support to the victim and the accused through information about court procedures and local resources that can be of assistance to all parties. Although statistics show that 95 percent of the victims are women, all persons accused of a crime, regardless of gender, are considered innocent until proven guilty.

Court support staff is most likely to have contact with victims of violent crimes during the issuance of emergency protection orders in domestic violence situations. Security measures should be adopted in all courts should someone become hostile and require intervention. Municipal courts are ideal locations for distribution of information about domestic violence, the rights of crime victims, and the Crime Victims' Compensation Fund. Public information centers or kiosks should be centrally placed in the court lobby or near the clerk's window.

Q. 73. Describe briefly how the justice system is changing its response to family violence. _

Q. 74. List some things that court support personnel can do to provide information to the public about domestic violence issues. _____

True or False

Q. 75. It is improper for a court clerk to place information about the local battered women's center in the court's public restroom. ____

End True/False

Q. 76. Under Texas law, does the definition of family violence include "dating violence"?

Q. 77. What is an emergency protection order? _____

Q. 78. Who can make a motion for an emergency protection order? _____

Q. 79. Can a clerk issue an emergency protection order? _____

Q. 80. What must be done if the victim is not present when the emergency protection order is signed? _____

E. Witnesses

1. Access to Court

Witnesses with disabilities must be protected under the ADA. Translation and physical accommodation are necessary. The needs of the individual with disabilities must be balanced with the defendant's constitutional right to confront the witness. Have a plan to handle these situations in advance.

2. Decorum

The court may enforce decorum and proper dress to maintain an orderly court. Judges should be careful to separate their personal cultural familiarities or bias from the concept of court decorum. Decorum may be enforced by a posted rule, oral admonishment, reprimand, or in extreme cases, contempt.

3. Retaliation and Security

Witnesses, like victims, have the right to be secure in court and while waiting to testify. Threatening or harming a witness is a third degree felony and should always be reported and investigated.

F. Jurors

Personal information about jury members is confidential and may not be disclosed by the court, prosecuting attorney, or defense attorney except to the qualified news media and any parties to the case. This includes the following information that may have been collected during the jury selection process: juror's home address, home telephone number, social security number, and driver's license number.

The clerk is required to provide a jury handbook to each juror who is required to read it before jury service begins. Sec. 23.202, G.C. Copies of the handbook may be ordered from the State Bar of Texas at 512.463.1463 or 800.204.2222 ext. 2610. Not all rules listed in the handbook apply to municipal courts.

If a juror is deaf or hearing impaired, the juror may request an auxiliary aid or service. The interpreter must be sworn in before performing interpretation. Rule 604, Rules of Evidence. A court procedure brochure will assist deaf persons, but it does not substitute for the services of an interpreter.

While deliberating, the jury may communicate with the court in writing via the presiding juror and bailiff. The court may answer in writing. In a court of record, if the juror disagrees as to the statement of the witness, the juror may apply to the court to have the statement read from the court reporter's notes. Other than in these two situations, no one may converse with the jury while it is deliberating.

Jurors, too, should be free from harm or threat of harm due to their service. To harm or threaten to harm a juror because of their service is a second-degree felony. Sec. 36.06(c), P.C.

True or False

Q. 81. Witnesses do not qualify for accommodation under the ADA. ____

Q. 82. There is a juror handbook that the clerk is responsible for providing to all jurors. ____

- Q. 83. What type of crime is threatening or harming a witness? _____

- Q. 84. A member of the militia requests the home addresses and telephone numbers of jurors who heard his or her traffic case. Do you release this information? _____

True or False

- Q. 85. The clerk may sit in and converse with the jury during its deliberations. _____

End True/False

- Q. 86. You receive a call from the teacher of the daughter of one of the jurors. The daughter has been expelled. Do you interrupt the jury proceedings to inform the juror? _____

PART 2 PROSECUTORS

Prosecutors are essential participants in municipal courts, while not actually part of the court personnel. The prosecutor in municipal court is a city attorney or deputy city attorney or the county attorney acting without compensation. Art. 45.201, C.C.P. The county attorney prosecutes appeals from non-record municipal courts, unless the county attorney consents to the appeal being prosecuted by the municipal prosecutor. In courts of record, appeals are conducted by city prosecutors.

The prosecutor makes ultimate decisions on who to charge, matters concerning witnesses, and which cases to prosecute. The exact wording of complaints is within the providence of the prosecutor, as are decisions concerning the number and nature of complaints. The prosecutors must also decide which witnesses to subpoena and in which order they testify. Except where explicitly permitted by statute or rule of law, cases may not be dismissed without a motion by the prosecution.

Since the prosecutor represents the State, discussions by the prosecutor and court personnel about the merits of a case outside of the presence of the defendant and/or his or her counsel are ex parte and unethical. The prosecutor represents the people of the State of Texas, not the judge or the court.

Attempts to control or “straighten out” the prosecutor, outside of proper rulings on the law and requiring decorum, have led to public sanctions of judges. Although the State does not have the same rights that are accorded to a criminal defendant, the prosecutor does have the right to independence and the right to the judge’s timely, patient, and well-studied rulings.

True or False

- Q. 87. Only county attorneys can prosecute traffic cases in municipal courts. _____
- Q. 88. The prosecutor makes decisions about who to charge and what cases to dismiss. _____
- Q. 89. Judges may dismiss cases anytime they determine it is necessary. _____
- Q. 90. The prosecutor may discuss a case with a judge before trial. _____

PART 3 COURT STAFF ISSUES

A. Sexual Harassment

Although sexual harassment is usually viewed as a problem between employees or a supervisor and a worker, it can occur in court as well. Sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. It usually involves submission to unwelcome sexual conduct. A hostile environment may be created if unwelcome sexual conduct creates an intimidating, hostile, or offensive working environment. A clerk should immediately notify his or her supervisor and/or judge if he or she is experiencing harassment by an employee, court or city official, attorney appearing in court, or member of the public. Incidents related to harassment of a defendant, victim, or witness should also be reported.

Q. 91. What is sexual harassment? _____

Q. 92. What should a clerk do if he or she observes or experiences sexual harassment?

B. Discrimination

Judges and court managers have an obligation to examine their hiring, promotion, and firing practices to ensure that they do not have the effect of discriminating against groups or persons. They should take positive steps to recruit, hire, train, and promote qualified employees or previously excluded groups to correct under-representation in traditionally segregated job categories and to ensure equal representation of all groups in the work force.

Another way of looking at how the court works with the variety of people who appear daily before it, is through diversity. People differ on many dimensions, from permanent characteristics such as race and gender, to factors which are subject to change such as skills, educational level, status, and income. Each person's unique attributes or diverse characteristics enrich the blend of court staff and contribute to better serving a diverse population in the court.

The Americans with Disabilities Act (ADA) also covers employees and hiring practices. The following are key terms that one must know to understand the ADA:

- *A qualified person with a disability* is an individual who, with or without reasonable accommodation, can perform the essential functions of the job that the individual desires to have or currently holds.
- *Essential functions of the job* are the fundamental duties of the position. The term does not include marginal functions of the job.
- *Reasonable accommodations* are modifications or adjustments to a job or to the work environment that enable a qualified applicant or employee with a disability to perform the essential job functions. Reasonable accommodations must be designed to meet the individual's needs. Examples of reasonable accommodations include making physical changes to the work environment, restructuring jobs, modifying schedules, or providing

qualified readers. Accommodations are considered reasonable unless the court can prove they would impose an “undue hardship” (a significant expense or difficulty).

The ADA does not require that persons with disabilities be hired or promoted before other qualified employees without disabilities. Applicants or employees with disabilities must satisfy the requisite skills, experience, education, and other job-related requirements of the position.

The ADA makes it illegal for employers (including courts) to discriminate against otherwise qualified persons and requires employers to make reasonable accommodations so that persons who are disabled may perform their jobs. Title I applies to any employers with 15 or more employees.

The following is a list that will help court managers with administrative hiring authority.

- Review and revise application procedures, hiring, promotion, termination, compensation, job training, and other terms of employment to ensure that “otherwise qualified” applicants or employees are not subjected to disability discrimination.
- Explicitly define the essential tasks of a particular job. Evidence that a function is “essential” may include the employer’s judgment, written job descriptions, the amount of time spent on the job performing a function, the consequences of not requiring the individual to perform a specific function, and the work experiences of past employees or incumbents.
- Train interviewers (judges, managerial personnel, court administrators, human resource specialists) to ask “essential function-related” questions in the interview.
- Educate other managers, judges, and employees about how to work with employees with disabilities and the requirements for public accommodation (accessibility to court services).

Courts, like other employers, must take steps to ensure compliance with ADA and to avoid charges of discrimination against an individual with a disability.

Q. 93. Explain the concept of diversity in court management. _____

Q. 94. What does the ADA stand for? _____

PART 4

“COURTING” COURT CUSTOMERS & DIFFICULT DEFENDANTS

A. Customer Service

Some courts have adopted a management philosophy of treating all users of the court system as customers. The “courting” court customers concept grew out of court efforts to reinvent government by improving public sector operations and customer service. As part of a quality management movement, staff members are trained to identify customers and their needs and taught methods for improving court procedures. For a municipal court, customers or “end-users” include defendants, victims, witnesses, prosecutors, defense lawyers, bail bondsmen, and jurors.

For more information on the difference between legal advice and legal information, see TMCEC Level II, *Ethics*, Part 3.

In offering those who appear in court the courtesy that a business might offer its clients or customers, a court clerk must be careful to never offer legal advice which might subject the city to liability and the clerk to charges of unauthorized practice of law.

B. Liability and Immunity

Liability and immunity are legal concepts that are most often litigated under Title 42 of the United States Code, Section 1983, Civil Action for Deprivation of Rights. This allows lawsuits to be brought against officials and employees of the states and their political subdivisions in federal or state court. There are four types of lawsuits that can be filed against judges and court personnel under Section 1983:

- A suit for money damages for past wrongs in an official capacity.
- A suit for money damages in an individual or personal capacity.
- A suit for injunctive or declaratory relief in an official capacity.
- A suit for injunctive or declaratory relief in an individual or personal capacity.

A judgment against an officer or city employee in an official capacity imposes liability on the city as long as the city's policy or custom was involved. For an aggrieved party to prevail and collect damages for an alleged violation of Section 1983, the party must establish: 1) that there is deprivation of a right, privilege, or immunity secured by federal law, and 2) that the defendant committed the deprivation while acting under a statute, ordinance, regulation, or practice of a state or a political subdivision of the state including municipalities.

A judge under certain circumstances is afforded judicial immunity from personal liability for lawsuits brought against the judge in his or her individual capacity under Section 1983. As a general rule, judicial immunity is accorded only for "judicial acts" that are not clearly in excess of the judge's jurisdiction. Administrative and executive acts, such as the hiring and firing of personnel, are not judicial acts and are not entitled to judicial immunity although some lesser immunity may apply.

Q. 95. List five end-users in municipal courts. _____

True or False

- Q. 96. Under the "quality" or "courting court customers" management theory, once a defendant has been found guilty, he or she should be treated as a criminal and no longer as a court customer. ____
- Q. 97. A court clerk should be prepared to give out legal advice in English and Spanish. ____
- Q. 98. It is the judge's role to make sure a person is notified if a member of a militant group files a false lien against him or her. ____
- Q. 99. If the defendant refuses to enter a plea or waive a jury trial, the clerk should enter a plea of guilty and sentence him or her. ____
- Q. 100. Judicial immunity only covers judicial acts, not ministerial duties of the clerk. ____
- Q. 101. Cities can be held liable for procedural errors made by court clerks following city policy. ____

CONCLUSION

Public compliance with the law is dependent on public respect for the courts. The court should be perceived as accessible to all. Because courthouses represent fairness and equity to citizens, the court must make every effort to maintain public confidence in this system of justice.

ANSWERS TO QUESTIONS

PART 1

- Q. 1. False.
- Q. 2. False.
- Q. 3. True.
- Q. 4. False.
- Q. 5. True.
- Q. 6. True.
- Q. 7. True.
- Q. 8. The right to notice of the charges against the accused; the right to fair trial; and the right to a neutral and fair magistrate.
- Q. 9. The right to a speedy trial; the right to a public trial; the right to a fair and impartial jury; the right to counsel; the right to remain silent and to not give evidence against one's self; the right to the presumption of innocence; and the right to have the State prove each element of an offense beyond a reasonable doubt.
- Q. 10. True.
- Q. 11. False.
- Q. 12. False.
- Q. 13. False.
- Q. 14. True.
- Q. 15. True.
- Q. 16. False. The law governing recusal and disqualification procedures changed in 2011 with the enactment of Subchapter A-1, Chapter 29 G.C..
- Q. 17. False.
- Q. 18. Two years.
- Q. 19. The judge is disqualified as a matter of law when a judge is the injured party; has been counsel for the State or the accused; or is connected to the accused or the party injured by consanguinity or affinity within the third degree as determined under Chapter 573, G.C.
- Q. 20. False.
- Q. 21. False.
- Q. 22. False.
- Q. 23. True.
- Q. 24. True.
- Q. 25. True.
- Q. 26. True.
- Q. 27. The Texas Rules of Evidence.
- Q. 28. The defendant is invoking the right against self-incrimination.
- Q. 29. The State must prove each element of the offense of the charge beyond a reasonable doubt.

- Q. 30. It guarantees protection against unreasonable searches and seizures.
- Q. 31. This rule excludes evidence obtained from unreasonable searches and arrests.
- Q. 32. A claim that a defendant was personally subjected to unreasonable police conduct.
- Q. 33. It affords equal protection of the law to all persons.
- Q. 34. Answers may include:
- bias pervades the entire legal system;
 - minorities receive disparate treatment and harsher sentences;
 - a lack of uniformity exists in prosecutorial decision-making in criminal cases involving minority persons;
 - some law enforcement officials treat minorities with disrespect and engage in offensive behavior toward them;
 - the quality of justice delivered to minority litigants who require interpreters for legal proceedings is adversely impacted by the lack of sufficient competent and trained interpreters in the court system;
 - minorities are underrepresented on juries;
 - some judges, lawyers, and other officers of the court and court staff members make offensive remarks and demonstrate biased attitudes toward minorities appearing in court;
 - minorities do not have access to rehabilitative programs as readily as other defendants; and
 - the criminal justice system provides inadequate protection, access, support, and services to minority crime victims.
- Q. 35. Municipal court personnel should examine their policies and practices for evidence of bias in their courts. Court assessments of how minorities are treated in the following areas can be formally or informally conducted by court personnel:
- wait time at the window;
 - pretrial detention, bail, and charging decisions;
 - sentencing decisions, such as the use of deferred disposition and time payments;
 - composition of juries; and
 - ethnic make-up of court employees.
- Q. 36. Race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.
- Q. 37. True.
- Q. 38. True.
- Q. 39. False.
- Q. 40. True.
- Q. 41. False.
- Q. 42. False.
- Q. 43. False.

- Q. 44. False.
- Q. 45. Those with hearing disabilities.
- Q. 46. Independent languages, such as American Sign Language; speech-equivalent-signing systems; and finger-spelling systems.
- Q. 47. Only 26 percent of speech can be understood through lip-reading.
- Q. 48. Persons who do not have a systematic way of communication and need relay or intermediary interpreters.
- Q. 49. These may include reducing noise from fans, air conditioners, outside traffic or construction and typing in an adjacent room.
- Q. 50. A court reporter keys in the testimony or questions, which then can be read on a personal computer.
- Q. 51. The judge, clerk, notary public, or any other person authorized by law.
- Q. 52. The Commission for the Deaf and Hard of Hearing.
- Q. 53. False.
- Q. 54. True.
- Q. 55. False.
- Q. 56. False.
- Q. 57. False. (All municipal courts must comply.)
- Q. 58. True.
- Q. 59. False.
- Q. 60. A person with a disability:
- has a physical or mental impairment that substantially limits one or more of the individual's major life activities;
 - has a record of such an impairment; or
 - is regarded as having such an impairment.
- Q. 61. Always refer to the person first and the disability, when necessary, second.
- Q. 62. This answer may include high public counters, water fountains, and telephones; no accessible elevators; stairs instead of ramps; and inaccessible restrooms.
- Q. 63. Judge's bench, jury boxes, witness boxes, counsel table, public seating, and microphones.
- Q. 64. The accessibility ombudsman may assist in arranging reasonable individualized accommodations such as making physical changes to the work environment, restructuring jobs, modifying schedules, or providing qualified readers.
- Q. 65. The National Center for State Courts.
- Q. 66. False.
- Q. 67. False.
- Q. 68. True.
- Q. 69. True.
- Q. 70. True.
- Q. 71. Medical bills and counseling services.

- Q. 72. The Texas Attorney General's Office.
- Q. 73. The treatment of family violence is no longer viewed as a family matter, but rather as a criminal matter for the courts. Interventions, counseling as a condition of bond, and emergency protection orders are examples of responses that courts can offer to help deter the abuse.
- Q. 74. Court support personnel can provide the following information to the public about domestic violence issues:
- brochures on personal safety plans;
 - brochures explaining how the criminal justice system works, specifically emergency protection orders, if one is issued;
 - community resources for referrals: victims' advocates, crisis centers, battering intervention, anger resolution, and private counseling;
 - literature in the court about the location of shelters;
 - leadership in the court to ensure that family violence is effectively managed and the necessary resources are made available;
 - discuss a system of priority docketing and disposition with the judge; and
 - a secure area for victims while waiting for cases to be called.
- Q. 75. False.
- Q. 76. Yes.
- Q. 77. A court order that prohibits the arrestee from committing family violence, stalking, communicating directly with or threatening the victim or a member of her family, going near the residence, place of employment, business, child care facility, or school where the person protected under the order reside or attend.
- Q. 78. Any of the following: a victim; a guardian of the victim; a police officer; a prosecutor; or a magistrate. Art. 17.292, C.C.P.
- Q. 79. No. This magisterial function must be performed by a judge or magistrate.
- Q. 80. The clerk must mail him or her a copy.
- Q. 81. False.
- Q. 82. True.
- Q. 83. Third degree felony.
- Q. 84. No.
- Q. 85. False.
- Q. 86. No.
- PART 2**
- Q. 87. False.
- Q. 88. True.
- Q. 89. False.
- Q. 90. False.

PART 3

- Q. 91. Sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that usually involves submission to unwelcome sexual conduct and creates an intimidating, hostile or offensive working environment.
- Q. 92. A clerk should immediately notify his or her supervisor and/or judge if he or she is experiencing harassment by an employee, court or city official, attorney appearing in court, or member of the public.
- Q. 93. Because people differ from permanent characteristics such as race and gender, to other factors, such as skills, education level, parental status, and income, a positive attitude toward each person's unique attributes or characteristics will enrich the blend of the court staff, and enhance its capacity to better serve a diverse population.
- Q. 94. Americans with Disabilities Act

PART 4

- Q. 95. End-users include: defendants; victims; witnesses; prosecutors; defense lawyers; bail bondsmen; jurors; citizens; and judges.
- Q. 96. False.
- Q. 97. False. (Clerks are not ever allowed to give legal advice unless they are licensed to practice law.)
- Q. 98. False. (It is the clerk's responsibility.)
- Q. 99. False. (The judge should enter a plea of "not-guilty" and schedule a jury trial.)
- Q. 100. True.
- Q. 101. True.