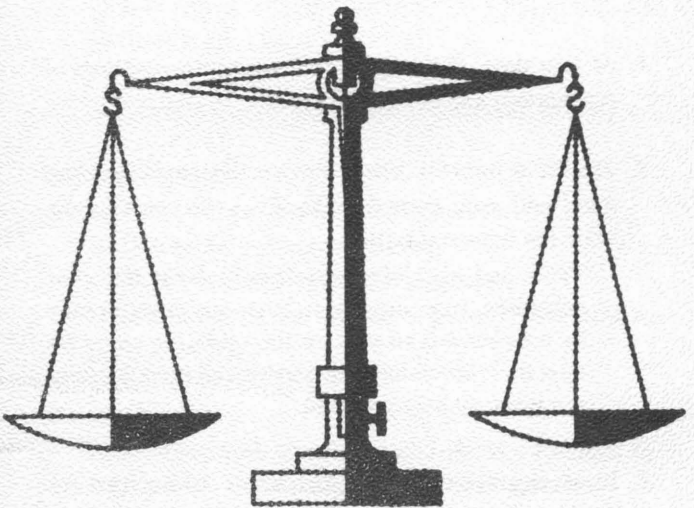


Steps in the Trial of a Criminal Proceeding



Outline Series for County Officials

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STEPS IN THE TRIAL OF A CRIMINAL PROCEEDING

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Prior to trial a defendant has been indicted by a grand jury or charged with committing a criminal offense by an information and complaint.

1. At trial date, the judge inquires as to the readiness of prosecution and defense to proceed to trial.
2. The list of jurors is called. Prospective panel members stand and raise their right hands as the clerk administers the following oath:

“You, and each of you, solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its direction, touching your service and qualifications as a juror, so help you God.”
3. Juror qualifications are tested by asking the following questions:
 - a. Are each of you citizens of the United States, of this state and county, qualified to vote under the Constitution? (Noncitizens are ineligible for jury service.)
 - b. Are each of you at least 18 years of age or older? (Persons under 18 may not serve.)
 - c. Are each of you able to read and write? (A juror must be able to read and write.)
 - d. Have any of you ever been convicted of a felony or are under indictment or legal accusation for theft or any felony? (If so, he would be ineligible to serve.)

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- e. Have you served as a juror for at least 6 days during the preceding 6 months in district court or during the preceding 3 months in county court?
(If so, a juror is ineligible to serve.)

Persons of unsound mind and bad moral character are ineligible for jury service.¹

4. The following persons shall be disqualified to serve as jurors in any particular case:
- Any witness in the case.
 - Any person interested, directly or indirectly, in the outcome of the trial.
 - Any person related within the third degree to any party involved.
 - Any person with a bias or prejudice.
 - A person who sat as a petit juror in a former trial involving the same defendant(s) or another case involving the same questions.²
 - A person who served on the grand jury which indicted the defendant.
5. The following persons are exempt from jury service at their option:
- All persons over 65 years of age.
 - All females who have legal custody of a child or children under the age of 10 years.³
 - Students attending secondary schools and institutions of higher education.
6. Court hears excuses of other persons seeking release from jury service.
7. The case is called for trial. The State of Texas vs. _____ (defendant) _____ charged with the offense of _____.
8. Remaining qualified jurors are listed and seated in the order their names have been drawn by the clerk.
9. Prosecuting attorney questions panel further regarding other qualifications, followed by questions by defense attorney.
10. Attorneys may make challenges of jurors who are legally disqualified for cause.

¹Art. 2133, Vernon's Annotated Civil Statutes. See Art. 35.12 Texas Code of Criminal Procedure.

²Art. 2134, Vernon's Annotated Civil Statutes. See Art. 35.16 Texas Code of Criminal Procedure.

³Art. 2135, Vernon's Annotated Civil Statutes. See Art. 35.04 Texas Code of Criminal Procedure.

11. Other challenges (strikes) may be made by each side as follows without cause:
 - a. District court:
 - 1) Capital felony, 15; with two defendants, eight each.
 - 2) Noncapital felony, 10; with two defendants, six each.
 - 3) Misdemeanors, five; with two defendants, three each.
 - b. County court:

Each defendant and the State are allowed three challenges in all cases.⁴
12. Jury is empaneled from the top names on list remaining unchallenged.
13. Each jury member stands, raises his right hand and is sworn as follows by the clerk:

“You, and each of you, do solemnly swear that in the case of the State of Texas against the defendant, _____ (name) _____, you will a true verdict render according to the law and evidence, so help you God.”
14. The witnesses may be sworn as follows:

“You do solemnly swear (or affirm) that the testimony which you may give in this cause, now on trial, is the truth, the whole truth, and nothing but the truth, so help you God.”
15. Inquire if attorneys wish to invoke the rule. (If so, witnesses other than parties to the action are asked to remain beyond the hearing of the court and to refrain from discussing the case with others. The witnesses may discuss their testimony with the lawyers involved.)
16. Indictment or information is read to the jury.
17. Defendant is asked to stand and plead guilty or not guilty.

⁴Art. 35.15, Texas Code of Criminal Procedure

18. Testimony begins. State's witnesses take the witness stand and are questioned by attorney for the State, then cross-examined by defendant's attorney.
19. At conclusion of State's case, the State will rest.
20. Defendant's witnesses are questioned by defendant's attorney, then cross-examined by attorney for the State.
21. Defense closes and rests.
22. The jury may be recessed while the court prepares a general charge of the applicable law and hears all objections to the charge.
23. The final form of the charge is then read to the jury.
24. Oral argument:
 - a. State's attorney opens the argument.
 - b. Defendant's attorney speaks.
 - c. State's attorney closes the argument.(The side having the burden of proof is permitted to open and close.)
25. Jury verdict:

Jury retires with the charge and elects a foreman to arrive at a verdict which must be unanimous in Texas. The verdict is returned by the jury and given to the court.
26. The defendant stands as the court reads the verdict. If a "not guilty" verdict is entered, the defendant is free to go (assuming there are no other pending charges against him). With a "guilty" verdict, the court sets the punishment and remands defendant to sheriff's custody.
27. If a "guilty" verdict is returned and the jury is selected to assess the punishment, the hearing on punishment then begins and steps 18 through 21, 24 and

25 are repeated. The court assesses the punishment set by the jury with the defendant standing as the punishment is read by the court.

28. If the defendant has been found guilty, he may file a motion for a new trial and take other appeal steps set out in the Code of Criminal Procedure.

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