

PRELIMINARY DRAFT

TEXAS LEGISLATIVE COUNCIL
Code of Criminal Procedure
Chapters 1, 2A, 4, 17,
and 35
7/24/26

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19	CHAPTER 1. GENERAL PROVISIONS	
20	<u>Revised Law</u>	
21	Art. 1.251. PERSONAL PRESENCE OF DEFENDANT AT TRIAL. (a)	
22	Except as provided by Subsection (b), a defendant must be	
23	personally present at the trial for:	
24	(1) a felony; or	
25	(2) a misdemeanor if the punishment includes	
26	confinement in jail.	

1 (b) A trial described by Subsection (a) may proceed to
2 conclusion without the defendant's personal presence if the
3 defendant voluntarily absents himself or herself after:

4 (1) pleading to the indictment or information; or

5 (2) the jury has been selected when trial is before a
6 jury.

7 (c) If the record on appeal shows that the defendant was
8 personally present at any portion of the trial, it is presumed in
9 the absence of all evidence in the record to the contrary that the
10 defendant was personally present during the whole trial. (Code
11 Crim. Proc., Art. 33.03 (part).)

12 Source Law

13 Art. 33.03. PRESENCE OF DEFENDANT. In all
14 prosecutions for felonies, the defendant must be
15 personally present at the trial, and he must likewise
16 be present in all cases of misdemeanor when the
17 punishment or any part thereof is imprisonment in
18 jail; provided, however, that in all cases, when the
19 defendant voluntarily absents himself after pleading
20 to the indictment or information, or after the jury has
21 been selected when trial is before a jury, the trial
22 may proceed to its conclusion. When the record in the
23 appellate court shows that the defendant was present
24 at the commencement, or any portion of the trial, it
25 shall be presumed in the absence of all evidence in the
26 record to the contrary that he was present during the
27 whole trial. . . .

28 Revisor's Note

29 (1) Article 33.03, Code of Criminal Procedure,
30 provides that a defendant must be personally present
31 at the trial for a misdemeanor if the punishment
32 includes "imprisonment" in jail. The revised law
33 substitutes "confinement" for "imprisonment" to
34 conform to the terminology used to describe
35 misdemeanor punishments in Subchapter B, Chapter 12,
36 Penal Code.

37 (2) Article 33.03, Code of Criminal Procedure,
38 requires a defendant to be "personally present" at
39 certain criminal trials and subsequently refers to the
40 defendant being "present" at trial. For consistency
41 in the portion of that provision revised in this

1 article, the revised law adds "personally" to these
2 subsequent references.

3 (3) Article 33.03, Code of Criminal Procedure,
4 requires that a defendant be personally present at
5 certain criminal trials unless the defendant
6 voluntarily absents himself or herself after pleading
7 to the indictment or information or, when the trial is
8 before a jury, after the jury has been selected, in
9 which case "the trial may proceed to its conclusion."
10 For clarity, the revised law adds "without the
11 defendant's personal presence" following the quoted
12 language because a trial that may proceed to its
13 conclusion after a defendant has voluntarily absented
14 himself or herself may, necessarily, conclude without
15 the defendant's personal presence.

16 (4) Article 33.03, Code of Criminal Procedure,
17 provides that a defendant is presumed to have been
18 present during the whole trial if the record on appeal
19 shows that the defendant was personally present at
20 "the commencement, or" any portion of the trial. For
21 clarity, the revised law omits the quoted language as
22 unnecessary because "the commencement" is included
23 within the meaning of "any portion of the trial."

24 Revised Law

25 Art. 1.252. APPEARANCE BY COUNSEL FOR CERTAIN MISDEMEANORS.
26 In the trial of a misdemeanor punishable by fine only, the defendant
27 may, with the consent of the attorney representing the state,
28 appear by counsel, and the trial may proceed without the
29 defendant's personal presence. (Code Crim. Proc., Art. 33.04.)

30 Source Law

31 Art. 33.04. MAY APPEAR BY COUNSEL. In other
32 misdemeanor cases, the defendant may, by consent of
33 the State's attorney, appear by counsel, and the trial
34 may proceed without his personal presence.

1 Revisor's Note

2 (1) Article 33.04, Code of Criminal Procedure,
3 provides that a defendant may, by consent of the
4 attorney representing the state, appear by counsel in
5 "other misdemeanor cases." The revised law
6 substitutes "misdemeanor punishable by fine only" for
7 the quoted language because "other misdemeanor" refers
8 to a misdemeanor other than one in which the punishment
9 includes confinement in jail as described by Article
10 33.03, Code of Criminal Procedure, revised in
11 pertinent part in Article 1.251(a), and "misdemeanor
12 punishable by fine only" is more commonly used in the
13 Code of Criminal Procedure.

14 (2) Article 33.04, Code of Criminal Procedure,
15 refers to the "[s]tate's attorney." The revised law
16 substitutes "attorney representing the state" for the
17 quoted language because the terms are synonymous and
18 "attorney representing the state" is more commonly
19 used in the Code of Criminal Procedure.

20 Revised Law

21 Art. 1.253. PERSONAL PRESENCE OF DEFENDANT AT MOTION FOR
22 NEW TRIAL. The personal presence of the defendant is not required
23 at a hearing on a motion for new trial in a misdemeanor. (Code Crim.
24 Proc., Art. 33.03 (part).)

25 Source Law

26 Art. 33.03. . . . Provided, however, that the
27 presence of the defendant shall not be required at the
28 hearing on the motion for new trial in any misdemeanor
29 case.

30 Revisor's Note

31 Article 33.03, Code of Criminal Procedure, refers
32 to the "presence of the defendant." The revised law
33 adds "personal" before "presence" for the reason
34 stated in Revisor's Note (2) to Article 1.251.

1 CHAPTER 2A. OFFICERS; POWERS AND DUTIES

2 SUBCHAPTER D. MAGISTRATES AND CLERKS

3 Revised Law

4 Art. 2A.1531. RECORD OF CRIMINAL ACTIONS. Each clerk of a
5 court of record with criminal jurisdiction shall, for each criminal
6 action, keep a record containing:

- 7 (1) the style and file number;
8 (2) the nature of the offense;
9 (3) the names of counsel;
10 (4) each proceeding held; and
11 (5) the date of each proceeding. (Code Crim. Proc.,
12 Art. 33.07.)

13 Source Law

14 Art. 33.07. RECORD OF CRIMINAL ACTIONS. Each
15 clerk of a court of record having criminal
16 jurisdiction shall keep a record in which shall be set
17 down the style and file number of each criminal action,
18 the nature of the offense, the names of counsel, the
19 proceedings had therein, and the date of each
20 proceeding.

21 CHAPTER 4. COURTS AND CRIMINAL JURISDICTION

22 Revised Law

23 Art. 4.071. SETTING OF DISTRICT OR COUNTY COURT DOCKET.
24 Each district and county court has control of its docket when
25 setting a criminal case. (Code Crim. Proc., Art. 33.08.)

26 Source Law

27 Art. 33.08. TO FIX DAY FOR CRIMINAL
28 DOCKET. The district courts and county courts shall
29 have control of their respective dockets as to the
30 settings of criminal cases.

31 CHAPTER 17. BAIL

32 Revised Law

33 Art. 17.391. DISCHARGE OF BAIL ON ACQUITTAL. If the
34 defendant is released on bail when the trial begins, the bail is
35 considered discharged if the defendant is acquitted. (Code Crim.
36 Proc., Art. 33.05 (part).)

37 Source Law

38 Art. 33.05. ON BAIL DURING TRIAL. If the
39 defendant is on bail when the trial commences, such

1 bail shall be considered as discharged if he is
2 acquitted. . . .

3 Revisor's Note

4 Article 33.05, Code of Criminal Procedure,
5 provides that the discharge of a defendant's bail after
6 a guilty verdict is governed by other provisions of the
7 Code of Criminal Procedure. The revised law omits that
8 provision as unnecessary because any provision
9 relating to the discharge of a defendant's bail applies
10 on its own terms. The omitted law reads:

11 Art. 33.05. . . . If a verdict of
12 guilty is returned against him, the
13 discharge of his bail shall be governed by
14 other provisions of this Code.

15 Revised Law

16 Art. 17.392. SURETIES BOUND AFTER MISTRIAL IN FELONY. A
17 defendant's sureties in a felony case continue to be bound for the
18 defendant's appearance after a mistrial until the sureties
19 surrender the defendant in accordance with the provisions of this
20 code. (Code Crim. Proc., Art. 33.06.)

21 Source Law

22 Art. 33.06. SURETIES BOUND IN CASE OF
23 MISTRIAL. If there be a mistrial in a felony case, the
24 original sureties, if any, of the defendant shall be
25 still held bound for his appearance until they
26 surrender him in accordance with the provisions of
27 this Code.

28 Revisor's Note

29 Article 33.06, Code of Criminal Procedure,
30 provides that "the original sureties, if any, of [a]
31 defendant shall be still held bound" for the
32 defendant's appearance after a mistrial in a felony
33 case until the defendant is surrendered. The revised
34 law omits "original" as unnecessary because only a
35 surety who has not been discharged can "still [be] held
36 bound," and the term does not add to the clear meaning
37 of the law.

1 CHAPTER 35. FORMATION OF THE JURY

2 Revised Law

3 Art. 35.001. DRAWING OF JURY PANEL. Except as otherwise
4 provided by this code, a jury panel, including a special venire, for
5 the trial of a criminal case shall be selected and summoned,
6 including the return on summons, in the same manner as the selection
7 of a jury panel for the trial of a civil case. (Code Crim. Proc.,
8 Art. 33.09.)

9 Source Law

10 Art. 33.09. JURY DRAWN. Jury panels, including
11 special venires, for the trial of criminal cases shall
12 be selected and summoned (with return on summons) in
13 the same manner as the selection of panels for the
14 trial of civil cases except as otherwise provided in
15 this Code.

16 Revised Law

17 Art. 35.211. JURY SIZE. A jury consists of:

18 (1) twelve qualified jurors in a trial held in a
19 district court, unless the trial involves a misdemeanor offense, in
20 which case the jury consists of six qualified jurors; or

21 (2) six qualified jurors in a trial held in a county or
22 inferior court. (Code Crim. Proc., Art. 33.01.)

23 Source Law

24 Art. 33.01. JURY SIZE. (a) Except as provided
25 by Subsection (b), in the district court, the jury
26 shall consist of twelve qualified jurors. In the
27 county court and inferior courts, the jury shall
28 consist of six qualified jurors.

29 (b) In a trial involving a misdemeanor offense,
30 a district court jury shall consist of six qualified
31 jurors.

32 Revised Law

33 Art. 35.212. ALTERNATE JURORS. (a) A judge may direct that
34 not more than the following number of jurors in addition to the
35 regular jury be called and impaneled to sit as alternate jurors:

36 (1) four jurors in a district court; or

37 (2) two jurors in a county court.

38 (b) Alternate jurors shall be drawn and selected in the same
39 manner as, have the same qualifications as, be subject to the same
40 examination and challenges as, take the same oath as, and have the

1 same functions, powers, facilities, security, and privileges as
2 regular jurors.

3 (c) An alternate juror shall, in the order in which the
4 alternate jurors are called, replace a juror who, before the time
5 the jury renders a verdict on the guilt or innocence of the
6 defendant and, if applicable, the amount of punishment:

7 (1) becomes or is found to be unable or disqualified to
8 perform the juror's duties; or

9 (2) is found by the court on agreement of the parties
10 to have good cause for not performing the juror's duties.

11 (d) An alternate juror who does not replace a regular juror
12 shall be discharged after the jury has rendered a verdict on the
13 guilt or innocence of the defendant and, if applicable, the amount
14 of punishment. (Code Crim. Proc., Art. 33.011.)

15 Source Law

16 Art. 33.011. ALTERNATE JURORS. (a) In district
17 courts, the judge may direct that not more than four
18 jurors in addition to the regular jury be called and
19 impaneled to sit as alternate jurors. In county
20 courts, the judge may direct that not more than two
21 jurors in addition to the regular jury be called and
22 impaneled to sit as alternate jurors.

23 (b) Alternate jurors in the order in which they
24 are called shall replace jurors who, prior to the time
25 the jury renders a verdict on the guilt or innocence of
26 the defendant and, if applicable, the amount of
27 punishment, become or are found to be unable or
28 disqualified to perform their duties or are found by
29 the court on agreement of the parties to have good
30 cause for not performing their duties. Alternate
31 jurors shall be drawn and selected in the same manner,
32 shall have the same qualifications, shall be subject
33 to the same examination and challenges, shall take the
34 same oath, and shall have the same functions, powers,
35 facilities, security, and privileges as regular
36 jurors. An alternate juror who does not replace a
37 regular juror shall be discharged after the jury has
38 rendered a verdict on the guilt or innocence of the
39 defendant and, if applicable, the amount of
40 punishment.

41 Revisor's Note
42 (End of Chapter)

43 Article 33.02, Code of Criminal Procedure,
44 provides that failing to register to vote does not
45 disqualify a person from jury service. The revised law
46 omits that provision because it duplicates in

1 substance Section 62.1031, Government Code. The
2 omitted law reads:

3 Art. 33.02. FAILURE TO REGISTER.
4 Failure to register to vote shall not
5 disqualify any person from jury service.