

# Applying Criminal Codes

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## INTRODUCTION

Most court procedures, processes, and offenses can be found in two criminal codes: the Code of Criminal Procedure and the Texas Penal Code. To determine if a statute in the codes applies to all courts or to a court other than a municipal court, clerks need a basic understanding of the Code Construction Act, which helps courts interpret statutes. This chapter provides an overview of the Code of Criminal Procedure, the Penal Code, and the Code Construction Act. Although some of the content will look familiar, the practice questions will help apply what has already been covered. Short summaries of the relevant codes covered in depth elsewhere are included here for quick reference.

### PART 1 CODE CONSTRUCTION ACT

#### A. Purpose

The Code Construction Act, found in Chapter 311 of the Government Code (G.C.), applies to all laws passed since the 60th Legislative Session, including amendments, repealed sections, revisions, or reenactments of all provisions of Texas statutes. The purpose of the Code Construction Act is to help courts ascertain and appropriately enforce the legislative intent of statutes. Courts do not have the power to legislate, but they do have a duty to adhere to statutory provisions and rules. The Code Construction Act helps courts reasonably construe statutes so that they implement procedures, follow rules, and properly handle cases in accordance with general principles of law.

#### B. Code Construction Act Rules

##### 1. Words and Phrases

According to the Code Construction Act, words and phrases should be read in context and interpreted according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, are read to include that meaning. Sec. 311.011, G.C. Moreover, Article 3.01 of the Code of Criminal Procedure states that words, phrases, and terms used in the Code of Criminal Procedure are to be used and understood in typical common language, except where specifically defined.

##### 2. Tense, Number, and Gender

When reading a statute, words in the present tense are intended to also include the future tense. Singular words include the plural and vice versa. Words of one gender are also meant to include the other genders. Sec. 311.012, G.C.

##### 3. Counting Days and Months

The general rules for the computation of time are explained below.

###### a. Days

When computing a period of days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday. Sec. 311.014(a) and (b), G.C.

Section 311.014 governs municipal court procedures, such as appeals, which have time deadlines. For example, defendants convicted at trial in a municipal court of record must file an appeal bond with the court within 10 days. In calculating the deadline, the court would not count the first day—the day judgment was entered—but would count the last day unless it fell on a Saturday, Sunday, or a legal holiday. If the last day fell on one of those days, the 10-day period would be extended to include the next working day of the court.

For example, if the trial and conviction occurred and judgment was entered on a Wednesday, the 10th day would fall on a Saturday. Thus, the defendant would have until the following Monday to give notice of an appeal and post an appeal bond, unless Monday was a legal holiday, in which case the deadline would be extended to the next day which was not a legal holiday.

## **b. Months**

By contrast, when computing months by counting a set number of months from a particular day, the period ends on the same numerical day of the final month as the day of the month from which the counting begins. If there are not that many days in the concluding month, then the period ends on the last day of the concluding month. Sec. 311.014(c), G.C.

## **4. Reference to a Series**

If a statute refers to a series of numbers or letters, the first and last numbers or letters are included. Sec. 311.015, G.C.

## **5. Intention in Enactment of Statutes**

In enacting a statute, it is presumed that:

- there is compliance with the U.S. and Texas Constitutions;
- the entire statute is intended to be effective;
- a just and reasonable result is intended;
- a result feasible of execution is intended; and
- public interest is favored over private interest. Sec. 311.021, G.C.

## **6. Statute Construction Aids**

Section 311.023 provides that whether or not a statute appears on its face to be ambiguous, a court, when interpreting statutes, may consider among other matters the:

- object or purpose sought to be achieved;
- circumstances under which the statute was enacted;
- legislative history;
- common law or former statutory provisions, including laws on the same or similar subjects;
- consequences of a particular construction;

- administrative construction of the statute; and
- title (caption), preamble, and emergency provision.

However, the Texas Court of Criminal Appeals has held that in discerning legislative intent or purpose, they focus on the literal text of the statute in question because “it is the only thing actually adopted by the legislators, probably through compromise, and submitted to the Governor for [his] signature.” *Boykin v. State*, 818 S.W.2d 782 (Tex. Crim. App. 1991). The Court held that “although Section 311.023 of the Government Code invites, but does not require, courts to consider extra-textual factors when the statutes in question are not ambiguous, such an invitation should be declined.” *Id.* Under this line of reasoning, the Court of Criminal Appeals will only look to the factors described by Section 311.023 if the statute in question is ambiguous.

## 7. Statute Heading

When researching a particular topic in any code, the chapter, article, and section headings can aid in finding certain information. The title headings, however, are not intended to limit or expand the meaning of a statute. Sec. 311.024, G.C. For example, Article 27.14 of the Code of Criminal Procedure is titled “Plea of Guilty or Nolo Contendere in Misdemeanor.” The heading seems to imply that only rules on those two pleas are contained in the statute, but the statute also provides guidance on the filing of a sworn complaint when a plea of not guilty is entered.

## 8. Severability of Statutes

Severability provisions, or savings clauses, save part of a statute when other parts are declared unconstitutional. Section 311.032 provides that “if a statute contains a provision for severability, that provision prevails in interpreting that statute.” Therefore, should a court declare part of a statute containing a severability provision unconstitutional, the other parts would still be valid if they are self-sustaining and capable of separate enforcement without regard to the invalid portion. Some statutes have a provision for non-severability, which means that if part of the statute is declared unconstitutional, the whole statute is invalid. Other statutes do not contain severability clauses. If any provision of one of those statutes or their application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute if the provisions can be effective without the invalid provisions or application. Sec. 311.032(c), G.C. Hence, the provisions of those statutes that are not held invalid are severable.

An example in which a court declared an entire act unconstitutional is *Meshel v. State*, 739 S.W.2d 246 (Tex. Crim. App. 1987). This case held that the “Speedy Trial Act” (Chapter 32A of the Code of Criminal Procedure) was entirely unconstitutional. Hence, no portion of Chapter 32A could be enforced. Eighteen years later, in 2005, the Legislature finally repealed Chapter 32A. It should be noted, however, that municipal court defendants still have a constitutional right to a speedy trial.

Since case law interprets statutes or declares statutes or portions of statutes unconstitutional, it is important to research all sources of law when trying to determine how to interpret or apply a certain statute.

## 9. Latest in Date of Enactment

The Legislature has the opportunity to change all codes, including the Code of Criminal Procedure and Penal Code, each time it convenes. If two laws conflict, but one is more recent than the other, the more recent law applies. Sec. 311.025(a), G.C. This is referred to as the “date rule.”

If amendments to the same statute are enacted at the same session, the amendments shall be harmonized if possible so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails. Sec. 311.025(b), G.C.

Thus, as entire statutes are intended to be effective and a result feasible of execution is intended, courts should first attempt to reconcile amendments. If the statutes or amendments are so conflicting that they cannot be harmonized, then courts must look to the date of enactment to determine which statute/amendment prevails. Generally, the date of enactment is the date on which the last legislative vote is taken on the bill. Sec. 311.025(d), G.C. Conflicting statutes and amendments are not a rarity; there is a need to determine the latest in date of enactment between conflicting bills almost every session.

## **10. General vs. Specific Statutes**

General statutes are ones that apply to all courts unless there is a specific statute that makes an exception. Article 45.002 of the Code of Criminal Procedure provides that municipal court proceedings are to be conducted according to the rules in Chapter 45. If, however, there is not a rule in Chapter 45 that applies, the court must apply other general provisions in the Code of Criminal Procedure to ensure that the objectives of Chapter 45 are met. Within Chapter 45 or even outside of the Code of Criminal Procedure altogether, whenever two provisions seem to cover the same topic and one is specific to municipal court, the court must follow the specific provision. Section 311.026(a) provides that if a general provision conflicts with a special or local provision, the provisions shall be interpreted, if possible, to give effect to both. But, if the conflict is irreconcilable, the special or local provision prevails as an exception to the general provision. Sec. 311.026(b), G.C. This is referred to as the “rule of the specific.”

The following list gives examples of this “rule of the specific” using Chapter 45 of the Code of Criminal Procedure and its rules that apply specifically to municipal courts but not to county or requesting courts.

- Articles 27.01 and 45.018 of the Code of Criminal Procedure provide rules regarding charging instruments. Article 27.01 states that the primary pleading (charge) in a criminal action by the State is the indictment or information. Article 45.018 provides that a complaint is a sworn allegation charging the accused with the commission of an offense. Since Article 45.018 is in the specific chapter for municipal and justice courts, municipal court defendants are charged by complaint instead of by indictment or by information.
- Articles 45.019(b) and 45.019(c) of the Code of Criminal Procedure provide rules regarding complaints. Article 45.019(b) provides that a complaint filed in justice courts must allege that the offense was committed in the county in which the complaint was made. Article 45.019(c) provides that a complaint filed in municipal courts must allege that an offense occurred in the territorial limits of the city.
- Article 35.15(c) and 45.029 of the Code of Criminal Procedure provide rules on peremptory challenges. Article 35.15(c) provides that in misdemeanor cases both the State and the defendant are entitled to five peremptory challenges each. Article 45.029 provides that the State and defendant are each entitled to three peremptory challenges in municipal court jury trials. Because the latter provision is in Chapter 45, it controls in municipal courts.

- Articles 35.01 and 45.027(c) of the Code of Criminal Procedure provide rules regarding a juror’s failure to appear. Article 35.01 specifies a fine of not less than \$100 or more than \$500. Article 45.027(c) specifies a fine not to exceed \$100. Because the latter provision is located in Chapter 45, municipal courts must follow it.
- Articles 35.23 and 45.034 of the Code of Criminal Procedure provide rules for juries. Article 35.23 provides authority for a court to permit jurors to separate before a verdict in a misdemeanor. Article 45.034 states that a jury in municipal court is to be kept together until it agrees to a verdict, is discharged, or the court recesses.
- Section 311.014 of the Government Code and Article 45.013 of the Code of Criminal Procedure provide rules for computation of time. Section 311.014 states that the computation of time does not exclude Saturdays, Sundays, or legal holidays unless the last day of the period falls on one of those days. Municipal courts, however, have a specific provision regarding the filing of documents by mail. Article 45.013 provides that a document is timely filed if it is mailed first class in a postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed. The clerk must receive the document within 10 days after the date the document is required to be filed with the clerk. Article 45.013 defines “day” not to include Saturdays, Sundays, or legal holidays. That specific provision prevails for items received by mail.
- Section 38.10 of the Penal Code [Failure to Appear (FTA)] creates an offense for defendants who fail to appear to answer for a criminal charge, assuming additional elements are met, while Section 543.009 of the Transportation Code [Violate Promise to Appear (VPTA)] creates an offense for defendants who fail to appear to answer for a Rules of the Road offense. As VPTA is a more specific charge, if the defendant could be charged with VPTA, then the defendant must be charged with that specific offense over the general offense of FTA.

An example of a general statute is Article 35.16 of the Code of Criminal Procedure, which provides reasons for why a judge may grant a motion to remove a juror for cause. This statute does not state specifically that it applies to municipal courts, but because Chapter 45 does not provide specific rules on this subject, Article 35.16 will apply to all courts.

Another example of a general statute is Article 17.38 of the Code of Criminal Procedure, which states that the rules in Chapter 17 (regarding appearance bonds) apply to any court, judge, magistrate, or other officer who requires bail of a person accused of an offense or of a witness in a criminal action. Since Chapter 45 does not contain specific rules for setting appearance bonds, municipal judges must use Chapter 17 rules for setting bonds. Chapter 45 does, however, have specific rules regarding appeal bonds for convictions being appealed from municipal court.

1.	What is the purpose of the Code Construction Act? _____ _____
2.	Where is the Code Construction Act located? _____ _____

3. How are statutes to be interpreted? \_\_\_\_\_  
\_\_\_\_\_

4. How does the Code Construction Act require that words and phrases be interpreted? \_\_\_\_\_  
\_\_\_\_\_

5. How are words with a technical or particular meaning to be interpreted? \_\_\_\_\_  
\_\_\_\_\_

6. Summarize the Code Construction Act rules regarding tense, number, and gender. \_\_\_\_\_  
\_\_\_\_\_

7. Explain the Code Construction Act rule for the computation of time. \_\_\_\_\_  
\_\_\_\_\_

8. What is presumed when a statute is enacted? \_\_\_\_\_  
\_\_\_\_\_

9. List the statute construction aids in Section 311.023 of the Government Code. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. When are the statute construction aids to be used according to the Court of Criminal Appeals?  
\_\_\_\_\_  
\_\_\_\_\_

True or False

11. The Code Construction Act applies to all current statutes. \_\_\_\_\_

12. The heading of a statute limits the meaning of the statute. \_\_\_\_\_

13. If part of any statute is unconstitutional, the rest of the statute is also invalid. \_\_\_\_\_

14. Since case law interprets statutes, courts should research all sources of law when determining how to administer statutes. \_\_\_\_\_



15. Chapter 45 of the Code of Criminal Procedure is an example of a chapter containing specific statutes. \_\_\_\_\_
16. Documents mailed to the municipal court must follow the specific rule in Chapter 45 for filing documents through the mail. \_\_\_\_\_
17. Chapter 17 of the Code of Criminal Procedure, which provides rules for bonds, contains general statutes that apply to all courts. \_\_\_\_\_
18. What is a severability clause commonly called? \_\_\_\_\_
19. What is the purpose of a severability provision? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
20. Define the “date rule.” \_\_\_\_\_  
 \_\_\_\_\_
21. What does latest in date of enactment mean? \_\_\_\_\_  
 \_\_\_\_\_
22. Define general statutes. \_\_\_\_\_  
 \_\_\_\_\_
23. Define the “rule of the specific.” \_\_\_\_\_  
 \_\_\_\_\_

**PART 2**  
**CODE OF CRIMINAL PROCEDURE**

**A. Introduction to the Code of Criminal Procedure**

The Code of Criminal Procedure is a collection of statutes governing procedures in criminal investigations and trials. Texas criminal cases have been conducted using a code of procedure since 1925. Throughout the years, the Texas Legislature has added new rules, changed existing rules, and repealed rules. In 1965, the Legislature restructured previous codes and created the Code of Criminal Procedure, and the basic format has remained the same since. The present code constitutes the law that must be applied in criminal cases, including fine-only misdemeanor cases in municipal court.

Article 1.03 sets out the code’s intent, provides objectives, and establishes rules for the prevention and prosecution of crimes in Texas:

- adopt measures to prevent crime;
- create rules to prevent criminals from escaping;

- set out trial procedures;
- make available as much evidence as possible;
- guarantee guidelines for fair and impartial trials; and
- provide rules to make sure sentences are properly executed.

The code is divided into two parts, which are further divided into chapters and articles containing definitions, procedures, and rules pertaining to investigations, trials, and appeals. The code applies to criminal cases in all criminal courts: the Court of Criminal Appeals, the courts of appeal, district courts, county courts, county courts at law with criminal jurisdiction, county criminal courts, magistrates appointed in certain counties, justice of the peace courts, and municipal courts. Art. 4.01, C.C.P.

24.	What types of investigations and trials does the Code of Criminal Procedure govern? _____ _____
25.	List the objectives of the Code of Criminal Procedure. _____ _____ _____
26.	List the courts that the Code of Criminal Procedure applies to. _____ _____ _____

**B. Structure of the Code of Criminal Procedure**

The Code of Criminal Procedure is divided into two parts—Title I and Title 2.

**1. Title I**

The specific provisions of Title I are listed here by chapter groupings.

- Introductory Provisions (Chapters 1-3): These chapters list objectives of the code; defendants’ rights; duties of peace officers, prosecutors, magistrates, investigators, and clerks; and other general provisions, including those on racial profiling.
- Courts and Criminal Jurisdiction (Chapter 4): This chapter lists the criminal courts, along with crimes that may be tried in each court. Municipal court jurisdiction is found in Article 4.14.
- Prevention and Suppression of Crimes (Chapters 5-10): These chapters involve family violence and protective orders, peace bonds, and suppression of riots. The previous Chapter 10, regarding obstructions of public highways, was repealed and relocated to Chapter 473 of the Transportation Code.

- Habeas Corpus (Chapter 11): This chapter contains provisions relating to writs of habeas corpus, which are issued when someone is held in jail or under restraint without adequate probable cause.
- Limitation and Venue (Chapters 12 and 13): These chapters provide time periods, or limitations, by which a person must be charged with an offense as well as provisions on venue, which is the location where a particular offense must be prosecuted. The time limitation is commonly called the “statute of limitations.”
- Arrest, Commitment, and Bail (Chapters 14-17): These chapters govern arrests without warrants, arrests with warrants, examining trials, magistrate warnings, and bail.
- Corporations and Associations (Chapter 17A): This chapter discusses the criminal responsibility of corporations and associations.
- Search Warrants (Chapters 18-18B): These chapters contain rules relating to search warrants, including blood draws, with specific provisions for disposing of abandoned or unclaimed property, paraphernalia, and weapons; detection, interception, and use of communications; and installation and use of tracking equipment.
- After Commitment or Bail and Before the Trial (Chapters 19-31): These chapters contain provisions relating to grand juries; indictments and information; bond forfeitures; capiases, summons, subpoenas, and writs of attachment; arraignment; pleadings in a criminal case, including the defendant’s plea and any motions; continuances; and venue changes.
- Trial and Its Incidents (Chapters 32-39): These chapters contain provisions about trials, including whether a defendant must be present for trial, bail during trial, the criminal docket, and special rules relating to capital murder cases. Also included in these chapters are rules concerning the formation of the jury, such as qualifications of a juror, who may be excused, and how voir dire (jury selection) should be conducted. Chapter 32 contains provisions on the dismissal of cases. Chapter 36 contains provisions for trial procedures, including order of argument, jury charge, and jury deliberations. Chapter 37 contains rules about the verdict. Chapter 38 contains evidence rules applicable to criminal cases. (A separate collection of rules called the Texas Rules of Evidence also applies to criminal trials.) Chapter 39 contains rules for taking depositions and handling motions for discovery.
- Proceedings after the Verdict (Chapters 40-43): These chapters contain rules for handling motions for new trial, judgments, pronouncing sentences, adult probation laws, and execution of the judgment by paying fines or by imprisonment.
- Appeal and Writ of Error (Chapter 44): This chapter contains rules for appeals, which includes some rules for municipal court appeals, though most rules governing municipal court appeals are in Chapter 45.
- Justice and Municipal Courts (Chapter 45): This chapter provides specific rules for justice and municipal courts. It includes rules for complaints, warrants, docketing, pleas, trials, judgments, new trials, appeals, capias pro fines, deferred disposition, driving safety courses, and special handling provisions for persons under the age of 17.

Clerks should become familiar with this chapter and always look first to Chapter 45 when researching any municipal court procedure.

- **Miscellaneous Proceedings (Chapters 46-67):** These chapters contain provisions not usually affecting municipal courts, including: the defense of insanity; incompetence to stand trial; disposition of stolen property; forfeiture of contraband; criminal history record system; pardons and parole; inquests; fugitives from justice; courts of inquiry; gang, sex offender, and missing persons/children databases; and AIDS/HIV and DNA testing. Chapter 55 provides for expunction rights applicable to municipal courts of record and other courts. Chapter 56 provides for the rights and compensation of victims of crime, while Chapters 57, 57A, 57B, 57C, and 57D provide for confidentiality of sex offense, family violence, child, and human trafficking victims.

## 2. Title 2

Title 2 contains four chapters: 101 through 104. These chapters relate to costs, collection of costs, recordkeeping, and private and public vendor collection contracts. Some provisions relate directly to justice and municipal courts.

- **General Provisions (Chapter 101):** This chapter contains the purpose of Title 2, provides that the Code Construction Act applies to the construction of Title 2, and general provisions about references to chapters and articles.
- **Costs Paid by Defendants (Chapter 102):** This chapter provides for fees and certain court costs. Not all the fees are applicable to municipal courts, but the following fees are:
  - reimbursement fees for services of peace officers (Articles 102.001 and 102.011);
  - fees in expunction proceedings (Article 102.006);
  - fines for Child Safety Fund (Article 102.014);
  - Municipal Court Building Security Fund (Article 102.017); and
  - Municipal Court Technology Fund (Article 102.0172)
- **Collection and Recordkeeping (Chapter 103):** This chapter contains provisions for the collection and recordkeeping of certain court costs. It provides authority for a municipality to enter into a contract for collection of fines, fees, restitution, and failures to appear that are more than 60 days past due.
- **Certain Expenses Paid by State or County (Chapter 104):** This chapter provides for paying certain jury, prisoner, and prosecution expenses. This chapter does not apply to municipal courts.

27. Explain the basic format of the Code of Criminal Procedure. \_\_\_\_\_

28. Where in the Code of Criminal Procedure can municipal courts find their jurisdiction? \_\_

- \_\_\_\_\_
29. Where in the Code of Criminal Procedure are the rules regarding the statutes of limitation?  
\_\_\_\_\_  
\_\_\_\_\_
30. Where in the Code of Criminal Procedure can you find criminal responsibility of corporations and associations? \_\_\_\_\_
31. Where in the Code of Criminal Procedure are most rules found governing municipal court appeals? \_\_\_\_\_
32. What is the title of Chapter 45 of the Code of Criminal Procedure? \_\_\_\_\_  
\_\_\_\_\_
33. What information is contained in Chapter 101 of the Code of Criminal Procedure? \_\_\_\_\_  
\_\_\_\_\_
34. Which fees in Chapter 102 of the Code of Criminal Procedure are applicable to municipal court proceedings? \_\_\_\_\_  
\_\_\_\_\_
35. In which chapter of the Code of Criminal Procedure is information on collection contracts for fines, fees, and restitution? \_\_\_\_\_

### **C. Provisions that Apply to Municipal Courts**

Although there are many provisions discussed throughout the chapters in this book, the following is a summary of some of the pertinent statutes in the Code of Criminal Procedure that apply to municipal courts.

#### **1. Public Servants**

Article 3.04(2) defines public servants by referring to the definition located in Section 1.07 of the Penal Code, which states that a public servant is a person who is elected, selected, appointed, or employed even if he or she has not yet qualified for office or assumed his or her duties and includes:

- an officer, employee, or agent of the government;
- a juror or grand juror;
- an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy;
- an attorney at law or notary public when performing duties of a governmental function;
- a candidate for nomination or election to public office; or
- a person who is performing a governmental function under a claim of right although he or she is not legally qualified to do so.

Since municipal judges, court clerks, and deputy court clerks are elected, appointed, or employed by a governmental agency, they are public servants.

## **2. Jurisdiction**

Jurisdiction is a court's legal power or authority over certain geographical areas and certain crimes and cases. The municipal courts' jurisdiction is defined in Articles 4.14 and 4.16. Article 4.15 provides that the municipal court may sit at any time to try a criminal case in its jurisdiction.

## **3. Rights of All Defendants**

Municipal court defendants have the same rights as defendants charged in any criminal court in Texas. The following is a listing of some of those rights in the Code of Criminal Procedure.

- Article 1.05: Rights of the Accused. All municipal court defendants have:
  - the right to a speedy public trial by an impartial jury;
  - the right to know the nature and cause of the accusation against them and to have a copy of the complaint;
  - the right not to give evidence against themselves;
  - the right of being heard;
  - the right to be confronted with witnesses against them; and
  - the right to compulsory process (subpoenas) for obtaining witnesses in their favor.
- Article 1.051: Right to Representation by Counsel. All defendants have the right to be represented by counsel, which includes the right to consult in private with counsel sufficiently in advance of a proceeding to allow adequate preparation for the proceeding. An indigent defendant is entitled to have an attorney appointed to represent him or her in any adversarial judicial proceeding that may result in punishment by confinement or in any other criminal proceeding if the court concludes it is in the interest of justice. Thus, municipal court defendants are entitled to hire and consult with counsel and have representation but are not entitled to appointed counsel. The court may, however, appoint counsel for an indigent defendant if the interest of justice requires representation.
- Article 1.06: Searches and Seizures. No warrant to seize any person shall issue without probable cause supported by oath or affirmation.
- Article 1.07: Right to Bail. All prisoners shall be bailable unless for capital offenses when the proof is evident. Thus, all municipal court defendants have a right to bail.
- Article 1.09: Cruelty Forbidden. The judge cannot require excessive bail or impose excessive fines.
- Article 1.10: Jeopardy. No person may be tried twice for the same offense after a verdict of not guilty in a court of competent jurisdiction. This is called double jeopardy.

- Article 1.12: Right to a Jury. The right of a trial by jury shall remain inviolate. Inviolable means that the right cannot be violated and is free from any impairment. Thus, municipal court defendants have a right to a jury trial.
- Article 1.24: Public Trial. The proceedings and trials in all courts shall be public.

#### **4. Persons Under the Age of 17**

Chapter 45 contains many statutes that apply to defendants under the age of 17. Examples include:

- Article 45.0215 requires the court to summon the parent, guardian, or managing conservator and have him or her appear in court with their child who is younger than 17 years of age.
- Article 45.0216 requires courts to admonish persons under the age of 17 charged with a penal offense of their right to expunction and give a copy of the statute to the child and parent.
- Article 45.050 provides options for the court for enforcement of judgments or orders against persons under the age of 17 who fail to comply and how to proceed in enforcement through contempt.
- Article 45.056 allows municipal courts, with the consent of the city council, to employ a juvenile case manager.
- Article 45.057 provides rehabilitative sanctions that the court may require of a person under the age of 17 upon conviction.
- Article 45.058 provides rules for taking children into custody.
- Article 45.059 provides rules for taking children into custody who are in violation of a juvenile curfew order.

#### **5. Citations and Complaints**

Articles 45.018 and 45.019 define what a complaint is in municipal court and the requisites of a valid complaint.

Article 1.05 states that defendants have a right to know the nature and cause of an accusation against them and to have a copy of the complaint. Article 45.018 provides that a defendant in municipal or justice court is entitled to notice of a complaint not later than the day before any proceeding in the prosecution. The defendant, however, may waive the right to notice.

Article 45.019 states that a complaint “is sufficient without regard to its form if it substantially satisfies the requisites” in that article. Clerks should rely on the prosecutor to draft the wording and form of complaints. If a defendant does not object to defects in the complaint before the date in which the trial on the merits commences, the defendant waives and forfeits the right to object to the defect. Art. 45.019(f), C.C.P.

A written notice, or citation, may be accepted to serve as the complaint to which a defendant can plead guilty, nolo contendere, or not guilty. Art. 27.14(d), C.C.P. The defendant must have been given a legible duplicate copy of the citation. If a defendant pleads not guilty, a sworn complaint must be filed unless the defendant and prosecutor agree to go to trial on the written notice (citation). The agreement must be in writing and filed with the court.

The provision authorizing a peace officer to issue a citation to an offender in lieu of taking the person before the magistrate is Article 14.06(b). Certain information must be included in the wording of the citation. Special provisions exist for officers releasing an individual detained for public intoxication. Art. 14.031, C.C.P.

## **6. Docket**

Article 45.017 requires each judge, or clerk if directed by the judge, to keep a docket and enter certain proceedings in the docket. A docket is a formal record with brief entries of the proceedings in a case. Articles 45.017(b) and 45.012(b)(3) provide authority for courts to maintain a docket by electronic means.

## **7. Pleas and Appearances**

Appearance is a proceeding in which a defendant submits to the jurisdiction of the court by entering a plea. Further court proceedings depend on the plea entered. The following Code of Criminal Procedure statutes indicate how defendants may make appearances to enter a plea.

- Article 45.021 provides that all pleadings in municipal courts may be oral or in writing “as the court may direct.”
- Article 45.0215 requires persons under 17 to enter a plea in person in open court with a parent, guardian, or managing conservator. It also requires a person under 17 to enter a plea, with permission of the judge of the court of original jurisdiction, in the county where the juvenile lives.
- Article 45.023 provides that a defendant may enter a plea of guilty, nolo contendere, not guilty, or a special plea after a jury is empaneled or after the defendant has waived trial by jury. Judges may also permit a defendant who is detained in jail to enter a plea; however, if the defendant who enters a plea in jail makes a motion for new trial not later than 10 days after judgment is rendered, the judge shall grant the motion.
- Article 27.14(a), (b), and (c) provide rules for making an appearance and for entering pleas of guilty or nolo contendere.
  - Subsection (a) provides that a defendant or his or her counsel may make a plea of guilty or nolo contendere in open court.
  - Subsection (b) provides that in cases of fine-only misdemeanors, defendants may mail or deliver in person a plea of guilty or nolo contendere and a waiver of jury trial to the court. Article 45.013, the “Mailbox Rule,” provides rules for handling documents filed with the court through mail. The Mailbox Rule establishes when a document is considered timely filed with the clerk. It says that once a document is mailed on or before the due date and the clerk receives it not later than the 10th day after the required filing date, it is considered timely filed.
  - Subsection (c) of Article 27.14 permits a defendant to pay a fine and costs without entering a plea. If the court accepts the amount offered by the defendant, it constitutes a finding of guilty in open court as though a plea of nolo contendere had been entered by the defendant. The payment also constitutes a written waiver of jury trial. The payments may be made in open court, mailed to the court, or



delivered in person to the court as provided in subsections (a) and (b) of Article 27.14.

- Article 27.16 provides that a plea of not guilty may be made orally by the defendant or by his or her counsel in open court. In fine-only misdemeanors, the defendant may also mail to the court a plea of not guilty.
- Article 45.024 requires a judge to enter a not guilty plea when a defendant refuses to enter a plea.

## **8. Warrant, Capias, and Summons**

Article 45.014 states that when a written and sworn complaint or affidavit based on probable cause is filed with the court, the judge may issue a warrant for the arrest of the accused. Article 45.014 also provides requirements for the form of the warrant issued under Chapter 45. This statute is the authority for judges to issue warrants for defendants charged in the judge's court.

Article 2.09 lists Texas magistrates and the list includes municipal judges. Chapter 15 provides authority for a magistrate to issue a warrant of arrest for all classifications of offenses. The chapter also provides requirements for a warrant of arrest issued by a magistrate. Because municipal judges are magistrates, they have additional authority to issue this type of warrant, in their capacity as magistrates.

A capias is a written order issued by a judge of a court having jurisdiction of a case after commitment or bail and before trial. Art. 23.01, C.C.P. The rules for issuing a capias are included in Chapters 23 and 43. Article 23.05 requires the court to issue a capias for a defendant when a bail forfeiture is declared.

Article 23.04 provides that a court, instead of issuing a capias, may issue a summons. The summons must be in the same form as a capias except that it shall summon the defendant to appear before the court at a stated time and place. Before a summons can be issued, the prosecutor must request that it be issued. Art. 23.04, C.C.P. Chapter 23 also provides procedures for serving a summons. Chapter 15 provides authority for a magistrate to issue a summons instead of a warrant.

Article 45.202 states that all process issuing out of a municipal court shall be served when directed by the court by a peace officer or marshal of the municipality within which it is situated, under the same rules as are provided by law for the service by sheriffs and constables of process issuing out of the justice court, so far as applicable. Subsection (b) of Article 45.202 states that a peace officer or marshal may serve all process issuing out of a municipal court anywhere in the county in which the city, town, or village is situated. If a city is situated in more than one county, the city police officer or marshal may serve the process throughout those counties.

The following Code of Criminal Procedure statutes address when warrant fees may be assessed.

- Article 102.011(a)(2) requires courts to collect a \$50 warrant reimbursement fee for the services of a peace officer either executing or processing a warrant, capias, or capias pro fine.
- Article 102.011(a)(4) requires a \$35 reimbursement fee for serving a writ not otherwise listed, which would include the fee for the service of a summons for a defendant or for the parents of a juvenile.

## **9. Bail**

Chapter 17 defines bail as the security given by the accused guaranteeing his or her appearance before the proper court to answer the accusations against him or her and includes a bail bond or a personal bond. Article 17.15 provides rules for setting bail. Article 17.38 states that the rules in Chapter 17 are applicable to all courts, judges, magistrates, or other officers who require bail.

If there is a personal bond office in the county from which the warrant for arrest was issued, the court releasing a defendant on his or her personal bond must forward a copy of the bond to the personal bond office in that county. Art. 17.031(b), C.C.P.

Article 4.14 provides authority for municipal courts to forfeit the bail of defendants charged in their courts.

Chapter 22 requires courts to forfeit bail when defendants fail to appear and provides procedures for forfeiting bail. These procedures apply to surety, cash, and personal bonds.

Article 45.044 provides an alternate method of forfeiting a cash bond. It states that a judge may enter a judgment of conviction and forfeit a cash bond for fine and costs. To engage these procedures, the defendant must have entered a written and signed conditional plea of nolo contendere and a waiver of jury trial and failed to appear according to the terms of release.

## **10. Pre-Trial**

Article 28.01 states that a court may set any criminal case for a pre-trial hearing before it is set for trial upon its merits. See Chapter 28 for specific time requirements for notification and other procedures.

## **11. Trial Processes**

### **a. Subpoenas**

A subpoena is the process issued by a court to summons a witness to testify before the court in a criminal action. The court may subpoena a parent or guardian to bring a child witness to court. A subpoena duces tecum requires that a witness bring to court some instrument, written document, or other tangible item desired as evidence.

### **b. Continuances**

The defendant or the State may request that the court postpone the case to a later date. Continuances may be granted if the trial falls on a religious holy day, by agreement in open court, or upon written motion stating a reason for the request. A defendant can request a continuance for any reason. Chapter 29 provides rules for requesting, granting, or denying continuances.

## **12. Judgment**

The judgment, in a fine-only misdemeanor case, is the written declaration of the court signed by the trial judge ordering the defendant to pay a fine and certain costs to the State, or do some other sanction as authorized by law. The requirements for the judgment are generally contained in Article 42.01 of the Code of Criminal Procedure.

### **a. Fines, Costs, and Restitution**

When a defendant is found guilty in municipal court, the court will order the defendant to pay a fine and certain costs to the State. In addition, the court may require restitution at any amount, except for the offense of issuance of bad check in which case the maximum amount of restitution is \$5,000. Art. 45.041, C.C.P. Article 45.041 provides authority for a judge to require payment of fines and costs immediately, at a later date, or in intervals. If the judge determines that the defendant is unable to immediately pay the fine and costs, the judge shall allow the defendant the opportunity to pay in intervals. Art. 45.041(b-2), C.C.P.

### **b. Rendered in Open Court and Signed**

Article 45.041 requires all judgments, sentences, and final orders of the judge be rendered in open court. Article 42.01 defines a judgment as the written declaration of the court signed by the trial judge. Article 45.012 provides that an electronically recorded judgment has the same force and effect as a written signed judgment. A document which must contain the signature of any person, including a judge, clerk of the court, or defendant, is satisfied if the document contains the signature as captured by an electronic device.

### **c. Jail-Time Credit**

The judge must credit a defendant for time served in jail on that charge. Arts. 42.03 and 45.041, C.C.P. This includes time served in jail from the time of arrest to conviction and time served after conviction, whether for the same offense or another, provided the person was confined after the date of the offense. Arts. 45.041(c) and (c-1), C.C.P. The rate of credit is not less than \$150 for a period specified in the judgment. The court may specify a period not less than eight hours or more than 24 hours. Arts. 45.041 and 45.048, C.C.P. When a judge enters judgment, he or she must specify the amount of time that the defendant must serve to receive jail credit at the specified rate.

## **13. Appeal**

Article 44.02 states that a defendant in any criminal action has the right of appeal. Article 45.042 states that municipal court appeals shall be heard by the county court except in cases where the county court has no jurisdiction. In those counties, the appeal would be to the proper appellate court.

In courts of non-record, the appeal is trial de novo. In municipal courts of record, the appeal is based on errors reflected in the record of the trial court. Art. 44.17, C.C.P.

Article 45.0425 provides rules for setting the amount of an appeal bond. Articles 27.14(b) and 45.0426 provide time deadlines for filing an appeal bond with non-record municipal courts. Defendants appearing in open court must file an appeal bond within 10 days after the date judgment is entered. Adult defendants appearing by mail or delivering a plea and waiver of jury trial to the court must file an appeal bond before the 31st day after receiving notice of the amount of fine and appeal bond. This provision allows an adult defendant to bypass a trial in a non-record municipal court without ever making a personal appearance in court. Remember also, the Mailbox Rule, which extends the time by an additional 10 working days for documents filed by mail.

The rules and deadlines for appeals from courts of record are found in Chapter 30 of the Government Code.

Article 44.18 states that all the original papers of a case must go to the appellate court. Article 44.281 states that when a case is affirmed (municipal court of record appeals), the fine imposed on appeal and the costs imposed on appeal shall be collected from the defendant and paid into the municipal treasury. There is no statute providing that the fine money collected on a de novo appeal from a non-record municipal court be remitted to the city.

## **14. Collection and Enforcement of the Judgment**

### **a. Community Service**

Article 45.049 states that a judge may require a defendant who fails to pay a previously assessed fine or costs or who is determined by the court to have insufficient resources or income to pay a fine or costs, to discharge the judgment by performing community service. The article also provides rules for the judge's community service order, types of allowable community service, amount to be credited to the fine, and immunity for the judge and other court employees.

A defendant is considered to have discharged not less than \$100 of fines or costs for each eight hours of community service performed. Other provisions govern community service for defendants younger than 17 years of age.

### **b. Waiver**

Article 45.0491 gives a judge authority to waive all or part of a fine if the defendant is indigent, does not have sufficient resources or income to pay, or was a child at the time of the offense, and performing community service would cause an undue hardship. A judge may waive all or part of the costs if the court determines that the defendant is indigent, does not have sufficient resources or income to pay, or was a child at the time of the offense. Waiver of court costs does not require a finding of undue hardship.

### **c. Civil Execution**

Article 45.047 provides authority for the judge to order a fine and costs to be collected by execution against the defendant's property in the same manner as a judgment in a civil suit. This court order is called a writ of execution.

### **d. Capias Pro Fine**

A capias pro fine is a written order of the court. Article 45.045 provides authority for a municipal judge to issue a capias pro fine for the judgment, after a hearing, if the defendant fails to satisfy a judgment. The capias pro fine must state the amount of the judgment and sentence.

## **15. Probation Statutes**

### **a. Deferred Disposition**

Article 45.051 provides judges with discretion to grant deferred disposition. A defendant must plead guilty or nolo contendere or be found guilty before a judge may grant it. When granting an order of deferred disposition, the judge places a defendant on probation for a period of time, not to exceed 180 days, and sets forth terms with which the defendant must comply within that time period. If the defendant successfully completes the probationary terms, the case is dismissed. The judge has broad discretion in most cases regarding the conditions of the deferred disposition.

Among those conditions, the judge can order the defendant to pay a deferred fine, pay restitution, submit to counseling, attend a class, or comply with any reasonable condition imposed by the judge. Art. 45.051(a-1), C.C.P. There are a few instances where the judge, when granting a deferred disposition, does not have discretion over some of the probationary conditions which must be satisfied; for example, a judge is required to have a defendant under the age of 25 years, charged with committing a moving violation, take a driving safety course as a condition of deferred disposition. Art. 45.051(b-1), C.C.P.

### **b. Driving Safety Courses**

Article 45.0511 provides that if defendants charged with traffic offenses meet certain criteria, they have a right to take a driving safety course or a motorcycle operator course to have the charge dismissed. The defendant has 90 days to complete a course and present the court with evidence of completion, a certified copy of his or her driving record from DPS that shows he or she was eligible, and an affidavit stating that the defendant was not taking a course for dismissal and had not requested to do so within 12 months preceding the date of the offense.

### **c. Teen Court**

Article 45.052 provides a judge discretion to grant teen court to a defendant who meets criteria established by the statute.

## **16. Magistrates**

Article 2.09 lists persons who are magistrates. Included in that list are municipal judges and mayors. Being a magistrate increases the authority of municipal judges. The authority of a magistrate is countywide, while a municipal judge's jurisdiction only extends to the territorial limits of the city and to property owned by the city in the city's extra-territorial jurisdiction. The following is a list of some of the statutes contained in the Code of Criminal Procedure providing for magistrate duties that municipal judges as magistrates may perform:

- issue peace bonds (Chapter 7);
- accept complaints and issue warrants for Class A and B misdemeanors and felonies (Chapter 15);
- inform defendants of their rights regardless of the classification of the offense (commonly called magistration) (Article 15.17);
- conduct examining trials (for the purpose of determining probable cause in a felony) (Chapter 16);
- set bail (Chapter 17);
- issue orders of emergency protection (Article 17.292);
- issue search warrants (Chapter 18); and
- issue a warrant for a fugitive from justice from another state (Chapter 51).

#### D. Conclusion of the Code of Criminal Procedure

The Code of Criminal Procedure sets out procedural rules to be applied in all criminal cases. Chapter 45 governs proceedings in justice and municipal courts and takes precedence over other rules that apply to criminal proceedings generally or to rules applicable to other misdemeanor or felony proceedings. Article 45.002 states that proceedings in municipal court must be conducted in accordance with Chapter 45 rules and that if the chapter does not provide a rule, the judge shall apply the other general provisions of the Code of Criminal Procedure. Although reason must be used to determine how to find information, the rules expressed in this part of the study guide should help provide a road map to finding procedures applicable to municipal courts.

36.	Explain who is a public servant. _____ _____
37.	What is jurisdiction? _____ _____
38.	What statute lists the rights of all criminal defendants? _____
39.	Is an indigent municipal court defendant entitled to have an attorney appointed to represent him or her? _____
40.	What must be determined before a warrant of arrest may be issued? _____ _____
41.	Why do all municipal court defendants have a right to bail? _____ _____
42.	What is double jeopardy? _____ _____
43.	Why do municipal court defendants have a right to a jury trial? _____ _____
44.	Why are all municipal court proceedings and trials open to the public? _____ _____
45.	Why must a municipal court provide a copy of the complaint to the defendant? _____ _____
46.	How much notice is a defendant entitled to if a complaint is filed against him or her? _____ _____
47.	What can serve as the complaint for a defendant to plead to? _____ _____
48.	When must a sworn complaint be filed with the court? _____

49. Define “docket.” \_\_\_\_\_  
\_\_\_\_\_
50. List the different ways in which a defendant can make an appearance to enter a plea. \_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
51. Who can enter a plea for a defendant? \_\_\_\_\_
52. What types of pleas can be entered by a defendant? \_\_\_\_\_  
\_\_\_\_\_
53. When a defendant refuses to plea, what must the judge do? \_\_\_\_\_  
\_\_\_\_\_
54. Before a warrant can be issued, what must be filed with the court? \_\_\_\_\_  
\_\_\_\_\_
55. What type of warrants does Article 45.014 of the Code of Criminal Procedure authorize a judge to issue? \_\_\_\_\_
56. Define a capias. \_\_\_\_\_  
\_\_\_\_\_
57. When is a capias required to be issued? \_\_\_\_\_  
\_\_\_\_\_
58. When can a summons be issued? \_\_\_\_\_
59. Which statute provides the geographical jurisdiction for city peace officers to serve municipal court process? \_\_\_\_\_
60. If there is a personal bond office in the county, what must the court do when a personal bond is granted? \_\_\_\_\_  
\_\_\_\_\_
61. Must the court set a case for pre-trial? \_\_\_\_\_  
\_\_\_\_\_
62. Why may municipal court clerks issue subpoenas? \_\_\_\_\_  
\_\_\_\_\_
63. Define “judgment.” \_\_\_\_\_  
\_\_\_\_\_

64. What article states that a defendant in any criminal action has the right of appeal? \_\_\_\_\_
65. What process may be issued to collect a fine and costs in the same manner as a judgment in a civil suit? \_\_\_\_\_
66. Which city officials are magistrates? \_\_\_\_\_

### PART 3 PENAL CODE

#### A. Introduction to the Penal Code

The Penal Code is a collection of statutes defining criminal offenses and setting penalties. Texas has had a penal code since the late 1880s. In 1925, the criminal offenses were gathered into a code that was used until 1973. In that year, the old code was re-codified, and the offenses were re-arranged into a new code called the Penal Code. The format set out in the 1973 version has remained unchanged by the Legislature, although some offenses have been modified, repealed, or added.

Just as in the Code of Criminal Procedure, the Penal Code has a statement of objectives in the first section, which includes the following goals:

- to ensure public safety through deterrence, rehabilitation of offenders, and punishment of those who commit offenses;
- to define and grade offenses so citizens will know what they can and cannot do;
- to define punishments appropriate for each particular offense;
- to safeguard innocent conduct;
- to guide law enforcement officials; and
- to make the criminal laws apply to everyone in the same way.

These objectives explain the intent of the Legislature to prevent crime through deterrence, rehabilitation, and punishment and to limit the power of the State from unduly interfering with innocent citizens.

67. What is the Penal Code? \_\_\_\_\_
68. List the goals included in the statement of objectives of the Penal Code. \_\_\_\_\_



69. What do the objectives in the Penal Code show about the intent of the Legislature? \_\_\_\_\_

## **B. Structure of the Penal Code**

The Penal Code is divided into 11 titles that are further divided into chapters, subchapters, and sections. Generally, the Penal Code contains offenses, definitions, procedures, defenses, and exceptions. The following is a list of major topics in the Penal Code, divided by title and chapter.

- Title 1. Introductory Provisions
  - Chapter 1: Contains the objectives of the Penal Code; the territorial jurisdiction of this State concerning where offenses are committed in order to be prosecuted in Texas; construction of the Penal Code; and basic definitions of terms used in the code.
  - Chapter 2: Contains burdens of proof; exceptions, defenses, and affirmative defenses to offenses; and presumptions used in prosecutions.
  - Chapter 3: Defines “criminal episode” and sets forth sentencing provisions for an accused found guilty of more than one offense arising out of a criminal episode.
- Title 2. General Principles of Criminal Responsibility
  - Chapter 6: Defines the criminal intent necessary for commission of criminal acts.
  - Chapter 7: Outlines ways in which one person may be responsible for the criminal acts of another person and includes provisions relating to corporate responsibility.
  - Chapter 8: Contains general defenses to criminal responsibility, such as insanity, intoxication, duress, entrapment, or age.
  - Chapter 9: Lists justifications for criminal acts, including public duty, necessity, self-defense, and defense of another person; defense of property; and the amount of force that can be used by officers, parents, educators, or guardians against persons who have broken the law.
- Title 3. Punishments
  - Chapter 12: Divided into five subchapters dealing with punishments for different classes of offenses.
    - Subchapter A: Classifies offenses as felonies (capital, first degree, second degree, third degree, or state jail) or misdemeanors (Class A, B, or C).
    - Subchapter B: Details the punishments for different classifications of misdemeanors.

- Subchapter C: Details the punishments for the different classifications of felonies.
- Subchapter D: Classifies offenses outside the Penal Code and defines exceptional sentences for repeat or habitual offenders.
- Subchapter E: Describes the punishments available when a corporation or association has been found guilty of an offense.
- Title 4. Inchoate Offenses (An inchoate offense means one that is attempted but not completed.)
  - Chapter 15: Defines criminal attempt, conspiracy, and solicitation; and provides a renunciation defense when a person attempts to commit an offense but abandons the attempt and renounces the effort before the offense is actually committed.
  - Chapter 16: Defines offenses related to unlawful telephone interceptions, pen registers, or telephone taps.
- Title 5. Offenses Against the Person
  - Chapter 19: Defines homicide offenses, which include capital murder, murder, manslaughter, or criminally negligent homicide.
  - Chapter 20: Defines offenses related to kidnapping and false imprisonment.
  - Chapter 20A: Defines offenses related to trafficking of persons.
  - Chapter 21: Defines sexual offenses such as public lewdness, indecent exposure, indecency with a child, improper educator and student relationships, and improper photography or visual recording.
  - Chapter 22: Defines assaultive offenses that result in injury but not death, including assault, sexual assault, assault of a child, the elderly, or a disabled individual; endangering or abandoning a child; deadly conduct; terroristic threat; aiding suicide; tampering with consumer products; harassment of a public servant; and leaving a child in a vehicle.
- Title 6. Offenses Against the Family
  - Chapter 25: Defines offenses such as bigamy, incest, interference with child custody, sale of a child, harboring of a runaway; criminal nonsupport; and violation of certain protective orders or conditions of bond.
- Title 7. Offenses Against Property
  - Chapter 28: Contains the offenses of arson; criminal mischief; reckless damage to property; interference with railroad property; and graffiti.
  - Chapter 29: Defines the offense of robbery (theft from a person).
  - Chapter 30: Defines burglary of a habitation, building, vehicle, coin-operated or coin collection machines; and criminal trespass.
  - Chapter 31: Contains theft offenses, including theft of services or trade secrets, unauthorized use of motor vehicle, theft of cable services, theft by appropriation or

worthless check; and unauthorized acquisition or transfer of certain financial information. The value of the property unlawfully appropriated determines the grade of offense and punishment.

- Chapter 32: Defines the offenses of fraud, which include forgery, credit card abuse, and issuance of a bad check; commercial bribery; illegal recruitment of an athlete; and the passing of certain fraudulent documents.
- Chapter 33: Defines computer crimes.
- Chapter 33A: Defines telecommunications crimes.
- Chapter 34: Defines money laundering crimes.
- Chapter 35: Defines insurance fraud.
- Chapter 35A: Defines Medicaid fraud.
- Title 8. Offenses Against Public Administration
  - Chapter 36: Defines bribery offenses and includes coercion of public servants or voters, improper influence, tampering with a witness, obstruction or retaliation, acceptance of an honorarium, and gifts to public servants.
  - Chapter 37: Defines perjury and falsification offenses including knowingly tampering with or making a false entry in a governmental record, false report to a peace officer, fraudulent filing of financial statements, impersonating a public servant, and false identification as a peace officer.
  - Chapter 38: Defines offenses relating to obstructing a governmental operation, such as failure to identify, resisting or evading arrest, escape, bail jumping and failure to appear, barratry, possession of prohibited substances or items in a correctional facility, interference with public duties, unauthorized practice of law, and preventing execution of civil process.
  - Chapter 39: Defines offenses regarding abuses of office, such as official misconduct or oppression, misuse of official information, and violations of the civil rights of persons in custody.
- Title 9. Offenses Against Public Order and Decency
  - Chapter 42: Includes the offenses of disorderly conduct; riot; obstructing a highway; false alarm; silent or abusive calls to 9-1-1 service; harassment; stalking; abuse of corpse; cruelty to animals; dog fighting and cock fighting; destruction of the flag; disrupting a public meeting, procession, or funeral; use of laser pointers; and discharge of a firearm in certain municipalities.
  - Chapter 43: Contains offenses related to public indecency such as prostitution; obscenity; display or distribution of obscene material; sexual performance by a child; sexting; and possession of child pornography.
- Title 10. Offenses Against Public Health, Safety, and Morals
  - Chapter 46: Contains offenses such as unlawfully carrying a weapon; hoax bombs; and making firearms accessible to a child.

- Chapter 47: Contains offenses of gambling and gambling paraphernalia.
- Chapter 48: Contains smoking offenses and the prohibition of the purchase and sale of human organs.
- Chapter 49: Contains offenses related to intoxication and other alcoholic beverage offenses including: public intoxication; possession of an alcoholic beverage in a motor vehicle; driving, flying, boating, or operating an amusement ride while intoxicated; and intoxication assault and manslaughter.
- Chapter 50: Contains offenses related to unlawful use of fireworks with the intent to interfere with the duties of a law enforcement officer or flee from a law enforcement officer in arresting or detaining the person.
- Title 11. Organized Crime
  - Chapter 71: Creates and provides defenses for the offense of engaging in organized criminal activity.

70. How is the Penal Code organized? \_\_\_\_\_  
\_\_\_\_\_

71. In what chapters of the Penal Code are the general principles of criminal responsibility located? \_\_\_\_\_

72. In what chapter of the Penal Code are punishments defined? \_\_\_\_\_

73. What is an inchoate offense? \_\_\_\_\_  
\_\_\_\_\_

74. What is the chapter in the Penal Code that prohibits public servants from accepting an honorarium?  
\_\_\_\_\_  
\_\_\_\_\_

75. Where is the offense of “failure to appear” located in the Penal Code? \_\_\_\_\_  
\_\_\_\_\_

76. What chapter in the Penal Code contains offenses relating to abuse of office? \_\_\_\_\_  
\_\_\_\_\_

77. Where is the offense of “disorderly conduct” located in the Penal Code? \_\_\_\_\_  
\_\_\_\_\_

78. Where is the offense of “public intoxication” located in the Penal Code? \_\_\_\_\_  
\_\_\_\_\_

### C. Basic Definitions

Definitions can be found throughout the Penal Code. When researching a particular offense, look at the beginning of the chapter to see if there are specific definitions for certain words.

Understanding how a word is defined is helpful in determining how the offense is filed and what wording should be included on a complaint (charging instrument). General definitions are listed in Section 1.07 of the Penal Code.

79. Where are definitions found in the Penal Code? \_\_\_\_\_  
\_\_\_\_\_

#### **D. How to Find Offenses**

There are many ways to use the Penal Code. There are a few questions to consider that can help narrow the scope of the search of the Penal Code:

- Who or what has been harmed? First, decide who or what has suffered because of the act. There are at least three possibilities.
  - If a person has been harmed, look to Titles 5 and 6 for the applicable offense.
  - If property has been harmed, look to Title 7.
  - If the harm is to public decency, safety, or health, look to Titles 8 through 11.
- What is the degree of harm?
  - More serious offenses, such as murder, manslaughter, and kidnapping, are found at the beginning of Titles 5 and 6. In some instances, the seriousness of the injury determines the classification of the offense. An example of this is the offense of assault. An assault that causes bodily injury is a Class A misdemeanor. If the assault was only physical contact with no injury, and the person regarded the contact as offensive or provocative, the offense is a Class C misdemeanor. Municipal courts would have jurisdiction over the latter assault offense.
  - If property has been damaged, the amount of pecuniary loss determines the classification of the offense. For example, municipal courts have jurisdiction over the offense of criminal mischief if the damage is less than \$100.
- What if harm is to society as a whole?
  - If no one person or thing has been harmed, check to see if the offense involved a public official, governmental operation, or a witness. These are crimes against public administration, which are found in Title 8.
  - If the offense involved disorderly conduct or public indecency, look to Title 9.
  - If the offense involved weapons, gambling, public health, or intoxication or alcoholic beverages, look to Title 10. This is where the offense of public intoxication is found.
  - If the offense involved organized crime activity, look to Title 11.

## E. Presumption of Innocence

In a criminal case, the defendant does not have to prove that he or she is innocent but is presumed to be innocent. A common opening statement by defense attorneys at trial is that the defendant could present no argument or evidence whatsoever and still be found not guilty. It is solely the burden of the State, represented by the prosecutor, to prove that the person is guilty beyond a reasonable doubt.

80. Explain presumption of innocence. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## F. Conduct Constituting an Offense

Conduct does not constitute an offense unless it is defined as an offense by statute, municipal ordinance, order of a county commissioner's court, or rule authorized by and lawfully adopted under a statute. Sec. 1.03, P.C.

### 1. An Act or an Omission

A person commits an offense only if he or she voluntarily engages in conduct, including an act, an omission, or possession. Sec. 6.01, P.C. An act means a bodily movement, whether voluntary or involuntary, and includes speech. Sec. 1.07(a)(1), P.C. An omission means a failure to act when the person had a duty to act. Secs. 1.07(a)(34) and 6.01(c), P.C. Possession means actual care, custody, control, or management. Sec. 1.07(a)(39), P.C.

### 2. Culpable Mental State

A culpable mental state is the state of mind in which a person voluntarily engages in certain conduct or omits an act when there is a duty to act. Unless the definition of an offense does not require a culpable mental state, a person does not commit an offense unless he or she intentionally, knowingly, recklessly, or with criminal negligence engages in conduct as the definition of the offense requires. Sec. 6.02, P.C. If an offense does not prescribe a culpable mental state, but one is required because the definition of the offense does not dispense with the need for a culpable mental state, intentionally, knowingly, or recklessly is sufficient to establish criminal responsibility. Sec. 6.02(c), P.C. Offenses defined by municipal ordinances must have a culpable mental state if the offense is punishable by a fine of more than \$500. Sec. 6.02(f), P.C.

Listed below are four culpable mental states.

- A person acts intentionally when it is his or her conscious objective or desire to engage in conduct or to cause the result. Sec. 6.03(a), P.C.
- A person acts knowingly when he or she is aware that the conduct is reasonably certain to cause the result. Sec. 6.03(b), P.C.
- A person acts recklessly when he or she is aware of, but consciously disregards, a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross

deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint. Sec. 6.03(c), P.C.

- A person acts with criminal negligence when he or she should be aware of a substantial and unjustifiable risk that the circumstances exist, or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint. Sec. 6.03(d), P.C.

### 3. Criminal Attempt

A person commits an offense if the person specifically intends to commit the offense and does an act amounting to more than mere preparation that tends, but failed, to effect the commission of the offense intended. An offense that is attempted, but fails, is one category lower than the offense attempted. Sec. 15.01, P.C.

### 4. Criminal Responsibility

#### a. Persons

A person is criminally responsible if the result would not have occurred but for his or her conduct. Sec. 6.04, P.C.

#### b. Corporations and Associations

When conduct constituting an offense is performed by an agent acting on behalf of a corporation or association and within the scope of his or her office or employment, the corporation or association is criminally responsible for the offense unless a statute plainly does not impose criminal responsibility on the corporation or association. Sec. 7.22, P.C. An agent means a director, officer, employee, or other person authorized to act on behalf of a corporation or association. Sec. 7.21, P.C.

- |     |   |
|-----|---|
| 81. | When does conduct constitute an offense? _____<br>_____   |
| 82. | Explain what constitutes committing an offense. _____<br>_____                                  |
| 83. | How does the Penal Code define the words act, omission, and possession? _____<br>_____<br>_____ |
| 84. | What is a culpable mental state? _____<br>_____   |
| 85. | List the four culpable mental states. _____<br>_____  |

	_____
	_____
86.	What is criminal attempt? _____
	_____
87.	When is a person criminally responsible? _____
	_____
88.	When is a corporation or association criminally responsible? _____
	_____

**G. Defenses**

Chapter 8 contains general defenses to criminal responsibility. A defense to prosecution is labeled by a phrase such as “It is a defense to prosecution.” The prosecutor is not required to negate a defense in the charging instrument (complaint). The defendant must raise the defense, and it is not submitted to the jury (or considered by the judge) unless some evidence of the defense has been admitted to support it. With the evidence supporting the defense, the jury must acquit the defendant if there is any reasonable doubt that the defendant committed the offense. Sec. 2.03, P.C. It is a defense to prosecution that:

- the actor through mistake formed a reasonable belief about a matter of fact if his mistaken belief negated the kind of culpability required for commission of the offense (Sec. 8.02, P.C.); or
- the actor engaged in the conduct charged because he was induced to do so by a law enforcement agent using persuasion or other means likely to cause persons to commit the offense (Sec. 8.06, P.C.).

Some defenses are called affirmative defenses. The prosecutor need not negate affirmative defenses in the charging instrument (complaint), and the existence of an affirmative defense is not submitted to the jury unless the defendant introduces evidence supporting the defense. If the existence of an affirmative defense is submitted to the jury, the court shall charge the jury that the defendant must prove the affirmative defense by a preponderance of the evidence. Sec. 2.04, P.C. It is an affirmative defense to prosecution that:

- the actor, at the time of the conduct charged, as a result of severe mental disease or defect did not know that his or her contact was wrong (Sec. 8.01, P.C.);
- the actor reasonably believed the conduct charged did not constitute a crime and acted in reasonable reliance upon a written interpretation of the law contained in an opinion of a court of record or made by a public official charged by law with responsibility for interpreting the law, such as the Texas Attorney General (Sec. 8.03, P.C.); or
- the actor was compelled to engage in the conduct by threat of imminent death or serious bodily injury to himself, herself, or another, or, if the conduct does not constitute a felony, was compelled by force or threat of force (Sec. 8.05, P.C.).



The following are not defenses to prosecution:

- that the actor was ignorant of the provisions of any law after the law has taken effect;
- that the actor was voluntarily intoxicated; and
- that the actor acted at the command or persuasion of his or her spouse, unless he or she acted under threat of imminent death, serious bodily injury to the actor or another, force, or threat of force.

Defenses are something the defendant must raise, or the defense is waived.

True or False

89. It is an affirmative defense if a defendant relied upon an interpretation of a statute by an opinion issued by an Attorney General. \_\_\_\_
90. It is not a defense if a person is compelled by a threat of force to commit a Class C misdemeanor offense. \_\_\_\_
91. A person cannot be convicted of a crime when he or she is unaware that the act was a violation of law. \_\_\_\_
92. A person who is charged with public intoxication can be prosecuted because the intoxication is voluntary. \_\_\_\_

## H. Preemption

No governmental subdivision or agency may enact or enforce a law that makes any conduct covered by the Penal Code an offense subject to a criminal penalty. Sec. 1.08, P.C. This means that a city could not pass a city ordinance criminalizing public intoxication because it is already an offense under state law.

93. Explain why cities cannot enact ordinances for conduct covered by the Penal Code. \_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

## I. Punishments

Chapter 12 lists punishments for different classifications of offenses. Offenses are designated as felonies or misdemeanors.

### 1. Misdemeanors

Misdemeanors are classified into three categories according to the relative seriousness of the offense: Class A misdemeanors, Class B misdemeanors, and Class C misdemeanors. Secs. 12.21, 12.22, and 12.23, P.C. A misdemeanor offense in the Penal Code without specification as to punishment or category is a Class C misdemeanor. 12.03(b) P.C. Class A misdemeanor offenses shall be punished by a fine not to exceed \$4,000, confinement in jail for a term not to exceed one

year, or both fine and confinement. Class B misdemeanors shall be punished by a fine not to exceed \$2,000, confinement in jail for a term not to exceed 180 days, or both fine and confinement. Class C misdemeanors shall be punished by a fine not to exceed \$500.

## **2. Felonies**

Felonies are also classified according to relative seriousness of the offense. There are five categories: capital felonies; felonies of the first degree; felonies of the second degree; felonies of the third degree; and state jail felonies. The range of punishment for felonies is life imprisonment or death for capital felonies; imprisonment for up to 99 years but not less than five years and may also include a fine not to exceed \$10,000 for first degree felonies; imprisonment for up to 20 years but not less than two years and may also include a fine not to exceed \$10,000 for second degree felonies; imprisonment for up to 10 years but not less than two years and may also include a fine not to exceed \$10,000 for third degree felonies; and confinement in a state jail for not more than two years but not less than 180 days and may include a fine not to exceed \$10,000 for state jail felonies. Secs. 12.31, 12.32, 12.32, 12.34, and 12.35, P.C. A felony offense in the Penal Code without specification as to punishment category is a state jail felony. 12.04(b) P.C.

## **3. Offenses Outside of the Penal Code**

Section 12.41 classifies offenses outside the Penal Code. If imprisonment in a penitentiary is affixed to the offense as a possible punishment, the offense is a felony of the third degree. If the offense is not a felony and confinement in a jail is affixed to the offense as a possible punishment, the offense is a Class B misdemeanor. If the offense is punishable by fine only, the offense is a Class C misdemeanor. Keep in mind that if the Class C misdemeanor is defined in the Penal Code, the maximum fine is \$500. A Class C misdemeanor outside of the Penal Code is not controlled by the \$500 maximum fine in the Penal Code.

## **4. Punishments for Corporations and Associations**

If a corporation or association is adjudged guilty of an offense that provides a penalty consisting of a fine only, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed the fine provided by the statute. Sec. 12.51(a), P.C.

If a corporation or association is found guilty of an offense that provides a penalty including imprisonment or that provides no specific penalty, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed:

- \$20,000 if the offense is a felony of any category (if the court finds that the corporation or association gained money or property or caused personal injury or death, property damage or other loss, the court may require a fine in an amount fixed by the court not to exceed double the amount gained or caused by the corporation or association to be lost or damaged, whichever is greater);
- \$10,000 if the offense is a Class A or a Class B misdemeanor (if the court finds that the corporation or association gained money or property or caused personal injury or death, property damage, or other loss, the court may require a fine in an amount fixed by the court not to exceed double the amount gained or caused by the corporation or association to be lost or damaged, whichever is greater);
- \$2,000 if the offense is a Class C misdemeanor; or

- \$50,000 if as a result of an offense classified as a felony or Class A misdemeanor, an individual suffers serious bodily injury or death.

The court may also require a corporation or association to give notice of the conviction to any person the court deems appropriate. On conviction of a corporation or association, the court shall notify the Texas Attorney General of that fact.

94.	How are offenses designated? _____ _____
95.	List the three classifications of misdemeanors. _____ _____ _____
96.	If a misdemeanor offense in the Penal Code does not specify a punishment or a category, what classification of offense is it? _____
97.	How does the Penal Code define Class C misdemeanor? _____
98.	List the five classifications of felony offenses. _____ _____
99.	If an offense outside of the Penal Code is punishable by fine only, what classification of offense is it? _____
100.	If a corporation or association is adjudged guilty of a Class C misdemeanor offense that does not provide for a specific penalty, what is the maximum possible punishment? _____ _____
101.	When a corporation is convicted of an offense, who can the court require the corporation or association to notify? _____
102.	Who is the court required to notify when a corporation or association is convicted? _____ _____

## J. Age Affecting Criminal Responsibility

Section 8.07 describes the age a person must be before facing prosecution in a criminal court. A person may not be prosecuted for or convicted of any offense that he or she committed when younger than 15 years of age except for:

- perjury or aggravated perjury;
- violation of a traffic offense under Chapter 729 of the Transportation Code, which involves the operation of a motor vehicle by a minor and which defines a minor as anyone under the age of 17, except for an offense punishable by any time in jail or:
  - under Section 550.021, T.C. (accident involving personal injury or death);
  - under Section 550.022, T.C. (accident involving damage to vehicle);

- under Section 550.024, T.C. (duty on striking unattended vehicle);
- a violation of a motor vehicle traffic ordinance;
- a misdemeanor punishable by fine only;
- a violation of a penal ordinance of a political subdivision;
- a violation of a penal statute that is a lesser included offense of a capital felony, an aggravated controlled substance felony, or a felony of the first degree for which the person is transferred to the court under Section 54.02 of the Family Code for prosecution if the person committed the offense when 14 years of age or older.
- a capital felony or an offense under Section 19.02 for which the person is transferred to the court under Section 54.02(j)(2)(A), Family Code.

Unless the juvenile court waives jurisdiction under Section 54.02 of the Family Code and certifies the individual for criminal prosecution, or the juvenile court has previously waived jurisdiction under that section and certified the individual for criminal prosecution, a person may not be prosecuted for or convicted of any offense committed before reaching 17 years of age except for an offense listed above. Sec. 8.07(b), P.C.

In 2013, the 83rd Legislature amended Section 8.07 to make clear that although children under the age of 15 can be criminally prosecuted for the offenses listed above, children under the age of 10 are not to be prosecuted or convicted of fine-only offenses or city ordinance violations. Sec. 8.07(d), P.C. The 83rd Legislature also created a presumption that children ages 10 to 14 (inclusive) are presumed not to be criminally responsible for any misdemeanors punishable by a fine only, or for a violation of a penal ordinance of a political subdivision with the exception of juvenile curfew ordinances. This presumption can be refuted by a preponderance of evidence showing that the child is morally blameworthy. Notably, the presumption would have no application to fine-only traffic offenses created by state law or city ordinance, and the prosecution would neither be required to prove that the child knew that the act was illegal at the time it occurred nor that the child understood the legal consequences of the offense. Sec. 8.07(e), P.C.

No person in any case can be punished by death for an offense committed while he or she was younger than 18 years of age. Sec. 8.07(c), P.C.

The 83rd Legislature also added Section 8.08, which provides guidance for cases in which the child defendant has a mental illness or developmental disability. On motion by the State, the defendant, a person standing in parental relation to the defendant, or on the court's own motion, a court with jurisdiction of a misdemeanor punishable by fine only or a violation of a penal ordinance of a political subdivision shall determine if there is probable cause to believe that a child, including a child with mental illness or developmental disability, (1) lacks the capacity to understand the proceedings or to assist in their own defense and is unfit to proceed or (2) lacks substantial capacity either to appreciate the wrongfulness of the child's own conduct or to conform their conduct to the requirements of the law. If the court determines that probable cause exists, after giving notice to the prosecution, the court may dismiss the complaint. The prosecution has the right to appeal such determinations. The scope of Section 8.08 is limited to Class C misdemeanors (other than traffic offenses).

103. What section of the Penal Code defines the age of a person who can be prosecuted? \_\_\_\_\_  
\_\_\_\_\_
104. For what fine-only misdemeanor offenses can persons under the age of 15 be prosecuted in municipal court? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
105. What is the youngest age that a person can be prosecuted for a criminal offense? \_\_\_\_\_
106. Children between the ages of 10 and 14 are presumed not to be what? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **K. Elements of an Offense**

The elements of an offense include the following:

- the forbidden conduct;
- the required culpability;
- the required result; and
- the negation of any exception to the offense.

The forbidden conduct includes facts that establish a particular act as an offense. Each offense will have its own set of facts. A peace officer or prosecutor has to determine during an investigation if a person's act falls within the forbidden conduct established for a particular offense.

In a municipal court, the offense must have occurred in the territorial limits of the city to give the municipal court jurisdiction over the crime. Art. 45.019, C.C.P. Some crimes must be committed in a public place and would not be a crime if committed in a private residence, such as the offense of disorderly conduct–vulgar language.

Each and every element of a crime must be alleged in a complaint. See the following two examples.

The elements of a Class C assault by threat would be:

- a person;
- location (city and county) (jurisdiction);
- date of offense;
- intentionally or knowingly (the culpable mental state); and
- threatens another, including the person's spouse, with imminent bodily injury (the forbidden conduct).

The elements of the offense of disorderly conduct–vulgar language would be:

- a person;
- location (city and county) (jurisdiction);
- date of offense;
- intentionally or knowingly (the culpable mental state);
- in a public place;
- uses abusive, indecent, profane, or vulgar language (the forbidden conduct); and
- which, by its very utterance, tends to incite an immediate breach of the peace (the result).

Although it is important to review the elements of the offense to better understand the law behind charging criminal offenses, note that the prosecutor is responsible for actually drafting the complaint language.

107.	What are the elements of an offense? _____ _____ _____
108.	Must all acts that are considered crimes be committed in a public place? _____
109.	List the elements of the offense of a Class C assault. _____ _____ _____

**L. Class C Misdemeanor Offenses**

The following is a partial list of Class C misdemeanor offenses in the Penal Code. When researching a particular offense, check the statute for specific information on the elements of the offense, definitions, defenses, exceptions, and in some instances, specific handling procedures.

- Section 22.01(a)(2) and (3) – Assault
  - (a)(2) A person commits an offense if the person intentionally or knowingly threatens another with imminent bodily injury, including the person’s spouse.
  - (a)(3) A person commits an offense if the person intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.
  - If Subsection (a)(3) is committed against an elderly or disabled person, it is a Class A misdemeanor. It is a Class B misdemeanor if the offense is committed by a person who is not a sports participant against a person the actor knows is a sports participant either while the participant is performing duties or responsibilities in the

participant's capacity as a sports participant or in retaliation for a duty or responsibility within the participant's capacity as a sports participant.

- Section 22.08 – Aiding Suicide
  - A person commits an offense if, with intent to promote or assist the commission of suicide by another, he or she aids or attempts to aid the other to commit or attempt to commit suicide.
  - If the person's conduct causes suicide or attempted suicide that results in serious bodily injury, the offense is a state jail felony.
- Section 22.10 – Leaving a Child in a Vehicle
  - A person commits an offense if he or she intentionally or knowingly leaves a child in a motor vehicle for longer than five minutes, knowing that the child is younger than seven years of age, and not attended by an individual in the vehicle who is 14 years of age or older.
- Section 28.03 – Criminal Mischief
  - A person commits an offense if, without the effective consent of the owner, he or she intentionally or knowingly damages or destroys the tangible property of the owner, tampers with the tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person, or makes markings, including inscriptions, slogan, drawings, or painting on the tangible property of the owner.
  - If the pecuniary loss is less than \$100, the offense is a Class C misdemeanor.
- Section 28.04 – Reckless Damage or Destruction
  - A person commits an offense if, without the effective consent of the owner, he or she recklessly damages or destroys property of the owner.
- Section 31.03 – Theft
  - A person commits an offense if the person unlawfully appropriates property with intent to deprive the owner of property.
  - If the value of the property is less than \$100, the offense is a Class C misdemeanor.
- Section 31.04 – Theft of Service
  - A person commits theft of service if, with intent to avoid payment for service that the person knows is provided only for compensation:
    - the person intentionally or knowingly secures performance of the service by deception, threat, or false token;
    - having control over the disposition of services of another to which the person is not entitled, he or she intentionally or knowingly diverts the other's services to his or her own benefit or to the benefit of another not entitled to them;
    - having control of personal property under a written rental agreement, the person holds the property beyond the expiration of the rental period without the

- effective consent of the owner of the property, thereby depriving the owner of the property of its use in further rentals; or
      - the person intentionally or knowingly secures the performance of the service by agreeing to provide compensation and, after the service is rendered, fails to make full payment after receiving notice demanding payment.
    - If the value of the stolen service is less than \$100, the offense is a Class C misdemeanor.
  - Section 32.41 – Issuance of Bad Check
    - A person commits an offense if he or she issues or passes a check or similar sight order for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance.
    - If the check or sight order was issued or passed for a child support payment established under court order, the offense is a Class B misdemeanor.
  - Section 36.05 – Tampering with Witness
    - A person commits an offense if, with intent to influence the witness, he or she offers, confers, or agrees to confer any benefit on a witness or prospective witness in an official proceeding or coerces a witness or prospective witness in an official proceeding to testify falsely, to withhold any testimony, information, document, or thing, to elude legal process summoning the person to testify or supply evidence, to absent him or herself from an official proceeding to which he or she has been legally summonsed, or to abstain from, discontinue, or delay the prosecution of another.
    - A witness or prospective witness in an official proceeding commits an offense if he or she knowingly solicits, accepts, or agrees to accept any benefit on the representation or understanding that he or she will do any of the things mentioned above.
    - If the official proceeding is part of the prosecution of a criminal case, the offense is a Class C misdemeanor if the most serious charge in the proceeding is a Class C misdemeanor. If the proceeding is one involving family violence or the tampering involves an act of family violence, it is not a Class C misdemeanor, even if the criminal case was.
  - Section 37.10 – Tampering with Governmental Record
    - A person commits an offense if he or she knowingly makes a false entry in or false alteration of a governmental record; makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record; intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record; possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully; makes, presents, or uses a governmental



record with knowledge of its falsity; or possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.

- A person commits a Class C misdemeanor offense if the governmental record is a governmental record that is required for enrollment of a student in a school district and was used by the actor to establish the residency of the student.
- Section 38.02 – Failure to Identify
  - A person commits an offense if he or she intentionally refuses to give his or her name, residence address, or date of birth to a peace officer who has lawfully arrested the person and requested the information.
  - If the person is not a fugitive from justice, the offense is a Class C misdemeanor.
- Section 38.10 – Bail Jumping and Failure to Appear
  - A person lawfully released from custody, with or without bail, on condition that he or she subsequently appear commits an offense if he or she intentionally or knowingly fails to appear in accordance with the terms of his or her release.
  - If the offense for which the person was required to appear is a fine-only offense, the offense of failure to appear is a Class C misdemeanor.
- Section 38.151 – Interference with Police Service Animals
  - A person commits an offense if the person recklessly taunts, torments, or strike a police service animal.
- Section 38.16 – Preventing Execution of Civil Process
  - A person commits an offense if the person intentionally or knowingly by words or physical action prevents the execution of any process in a civil cause.
- Section 39.02 – Abuse of Official Capacity
  - A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant’s custody or possession by virtue of the public servant’s office or employment.
  - When the value of the use of the thing misused is less than \$100, it is a Class C misdemeanor.
- Section 39.06 – Misuse of Official Information
  - A public servant commits an offense if, in reliance on information to which he or she has access by virtue of his or her office or employment and that has not been made public, and he or she as a public servant, including a principal of a school, coerces another into suppressing or failing to report that information to a law enforcement agency.

- Section 42.01 – Disorderly Conduct
  - The offense of disorderly conduct has 11 different ways in which the act of disorderly conduct can be committed. The following are Class C misdemeanors.
    - A person commits an offense if he or she intentionally or knowingly:
      - Uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;
      - Makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace;
      - Creates, by chemical means, a noxious and unreasonable odor in a public place;
      - Abuses or threatens a person in a public place in an obviously offensive manner;
      - Makes unreasonable noise in a public place other than a sport shooting range or in or near a private residence that he or she has no right to occupy;
      - Fights with another in a public place;
      - Discharges a firearm on or across a public road;
      - Exposes his or her anus or genitals in a public place and is reckless about whether another may be present who will be offenses or alarmed by his or her act; or
      - For a lewd or unlawful purpose enters on the property of another and looks into a dwelling on the property through a window or other opening; while on the premises of a hotel or comparable establishment, looks into a guest room not their own through a window or other opening; or while on the premises of a public place, looks into an area such as a restroom or shower stall or changing/dressing room that is designed to provide privacy.
- Section 42.105 – Cockfighting
  - A person commits an offense if the person knowingly attends as a spectator an exhibition of cockfighting.
- Section 42.13 – Use of Laser Pointers
  - A person commits an offense if the person knowingly directs a light from a laser pointer at a uniformed safety officer, including a peace officer, security guard, firefighter, emergency medical service worker, or other uniformed municipal, state, or federal officer.
- Section 42.14 – Illumination of Aircraft by Intense Light
  - A person commits an offense if the person intentionally directs a light from a laser pointer or other light source at an aircraft and the light has an intensity sufficient to impair the operator’s ability to control the aircraft.

- If the intensity of the light impairs the operator’s ability to control the aircraft, the offense is a Class A misdemeanor.
- Section 43.22 – Obscene Display or Distribution
  - A person commits an offense if he or she intentionally or knowingly displays or distributes an obscene photograph, drawing, or similar visual representation or other obscene material and is reckless about whether a person is present who will be offended or alarmed by the display or distribution.
- Section 43.261 – Electronic Transmission of Certain Visual Material Depicting Minor
  - This is the “sexting” offense. A person who is a minor (under 18) commits an offense if the person intentionally or knowingly by electronic means promotes to another minor visual material depicting a minor, including the actor, engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material, or possesses in an electronic format visual material depicting another minor engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material.
  - The offense is generally a Class C misdemeanor, but there are many ways to enhance it to a Class B or Class A misdemeanor.
  - This same conduct, when committed by a child (under 17), is considered conduct indicating a need for supervision, and must be filed as such in the juvenile court or transferred to the juvenile court. Thus, municipal courts only have jurisdiction over this offense when the defendant is 17 years of age.
- Section 46.13 – Making a Firearm Accessible to a Child
  - A person commits an offense if a child gains access to a readily dischargeable firearm and the person with criminal negligence failed to secure the firearm or left the firearm in a place to which the person knew or should have known the child would gain access.
  - If the child discharges the firearm and causes death or serious bodily injury to himself or another person, the offense is a Class A misdemeanor.
- Section 47.02 – Gambling
  - A person commits an offense if he or she makes a bet on the partial or final result of a game or contest or the performance of a participant in a game or contest; makes a bet on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or plays and bets for money or other thing of value at any game played with cards, dice, balls, or any other gambling device.
- Section 48.01 – Smoking Tobacco
  - A person commits an offense if he or she is in possession of a burning tobacco product or smokes tobacco or operates an e-cigarette in a facility of a public primary or secondary school or an elevator, enclosed theater or movie house, library,

museum, hospital, transit system bus, or intrastate bus, plane, or train which is a public place.

- Section 49.02 – Public Intoxication
  - A person commits an offense if the person appears in a public place while intoxicated to the degree that the person may endanger himself, herself, or another.
  - An offense under this section committed by a person younger than 21 years of age is punishable in the same manner as if the minor committed an offense to which Section 106.071, A.B.C. applies.
- Section 49.031 – Possession of Alcoholic Beverage in Motor Vehicle
  - A person commits an offense if the person knowingly possesses an open container in a passenger area of a motor vehicle that is located on a public highway, regardless of whether the vehicle is being operated or is stopped or parked. Possession of one or more open containers in a single criminal episode is a single offense.

True or False

110. A person who threatens to break another person's arm commits a Class A misdemeanor assault. \_\_\_\_
111. It is not an offense to assist someone to commit suicide. \_\_\_\_
112. A person who leaves a child in a vehicle with someone who is only 14 years of age commits an offense. \_\_\_\_
113. A person who intentionally throws a rock through a neighbor's window causing a repair bill of \$90 could be charged in municipal court with a Class C misdemeanor offense of criminal mischief. \_\_\_\_
114. A person who loses control of a car and damages a fence because he or she is speeding could be charged with the offense of recklessly damaging property. \_\_\_\_
115. A person who shoplifts a jacket worth \$99.99 can be charged in municipal court with the Class C misdemeanor offense of theft. \_\_\_\_
116. A person who buys a dress for \$99.99 and pays for it with a check that does not have sufficient funds to cover it could be charged in municipal court with Class C theft. \_\_\_\_
117. A person who intentionally fails to pay a city water bill that amounts to \$45 can be charged with theft of services in municipal court. \_\_\_\_
118. A person who coerces a witness in a Class C criminal mischief case into not testifying could be charged with a Class C misdemeanor offense for witness tampering. \_\_\_\_
119. It is a crime for a person who has been lawfully stopped by a peace officer to not provide his or her name, address, and date of birth to the officer if he or she is not committing a crime. \_\_\_\_
120. When a defendant has been summoned to court and fails to appear, he or she can be charged with the offense of failure to appear. \_\_\_\_

121. A person who lies about someone's whereabouts to a person attempting to serve a civil citation commits a Class C misdemeanor offense. \_\_\_\_
122. A person who curses in the shopping mall could be charged with Class C misdemeanor disorderly conduct. \_\_\_\_
123. If the city police raid a cockfighting contest and catch you watching, they can charge you with a Class C misdemeanor offense. \_\_\_\_
124. A 15-year-old who is charged with "sexting" can be tried in the municipal court. \_\_\_\_
125. It is not a crime to smoke in a theater. \_\_\_\_
126. A person who gets drunk in his or her backyard is committing the offense of public intoxication. \_\_\_\_

## ANSWERS TO QUESTIONS

### PART 1

1. To help courts ascertain and appropriately enforce the legislative intent of statutes.
2. Chapter 311 of the Government Code.
3. Statutes must be reasonably construed (interpreted) in accordance with general principles of law.
4. Words and phrases shall be read in context and interpreted according to the rules of grammar and common usage.
5. They shall be interpreted according to their technical meaning.
6. Words in the present tense include the future tense; the singular includes the plural; the plural includes the singular; and words of one gender include the other genders.
7. The first day is excluded and the last day is included. If the last day is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.
8. Section 311.021 of the Government Code provides that when a statute is enacted, it is presumed that:
  - there is compliance with the U.S. and Texas Constitutions;
  - the entire statute is intended to be effective;
  - a just and reasonable result is intended;
  - a result possible of execution is intended; and
  - the public interest is favored over any private interest.
9. Section 311.023 of the Government Code provides that in interpreting statutes, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:
  - object or purpose sought to be achieved;
  - circumstances under which the statute was enacted;
  - legislative history;
  - common law or former statutory provisions, including laws on the same or similar subjects;
  - consequences of a particular construction;
  - administrative construction of the statute; and
  - title (caption), preamble, and emergency provision.
10. When the statute in question is ambiguous.
11. True
12. False.

13. False (the statute may have a severability provision).
14. True.
15. True.
16. True.
17. True.
18. A savings clause.
19. A severability provision is a provision in a statute that saves part of a statute from a declaration of unconstitutionality when one or more other parts are declared unconstitutional. Section 311.032 of the Government Code provides that if a statute contains a severability clause, that provision prevails in interpreting that statute. That means that should a court declare part of a statute containing a severability clause unconstitutional, the other parts would still be valid if they are self-sustaining and capable of separate enforcement without regard to the invalid portion. Some statutes have a provision for non-severability, which means that if part of the statute is declared unconstitutional, the whole statute is invalid. Other statutes do not contain severability clauses. If any provision of one of these statutes or their application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute if the provisions can be effective without the invalid provisions or application.
20. If two rules conflict, but one is more recent than the other, the more recent rule applies.
21. The date on which the last legislative vote is taken on the bill.
22. General statutes are ones that apply to all courts unless there is a specific statute.
23. If two rules conflict, the special or local provision prevails as an exception to the general provision.

## **PART 2**

24. Criminal trials and investigations.
25. The objectives are:
  - adopt measures to prevent crime;
  - create rules to prevent criminals from escaping;
  - set out trial procedures;
  - make available as much evidence as possible;
  - guarantee guidelines for fair and impartial trials; and
  - provide rules to make sure sentences are properly executed.
26. It applies to all courts with criminal jurisdiction: the Court of Criminal Appeals, the courts of appeals, district courts, county courts, county courts at law with criminal jurisdiction, county criminal courts, magistrates appointed in certain counties, justice of the peace courts, and municipal courts.
27. The code is divided into two parts (Title I and Title 2) that are divided into chapters and articles.

28. Article 4.14.
  29. Chapter 12.
  30. Chapter 17A.
  31. Chapter 45.
  32. Justice and Municipal Courts.
  33. Chapter 101 provides the purpose of Title 2, that the Code Construction Act applies to the construction of Title 2, and the general provisions about references to chapters and articles in Title 2.
  34. The following fees are applicable to municipal court proceedings: reimbursement fees for services of a peace officer, expunction fees, fines for Child Safety Fund, Municipal Court Building Security Fund, and Municipal Court Technology Fund.
  35. Chapter 103.
  36. The definition is found in Section 1.07 of the Penal Code, which states that a public servant is a person who is elected, selected, appointed, or employed as one of the following, even if he or she has not yet qualified for office or assumed his or her duties:
    - an officer, employee, or agent of the government;
    - juror or grand juror;
    - an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy;
    - an attorney at law or notary public when participating in the performance of a governmental function;
    - a candidate for nomination or election to public office; or
    - a person who is performing a governmental function under a claim of right although he or she is not legally qualified to do so.
- Since municipal judges, court clerks, and deputy court clerks are elected, appointed, or employed by a governmental agency, they are public servants.
37. Jurisdiction is a court's legal power or authority over certain geographical areas and certain crimes.
  38. Article 1.05, C.C.P.
  39. No. All municipal court defendants are entitled to hire and consult with counsel and have representation but are not entitled to appointed counsel. The court may appoint counsel for an indigent defendant if the interest of justice requires representation.
  40. Probable cause upon oath or affirmation.
  41. Article 1.07 states that all prisoners have a right to bail, unless for capital offenses when the proof is evident.
  42. No person may be tried twice for the same offense after a verdict of not guilty in a court of competent jurisdiction.



43. Article 1.12 states that the right of a trial by jury shall remain inviolate, which means that the right cannot be violated and is free from any impairment.
44. Article 1.24 states that the proceedings and trials in all courts shall be public.
45. Article 1.05 states that defendants have a right to know the nature and cause of an accusation against them and to have a copy of the complaint.
46. Defendants are entitled to notice of a complaint not later than the day before any proceeding in the prosecution.
47. The written notice to appear (citation) when a legible duplicate copy was given to the defendant.
48. If a defendant pleads not guilty, a sworn complaint must be filed unless the defendant and prosecutor agree to go to trial on the written notice (citation). The agreement must be in writing and filed with the court. In addition, a sworn complaint must be filed when the defendant fails to appear in court. This will toll (stop) the statute of limitations from running so that prosecution can continue.
49. A docket is a formal record with brief entries of the proceedings in a case.
50. A defendant can make an appearance:
  - in person in open court;
  - by attorney in open court;
  - by mail;
  - by delivering a plea and waiver of jury trial to the court; or
  - by paying the fine.
51. The defendant or the defendant's attorney.
52. Not guilty, guilty, nolo contendere, or a special plea.
53. Enter a not guilty plea.
54. A complaint or affidavit based on probable cause.
55. Warrants for charges filed in the judge's court.
56. A capias is a written order issued by a judge of a court having jurisdiction of a case after commitment or bail and before trial.
57. When a bond forfeiture has been declared.
58. When a prosecutor makes a request that it be issued.
59. Article 45.202 of the Code of Criminal Procedure.
60. The court releasing a defendant on his or her personal bond must forward a copy of the bond to the personal bond office in that county.
61. No, but the court may set a case for pre-trial before it is set for trial upon its merits.
62. Because defendants have a right to subpoena witnesses and there is no discretion in issuing subpoenas, municipal court clerks may issue subpoenas.

63. The written declaration of the court signed by the trial judge ordering the defendant to pay a fine and certain costs to the State.
64. Article 44.02 of the Code of Criminal Procedure.
65. A writ of execution.
66. Municipal judges and mayors.

### **PART 3**

67. It is a collection of statutes defining criminal offenses and setting penalties.
68. The goals are:
  - to ensure public safety through deterrence, rehabilitation of offenders, and punishment of those who commit offenses;
  - to define and grade offenses so citizens will know what they can and cannot do;
  - to define punishments appropriate for each particular offense;
  - to safeguard innocent conduct;
  - to guide law enforcement officials; and
  - to make the criminal laws apply to everyone in the same way.
69. The objectives show that the intent of the Legislature is to prevent crime through deterrence and punishment and to limit the power of the State from interfering too much with innocent citizens.
70. It is divided into title, chapters, subchapters, and sections.
71. Title 2, Chapters 6 through 9.
72. Title 3, Chapter 12.
73. It is an offense that is attempted but not completed.
74. Title 8, Chapter 36.
75. Title 8, Chapter 38 (Section 38.10).
76. Title 8, Chapter 39.
77. Title 9, Chapter 42 (Section 42.01).
78. Title 10, Chapter 49 (Section 49.02).
79. Definitions are scattered throughout the Penal Code. General definitions are listed in Section 1.07.
80. A person does not have to prove that he or she is innocent. The State must prove that the person is guilty beyond a reasonable doubt by proving each element of the offense.
81. When the conduct is defined as an offense by statute, municipal ordinance, order of a county commissioner's court, or rule authorized and lawfully adopted.

82. A person commits an offense only if he or she voluntarily engages in conduct, including an act, an omission, or possession.
83. Act means a bodily movement, whether voluntary or involuntary and includes speech. Omission means a failure to act when the person had a duty to act. Possession means actual care, custody, control, or management.
84. A culpable mental state is the state of the mind in which a person voluntarily engages in certain conduct or fails to perform an act when there is a duty to act.
85. Intentionally, knowingly, recklessly, and criminally negligent.
86. When a person specifically intends to commit the offense and does an act amounting to more than mere preparation that tends, but failed, to effect the commission of the offense intended.
87. A person is criminally responsible if the result would not have occurred but for his or her conduct.
88. When conduct constituting an offense is performed by an agent acting on behalf of a corporation or association and within the scope of his or her office or employment.
89. True.
90. False.
91. False.
92. True.
93. Section 1.08 of the Penal Code prohibits governmental subdivisions from enacting or enforcing laws that make any conduct covered by the Penal Code an offense subject to criminal penalty.
94. As felonies or misdemeanors.
95. Class A, Class B, and Class C misdemeanors.
96. Class C misdemeanor.
97. The Penal Code defines a Class C misdemeanor as an offense that is punishable by a fine not to exceed \$500.
98. Capital felonies, first degree felonies, second degree felonies, third degree felonies, and state jail felonies.
99. Class C misdemeanor.
100. \$2,000.
101. Any person the court deems appropriate.
102. The Texas Attorney General.
103. Section 8.07.
104. Traffic offenses, except for traffic offenses punishable by incarceration or
  - Section 550.021 (accident involving person injury or death);
  - Section 550.022 (accident involving damage to vehicle);

- Section 550.024 (duty on striking unattended vehicle);
  - Other state law misdemeanors punishable by fine only; and
  - City ordinances.
105. Age 10.
106. Criminally responsible for any misdemeanors punishable by a fine only or a violation of a penal ordinance of a political subdivision (with the exception of juvenile curfew ordinance), except for traffic offenses.
107. The elements of an offense are the forbidden conduct; the required culpability and required result; and the negation of any exception to the offense.
108. No (e.g., assault).
109. The elements of the offense of a Class C assault are:
- person;
  - location (city and county);
  - date of offense;
  - intentionally or knowingly; and
  - threatens another, including the person's spouse, with imminent bodily injury.
110. False (This conduct would constitute an assault by threat, a Class C misdemeanor. The Class A misdemeanor assault requires bodily injury, which is not suggested by the question. If the offense charged was Terroristic Threat under 22.07, P.C., however, the charge could be filed as a Class A misdemeanor. The practice question suggests a Class A Assault, though, so the answer is false.).
111. False (it is a Class C misdemeanor offense).
112. False (it is not an offense if there is a person at least 14 years of age in the vehicle).
113. True.
114. True.
115. True.
116. True.
117. True.
118. True.
119. True.
120. False (the defendant must have been in custody and released on the condition he/she subsequently appear).
121. True.
122. True.
123. True.

124. False (only 17-year-olds can be tried in municipal court; anyone else must be transferred to juvenile court).
125. False (it is a Class C misdemeanor offense).
126. False (the backyard is not a public place).