

Criminal Jury Trial

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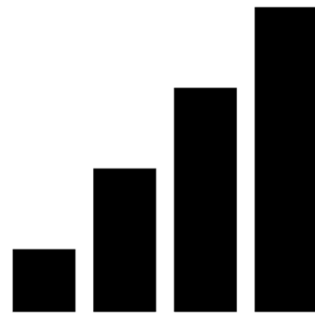
Trial Basics

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Poll: Have you presided over a criminal trial as a judge yet?

1. Yes

2. No



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Trial Scripts

Trial Notebook

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Texas Rules of Evidence (TRE)

Criminal Cases
Always apply



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Control of the Courtroom

The court should exercise reasonable control over the presentation of evidence and examination of witnesses.

TRE 611

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Assisted Representation

Not allowed in criminal cases.

Defendant has 2 choices.

1. Hire an attorney, or
2. Be self-represented.

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Right to a Jury Trial

Parties in a criminal case
are **entitled to a jury trial**
– **it is the default!**

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Right to a Jury Trial

Criminal Cases

- All cases for trial must be set for jury trials ***unless*** the defendant waives the jury trial in writing. *CCP 45.024*
- Offenses occurring prior to 1/1/2020 – \$3 jury fee added to court costs
- For offenses after 1/1/2020, part of the local consolidated cost ends up in the jury fund

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Before Taking the Bench

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Criminal Cases

What type of case is this?

What statutes should I have easy access to?

Keep a copy of the Rules of Evidence on your bench (physically or digitally).

Has a jury charge been submitted to the court?

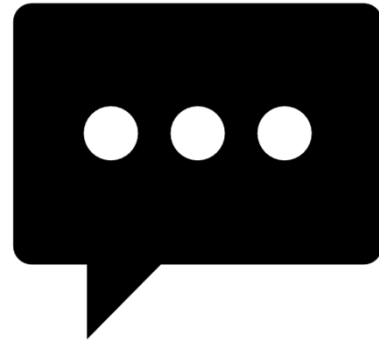
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Look at your Handouts!

Criminal Jury Trial Elements Checklist and Statutes Example

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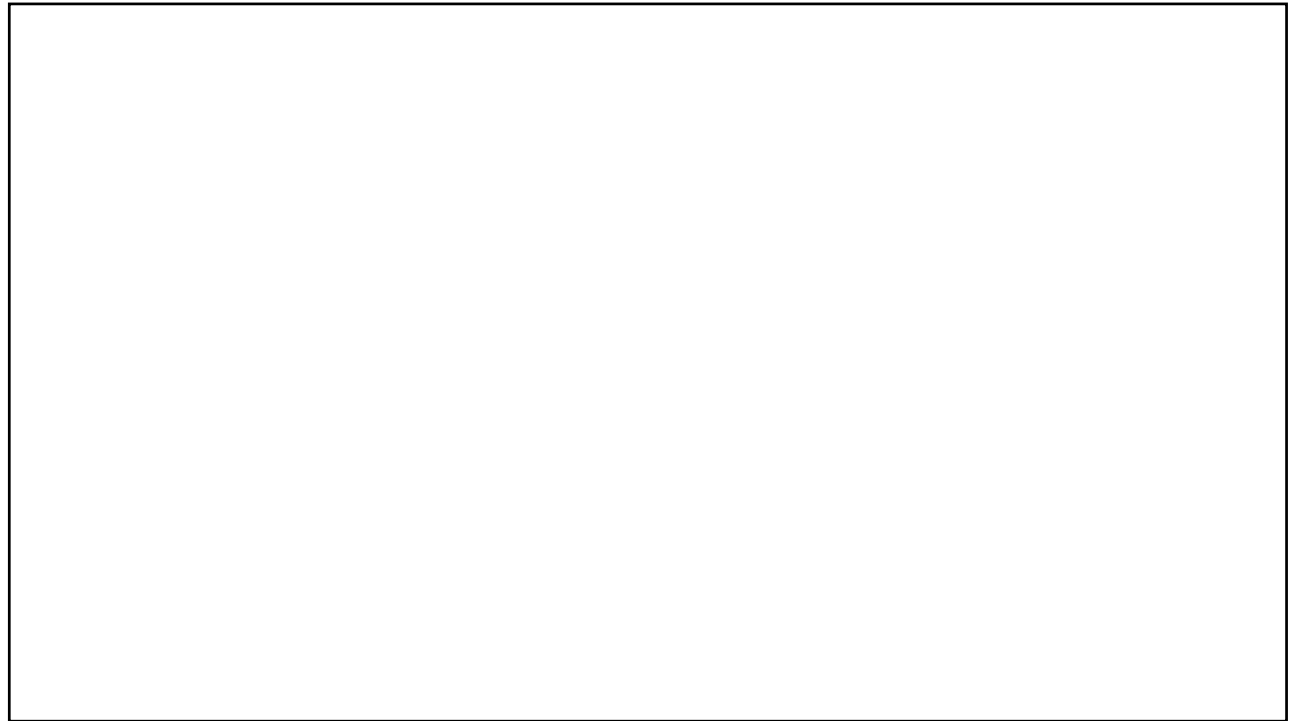
Do you do anything special to prepare for trial?



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Want to see what a trial might actually look like?

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Jury Selection *also*
called
Voir Dire

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**How many jurors sit
on a justice court
jury?**

1. 5
2. 10
3. 6
4. 12

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Voir Dire Bench Card

Look on the TJCTC **Flowcharts, Bench Cards, and Checklists** page for this under the **Trial Procedure** section.

<https://www.tjctc.org/tjctc-resources/Charts-and-Checklists.html>

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Preparing & Swearing-in the Jury Panel

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General Juror Qualifications

Voir Dire Bench Card

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Exemptions from Jury Service

Voir Dire Bench Card

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Excuses

The Court can excuse a party who they believe has a sufficient excuse.

The Court cannot excuse a prospective juror for an economic reason without both parties being present and approving the release of that juror for that reason.

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De-selection vs. Selection

Jurors aren't really "picked"...

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Strike, you
are out!

- **Peremptory Challenges/Strikes**

Each side can strike three (3) people from the jury pool without telling the court a reason

Batson Challenge – either side can argue that the other has used preemptory strikes to eliminate otherwise eligible jurors because of **race, ethnicity, or sex**

This is discussed further in the Trial Notebook

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- **Challenge/Strike for Cause**

A request that a prospective juror be struck, meaning removed or dismissed, because there is a specific reason to believe the person can't be fair, unbiased, or capable of serving as a juror

Strike, you are out!

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Things that the parties can't ask:

Repetitious questions

Irrelevant or immaterial questions

Commitment Questions – a party can't try to make a potential juror commit to a verdict based on facts other than something that would prove they were not impartial.

- **EXAMPLES:**

- ✓ *If I proved all of the elements of the offense beyond a reasonable doubt, could you convict?*
- ✗ *If the Defendant refused a breath test, would you convict?*

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Common challenges for cause

Unfair bias for/against law enforcement (*criminal cases*)

Personal relationship with one of the parties that creates bias/prejudice

Experience with the justice system that creates bias/prejudice

Sovereign citizens – couldn't find anyone guilty or don't believe courts have authority

Can't hear/see

Witness in this case

Related to party within 3rd degree consanguinity or affinity (Government Code Ch. 573)

Can't consider full range of punishment (*criminal cases*)

Others?

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Does anyone know
Deputy Williams?

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Can the
prosecutor or
defendant ask?



Has anybody here ever attended
AA?



Anyone ever had one beer and
walked home?



Who thinks public intoxication
law is stupid?

29

Question 1:
Who doesn't agree with being
arrested for public intoxication?

30

Its ridiculous!
The government
shouldn't tell us
where we can drink!

Question 1
Juror 1

31

We need it to be
enforced more! All
of these drunks out
there causing
dangerous
situations.

Question 1
Juror 4

32

I guess
it's okay.

Question 1
Juror 6

33

Question 2:
Who has had a
bad experience
with law
enforcement?

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*All of the men in
my family are
police, and they
would never do
anything
improper!*

Question 2
Juror 2

35

I have. These
days police just
don't know how
to do their jobs
right!

Question 2
Juror 3

36

Question 2
Juror 5

I haven't.

37

Question 3:

Who will promise me that if
they only believe I had 2 beers,
they won't find me guilty?

38

We all just need
to chill and let
people do what
they want to do!

Question 3
Juror 3

39

No
promises.

Question 3
Juror 4

40

I just couldn't be
fair to someone
who drinks beer.

Question 3
Juror 7

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Peremptory Strikes by Each Party:

Prosecutor:
JURORS 1, 3,
6

Defendant:
JURORS 8, 9,
10

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Prosecutor makes a Batson Challenge

What do you do???

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Defendant says: “So, my
strikes don’t count?!”

How do you respond???



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After the Jurors are Seated

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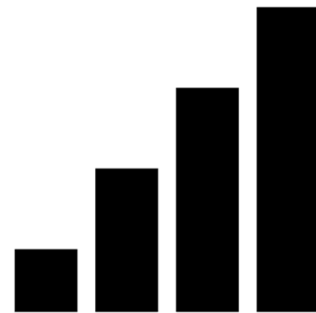
**Each Party's
Case**

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Poll: Have you watched the evidence portion of a jury trial?

1. Yes

2. No



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The Judge is the Umpire/Referee

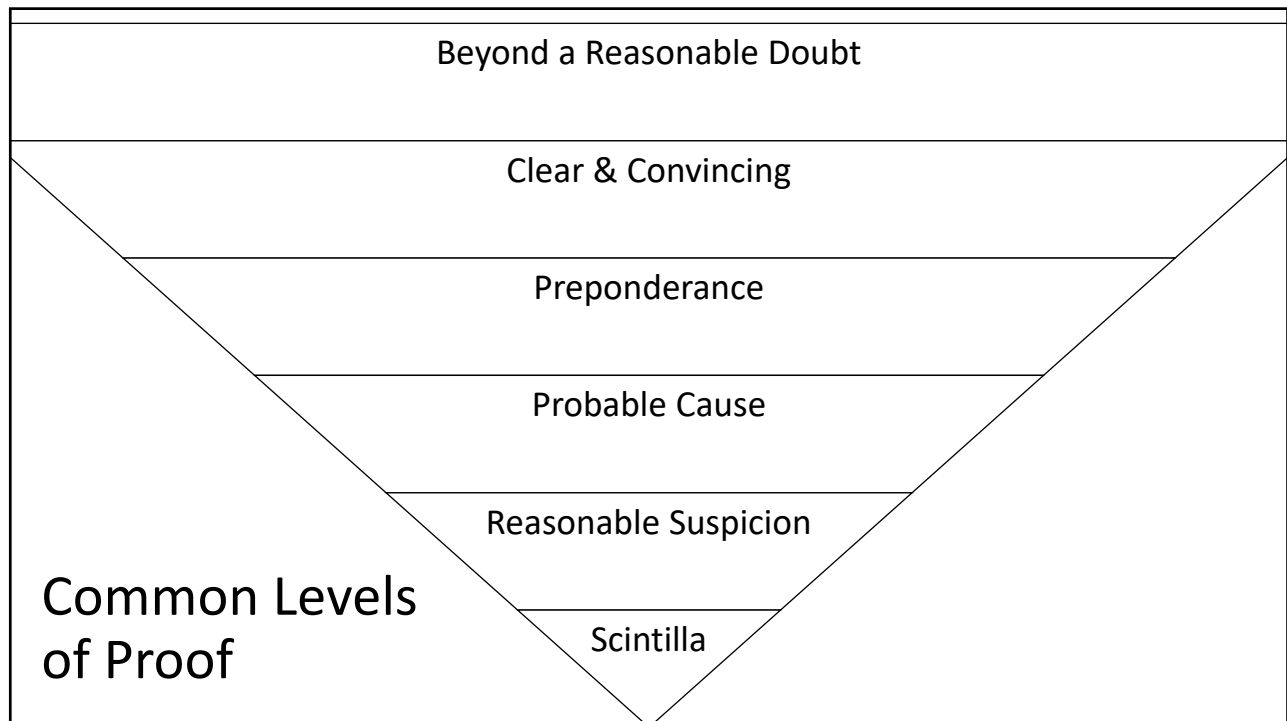
- The next part of trial is where each party (Prosecutor/Defendant) call witnesses and submit evidence to the jury
- The judge's job is to keep things fair and make sure that parties follow court procedures
- In criminal cases, the prosecutor goes first

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Burden of Proof

Criminal =
**Beyond a Reasonable
Doubt**

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Common Terminology Used During Trial

Pass the witness

Step down

Approach the bench

Outside the presence of the jury

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Exclusion of Witnesses

- Witness who aren't parties can be kept out of the courtroom while others are testifying
- Attorneys will request this by "invoking the rule"
- The court MAY do this on their own, but MUST do it if a party requests it

TRE 614

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Why did the prosecutor do that?



- Sometimes the parties (especially attorneys) will handle things in your court just like if they were in a court of record.
- Why?
 - Habit
 - To draw the jury/judge's attention to something
 - To show the jury that this case is just as important as a higher-level offense to them

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How would you rule??

Would you give the defendant any instructions?

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The Judge's Ruling



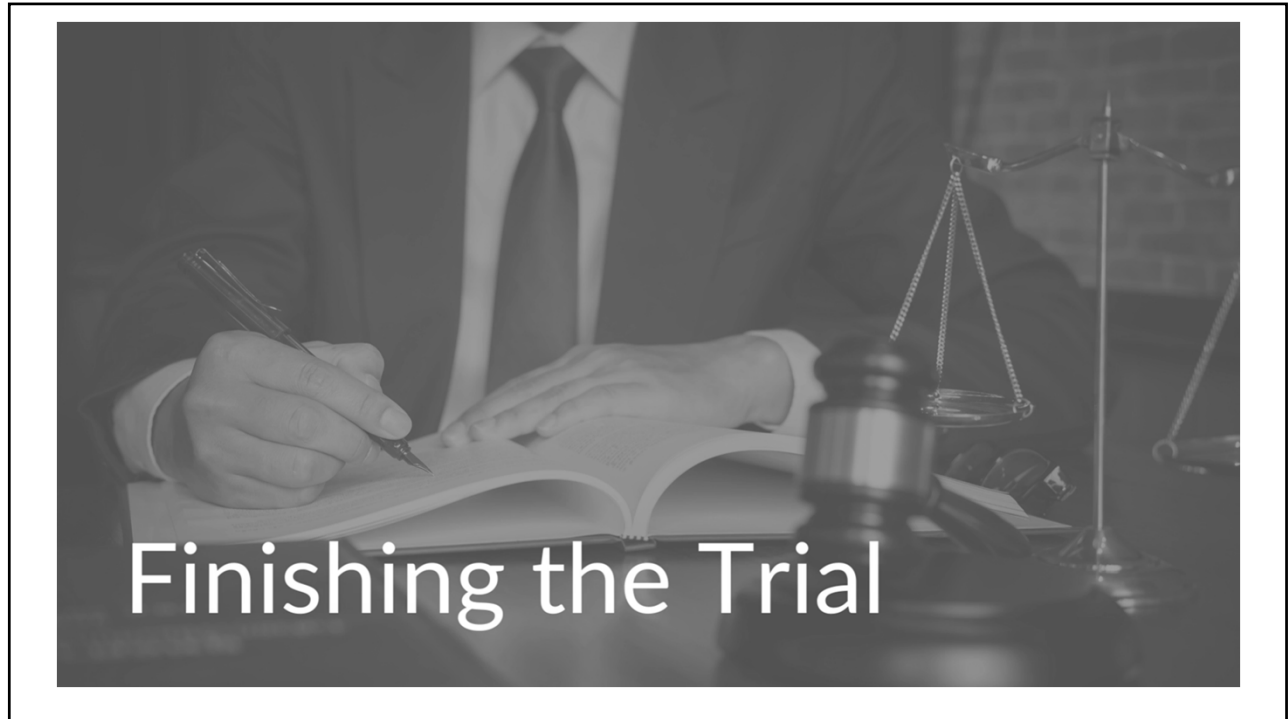
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Did you know there can be written
hearsay?



- How would you respond to the defendant?
- What if the prosecutor changes her mind and says, "I withdraw my objection"?

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How do you handle the defendant's motion?



Did the state prove all the elements?

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Jury Deliberation & Verdict

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Jury Deliberations

After the evidence is finished, the jury will go to the jury room where they can discuss and make a decision on the case.

They will provide their decision in the form of a verdict that the judge will read in open court

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Jury Instructions & Charges

- In all cases you may give basic instructions
 - *Juror Instruction Handouts*
- In Criminal cases, you also formally charge a jury with instructions that include definitions of the law and elements of the offense
 - TMCEC has a jury charge bank that can be found on their website here: <https://www.tmcec.com/resources/jury-charges/>
 - *Also see your handouts for a few examples.*

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Questions During Deliberations

- If jurors have a question during deliberations, they should write it down and have the bailiff take it to the judge
- The judge will then speak with the parties in open court to draft the agreed-upon answer
- The then judge sends back a written response or brings the jurors into court to provide them with the answer
- The most common appropriate answer:
“Thank you for your question. My response to you is the following: you should rely on your memory as to what was said and what you saw.”

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Polling the Jury

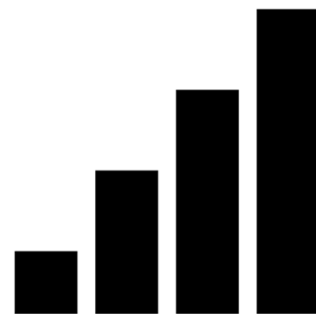
- A party may request that the jury be “polled” after the verdict is read.
- This means that the judge will ask each juror individually what their verdict is.

Code of Criminal Procedure 37.05

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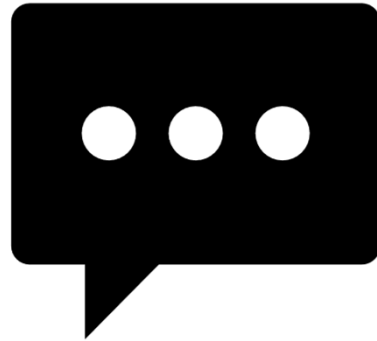
Poll: Does the jury verdict have to be unanimous?

1. Yes
2. No
3. Sometimes



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What happens if the jury can't come to a decision?



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Judgment

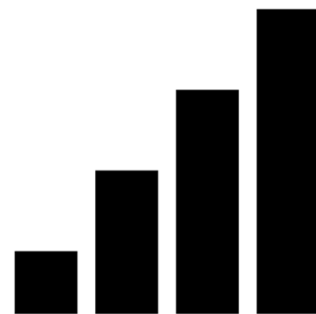
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There must be a written judgment in **every case!**

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Poll: Should information about a payment plan be in a criminal judgment of conviction?

- 1. Yes
- 2. No



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Key Parts of a Criminal Judgment of Conviction

Fine	Court costs	Defendant's plea	Date of offense	Jail credit
Restitution	Charging instrument	How Defendant appeared	If Defendant represented	Waivers
Competency finding	Plea is free/voluntary	Ability to pay	Finding of guilt	Additional sanctions or findings

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Key Parts of a Criminal Judgment of Acquittal

Defendant's plea	Date of offense	Charging instrument	How Defendant appeared
If Defendant represented	Waivers	Competency finding	Plea is free/voluntary
Finding of not guilty			

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Thank You!

Don't forget to fill out your evaluation.