

**(Rev. 12/2006)**

**IN THE 33<sup>RD</sup> AND 424<sup>TH</sup> JUDICIAL DISTRICT COURTS  
OF BLANCO, BURNET, LLANO AND SAN SABA COUNTIES, TEXAS**

**STANDING ORDER**

**ORDER GOVERNING MOTIONS, DISCOVERY  
& TRIAL APPEARANCES, and  
SUPPLEMENTAL DISCOVERY ORDERS**

This is a "red-lined" version comparing this order to its predecessor that was filed in each case, which will no longer be the practice. The RED language is added and the STRIKEOUTS show the deleted language. Please refer further to the signed order which is also in the "Standing Orders" repository on the website, and is filed in the clerk's office in each county.

The District Courts enter the following Standing Docket Control Order which shall apply to all felony cases filed in the subject counties both those presently pending on the effective date of this Standing Order and those filed hereafter. This Order expressly supercedes and replaces in its entirety any similar order previously filed in individual cases pending on the date this Order is adopted. This Standing Order is effective January 1, 2007 and shall be filed in the office of the District Clerk of each county and posted in a conspicuous place therein.

This Standing Order shall govern each felony case and all counsel are responsible to be familiar with this Order which shall be widely published, but which will not be filed in the individual cases.

Abbreviations used in this order: C.C.P. means the Texas Code of Criminal Procedure; TRE means the Texas Rules of Evidence.

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**DOCKET CONTROL ORDERS**

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**A separate "Setting Order" has been or will hereafter be filed in each case and this Order is hereby made a part thereof for all purposes just as if copied fully therein. The dates in the Setting Order are subject to change and the defendant and counsel must remain informed of the scheduling.**

This Order will describe the hearings that have been or will be set by the separate order referred to in the preceding paragraph. Counsel for the State and Defendant are responsible to be aware of the contents hereof.

**ARRAIGNMENT OR OTHER 1<sup>ST</sup> APPEARANCE.** The State will normally have a discovery packet available for the Defense along with a written plea-bargain offer unless no offer is anticipated to be made. See later orders regarding discovery. If defendant has counsel at arraignment or such other first appearance, attorneys for the State and Defendant shall confer face to face to review the case, to review and consider any plea bargain offer, review the offense report and discovery, and take such other steps as may be necessary or helpful to give genuine initial consideration to resolving the case. Appearance by both the defendant and defense counsel is required at this setting and cannot be waived except for good cause shown upon motion filed prior to the setting date, which motion will be considered by the Court without a hearing. Counsel are excused only

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after either filing the Joint Pre-Trial Announcement form promulgated by the Court or directly conferring with the Court on the status of the case following the conference.

**ART. 28.01 FILING DEADLINE.** Notice is hereby given pursuant to Art. 28.01, Sect. 2, C.C.P. of a Pretrial hearing date as set forth in the Setting Order. All Art. 28.01 Motions must be filed and served upon the other side at least 14 days prior thereto (rather than the seven days provided in the C.C.P.).

**ANNOUNCEMENT / DISPOSITION / Art. 28.01 HEARING DOCKET.** Announcements shall be made by both sides as to request for either the plea docket (para. 12) or to remain on the trial docket. **NO NEGOTIATING OR CONFERRING IS PERMITTED DURING THIS SETTING UNTIL ALL MOTIONS HAVE BEEN HEARD.** Pretrial matters will be handled as follows for the cases announcing for the trial docket:

1. Provided that defendant is represented by counsel, the 28.01 hearing may be waived if there are no motions to be presented, in which case the defendant and counsel need not appear.
2. If motions are to be presented, and provided that the Defense has provided a Notice of Hearing (see 2.a), pending pretrial motions will be heard on this date. The Notice of Hearing must be filed with the Clerk, with a copy to the Court Administrator, and served upon the State with seven (7) days notice of the specific motions to be presented to the Court for determination.
  - a. The Notice shall further be specific of the exact matters complained of if multiple matters are asserted in a motion. For example, if a motion to suppress seeks to suppress different items, or to suppress a single item for different reasons, the Notice must be specific as to the item and grounds to be advanced; or if a motion to quash the indictment sets up multiple grounds the **Notice must specify which grounds will be advanced at the hearing. An estimate of the time required for hearing must also be stated in the Notice.**
  - b. If the Notice is not sufficiently specific and if the State is not prepared as a result thereof, then the Motion thereby affected is subject to being reset for an additional hearing prior to the trial date.
3. Absent the timely filing of a Notice of Hearing the motion(s) will be not be heard and will be considered waived by the defendant except for good cause shown after notice and hearing.
4. Any pretrial motions, the determination of which will be dispositive of the case (i.e. that if prevailing the State will dismiss the case or if not prevailing the Defendant will plead guilty) should also be heard at the pretrial. It is a waste of the time of jurors, the attorneys in all of the pending cases, witnesses and the Court to delay this circumstance until the day of trial.

**Procedure to Process a PBA in preparation for Plea:**

**ATTENTION:** A Setting Order is on file in this case which specifies a Plea Bargain Deadline which is the last date that a plea bargain may be memorialized and have the case moved from the trial docket.

At any time that a Plea Bargain Agreement (PBA) is reached and filed with the Clerk, or at any time that the attorneys for the State and the Defense represent in good faith that they believe the case will be settled without the necessity of a jury trial, then the following steps shall be taken:

5. Execute and file the PBA and waiver of jury trial with the District clerk and fax copy of the fully executed PBA to DA, Court Administrator, Community Supervision and Corrections Dept. (CSCD).
6. As noted above, the case will be moved to a plea docket date (per the Setting Order) and removed from its trial docket and any remaining pretrials.
7. The case will be set for entry of the plea on the plea docket per the Setting Order.
8. Defendant shall immediately (no later than the end of the next business day after signing the PBA) make an appointment with CSCD (or defense counsel shall notify CSCD if the defendant is in jail) for an

- interview and preparation of a Presentence Investigation and initial review with CSCD of the Terms and Conditions of probation (where applicable).
9. For probation cases in Burnet County, the defendant will be referred the same day to the Burnet County Collections and Compliance Department to fill out an application for time payments for later consideration by the Court on the date of the plea. See paragraph 18 below.
  10. Document Preparation Responsibility:
    - a. The State shall prepare the “plea packet” and judgment. Those materials will be delivered to Defense at least 3 business days prior to any plea docket setting on the case for counsel’s prior review with defendant.
    - b. CSCD shall prepare the PSI (short form for agreed terms of punishment cases, long form if the Court is to assess punishment) and, for probation cases, the Terms and Conditions of Probation.
  11. Defense reviews plea packet with defendant PRIOR to day of court, have defendant sign and swear before notary at attorney’s office, or at the jail if incarcerated.

**NON-JURY DISPOSITION (i.e. Plea Docket).** The procedure on this day will be:

12. Defense attorneys appear prior to the start of court to have defendant sworn in front of the Clerk if not already done or to review plea papers with their clients so that all preparations are finalized prior to the beginning of court.
13. **COURT TIME WILL NOT BE TAKEN FOR ATTORNEYS TO REVIEW PLEA PAPERS WITH THEIR CLIENTS EXCEPT IN EXTRAORDINARY CIRCUMSTANCES.**
14. Court appointed attorneys other than the Contract Defender’s office (where applicable) will present their fee vouchers for approval of the amount and entry of same into the judgment.
15. Pleas will be taken and sentence imposed.
16. Defendants receiving a probated sentence will remain and confer with CSCD to finalize probation matters.
17. Punishment hearings before the Court (such as on open pleas of guilty) may also be set on this day.
18. Court Costs and fines are due and payable in full at the time of entry of the plea, in cash or “good” funds, unless otherwise agreed and approved by the Court. In Burnet County, any financial arrangements must be initiated through the collections and compliance office as described in paragraph 9 above. Defense will contact the Clerk in advance to ascertain the correct amount of court costs.
19. These procedures for this docket will apply whether the plea is taken on this date or on another day.
20. If the case has been set on the plea docket but is not disposed of at that time, and if not continued further to another Plea Docket, it will be placed on the next available jury-trial docket and given priority as to the order of trial on that docket.

**JURY TRIAL** – On this day defendants and attorneys must appear for the first six (6) cases on the trial docket. The number one case will be selected by the Court on that day will have Motions in Limine ~~and any pending pretrial matters~~ heard. As provided in the Trial Management Order below, no other motions will be heard by the Court on the day of trial. All cases remaining on the trial docket on this date are subject to being called for trial on ½ day notice any time within the ensuing 2 weeks. Jury Selection will begin the same day and it should be expected that opening and presentation of evidence may also commence that same day.

### **TRIAL MANAGEMENT ORDER**

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#### **Submissions Required Prior to Trial**

21. No later than 3:00 p.m. on Friday prior to the trial date the following submissions shall be exchanged (i.e.

actually delivered and received) among all counsel of record with a copy to the Court (Note: all court email addresses may be found at <http://dcourt.org/forum/contact>) where indicated for each of the first eight (8) cases on the trial docket:

- a. (if a jury trial) Proposed jury charge with specially requested instructions and definitions and a copy to the Court Administrator/Coordinator (electronically via email or on CD – no floppy discs). The State will furnish a complete charge. The defense will furnish any “defense” charges that may reasonably be anticipated to be requested; provided that the defense may omit copying the State if such involves a matter of trial strategy for which the defense is not required by law to give notice to the State.
  - b. Exhibit list (from State only) and two copies to the Court (one of which will be for the Court Reporter).
  - c. Witness list (from State only) and two copies to the Court (one of which will be for the Court Reporter).
  - d. A vocabulary (prepared by the State) (~~two copies, one of which will be for the Court Reporter~~) of all words, terms and phrases of a legal, technical, scientific or other specialized nature not used in everyday language (send directly to the Court Reporter electronically via email or on CD – no floppy discs).
  - e. Motions in *Limine* with a copy to the Court.
  - f. All State exhibits which shall be pre-marked and 3-hole punched<sup>1</sup> on the left side in a 3-ring binder notebook with number tabs and the notebook clearly labeled as to the party submitting the exhibits.
    - i. The exhibit book shall include the exhibit list as an index.
    - ii. Include a courtesy copy for the Court.
    - iii. When a single witness will be examined regarding a large number of exhibits (*e.g.* an expert with many background documents) a separate set of the documents to be sponsored by that witness will be furnished for ease and speed of reference by the witness on the witness stand.
22. Demonstrative Exhibits shall be shown to opposing counsel prior to commencement of *voirdire*.
23. All proceedings at trial shall be recorded by the Official Court Reporter unless waived in writing by both sides.
24. Counsel shall carefully instruct each witness tendered about the “Rule” and on the rulings of the Court on the Motions *In Limine* to the extent applicable to each witness; and further on the “Witness Instructions” using the form promulgated by the Court at <http://dcourt.org/forum/node/548>
25. Notwithstanding the filing deadlines for the Art. 28.01 pretrial in the Setting Order, the following motions may be filed on the day of trial:
- a. Defendant’s election between jury and judge for punishment.
  - b. Defendant’s Application for probation, if applicable.
  - c. Motions *In Limine*.
  - d. A motion by either side challenging the testimony of an expert after *voirdire* of the expert prior to testimony.
  - e. Any motion by either side concerning matters that could not have been addressed prior to the date of trial.

#### **Automatic Admission of Exhibits**

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<sup>1</sup> Except, as to the original thereof, if the 3-hole punching would destroy a part of the exhibit then it may be placed in a plastic carrier or mounted in another fashion for its protection.

26. It is the Court's intent that valuable jury time not be wasted by needless predicates and offers of exhibits. The State has an open-file policy and the Court's Discovery Order contained herein will ensure that the defense has obtained, well prior to trial, all exhibits that may appear on the State's Exhibit list as provided in paragraph 21.b. THEREFORE, unless a written objection to a State's exhibit is made on or before the trial date then the same shall be considered by the Court to have been stipulated to as to both authenticity and admissibility. Objections will be considered only where the same was absolutely necessary. Limited stipulations (such as to authenticity but not admissibility or admissibility predicated on first authenticating, etc.) may be made in conjunction with an objection.

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### OTHER ORDERS

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#### DEFENSE OBTAINING DISCOVERY PRODUCTS

It is the intent of this discovery order in conjunction with the State's open file policy that the DEFENSE ATTORNEY IS RESPONSIBLE for physically obtaining the discovery from the State, by arranging a mutually convenient date for inspection, in obtaining a "discovery packet" (para. 17 of the Discovery Order) or otherwise making arrangements for access to or inspection of discovery matters.

#### ORDER REGARDING MOTIONS

In addition to any local or other rules concerning motions, no motion may be filed without first conferring with opposing counsel and attempting to resolve the matter and including a certificate of conference on the motion which indicates the fact of the conference and the result thereof. Additionally, a certificate of service must appear thereon which indicates the *specific addressee and the full address, manner and means of service.*

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### DISCOVERY ORDER

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**ONLY A BONAFIDE MOTION FOR DISCOVERY MAY BE FILED. THE COURT WILL NOT CONSIDER MOTIONS WHICH ARE MERELY REPETITIVE OF LOCAL RULES OR OF THIS ORDER.** The District Attorney's office has an open file policy and a Discovery Motion may be filed only after the defense has obtained discovery from the State and believes that there is something not yet received, or if the State has failed to furnish discovery to the defense after proper request. The local rules provide further for the open file policy and that rule will be honored by the court just as if a motion covering each of those items had been filed and granted. Should there be items to which the local rule is not responsive and for which the defense needs to ascertain discovery, a motion may be filed when defense counsel believes in good faith that such matter is not covered by this order.

Further, the following Discovery Order is hereby made which is cumulative of and not in place of either the Local Rules or the State's voluntary open file policy:

#### The State is Ordered:

- 1 To file with the Clerk of the Court a list of all witnesses the State intends to call on their case in chief (for either guilt or punishment phases) at least ten (10) days prior to the trial, and furnish a copy of same to the defense on or before the same day (for actual receipt by the defense on or before such date). Such list shall contain full name and address for each witness. *See Richardson v. State*, 744 S.W.2d 65 (Crim. App. 1987). Such list further shall include the information for any rebuttal witnesses for which the State can reasonably anticipate the defense. *See Hoagland v. State*, 494 S.W.2d 186 (Crim. App. 1973).

- 2 To furnish, in accordance with *Gaskin v. State*, 353 S.W.2d 467 (Crim. App. 1961), all reports or statements given by a witness for the State. This shall further include any tape recordings of witness reports or statements which qualify under *Gaskin*. See *Cullen v. State*, 719 S.W. 2d 195 (Crim. App. 1986). This provision is not intended to abrogate the attorney work-product privilege as to statements made to the State's attorney which qualify for that privilege. Advance inspection is encouraged – see paragraph 13.
- 3 To furnish all written or recorded statements of the defendant, along with all confessions or statements, whether verbal or otherwise, which the State will contend were made in compliance with Art. 38.22 C.C.P., including all portions of offense reports containing either a verbatim account or a summary of any portion of the same. This provision does not reach statements of the defendant which were not the result of custodial interrogation.
- 4 To Permit Inspection of:
  - 4.1 All items seized from the defendant;
  - 4.2 All items seized from any co-defendant or accomplice;
  - 4.3 All physical objects to be introduced as part of the State's case;
  - 4.4 All documents, photographs, investigative charts or diagrams to be introduced as part of the State's case;
  - 4.5 All contraband, weapons, implements or criminal activity seized or acquired by the State or its agents in the investigation (and this order shall constitute sufficient authority to any law enforcement or other agency of the State to permit inspection of such items);
  - 4.6 All tangible items of physical evidence collected by the State or its agents concerning the alleged offense; such as (by way of example and not intended to be inclusive) latent fingerprints, voiceprints, hairs, fibers, trace metal detections, weapons, fingernail scrapings, body fluids, handwriting exemplars, ballistics, tire tracks, paint scrapings, photographs, analytical results of intoxilyzer tests, patrol car audio or video tapes, and DWI video tapes;
  - 4.7 All psychiatric reports concerning the defendant, known to the State;
  - 4.8 All business reports or governmental records to be introduced as part of the State's case;
  - 4.9 All audio or video tape recordings which contain the defendant's image or voice;
  - 4.10 Any and all lab reports including but not limited to autopsy reports (other than reports produced by or at the request of expert witnesses for the State, except if the report is to be introduced as part of the State's case then it shall be produced as provided in paragraph 4.4 hereof).
- 5 Upon request, to permit defense counsel, the defendant and any expert witness for the defendant who is consulting or who may testify regarding such matters to view any video tape or listen to any audio tape containing images or the voice of a person under the age of 17 who is alleged to be the victim of sexual assault.
  - 5.1 Such viewing/listening shall be afforded pursuant to C.C.P. Art. 38.071 Sec. 2(a)(7) as a predicate to admissibility of such tape and not in amplification of discovery rights except as expressly set forth herein.
  - 5.2 At a minimum, the State shall afford the viewing opportunity at least the day/evening prior to the day the State expects to offer the tape. The State is encouraged to afford that opportunity in the week prior to commencement of trial so that jury time is not needlessly wasted.
  - 5.3 Except under extraordinary circumstances and upon prior motion and hearing thereon, copies of such tapes will not be ordered to be made for use by the defense.

- 6 Upon request by the defense pursuant to Rule 404(b), Texas Rules of Evidence or Art. 37.07, C.C.P., to give notice, with date, time and place, of all extraneous offenses which may be admissible against the defendant in the State's case in Chief, (14 days after request is received by the State or 10 days before trial, whichever is sooner). Once requested, this Order shall be self-actuating without the necessity of further Order of the Court.
- 7 To inform the Defense of all promises of benefit or leniency afforded to or for the benefit of any accomplice or prospective witness in connection with the witness's proposed testimony or other cooperation with regard the alleged offense.
- 8 To inform the Defense of certain "known" convictions as set forth below. By these provisions the State is not required to prepare criminal histories on the classes of persons indicated unless the State has reasonable cause to believe that such convictions may exist. When giving such notices, only the information necessary to describe and identify the conviction and the record thereof shall be furnished and the "rap sheet" privilege shall not be breached. Such information shall be furnished not later than 10 days prior to trial. The convictions to be noticed under this paragraph are:
  - 8.1 those which may be admissible in evidence or used for impeachment of the defendant, pursuant to Rule 609, Texas Rules of Evidence;
  - 8.2 those which are admissible for impeachment concerning any of the State's proposed witnesses. *See, e.g. Giglio v. United States*, 405 U.S. 150, 154 (1972); and
  - 8.3 Convictions, pending charges or suspected criminal offense concerning any accomplice proposed to be used as a witness by the State.
- 9 To furnish copies of any search warrants and related affidavits.
- 10 To provide Defense with all exculpatory evidence pursuant to *Brady v. Maryland* and related cases, i.e. that which is both favorable to the accused and material either to guilt or punishment. Such exculpatory evidence shall specifically include (by way of reminder and not intending to alter any requirement under *Brady* or its progeny):
  - 10.1 Any person who was unable to identify the defendant in a lineup. *See Ex-parte Adams*, 768 S.W.2d 281 (Crim. App. 1981).
  - 10.2 Prior inconsistent statements of a witness if qualifying under *Brady*. *See Ex-parte Adams, id.*
- 11 Order on Expert Witness Disclosure, Voirdire and Challenge Without the necessity of a specific request by either side, and in accordance with Art. 39.14(b), Texas Code of Criminal Procedure, each side shall disclose to the other each person a party may use at trial to present expert testimony under Rules 702, 703 or 705, Texas Rules of Evidence.
  - 11.1 Such disclosure shall be in writing and include, at a minimum, the name and address of such person. Disclosures shall be served upon the opposing party as follows:
    - 11.1.1 By the State: No later than 30 days prior to trial.
    - 11.1.2 By the Defense: No later than 20 days prior to trial.
  - 11.2 Any motion under T.R.E. 705(b) for *voirdire* of an expert prior to testimony will ordinarily be taken up at the time of trial in such manner as to not unduly waste jury time. However, if either party anticipates that an extensive Rule 705(b) examination will be required, such shall be made known to the Court so that an additional pretrial hearing for this purpose and for possible challenge to the expert or the testimony to be given may be scheduled prior to the date of trial.
  - 11.3 The provisions of this paragraph 11 do not pertain to opinion testimony by a lay witness offered **and admissible under Rule 701, Texas Rules of Evidence, and no such lay witness shall be**

designated as an expert on the State's witness list as doing so merely confuses the issue of expert witnesses as contemplated by CCP Art. 39.14(b).

- 12 It is to be understood that the State will allow the inspection of previously listed items which are in the possession of the State's attorneys or which are known or with the exercise of due diligence known to be in the possession of the investigating officers or other agents of the State. **The State shall notify the Defense of the specific agency having custody of any evidence not in the control of the State's attorney. Thereafter, it shall be the responsibility of the defense to arrange inspection with that agency, and the State shall insure the cooperation of such agency.**
- 13 In appropriate cases, the State is encouraged to allow the inspection of offense reports and witness statements in addition to the above items. However, such reports and statements are normally work product of the State and are therefore protected from mandatory disclosure unless the contents are exculpatory. Such statements and reports must of course be tendered to the Defense for cross-examination on proper request under *Gaskin* or related requirements.
- 14 In the event that documents, diagrams, models or charts are prepared as "jury aids" at the direction of the State's attorneys before trial, such items will be considered work product but will be provided for inspection by the Defense no later than the morning that testimony is to begin.
- 15 This Order will dispose of all pre-trial discovery and specified request motions heretofore filed. Because of the extensive nature of the discovery herein ordered, it will be considered that such Order is acceptable to the Defense pending the review of the evidence and documents as ordered. In the event that further particularized discovery is considered necessary, the Defense may file a written Motion for Discovery, addressing only matters not covered in this Order, and such Motion will be presented to the Court at the earliest practical opportunity before trial but in any event no later than the occasion of the Art. 28.01 pretrial hearing.
- 16 Except as otherwise noted herein, The State is ordered to furnish the above inspection within 15 days after the date of this Order, and in every event on or before ten (10) days prior to trial or any agreed upon date which agreed date of compliance shall be reduced to writing and signed by State's attorney and Defense attorney.

- 17 The State, at its option, may comply with this Discovery Order by either:
- 17.1 allowing inspection by the Defense; or
  - 17.2 by furnishing true copies of discovery materials within the time designated. A reasonable charge not to exceed \$5.00 per case plus \$0.25 per page produced may be made to other than court-appointed counsel for the furnishing of a discovery packet, which fee shall be returned to the general budget of the District Attorney's office. If a discovery packet fee would exceed \$25, inquiry shall first be made of defense counsel if he wishes a packet to be furnished or to make an inspection.

SIGNED this day December 20, 2006, to be effective January 1, 2007.

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Guilford L. Jones, III, Judge  
33<sup>rd</sup> District Court

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Dan H. Mills, Judge  
424<sup>th</sup> District Court