The official journal of the Texas District and County Attorneys Association

The Texas Prosecutor

January–February 2025 • Volume 55, Number 1

"The primary duty of an attorney representing the state ... is not to convict but to see that justice is done."
Art. 2A.101, Texas Code of Criminal Procedure

Everything we do matters

Based on a unique experience I had last year, I offered to prepare a training for our misdemeanor prosecutors on the best practices for RIP calls in family violence cases.

By Emily Thompson
Assistant District Attorney in Harris County

In Harris County our initial contact with complainants is known as an RIP call, which stands for restitution, injury, and punishment. As a misdemeanor prosecutor, RIP calls are a daily occurrence and help determine how to proceed with a case.

These calls are pretty straightforward: You call the complainant, ask what happened, ask for an opinion on punishment, and ask if s/he is willing to testify. Depending on the charge, there may be additional questions to ask or information to gather. In family violence cases, for example, we need to know if the victim wants a protective order and/or a no-contact order. It's also important to ask about prior incidents of family violence. For every call, you take notes during the conversation, save them to the case file, and move on to the next call.

I learned a lot about how to best handle these cases when the work I did on a misdemeanor family violence case—years and years ago—helped convict a defendant of capital murder. You never think the work you do on a misdemeanor case is going to be used as evidence in a capital murder trial—until it is.

My RIP call to Maya

It was 2016 and I had been a prosecutor for all of nine months. I had just been promoted and was now the No. 2 prosecutor in a misdemeanor court, where I was trusted to handle more serious misdemeanors, such as assault of a family member. It was my first week in the new position.

On this particular day, I arrived at the office a few hours before docket (per usual for all trial court prosecutors) to review and screen the new cases that came in overnight. The most time-sensitive cases are those on that day's docket where the defendant is still in custody. Two of my cases that day stemmed from the same incident and defendant. The

Continued on page 19

A banner year!

I am happy to report that 2024 was a banner year for the Foundation.

By Rob Kepple
TDCAF Executive Director in Austin

Under the Board's leadership and with your contributions, we beat projected donations by nearly 50 percent. And that is important—a lot of training needs the Foundation's support, and we are dedicated to making sure that the State is always ready. What's more, the endowment, which is funded by the Texas Prosecutors Society, is nearing the million-dollar mark—which is huge. Thanks to everyone who supported the work of Texas prosecutor offices this last year. You are part of the reason Texas leads the way in our profession.

Welcome to the newest members of the Texas Prosecutors Society!

In conjunction with the Elected Prosecutor Conference in December, the Foundation hosted a reception honoring the newest members of the Texas Prosecutors Society. The invitation-only society honors those who are dedicated to the advancement of justice; its members support the growing endowment. Congratulations to the Class of 2024:

Alison Baimbridge
Kristin Burns
Amy Davidson
Jessica Escue
Glen Fitzmartin
Ariane Flores
Christopher Gatewood
Carlos Madrid
Natalie McKinnon
Erik Nielsen
Chandler Raine
Shanna Redwine
Brandy Robinson
Lauren Scott
Ronny Dale Smith
Lisa Stewart
Jeff Swain

A photo of the new members who attended the reception is at right. Welcome to you all!

What's new for 2025

I am looking forward to a great 2025. I have retired as the executive director of TDCAA, but the Foundation Board has graciously agreed to keep me on as the executive director of the Foundation. I can't wait to get started!

My job will be to seek resources for the Foundation to keep TDCAA training and services humming along. We will be building a budget to support TDCAA's Domestic Violence Resource Prosecutor **Kristin Burns**, offer continued support for the Advanced Trial Advocacy Course and Train the Trainer, and support the expansion of TDCAA's online courses. If you want to explore how you can get involved, just email me at Rob.Kepple@tdcaf.org. ❇

Texas District and County Attorneys Association
505 W. 12th St., Ste. 100
Austin, TX 78701 • www.tdcaa.com

About *The Texas Prosecutor*

Published bimonthly by TDCAA through legislative appropriation to the Texas Court of Criminal Appeals. Subscriptions are free to Texas prosecutors, staff, and TDCAA members.

Table of Contents

My take on scatter-shooting

My first installment of The President's Column is like the late, great Blackie Sherrod's[1] Scattershooting column.

By David Holmes
TDCAA Board President & County Attorney in Hill County

My hope is that future efforts will be much more focused and content-rich.

I will pick up where last year's President, Erleigh Wiley, left off in the most recent issue of *The Texas Prosecutor* by wishing now-retired Executive Director Rob Kepple and our new Executive Director Shannon Edmonds both a hearty *congratulations*. I am excited for both of them as they begin their new chapters. I also want our members to know how excited I am to serve as President of TDCAA in 2025. Being involved in TDCAA is one of the best things I have done professionally. I encourage all prosecutors to get involved in our great organization. The more you get involved, the more you will benefit from it.

I am probably not alone in being thankful that the presidential election is over. The TV ads, texts, and social media posts have become overwhelming and exhausting in today's elections. Criminal justice was a central issue in this last election cycle. One of my concerns in politicizing criminal justice is that it detracts from why most of us work in prosecution: to serve victims. The focus on crime victims gets lost in the midst of the political hyperbole and rhetoric.

While our candidates make themes out of certain crimes, such as human trafficking and illegal entry, service to victims of violent crimes is suffering. Statistics show that the processing time of applications for Crime Victims' Compensation has ballooned. As most of you are aware, when a victim of abuse finally decides to escape her abuser, time is of the essence in getting her the resources to establish a new residence, employment, etc. When services lag, the chances of victims returning to their abusers increases exponentially.

Speaking of increasing focus on the victims we serve, I'd like to welcome Kristin Burns to TDCAA in the new position of Domestic Violence Resource Prosecutor. I am excited to see what Kristin does with this much-needed position. Also, thank you to the Texas District and County Attorneys Foundation for helping to fund this position to better train and serve Texas prosecutors who prosecute domestic violence cases.

As we move into a new legislative session in Austin, I urge you to talk with your local state representatives and senators and participate in the legislative process to the degree your busy schedules allow. As you engage with them, encourage your reps to keep the victims of crime at the forefront of crafting criminal justice legislation.

There are several great resources available to you as a member of TDCAA of which you should be aware. The Legislative Update is emailed weekly during the session and periodically when not in session. I am sure that Shannon Edmonds and Hector Valle (our new Director of Government Relations) will be as great as ever keeping us up to date during the 89th Legislative Session. (Welcome, Hector!) The weekly Case Summaries Update will keep you informed regarding recent appellate rulings that affect our jobs as prosecutors. It also includes notable requests for Attor-

[1] For those unfamiliar, Blackie Sherrod was a beloved sportswriter and newspaper columnist in Dallas for more than six decades.

ney General opinions. Our newest email feature is the TDCAA Round-Up, which is a collection of articles relevant to our profession—an outstanding addition. (These three emails require you to sign up to receive them, so it takes a few minutes of effort, but it is time well-spent.) Finally, TDCAA has a Bill Tracker on its legislative webpage that is a great resource for tracking bills pending in the legislature.

One of those "flavor of the session" subjects in the upcoming 89th is Organized Retail Theft. I will be focusing more on property crimes in future editions of *The Texas Prosecutor*. Victims of property crimes are just that—victims—and whether it be an individual or a business, they are often overlooked. So there is more to come on that.

I wish you all a happy New Year. I hope 2025 is good to each and every one of you. Please do not hesitate to call on any of your prosecutor colleagues or our incredible TDCAA staff to assist in your efforts seeking justice in the new year. ❇

Recent gifts to the Foundation*

Michael Butera
Jack Choate *in honor of the career of Phil Hall*
Kathleen Coffey *in honor of Roy DeFriend*
Amy Davidson
David Finney *in honor of Rob Kepple's service*
Gerald Fohn *in honor of John Thomas McCoppin*
Philip Mack Furlow
Michael Guarino *in memory of Chuck Rosenthal*
Michael Guarino *in honor of Rob Kepple*
Lynn Hardaway
James Hicks
Jeffrey Janes *in honor of Roy DeFriend*
Jana Jones
Rob Kepple *in honor of the TDCAA Board of Directors*
Rob Kepple *in honor of the Foundation Board of Trustees*
Jo Ann Linzer *in honor of Rob Kepple*
Cheryll Mabray
Carlos Madrid
Erik Nielsen
Julie Renken
Lauren Scott
Joseph Skrivanek III
Lisa Stewart
Beth Toben *in honor of Roy DeFriend*
Jerry Varney
Gary Young *in honor of Rob Kepple*

* gifts received between October 5 and December 6, 2024

Comings and goings

"Everything changes; nothing stands still."

—Heraclitus of Ephesus

By Shannon Edmonds
TDCAA Executive Director in Austin

Happy 2025! For those of you keeping track at home, TDCAA is starting off the new year with a new executive director (yours truly!), three new employees (**Hector Valle, Kristin Burns**, and **Joseph Studer**, welcomed in our last issue), three new executive committee members, six new general Board members, and 62 elected prosecutor members who were not in that role 12 months ago. Allow me to introduce you to some of them here.

New TDCAA leadership

Our association leaders for the year were elected at TDCAA's Annual Business Meeting in December. The new leadership positions for 2025 are:

Board Chair: Erleigh Wiley, CDA in Kaufman County

President: David Holmes, CA in Hill County

President-Elect: Brian Middleton, DA in Fort Bend County

Secretary-Treasurer: Philip Mack Furlow, 106th Judicial DA

Other two-year Board positions filled last month are:

Criminal DA-at-large: Jim Hicks, CDA in Taylor County

County Attorney-at-large: Landon Lambert, CA in Donley County

Region 1 Director: Rickie Redman, C&DA in Lamb County

Region 2 Director: Sean Galloway, C&DA in Andrews County

Region 4 Director: John Hubert, DA in Kleberg & Kenedy Counties

Region 7 Director: Trey Brown, CA in Somervell County

TDCAA's Board of Directors is the engine that drives our association. Please join me in congratulating all our new Board members, and if they reach out to you for information or assistance, please consider lending them a hand.

New elected members

Most local prosecutor elections in Texas coincide with U.S. Presidential election years. For 2024, that meant roughly 280 district attorney and county attorney offices were up for grabs. (Criminal district attorneys usually run in the mid-term elections with statewide officeholders such as the governor, but there are always some offices that do not follow the general rule. That's one reason why TDCAA exists—to keep track of all this madness!)

After the dust settled from all the elections and other mid-term appointments last year, we find ourselves welcoming 62 newly elected prosecutors to their first full year in office in 2025. That's much too long of a list to reproduce here, but allow me to share some general data about this group:

- Gender: 34 men, 28 women (55 percent and 45 percent)
- Political party: 56 Republicans, 6 Democrats (90 percent and 10 percent)
- Contested primary election races: 57
- Contested general election races: 9

As you can see, the vast majority of Texas prosecutors take or retain their office through uncontested elections. (More than 200 did this year.) That is a long-standing national phenomenon, not something unique to Texas or to this election cycle. But don't mistake lack of political competition for lack of interest in what you do—the upcoming legislative session will prove that.

Elected Prosecutor Conference recap

It was great seeing so many new faces at our Newly Elected Prosecutor Boot Camp and the subsequent Elected Prosecutor Conference in The Woodlands last month. When you add in all the "repeat customers," we had more than 200 elected prosecutors and other members of their leadership teams join us for several days of top-notch training. The Elected Prosecutor Conference also provides our state's top prosecutors with a unique opportunity to network and confer with their peers in a collegial setting. If you are an elected prosecutor who hasn't made it to this conference in a while, be sure to pencil in the next one on your calendar now because we will be at the Hyatt Regency on the Riverwalk in San Antonio in December 2025.

Legislative resources

It wouldn't be an odd-numbered year without a lot of talk (dare we say, angst?) about the legislative session. With so many of our members having diverse interests and goals, it's impossible for TDCAA to represent any individual prosecutor at the capitol. Instead, we focus on empowering our members to achieve their own policy victories under the Big Pink Dome in Austin—even if that means maintaining the status quo on some important issues. To do that, we offer a variety of resources and assistance to our members, including weekly email updates, memos on how to be effective at the capitol, and more. (Reach out to me or Hector for more details on those resources.)

But perhaps the most important way in which we can help you is by providing you with a home base when you are in Austin. Our offices are mere blocks from the capitol with free parking, wi-fi, and meeting space. If you are coming to Austin, remember that our office is your office! And if you have the urge to be more involved in the legislative process but don't know where to start, reach out to us for more details on how you can get involved. We are old hands at helping new prosecutors find their way around in Austin, and we'd love to help.

Honors for Rob Kepple

Finally, on behalf of the entire TDCAA staff, I would like to congratulate Rob Kepple for being awarded an honorary life membership in TDCAA. This special recognition is just one of the many ways in which we at TDCAA—both members and employees—can show our appreciation for Rob's many years of dedicated service to our association and our profession. Congratulations on a well-earned distinction, Rob! We look forward to you staying in the fold in your new role as Foundation executive director.

Rob was also honored with an award in his name at September's Annual Conference; see the photo, below, where he's pictured with **Erleigh Wiley** (left), Board President, and **Kriste Burnett** (right), TDCAA Board President-Elect for 2024. The Kepple Award honors recipients whose career accomplishments have left an indelible mark on the field of Texas criminal prosecution.

This award is intended to honor those whose career body of work has impacted the efforts that Texas prosecutors undertake every day in a way that will continue for years to come. Recipients may include prosecutors, those who lead prosecution-affiliated organizations, people who work with victims of crime, law enforcement officials, legislators, and others who have created a lasting, positive impact on our field of work.

This award was created in 2024 to honor longtime TDCAA Executive Director Rob Kepple for his incomparable service to Texas prosecutors for over 20 years. The design of the award, a crystal mountain peak, memorializes not only one of Rob's favorite activities, hiking, but also the skill, dedication, and discipline it takes for recipients of this award to reach the summit of our profession.

The Kepple Award shall run in tandem with the Prosecutor of the Year Award and the Lone Star Award, meaning that TDCAA members can forward nominations in writing to TDCAA's Nominations Committee, which in turn makes a recommendation to the TDCAA Board. ❇

It wouldn't be an odd-numbered year without a lot of talk (dare we say, angst?) about an upcoming legislative session.

Talking shop in 2025

Tool metaphors get tossed around a lot in the world of training and professional development.

By Brian Klas
TDCAA Training Director in Austin

Everyone has a toolbox or necessary repair in desperate need of new tools. How are you going to function from one moment to the next without this cutting-edge tool? You *don't* have Sears (RIP) Robo-Grip pliers? Shame!

The thing is, any mechanic or tradesperson knows you don't need to load up on a bunch of nonsense tools—Robo-Grips are pretty cool, but most of those gadgets are garbage. You just need quality tools and maybe some help maintaining and using the tools you already have. Tools can be adapted, practiced with, applied to new situations, and cared for. When new tools are necessary, they should work with or replace existing tools, not function counter to their current use.

In 2025, TDCAA's training continues to be designed *by* our membership *for* our membership. Our training aims to hone the skills our members already possess and introduce new concepts in ways that are immediately practical.

Our 2025 lineup

First up is our Prosecutor Trial Skills Course in mid-January (before this journal is published). As many of you know, we put on this course two times a year. It is a weeklong training designed to introduce attendees to the tools we use in our profession. Seasoned prosecutors work in small groups of attendees to provide secondary explanations of topics and to offer guidance on the daily issues prosecutors face. Built for new prosecutors, the course is *the* foundational training for successful prosecution in Texas. If you missed the course in January, another will be held in July. We consistently hit capacity on it, so register as soon as you are able.

Our Investigator Conference brochure

In February, the annual Investigator Conference will be held in College Station. We're excited to venture to a new area of the state and try out a brand-new venue. Throughout the year, TDCAA's Investigator Board members gather ideas from their peers and meet to distill those ideas into training topics that cover what's most relevant to our investigators. This year's offerings can be viewed online now by hovering your phone's camera over the QR code at left.

April brings an exciting development with our specialized training conference. We'll be in Sugar Land this time around, and we're trying something new. When planning for this April specialty course, TDCAA's Training Committee expressed a few high-need areas for training. Rather than jettison all but one idea to create a single-topic conference, we created an agenda for a broader section of our membership. This year, we'll have two full days of training on prosecuting domestic violence cases and two full days on prosecuting child sex assault—hence the name of the course, Prosecuting Domestic Violence & Child Sex Assaults. Also, we are working with the Texas Children's Commission to provide additional training for offices handling a Child Protective Services (CPS) caseload. The model for this training is new, and I can't wait to see how it works.

In May, we'll head to Galveston for our regular Civil Law Conference. We have a great group on our Civil Committee, and they've got a solid slate of training topics to cover. They are also keen to reproduce the Civil Practitioners Boot Camp we

tried out a couple of years ago. Barring the unforeseen, that'll be a go in 2026.

In June, we're introducing our Advanced Writing & Appellate Advocacy Course. Course Directors Emily Johnson-Liu and Alan Curry have been working hard to design a course aimed at both appellate prosecutors and those who simply want to sharpen their legal writing skills. We have held a similar course in recent years, and the instruction looks to be top-notch once again. Keep an eye on our website for additional details when they are finalized.

Also in June, we'll host the first of our two standalone courses from our Prosecutors Management Institute, the Fundamentals of Management module. These work only with a small attendance, so they are sure to fill quickly; in the past, they have hit capacity within a few days of opening for registration. The second management course will be held in August; both the June and August schools will take place in Austin. These standalone courses are open generally to our service group but were originally designed for smaller offices and attendees who missed the course when it was brought to their home county. If you are interested in the traditional management training model and would like to work with TDCAA to get this training in your jurisdiction, have a look at the Prosecutor Management Institute page on our website by hovering your phone's camera over the QR code (at right) or going to www.tdcaa.com/prosecutor-management-institute-pmi for contacts and instruction.

In addition to the previously mentioned Prosecutor Trial Skills Course, July is also home to our Advanced Trial Advocacy Course. We are continuing our partnership with Baylor Law School to provide 32 applicants with top-tier trial training. As I've said many times, if you are good in trial but want to be great, this is the course for you. Shanna Redwine, an ADA in Montgomery County, will be our Course Director, and she's busy at her workbench putting together a case problem that focuses on child homicide. Applications for the course will be available in late April or early May.

I could go on and on, but I will stop at our Annual Criminal & Civil Law Conference. The Annual will be held in Round Rock at the Kalahari Resort. If you were there with us last time in 2023, you know it is a top-notch training facility surrounded by lots of things to do. It is incredibly early to discuss this event except to note that the schedule will be different this year. Instead of the main course starting Wednesday afternoon, we will kick things off Tuesday afternoon. I expect we'll still have a live Legislative Update scheduled the day before on Monday, and we will adjourn the Annual Conference on Thursday.

Again, there is always more training, and I encourage you to keep an eye on TDCAA's website for upcoming training opportunities. Our Assistant Training Director, Joe Hooker, is putting together new online courses even as you read this, and our new Domestic Violence Resource Prosecutor, Kristin Burns, is setting up a training system that will reach across the state—similar to what W. Clay Abbott, our DWI Resource Prosecutor, has so successfully done with intoxication offenses.

Conclusion

I look forward to seeing as many of you as possible down the road. We remain committed to providing the best possible training to Texas prosecutors and staff. We are invested in your success, and while I tend to focus on the training itself, there is no better place to network, solve problems, and build connections than a TDCAA conference. It is an advantage we have as prosecutors. These events are where you discuss the use and care of tools you've developed as a professional, as well as the most complex legal or ethical issues imaginable, with others who have the expertise and objectivity to give valuable feedback. And talking shop is fun. ❇

There is no better place to network, solve problems, and build connections than a TDCAA conference.

The PMI page on our website

KP–VAC Conference recap

The Marriott Hotel and Conference Center in Sugar Land was the venue for our Key Personnel–Victim Assistance Coordinator Conference in November.

By Jalayne Robinson, LMSW
TDCAA Victim Services Director

Attendees from across Texas gathered to hear presentations geared toward assisting key personnel and VACs who work in prosecutor offices. Many, many thanks to our highly informative speakers! We appreciate your time and valuable assistance to our TDCAA membership.

This conference is held annually and provides key personnel and victim assistance coordinators a chance to network and gather innovative ideas from others who do similar jobs in other counties. Each year during this conference, awards and recognition are given to deserving KP and VACs. (More about those below.)

Mark your calendar for the 2025 conference to be held November 5–7 in Grapevine at the Great Wolf Lodge. We hope to see you there!

Suzanne McDaniel Award

Sherry Magness, a victim assistance coordinator who has worked for the Criminal DA's Office in Smith County for the past 18 years, was honored with the Suzanne McDaniel Award for her work on behalf of crime victims.

Sherry's boss, elected Criminal District Attorney Jacob Putman, nominated her for the award, noting how patient, kind, and caring Sherry is toward victims of every type of crime. She has worked with thousands of crime victims, from family violence cases to murders. Mr. Putman also noted that Sherry maintains good relationships with victims' families on death penalty cases, which often are pending in appeals for decades.

In 2012, Sherry volunteered to be trained as a facility dog handler so that victims would have the comfort of a K9 companion. Since 2012, she has successfully been the handler for three different facility dogs. Sherry served on TDCAA's KP–VS Board from 2018 to 2019 and has contributed to this journal with an article about her work with comfort dogs. She has implemented new programs and has innovative ideas about ways to serve crime victims. She has also been an invaluable resource to other VACs across Texas and is always willing to share her expertise with other offices.

The award from the Key Personnel–Victim Services Board is given annually to a person employed in a prosecutor's office whose job duties involve working directly with victims and who has demonstrated impeccable service to TDCAA, victim services, and prosecution. It is named for the late Suzanne McDaniel, who was a pioneer in Texas victim services. Suzanne served as the first Victim Services Director for TDCAA until her death in 2010. She spent her entire career serving victims of crime.

Sherry exemplifies the qualities that were so evident in Suzanne McDaniel herself: advocacy, empathy, and a constant recognition of the rights of crime victims. Congratulations Sherry!

From left to right: Chris Gatewood, First Assistant CDA; Sheila Parker and Sherry Magness, VACs; and Jacob Putman, CDA, all in Smith County.

PVAC recognition

The Professional Victim Assistance Coordinator (PVAC) recognition is a voluntary program for Texas prosecutor offices designed to recognize professionalism in prosecutor-based victim assistance and acknowledge a minimum standard of training in the field. In 2024, four VACs received their certificates:

Leslie M. Childress has worked for the Chambers County DA for nine years as a legal assistant and victim assistance coordinator. She holds a bachelor's degree in criminal justice and an associate's degree in paralegal studies. She organizes their Tree of Angels ceremony each year in Chambers County.

Amy Johnson-Duong has been a VAC with the District Attorney's Office in Harris County since 2022 and has worked in the victim services field since 2003. A major portion of her career was as a Children's Court Services advocate, where she worked very closely with local prosecutors while assisting child victims of sexual assault. Amy has also worked as a mobile Advocacy Specialist with the Harris County Domestic Violence Coordinating Council. Currently, she is assigned as a VAC to one felony court and one misdemeanor court where she provides direct services to victims in cases assigned to those courts.

Patricia West has been a VAC with the District Attorney's Office in Harris County for almost six years, and she has been employed by the office in various capacities for nearly 25. While she is currently assigned as a VAC providing direct victim services in cases assigned to one felony court and one misdemeanor court, she has been assisting crime victims throughout her tenure at the office.

From left to right, Sara Bill, KP–VS Board Chair; Amy Johnson-Duong; Verna D. Johnson; and Jalayne Robinson, TDCAA Victim Services Director.

Verna D. Johnson has worked for the DA's Office in Harris County for over five years and is a team lead supervising other VACs in the office. Verna is a master level social worker and is a field instructor for undergraduate and graduate social work students who are interning in the division. In addition to her team lead and intern supervision duties, Verna is assigned to a felony caseload and works directly with crime victims. (She and Amy Johnson-Duong are pictured, below left.)

PVAC applications

The deadline for applications for PVAC recognition is January 31. To be eligible, applicants must provide victim assistance through a prosecutor's office and be or become a member of TDCAA in the Key Personnel category. Other requirements include:

- either three years' experience providing direct victim services for a prosecutor's office or five years' experience in the victim services field, one of which must be providing prosecutor-based victim assistance.
- training recognized for CLE, TCLEOSE, social work, and/or licensed professional counselor educational credits are accepted under this program. Training must include at least one workshop on the following topics: prosecutor victim assistance coordinator duties under Chapter 56A of the Code of Criminal Procedure; the rules and application process for Crime Victims' Compensation; the impact of crime on victims and survivors; and crisis intervention and support counseling.

Applicants must show that they have already received 45 total hours of training in victim services (which is equivalent to the number of hours in the National Victim Assistance Academy program created by the U.S. Department of Justice's Office for Victims of Crime).

For more requirements, please visit our website at www.tdcaa.com/resources/victim-services. Email applications to me at Jalayne .Robinson@tdcaa.com.

Continued on page 13 in the purple box

A tidy bright-line rule on *Miranda* from *State v. Johnson*

People are messy. We constantly create novel situations that attorneys and judges can't anticipate.

By Richard Guerra
Assistant Criminal District Attorney in Bexar County

The law—whose ghostly demarcations are blurred by human behavior—plays catch-up.

We often encounter these confusing situations during custodial interrogations, where the stress of confrontations between law enforcement and the accused creates unanticipated situations. Indeed, prosecutors are constantly confronting issues with *Miranda*.

But we can have nice things occasionally. And the Court of Criminal Appeal's holding in *State v. Johnson*,[1] which carefully spells out a bright line rule concerning *Miranda*, is nice to have.

Background

Sedrick Johnson went to the police station to help search for his girlfriend's missing child. The boy was 18 months old. The Dallas Police Department had multiple divisions involving hundreds of people searching for him.

At 2:30 p.m., a detective took Johnson to an interview room for some questioning. Nearly three and a half hours later, at 5:57 p.m., another officer interviewed Johnson. He was free to leave at any time during this interview.[2] Afterward, Johnson was alone in the room. At 7:18 p.m., Johnson left the room to ask about his children. Seventeen minutes later, Johnson returned to the hallway outside the interview room and asked where his children were. An officer told Johnson that his children were being questioned about a criminal offense. Johnson asked what offense. The response: kidnapping.

"Who says they were there?" Johnson asked.

"They did," the officer responded. Johnson was handcuffed.

"OK. I need to talk to a lawyer."

The police told Johnson that he had to sit in the interview room. Then, after some conversation, Johnson said, "I don't mind talking to nobody as long as I know my kids are all right." The police told Johnson that he was being arrested for out-of-county warrants. He asked to call his grandmother, but it was not permitted at that time. Johnson remained in the interview room for six hours. During that time, he called out to officers for help getting up from the floor, loosening his handcuffs, and getting some water. He asked about his warrants, about his girlfriend, and about his kids. Officers told him that interviews were ongoing and that he might need to be interviewed again.

No attorney was ever called.

Finally, at about 1:20 a.m., a detective entered the interview room. Nobody told this detective that Johnson had said he needed to talk to a lawyer. The detective introduced himself, provided Johnson with a *Miranda* warning card, and read the warnings required by *Miranda* and Code of Criminal Procedure Art. 38.22. Johnson signed and dated the card and then confessed. He told the detective that the missing child started throwing up while playing a game. Johnson wrapped him in a blanket and drove around, but he was afraid to take the boy to a hospital. He

---

[1] *State v. Johnson*, No. PD-0665-23, 2024 WL 4757857 (Tex. Crim. App. Nov. 13, 2024).

[2] *State v. Johnson*, No. 05-22-00480-CR, 2023 WL 4676869, at *2 (Tex. App.–Dallas July 21, 2023), *rev'd*, No. PD-0665-23, 2024 WL 4757857 (Tex. Crim. App. Nov. 13, 2024).

eventually led the police to the dumpster where he put the child's body, which was later found in a landfill.

The State charged Johnson with injury to a child by omission and capital murder of a child under 10 years of age. He moved to suppress his confession and all the pictures or diagrams of the victim's body. At the suppression hearing, the interrogating detective testified that he knew Johnson had been questioned before he arrived, but he was not aware that Johnson had said, "I want to talk to a lawyer." The detective told the trial court that he would have stopped the interview if the defendant had said those words to him. The trial court granted Johnson's motion to suppress.

On appeal the State conceded that Johnson was in custody when he requested an attorney.[3] However, the State argued that an interrogation had not begun because Johnson was not being questioned at that time. The Dallas Court of Appeals disagreed. According to the appellate court, Johnson's questioning was ongoing from the first two interviews through the third. Thus, once Johnson was handcuffed, he was being interrogated. The appellate court reasoned that the police subjected Johnson to a "custodial interrogation environment." The court effectively held that a person cannot invoke his Fifth Amendment right anticipatorily and "outside the custodial interrogation environment." The court next held that Johnson's invocation was unambiguous and that he did not subsequently revoke it by talking to the police. The State appealed to the Court of Criminal Appeals.

As the judges saw it

The CCA held that the lower court's reliance on a "custodial interrogation environment" to establish a *Miranda* violation was error.[4] Its decision included a step-by-step analysis of *Miranda*'s development over multiple cases.

First, the CCA reiterated the United States Supreme Court's holding in *Miranda*: A suspect has the right to have an attorney present during

---

[3] *State v. Johnson*, No. 05-22-00480-CR, 2023 WL 4676869, at *4 (Tex. App.–Dallas July 21, 2023), *rev'd*, No. PD-0665-23, 2024 WL 4757857 (Tex. Crim. App. Nov. 13, 2024).

[4] *State v. Johnson*, No. PD-0665-23, 2024 WL 4757857 (Tex. Crim. App. Nov. 13, 2024).

National Crime Victims' Rights Week

Each April, communities throughout the country observe National Crime Victims' Rights Week (NCVRW) by hosting events promoting victims' rights and honoring crime victims and those who advocate on their behalf. NCVRW will be observed April 6–12, 2025, with the theme, "Connecting < KINSHIP > Healing." For more information, check out the Office for Victims of Crime (OVC) website at ovc.ojp.gov/news/announcements/2025-national-crime-victims-rights-week-dates-and-theme. Sign up for the NCVRW subscription list at ovc.ojp.gov/program/national-crime-victims-rights-week/subscribe.

If your community hosts an event, I would love to publish photos and information about it in an upcoming issue of *The Texas Prosecutor* journal. Please email me at Jalayne.Robinson @tdcaa.com with information and photos of your event.

Victim services consultations

As TDCAA's Victim Services Director, my primary responsibility is to assist Texas prosecutors, VACs, and other staff in providing support services for crime victims in their jurisdictions. I am available to provide training and technical assistance via phone, by email, in person, or by Zoom. I can tailor individual or group training specifically for your needs. The training and assistance are free of charge.

Are you a new VAC? This training would be perfect for you! To schedule a free consultation, please email me at Jalayne.Robinson @tdcaa.com. Many offices across Texas are taking advantage of this free victim services training. ❇

a custodial interrogation.[5] Consequently, a suspect must be informed of his right to counsel before custodial interrogation. If he requests counsel, then the interrogation must cease until an attorney is present. The Supreme Court has referred to this as a "prophylactic rule."

Edwards v. Arizona added "a second layer of prophylaxis" to *Miranda*: Once a suspect invokes his right to counsel under *Miranda*, the police, after ceasing the interrogation, cannot attempt another interrogation, even after further *Miranda* warnings, unless the suspect has been given counsel or the suspect initiates further communication with the police.[6]

The U.S. Supreme Court established a third layer of prophylaxis in *Minnick v. Mississippi*, in which it held that once the *Miranda*-based right to counsel is invoked, the *Edwards* prohibition against additional police-initiated questioning continues—even after the suspect has consulted an attorney—if that attorney is not present during the interrogation.[7]

After reviewing these three prophylactic layers, the CCA echoed a consequential footnote from *McNeil v. Wisconsin*, in which the Supreme Court observed, "We have in fact never held that a person can invoke his *Miranda* rights anticipatorily, in a context other than 'custodial interrogation.'"[8] The Supreme Court ultimately determined that the three layers of prophylaxis established by the *Miranda-Edwards-Minnick* line of cases are "sufficient."[9]

Later, in *Pecina v. State*, the CCA applied the *Miranda-Edwards-Minnick* line of cases in deciding that a defendant's invocation of his Sixth Amendment right to have an attorney at a magistration hearing did not simultaneously invoke his Fifth Amendment right to counsel.[10] Specifically, the CCA found that "the judge's magistration of the defendant didn't trigger any Fifth Amendment right concerning custodial interrogation; that was done by the detectives at the beginning of their interrogation."

With all this analysis in mind, the *Johnson* Court established a bright line rule: A suspect must be *Mirandized* before he can invoke his Fifth Amendment right to counsel.[11] In this case, Johnson was in custody, but he was not given *Miranda* warnings, and nobody tried to interrogate him. After receiving his *Miranda* warnings (after nearly six hours of being in custody), Johnson could have invoked his right to counsel. He did not.

The CCA plainly stated the rule: "The Miranda right to counsel–with all of its prophylactic protections–becomes ripe for invocation only after 1) Miranda warnings have been given while the suspect is in custody or, 2) if custodial Miranda warnings have not been given, when custodial interrogation begins."

The takeaway

The CCA plainly stated the rule: "The *Miranda* right to counsel—with all of its prophylactic protections—becomes ripe for invocation only after 1) *Miranda* warnings have been given while the suspect is in custody, or 2) if custodial *Miranda* warnings have not been given, when custodial interrogation begins."[12]

---

[5] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[6] In *Edwards*, the police ceased questioning the defendant after he invoked his right to counsel. But they returned the next morning to interview him again, read him his *Miranda* rights again, and gained a confession. *Edwards v. Arizona*, 451 U.S. 477, 479, 101 S. Ct. 1880, 1882, 68 L. Ed. 2d 378 (1981).

[7] In *Minnick*, law enforcement ceased interrogating the suspect after he requested an attorney. The suspect was appointed an attorney, with whom he spoke two or three times. Then, two days later, the police *Mirandized* and interrogated the suspect. *Minnick v. Mississippi*, 498 U.S. 146, 149, 111 S. Ct. 486, 488-489, 112 L. Ed. 2d 489 (1990).

[8] In *McNeil*, the Supreme Court held that the Sixth Amendment right to counsel–which had attached before the police Mirandized and interrogated the suspect about a different offense from the one for which the right had attached–was offense-specific. *McNeil v. Wisconsin*, 501 U.S. 171, 182 n.3, 111 S. Ct. 2204, 2211, 115 L. Ed. 2d 158 (1991).

[9] *Montejo v. Louisiana*, 556 U.S. 778, 794, 129 S. Ct. 2079, 2090, 173 L. Ed. 2d 955 (2009) (citing *McNeil v. Wisconsin*, 501 U.S. 171, 182 n.3, 111 S. Ct. 2204, 2211, 115 L. Ed. 2d 158 (1991)).

[10] *Pecina v. State*, 361 S.W.3d 68, 80 (Tex. Crim. App. 2012).

[11] *State v. Johnson*, No. PD-0665-23, 2024 WL 4757857, at *4 (Tex. Crim. App. Nov. 13, 2024).

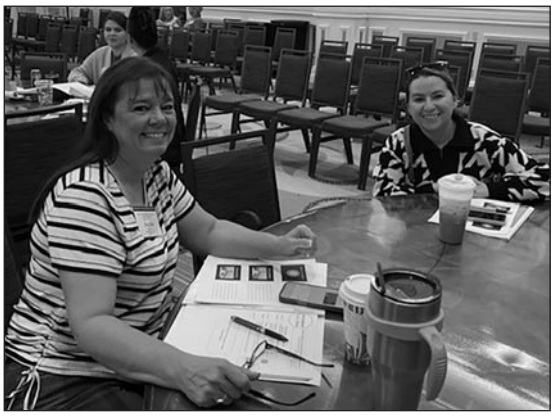
[12] *Id*.

This rule will most likely assist the prosecution of cases in which (often sophisticated) defendants immediately invoke their right to an attorney at the beginning of an investigation. That's all well and good that they want an attorney, but they must invoke their right after receiving *Miranda* warnings. If no warnings are given, then *Miranda* still offers protection if the police begin an interrogation without giving the warnings.

This rule is easier to apply than the lower appellate court's analysis of determining whether a suspect is being subjected to a custodial interrogation environment. However, if a defendant anticipatorily invokes his Fifth Amendment right to an attorney, the defense will likely argue that the interrogation had already started at that time. In this case, Johnson was in custody for six hours—in an interrogation room—before his interrogation began. The facts of this case do not indicate that the police purposefully kept Johnson in custody for such a long time after his request for a lawyer as part of a plan to gain a confession. I anticipate that defense attorneys will argue (and attempt to create a record that shows) the police employed such a strategy. These situations will likely be fact-specific.

This bright line rule is much appreciated. People are messy. And the law can be messier. As we enter a new year, it's nice to have things neat and tidy—at least for a little while. ❇

Photos from our KP–VAC Conference



Photos from Newly Elected Boot Camp

Photos from our Elected Prosecutor Conference

Everything we do matters (cont'd from the front cover)

charges were for assault of a family member and criminal mischief. The defendant, Jarvis Hickerson, was alleged to have assaulted his girlfriend, Maya, and damaged items in her apartment. According to the deputy's summary, the assault was a slap on the arm and a kick to the leg. The injuries were listed as a small cut on Maya's finger from Hickerson snatching her apartment keys out of her hand and a scratch on her leg from him kicking her. The damage in Maya's apartment was two broken mirrors, a damaged TV, and a damaged TV stand.

Part of the screening process is to attempt to contact the complainant before docket, so I called the number I had for Maya but her sister Laura answered. At the time of the offense Maya didn't have a phone because Hickerson had broken it during a prior altercation, but since the offense, Maya had gotten a new phone and Laura gave me her new number. Laura said that on the night of the offenses Maya called her from an IHOP needing a ride home because Hickerson had left her there. Laura picked Maya up and drove her to her apartment. Laura couldn't stay because she had her young children with her. Laura said Maya went to her neighbor's apartment and called 911. I made notes about what Laura was telling me. My practice at the time was to take handwritten notes as I talked to a complainant, but after this case I switched to typing notes when possible. Even if I had to hand-write notes for some reason, later I would type up my handwritten notes and save both versions in the file.

Next, I called Maya. She didn't answer so I left a voicemail. Right before I headed to docket, Maya called me back. At this point it had been a little over 24 hours since the offenses occurred and Hickerson was still in custody. When I spoke with Maya, she seemed a bit embarrassed but was willing to talk and answer my questions. She confirmed that the deputy's summary of what happened was accurate. She told me that she and Hickerson had been dating for four to five months. This was the first time she (successfully) called the police, but it wasn't the first time Hickerson had assaulted her. She described how after one assault she tried to call police but he took away her phone and broke it. Another time Hickerson hit her so hard that it left bruises, which her coworkers later saw. Maya also shared that Hickerson told her if she ever called police on him, he would shoot up her house.

Next, I let her know that her request (made to the responding deputy) for a Magistrate's Order of Emergency Protection had been granted, and I explained what it was and when it expired. Then I asked her if she would also like an order of no-contact. She said she would. Maya was very fearful that Hickerson would retaliate against her now that she had finally reported his abuse to police. I asked which address she would like listed in the no-contact order; and she wanted all of them listed: her residence, work, school, and her sister's residence (where she was living at the time). Maya said she was too scared to live alone at her apartment.

We wrapped up the call with questions about her opinion on punishment and her willingness to testify. She felt the defendant deserved jail time and she was willing to testify if needed. After drafting the no-contact order, I headed to court for docket.

The court was in trial so we had to run docket out of the coordinator's office. With 50 cases on docket, it was hectic to say the least. Back then we had paper files, so we would attach no-contact orders to the front of the file so everyone knew to approach on the order before resetting the case.

Understandably, the defendant's court-appointed attorney didn't want to wait for a break in trial to approach on the no-contact order. He asked if we could reset the case and approach on the order at the next setting in a week. I didn't want to be unreasonable or difficult, but he hadn't heard the fear in Maya's voice like I had. And if he didn't read my RIP call notes in the file, he didn't know about the threat Hickerson made and the prior unreported assaults. I relayed all of this to the defense attorney and insisted we approach on the order that day. During a break in trial, we approached with Hickerson, and the no-contact order was granted. Unknown to me at the time, Hickerson posted bail the next day and was released. His bonds were set at $5,000 on each case.

The next week I was in a highly contested DWI trial that lasted a few days. When I returned to my office after a long day of trial, I was told a woman had called me multiple times and said it was urgent I call her back. The woman calling was one of Maya's other sisters. I'll refer to her as Tina. I immediately called Tina back. Tina told me that Maya was missing. She wasn't at home and she wasn't at work. No one had seen or talked to her in almost 48 hours. Her other sister, Laura, last saw Maya two days prior when Hickerson picked her up from Laura's apartment. According to Tina, Hickerson was the last person to see or talk to Maya.

By now Maya's friends and family had reached out to Hickerson to see if he knew where she was. He told different people different things: that he last saw Maya at her apartment as she was getting ready to leave for work or that she was probably in Florida with her ex-boyfriend. For many reasons, Tina was suspicious. For one, when Hickerson and Maya were on good terms, he would drive her to work because her car was inoperable (because after one of their fights Hickerson poured something in the car's gas tank, forcing Maya to rely on him or an Uber to get to work). So it seemed unlikely that he would have left Maya's apartment when she was getting ready for work and not driven her to work. Second, Maya wasn't at work and she hadn't called in to say she'd be out. And third, if Maya was in Florida, she would have told someone.

My initial thoughts upon learning Maya was missing were: I really hope Maya is OK; I need to talk to my chief; I need to request that Hickerson's bonds be revoked for violating the no-contact order; and I hope I took good notes when I talked to Maya the week before.

The family had already filed a missing person's report, but because Maya was an adult and it had been less than 48 hours, they weren't sure how much attention the case was getting. They were exhausting all resources to find her. My initial thoughts were: I really hope Maya is OK; I need to talk to my chief; I need to request that Hickerson's bonds be revoked for violating the no-contact order; and I hope I took good notes when I talked to Maya the week before.

It isn't every day your complainant's family calls to tell you the complainant is missing (not even in Harris County), so I definitely needed guidance on how best to proceed. After talking to my chief, we asked our investigator to try locating Maya. Next, I prepared to approach the court to revoke Hickerson's bonds based on him having contact with Maya.

All judges are different, and some need more than others to revoke a defendant's bond based on a bail violation. Hickerson admitted to Maya's family he picked her up from Laura's apartment, but Laura didn't actually see him or see Maya get in his car. Also, Hickerson told multiple people he was with Maya at her apartment that night and into the early morning. The defense attorney and I approached on the matter two days after Maya went missing. Tina came to court prepared to testify if need be, but the judge didn't require it and revoked the defendant's bond based on his admission of contact to multiple people.

Three days after Maya went missing, our investigator went to Hickerson's last known address with the arrest warrant in hand. Hickerson was located and arrested, and his cell phone was taken into custody.

With the defendant back in custody on the two misdemeanors, the bonds were raised to $20,000 each. Maya was still missing. The detective on the missing person's case interviewed Hickerson and he admitted to being with Maya at her apartment on the day she went missing. Based on that and surveillance video from Maya's apartment complex which showed Hickerson's truck arriving and leaving, he was charged with violation of a protective order.

About two months after Maya went missing, Hickerson made bond on his three misdemeanor cases. Maya was still missing. By now, the cases had been transferred to our domestic violence division and my involvement as a prosecutor was over. It felt like forever, but about 70 days after she went missing, Maya's remains were located in a shallow grave in a wooded area in Montgomery County. Dental records had to be used to identify her.

Soon after the discovery, Hickerson was charged with capital murder. The indictment alleged that while in the course of committing and attempting to commit retaliation against Maya, he intentionally caused her death by an unknown manner and means. *Retaliation*. That meant the work I did on a misdemeanor case was being used as evidence in a capital murder.

A capital case

The case had delay after delay, first with Hurricane Harvey and then COVID. Also, the defendant kept "firing" his court appointed attorneys which dragged the case out even longer. I am thankful I was too swamped with work to properly freak out, but as the years went by, I defi-

nitely wondered if I would ever be called to testify.

Finally, in 2024, eight years after Maya's murder, Hickerson went to trial for killing her. The trial prosecutors reached out and let me know my testimony was needed. Even though I always knew it was a possibility, I couldn't believe it was finally here. I felt every emotion; eager, nervous, happy (the family would finally get their day in court), concerned, confident. I was glad I could help the case, but I was also nervous to testify. What would the defense ask on cross? What would I be allowed to testify to? Would my testimony be helpful?

I want to take a moment to recognize and appreciate all the witnesses we call to testify, especially witnesses in jury trials. You truly can't understand what it feels like to be in their shoes unless you've been there. The more you can prepare a witness the better, which I know is an obvious statement. But if testifying was nerve-wracking for me, imagine how scary it is for someone who doesn't do this for a living. Keeping witnesses in the loop and making sure they understand what's expected of them can only help a case.

The trial prosecutors made sure I was well-prepared. I knew exactly what I could and could not testify to. My testimony was to help prove the murder was in retaliation for Maya calling the police and the charges that followed. The only statement of Maya's I was allowed to testify about was that Hickerson had threatened to shoot up her house if she ever called the police. I also testified about my impression of Maya: that she was very scared of what the defendant would do now that she had called the police. Her fear was evident from her wanting a protective order and an order of no-contact that included all of her addresses.

After a great presentation of evidence by the trial prosecutors, the jury found Jarvis Hickerson guilty of capital murder and he was sentenced to life in prison without the possibility of parole.

Takeaways

The way we work up a family violence case can have a lasting effect not only on that particular case but on future cases involving the same complainant and/or defendant.

First, when it comes to making contact with the complainant in a family violence case, time is of the essence—the sooner, the better. We want to talk to the victim about what happened when it's freshest on her mind. Also, we want to reach a complainant before the defendant does. Don't give the defendant a chance to persuade the complainant not to cooperate. Assume the defendant will try to, but ideally that will happen after prosecutors have already talked to her.

Next, the way we contact the complainant is important. It should be a phone call, not a text or email. A lot can be lost in a text or email. By speaking to the complainant, we get a better idea of what happened and how it affected her. Her tone and the emotion in her voice are lost in a text or email, but these are helpful to decipher her credibility and state of mind. Also, by speaking to the complainant on the phone, you're more likely to know if the person you're talking to is actually the complainant.

Thank goodness I took such detailed notes during that RIP call in 2016. If I hadn't, my testimony would have been a lot weaker. I remembered the call and a lot of what we talked about, but eight years later I didn't remember that Maya told me Hickerson threatened to shoot up her house if she called the police. But because I wrote it down, I knew it was true and accurate.

Also, I am so glad I didn't wait to get the no-contact order signed. Because of that order, prosecutors could show how fearful Maya was without getting into hearsay (which is good because I wasn't allowed to testify about her telling me she was scared). Also, because of the no-contact order, we could arrest the defendant very soon after he committed the murder, which led to finding valuable evidence in his cell phone and connected him to the truck on the apartment's surveillance video.

Lastly, my biggest takeaway was that everything we do matters. It doesn't always feel that way, especially in misdemeanor cases, but something routine we do today could have a big impact down the road—even in cases where the facts aren't that egregious. Here, the visible injuries from the misdemeanor assault were a scratch and a small cut. Based on that, I wouldn't have predicted an outcome of capital murder, but the preliminary report and photos didn't paint the whole picture. That's why it's important we do the work on every case. Talk to the complainant ASAP and any witnesses. Getting the whole picture could help turn a misdemeanor into a capital murder. And that's why everything we do matters. ❇

Thank goodness I took such detailed notes during that RIP call in 2016. If I hadn't, my testimony would have been a lot weaker. I remembered the call and a lot of what we talked about, but eight years later I didn't remember that Maya told me Hickerson threatened to shoot up her house if she called the police. But because I wrote it down, I knew it was true and accurate.

DFW's new chapter of the Black Prosecutors Association

Three months into 2020, we found ourselves amidst an unprecedented global pandemic that caused isolation from family, friends, and colleagues.

By Krystal Biggins (left) & Amber Moore (right)
Assistant Criminal District Attorneys in Dallas County and Executive Board members of the Dallas–Fort Worth Black Prosecutors Association

On May 25 of that year, we were in shock and utter disbelief to learn the news of George Floyd's murder by a Minneapolis police officer. His murder became a catalyst for much-needed race-related conversations and more diversity, equity, and inclusion programs in many areas, but specifically within the legal community for Black prosecutors. We needed a safe space to have these conversations.

Ten days after George Floyd's death, TDCAA's Diversity, Recruitment, & Retention Committee offered a confidential and safe space where Black prosecutors could discuss their feelings and experiences in the wake of what was happening: a virtual forum. Toward the forum's conclusion, a former Southern Regional Director of the National Black Prosecutors Association (NBPA) who was on the call mentioned the NBPA and shared the purpose of the organization. For many of us, it was the first time we had heard of the NBPA. Prosecutors on the forum were encouraged to act by getting involved in their local chapter or by starting one if a chapter did not already exist.

For those of us who learned of the NBPA through the forum, we in Dallas County discovered that the NBPA was a well-recognized national organization. It was founded in Chicago in 1983 and is the "only organization dedicated to the hiring, retention, and promotion of Black prosecutors," according to its website. The NBPA recognizes the need to correct the "dramatic inequity that exists with respect to Black representation in the executive ranks of prosecutor's offices." Therefore, the NBPA's goal is to not only "recruit, [but also] train and mentor younger aspiring lawyers for leadership roles in the years ahead."

This was exactly what we were looking for. We did not have a local chapter in the Dallas–Fort Worth area—and we needed one. Soinkne Lewis, an ACDA in Dallas County, had been a member of NBPA for years, and she had always wanted to launch a local chapter. She spearheaded the initiative to get the DFW chapter started. The Dallas Fort-Worth Black Prosecutors Association (DFWBPA) was chartered in 2021 after a desire to effectuate change in our community and to prosecute with a purpose. Our goal is to advance the art of fair and firm prosecution; to encourage legal education and professional development; to provide and promote fellowship and support for Black prosecutors; and to increase camaraderie and nationwide networking among Black prosecutors.

To start the chapter, we first had to become members of NBPA. Once we had at least 10 paid members in NBPA, we began formulating bylaws that would govern our local chapter. We used the bylaws framework from other local chapters and the national chapter as our guide.

DFWBPA is comprised of a general body membership and an Executive Board. The general body meets as needed, and the Executive Board meets monthly to discuss and plan programming throughout the year.

Since our inception, we have prioritized investing in our local communities. We have part-

nered with several nonprofits for toy and clothing drives, and many of our members regularly speak to school-aged kids about the life of a prosecutor. We organized an office-wide CLE during Black History Month, created relevant programming during Women's History Month, and hosted a snack-and-chat series during Juneteenth. Additionally, we host several social mixers throughout the year for current and prospective members, local law enforcement partners, and the defense bar to continue cultivating those working relationships.

In June 2024, we announced one of our most meaningful accomplishments in establishing the Craig M. Watkins Scholarship Fund to honor the legacy of the late Criminal District Attorney in Dallas County and continue the ongoing objectives of the NBPA. Two scholarships totaling $3,500 were awarded to a qualified law student and a post-bar intern.

In August 2024, members of our Executive Board had the privilege to travel to Boston for the annual NBPA national conference. This was the first year for all of us to attend. We were overwhelmed with joy and pride to see so many Black prosecutors at the state and federal level in one place. This year's conference theme was "Educate, Advocate, Innovate: Inspiring the Future of Prosecution." The conference offered valuable opportunities to fellowship and attend numerous CLE sessions, and most notably, it reminded us of why we are needed in prosecution.

While at the conference, our chapter was awarded the prestigious honor of Chapter of the Year. While it was completely unexpected, the award symbolized the dedication and hard work our Executive Board and members have devoted to the organization since 2021.

While we are proud of all that we have accomplished thus far, we just wish that we would have had this type of organization earlier in our careers. The benefits of this organization have been impactful beyond measure. Member Delayna Griffin remarked how it has strengthened our sense of service to others, allowed us to embrace the challenges of being a Black prosecutor, and—most importantly—emphasizes the significance of diversity and representation within the legal field, especially in our continued commitment to see justice done. ❇

Pictured with our Chapter of the Year award (from left to right) are Vice President Amber Moore; Legacy Chair Delayna Griffin; Corresponding Secretary Andrea Nfodjo; Vice President of Planning Krystal Biggins; Community Outreach Chair London Daniels; and Fundraising Chair Scott Wells.

Deed it right: the essentials of deed drafting for Texas counties

Since early humans shifted from a hunter-gatherer, nomadic lifestyle to an agricultural society, the concept of owning and exchanging land has played a significant role in our history.

By Andrew Wipke & Jennifer Fox
Assistant County Attorneys in Fort Bend County

As the need for permanent settlements grew, so did the value of land ownership and the need to formalize and document the conveyance of real property.[1] Early property[2] transactions were often recorded on clay tablets or papyrus scrolls and required some type of symbolic performance or ceremonial act to legally transfer land from one party to another.[3] One such ceremonial act performed in medieval England and up to the establishment of the American Colonies was the "livery of seisin," which translates to "delivery of possession."[4] Livery of seisin was a publicly witnessed transaction and required the transferor, or "grantor," of the property to physically hand over dirt or twigs from the land to the transferee, or "grantee," thus establishing delivery of the land and the rights of the grantee to its possession.[5]

As literacy increased and publicly available records grew, the need for ceremonies and physical actions to legally convey land became futile. We are thankful we now live in a time where one is not required to transfer clumps of dirt or twigs or perform some other type of ceremony to legally convey property. Rather, such practices have evolved into essential written instruments by which a grantee takes title[6] to property: a deed.[7] While the process of conveying property has been simplified by written instruments, drafting and reviewing deeds entails some complexities county practitioners should note to avoid future disputes and ensure the deed's effectiveness and enforceability. Whether you reside in a rural or urban jurisdiction, your county will likely need to acquire real property for some reason, including the construction of roads and public facilities, creation of parks, or other public purposes. The frequency of real property-related transactions, especially for urban counties, can occur weekly.

This article provides an initial guide to drafting and reviewing deeds for county practitioners, including an overview of types of deeds, their necessary elements, and pitfalls to avoid.

---

[1] "Real property" means "land and whatever is erected or growing upon or affixed to land." See *San Antonio Area Foundation v. Lang*, 35 S.W.3d 636, 640 (Tex. 2000). This is different from "personal property" which is defined as "interests in goods, money, choses in action, evidence of debts, and chattels real." *Id.*

[2] In this article, "property" means "real property."

[3] See e.g. Ruth 4:7-10 (English Standard Version).

[4] *Dawson v. Tumlinson*, 242 S.W.2d 191, 193 (Tex. 1951).

[5] See William Henry Rawle, A Practical Treatise on The Law of Covenants for Title §38, at 52-53 (5th ed. 1887).

[6] "Title" is the "union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property itself." Black's Law Dictionary (12th ed. 2024).

[7] A deed is a "written instrument by which land is conveyed." Black's Law Dictionary (12th ed. 2024).

Which deed do you need?

Various types of deeds are utilized in property transactions. But which deed do you need? The type of deed one chooses depends on the nature of the transaction and the desired level of protection. The four most common deeds used in Texas are:

- general warranty deeds,
- special warranty deeds,
- deeds without warranty, and
- quitclaim deeds.

A general warranty deed expressly warrants the entire chain of title dating back to when the sovereign owned the property (e.g., the state of Texas)[8] and uses the following warranty language:

> "Grantor binds itself, its successors, and its assigns to warrant and forever defend all and singular the title to the Property to Grantee, its successors, and its assigns against any person lawfully claiming or to claim the same or any part thereof."

This language expressly obligates the grantor of the property to defend against any defects[9] in the chain of title, even if those defects were created before the grantor owned the property.[10] A general warranty deed offers a county the most protection against title defects and may be the preferred deed when *acquiring* property. However, in contrast, when a county is *conveying* its property, the county should be wary in making such broad warranties, especially if the county is unsure about the property's title prior to its ownership.

Instead, a county should use a special warranty deed when conveying its property. A special warranty deed obligates a grantor to warrant against any title defects that occurred only during the grantor's period of ownership[11] and relieves a grantor of liability for any defects that occurred prior. A special warranty deed uses the following warranty language:

> "Grantor binds itself, its successors, and assigns to warrant and forever defend all and singular the Property to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof *when the claim is by, through or under Grantor, but not otherwise."*

Unlike a general or special warranty deed, a deed without warranty (as the name indicates) does not provide any warranties against title defects. A deed without warranty is generally used when a seller may be unsure of title to the property or there are gaps in the chain of title. A deed without warranty uses the following language:

> "Grantor conveys to Grantee the property without warranties, express or implied. All warranties that might arise by common law and by Section 5.023 of the Texas Property Code, as amended, are hereby excluded."

This type of deed purports to convey the property and not merely a right or interest in the property.[12] County practitioners may encounter this type of deed in transactions concerning a county's acquisition of property in an old neighborhood, such as those more than 100 years old. It is not uncommon for some of these properties to be conveyed or passed down over the years from one owner or family member to another without recording a deed in the official public records of the county. In turn, any records concerning the unrecorded deed are often lost, thus creating gaps in the chain of title. A property owner in this situation may be unwilling or reluctant to warranty title in a deed to the county. However, counties should still be wary and weigh the consequences of accepting these deeds as a

Which deed do you need? The type of deed one chooses depends on the nature of the transaction and the desired level of protection.

---

[8] *Munawar v. Cadle Co.*, 2 S.W.3d 12, 16 and 20 (Tex. App.–Corpus Christi 1999, pet. denied).

[9] A "defect" is a claim or encumbrance that affects or impairs a property owner's title, such as taxes, assessments, liens, mortgages, and judgments. See Tex. Prop. Code §5.024; see also *Gordon v. W. Houston Trees, Ltd.*, 352 S.W.3d 32, 42 (Tex. App.–Houston [1st Dist.] 2011, no pet.).

[10] *Munawar*, 2 S.W.3d at 16.

[11] *Id.*

[12] *Richardson v. Levi,* 3 S.W. 444, 447 (Tex. 1887).

grantee because the county assumes the risk concerning any title defects.[13]

A deed without warranty is only slightly better than a quitclaim deed, which is a misnomer because it is not really a deed at all. A quitclaim deed does not transfer title to property and purports to transfer to the grantee only whatever rights or interest a grantor has in the property, if any.[14] Nor does it warrant or profess that title to the property is valid,[15] and the grantee takes no more than the grantor can lawfully convey, "even if it turns out that they convey nothing."[16] A quitclaim deed can also have severe, negative impacts because it is insufficient by itself to prove ownership of a property,[17] and it clouds title.[18] This may result in costly quiet title[19] actions to remove a cloud on title.[20]

There is no express language that identifies a quitclaim deed. Instead, "courts look to whether the language of the instrument, taken as a whole, conveyed property itself or merely the grantor's rights."[21] Quitclaim deeds are commonly used by counties for constable's sales (i.e., sales of tax-foreclosed property). Apart from a constable's sale, counties should avoid using quitclaim deeds altogether when conveying or acquiring property.

Quitclaim deeds are commonly used by counties for constable's sales (i.e., sales of tax-foreclosed property). Apart from a constable's sale, counties should avoid using quitclaim deeds altogether when conveying or acquiring property.

---

[13] *Id*.

[14] *Geodyne Energy Income Prod. P'ship I-E v. Newton Corp.*, 161 S.W.3d 482, 486 (Tex. 2005).

[15] *Rogers v. Ricane Enterprises, Inc.*, 884 S.W.2d 763, 769 (Tex. 1994).

[16] *Geodyne*, 161 S.W. 3d at 486.

[17] *Rogers*, 884 S.W.2d. at 769.

[18] A cloud on title is any document, claim, lien, or encumbrance which, "on its face, if valid" may impair or injure the title to real property or make title doubtful. See *Gordon*, 352 S.W.3d at 42.

[19] A suit to quiet title is an equitable court action by which a person claiming ownership of the real property seeks to remove any defects in the chain of title or adverse claims against title. See e.g *Sw. Guar. Trust Co. v. Hardy Rd*. 13.4 Joint Venture, 981 S.W.2d 951, 957 (Tex. App.–Houston [1st Dist.] 1998, pet. denied).

[20] See e.g., *Gordon*, 352 S.W.3d at 42.

[21] *Geodyne Energy*, 161 S.W.3d at 486.

Elements of a deed

Unlike common law, Texas law does not require deeds to contain formal parts or technical language[22] and has minimal requirements for a deed to be valid and effective.[23] However, county practitioners should ensure a deed contains at least the following elements:

- notice of confidentiality rights;[24]
- grantor and grantee names;[25]
- grantor and grantee's mailing addresses;[26]
- consideration;[27]
- proper legal description of the property;[28]
- reservations;[29]
- exceptions;[30]

---

[22] Tex. Prop. Code §5.001.

[23] A valid and effective deed must be in writing, identify the grantor and grantee, contain a sufficient description of the property, include operative words of conveyance, be signed by the grantor, and delivered to and accepted by the grantee (although actual delivery is not required). See *id*. at §5.021; See also *Gordon*, 352 S.W.3d at 43; *Adams v. First Nat'l Bank of Bells/Savoy*, 154 S.W.3d 859, 869 (Tex. App.–Dallas 2005, no pet.); *Harris v. Strawbridge*, 330 S.W.2d 911, 915 (Tex. Civ. App.–Houston, 1959, writ ref'd n.r.e.).

[24] Tex. Prop. Code §11.008(c).

[25] *Id*. at §5.021; See also *Gordon*, 352 S.W.3d at 43.

[26] Tex. Prop. Code §11.003(a).

[27] A contract (such as a deed) must be based on consideration to be valid. See *1464–Eight, Ltd. v. Joppich*, 154 S.W. 3d 101, 105-106 (Tex. 2004). Consideration is a bargained for exchange of promises meant to induce the parties to enter into the contract (e.g., money in exchange for the conveyance of land). See *id*. However, Texas law does not require the parties to a deed to show the amount of money paid and may, instead, recite a nominal amount (e.g., "$10.00") and "other good and valuable consideration."

[28] *AIC Mgmt. v. Crews*, 246 S.W.3d 640, 645 (Tex. 2008).

[29] *Combest v. Mustang Mins., LLC,* 502 S.W.3d 173, 179 (Tex. App.–San Antonio 2016, pet. denied).

[30] *Id*.

- granting clause or operative words of conveyance showing an intention by the grantor to convey the property;[31]
- warranty clause;[32]
- payment of ad valorem taxes;[33] and
- proper execution and acknowledgment.[34]

Certain elements are explained more fully below.[35]

Common pitfalls to avoid

Drafting a deed may seem like a straightforward task. After all, with the availability of online resources, it is easy to find form deeds from which to copy and paste. But even small mistakes or oversights can lead to significant legal problems in the future. Additionally, there is a legal presumption that "parties to a deed intend every clause to have some effect and in some measure to evidence their agreement"[36] and are "bound by every recital, reference, and reservation."[37] While the law allows for the use of correction deeds, such use is narrow in scope and limited to the correction of facial imperfections.[38] Therefore, county practitioners should be vigilant when drafting and reviewing deeds to ensure that the county's legal objectives and intent for the conveyance are met.

Some common pitfalls generally involve misidentification and the omission of or failure to consider the legal ramifications of certain language. Misidentification commonly occurs when the drafter fails to properly identify the grantor, grantee, or the property being conveyed. A detailed description of the property is vital to a conveyance.[39] A property description is sufficient if the property can be identified with "reasonable certainty" and described with such particularity that one is able to "locate the specific land being identified."[40] The description should be more than a mere address, and drafters should be cautious of relying on an appraisal district's numbered tax tracts or descriptions used for its records.[41] A property description should include either a metes and bounds description for unplatted, acreage property or a lot, block, and subdivision description with reference to a recorded plat. A reference to a prior recorded instrument with either of these descriptions is also sufficient.[42]

A grantor and grantee must also be clearly identified.[43] Along with the full, legal name, recitals may be used to clearly identify the grantor and grantee and the marital status of each (if natural persons). This is especially important in a community property state like Texas.[44] Recitals are a statement of some matter of fact in a deed or contract that explains the reason for the transaction or the manner in which the real property was conveyed. They also help clarify gaps in the chain of title. The following are examples of recitals used to identify a grantor or grantee:

- "Elizabeth Smith, a married woman, dealing with her sole and separate property"

Drafting a deed may seem like a straightforward task. After all, with the availability of online resources, it is easy to find form deeds from which to copy and paste. But even small mistakes or oversights can lead to significant legal problems in the future.

---

[31] *Gordon*, 352 S.W.3d at 43. A granting clause is the grant of the property and generally includes the words "grant, sells, and conveys" (for purchase) or "grant, gives, and conveys" (for a donation).

[32] A warranty clause should be included to determine the type of deed being used.

[33] An "ad valorem" tax is a tax on property at a certain rate based on the value of the property. *Texas Mun. League Intergov'tl Risk Pool v. Texas Workers' Comp. Comm'n*, 74 S.W.3d 377, 387 (Tex. 2002). A statement regarding the payment of ad valorem taxes for the current tax year should be included to identify the responsibility of the grantor and grantee for unpaid taxes.

[34] Tex. Prop. Code §§5.021 and 12.001; see also *Gordon*, 352 S.W.3d at 43.

[35] For the remaining items, please consult the above footnotes for additional information.

[36] *Altman v. Blake*, 712 S.W.2d 117, 118 (Tex. 1986).

[37] *Munawar*, 2 S.W.3d at 19.

[38] See Tex. Prop. Code §§5.028 and 5.029; see also *Myrad Properties, Inc. v. LaSalle Bank Nat. Ass'n*, 300 S.W.3d 746, 750 (Tex. 2009).

[39] *AIC*, 246 S.W.3d at 645 (Tex. 2008).

[40] *Id*.

[41] See generally *id*. at 645-649.

[42] See *Morrow v. Shotwell*, 477 S.W.2d 538, 539 (Tex. 1972).

[43] See Tex. Prop. Code §5.02; see also *Gordon*, 352 S.W.3d at 43.

[44] Tex. Fam. Code §5.001.

- "Acme Brick Company, a Texas corporation"
- "Jane Doe, the sole heir of John Doe, deceased"

Omitting or failing to consider the legal ramifications of certain language in a deed may cause some unintended or negative consequences, as a deed will pass whatever interest the grantor has in the land, unless it contains language showing otherwise.[45]

A reservation creates a new right out of the property and reserves the grantor's interest in the property, such as an easement or mineral rights. Reservations cannot be implied and must be made by clear language.[46] Because a county is generally constitutionally prohibited from granting a "thing of value ... to any individual ... or corporation,"[47] any failure or omission of the grantor to reserve a property interest in the deed (once conveyed to a county) may force the grantor to purchase a subsequent interest in the property pursuant to the statutory requirements governing the sale of county property.[48] In one jurisdiction, the county sought to acquire a 100-acre tract of land from a property owner. The property owner desired to reserve a one-acre parcel and access easement for itself within the 100-acre tract. However, the property owner did not want to delay completing the transaction while awaiting a survey concerning the reservation's legal description. Assuming the county could merely convey the one-acre parcel and easement back to the property owner, the property owner attempted to transfer the property to the county without mention of the reservation in the deed. In this situation, the county did not accept the deed and delayed finalizing the conveyance until the survey was completed. If this transaction had proceeded as the property owner desired, then the county would be required to follow the statutes governing the sale of county property to convey and sell the one-acre parcel and easement.[49]

Because a county is generally constitutionally prohibited from granting a "thing of value … to any individual … or corporation," any failure or omission of the grantor to reserve a property interest in the deed (once conveyed to a county) may force the grantor to purchase a subsequent interest in the property pursuant to the statutory requirements governing the sale of county property.

An exception is different from a reservation because it either excludes the grantor's existing property interest from the conveyance or conveys the property subject to certain encumbrances. Failing to consider the legal ramifications of accepting a deed with language subjecting a county to "all encumbrances" including liens, covenants, restrictions, or any other language that conveys anything less than clear and marketable title[50] to a county, is not only contrary to law[51] but also may result in costly litigation. Moreover, accepting a deed subject to all restrictions and covenants may inadvertently subject the county to a Property Owner Association's (POA) deed restrictions and covenants. This can be problematic when POA dues are assessed against the county's property or the public purpose for which the county acquired the property is prohibited by the POA's deed restrictions. However, deed restrictions and restrictive covenants do not apply to governmental entities with the power of eminent domain with respect to property acquired by purchase or condemnation, as such restrictions and covenants limit a governmental entity's police power.[52]

---

[45] Tex. Prop. Code §5.001; *Combest v. Mustang Mins., LLC*, 502 S.W.3d 173, 179 (Tex. App.–San Antonio 2016, pet. denied).

[46] *Combest*, 502 S.W.3d at 179.

[47] Tex. Const. Art. III, §52(a).

[48] See Tex. Loc. Gov't Code §§263.001, 263.006, 263.007, and 272.001.

[49] *Id.*

[50] Clear and marketable title means title that is free from any liens or claims.

[51] See Tex. Loc. Gov't Code §280.002.

[52] See Tex. Att'y Gen. Op. No. GA-0249 (2004) at 2 (citing to *Wynne v. City of Houston*, 281 S.W. 544, 544 (Tex. 1926) (per curiam); *Deep E. Tex. Reg'l Mental Health & Mental Retardation Servs. v. Kinnear*, 877 S.W.2d 550, 560 (Tex. App.–Beaumont 1994, no writ); *Palafox v. Boyd*, 400 S.W.2d 946, 949-950 (Tex. Civ. App.–El Paso 1966, no writ); and *City of River Oaks v. Moore*, 272 S.W. 2d 389, 391 (Tex. Civ. App.–Fort Worth 1954, writ ref'd n.r.e). In one jurisdiction, a county acquired a parcel of property to construct a public venue. An adjacent landowner and the local POA informed the county the pending construction violated the deed restrictions and forwarded a cease and desist letter to the county. In reliance upon Texas Attorney General Opinion GA-0249, the county continued with the construction of the venue.

Omitting language regarding the purpose of the conveyance is another pitfall. This is especially important for right-of-way conveyances. Failing to include any language in the deed regarding the grantor's right-of-way access or that the conveyance is made for public right-of-way purposes may unintentionally result in landlocking or creating title issues for the grantor or an abutting property owner.

Conclusion

While drafting and reviewing a deed may seem straightforward, it can be a meticulous process that requires attention to detail and a clear understanding of the conveyance being made. Any blunders or oversight can lead to future disputes or have costly and negative consequences. But with careful drafting and avoidance of common pitfalls, you can create a deed that is effective and that withstands legal challenges. ❇

Looking to hire Texas law school students?

Do you have open positions in the office or are you interested in starting an internship program? This list of contacts at all the law schools in the state will be a big help.

By Joe Hooker
TDCAA Assistant Training Director in Austin

Each QR code will take you to that law school's Career Development page with information on posting jobs (which can be viewed both by law students and law school alumni), internships, externships, and career fairs. Also included is information on conducting on-campus interviews, many of which are done by Zoom now, which is a big help for those prosecutor offices far away from the nearest law school campus.

Don't hesitate to reach out to any or all of these contacts for assistance. ❇

Baylor Law School

Kristine Bridges, Assistant Dean of Career Development
Kristine.Bridges@baylor.edu
254/710-8537

Dedman School of Law at Southern Methodist University

Laura Burstein, Assistant Dean for Public Interest & Pro Bono
Lburstein@smu.edu
214/768-2567

South Texas College of Law Houston

Noor Ismail, Assistant Director of Employer Relations
Nismail@stcl.edu
713/646-1866

St. Mary's University School of Law

Veronica Elizalde, Director of Employer Engagement
Velizalde@stmarytx.edu
210/436-3541

Texas A&M University School of Law

Melissa Davis, Director of Employer Relations & Development
Madavis@law.tamu.edu
817/212-4013

Texas Southern University Thurgood Marshall School of Law

Jamina Scippio-McFadden, Office of Career and Professional Development
JaminaScippio@tsu.edu
713/313-7158

Texas Tech University School of Law

Kayla Wimberley, Assistant Dean of Career & Professional Development
Kayla.Wimberley@ttu.edu
806/834-3214

University of Houston Law Center

Bill Powers, Director, Judicial Clerkship & Externship Programs
Wapowers@central.uh.edu
713/743-0810

University of Texas School of Law

Amanda Huston, Career Services Office
Amanda.Huston@law.utexas.edu
512/232-1150

UNT Dallas College of Law

Courteney Harris, Assistant Dean for Career and Professional Development
Courteney.Harris@untsystem.edu
214/243-1780

Juvenile deferred prosecution

As a prosecutor in the juvenile system, I have a duty to pursue the protection of the community, hold juvenile offenders accountable for their actions, and ensure that juveniles have an opportunity for rehabilitation.

By Kathleen Takamine
Assistant Criminal District Attorney in Bexar County

It is quite a balancing act. As such, the Family Code gives me a fairly wide range of ways to maintain accountability and rehabilitate juvenile offenders. One way is placing a juvenile on deferred prosecution.[1]

It should be noted that deferred prosecution in the juvenile system is very different from deferred adjudication in the adult system. In a nutshell, when an adult defendant pleads guilty or no contest, the judge makes a finding that the evidence supports the plea, defers entering an adjudication of guilt, and places the defendant on deferred adjudication. The defendant does not have a final conviction unless she violates the conditions of the deferred adjudication. At that point, the judge can enter an adjudication of guilt and consider the full range of punishment during sentencing.[2]

For juvenile respondents, the process is not quite as formal. Juveniles do not necessarily have to admit to, in juvenile parlance, "engaging in delinquent conduct." Deferred prosecution falls under Texas Family Code §53.03 and is touched upon in Chapter 59 of the Family Code. Looking at the laws governing deferred prosecution, you can appreciate the differences. I'll start with Chapter 59 as it is a fairly general discussion on punishment in juvenile.

Chapter 59: Progressive Sanctions Model

Section 53.013 of the Family Code allows each local Juvenile Board to develop a Progressive Sanctions Program based on Chapter 59. This program was created by the legislature to encourage uniformity in the disposition of juvenile cases and related terminology.[3] It is more advisory in nature, however, and the very language of §53.013 indicates the board "*may* adopt the program," indicating that it is strictly within the Juvenile Board's discretion and is not mandatory.

Basically, Chapter 59 outlines punishment in juvenile law. The punishments (also called sanctions) range from basic counseling (Sanction Level One) all the way to being sentenced to the Texas Department of Criminal Justice in a certify-and-transfer case (Sanction Level Seven).[4] Although it is not necessary to follow the model, it does give a sense of how the juvenile is treated within the criminal justice system. None of the individuals involved in the system (the court,

---

[1] Note: I will sometimes refer to "deferred prosecution" as simply "deferred" for the sake of simplicity.

[2] See Tex. Code Crim. Proc. Ch. 42A.

[3] See Dawson, *Texas Juvenile Law*, p. 295. In general, the legislature created all of Chapter 59 for this reason.

[4] Chapter 59 outlines the various sanction levels with a number of conditions for each. The basic premise of each level is as follows: Sanction Level One consists of counseling with no referral to court. Level Two is deferred prosecution. Levels Three and Four are formal probation with Four having more strict conditions. Level Five is secured residential treatment, and Six involves sentencing to the Texas Juvenile Justice Department. Level Seven is certification and transfer to a criminal district court.

prosecutor, defense attorney, probation officer, law enforcement officer, etc.) can be held to account for not following the sanction model,[5] nor can the failure to follow the model be a matter of an appeal.[6]

Deferred prosecution is in Sanction Level Two, sandwiched between simply counseling the juvenile and formal probation.[7] Under this model, the legislature is giving the juvenile court, juvenile probation officer, and prosecutor the general guidelines in recommending deferred prosecution.[8] The guidelines include:

- a length of supervision between three and six months;
- that the juvenile is to be released into the custody of his parents or guardians;
- granting community service hours and/or requiring restitution payments to the victim;
- including any restrictions that the parent or guardian will impose on the juvenile;
- letting the juvenile know the consequences of violating the deferred prosecution;[9]
- providing information and/or assistance to the parent or guardian about social services;
- requiring parents or guardians to participate in services and programs;
- referring the juvenile to a community-based citizen intervention program;
- requiring the juvenile to complete an approved educational program (such as GED); and
- discharging the juvenile once all the conditions have been completed.

As you can see, it's a pretty basic outline of what is expected. It does not indicate how a deferred prosecution is implemented and what is required of all the parties involved. That falls under §53.03 of the Texas Family Code.

Section 53.03: Deferred Prosecution

First off, this section emphasizes the need for voluntary consent. The juvenile and parent or guardian must be told that a deferred prosecution recommendation is not obligatory.[10] They must also understand that they have the right to terminate the deferred at any time prior to the completion date and to petition that the case be set for a court hearing.[11] If the juvenile says anything incriminating during the discussion for deferred prosecution, such statement cannot be used against the him.[12] If a court is relying on professional assessments and statements made while the court is considering granting deferred prosecution, such assessments and statements may not be used against the juvenile should the court refuse to grant deferred.[13]

This section also points out that a juvenile cannot be placed on a deferred prosecution unless there is probable cause to believe that he engaged in the delinquent conduct alleged.[14] Frankly, this makes sense because we shouldn't hold anyone accountable for something that can't be proven; this requirement is also important if a juvenile fails at deferred (which I'll discuss later in this article).

A juvenile cannot be placed on a deferred prosecution unless there is probable cause to believe that he engaged in the delinquent conduct alleged. Frankly, this makes sense because we shouldn't hold anyone accountable for something that can't be proven.

For clarity, I will break down the remainder of this section into the following questions and later their individual answers:

- Who can recommend and implement deferred prosecution?
- What types of cases are eligible?
- When can deferred prosecution be recommended and implemented?
- What happens when the juvenile violates the conditions?

Who can recommend and implement deferred prosecution?

In the adult system, the judge ultimately grants deferred adjudication to the defendant.[15] In juvenile law, the judge grants a deferred prosecution to the juvenile,[16] but also the probation officer,

---

[5] Tex. Fam. Code §59.013.

[6] Tex. Fam. Code §59.014.

[7] Tex. Fam. Code §59.005.

[8] Tex. Fam. Code §59.005(a).

[9] This part refers back to a condition is found in Sanction Level One.

[10] Tex. Fam. Code §53.03(a)(2).

[11] Tex. Fam. Code §53.03(a)(3).

[12] Tex. Fam. Code §53.03(c).

[13] Tex. Fam. Code §53.03(k).

[14] Tex. Fam. Code §53.03(a); see also Tex. Fam. Code §53.01.

[15] Tex. Code Crim. Proc. Art. 42A.101.

[16] Tex. Fam. Code §53.03(i).

prosecutor, and defense attorney may recommend and move toward implementing deferred prosecution.[17] For probation officers and prosecutors, what usually happens is that one or the other makes the recommendation and then gets an agreement from the juvenile, parent or guardian, and defense attorney, if there is one. For a defense attorney, he usually talks to the probation officer and prosecutor to see if they would agree to a deferred. If no agreement is reached, defense counsel can request deferred from the court.

What types of cases are eligible?

Prosecutors may recommend deferred prosecution on any case with the exception of certain ineligible offenses including:

- driving, flying, or boating while intoxicated,
- intoxicated assault,
- intoxicated manslaughter,[18] and
- a third or more subsequent offense under the Alcoholic Beverage Code (Consumption of Alcohol by a Minor and Driving or Operating a Watercraft while Under the Influence).[19]

Probation officers may recommend and place a juvenile on deferred prosecution in most cases, but doing so requires written approval from the prosecutor and chief probation officer in any felonies, misdemeanors involving violence or use/possession of a prohibited weapon,[20] and misdemeanors where a juvenile has been previously adjudicated on a felony offense.[21] For a deferred prosecution recommended by the probation officer and prosecutor, the term may not be more than six months.[22] The court may grant deferred prosecution once a case has been filed and can grant a period of up to a year.[23]

In practice, if the parties want a deferred prosecution longer than six months, they can get the court's permission to extend it up to a year, or they may put language in the deferred contract that the juvenile will sign another six-month deferred agreement. This usually happens when six months is not enough time to complete certain counseling or to give the offender more time to pay restitution.

In practice, if the parties want a deferred prosecution longer than six months, they can get the court's permission to extend it up to a year, or they may put language in the deferred contract[24] that the juvenile will sign another six-month deferred agreement. This usually happens when six months is not enough time to complete certain counseling or to give the offender more time to pay restitution. All deferred prosecutions can be terminated early, either by getting approval from all parties or if the court is successfully petitioned.

When can deferred prosecution be recommended and implemented?

A deferred prosecution can be recommended and implemented before or after a criminal case is filed and the juvenile is formally charged.[25]

I have worked as a juvenile intake prosecutor and have received recommendations from probation officers to place the accused juvenile on a deferred prosecution before the case is even filed. Or I may be evaluating a case that was referred to us and decide that the juvenile is a good candidate. If I make that determination, I will contact the victim and the juvenile's probation officer and ask for their input. If we all agree the juvenile should be placed on deferred prosecution, then it is implemented without a petition being filed and sent to court. The juvenile, his parents or guardians, and the probation officer sign a deferred contract that lists all the conditions.

Even if a criminal case is filed, the probation officer, prosecutor, or defense attorney may still recommend deferred. If all three parties agree, then the juvenile can be placed on deferred without the necessity of the court's input. The deferred contract is signed by the parties and the case is done—meaning, the case is basically dismissed, or in juvenile speak, it is non-suited.

If the parties do not agree, the defense attorney can still request that the court place the juvenile on a deferred prosecution. This would entail an open plea where there is no agreement.

---

[17] Tex. Fam. Code §53.03(e).

[18] Tex. Fam. Code §53.03(g)(1).

[19] Tex. Fam. Code §53.03(g)(2).

[20] Tex. Fam. Code §53.03(e)(1).

[21] Tex. Fam. Code §53.03(e)(2).

[22] Tex. Fam. Code §53.03(a).

[23] Tex. Fam. Code §53.03.

[24] In Bexar County, we use the phrase "deferred contract" interchangeably with deferred prosecution. It is an informal agreement with the juveniles, their parents, and the juvenile probation department–hence the term "contract."

[25] See Tex. Fam. Code §53.03.

The Family Code gives the court a lot of discretion in granting deferred prosecution: If the case is set for a jury trial, the court may grant deferred up until the jury is sworn,[26] and if the case is set for a bench trial, the court has that discretion up until the first witness is sworn.[27] If there is an open plea, the court may grant deferred before the juvenile pleads to the allegation or agrees to stipulate to the evidence.[28] For that last option, I have been in situations where the court has granted a deferred after the juvenile pleads and the evidence is stipulated. The court will just defer a finding that the juvenile has engaged in delinquent conduct and place him on deferred. There is no specific recommendation in the Family Code that requires the court to grant a deferred only upon a request from one of the parties.

What happens when the juvenile violates the conditions?

The Family Code is quite clear that a juvenile probation officer, who is monitoring the youth on deferred prosecution, must inform the court if there are any violations of the deferred.[29] In Bexar County, probation officers inform the court through the prosecutor when they send a request to have the case reactivated.

Once a violation occurs, the case will proceed as if the deferred prosecution had not been granted. In Bexar County, the probation officer sends a memo for reactivation of a case and lists the reasons for reactivation. If the case had not been filed, our intake division would then file a petition and the case is sent to court. If the deferred had been granted after filing, the case is reactivated in the same manner, and the case is set on the court's docket.

This is unlike the adult system where the defendant will have an adjudication of guilt after the violations are proven by preponderance of the evidence. The defendant will then face the full range of punishment.[30]

In juvenile, we go back to square one. This is why it is very important that we do not proceed on cases we can't prove: Even if we place a juvenile on a deferred prosecution, there is the chance that we will have to start all over again if he violates the conditions. In the end, we have to non-suit the case—and what did the juvenile learn?

Miscellaneous factors

The questions above covered the main points of §53.03. However, there are a few bits of miscellaneous information in that section.

If a juvenile is charged with grafitti under Penal Code §28.08, he can be given a condition that he take a class that covers the crime's impact on victims and a condition that requires the juvenile to clean up the graffiti.[31]

If a juvenile is charged with possession of a controlled substance in Penalty Groups 1, 1-A, 2, 2-A, 3, or 4 or possession of marijuana, he may be required to take a substance misuse program.[32]

Finally, if the juvenile is charged with an offense under the Alcoholic Beverage Code[33] or public intoxication under Penal Code §49.02, he may be required to complete an alcohol awareness program.[34]

In conclusion

As I wrote at the beginning of this article, prosecutors in juvenile law have quite a balancing act to maintain. We balance advocating for the community at large, the victim, the juvenile respondent, and our duties as laid out in the Code of Criminal Procedure. For those of us in juvenile law, deferred prosecution is one way to maintain that balance. After you've read this article, I hope you've come away with a better understanding of how it works. There is always so much to learn in the juvenile system, and I am always happy to take part in it. ❇

The Family Code is quite clear that a juvenile probation officer, who is monitoring the juvenile on deferred prosecution, must inform the court if there are any violations of the deferred.

---

[26] Tex. Fam. Code §53.03(i)(1).

[27] Tex. Fam. Code §53.03(i)(2).

[28] Tex. Fam. Code §53.03(i)(3).

[29] Tex. Fam. Code §53.03(f).

[30] See Tex. Code Crim. Proc. Ch. 42A.

[31] Tex. Fam. Code §53.03(h)(1) & (2).

[32] Tex. Fam. Code §53.03(h-1).

[33] This includes purchase, attempt to purchase, consumption, and possession of alcohol by a minor; operating or driving a watercraft while under the influence; and misrepresentation of age by a minor.

[34] Tex Fam. Code §53.03(h-2).

Texas District & County Attorneys Association
505 W. 12th St., Ste. 100
Austin, TX 78701

PRSRT STD
U.S. POSTAGE
PAID
AUSTIN, TEXAS
PERMIT NO. 1557

RETURN SERVICE REQUESTED