

THE DEFENDER

2020
VOLUME 2

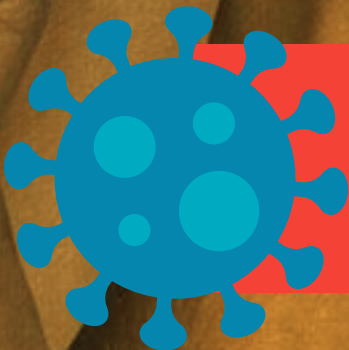
HARRIS COUNTY CRIMINAL LAWYERS ASSOCIATION

5

1970-2020



YEARS
STRONG



COVID 19 INFORMATION & UPDATES

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WITH **HCCLA EVENTS?**

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Celebrating



50

1970-2020

THE HARRIS COUNTY CRIMINAL LAWYERS ASSOCIATION IS THE LARGEST LOCAL CRIMINAL DEFENSE BAR IN THE UNITED STATES, WITH MORE THAN 700 ACTIVE MEMBERS ENGAGED IN DEFENSE OF CITIZENS ACCUSED OF CRIMINAL ACTS. HCCLA HAS, FOR 50 YEARS, STOOD FOR CRIMINAL JUSTICE, CRIMINAL JUSTICE REFORM, AND AGAINST GOVERNMENT AND JUDICIAL OVERREACH.

**STAY UP TO DATE WITH HCCLA EVENTS
CELEBRATING 50 YEARS OF HCCLA**

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THE DEFENDER

PUBLISHER
HCCLA

EDITOR
ROBERT PELTON

ADS & DISTRIBUTION
ROBERT PELTON
CHRISTINA APPELT

DESIGN & LAYOUT
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A WORD FROM YOUR PAST PRESIDENT



Neal Davis

MAN PLANS

God Laughs

“Mann Tracht, Un Gott Lacht” is an old Yiddish adage meaning, “Man Plans, and God Laughs.”

We had lots of plans when I assumed the presidency of HCCLA, from ensuring defense lawyers were not excluded from cite-and-release (or other deferred prosecution programs) to increasing diversity in HCCLA. But our plans were superseded by two unexpected events: the Managed Assigned Counsel (MAC) program to completely overhaul court appointments and, of course, the COVID-19 pandemic.

Regarding MAC, HCCLA sent a letter to the County Commissioner’s Court and to judges expressing reservations and concerns about certain details of the program. However, to be clear, we have been, and will remain, steadfast in our support of MAC. Regardless of some dissension within our ranks in HCCLA regarding the wisdom of a MAC, the reality is clear—a MAC is coming sooner or later,

and HCCLA should make its best efforts to have its voice heard and considered.

Regarding COVID-19, HCCLA sent letters to the courts and they eventually relented and permitted almost every appearance via Zoom. We must remain vigilant in courts’ attempts to re-open too soon, or to force jury trials on defendants that impinge on the integrity of our criminal justice system. That means we must resist tooth and nail any effort to conduct jury trials in any way except in person, without masks, and everyone in the same room. No remote testimony.

Being President is not a one-person job. I have relied on our outstanding Board of Directors, and in particular want to thank Robb Fickman, Troy McKinney, Mark Bennett, Sarah Wood, David Ryan, Joe Vinas, Damon Parrish, Justin Harris, and Mark Thiessen for their invaluable assistance. I could not have done it without them, and we owe them a huge debt of gratitude.



A WORD FROM YOUR PRESIDENT

Mark Thiessen

First, I would like to thank everyone that voted for me and allowed me to become the President of HCCLA. I've been a member of HCCLA since 2006 and am honored to lead this powerful organization. HCCLA is one of the largest local criminal defense bar associations in Texas and the nation. My primary goal for this year is to make HCCLA even stronger and invite each and every member of the criminal defense bar to contribute and participate in HCCLA.

In furtherance of that goal, I want you all to know that 1) I will listen to your concerns; 2) I will stand up and fight for our members; and 3) I will pour my heart and soul into this position. My cell phone is (832) 654-3058, and I want to be available for every member's questions and concerns. I am here to serve you. I wear many hats for different organizations, but Houston will always be my home, and this presidency is my number one priority. HCCLA will be my primary focus and obligation. Every decision I make this year will always be to benefit the membership of HCCLA.

Second, I would like to thank our past president, Neal Davis. He had a wonderful and productive term. Although he encountered a global pandemic during his term, he met every challenge with dignity and class. He has left me big shoes to fill, and I look forward to the challenge. Additionally, I wanted to thank all HCCLA Past Presidents. They are women and men that I look up to and admire. I will need their help and direction facing HCCLA's 50th year.

Right now, the most important question facing us is how do we accomplish our goals in a safe manner? What is our "new normal" and what will it look like after the Covid-19 pandemic? How can we protect our client's constitutional guarantees while also assuring the safety of every member of the public that comes through the courthouse doors? Right now, we don't have answers to some of those questions, but we are working on it.

I am asking you to let your voice be heard. HCCLA's Board of Directors is a diverse and highly intelligent group of 23 talented lawyers. The Board is already handling daily issues as they arise. I look forward to fighting along side this Board to protect us all.

The next year will be full of many challenges. We have ongoing dialogue with the judiciary and District Attorney's office. This has not always been the case, so we are encouraged about the future. We may be two separate teams and a referee; but we are finally all working together toward justice.

As Winston Churchill *possibly* said, "If you're going through hell, keep going." I took the helm in the middle of this pandemic and we have to push through uncharted territory. I will make mistakes this year. I am not perfect. I cannot appease everyone. But, I promise to never back down from a fight for our membership and never give up. I promise to engage the HCCLA Board of Directors and listen to our members' worries and concerns. It is my hope that we can use the latest State of Emergency to regroup and to keep the Harris County Criminal Lawyers Association the greatest local bar in Texas.



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(THROUGH AUGUST 26)



WASH YOUR HANDS
OFTEN WITH SOAP &
WATER FOR AT LEAST
20 SECONDS



USE ALCOHOL
BASED HAND
SANITIZER

GO ONLINE TO [HCCLA.ORG/COVID19](https://hccla.org/covid19)

STAY UP TO DATE COVID 19

At HCCLA, we are committed to helping the criminal bar and their clients through the outbreak of COVID-19. This is a rapidly evolving situation, so we will remain vigilant, continue to monitor the situation and update our members regularly. We will keep our website updated on the status of courts, jails and more as it becomes available.



HCCLA NEWS ROUNDUP

WELCOME NEW HCCLA MEMBERS

NEW MEMBERS

Kathy Adibe	Thomas C Locke
Brandon A. Bibby	Jeremy M. Masten
Travis Allan Bryan I	Lorraine Nwora
Octavio M. Rivera Bujosa	Sean Payne
Jami Carlisle	Ruben Restrepo
Cheryl Williamson Chapell	Jannell Robles
Dejean Cleggett	Sara Roque
Catherine Evans	James Rytting
Jorge Francisco Gallardo	Erik Smith
Jay Goins	Brandon Strauss
Paula Goodhart	Eric William Sundin
Sharon Hemphill	Kendra D Vega
Saif Kazim	Katie Wilson
Paige Lewis	

NEW PARALEGAL MEMBERS

Charnelle Barnes,
Mary E. Conn & Associates



APPLY ONLINE
HCCLA.ORG/MEMBERSHIP

2020 HCCLA AWARD WINNERS CONGRATULATIONS

RICHARD "RACEHORSE" HAYNES
LIFETIME ACHIEVEMENT

WENDELL ODOM

PAUL SCHIFFER

CRAIG WASHINGTON

LAWYERS OF THE YEAR

WENDELL ODOM, NEAL DAVIS III
& BRIAN HOBSON

ROBERT LOPER, BRAD LOPER,
& JON STEPHENSON

TORCH OF LIBERTY

HONORABLE ELSA ALCALA

SHARON LEVINE
UNsung HERO

JORDAN LEWIS

MENTOR OF THE YEAR

ERIC DAVIS

PRESIDENT'S AWARDS

COVID-19 TASK FORCE

ROBERT FICKMAN

DAMON PARRISH II

DAVID RYAN

JOE VINAS

SARAH WOOD

WINNING YOUR CASE THROUGH GREAT PREPARATION & this checklist

From Jack. B. Zimmermann & Terri R. Zimmermann

1 INITIAL CLIENT INTERVIEW

- **OBJECTIVES**
Build Trust, Explain the Process to Client,
& Learn About the Case
- **HAVE & EXPLAIN AN AGENDA**
- **EXPLAIN ATTORNEY-CLIENT PRIVILEGE**
- **SHARE YOUR BACKGROUND**
- **EXPLAIN THE PROCESS**
Elements, Max Pun, Presumption of Innocence,
Burden of Proof, Timelines
- **DISCUSS CLIENT BACKGROUND**
- **DISCUSS CLIENT'S REACTION TO ALLEGATIONS**
- **ANSWER CLIENT QUESTIONS**

2 INVESTIGATION

- **OBTAIN DISCOVERY**
 - » All Offense Reports with Exhibits, Lab Documentation,
Cell Phone Info, TCOLE Training
Send email to open_records@tcole.texas.gov
Include officer's name and agency, request training
records, and you will get a free report soon.

POINT OF CONTACT

Cera Thornton
Public Information Coordinator
Texas Commission on Law Enforcement
6330 East Hwy 290 | Suite 200
Austin, Texas 78723
open_records@tcole.texas.gov
cera.garrett@tcole.texas.gov
512-936-7763

- **VISIT & DOCUMENT SCENE WITH A PROVER**
- **INTERVIEW WITNESSES WITH A PROVER**

3 PREPARE IN ADVANCE

- **JURY INSTRUCTIONS**
 - » Standard & Requested Jury Charges
 - » See <https://www.justex.net/Courts/Criminal/JuryChargeBank/Default.aspx>
- **FINAL ARGUMENT**
 - » Outline Before & During Trial
 - » Practice

4 GRAND JURY

- **LOGISTICS**
Coordinate with State
- **MECHANICS**
 - » Your Cover Letter, Affidavits, Photos,
Medical Records, etc. as Evidence
- **STRATEGY**
 - » How Much to Disclose to State & Witnesses

5 MOTIONS

- **STANDARD**
 - » Brady, Court Reporter, 404(b)
- **CASE SPECIFIC**
 - » Suppress, Limine
- **GET HEARING PRIOR TO TRIAL IF POSSIBLE**
 - » Call Witnesses to Create Prior Sworn Statement

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6 PREPARE FOR JURY SELECTION

- DETERMINE DESIRED JUROR CHARACTERISTICS
 - » Opinions, Not Status
- QUESTIONNAIRE
- REVIEW CHALLENGE FOR CAUSE STANDARDS
 - » Tex. Code Crim. P. Art. 35.16
- CHARTS
- SEATING
- SELECTION
 - » With Number of Peremptory Challenges Notated

9 WITNESS QUESTIONS

- OUTLINES OF DIRECT & CROSS
 - » Bullets/Topics
- BUT LISTEN TO WITNESS ANSWERS

10 TAKE CARE OF YOURSELF

- HEALTHY EATING, SUFFICIENT SLEEP, REGULAR EXERCISE & STRESS RELIEF


7 PREPARE TRIAL GUIDE

- HOUSEKEEPING MATTERS
- LIST OF ALL EVENTS
 - » Voir Dire to Sentencing, including Motions
- ASSIGN A LAWYER IF CO-COUNSEL
- NOTATE EVIDENCE TO BE INTRODUCED
- ALSO HAVE FILE ORGANIZED FOR EASY ACCESS

8 PREPARE TRIAL GUIDE

- MARK ON TRIAL GUIDE
- PREPARE TRIAL BRIEFS
- PRESERVE RECORD
 - » Objections
 - » Bills of Exception
- WIN AT TRIAL OR INCREASE ODDS OF WINNING ON APPEAL

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BEST PRACTICES FOR zoom COURT PROCEEDINGS

BY GRAHAM SUTLIFF

The Stay-At-Home and Shelter-In-Place Orders issued across the country have presented unique challenges in many forms. For litigators, these challenges have required an industry that is resistant to change to adapt quickly and dramatically in order to continue to fulfill our obligations to our clients and the legal system.

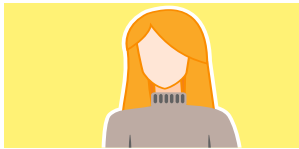
We commend judges, counsel, clients, those in the legal industry, and everyone else who is taking part in learning and mastering these virtual substitutes, for continuing to innovate and keep the wheels of justice moving.

Video conferencing has become the new norm for all types of proceedings throughout Texas and the United States. In Texas, the Office of Court Administration (OCA) secured a Zoom contract and a license is available to all State of Texas judges. Additionally, the OCA recommends that most non-essential proceedings, except for jury trials, be conducted remotely. While the means for conducting proceedings has been given, the legal community is now faced with handling the logistical details of how to effectively and professionally participate in a Zoom proceeding.

Several best practices have emerged to help you present your case in the best manner.

FIRST THINGS FIRST--SETTING UP ZOOM FOR YOUR PRACTICE

One of the main reasons why Zoom seems to be such a popular video conference option is its cost-effectiveness. Zoom has a free option that provides a number of features, and its subscription service is relatively inexpensive (i.e. \$149.90 for an annual, single license). In comparison, competitors such as GoToMeeting do not offer any type of free plan.



Installing Zoom is extremely easy and user-friendly. A web browser client is downloaded whenever you start or join your first Zoom meeting. On the Zoom website, any number of plugins or extensions can be installed so that Zoom can be run from applications such as Google Chrome, Microsoft Outlook, or Skype for Business. Zoom can also be run from a mobile device, such as a tablet or smartphone. As might be expected, running Zoom from a computer with a webcam or a laptop provides a richer experience over using it on a tablet or smartphone. A smartphone should only be used as a last resort.

AS ALWAYS, CHECK FOR LOCAL RULES

Before appearing in a proceeding, you should also check with the specific rules of the court. Different judges will have their own preferences on topics such as mute procedures, whether or not recording is allowed, and how to submit evidence. Additionally, as judges gain more experience with Zoom, those preferences may change over time. For instance, the 345th District Court issued procedures that include a rule about muting when not speaking and a detailed procedure on how to submit exhibits. In comparison, Judge Kyle Carter includes in his Court Decorum rules the following: “Mute Button When You Are Not Speaking, Identify Yourself Each Time You Speak, and Recording is Prohibited.” These rules may seem strange or arbitrary, but they are often the result of some surprising discoveries about Zoom. For instance, many courts are setting Zoom videoconferences to private, utilizing breakout rooms and keeping witnesses in virtual waiting

rooms. This has become a necessity because of Zoombombing (a form of hacking). Recordings are generally discouraged because the only official record of a court proceeding should be the one produced by the Court Reporter. Additionally, several courts are advising that chats be avoided altogether or prohibiting private chats. This is in response to the discovery that messages that were sent in a private, person-to-person mode, can actually be viewed by anyone who downloads the transcript from Zoom.

THREE WAYS TO IMPROVE YOUR PRESENTATION

1. BACKGROUNDS

It is important to have a clean and professional looking background when engaging via Zoom. This is necessary for both depositions and court proceedings since deposition recordings may be introduced later during a hearing, and court proceedings are often livestreamed to YouTube or Facebook to ensure the public has access under the Open Courts Provision of the Texas Constitution. You don’t want people thinking about what is going on behind you and not listening to what you have to say.

With this in mind, you have several options. You can look for an organized, clutter-free space in your home that can be your background. Alternatively, as a way to improve your presentation or the presentation of your witness, you can use a virtual background through Zoom. For depositions, assuming it is your witness, be sure to give some thought about the witness’ background.

If you want to use a virtual background, you need to test it to see if the space you want to use will need a green screen. A cluttered background makes it difficult for the technology to differentiate you from what is behind and around you. In this situation, you will need a green screen to use a virtual background. There are many options for purchasing a green screen online, but you can also purchase inexpensive options like a green poster board or make your own screen by painting a sheet or piece of cardboard.

Also, be sure that your clothes are not the same color as your background (e.g. green shirt with a green background) or you will become the invisible person.

The process of adding a virtual background is very easy and you can add anything you think would look the best. To help, we have created a photo gallery of professional, license-free images that you can download and use for yourself. [Click here](#). We have also set out instructions on how to download and upload the images to your Zoom account.

2. SUBMITTING AND PRESENTING DOCUMENTS

For court proceedings, each court will likely have its own rules about how to present documents. Some courts have used Dropbox to allow attorneys to share evidence, but many others prefer email. Be sure to call the Court prior to your hearing to determine how the Court handles the presentation of evidence. Some judges can manage the exhibits themselves and share their screen on Zoom when exhibits are used. If, on the other hand, you are required



to present your exhibits, then you need to know how to share your computer screen and how to direct people's attention to the parts you want. An app we find helpful in the presentation of evidence is Snagit. This app allows you to easily cut and paste from documents and zoom in easily. When it comes to depositions, we suggest coordinating with the videographer beforehand so they can verify that they have high-quality, clean copies and that they will be able to zoom in on relevant portions of exhibits as needed. You should also familiarize yourself with Zoom's ability to share your computer screen so you can present documents on the fly during the deposition.

3. TECHNICAL CAPABILITIES

In order to make sure you have high-quality video and audio, you will need a strong wired or WiFi connection, so you may need to experiment in different parts of your home to find the strongest signal. Attorneys should also try to find a quiet place where ambient noise will be at a minimum (think rooms with carpet or rugs and rooms with no echo). If available, using ear buds with a built-in microphone provides a better listening experience, reduces background noise and allows others to hear you better. With respect to lighting, you want the room to be well lit. Lamps are helpful and, when available, should be placed evenly with or a little behind your camera. Avoid having bright lights in the background because such light will create problems for the camera.

As for the location of the camera, try to have it eye-level so that it appears that you are looking at the other individuals on the conference.

Even with the best preparation, it can be difficult to anticipate how your Zoom video conference will behave on the day that you need it. Associate Judge Aurora Martinez Jones suggests that you try to avoid Zoom "traffic," if possible, by requesting or setting a start time that is mid-morning or later. She also recommends that you have a number of backup devices available in case your audio does not work or if you need to have private attorney-client communication. If you do end up using multiple devices, make sure to label them all properly when logging into Zoom using your first and last name so that they can be easily identified by the host of the videoconference. If only a phone is used, provide the host with your phone number ahead of time. If you are the host of a Zoom video conference, it is recommended that you ask all participants to log in early to iron out any technical difficulties.

Judge Dimple Malhotra also has a number of suggestions to ensure successful Zoom video conferences. If there is time before the official start time of the hearing, be sure to turn your video off until it is needed. She also encourages attorneys to be aware of issues of access. Not all participants have the capability to use Zoom. Some clients may not have a compatible device or internet access, and you should be prepared to come up with alternative arrangements.

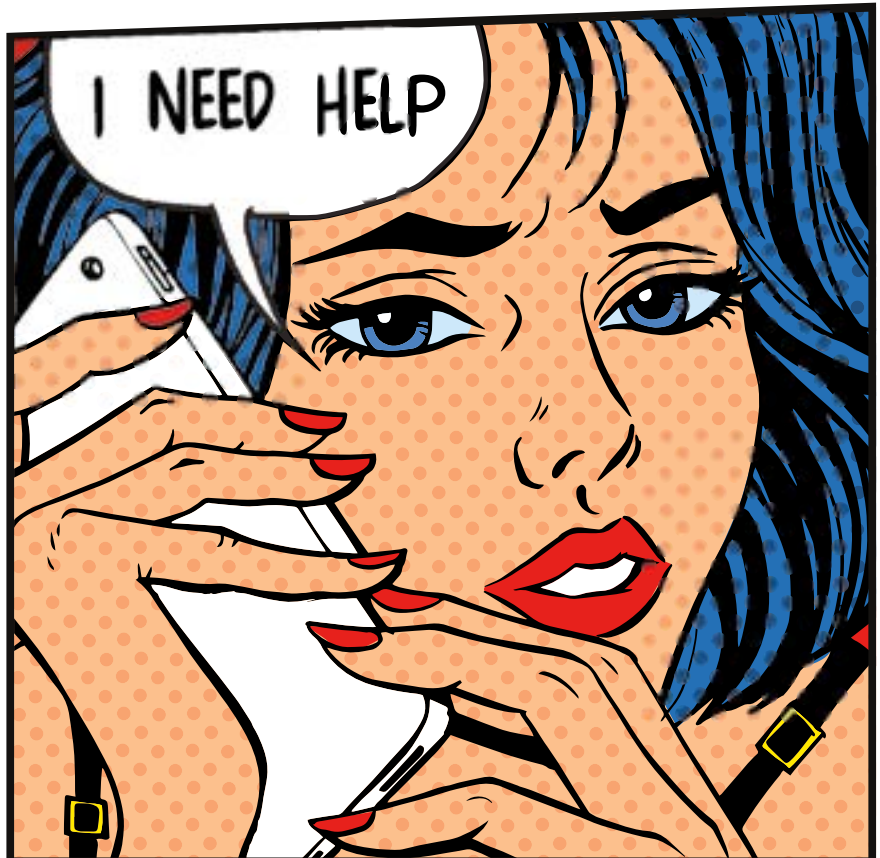
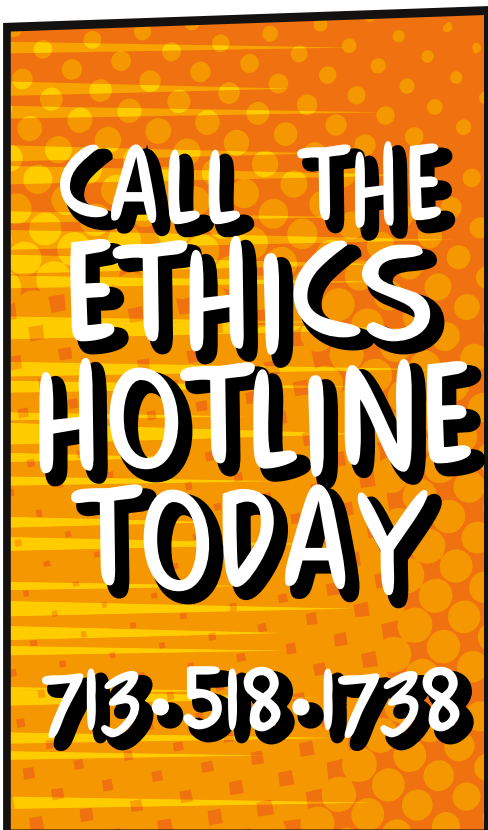
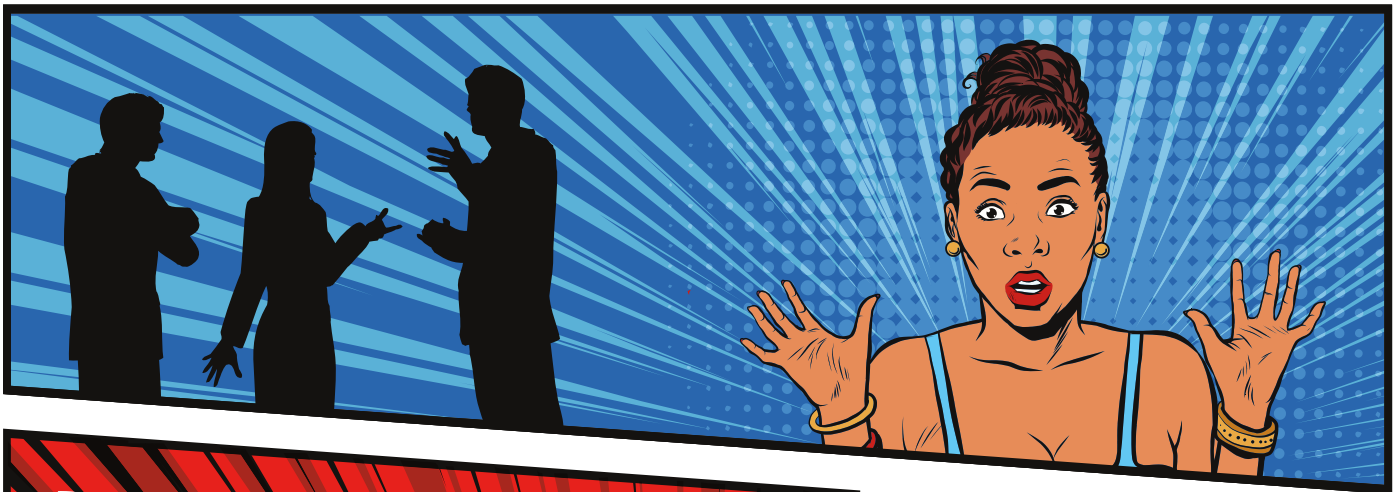
PROPER PREPARATION— BE SURE TO TEST YOUR SETUP AND SYSTEM BEFORE ANY HEARING OR DEPOSITION

After installing Zoom, users should test out the functions in Zoom by going through the various options and setting up a videoconference with a friend or colleague. When setting up this test, be sure to record the test session so you can go back and watch the test so that you will understand what others will see. You want to familiarize yourself with the basic functions such as different view options, mute, and chat. Depending on the device used and the form of Zoom interface, certain features may not be available. For instance, some devices may not have the video capabilities to utilize virtual backgrounds. Finally, attorneys should practice working with the different video and audio options, as well as how to use screen sharing and documents.

With these best practices in mind, combined with patience and learning from experience, Zoom can be a powerful tool to help courts and attorneys continue their important work.



Graham Sutliff is the co-founder of Sutliff & Stout, Injury & Accident Law Firm. Graham is Board Certified in Personal Injury Trial Law, and he has been actively trying personal injury cases for over fifteen years.



HCCLA ETHICS: COWBOY UP

The Trains Will Run Again!

By Robert Pelton, Editor

When Texas was younger, her pioneers lived in fear of yellow fever, scarlet fever, malarial fever, dengue fever, a handful of generic bilious fevers, and about as many poxes.

Before the first blue norther came in each year, people stayed on edge. It came with the pioneer territory.

So it's no surprise that in September 1897, when cases of yellow fever popped up at Ocean Springs, Mississippi, Texans tensed up. Those who had survived the epidemic 30 years before recalled the losses of entire families, and the deaths of thousands.

But things were different in 1897. Telephones supplemented telegraphs, bringing the news faster, and with the inflection of the human voice. People also traveled more, faster and farther than they had in 1867. A fantastic web of rail connected Texans to Texas and to everywhere else.

The good part about 1897 was that Texas found out about the outbreak in real time. The bad part about 1897 was that people from infected places might be arriving at the train station in your town any minute. What if they were bringing with them a bug that could wipe your community off the map?

The fever moved down the coast. Mobile, Biloxi, Bay St. Louis. Port towns all over the U.S. quarantined against ships from Gulf ports. Texas likewise locked down her ports to ships from any point east of New Orleans. Police inspected inbound trains to make sure passengers weren't coming from infected towns. The people were cautiously optimistic.

Then news of 12 cases in New Orleans hit the papers, and all hell broke loose. New Orleans health officials swore that it was just some lesser fever, but nobody cared. Towns all along the coast declared absolute quarantines against New Orleans and other infected places. Cotton futures plummeted. Ripples

of the news were felt in the great east coast financial kingdoms.

Texas papers daily carried the updated number of cases, deaths and recovered patients in New Orleans. To try to keep her commerce alive, New Orleans declared herself squeaky clean and announced new clean-up measures. It would now clean... wait for it...the asphalt! Just in case yellow fever germs were living on the blacktop, New Orleans was singeing the surface.



But Texans didn't care. Towns in East Texas outright refused to allow trains to stop at their stations. Keep it moving at 25 mph...or else. The State Health Officer, Dr. Swearingen, posted armed guards at all dirt roads entering Texas from Louisiana. Quarantine camps, like the one below, sprang up outside of railroad towns.

Travelers who were shut out of their destinations because of quarantines, but couldn't turn back because trains weren't running east, were held at these camps for 2 weeks to prove they were disease-free.



Places like Marlin and Georgetown locked themselves down entirely. Nobody could enter. If you lived there and were returning home after lockdown was declared, well that was just too bad. Bryan sent a health official to inspect Houston, on behalf of its citizens, who had heard rumors that the Bayou City was infected. Denton also issued a quarantine against any outside entry.

Big towns and little towns did the only thing they thought might save them - they cleaned. Galveston appropriated \$5,000 to clean the city gutters, pull weeds and pick up trash. Houston declared that any structure within 250 feet of a sewer line had to tie into the line. Corpus engaged in a city-wide cleanup effort. In Milam County, a volunteer force in Cameron disinfected the town. As far as I know, nobody scorched the pavement to kill germs in Texas.

By the third week of September 1897, the papers were filled with quarantine notices and rumors of "suspicious cases." Caldwell, Navasota, Wills Point, Brenham, Tyler, Calvert, La Grange, Huntsville, Brookshire, Hearne, Columbus...even Dallas declared a quarantine against trains and humans from infected or suspicious places.

The holdouts were few. Waxahachie, Palestine and Corsicana said they didn't believe yellow fever was coming to Texas, so they remained open. Naturally, other towns quarantined against the open towns. Overall, everyone quarantined against each other in the spirit of self preservation.

Then nothing happened. Texas thought it had dodged a bullet. The Houston Post published this triumphant but creepy victory cartoon to kick off October 1897.



Orange reported it was resuming business. Hillsboro and Waco lifted their quarantines. Public schools re-opened on October 4 in Richmond. A large crowd at Sabine Pass greeted the first train to arrive there in weeks. Merchants and markets rallied. Everyone was alive again. And that should have been the end of the story.

...but it wasn't. An October 12, 1897 statement by Dr. Juan Guiteras of the U.S. Marine Hospital, published in the Houston Post, upended Texas in way that made the events of September look like dinner theater.

Dr. G's report declared that he had inspected Houston and Galveston, and the fever was present in both places. Yellow Jack, Bronze John, the Saffron Scourge - it had arrived in Texas! About 12 cases, he said, most of them recovered, but definitely yellow fever.

Houston and Galveston doctors moved swiftly to denounce Guiteras' statement, claiming it was just dengue fever, not yellow fever. City councils passed resolutions declaring that their cities had one malady and not the other. But the damage was done. Texans flew into action.

Now Texas towns declared quarantines against Houston and Galveston, as well as other places down the coast. The old shotgun quarantine method went into effect. Try to enter from Houston and you had to deal with men with guns. The San Francisco Bulletin summed it up well:

They have established shotgun quarantine against Yellow Jack in Texas. Texas is nothing if not strong—and, in the matter of shooting, accurate.—S. F. Bulletin.

The town of Bryan not only tried to prevent trains from stopping there, they barred trains from entering the county entirely. Picture it like a train robbery, but without the theft part. Brazos County was not alone in this tactic.

Texas A&M entered total isolation and declared it would stay that way until the first frost.

In Fayette County, a Muldoon company loading a huge order of rock bound for the Galveston jetties stopped work...no train would be sent to infected Galveston.

Folks in Wharton and other towns just fled. Trying to avoid contact with other people - even their neighbors - they fled to the interior and North Texas.

At Brenham, there was a run on groceries and supplies (yep....19th century toilet paper pirates). People living outside of town were preparing for "a siege in case this yellow fever business comes to the worst."

The news from La Grange two days after the cases were announced:

"Our streets have been almost deserted this week, owing to people being afraid to come into town."

On the day the Associated Press broke the news of cases in Texas, the Western Union office at Houston was flooded with 750 telegrams and had to call in extra hands to deal with the 900 responses to be sent out.

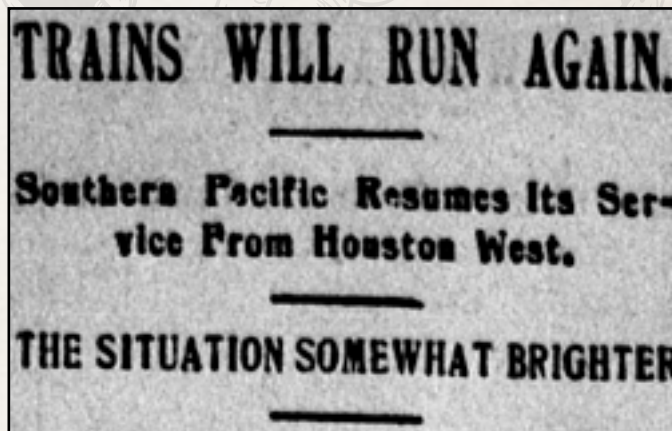
Houston immediately bought from Washington D.C. a new device for mechanical fumigation of mail. The machine, by way of a paddle with thin metal tines, slapped tiny holes in each envelope to allow sulphur or formaldehyde fumes inside to kill germs on the letters.

San Antonio locked down, but the Austin city council couldn't agree to quarantine or not to quarantine, so they just adjourned without doing anything at all.

Mayor Rice of Houston, at the pleading of the Houston Cotton Exchange, issued an invitation for town representatives from the Texas interior to come to Houston and inspect it for themselves.

He even offered to provide free transportation. Each town decided independently whether or not they wanted to risk sending their most trusted citizens into Houston. In the end, the handful that went were able to convince others that Houston wasn't a hotbed of yellow fever. Texas Health Officer Swearingen released the state ordered quarantine of Houston and Galveston when no new cases had appeared for about 10 days.

Less than 2 weeks after the panic began, it subsided. Houston theaters announced they'd resume plays. Public schools reopened across the state. And the Houston Post trumpeted the news everyone was waiting to hear.



Trains will run again! Texans and commerce began to move. They shopped, sent letters, received newspapers, saw their neighbors. Texas was gonna be okay.

Little did they know, it was those new-fangled window screens they'd installed since the last epidemic that had saved them from heartbreak and death. The discovery that mosquitoes were the cause of the dreaded disease was still a couple years away.

Newspaper editors, with a few days' hindsight under their belts, scoffed at the experts who had raised the alarm of the fever in Texas. Hallettsville bragged on itself for knowing all along that the scare was no big deal. Ain't hindsight grand?

This thing we're living through right now is like 1897 in many ways. Every day, we're bombarded with figures and death tallies. Every day we're reminded to stay at home. Every day we're told that the economy is wrecked.

There are pertinent things we don't understand yet, just like those Texans didn't know the damn mosquitoes were the cause of yellow fever. We're leery of the various alarms & predictions of experts, but afraid nonetheless. We're bringing back shotgun quarantine at the Louisiana border.

But we are adapting and we are pioneering new ways of doing what needs to be done. We are doing as Texans have always done - moving ably through uncharted territory. And while we don't yet know how our version of this story ends, we must remember this: the trains will run again. You can count on it. When the trains start running again, remember the RULES OF ETHICAL BEHAVIOR. Many of the ethical complaints received by the state bar are for FAILURE TO COMMUNICATE. Even though you may not be in your office it is vital to be in contact with your clients.

If they are in jail, send a letter or put a little money on their books. Talk with their family to reassure them that you are ok and concerned and working on their cases. It is time to COWBOY UP.

Cowboy Up, America.

When a Cowboy's in a pinch, he just tightens up the cinch, spurs his horse and rides right through it 'cause that's the way the Duke'd do it. He'd Cowboy Up. And with our country now in danger, a cowboy is like the old Lone Ranger. Ridin' hard and shootin' straight, fightin' those who spread the hate. He'd Cowboy'd Up.

The original meaning of "Cowboy Up" was to inform the next bull rider or bucking bronco rider at a rodeo to get ready to ride or "cowboy up". Now it means to stop being a snowflake with your safe spaces and whiny bullshit, grow up and be tough for once in your life. As lawyers, it is hard to be away from court. Most of us are complaining about having no business and no money. Many of the accused citizens we represent have no jobs and no money either. You don't have to look far to see many who are in much worse shape than we are. Be ready to get back to court when the time comes and be an ethical lawyer-----COWBOY UP!

Thanks to Mark Pusateri with Copano Press in Corpus Christi for allowing me to use some of his historical information in this article. Thanks to Alexis Lehrer for helping me with this

article. Finally, thanks to my dear friend and lawyer, the late Jim Skelton, and my brother and law partner, Joe Pelton, for being good cowboys. Jim lost 3 fingers when the rope on his saddle horn ripped and jerked 3 of his fingers off. My brother almost got blood poisoning when a steer pushed him into a sharp gate post and ripped his leg open. I only got a concussion when a half broke horse ran me under a tree. Jim was 11, Joe was 9, and I was 12. Whenever we had a problem, Jim always said "y'all need to COWBOY UP".



Robert Pelton is a Criminal Defense Lawyer with offices in Houston and Abilene, Texas. Mr. Pelton has been named "Top Lawyer for the People" and one of Marvin Zindler's "Marvin's Angels" by H-Texas Magazine (2007). He was the personal lawyer for Marvin Zindler for 31 years. He was also rated by Super Lawyers (2014-18). Mr. Pelton is a Past President of HCCLA (1985-86), Founder and Chairman of HCCLA and TCDLA Ethics Committees (since 2011), a recipient of the Jim Bowmer Award for Professionalism from the Texas Bar College (2012); HCCLA Richard "Racehorse" Haynes Lifetime Achievement Award (2016); TCDLA President's Awards (2011-18); and a United States Congress Proclamation from Congressman Ted Poe for his Zeal and Tenacious Defense of his Clients (2016). In the 1980s, Robert Pelton and Allen Isbell created the Docket Call, which later became the Defender Magazine.

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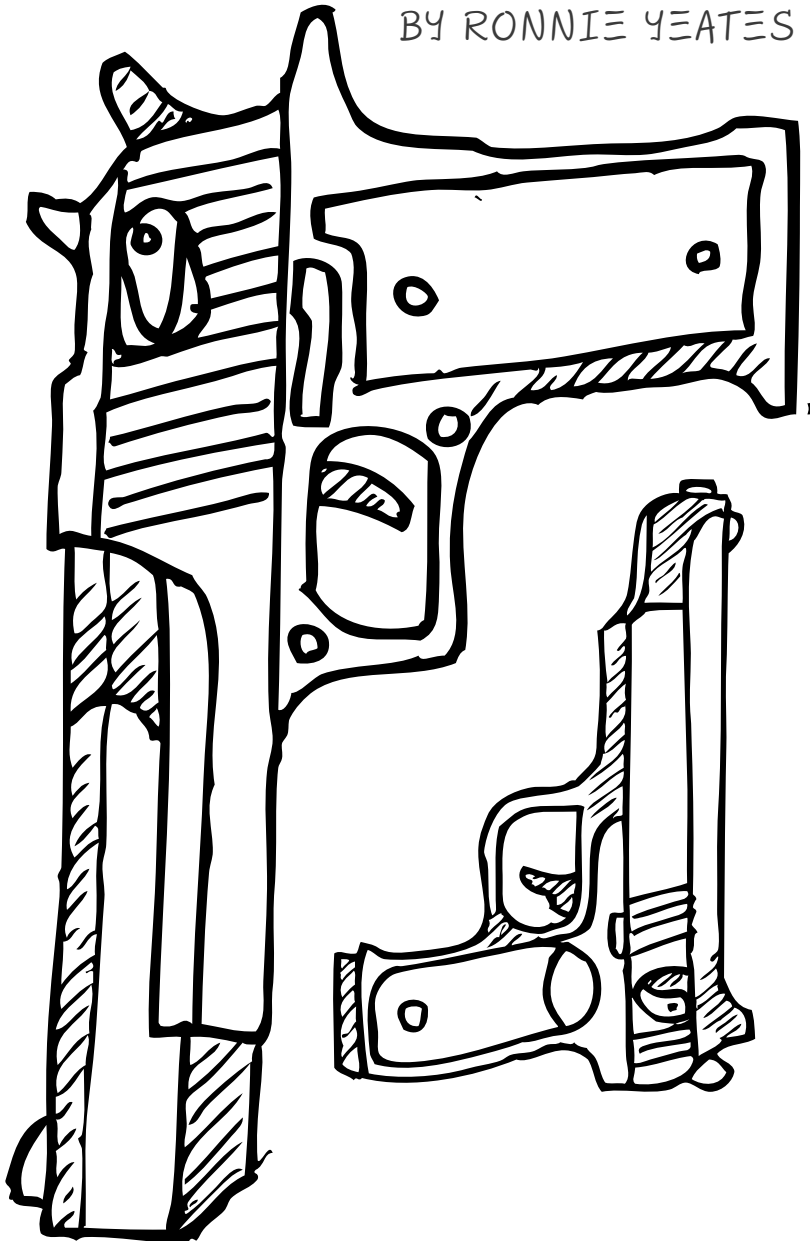
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PRACTICAL HANDGUN LAWS AND DEFENSES IN TEXAS

BY RONNIE YEATES



As a child, my parents blessed my sister and me by taking us all over the world. On a European vacation, I met some friendly people from France. As most Europeans do, they spoke some English. Like most Americans, I spoke no French. When they asked where I was from, I told them: Texas. Upon this response, they put their hands in the air like guns and said, “bang bang cowboys, Texas.” I chuckled and agreed while saying, “yes, Texas.”

My meeting with the French couple happened in the eighties, and things have changed quite a bit since then. I remember rifles and shotguns in back windows. I remember my mom teaching me how to use my first gun, a Browning Auto 22 rifle.

My friends and I used to walk down the street with our .22's. Not only have opinions about firearms changed and advocates become more vocal, but the laws regarding possessing firearms have also changed around the country and in Texas.

The physical response by the French couple was not a rarity. Most people I meet throughout the U.S. and around the world think of Texas as a rambunctious state. They still think Texas has a wild, wild west full of cowboys, guns, and all the trappings of such thoughts and beliefs. Surprisingly, Texas, unlike numerous other states, has quite a few laws regarding weapons, firearms, and, more specifically: stricter laws when it comes to handguns.

A. FIREARM VS HANDGUN

Basic Definitions

Most of us regularly get asked questions like: “Can I have a gun in my car?”; “Can I have a gun if this?”; “Can I have a gun if that?”; “What happens if?” Possession of firearms is often fact-specific to what type of firearm, where, and how. Let’s start with the different types of firearms and how the law is fairly specific as applied to each.

What is a firearm?

Texas Penal Code¹ defines a firearm as:

(3) Firearm means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. Firearm does not include a firearm that may have, as an integral part, a folding knife blade or other characteristics of weapons made illegal by this chapter and that is:

- (A) an antique or curio firearm manufactured before 1899; or
- (B) a replica of an antique or curio firearm manufactured before 1899, but only if the replica does not use rim fire or center fire ammunition

This definition generally follows the Federal definition found in 18 U.S.C. § 921(a)(3). However, the Federal definition also includes a firearm to be the “frame or receiver, a silencer, or a destructive device.” The frame or receiver provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.²

Well, what is a Handgun?

Federal and State laws are very similar here, as well. Texas Penal Code defines a Handgun as any firearm designed, made, or adapted to be fired with one hand.³

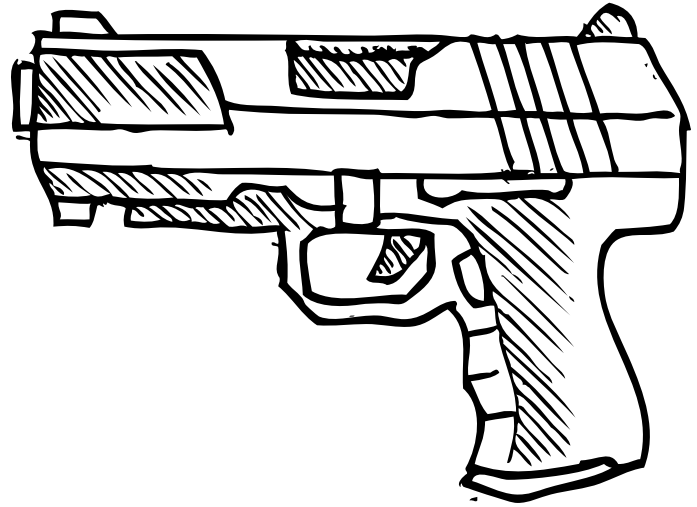
With these basic definitions, we can delve into some of the intricacies of Texas gun laws.

B. LAW ON HANDGUNS

Through the years, I have seen a lot of bad advice on social media regarding handguns. Because of this, I wanted to break down handguns or pistols (collectively herein called “handguns”) and the laws controlling them.

Almost everyone can picture what the handgun looks like when they think of the movie scene when Dirty Harry asks, “do you feel lucky?” It’s the nickel-plated Smith and Wesson .44 revolver. Or, some may always remember the role of the Colt .45 seen in almost every war movie or the Beretta 92 seen in Die Hard, The Bourne Series, C.S.I., The Sopranos, and more. A handgun is the gun

you shape your hand into when you say “bang,” as the French couple did. The common misconception about Texas and guns is: you can get a gun and carry wherever you want (as long as you’re not a felon). However, most lawyers and those who are familiar with firearms know that is wrong.



“Constitutional carry” means the United States Constitution says you can carry a handgun how you want and not need a permit.

Even though many have argued for and attempted to sway the Legislature, Texas is still NOT a constitutional carry state.

In Texas, to carry a handgun on one’s person, one must obtain an “LTC” or License to Carry. To be eligible for an LTC, a person cannot be: (1) under 21 years of age;

(2) a convicted felon; (3) a fugitive; (4) delinquent on child support; (5) and a few other things.⁴ If eligible, a person has to: (1) provide fingerprints; (2) a passport picture; (3) undergo a background check; (4) complete an application; (5) take a class; (6) pass a written test; (7) and pass a practical shooting test. Although it sounds difficult, honestly, it is not.

C. LAWS IF YOU DO NOT HAVE AN LTC

First, let's discuss laws for a handgun for someone without a valid LTC. If someone does not have an LTC, they can possess a handgun: (1) on or about their person; (2) on premises they own or control; and (3) in their motor vehicle or watercraft. They can also possess a handgun while headed to or from the premises, to their motor vehicle, or vice versa. However, since the person in this example *does not* have an LTC, any handgun must be concealed while doing so. This means the handgun cannot be recklessly or intentionally in plain sight. Also, there are no restrictions on the gun being loaded or where it has to be. The handgun can be on the front seat of the vehicle and covered by a handkerchief. The handgun can be in their pocket, the glove box, or any other place as long as it is concealed.

What are "premises" as referred to above? Under Texas law, it means real property. It also means a motor vehicle designed to live in or a trailer with temporary living quarters inside (both are recreational vehicles). Such items are travel trailers, motor homes, a horse trailer with living quarters, a camper, etc.⁵

Are there times when someone without an LTC cannot have a handgun in their motor vehicle or watercraft?

The short answer is yes.

If someone does not have an LTC, they can only have a handgun in their motor vehicle or watercraft if it is concealed. They can still face criminal charges of Unlawfully Carrying a Weapon (UCW) if: (1) they are engaged in any criminal activity other than a class C traffic or boating violation; (2) are otherwise prohibited from possessing it; (3) or are a member of a criminal street gang.⁶

The offense usually occurs or accompanies an arrest for driving while intoxicated, possession of marijuana or other prohibited substance, and reckless driving.

D. UNLAWFULLY CARRYING A WEAPON

UCW with a handgun in Texas is a Class A misdemeanor under Texas Penal Code §46.02 with a possible range of punishment up to one year in county jail and up to a \$4,000 fine.⁷ This punishment is usually more significant than the range associated with the underlying offense. Additionally, if someone does not have an LTC and carries a handgun into an establishment with a permit to sell alcoholic beverages, it is a Third Degree Felony⁸ with a range of punishment up to ten years in prison and up to a \$10,000 fine.

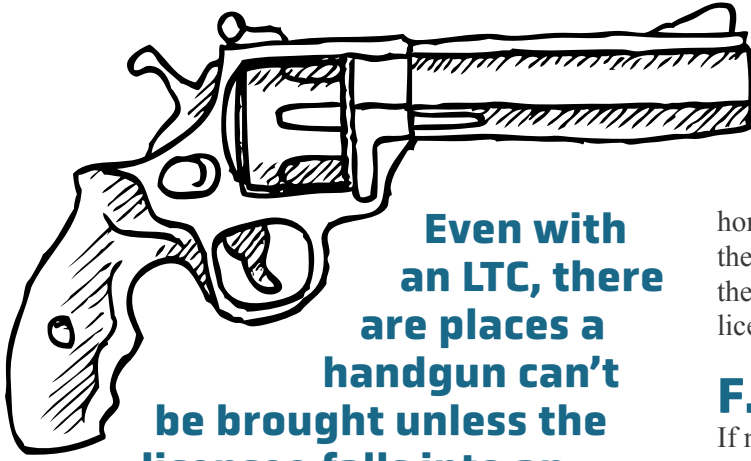
E. LTC LAWS

Once a person gets their LTC, they can carry their handgun more places than just their motor vehicle and other "premises." However, there are still limits to the LTC.

Let's begin with the LTC in a motor vehicle. Remember, a person without an LTC can have a handgun in their motor vehicle or watercraft, but it must be concealed. If someone has an LTC, any handgun must still be concealed unless it is in a shoulder or belt holster. If the handgun is in a shoulder or belt holster,⁹ then the handgun can be in plain view.

When I was a prosecutor, and the open carry law came out, the funny discussion at the TDCAA Legislative update was: **"what is a holster?" Well, nowhere in the statute is holster defined.**

Some funny memes circulated, including a gun in a sandal stuck in someone's belt. In essence, a holster can be anything a person would place a handgun in. And, as long as the handgun is in a "holster," the handgun can be anywhere in the vehicle. The handgun can be in a "holster" on the dashboard, the seat, on your waist... anywhere. However, whether someone would get arrested or charged could vary depending on the jurisdiction, an overzealous prosecutor, or an exuberant officer. This is one of those can't beat the ride scenario. Will it stick? Who knows. Since there is no statutory definition of a "shoulder or belt holster," a jury somewhere could decide a sandal is not a holster.



Even with an LTC, there are places a handgun can't be brought unless the licensee falls into an excepted group. Also, there are statutes allowing businesses and other public or private entities to prohibit a licensee from coming on the premises with a handgun.

Texas Penal Code §30.06 addresses the offense of trespass by a licensee with a concealed handgun. This offense requires notice to a licensee when the entity wishes to prohibit their entry with concealed handguns. Commonly referred to as “30.06 signs,” these have to meet every requirement outlined in Texas Penal Code §30.06. This section has a lot of things to unpack and deals explicitly with a licensee trespassing on specific properties prohibiting carrying a handgun by licensees. Section 30.06 also lays out the defenses licensees have if they do go on prohibited premises. If an entity has communicated in written form with “30.06” signs they’re prohibiting a licensee carrying a concealed handgun, the licensee shall not enter with a concealed handgun. Texas Penal Code §30.07 has all the same language of Section 30.06, but Section 30.07 relates to a licensee openly carrying a handgun on an entity’s premises. All warnings must be explicitly posted and follow Section 30.07 guidelines. If a licensee comes on the property in violation of either Section 30.06 or 30.07, it is a Class C offense with up to a \$200 fine; it is a Class A misdemeanor if the licensee is told to leave and refuses to leave.¹⁰

As defense attorneys, it is imperative to know the defenses available.

There are myriad defenses to both Section 30.06 and Section 30.07, the biggest being if the person is personally told to leave, and he promptly does.¹¹ Other defenses include being an owner, tenant, or guest of either an owner or tenant of a condominium, a rental unit, a manufactured

home lot, and the individual possesses the handgun in the respective premises or is directly in transit to or from their motor vehicle or premises. Another defense is if the licensee is a volunteer E.M.S.

F. LTC & COLLEGE CAMPUSES

If not prohibited by some other law, anytime a licensee is in a public place, and the licensee intentionally displays the handgun in plain view of another, it is a violation of the law if it is not in a holster.¹⁴ Texas Penal Code §46.035(a-1) through (a-3) specifically addresses a licensee’s possession on institutions of higher education. While on the premises of an institution of higher education or the public or private driveway, garage, or parking lot of an institution of higher education, a licensee isn’t supposed to “flash” the handgun in plain view of another person, even if the handgun is in a holster.¹⁵ If an institution of higher education has established rules regarding licensees where a school-sponsored activity is taking place, and the institution provides notice in compliance with §30.06, a licensee cannot carry a handgun, holstered or not, on the grounds or building or in a vehicle of the institution.¹⁶ Additionally, a licensee cannot carry a concealed handgun on a portion of premises located on a campus of an institution of higher education if the institution provides notice complying with §30.06.

All the offenses in the previous paragraph are punishable as a Class A misdemeanor, and they also share the same defense to prosecution. It is a defense if, at the time of the commission, the licensee displayed the handgun when the licensee would have been justified in using force or deadly force.¹⁷ Also, §46.035(a-1) through (a3) does not apply to a historical reenactment in compliance with the Texas Alcoholic Beverages Commission.¹⁸

G. MORE PREMISE LIMITATIONS

There are quite a few other places a licensee is forbidden from carrying a handgun, whether concealed or not, even if it is in a holster. One of these places is a bar, not the bar part of a restaurant, but a full-fledged bar which includes any establishment making 51 percent or more of its income from on-premises sale or service of alcoholic beverages for consumption.¹⁹ These locations usually have the big red “51%” signs posted at their entrance. Another prohibited place to carry while possessing a valid LTC is on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place unless the licensee is a participant in

an event where the handgun is used.²⁰ The prohibition also includes the premises of a correctional facility like a county or city jail or prison, a hospital or nursing facility (unless the carrier has written authorization), an amusement park, or the premises of a civil commitment facility.²¹ Licensees also cannot carry into an open meeting of a governmental entity subject to Chapter 551 of the Government Code, and the entity provided notice of the meeting.²²

Of course, being *intoxicated* and carrying a handgun under the authority of being a licensed carrier is against the law, whether holstered or not.²³

Most of these are a Class A Misdemeanors unless the licensee is in a bar or correctional facility, in which case it is a Third Degree Felony.

Texas Penal Code §46.03, “Places Weapons Prohibited,” limits where both licensees and non-licensees can possess certain other weapons and firearms, including a handgun, unless the individual falls under a particular exception.²⁴ One of these prohibited places is the (1) physical premises of a school or educational institution, any grounds or building where there is a school activity or a transportation vehicle unless the person has written authorization from the school or the person has a valid LTC and the premises are an institution of higher education.

Prohibited places also include (2) polling places during an active election, (3) government court or office utilized by the court unless written authorization, (4) a racetrack, (5) the secured area of an airport (more on this later), and (6) within 1,000 feet of a prison where an execution is happening and the person received notice of the prohibition. Under this statute, if the weapon possessed was a firearm, including a handgun, the offense is a Third Degree Felony.

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H. EXCEPTIONS TO THE LAW

Further defenses to Section 46.03 (1-4) are if the person were in the actual discharge of duties as a member of the armed forces, national guard, or a guard employed by a penal institution or an officer of the court.²⁵

No one has a defense to carrying while intoxicated. The Legislature sometimes passes two versions of a statute, and §46.035(h-1) is no different. However, the versions are not too dissimilar. A judicial officer, as defined in Texas Government Code §411.201, and his bailiff escorting him has a defense to prosecution to all the offenses listed in the first paragraph of Section G above.²⁶ Volunteer emergency service personnel also share this defense. The next group consists of a judge or justice of a federal court, active judicial officers as defined in Texas Government Code §411.201 (duplicated by both versions of (h-1), attorney general, United States attorney, district attorney, criminal district attorney, county attorney, or an assistant of one of those attorney categories. This select group has a defense to prosecution to enter or remain on any of the places listed in the first paragraph of Section G unless the premises is a correctional facility or commitment facility.²⁷

If a hospital, nursing facility, amusement park, or open meeting of a governmental entity fails to provide valid notice by placing signage meeting the requirements of Sections 30.06 or 30.07, then a licensee can carry a handgun into those establishments as there is no crime.²⁸

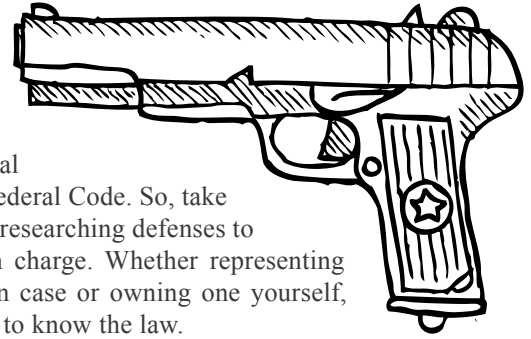
More defenses exist for those who are inside the secure area of an airport, as well. The first defense is for a person traveling while or discharging their duties as a member of the armed forces or national guard or as a guard at a penal institution. This defense also includes someone traveling while or discharging their duty as a commissioned security guard who is either wearing a distinctive uniform and his weapon is in plain view or is not wearing a uniform, and his weapon is concealed.²⁹

There are also specific protections for individuals who check their firearms following federal guidelines before entering the secure area. Likewise, it is a defense if a licensee carrying a concealed handgun enters the screening checkpoint for a secured area and leaves immediately after completing the screening process after notification he possessed the handgun (think of a person who forgot about the handgun in their bag). And, an officer cannot arrest a licensee who enters the secure area unless the officer tells the person about the defenses, allows the licensee an opportunity to exit the screening area, and the person does not leave.³⁰

CONCLUSION

Many people still think Texas is the wild, wild west where everyone rides horses to work, and everyone carries a gun. However, this gun-loving State has plenty of rules. If you didn't know before reading through this, now you do. There are even deeper and more specific caveats throughout the weapons code in Texas. Texas gun laws offer cross-sections between

the Government Code, the Penal Code, and the Federal Code. So, take your time when researching defenses to a particular gun charge. Whether representing a client in a gun case or owning one yourself, it is always best to know the law.

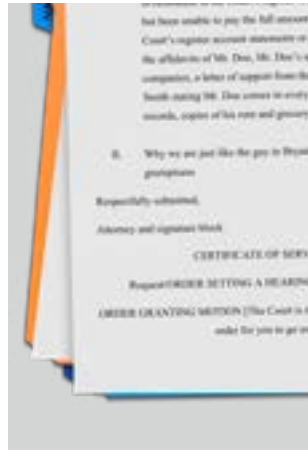


- 1 Texas Penal Code §46.01(3)
- 2 27 C.F.R. §478.11
- 3 Texas Penal Code §46.01(5)
- 4 Texas Government Code §411.172(a)
- 5 Texas Penal Code §46.02(a-2)
- 6 Texas Penal Code §46.02(a-1)(2)
- 7 Texas Penal Code §46.02(b)
- 8 Texas Penal Code §46.02(c)
- 9 Texas Penal Code §46.02(a-1)(1)
- 10 Texas Penal Code §30.06(d) & §30.07(d)
- 11 Texas Penal Code §30.06(g), §30.07(h)
- 12 Texas Penal Code §30.06(e-1)-(e-3), §30.07(e-1)-(e-3)
- 13 Texas Penal Code §30.06(f), §30.07(g)
- 14 Texas Penal Code §46.035(a)
- 15 Texas Penal Code §46.035(a-1)
- 16 Texas Penal Code §46.035(a-2)
- 17 Texas Penal Code §46.035(h)
- 18 Texas Penal Code §46.035(j)
- 19 Texas Penal Code §46.035(b)(1)
- 20 Texas Penal Code §46.035(b)(2)
- 21 Texas Penal Code §46.035(b)(2)-(b)(6)
- 22 Texas Penal Code §46.035(c)
- 23 Texas Penal Code §46.035(d)
- 24 Texas Penal Code §46.03(1)-(6)
- 25 Texas Penal Code §46.03(b)
- 26 Texas Penal Code §46.035(h-1)(1) & (2)
- 27 Texas Penal Code §46.035(h-1)(1), (2), (3)
- 28 Texas Penal Code §46.035(i)
- 29 Texas Penal Code §46.03(d)
- 30 Texas Penal Code §46.03(e)



Ronnie Yeates is an associate attorney with The Thiessen Law Firm, based in Houston, Texas. Ronnie completed his undergraduate at Sam Houston State University with a Bachelor's in Criminal Justice in Law Enforcement - Police Science, and he received his Juris Doctor at South Texas College of Law. Ronnie retired from the Grimes County District Attorney's Office in 2018 after more than 16 years as a prosecutor.

Before joining the Thiessen Law Firm in 2019, Ronnie became a member of the Texas State Bar College and received the Texas Criminal Defense Lawyers Association's DWI Trial Warrior award. Ronnie is a Type 07 Federal Firearms Licensee with a Class 2 SOT designation, which means he is a manufacturer and dealer in both Title I (regular) firearms and Title II (machine gun, silencers, short-barreled weapons) firearms.



MAKING CASES INTO MOTIONS

BY PATRICK F. McCANN

It is always a nice thing when a colleague shares a hot new published appellate case with his or her fellow defense bar members. What is even better is when the case is relevant to something that is on one's own docket. The real hurdle [for me at least] is converting a good published case into a motion that makes sense for that case on your own docket, and your judge. So, let's break down how we, as legal eagles, can do this on any good case. Together, let us see what makes sense in terms of crafting a reasonable motion from a case in a timely and useful way, shall we?

To do this we will need a sample published case. I am choosing one at random from the reading that comes out of the Courts of Appeals in my home state each week [available via email subscription or download from their own websites at Texas Judiciary Online], so let's take the recent case of *Bryant v. State*, an Eleventh Court of Appeals case from Midland, Texas, No. 11-10-00145-CR. There the Court of Appeals held it was an abuse of discretion for the trial court to adjudicate Mr. Bryant and revoke his community supervision for failure to pay the full restitution of \$197,000.00 dollars and change when the trial court did not consider the factors listed in Article 42.037(h) of the Texas Code of Criminal Procedure, which provides:

If a defendant is placed on community supervision or is paroled or released on mandatory supervision, the court or the parole panel shall order the payment of restitution ordered under this article as a condition of community supervision, parole, or mandatory supervision. The court may revoke community supervision and the parole panel may revoke parole or mandatory supervision if the defendant fails to comply with the order. In determining whether to revoke community supervision, parole, or mandatory supervision, the court or parole panel shall consider:

- (1) the defendant's employment status;
- (2) the defendant's current and future earning ability;
- (3) the defendant's current and future financial resources;
- (4) the willfulness of the defendant's failure to pay;
- (5) any other special circumstances that may affect the defendant's ability to pay; and
- (6) the victim's financial resources or ability to pay expenses incurred by the victim as a result of the offense.



We should also note under the Bryant case that the Appellant had faithfully paid restitution of \$300.00 dollars per month every month for almost ten years, and that the State presented no evidence of willful failure to try and pay something during any month. So, let us suppose that we represent a man who is on community supervision, [what Texas calls probation] and who was assigned twenty thousand dollars of restitution for a theft case. That man has completed a drug rehab program and has been on supervision for two years, reporting faithfully, but he has been unable to obtain a job in the current economy. No or very little restitution has been paid. The probation office has requested and the Assistant District Attorney has filed a Motion to Adjudicate or revoke, and the trial court has set a hearing, or is going to at the next setting. How do we use this case to present a motion to the trial court?

Well, every motion has some parts that are ALWAYS the same. Every motion has the cause number and style, and has a prayer that the motion be granted, usually a request for a hearing on the matter, and your signature block and the certificate of service. So, starting with what is **always** there, we know those things and they should go into the skeleton of the motion.



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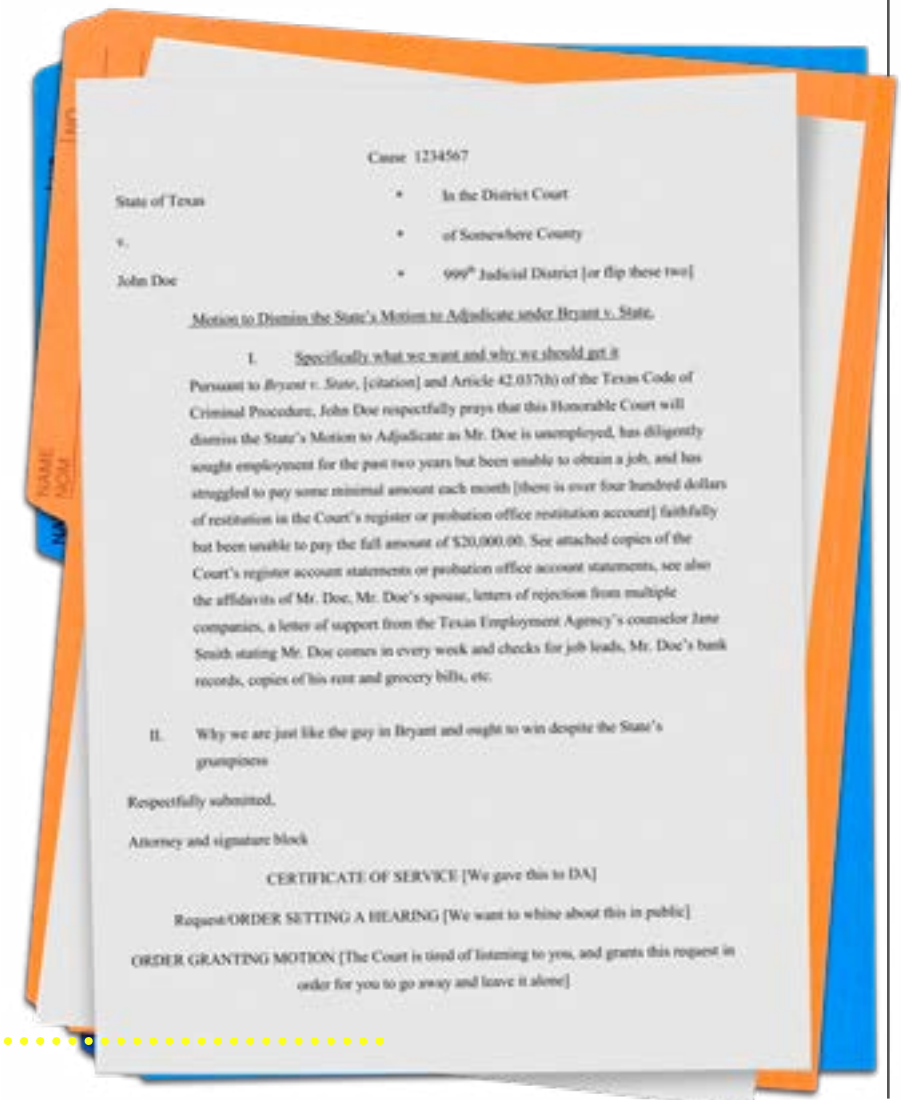
Starting with virtually no resources and no support, this scrappy little group of volunteers and underpaid defenders have changed 'the capital of capital punishment' in ways no one believed possible. I encourage you to support the lifesaving work of GRACE. Their compassion and energy will multiply the impact of your gift many times over.

SISTER HELEN PREJEAN,
 ACTIVIST & AUTHOR OF
 DEAD MAN WALKING

So it will look something like this ►►

There, now you have a framed house, and need to fill it with the warm legal wording that will make the trial court grant your request. The walls and roof come next, and these are taken right from the case. Since the case reversed a trial court [and nothing irritates trial courts more] and since the trial court has discretion to dismiss or deny the State's motion to adjudicate, one can style it thusly: Motion to Dismiss the State's Motion to Adjudicate under Bryant v. State. Now both the trial court and the State know exactly what you want, and even have the style of the case to go check and see whether you are making up this citation. However, you are not done yet. You should also tell the trial court why it is that you ought to win under this case, and the section of the Code it cites to. So, since the *Bryant* case cites to Article 42.037(h) of the CCP, you should add the next line: "Pursuant to *Bryant v. State*, [citation] and Article 42.037(h) of the Texas Code of Criminal Procedure, John Doe respectfully prays that this Honorable Court will dismiss the State's Motion to Adjudicate as Mr. Doe is unemployed, has diligently sought employment for the past two years but been unable to obtain a job, and has struggled to pay some minimal amount each month [there is over four hundred dollars of restitution in the Court's register or probation office restitution account] faithfully but been unable to pay the full amount of \$20,000.00. See attached copies of the Court's register account statements or probation office account statements, see also the affidavits of Mr. Doe, Mr. Doe's spouse, letters of rejection from multiple companies, a letter of support from the Texas Employment Agency's counselor Jane Smith stating Mr. Doe comes in every week and checks for job leads, Mr. Doe's bank records, copies of his rent and grocery bills, etc."

Now your motion will look like this ►►



Under Roman numeral II above goes the arguments you would make, i.e. “Unless this Honorable Court wishes to suffer the same inglorious fate as that way-off-the-reservation trial court in Midland, it should seriously dismiss the State’s motion or hold a hearing on this matter because my client is almost identical to the poor schlub in Bryant, and this Court can see that from all the cool proof items we added as Exhibits, which will also be reviewed by the appellate courts.”



Then one can make reference to fact items in the Exhibits, such as the hypothetical spouse’s cries about cold and hungry children the family will have to sell on eBay if the court sends him away or makes them pay more restitution, or the kindly state employee who actually remembers your guy coming in and looking for work and gave you an affidavit about it. At the end of this one simply asks the trial court to grant the motion or set it for a hearing.

At the end of the day, a motion is not magical – it is simply a formal request for relief from the court with supporting legal arguments and facts that should be persuasive to a reasonable mind. In this sense it is not unlike following a recipe in a cookbook, and like an enticing recipe it may even, if done well, make the State want to taste a sample of the cooking and discuss an alternative to revocation. The things that are always present, your signature, the certificate of service, are the flour, eggs, and butter. The things that lend new flavor, the case law, facts supporting, and citations, are thus the spices and meat in this already over-worked food analogy. Good luck, and to finish the food analogy completely, like chicken soup, a good motion based upon an appellate case cannot ever hurt.



Pat McCann is in solo practice in the Houston area, and has been since 1995. He handles federal and state trials, appeals, and post-conviction matters. He has handled over fifty death penalty cases. He is a past President of both Fort Bend County Criminal Defense Attorneys Association and HCCLA.

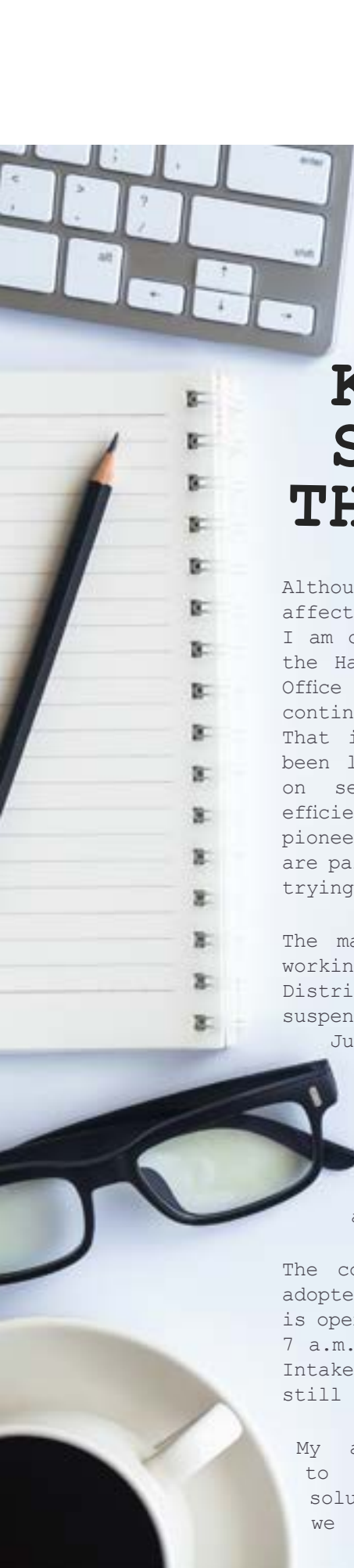
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BY MARILYN BURGESS,
HARRIS COUNTY
DISTRICT CLERK

KEEPING THE JUSTICE SYSTEM GOING DURING THE COVID-19 PANDEMIC

Although the COVID-19 pandemic is affecting all aspects of our lives, I am committed to making sure that the Harris County District Clerk's Office (DCO) helps the justice system continue without interruption. That is why my administration has been laser focused since mid-March on serving the legal community efficiently and implementing some pioneering services that I trust are particularly useful during these trying times.

The majority of the DCO staff is working from home and the Board of District Judges has extended the suspension of jury service through June 30, but our clerks are available by email and phone during normal business hours. We are also working with the Office of Court Administration on plans to bring back trials in a safe and cautious manner.

The courthouse complex itself has adopted new hours of operation and is open Monday through Thursday from 7 a.m. to 6 p.m., but our Criminal Intake team and Probable Cause clerks still serve on-site 24/7.

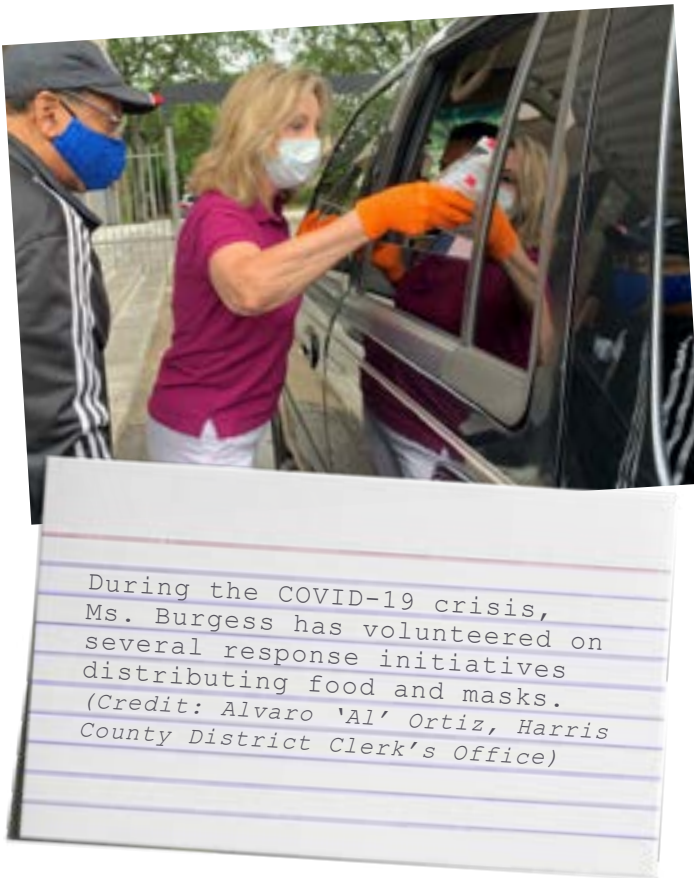
My administration is committed to delivering robust digital solutions. With that goal in mind, we provide a complete suite of

digital options to assist you and have developed several new services to fill gaps as they arise.

Working closely with judges and the District Attorney's Office, the DCO's Information Technology team recently piloted and launched an innovative digital signature service known as e-Plea. This allows electronic pleas to be digitally signed by both the defendant and defense attorney through our Attorney Kiosk page.

In addition, our collaboration with judges and prosecutors, as well as the Sheriff's Office, defense attorneys and the Public Defender's Office, resulted in an electronic protocol to process the digital pleas virtually. This protocol is custom built, streamlined and directly available to the Sheriff's Office and all parties to the case through our document management system. Because the protocol is digital, at no point is anything faxed or hand delivered, making the process more efficient and timely.

Beyond its usefulness during the current crisis in terms of limiting personal contact, this protocol will allow pleas to be entered digitally and remotely during future emergencies or under other special circumstances.



Our technology is helping judges, prosecutors, and defense attorneys to collaborate efficiently. Take, for instance, the sequence for a virtual courtroom using e-Plea:

1. Prior to the hearing, the defense attorney can request a remote virtual "Defense Visit" with their client by setting an appointment with the Harris County Sheriff's Office.
2. The prosecutor prepares the documents electronically and files them with the District Clerk's Office (DCO).
3. The DCO places the plea documents on the Attorney Kiosk for the defense attorney to review them with the defendant.
4. From a designated area in the jail, the defendant sees and reads the electronically prepared plea papers and signs them with a tablet computer provided by the bailiff.
5. The deputy district clerk prepares the judgment for signature by the judge. All e-Plea documents, with the exception of the judgment itself, must be signed before the hearing.
6. The day of the virtual hearing, the Sheriff secures the fingerprint for the judgment. When it is time for the hearing, the judge, prosecutor, defense attorney, and court staff

meet safely and remotely via video conference. The defendant never leaves the jail.

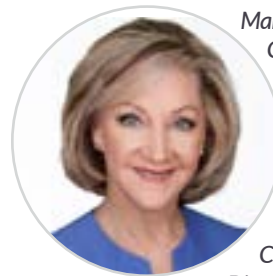
Currently, the following courts are using e-Plea: 174, 178, 180, 182, 183, 184, 185, 208, 209, 228, 232, 248, 262, 263, 337, 338, 351, and the Responsive Interventions for Change (RIC) docket. The Mental Health court will also use e-Plea in the near future.

Our paperless approach to business means that, with your help, we continue to keep the wheels of justice turning. In March, the District Attorney filed 3770 misdemeanors and 3599 felonies and in April the filings went down to 2703 misdemeanors and 3419 felonies. By mid-May, 1754 misdemeanors and 1959 felonies had been filed. Through it all, the DCO has maintained a low rejection rate for criminal filings. In April, we only rejected 3.95% of filings and, as of mid-May, our year to date rate is merely 2.34%.

We are also keeping the legal community informed about this and other services in a timely manner through our website's Attorney Communications section, along with social media posts and our blast emails.

Our IT team has also refined our online Attorney Kiosk with new features such as remote defendant signature ability, a new accordion for booking and holds information, and a homepage button for easy navigation back to our website. Future enhancements will merge the "My Filings" page with the Kiosk.

I am grateful for your patience and cooperation as we go through the COVID-19 pandemic and I remain open to suggestions.



Marilyn Burgess is the Harris County District Clerk. With over 30 years as a Certified Public Accountant (CPA), she is a seasoned businesswoman with real world administrative experience. While this is her first elected position, she is not new to leadership, having served as both the President of the North Houston-Greenspoint Chamber of Commerce and the Executive Director of the Texas Parent Teachers Association (PTA). In her time at the Texas PTA, she championed causes that bettered the lives of teachers, working and middle-class families, single mothers, and children. As District Clerk, she is working hard to make the DCO more efficient and technology-driven. Ms. Burgess oversees a budget of \$36 million and a staff of over 500 professionals. She is bringing an innovative and pragmatic leadership style to the DCO.



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