



The Texas Prosecutor

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“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

Everyone’s current favorite topic: datacenters

I am your humble guide to all things potentially interesting in the civil (and sometimes not so civil) world of Texas county law.

Being a member of the civil team at the Kaufman County DA’s office provides exposure to a wide variety of issues, both urban and rural. This article involves both, and it is on everyone’s current favorite topic: datacenters. Some counties want them, and some counties don’t. Whatever your county’s preference, this article should provide a solid starting point when talking to your elected officials about datacenters.

We will start with a quick overview of the technology that is driving the surge in datacenter development before looking into the regulatory framework currently in place. We will wrap up with a look at some of the proposals that are floating around the political sphere.

Datacenters and LLMs

Datacenters themselves are not new phenomena. Companies have used them to run software or to back up important data for years. What is new is the demand for new datacenter capacity. That demand is largely driven by the development and commercialization of what are called large language models (LLMs). These models power generative AI (artificial intelligence) tools such as Claude, ChatGPT, Gemini, and Copilot. LLMs can vary in size, but the most well-known



By Mark Guthrie

Assistant Criminal District Attorney in Kaufman County

models are large enough to require specialized equipment to develop and run them.

LLMs require graphics processing units (GPUs) that have extremely large amounts of high bandwidth memory and can process large quantities of data. These GPUs consume a lot of power and generate enormous amounts of heat as a byproduct. Anyone with a consumer GPU in their computer can tell you how a single GPU can raise the temperature of a room several degrees when it is running at full capacity. Now imagine you have a building with not one but

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'Mandatory *Brady* Training' now online

TDCAA's new "Mandatory *Brady*-Training" program is now *live* and available on our website for free.

What is it, and why is it "mandatory?" Read Joe Hooker's column on page 5 for all the details.

Before moving on, I want to recognize everyone who appears in the video portions of this CLE program to share their perspectives on this important topic with our audience. Huge props to these folks:

Tonya Ahlschwede, 452nd Judicial District Attorney

Isidro "Chilo" Alaniz, District Attorney for Webb and Zapata Counties

Kenda Culpepper, Criminal District Attorney in Rockwall County

James Hicks, Criminal District Attorney in Taylor County

Landon Lambert, County Attorney in Donley County

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Jennifer Tharp, Criminal District Attorney in Comal County

Erleigh Wiley, Criminal District Attorney in Kaufman County

Greg Willis, Criminal District Attorney in Collin County

The Honorable Sid Harle, Presiding Judge of the Fourth Administrative Region; and

Mr. Michael Morton, who provided a powerful video introduction to this program.

Our thanks go out to him and to the public servants who gave of their time and wisdom to help us create this tool for improving our criminal justice system. We hope you find it enlightening!

Association awards

It's Annual Conference season, which means we get to lift up members of our profession for well-deserved accolades! Your association is proud to



By Shannon Edmonds

TDCAA Executive Director in Austin

announce the following award recipients for 2026 who were recognized at our Annual Criminal & Civil Law Conference in Waco (pictured top to bottom with David Holmes, TDCAA Board Chair):

Prosecutor of the Year: Rickie Redman, County & District Attorney, Lamb County

Lone Star Awards: James M. Stainton, 271st Judicial District Attorney, and Charann Thompson, Assistant District Attorney, Fort Bend County

Kepple Award: C. Scott Brumley, County Attorney, Potter County

C. Chris Marshall Distinguished Faculty Award: Kristin Burns, First Assistant Criminal District Attorney, Bastrop County

I also have the privilege of announcing TDCAA's new **Rising Star Prosecutor** recognitions. Those recipients are:

Levi Camden, Assistant District Attorney in Montgomery County

Kaitlin Freudenberg, Assistant County Attorney in Chambers County

W. Jackson Heard, Assistant Criminal District Attorney in Kaufman County

Connor D. Leigh, Assistant District Attorney in Bell County

Madison Schrock, Assistant District Attorney in Montgomery County

Judy Tejeda-Gonzales, Assistant District Attorney in the 106th Judicial District

Dawson Townsend, Assistant County & District Attorney in Colorado County

Mallory Vargas, Assistant District Attorney in Chambers County



These inaugural Rising Star prosecutors will be recognized in person in each recipient's jurisdiction starting later this fall. If you hear about one of those events happening in your area, come join us to celebrate some bright young prosecutors who are making their communities better places to live and work!

To learn more about these awards mentioned above, visit www.tdcaa.com/association-awards. Nominations for the 2027 cycle will begin early next year.

“The Jury Experience”

I know that many of your jurisdictions have trouble getting panelists to show up for jury duty. But have you considered setting up a concession stand so they can buy snacks and adult beverages during voir dire?

Seriously, that appears to be a factor behind the success of a theater production that started advertising on social media platforms last year called “The Jury Experience.” This theatrical version of everyone's (least?) favorite civic duty is currently being offered in several cities in Texas and around the country. And get this: *People are paying to serve as “jurors”* rather than the other way around! Perhaps it's the short time commitment (60–90 minutes), the technological interactivity (votes are submitted by phone), the dramatic license taken by the production's writers, or the bar set up out in the hallway—whatever the hook, it seems to be popular. What does that tell us?

To me, it's a reminder that people are still fascinated by our criminal justice system. Television, movies, books, and podcasts are rife with “true crime” stories and murder mysteries. But when it comes time to ask our fellow citizens to participate in that process on the back end, jury summonses go unanswered and social media threads go viral by featuring the most outlandish excuses to avoid that civic duty. I don't have any easy solutions to fix that problem, but the popularity of this theater production makes me believe that we can learn something from it. After all, if a popcorn and a Coke (or a Jack & Coke!) can convince people to overcome their aversion to (fictional) jury duty, surely we can find other creative solutions to addressing the (factual) jury service problem!

A look inside

This issue of our association journal is full of great material, including articles on credit card skimmers, datacenters, and how prosecutor offices are handling some new TCOLE (Texas Commission on Law Enforcement) policies. I hope you enjoy them!

And as always, if you ever have any questions about TDCAA or what we do, please don't hesitate to reach out for answers. We are here to serve you. ✱

When it comes time to ask our fellow citizens to participate in that process on the back end, jury summonses go unanswered and social media threads go viral by featuring the most outlandish excuses to avoid that civic duty.

The biggest news of the quadrennial!

Some of you may have gotten TDCAA's survey that went out in the spring asking the one question on everyone's minds, "What once-every-four-year event taking place in the summer of 2026 are you most excited about?"

As you can expect, we had a few pranksters answer the survey with something about the "Cups of the World tour" or some such thing. But most people answered correctly that they were most excited about the release of TDCAA's updated version of our mandatory *Brady* training!

In 2014, along with the passage of the Michael Morton Act (Art. 39.14 of the Code of Criminal Procedure), the legislature also enacted §41.111 of the Government Code, which requires the Court of Criminal Appeals and TDCAA to design a one-hour course that is mandatory viewing for all prosecutors. This course covers "the duty of a prosecuting attorney to disclose exculpatory and mitigating evidence in a criminal case." The statute requires this course to be taken within 180 days of assuming the role of prosecutor, and the Court has required prosecutors to retake this training every four years to review these fundamental principles of just and fair prosecution.

Since 2014, TDCAA has offered an updated version of this training every quadrennium so that prosecutors who took the original course, as well as all attorneys who have become prosecutors since then, have been able to take an updated version.

While the statute mandates that prosecutors learn only about their obligations under *Brady v. Maryland*¹ (hence the name for the course being "Mandatory *Brady* Training"), under Texas jurisprudence it is nearly impossible to discuss *Brady* without also discussing the obligations under CCP Art. 39.14 and Texas Disciplinary Rule of Professional Conduct 3.09.

The 2026 version of this course includes new filmed segments that have been added to the existing course videos, plus timely updates and an opportunity to watch the first installment of TDCAA's newest online series, "The Cases that Made Us." Britt Houston Lindsey, Assistant



By Joe Hooker

TDCAA Assistant Training Director in Austin

Criminal District Attorney in Taylor County, walks us through the facts of not only of *Brady* and its progeny but also important Texas discovery cases including *Morton*, *Miles*, *Schultz*, *Watkins*, and *Heath*. For those interested in watching this first installment on its own, find "The Cases that Made Us: *Brady*" under the *Brady* option under the Resources tab on the TDCAA website (www.tdcaa.com/resources/brady).

Those who complete "Mandatory *Brady* Training" will receive 1.25 hours of CLE ethics credit. The course is always available to view under the Online Training option under the Training tab at TDCAA.com (www.tdcaa.com/training/#online-training). ✱

¹ 373 U.S. 83 (1963).

Geofence warrants in light of *Chatrie v. United States*

It's been over a year since the Texas Court of Criminal Appeals (CCA) issued its plurality opinion on geofence warrants in *Wells v. State*, which affirmed Mr. Wells's conviction.

Wells subsequently petitioned the Supreme Court of the United States (SCOTUS) for certiorari, which was granted. In a two-sentence opinion, the Court vacated the judgment and remanded the case to the CCA for consideration in light of the Supreme Court's decision in *Chatrie v. United States*.¹ How might the Supreme Court's opinion in *Chatrie* affect Texas geofence warrants? Did the Supreme Court finally settle the privacy law frontier? Let's evaluate *Chatrie v. United States* to find out.

Background

A man walked into a credit union and presented to the teller a note demanding \$100,000. It was spring—about 4:50 p.m. Within the note were



By Richard Guerra

Assistant Criminal District Attorney in Bexar County

threats against the teller and the teller's family. There was a warning that the man had "boys on the lookout outside."² When the note failed to secure his demand, the man brandished a gun. He ordered everyone to the ground. He forced the bank manager to remove \$195,000 from the safe and put it into his bag. Then he fled on foot.

The local police investigation determined that the robber approached the credit union from the corner of an adjacent church. Surveillance footage saw him talking on a cell phone. Nearly a month later, the case went cold.

The geofence warrant

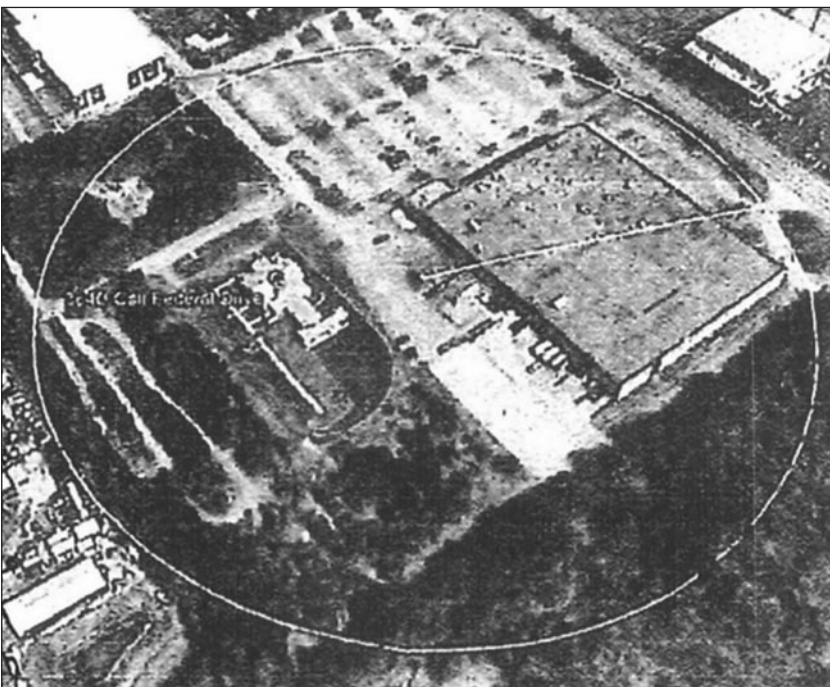
The police applied to a local magistrate for a geofence warrant that was directed to Google. The warrant's affidavit explained that Google's data could lead to identifying the robber, his possible accomplices (recall that the robber was seen talking on a cell phone), or additional witnesses.

The warrant initially drew a geofence with a 150-meter radius and a diameter of 300 meters.³ This coverage—longer than three football fields—included the bank and the nearby church. The total area of the geofence was 70,686 square me-

² *Chatrie v. United States*, 146 S. Ct. 2193, 2202 (2026).

³ *Chatrie*, 146 S. Ct. at 2202; *United States v. Chatrie*, 590 F. Supp. 3d 901, 918 (E.D. Va. 2022).

The warrant application included this photograph, below.



ters, which was “about three and a half times the footprint of a New York City Block.”⁴

Three-step process

Google received its first geofence warrant in 2016. Other tech companies, including Apple, Lyft, Snapchat, and Uber, have received geofence warrants, but Google is the “most common recipient and the only one known to respond.”⁵ Over time, Google worked with law enforcement to develop a three-step protocol for geofence warrants so that Google could provide the government with its users’ location data, which would typically include a device’s latitude and longitude coordinates with the corresponding timestamp, an estimate of each coordinate’s accuracy, and from what source Google collected this information via the user’s device—a wi-fi network, cell site, etc.⁶

The warrant application in this case described the three-step process.⁷

The first step sought anonymized location data for every device within the geofence from 4:20 p.m. to 5:20 p.m. on the day of the robbery. This timeframe was 30 minutes before and 30 minutes after the offense.⁸ Here, Google gave police anonymized location data for 19 users within the geofence.

At the second step, the police would “attempt to narrow down the list [of devices] by reviewing the time stamped location coordinates for each and comparing that against known time and location information that is specific to the crime.”⁹ For this narrowed list of anonymized users, Google would provide location information—regardless of whether it was inside or outside of the geofence—for an additional half-hour before and after step one’s timeframe, totaling two hours. Here, Google gave police extended location information data for nine users within and beyond the geofence.

At the third step, the police would “attempt to narrow down the list by comparing this additional information regarding travel and time against the known time and location information that is specific to this crime.”¹⁰ Ultimately, Google identified three users (including their names and phone numbers) from the police’s third narrowed list of anonymized users. One of these three was Chatrle, whose location data showed him entering the geofence 10 minutes before the robbery and then heading toward a residential part of town immediately after leaving the bank.

Chatrle was charged with robbery and related firearms offenses. He moved to suppress the information Google had handed over to police. He argued that both the officers’ acquisition of his data through a Fourth Amendment search and the authorizing warrant for this search were invalid.¹¹ The district court denied Chatrle’s motion to suppress. The court ruled that the warrant violated the Fourth Amendment, but it admitted Chatrle’s location data under the good-faith exception. Although Texas Code of Criminal Procedure Art. 38.23(a) disallows illegally obtained evidence, the good-faith exception—found in Art. 38.23(b)—allows the admission of such evidence when obtained by an officer acting in good-faith reliance on a warrant issued by a neutral magistrate based on probable cause.¹²

The Fourth Circuit used different reasoning to uphold the location data’s admission. The circuit majority reasoned that no Fourth Amendment search had occurred, and consequently, the police did not need a warrant. The majority held that Chatrle didn’t have a reasonable expectation of privacy in two hours of Google location history data. After rehearing *en banc*, the Fourth Circuit affirmed in a single sentence.¹³ Astonishingly, the majority split evenly—seven to seven—on

The Fourth Circuit used different reasoning to uphold the location data’s admission. The circuit majority reasoned that no Fourth Amendment search had occurred, and consequently, the police did not need a warrant.

⁴ *Chatrle*, 590 F. Supp. at 918 n.26 (citing Michael Kolomatsky, How Big Is an Acre, Anyway? *The New York Times* (July 26, 2018), <https://nyti.ms/345CjS7>).

⁵ *Chatrle*, 590 F. Supp. 3d at 919.

⁶ *Chatrle*, 146 S. Ct. at 2021 n.3.

⁷ *Chatrle*, 146 S. Ct. at 2022.

⁸ *Chatrle*, 146 S. Ct. at 2022.

⁹ *Id.*

¹⁰ *Id.* at 2203.

¹¹ *Id.*

¹² Tex. Code. Crim. Proc. Art. 38.23.

¹³ “PER CURIAM: The judgment of the district court is AFFIRMED.” *United States v. Chatrle*, 136 F.4th 100 (4th Cir. 2025), cert. granted in part, 223 L. Ed. 2d 553 (Jan. 16, 2026) and vacated and remanded, 146 S. Ct. 2193 (2026).

At the time this case was argued, Google stored all Location History in the cloud, which means that the data was stored on remote servers rather than the user's device. Google has since shifted to storing Location History on the user's device. Google has stated that this decision prevents it from responding to geofence warrants based on Location History because—as of July 2025— it no longer has the ability to access that data.

whether a Fourth Amendment search had occurred and thus whether a warrant was required.¹⁴

Chatrìe appealed to the United States Supreme Court.

As the judges saw it

The Supreme Court granted certiorari on the sole question of whether police conducted a Fourth Amendment search in obtaining Chatrìe's location data. Justice Kagan wrote the Court's majority opinion; Chief Justice Roberts and Justices Sotomayor, Kavanaugh, and Jackson joined her. The majority held that the government conducts a Fourth Amendment search when it accesses historical cell phone location information.¹⁵

In its reasoning, the Court relied on the district court's record of testimony regarding how Google collects, stores, and uses user location data. The Court initially observed—as it had done before in *Riley v. California*—the ubiquity of cell phones in modern life.¹⁶ These phones contain a number of applications and services that collect and store detailed personal information that is used to assist users daily. Among this information is the device's physical location. For example, cell phone apps use location data to help individuals navigate roads, check the weather forecast, and find nearby restaurants. The location data that these apps use is called "Location History."

Google pulls Location History from multiple sources via a user's cell phone: nearby wi-fi networks, Bluetooth beacons, cell sites, GPS information, and IPS address information, to create a time-stamped record of every place a cell phone has been within 20 meters. Google can also ascertain which floor of a building a device is on by tracking the device's elevation.

Users are prompted to turn on Google Location History when a person creates a Google account. And again they are prompted each time a person sets up a Google app, which includes Google Assistant, Google Maps, Google Photos, etc. Google specifically warns Android users that their devices will not work correctly with Location History turned off. Over 500 million worldwide users have enabled Google Location History.

Once activated, Location History constantly runs in the background. It will continue to collect Location History by drawing on the aforementioned sources every two minutes or so. It will record the phone's location even when the apps that utilize Location History are not in use. If the user deletes the app from which Location History was switched on, Google will still record the device's location. If the user is not using the phone at all, Google will still record the device's location. The only way to stop Google from recording Location History is for a user to affirmatively turn Location History off.¹⁷

At the time this case was argued, Google stored all Location History in the cloud, which means that the data was stored on remote servers rather than the user's device. Google has since shifted to storing Location History on the user's device. Google has stated that this decision prevents it from responding to geofence warrants based on Location History because—as of July 2025—it no longer has the ability to access that data.¹⁸ Although this will affect Google's future ability to respond to geofence warrants for Google Location History, Chatrìe's Location History was stored on Google's servers. Even so, the Court pointed out that Google's choice makes no substantial difference to the user. Indeed, whether the data is stored on a user's phone or on Google's servers makes no difference in how a user interacts with it when the user accesses previously travelled routes, daily commute updates, or location recommendations.

Carpenter v. United States

In *Carpenter v. United States*, the Court held that the government violated the Fourth Amendment

¹⁴ *Chatrìe*, 146 S. Ct. at 2203.

¹⁵ *Chatrìe*, 146 S. Ct. at 2215 ("We hold that police officers invade a cell-phone user's reasonable expectation of privacy when they access his Location History. It does not matter if the time period scrutinized was only two hours. Nor does it matter that the materials obtained were handed over by a third-party tech company. When the government 'accesses historical cell phone' location information—Location History as much as CSLI [cell-site location information]—it 'conducts a search under the Fourth Amendment.'").

¹⁶ *Id.* at 2200 ("Today, more than nine in 10 Americans own a smartphone").

¹⁷ *Id.* at 2200–01.

¹⁸ Brief for Amicus Curiae Google LLC in Support of Neither Party at *2, *10, *Chatrìe v. United States*, 146 S. Ct. 2193 (2026) (No. 25-112) 2026 WL 624354.

when it accessed seven days' worth of the defendant's cell-site location information (CSLI).¹⁹ At the forefront, the Court recognized that the similarities between CSLI's and Location History's relationship to privacy "practically leap[t] off the page."²⁰ The Court described these similarities (see the chart below)—and noted an impactful difference:

mation seized. The Court recalled that the total duration of the unconstitutional wiretap in *Katz v. U.S.* amounted to 18 minutes.

The Court next expressed concern for the all-encompassing nature of Location History data, which it distinguished from the more rudimentary technology (a beeper) that the police accessed in *United States v. Knotts*, in which the

Similarities	<i>Carpenter</i> and CSLI	<i>Chatrie</i> and Location History
Location precision	Within 1/8 to 4 square miles	Within roughly 20 meters
Daily number of logs	Average of 101 per day	Average of 720 per day
Elevation charting	Incapable	Estimates phone elevation
Retrospective location reconstruction	Capable	Capable and editable at the user's discretion
Impactful Difference: General record use	<i>Carpenter</i> : Wireless carriers use data; most device owners are unaware and don't use it.	<i>Chatrie</i> : Device owners regularly ¹ consult data for personal reasons (places visited, distance walked, etc.).

¹ *Chatrie* at 2208-09.

With these observations, the Court confirmed that Location History implicates privacy interests more than the CSLI at issue in *Carpenter* because it contains more specific, frequent, and intrusive data regarding the user's daily personal life. Moreover, unlike CSLI, which is used by wireless carriers without most device owners' awareness, device owners regularly access their own Location History—and can even edit it. According to the Court, this makes Location History more akin to a personal journal, which a user would reasonably view as his or her own. Consequently, the Court reached the same conclusion that it had in *Carpenter*—users have a reasonable expectation of privacy in their Location Data.²¹

The Court next rejected the government's argument that *Chatrie* had no reasonable expectation of privacy in a mere two hours of location history because this temporal duration was not significantly personally revealing.²² The Court explained that the Fourth Amendment applied regardless of the quality or quantity of the infor-

Court declared that "different constitutional principals" could apply if technology advanced to allow more sophisticated surveillance. Moreover, the Court pointed to the fact that the surveillance in *Knotts* was on public roads in which the defendant had no reasonable expectation of privacy.²³

In analyzing whether the third-party doctrine should apply to Location History, the Court couldn't ignore the similarities between this case and *Carpenter*. Prior SCOTUS caselaw had held that a bank depositor had no reasonable expectation of privacy in canceled checks and deposit slips that the depositor had voluntarily conveyed to the bank. Likewise, a telephone subscriber has no reasonable privacy expectation in dialed phone numbers as the subscriber voluntarily conveyed those numbers to the telephone company.²⁴ But the Court distinguished these prior cases because, like the CSLI in *Carpenter*, Location History information is "qualitatively different" from bank records and phone numbers.²⁵

Location History is exhaustive in scope when compared to the limited information in telephone numbers and bank records. Additionally, a cell phone user does not voluntarily expose Lo-

¹⁹ *Carpenter v. United States*, 585 U.S. 296, 310 (2018).

²⁰ *Chatrie*, 146 S. Ct. at 2207-08.

²¹ *Id.*

²² *Id.* at 2209-10. ("[W]e have never understood Fourth Amendment protections as kicking in only once an intrusion 'goes too far'").

²³ *Id.* at 2210-11.

²⁴ *Id.* at 2212 (citing *United States v. Miller*, 425 U.S. 435 (1976); *Smith v. Maryland*, 442 U.S. 735 (1979)).

²⁵ *Id.*

Ultimately, the Court held that “police officers invade a cell-phone user’s reasonable expectation of privacy when they access his Location History. It does not matter if the time period scrutinized was only two hours. Nor does it matter that the materials obtained were handed over by a third-party tech company.”

cation History information with the same meaningful understanding as these other types of data because sharing Location History “is the automatic price of conventional cell-phone usage, especially when cell phones are as pervasive and necessary to daily life.”²⁶ Moreover, Google does not notify users of Location History’s frequency, precision, and government accessibility.

The Government argued that opting into Location History is not indispensable because only one-third of Google accountholders had activated the service; thus, Location History is voluntarily activated by an affirmative act. Although the Court took issue with the reliability of this statistic, it ultimately didn’t matter to the Court’s voluntariness analysis. According to the Court, the Government’s argument misunderstood the nature of how cell phones are used. Sending emails, uploading photos, and adjusting calendar entries are all affirmative acts. Each act requires an optional add-on beyond the phone’s general operation. And each act shares private information with a third-party tech company. Divorcing all these activities from the act of turning on the phone, with only turning on the phone receiving Fourth Amendment protection, conflicts with the manner in which cell phones are used. An individual’s use of a device’s apps and services pervades everyday life more than the cell phone itself. The point of carrying a cell phone is to use it, apps and all.²⁷

Ultimately, the Court held that “police officers invade a cell-phone user’s reasonable expectation of privacy when they access his Location History. It does not matter if the time period scrutinized was only two hours. Nor does it matter that the materials obtained were handed over by a third-party tech company. When the government ‘accesses historical cell phone’ location information—Location History as much as CSLI—it ‘conducts a search under the Fourth Amendment.’”²⁸

The Court vacated the Court of Appeals’s judgment and remanded the case to the Fourth Circuit to consider the geofence warrant’s constitutionality—whether it established probable

cause to support the search and whether the search’s scope (including its geographic and temporal limitations) was described with sufficient particularity.

Justice Jackson’s concurring opinion

Justice Jackson warned that—at bottom—the second and third stages of the geofence warrant process did not satisfy probable cause and did not describe the search’s scope with particularity. She reiterated dicta from the Court’s opinion that expressed concern the warrant offered little information regarding how the officers would narrow the list of users at these stages.²⁹ This information fit into a single sentence in the warrant: that the police would “attempt to narrow down the list by reviewing the time stamped location coordinates for each [device] and comparing that against the known time and location information that is specific to this crime.”³⁰ Justice Jackson found it problematic that the warrant’s second and third steps did not require a magistrate to review how the police would “attempt” to narrow the list. This lack of judicial oversight allowed the police too much discretion.³¹

Justice Gorsuch’s concurring opinion

Though he reached the same conclusion, Justice Gorsuch would have eschewed relying on *Carpenter*, *Katz*, and the third-party doctrine for his analysis. Quoting mostly from his own dissent in *Carpenter*, Justice Gorsuch opined that the Court wasn’t equipped to empirically assess what Americans think are reasonable privacy expectations. Like Justice Scalia did in *U.S. v. Jones*, he would apply property law to determine whether Chatrie’s privacy rights were invaded.

Justice Gorsuch reviewed the agreement between Google and Chatrie regarding Location History and determined that the agreement granted Chatrie the right to enjoy, manage, alter, dispose of, and exclude others from his Location History information. These rights granted Chatrie a strong claim that his Location History was personal property.³² Additionally, Virginia’s

²⁶ *Id.*

²⁷ *Id.* at 2214.

²⁸ *Id.* at 2215 (quoting *Carpenter v. United States*, 585 U.S. 296, 310).

²⁹ *Id.* at 2217.

³⁰ *Id.* at 2216.

³¹ *Id.* at 2218.

³² *Id.* at 2218–21.

Computer Crimes Act expressly describes “computer data” as a form of property. Other states, including Texas, have similar laws. As such, Justice Gorsuch suggested that the Fourth Amendment could protect Chatrle’s Location History as personal “effects.” He noted that the Fourth Amendment protects against searches performed by a private party if that private party acts as an agent of the State. Thus, the government conducted a search when it compelled Google to rummage through and turn over its data.³³

Justice Alito’s dissenting opinion

Justice Alito would have relied on the third-party doctrine to hold that Chatrle could not challenge the geofence warrant under the Fourth Amendment.³⁴ He reached back to America’s first century of search and seizure law—which protected only the physical security of persons and property—for the proposition that document productions orders—to which he likened Google Location History—are not Fourth Amendment searches.³⁵

He distinguished between the Google Location History files themselves and the information on spreadsheets Google provided to police, which summarized the historical facts about Chatrle’s location. He equated it to the difference between ownership of a newspaper article and ownership of the facts on which the article had reported.

According to Justice Alito, *Carpenter* was unique—not meant to be expanded as the majority did here. Moreover, *Carpenter* had a greater privacy interest than Chatrle because *Carpenter*’s phone was the only phone tracked, it tracked him into private residences, and he did not voluntarily share his CSLI with his cellular carrier. Moreover, Location History is not essential to a cell phone’s functionality. Thus, under the third-party doctrine, Chatrle assumed the risk that Google might share his information with the police, among others.³⁶

Justice Barrett’s dissenting opinion

Justice Barrett would have held that Chatrle had no reasonable expectation of privacy in data regarding his public moments that he voluntarily disclosed to Google.

The takeaway

A year ago in this journal, I recommended that prosecutors should presume users have a reasonable expectation of privacy in Google’s Location History.³⁷ This still holds true under *Chatrle*. However, prosecutors now have smidgens of certainty: 1) accessing Location History is a Fourth Amendment search; 2) a geofence warrant doesn’t have a two-hour constitutional grace period; and 3) the third-party doctrine does not apply to Location History.

Going forward, law enforcement should obtain a warrant to access geofenced Location History. The Court did mention the potential for warrantless access to Location History by way of exceptions to the warrant requirement (the Court specifically identified the exigent circumstances exception).³⁸ However, due to a dearth of caselaw on this subject, prosecutors and police should consider relying on exigent circumstances only in situations in which there is absolutely, sincerely, no other way.

Now that courts have certainty regarding whether accessing Location Data is a search, they will shift to analyzing the contents of geofence warrant affidavits. Recall that in *Wells v. State*, CCA Judge Yeary noted that probable cause exists if, under the totality of the circumstances, there is “at least a ‘fair probability’ or ‘substantial chance’ (it need not be ‘more likely than not’) that evidence of an offense will be found at the location that law enforcement seeks to search.”³⁹ This language remains useful for prosecutors to lean on when arguing the sufficiency of a geofence warrant affidavit to trial courts. Indeed, the *Chatrle* Court referred to the requisite “fair

Now that courts have certainty regarding whether accessing Location Data is a search, they will shift to analyzing the contents of geofence warrant affidavits.

³³ *Id.* at 2222.

³⁴ Part I of Justice Alito’s dissenting opinion describes why he believed that the majority’s opinion was a performative advisory opinion. *Id.* at 2222–26. Although interesting to study, it is likely not of significant use to trial prosecutors. As such, it is only mentioned in this footnote.

³⁵ *Id.* at 2226–27.

³⁶ *Id.* at 2229.

³⁷ www.tdcaa.com/journal/geofence-warrants-and-the-frontier-of-fourth-amendment-law.

³⁸ *Id.* at 2215 n.11.

³⁹ *Wells v. State*, 714 S.W.3d 614, 623 (Tex. Crim. App. 2025), reh’g denied, 721 S.W.3d 260 (Tex. Crim. App. 2025), cert. granted, judgment vacated, No. 25-484, 2026 WL 1871296 (U.S. June 30, 2026) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 243 n.13 (1983)).

It is probably unwise for law enforcement to draw a geofence warrant as large as the one in Chatrie, which was larger than three football fields in step one and then more than doubled in size in step two.

probability” when discussing (in dicta) the potential issues that the geofence warrant’s affidavit might raise. The appropriate scope of a search must be “carefully tailored to its justifications.” Law enforcement should work with prosecutors to ensure that the warrant’s affidavit supports its scope and duration with articulatable information.

Justice Jackson took issue with the warrant affidavit’s lack of particularity in its second and third steps. The warrant required only that officers “attempt” to narrow the list of anonymous users that they received through step one to obtain the second and then the third data sets. This is likely problematic because a promised “attempt” to do something offers no assurance that it will be done. Geofence warrant affidavits should offer detailed explanations of precisely how they will utilize investigative information to narrow the step one’s anonymized list and then again in step two.

With the problem of specificity in mind, my (likely unpopular) suggestion is to have a magistrate review and approve each of the geofence warrant’s three steps. This would functionally break the single geofence warrant into a series of three individual geofence warrants. This way the information obtained from step one can be applied to the analysis in step two, and then the information obtained from step two can be applied to the analysis in step three. This removes the potential problem of leaving the officers who execute the warrant with too much discretion. It would also likely assist prosecutors in arguing—should the need arise—good faith reliance. I expect that this practice could ultimately become mandatory if geofence warrants continue to be used to obtain data from other cloud-based digital service providers. Virtually every American uses cloud-based services that—like Google’s Location History—can track or tag their location, including email, cloud storage, search engines, navigation apps, and social media.⁴⁰

Recall that the warrant affidavit in *Wells* relied on the ubiquity of cell phones to give the magistrate a substantial basis to conclude there was a fair probability that one of the perpetrators possessed a device with Google apps installed. Although relying on this general knowledge is use-

ful, a warrant affidavit should include—if possible—the investigator’s specific reasons for believing a cell phone was present and/or used during the commission of a crime.⁴¹ This could include surveillance footage, witness interviews, or more. If there is extra information, use it. Don’t just rely on the fact that cell phones are everywhere. Look for facts that point to a suspect using a specific application that stores location data.

It is probably unwise for law enforcement to draw a geofence warrant as large as the one in *Chatrie*, which was larger than three football fields in step one and then more than doubled in size in step two. In step two, the *Chatrie* geofence included—in addition to the bank and adjacent church—a Ruby Tuesday restaurant, a Hampton Inn hotel, several units of a nearby apartment complex, a storage business, a senior living facility, two busy streets, and what appeared to be several residences.⁴² To contrast, the geofenced area in *Wells* included a single residence and part of the adjacent church from where the suspects approached. Similarly, the duration of the geofence warrant in *Chatrie* was double the duration of the *Wells* warrant. This is not to say that a huge geofenced area over an extended period of time will always fail scrutiny. But the drafter of the warrant affidavit should have darn good (specific) reasons for its size and scope.

We now have some clarity on geofence warrants, but the process of taming this frontier is just beginning. *Chatrie* offers us a saddle, but the horses are still wild and the horizon is still expanding. ❖

⁴¹ Somewhat similar reasoning to cell phone searches discussed in *State v. Baldwin*, 664 S.W.3d 122 (Tex. Crim. App. 2022) (an affidavit for a search of a cell phone must include “other facts and reasonable inferences that establish a nexus between the device and the offense” to support a finding of probable cause; “boilerplate” language about criminals commonly using cell phones when committing crimes insufficient to establish probable cause in an affidavit to search a suspect’s cell phone).

⁴² *Chatrie*, 590 F. Supp. 3d 901, 922-23.

⁴⁰ See Brief for Amicus Curiae Google LLC in Support of Neither Party at *36, *Chatrie v. United States*, 146 S. Ct. 2193 (2026) (No. 25-112) 2026 WL 624354.

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2026 Annual Campaign: 'Why We Give'

The Foundation was created 20 years ago this past August.

The mission is to support the professionalism of Texas prosecution by devoting additional resources toward training Texas prosecutors. The Foundation exists, in other words, so the State is always ready.

To recognize 20 years of devotion to the mission, we contacted 12 people who have regularly and generously supported the Foundation over the years, and we asked them why they give. Then we collected their answers in a flyer, which was sent to all elected prosecutors and Foundation supporters as part of the 2026 Annual Campaign. In it, you'll find the stories of luminaries such as

Judge Susan Reed, former CDA in Bexar County; **Ken Magdison**, former DA in Harris County and U.S. Attorney for the Southern District of Texas; and current prosecutors **Beth Toben**, Assistant County & District Attorney in LIMESTONE County, and **Amy Derrick**, Assistant Criminal District Attorney in Dallas County. Their stories are different, but they share a common thread of appreciation for TDCAA's excellent training and responsiveness when extra help is needed. Thanks to all 12 for sharing their stories and for their continued support of the mission—and thanks to all of you who support the profession through the Foundation!

Aggies coming through!

The reception honoring the 2026 Class of the Texas Prosecutors Society (TPS) will take place at the Zone Club at Kyle Field in College Station on Wednesday, December 2. The reception is held in conjunction with TDCAA's Elected Prosecutor Conference. We are delighted that the Aggies among our ranks have stepped up and created a host committee chaired by **Bobby Bland**, former District Attorney in Ector County.

Furthermore, we are proud to have a unique honorary sponsor of the committee: **Robert Ahdieh**, the dean of the Texas A&M University School of Law. What better way to connect a new flagship Texas law school with Texas prosecutors!



By Rob Kepple

TDCAF Executive Director in Austin



I also want to thank **Rusty Hardin** for his generous gift in support of the reception and the Class of 2026, as well as the Foundation Board members who have committed to matching Rusty's support.

TPS Sustaining Members

The Texas Prosecutors Society was created from the vision of the late **Dan Boulware**, former DA in Johnson & Somervell Counties, and **Tom Krampitz**, former TDCAA Executive Director. The first 106 members to join the Society were designated as the

Founding Fellows (in honor of the 106 years TDCAA had been serving Texas prosecutors when the Society was founded). And today, TPS boasts over 300 by-invitation-only members whose contributions have built an endowment of well over \$1 million. You can recognize these supporters by the sterling silver TPS pins they often wear—they are modeled after Texas Ranger badges.

This fall, Foundation leadership announced the creation of a new level of TPS supporters, who are called Sustaining Members. Those who have fulfilled their initial TPS pledge (\$2,500 over 10 years) will at some point be invited to join as a Sustaining Member, where their gift to the endowment will support TDCAA training well into the future.

The first Sustaining Member invitations will be extended to the original Founding Fellows,



with invitations to others to come in the future. Those who say “yes” to this invitation will be easy to pick out of a crowd; their sterling pins will also include a solid bronze “halo” designating them as

Sustaining Members. (See the photo, left.) Watch for those invitations coming soon in the mail, and thank you in advance for your support! ❄

Recent gifts to the Foundation*

Devon Anderson
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* gifts received between June 8 and August 22, 2026

Photos from our Prosecutor Trial Skills Course



Photos from our Advanced Trial Advocacy Course



Photos from our Fundamentals of Management Course in Austin



Photos from our Annual Conference



Recent milestones of note

Awards

Chilo Alaniz, District Attorney in Webb and Zapata Counties, received the Fentanyl Free America Excellence in Protection Award, which is presented annually by the Drug Enforcement Administration (DEA). The award honors individuals and organizations for exceptional leadership and measurable impact in combating the illicit fentanyl crisis. Alaniz's office is part of the Fentanyl Task Force Initiative, and Laredo (the seat of Webb County) registered a big drop in fentanyl overdoses from 2023 to 2025, one of the largest reductions in the U.S.

The County Attorney's Office in El Paso County is among the recipients of the American Bar Association Government & Public Sector Lawyers Division's 2026 public service awards. The office was recognized for using innovative civil litigation to combat crime and human trafficking while protecting vulnerable residents.

Appointments

John McIntyre was appointed as the County Attorney in Hemphill County in late June. He replaces his predecessor, Kyle Miller. Mr. McIntyre will maintain his private practice.

Greg Magee, a former judge, was appointed by Governor Greg Abbott as the Criminal District Attorney in San Jacinto County. He won the primary election for the office of Criminal DA earlier this year and would have run unopposed in the general election. After former CDA Todd Dillon's resignation, Magee will fill the remaining term of office until January 1, 2027, after which he will begin a full term as DA.

Brooke Koi was appointed by Governor Abbott and sworn in as the Criminal District Attorney in Tyler County in mid-July. She has worked in the office since 2021 and served as the First Assistant (under then-CDA Lucas Babin) since 2022.

Clay Carr was appointed by Governor Abbott as the District Attorney for the 84th Judicial District (Hansford and Hutchinson Counties), effective September 1. He had been an assistant in that office. His term will expire December 31, 2028, or until a successor shall be elected and qualified.

Cullen Cook was appointed District Attorney for the 69th Judicial District (Dallam, Hartley, Moore, and Sherman Counties); his term will expire December 31, 2028, or until a successor shall be duly elected and qualified. Cook had been an ADA in that office and in Collin County before that; he graduated with a J.D. from Texas Tech Law School.

Deaths

Danny Buck Davidson, former Criminal District Attorney in Panola County, died in early July. He served as a county judge, worked in private practice, and was elected district attorney in 1995. He was famously portrayed by Matthew McConaghey in the 2011 movie *Bernie*, which chronicled the murder of Marjorie Nugent, a Carthage resident, by her companion, Bernie Tiede. Davidson retired from the DA's Office in late 2024.

Bob Gage, longtime County & District Attorney in Freestone County, died in late August. He had served for more than 25 years before going into criminal defense work.

Ben Neel, former County Attorney in Menard County, died at the end of August. When he retired in 2012, he had served 38 years as elected CA and as an assistant county attorney, making him the longest serving public official in Menard County history. ✱

Everyone's current favorite topic: datacenters (cont'd from the front cover)

hundreds or even thousands of these GPUs running at full tilt—cooling is paramount.

As a result of the power and cooling requirements, datacenters are generally designed to minimize the costs of these two factors.

So power is a primary factor for datacenters, because without electricity the GPUs and other equipment are expensive paperweights. Datacenter developers have approached this factor in several ways. The first is locating their facilities close to a high-power transmission line. Such lines draw directly from the grid and can lead to rising electricity rates in surrounding areas. The Electricity Reliability Council of Texas (ERCOT) has a registration process for these “Interconnecting Large Load Entities,” which includes approval prior to connection to the grid.

The other approach is to build power generation on-site. The types of power generation vary, including (but not limited to) solar, gas, and even nuclear. (Although nuclear power is not up and running in Texas yet, plans are underway in at least two counties.) The amount of power these facilities require covers a huge range from 75 megawatts (MW) up to 7,500 MW. Whatever way the facility is powered after it is built, connection is a huge factor in development so you will see sites that are located near existing power substations or internet backbones. Note also that these different power sources—either from the existing grid or purpose-built for these facilities—can lead to other considerations for counties, such as land usage, air pollution, or waste product storage.

The second factor for datacenter design—cooling—leads to great water usage, because water is a coolant. There are many different types of datacenter designs, from those that use evaporative cooling technologies to those with a closed-loop cooling system (a sealed recirculation network where a coolant, such as water or other refrigerant, flows through equipment to absorb heat, travels to a heat exchanger or chiller to reduce that thermal energy, and cycles back without being exposed to the outside air). Water usage can vary significantly as a result. If a datacenter is being proposed in your county, asking the developer about the expected water use over a month, quarter, and year will provide you and your elected officials with valuable information.

Aside from water and power, counties and their residents must also consider traffic, con-

struction and operational noise, and damage to roads. Many datacenters are being built in unincorporated areas of counties. Depending on the size of the facility, hundreds or thousands of workers would need accommodation on the road to and from the site each day. This can significantly affect traffic patterns for areas that are not used to that many vehicles. Such an increase in traffic can lead to additional stress on roads from builders' vehicles, trucks, and heavy machinery being brought to the site. Noise during and after construction can be an issue for residents in close proximity to these developments.

Regulatory framework

For purposes of regulating development, counties can regulate only what the state has provided for under Texas law. Most county regulatory authority comes from Chapters 232 and 233 of the Local Government Code. These chapters provide counties with the ability to regulate subdivisions, housing, and businesses in unincorporated parts of the county. Counties should also enforce their authority over county road conditions under Transportation Code Chapter 251. In situations where regulation under one of these chapters may not be available, a county may still be able to use a tax abatement agreement under Chapter 312 of the Tax Code (the Property Redevelopment and Tax Abatement Act) to get a developer to willingly comply with requests your county may not have the statutory authority to require.

Chapter 232 of the Local Government Code (County Regulation of Subdivisions) requires a plat to be filed and approved by a county for subdivisions of land. While each development is different, the datacenter developments I have seen all occupy sites larger than 10 acres. This size would allow the developer to avoid the plat requirement.¹ If, however, the site of development does require a plat in your county, the county can apply any available requirements under Chapter 232.² If your county has a development services

¹ Tex. Loc. Gov't Code §232.0015 (no plat of the subdivision required if all lots are more than 10 acres).

² Primarily looking at §232.003 of the Local Government Code allowing right of ways, drainage, and setbacks as potentially allowable requirements.

team, check with members of that team to see what local development regulations include. While Chapter 232 is used widely to regulate new housing developments on county land, it is not likely to be useful for dealing with datacenter development.

Chapter 233 of the Local Government Code (County Regulation of Housing and Other Structures) is where counties are likely to be able to regulate datacenters most effectively. County commissioners can pass an order to require setbacks for new development and can enforce that order through injunction or abatement actions brought by the district or county attorney (that's us!).³ Additionally, some counties may adopt a fire code and rules to enforce that code.⁴ The county's fire marshal can and should rigorously enforce whatever fire code is applicable in your county.

Counties have general authority over all roads, highways, and bridges in the county and may recover damages from parties that negligently damage those roads.⁵ Road damage can be mitigated either through subsequent actions to recover the costs of repairing the roads to prior condition or through road use agreements. Road use agreements, while optional, can be a great way for counties to reduce traffic to specific roads and to get buy-in from developers by potentially putting a maximum cap on liability for damages.

Tax abatements are, at this time, the best method for enforcing compliance on a datacenter developer who may be reluctant to consider a county's wishes. Counties can execute a tax abatement on all or a portion of the real property, tangible personal property, or both.⁶ These agreements allow a county to contract for items that may not be in its normal regulatory authority but may be important to the county's constituents. If a datacenter is being proposed around a residential neighborhood, for example, the county could ask for sound dampening equipment or screen-

ing to be placed and maintained around the facility. Or if constituents are concerned about water usage from a local aquifer, the agreement could limit groundwater usage or require a closed-loop system (or something similar) to limit water usage. One specific concession that I have been advised is useful (especially for smaller counties) is to have the developer or operator of the facility make an in-county representative available to take calls and meetings with residents so that the company, and not county staff, can answer questions about the development. Counties do have limits to what they can agree to and for how long, but in my conversations with officials in counties with these agreements, the universal feedback is that the operators are very receptive to such conditions in exchange for tax abatements.

One note of caution: The public has been very negatively inclined to abatements for these facilities in the last few months, so make sure you and your elected officials have a good feel for the public interest barometer in your county.

Moratoria

At this time, there is no general authority for counties to pass a moratorium on datacenter development. While I have found no information directly related to datacenters, it is similar to certain county opinions on solar farms. The Attorney General (AG) provided an opinion to Franklin County regarding a moratorium on solar farm construction passed by the commissioners in that county.⁷ In that opinion, the AG's office took the position that while the commissioners may have some regulatory authority over solar farms, it is unlikely that the commissioners could pass and enforce a moratorium on their development.

Despite this authority, some counties have continued to pass moratoria of their own. Hill County passed a one-year moratorium in its jurisdiction in May 2026, and the county was subsequently sued by a developer in federal court.⁸ Hill County subsequently provided a waiver to the developer to exempt it from the moratorium and agreed to pay \$100,000 in attorney fees and

One note of caution: The public has been very negatively inclined to abatements for these facilities in the last few months, so make sure you and your elected officials have a good feel for the public interest barometer in your county.

³ Tex. Loc. Gov't Code §233.032.

⁴ Tex. Loc. Gov't Code §233.061 (applies to counties with a population of more than 250,000 or counties adjacent to a county with a population of more than 250,000).

⁵ Tex. Trans. Code §251.016; Tex. Trans. Code §251.160.

⁶ Tex. Tax Code §312.402.

⁷ Op. Tex. Att'y Gen. AC-0003 (August 16, 2023).

⁸ *RCM Hill, LLC. v. Hill County, et al.*, No. 6:26-cv-00340-CRW-DTG (W.D. Tex. May 27, 2026), *dism'd with prej.* (July 9, 2026).

At the time of this writing, Governor Greg Abbott has announced that he is directing the Public Utility Commission of Texas (PUCT) and ERCOT to conduct a “comprehensive verification and audit of all datacenters” intending to connect to the public grid.

revise its development policies.⁹ While not an admission that the moratorium was unsupported by law, the litigation is not helpful for future regulation.

At the time of this writing, Governor Greg Abbott has announced that he is directing the Public Utility Commission of Texas (PUCT) and ERCOT to conduct a “comprehensive verification and audit of all datacenters” intending to connect to the public grid.¹⁰ The goal appears to be a delay in allowing future datacenters to connect to the grid. While not expressly laid out as a moratorium, if the delay in approval is extended, it will constructively function as one. The language of the request from the governor does not appear to affect developments that are building on-site power generation or specify if PUCT and ERCOT are to consider on-site power generation. It is unclear at this time if this action will be challenged in courts. Even if the review survives court scrutiny, the effect on datacenter construction remains to be seen, especially in light of the largest planned datacenters being powered mainly, if not exclusively, from on-site power generation.

Proposals and next steps

With great interest in datacenters generally and this being an election year, lots of local, state, and federal politicians have begun introducing proposals for regulating datacenter construction. Most seem to allow for limiting construction, primarily in rural areas.¹¹ Others include limiting the use of tax abatement agreements by local gov-

ernments.¹² On the national level, politicians have begun proposing a national moratorium on datacenter construction.¹³

If your county is looking for maximum regulatory authority over development, you should evaluate, update, or (if your county does not have them) pass development regulations in your county. For a set of industrial development guidelines that could prove useful, look to the revised proposed guidelines in the agenda of Hill County Commissioners Court posted in Footnote 9.

Regardless of whether your county wants to avoid or attract development, it is important to be aware of changes that may be coming to a Local Government Code near you. ❖

¹² Senate Finance Committee hears info on tax exemptions for datacenters, www.nbcdfw.com/news/local/texas-news/texas-data-center-tax-exemption-hearing/4053952/ (last visited Aug. 5, 2026).

¹³ Ocasio-Cortez introduces House version of the AI datacenter moratorium act, <https://ocasio-cortez.house.gov/media/press-releases/ocasio-cortez-introduces-house-version-ai-data-center-moratorium-act> (last visited Aug. 6, 2026); Artificial Intelligence Data Center Moratorium Act, www.govtrack.us/congress/bills/119/s4214 (last visited Aug. 6, 2026).

⁹ Hill County Commissioners Court Agenda, June 4, 2026, www.co.hill.tx.us/upload/template/28749/docs/CC%202026/ccagenda_06042026.pdf.

¹⁰ Governor Abbott Directs Comprehensive Data Center Audit, <https://gov.texas.gov/news/post/governor-abbott-directs-comprehensive-data-center-audit> (last visited Aug. 5, 2026).

¹¹ Governor Abbott discussed a ban on datacenter development in rural neighborhoods at a campaign stop, www.texastribune.org/2026/06/30/texas-abbott-data-center-development-ban-rural-communities/ (last visited on Aug. 5, 2026).

Two stories of repeat DWI defendants getting life

The two articles following this column (starting on the next page) tell the stories of prosecutors in two offices (Randall and Gregg Counties) who tried defendants for driving while intoxicated (DWI) and secured life sentences.

That's right: life in prison for DWI. No crashes, no injuries, and no fatalities—simply driving under the influence of alcohol over and over and over again. Juries in both cases—and on opposite ends of the state—had clearly had enough of the defendants' dangerous behavior.

I wanted to write an introduction to the articles for a couple of reasons. One is that in my job, I attend a bunch of local, statewide, and national meetings where the topic is, "What do we do about impaired driving deaths?" The first answer that is inevitably shouted from the crowd is, "Harsher punishment for DWI." And while I certainly understand how victims feel that way, I rarely agree. In Texas, as these articles point out, we routinely get life sentences for DWI—just plain ol' no-crash DWI. And when I explain this to people in other states, I don't apologize. I think the defendants have earned the punishment, and local prosecutors and juries agree. Such a sentence is often hard for prosecutors and jurors (as both articles point out), but it is necessary. Defendants who accumulate a dozen or more DWI priors—and even more arrests and a far greater number of undetected instances of placing our communities at risk—simply won't stop getting in a car while intoxicated and sending a speeding projectile onto our roads. I am proud Texas prosecutors and juries don't simply sit on their hands and wait for someone to die in a crash.

Second, I want to explain how a life sentence is even an option with repeat offenders. DWI as an offense can be enhanced two ways. The first is under §49.09(b)(2) of the Texas Penal Code, where two prior DWI convictions raise a third DWI to a third-degree felony. These two priors are referred to as jurisdictional priors because they must be proven during guilt–innocence, either by introduction of judgments and records or by stipulation.



By W. Clay Abbott

TDCAA DWI Resource Prosecutor in Austin

But felony DWIs may also be enhanced like any other felony (except state jail felonies) under Penal Code §12.42(d), where two prior felony convictions raise the punishment range to 25–99 years or life. While jurisdictional priors can be returned concurrently (or on the same date), Chapter 12 enhancements must be subsequent, meaning the first conviction must be final before the second DWI is committed. Note that the same DWI conviction cannot be used as both a jurisdictional prior and a Chapter 12 punishment enhancement. But for a defendant with a multitude of prior DWI convictions, both misdemeanors and felonies (as with the defendants in Randall and Gregg Counties), this possible enhancement makes charging a very strategic legal process that raises the minimum sentence to 25 years—and yes, it can result in life in prison. Both articles touch on how the State charged these offenders; for a much longer discussion about it, see Chapter 10 of TDCAA's *DWI Investigation & Prosecution* book, which is available for sale at www.tdcaa.com/product/dwi-investigation-and-prosecution-2024.

As you'll be reminded when reading these two articles, DWI prosecution and punishment matter—to prosecutors and to our communities. ❖

The road to a life sentence

On August 4, 2025, officers with the Longview Police Department responded to the Majestic Inn after receiving a call that a man was slumped over in the driver's seat of a vehicle while repeatedly revving the engine.

The caller, a motel clerk, remained on the phone with dispatch and reported the actions of the driver in real time. She said he was driving around the parking lot, he was having trouble parking, and he stumbled from the vehicle into his room.

About four minutes after the 911 call ended, officers arrived and met with the motel clerk, who requested that the driver be removed from the premises. The clerk informed officers that the same man had been involved in a hit-and-run at the motel the previous day. She then asked officers if they could issue the man a criminal trespass warning, preventing him from coming back to the motel. She provided his room number, and officers proceeded to the room.

Finding the door partially ajar, officers knocked and announced their presence. After receiving permission to enter, they found the occupant, later identified as Jeffry Webb, lying unclothed in bed. Webb told officers that he had been asleep for the past nine hours. Officers advised him that he was being vacated from the premises due to breaking motel policies, and they instructed him to gather his belongings. While helping him, officers did not find any alcohol in his room; however, they did observe indicators that Webb was likely intoxicated, including slurred speech, red and glassy eyes, and slow motor function.

After helping Webb load his belongings into his vehicle, officers informed him that he would not be permitted to drive and encouraged him to call someone to come get him. Webb contacted his mother, who declined to pick him up. Based on the totality of the circumstances, officers shifted their investigation to a possible driving while intoxicated (DWI) offense.

Police reviewed the motel's surveillance footage, which corroborated the clerk's account: It showed Webb driving his vehicle through the parking lot, parking crooked, exiting, and stumbling into his motel room. Webb was subse-



By Tanya Taylor (left) & Baylee Walters (right)

Assistant Criminal District Attorneys in Gregg County

quently asked to perform the Standardized Field Sobriety Tests (SFSTs), but he refused.

Based on the clerk's statements, surveillance video, admission to drinking alcohol, another patron's statements regarding Webb, and Webb's physical signs of intoxication, officers placed him under arrest for DWI. A search warrant was obtained for a blood specimen, which was collected approximately three hours after his arrest. Webb's blood alcohol concentration was 0.272 grams of alcohol per 100 milliliters of blood, more than three times the legal limit of 0.08.

Unlike a typical DWI prosecution, law enforcement did not personally observe Webb operating a motor vehicle, nor did officers initiate a traffic stop. Instead, the investigation originated from a welfare check. The evidence established Webb's operation of the vehicle through the motel clerk's eyewitness account, surveillance video showing Webb driving mere minutes prior to police arriving, and his observable signs of intoxication immediately thereafter. Alongside the blood test result, the evidence provided a compelling conclusion that Webb was intoxicated while operating his motor vehicle.

Not his first offense

Jeffry Webb has extensive criminal history involving repeated DWI offenses spanning nearly three decades all from Gregg County. His first DWI occurred on December 11, 1996, he pleaded guilty, and he received two years of probation.

Another DWI was taken into consideration with that plea. While he was in his last few months of probation, Webb picked up another DWI and pleaded guilty in June 1999, and he again received two years of probation. After completing his second probation in June 2001, Webb had no arrests for approximately eight years.

However, on August 29, 2009, he was arrested for his first DWI—Third or More and pled guilty in February 2010. Just six months into his probation, Webb was arrested again for DWI. At this point, Webb pled guilty to his fourth DWI and probation on his third was modified. Webb was sent to the Substance Abuse Felony Punishment Facility (SAFPF) for treatment and successfully completed the program. He was released from the SAFPf and the aftercare program around the end of June 2011.

For the next four years Webb appeared to comply with his probation. Then, while on probation for his two felony DWIs, he was arrested for his fifth DWI in May 2015. Because he had never been to prison before, the State could not enhance Webb's sentence. At this point, he pled guilty to his newest DWI, pled true to all the allegations in the revocations on his other two felony DWIs, and was sentenced to five years in the Texas Department of Criminal Justice (TDCJ) with all sentences running concurrently.

A year after Webb completed his TDCJ sentence, he committed another felony DWI offense in November 2021. At this point, he had been arrested for seven DWIs and convicted of six of them. He pleaded guilty in May 2023 and was sentenced to another five years in prison. Webb was later released and while on parole, he was arrested yet again for felony DWI—the one we took to trial. Webb's six prior DWI convictions demonstrated a longstanding pattern of intoxicated driving and repeated criminal conduct despite multiple opportunities for rehabilitation.

An ongoing concern

It is fair to say that DWI cases continue to be a significant public safety concern affecting communities across Texas, including Gregg County. Over the past several months, DWI-related offenses have had a substantial impact here, with many incidents involving crashes, serious injuries, and even fatalities. These cases, particularly the fatal collisions, demonstrate the severe and often irreversible consequences of operating a motor vehicle while impaired on drugs and alcohol.

Prosecuting DWI offenses in our county serves several important purposes: holding offenders accountable for placing our community at risk, enforcing laws to protect public safety, and deterring others from impaired driving. By imposing the appropriate legal consequences, we reinforce that individuals who choose to operate a motor vehicle while intoxicated will be held responsible for the harm their actions may cause the community.

While DWI prosecutions can be challenging due to evidentiary, scientific, and procedural issues, taking these cases to trial (rather than routinely resolving them through plea deals) supports the broader goal of reducing impaired driving in our community. The public is regularly exposed to reports of DWI offenses and the preventable tragedies that can result. To maintain public confidence, law enforcement and prosecutors must vigorously pursue DWI cases. Ultimately, a consistent commitment to prosecuting DWI reinforces the law, promotes accountability, and helps protect the public from preventable harm.

The trial

When picking a jury for this case, we were seeking jurors who would acknowledge the public safety risks associated with intoxicated driving even in an atypical circumstance such as this one. It was important for the jury to understand that circumstantial evidence can be just as persuasive as direct evidence when corroborated.

Because DWI offenses often involve strong personal opinions and experiences, we knew it was important to explore the panelists' backgrounds. We asked prospective jurors whether any panel member, their family, or close friends had been involved in impaired driving situations, including arrests, convictions, crashes, or injuries. These questions helped us identify whether a juror's personal experience might affect the ability to remain fair and impartial. However, the purpose was not to exclude jurors solely based on how they were impacted by intoxicated driving, but to determine whether they could set aside those experiences, evaluate the evidence presented objectively, and render a verdict based solely on the law and facts in this case.

When talking about habitual offenders, we wanted jurors who could consider the full range of punishment authorized by law. We did not necessarily look for individuals who automatically wanted to impose the maximum but instead

When picking a jury for this case, we were seeking jurors who would acknowledge the public safety risks associated with intoxicated driving even in an atypical circumstance such as this one. It was important for the jury to understand that circumstantial evidence can be just as persuasive as direct evidence when corroborated.

Based on his history and the need to protect the public, and honestly, to protect Webb from himself, we asked the jury to impose a life sentence. It was the only verdict that could protect other drivers and members of the community from the continued danger Jeffrey Webb posed.

those who could follow the court's instructions and render a punishment that was fair and consistent. We mentioned that the punishment range could be anywhere from two years all the way up to 99 years or life. Some on the panel thought two years was too low; on the other end, individuals thought life was too high. We posed hypothetical scenarios where jurors could consider two years and scenarios where they could even consider life.

The State used two of Webb's prior felony DWI-Third or More convictions as his jurisdictional enhancements. There were only two prior felonies we could use for enhancement purposes. Strategically, alleging these prior convictions preserved the State's ability to offer them at trial if the defense declined to stipulate. Had that happened, we would have been required to present evidence establishing the prior convictions as a jurisdictional element to the offense. In that case, the jury would have been able to hear about the defendant's prior felony DWI convictions during guilt-innocence for the limited purpose of proving an essential element.

During the punishment phase of trial, we emphasized that Webb was given multiple opportunities to change his behavior and avoid further DWI offenses. The defense called his mother and brother-in-law to the stand, and they both testified about Webb's severe alcoholism and his efforts at rehabilitation. His mother also testified about the family's efforts to help him, including an intervention in which Webb refused to participate. During one of his stints in prison, Webb was sent to a SAFPE, and he had also gone to at least three other private rehabilitation facilities. Despite all of these opportunities to change, he continued to engage in conduct that placed the public at risk.

During closing arguments, we carefully considered the appropriate punishment recommendation. Ultimately, we emphasized Webb's persistent pattern of driving while intoxicated and his repeated failure to take advantage of rehabilitation and counseling. Despite having previously served two other prison sentences, Webb committed the current offense four months after being released on parole.

We argued that his continued intoxicated driving demonstrated a disregard for the law and the safety of the community. Despite prior convictions, incarceration, and opportunities to address his alcohol addiction, he still chose to drink and then drive. Based on his history and the need

to protect the public, and honestly, to protect Webb from himself, we asked the jury to impose a life sentence. It was the only verdict that could protect other drivers and members of the community from the continued danger Jeffrey Webb posed.

After deliberating for only an hour and a half, the jury returned a verdict assessing life. The sentence reflects both the evidence presented and Gregg County's commitment to holding intoxicated drivers accountable and protecting the community from repeat offenders.

Lessons

For prosecutors handling repeat DWI offenders, Webb's case provides an important lesson: Do not be afraid to fully prosecute a case when the facts warrant it. Repeat DWI offenses should be viewed in the context of the defendant's entire history, including prior convictions, failed rehabilitation efforts, and repeated opportunities to change. Prosecutors should be prepared to present these aspects to a jury when a lesser consequence has failed to deter him. In addition, prosecutors should carefully evaluate and pursue enhancements because they can give the jury a more complete picture of the defendant; they can also ensure the defendant's longtime conduct is considered at punishment.

While every case must be evaluated on its own facts, prosecutors should not hesitate to seek the maximum punishment. When the evidence establishes that the defendant poses a substantial danger to the community, seeking a life sentence is not simply about punishment, it is about accountability, public safety, and preventing an avoidable tragedy. When a repeat offender, such as Jeffrey Webb, has been given every opportunity to change but continues to put lives at risk, a life sentence is not simply a punishment—it is a consequence he himself earned. ✱

‘Unlucky’ and ‘ignorant’ drunk driver gets life

On August 9, 2025, Raymundo Ayala was stopped on Interstate 27 in Amarillo by a DPS trooper for speeding and failure to maintain a single lane.

Ayala was driving 67 miles per hour in a 60-mph zone and he almost swerved into a concrete barrier. When the trooper approached the car, he saw Ayala put gum in his mouth. He had incredibly slurred speech and had to use his vehicle for support as he got out and walked around it. He admitted to drinking “only a couple of beers” (just like most defendants we all have prosecuted for driving while intoxicated [DWI]).

Ayala failed the HGN (horizontal gaze nystagmus) test and was unable to safely get in the ready position for the walk-and-turn. He was placed under arrest and taken to a local hospital for a blood draw, which he resisted. The blood sample was sent to a DPS (Department of Public Safety) lab in Lubbock, and his BAC came back at 0.213.

This was to be his twelfth (plus) DWI conviction (and he admitted to even more drunk driving when he testified during punishment at his trial).

A little history

When this case came across my desk, I knew Ayala needed to go away for a long time. He had previously gone to prison four times on six different DWI convictions, and he was currently on parole for his most recent conviction where he was sentenced to 25 years. It was evident from his numerous DWI convictions dating back to 1972 that if he wasn’t in prison, he was on the road putting everyone else in danger.

Drunk driving is a serious problem in Randall County. We see intoxication-related crashes every year. Our office and the public agree that DWIs are completely avoidable and should be punished. Unfortunately, DWI convictions are sometimes the hardest to get.

I remember when I attended baby prosecutor school (TDCAA’s Prosecutor Trial Skills Course), many speakers shared their “why” at the end of their presentation—why they became prosecutors. My “why” is Sarah Grace Dearmond, my col-



By Lauren McAden

(right), pictured with

Alexis Martin

Assistant Criminal District Attorneys in Randall County

lege roommate and an angel on earth. When I was a college sophomore in Lubbock in 2019, Sarah Grace and I went to get ice cream one night. On our way back, we were struck by a drunk driver who ran a red light. Sarah Grace was killed, and I somehow survived with only a concussion, a busted eyelid, and some bruised bones. The other driver pleaded guilty to intoxication manslaughter in 2023 and is currently serving a 10-year sentence.

As a prosecutor these years later, I have sat across from families who have lost loved ones in a similar way and I’ve tearfully told them about Sarah Grace. I know all too well not only how dangerous drunk drivers are but also how it feels to lose someone I love due to someone else’s selfish actions.

It is hard not to take DWIs and intoxication cases personally, but the safety of our community is largely on me as a prosecutor. I do take it personally to do whatever I can to ensure that no one suffers the loss I did. (Thank you, prosecutors in Lubbock County, for speaking with me and providing more information on Sarah Grace’s case. It has helped me in more ways than you know.)

The trial

I tried this case with Alexis Martin. Alexis and I started in our office on the same day in September 2024, and we had been impatiently waiting to

Prior to the start of trial, the defense indicated the toxicologist was going to be an important witness for them. Good thing Alexis had attended a training with W. Clay Abbott, TDCAA's DWI Resource Prosecutor, the week before.

try a case together ever since. I knew she would be the perfect trial partner when it came time to take Ayala to court. We even wore matching or coordinating suits throughout the trial.

I knew there were two potential issues going into voir dire. My first battle would be finding jurors who would still make me prove that Ayala committed a DWI and not automatically assume he committed this offense because he had committed the other two required for a DWI-Third or More. I knew the defense would talk about this issue, so I made sure I did first.

I simply asked if everyone would hold me to my burden and make me prove beyond a reasonable doubt that the defendant 1) committed a DWI and 2) was the same person who committed the two previous DWIs. All the jurors nodded their heads, so I moved on. It wasn't until the very end of voir dire when a potential juror on the last row asked why we were having a trial because Mr. Ayala had two prior convictions. A few other jurors nodded their heads in agreement at the question. I took that opportunity to (again) explain that an indictment is like a traffic ticket: It's not evidence of guilt but notice of what you are being accused of, and Ayala has a right to a jury trial. With that example, everyone seemed to be on board.

My second issue was getting jurors to agree to consider the punishment range of 25 years to life in prison on what they knew was "only" a DWI. I explained enhancements and then used the example of a toolbox to explain the punishment phase of trial. I told jurors that they won't know what tool they need to pull out of their toolbox until they know what the problem is. At guilt-innocence, they determine there's a problem; at the punishment phase, they determine what tools they need to fix the problem. Fortunately for me, all the jurors agreed that they could give meaningful consideration to the punishment range of 25 to life.

I discovered the Thursday before trial that I would have to get a little creative in proving up my jurisdictional priors. The first one was a felony where I had the pen pack and a certified copy of the indictment. But on the second, all I had was a certified copy of a 1986 docket sheet with a cause number, Ayala's name, offense date, and conviction date. Luckily, the indictment for the first felony prior also alleged the 1986 prior. I would have to explain to the jury that Ayala's guilty plea to the felony prior confirmed that he had also been convicted of DWI in 1986. I had a

backup plan to also admit a certified copy of Ayala's driving record, which listed his convictions—the dates of the offense and his arrest matched those on the 1986 docket sheet. I had multiple other judgments and pen packs that also alleged the 1986 prior, but I wanted to keep those in my back pocket for punishment, not only to enhance his punishment but also to show the jury how many convictions Ayala had.

Prior to the start of trial, the defense indicated the toxicologist was going to be an important witness for them. Good thing Alexis had attended a training with W. Clay Abbott, TDCAA's DWI Resource Prosecutor, the week before. Armed with what Clay taught at that training, Alexis preempted every single possible defense argument they could have had for the toxicologist. Alexis had two goals going into her direct examination. The first was to make sure the jury knew the truth about forensic toxicology from the expert before the defense had the opportunity to discredit it. Her second goal was to establish the toxicologist as a subject matter expert, not only as to testing but also the effects of alcohol on the human body. Ultimately, she helped the jury understand the nuances of blood alcohol analysis. While our trooper testified phenomenally, the real star was Alexis's direct examination of the forensic toxicologist.

During closing, I explained to the jury about the priors, using jigsaw puzzle pieces as an example of how each piece of evidence makes up the whole picture, and I walked jurors through every element of a DWI and the evidence that proved each element. I also told the jury that they had everything they needed to find Ayala guilty.

After the State rested, the defense moved for a partial directed verdict. The motion had two main points. The first was that I did not prove that the indictment for Ayala's second felony prior was the indictment to which Ayala pleaded guilty. The second point of the motion was the only thing linking the felony prior to the 1986 prior was Ayala's name, and name alone is insufficient to prove a prior. The defense is right that name alone is not sufficient to prove priors, but there is not one singular way to prove a prior, and the Court of Criminal Appeals has held that the jury is allowed to use their reason and common sense to put the pieces together like a jigsaw puzzle.

zle.¹ The trial court held that there was some evidence linking Ayala to the felony prior and the 1986 prior, and the defense motion was denied.

The jury found Ayala guilty after just an hour of deliberation.

Punishment

For punishment, I had three other pen packs, four docket sheets from the 1980s, and a certified copy of Ayala's driving record. That driving record was really important. I was aware of more DWIs from his criminal history and driving record dating back to 1972, and I was able to get him to admit to those on the stand. When I put everything together, I counted 14 DWIs from three different Texas counties and one in Illinois. Ayala pleaded true to the punishment enhancements; I admitted all my pen packs, docket sheets, and driving records; and the State rested.

Ayala's wife testified at punishment and talked about the life they've had together for over 50 years. During cross examination, Alexis got her to admit Ayala drives drunk all the time and had done it far more times than he had been arrested for.

Ayala also took the stand. On direct examination, he stated he had gotten so many DWIs because he was "unlucky." On cross, I asked him why he kept doing it if he knew he was so unlucky. Ayala simply answered "ignorance." Based on his and his wife's testimony, I genuinely believe he still thinks it's OK to drink and drive.

During defense closing argument, counsel asked the jury to consider the lower end of the punishment range because "Mr. Ayala never intentionally hurt anyone." I knew that line was my perfect opening to bring home to the jury how many times he had driven while intoxicated. I laid every single docket sheet and pen pack on the bannister in front of the jury box, and I told the jury that Ayala was actually *lucky*—lucky he never killed anyone. I reminded the jury they could make sure he never had the opportunity to get behind the wheel again and that sentencing him to life was the way to do that. (Yes, Ayala is a 75-year-old man, so any sentence within the punishment range would be a life sentence. But that didn't change my opinion of asking the jury to consider life. It was clear that if Ayala was not in prison, he would be driving while intoxicated.)

His luck had run out, and we wouldn't allow him an opportunity to potentially kill someone.

The jury returned a verdict of life in just over 30 minutes.

When we talked to a juror after the trial, we asked how the jury got to life. He said that it was a hard decision to impose such a sentence, but the fear of Ayala getting behind the wheel ever again outweighed any concerns they had about him going to prison for life.

Conclusion

I have been a prosecutor for just under two years, and after every trial I try to pick out one thing to keep with me, even if I would rather forget the whole case entirely. In this trial, I learned that juries can tell when you care. I don't tell juries about Sarah Grace, but I know they can tell how much I care about DWIs and related offenses. ❖

When we talked to a juror after the trial, we asked how the jury got to life. He said that it was a hard decision to impose such a sentence, but the fear of Ayala getting behind the wheel ever again outweighed any concerns they had about him going to prison for life.

¹ *Flowers v. State*, 220 S.W.3d 919, 921-22 (Tex. Crim. App. 2007).

A prosecutor's guide to contempt of court

Television has taught us that with the magic words “You’re in contempt!” and the bang of a gavel, the offending speaker is hauled away by a bailiff to sweat out a night in jail, and order is magically restored to the courtroom.

The actual practice of contempt is, of course, not quite as seen on TV. In most courtrooms, contempt is much more rarely seen, and it entails more procedure than many think. Whether faced with the threat of contempt for actions in court or asked by the judge to assist in contempt procedures for a defiant witness, prosecutors need to be aware of the basic procedural requirements of contempt law.¹

What type of contempt are you dealing with?

Contempt of court generally means disobedience or disrespect of a court.² It is considered “strong medicine” and should be used only as a last resort. The first question when looking at any issue for contempt of court is what type of contempt is involved. This will affect every other question that you will deal with, from what notice is required to what penalty can be assessed. Contempt may be either direct or constructive, and either civil or criminal.

Whether contempt is direct or constructive depends on whether it happened in front of the court. Direct contempt involves disobedience or disrespect occurring in the court’s presence. This is the type most familiar to us from television. If the judge directly witnessed the offensive action, he or she may immediately punish the violator. Direct contempt stems directly from the court’s inherent power to punish violations in its presence.³

By contrast, constructive contempt involves disobedience that occurs *outside* of the court’s presence. This most often involves failure to comply with a court order, but it can include any



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act that impedes, embarrasses, or obstructs the court in the discharge of its duties.⁴ If it occurred outside the court’s presence, this type of contempt requires witnesses to be proved. The court is thus required to give the contemnor written notice, hold a hearing, and give the contemnor the opportunity to call witnesses and defend herself against the charges.⁵

The most important classification of contempt is civil or criminal. Despite the name, this classification has nothing to do with the underlying case. Civil contempt may occur in a murder trial as easily as criminal contempt might stem from a divorce. Rather, the classification is dependent on the purpose of the contempt—civil contempt seeks to correct a violation, while criminal contempt punishes the violator.⁶

Civil contempt is also known as “coercive” or “remedial” contempt⁷ because its purpose is to persuade the contemnor to obey a previous order. This is the classic situation of a witness being jailed until he agrees to testify. The judge may assess a fine, imprisonment, or both, and the sentence may be determinate or open-ended. The only requirement is that the contempt is conditional: The contemnor may escape the sentence by complying with the court order. In this

¹ This article is adapted from an article of the same title that I wrote that appeared in the May-June 2008 edition of *The Prosecutor* journal. My hope is, like a fine wine, it has improved with time!

² *In re Luther*, 620 S.W.3d 715, 721 (Tex. 2021).

³ *Ex parte Gordon*, 584 S.W.2d 686 (Tex. 1979).

⁴ *In re Reece*, 341 S.W.3d 360, 366 (Tex. 2011).

⁵ *Ex parte Chambers*, 898 S.W.2d 257, 259 (Tex. 1995).

⁶ *Luther*, 620 S.W.3d at 721.

⁷ *In re Dotson*, 76 S.W.3d 393, 395 n.3 (Tex. Crim. App. 2002); see also *In re Paul*, 698 S.W.3d 568, 569 (Tex. 2024).

way, the contemnors are said to carry “the keys of their prison in their own pocket.”⁸

Criminal contempt, on the other hand, is also known as “punitive” contempt because it seeks to punish a violation.⁹ A lawyer fined for swearing in court is an example of criminal contempt. It is unconditional: The punishment stands regardless of what the contemnor may later do to comply with the court order. Criminal contempt thus requires due process and a higher standard on appeal because of this punitive nature.

Prosecutors should be particularly aware of criminal contempt, as it is considered a *crime* and can thus bar prosecution for the same conduct.¹⁰ If, for example, a person is found in criminal contempt for failure to pay child support, the State may not be able to prosecute him for criminal nonsupport for the same instances of failing to pay.¹¹ The State should charge dates different from the contempt order to not to run afoul of double jeopardy. Similarly, a person held in contempt for lying to the court may not subsequently be prosecuted for perjury for the same lie.¹²

It is possible for a contempt order to be both civil and criminal if it contains elements of each. For example, a judge may jail a lawyer for three days for failing to comply with a discovery order and order him to remain in jail until he complies. The initial unconditional sentence—confinement for three days even if discovery material is turned over immediately—is criminal contempt, while the conditional portion of the sentence—where the contemnor remains in jail only until the discovery is provided—is civil contempt.

⁸ *Shillitani v. United States*, 384 U.S. 364, 368 (1966).

⁹ *Dotson*, 76 S.W.3d at 395 n.3.

¹⁰ *United States v. Dixon*, 509 U.S. 688, 696 (1993); *Ex parte Rhodes*, 974 S.W.2d 735, 740-42 (Tex. Crim. App. 1998).

¹¹ At least one court has suggested that criminal nonsupport and criminal contempt involve sufficiently separate elements so as to not run afoul of double jeopardy. See *State v. Landrum*, No. 05-98-01226-CR, 2000 WL 280317, at *1 (Tex. App.—Dallas Mar. 16, 2000, no pet.) (not designated for publication). It may be worth arguing a distinction to *Rhodes*, but alleging separate dates is the safer option.

¹² *Ex parte Busby*, 921 S.W.2d 389, 393 (Tex. App.—Austin 1996, pet. ref’d).

What kind of due process requirements apply to contempt?

No notice is required for direct contempt, whether civil or criminal, unless it is assessed against an officer of the court.¹³ This is due to the court’s “inherent power to punish” for actions occurring before it, and because the contempt immediately follows offending behavior. This is why a judge can immediately hold a person in contempt and order him jailed or fined for something such as causing a disruption in the courtroom.

However, under Tex. Gov’t Code §21.002(d), if the contemnor is an officer of the court, he has special additional protections, even for direct contempt. Officers of the court include attorneys, bailiffs, clerks, court reporters, or other similar officials. An officer of the court may not be held in direct contempt immediately but instead must be released on a personal recognizance bond pending a hearing to determine his guilt or innocence. He is also entitled to a hearing in front of a judge other than the offended judge. The presiding judge of the administrative district in which the contempt occurred must appoint another district judge to preside over the hearing. This is the only time a court other than the offended court is legally authorized to assess contempt. Because contempt is part of the inherent powers of the court, a court is otherwise not authorized to find a person in contempt for violating another court’s order.

Constructive contempt requires written notice of how, when, and by what means the party committed the alleged contempt.¹⁴ This notice can be in the form of a motion for contempt, a show cause order, or any other equivalent process. Furthermore, because this is a due process issue, merely following the standard rules of service is not sufficient. Sending a notice to the defendant’s home¹⁵ or to his attorney,¹⁶

The only requirement is that civil contempt is conditional: The contemnor may escape the sentence by complying with the court order. In this way, the contemnors are said to carry “the keys of their prison in their own pocket.”

¹³ *Ex parte Krupps*, 712 S.W.2d 144 (Tex. Crim. App. 1986); see also *In re Hesse*, 552 S.W.3d 893, 897 (Tex. App.—Amarillo 2018, no pet.).

¹⁴ *Chambers*, 898 S.W.2d at 261; see also *In re Moreno*, 328 S.W.3d 915, 918 (Tex. App.—Eastland 2010, no pet.).

¹⁵ *In re Gabrielova*, 527 S.W.3d 290, 295 (Tex. App.—El Paso 2016, no pet.).

¹⁶ *In re Lozano*, 696 S.W.3d 222, 229-30 (Tex. App.—San Antonio 2024, no pet.).

Contempt proceedings, including for civil contempt, are quasi-criminal in nature because imprisonment is a possibility. Thus, they must comply with criminal standards of due process.

serving notice by publication under the Rules of Civil Procedure,¹⁷ or even orally notifying him¹⁸ is not sufficient if the defendant can show he had no *personal* knowledge of the setting and was not purposely avoiding service.

The courts do not appear to have addressed precisely how *much* notice is required. The only opinions that deal with a specific timeframe focus on failure to pay child support, which has its own 10-day notice requirement. In other situations, as little as three days' notice has been held sufficient.¹⁹ The key factor is that notice must be "reasonable."²⁰

Due process must also be satisfied at the contemptor's hearing. Contempt proceedings, including for civil contempt, are quasi-criminal in nature because imprisonment is a possibility. Thus, they must comply with criminal standards of due process.²¹ A person is entitled to counsel at a contempt hearing and has the right against self-incrimination.²² But there is no inherent right to a jury trial. A person held in civil contempt has no right to a jury trial, and the right exists in cases of criminal contempt only if "serious" punishment is imposed.²³ Serious punishment is considered confinement for more than six months or a fine greater than \$500. This determination is cumulative, so a series of smaller sentences for multiple violations can be combined to amount to a "serious punishment."²⁴ Finally, the hearing re-

quirement may be satisfied by affidavits.²⁵ The court is required to give the contemptor "a meaningful opportunity" to explain his behavior, but it is not required to hold a live hearing.

How do you prove contempt?

Although the court's power to punish through contempt is broad, contempt is meant to be exercised rarely and is presumed *not* to exist, unless²⁶ three elements are satisfied:

- 1) a reasonably specific order;
- 2) a violation of the order; and
- 3) the willful intent to violate the order.²⁷

To be specific enough to support a constructive contempt finding, an order must spell out the details of compliance in clear, unambiguous terms so that the person knows exactly what she must do to comply with it. Some courts have held that an oral order is *never* sufficiently specific and thus only a written court order may support a constructive contempt finding.²⁸ An oral order may support a *direct* contempt finding, but it must still be clear what the court has ordered the person to do.²⁹

Noncompliance with an unambiguous order of which a person has notice raises the inference that the violation was willful.³⁰ But a person is in contempt only if he has the ability to comply with the court's order but chooses not to.³¹ A person may not, for example, be jailed for failing to turn over property not in his possession. But for this exception to apply, the inability to comply must be *involuntary*.³² If a person puts himself in a position where he is unable to comply with the order, then he may still be held in contempt.

¹⁷ *Ex parte Moore*, 567 S.W.2d 523, 526 (Tex. App.—Texarkana 1978, no pet.).

¹⁸ *Ex parte Vetterick*, 744 S.W.2d 598, 599 (Tex. 1988).

¹⁹ *Ex parte Hodge*, 611 S.W.2d 468, 469 (Tex. App.—Dallas 1980, no pet.).

²⁰ See, e.g., *In re Gabrielova*, 527 S.W.3d 290, 295 (Tex. App.—El Paso 2016, no pet.); *Moreno*, 328 S.W.3d 915, 918 (Tex. App.—Eastland 2010, no pet.).

²¹ *Ex parte Gonzales*, 945 S.W.2d 830, 836 (Tex. 1997).

²² *Id.*; *Ex parte Werblud*, 536 S.W.2d 542, 547 (Tex. 1976).

²³ *Werblud*, 536 S.W.2d at 547. An officer of the court does not have a special entitlement to a jury trial. *Hesse*, 552 S.W.3d at 900-901.

²⁴ *Ex parte Griffin*, 682 S.W.2d 261, 262 (Tex. 1984).

²⁵ *Fahle v. Cornyn*, 231 F.3d 193, 196 (5th Cir. 2000); see also *In re Van Orden*, 559 S.W.2d 805, 806 (Tex. Crim. App. 1977).

²⁶ *Ex parte Taylor*, 807 S.W.2d 746, 748 (Tex. Crim. App. 1991).

²⁷ *Luther*, 620 S.W.3d at 721; *Chambers*, 898 S.W.2d at 259.

²⁸ *Ex parte Wilkins*, 665 S.W.2d 760 (Tex. 1984).

²⁹ *Jacobs*, 664 S.W.2d at 364.

³⁰ *Chambers*, 898 S.W.2d at 261.

³¹ *In re Gawerc*, 165 S.W.3d 314, 315 (Tex. 2005).

³² *Chambers*, 898 S.W.2d at 261; see also *In re D.L.*, 641 S.W.3d 873, 890 (Tex. App.—Fort Worth 2022, no pet.).

What is the punishment for being held in contempt?

Under Tex. Gov't Code §21.002(b) criminal contempt in county or district court is subject to a maximum fine of \$500, confinement in county jail for not more than six months, or both. In a justice or municipal court, under Gov't Code §21.002(c), the limit is \$100 or three days in city jail. This limit is *per violation*, meaning a court could issue a higher punishment if there was more than one violation of an order.³³ A court may opt to have the punishment for multiple violations served consecutively or concurrently.³⁴ But while the fines might well stack indefinitely, confinement is limited to no more than 18 months total for issues arising out of the same matter under Gov't Code §21.002(h)(1).

In civil contempt, under Gov't Code §21.002(h)(2), the maximum confinement is the lesser of 18 months or the period until the person complies with the court order. That means that as soon as the person complies with the order, he should be released, but he cannot be confined more than 18 months total for a single violation even if he never complies. But the statute does not contain any limit on the fines that could be assessed in a civil contempt case.³⁵

Is an appeal of a contempt finding possible?

There is no appellate process for contempt orders, but a contemnor may seek relief through a writ of habeas corpus.³⁶ A reviewing court may not reweigh the burden of proof, but rather a writ will issue only if the contempt order is void, meaning it is beyond the court's power or the contemnor was not afforded due process.³⁷

A contempt order is beyond the court's power if it violates the Texas Constitution.³⁸ Notably,

the Constitution prohibits imprisonment for debt, so a contempt order based solely on a failure to pay a debt is void. This does not apply, however, to failure to pay child support or a criminal fine. In both cases, the failure is considered failure of a legal duty, not a "debt."³⁹

If a person is held in contempt but not imprisoned, then he may be able to seek relief through a writ of mandamus.⁴⁰ The standard is similar to a writ—the contemnor must show that he is unquestionably entitled to relief.

Anything else to remember?

A person may not be released on any sort of bond pending review of a contempt order.⁴¹ Because there is no appeal, there cannot be an appeal bond. The only form of appeal is a writ, but a writ requires illegal confinement. If the trial court permits a bond, then the person is no longer illegally confined, and a writ is not appropriate. However, if the appellate court actually issues a writ, it can order the contemnor released on bond pending the conclusion of its hearing.

A written order is required before a person may be confined for contempt, direct or constructive.⁴² If the contempt is civil, the order must clearly lay out what is required to purge the contemnor of contempt. But the court may order the person detained for a reasonable time while the written order is prepared.

Finally, remember that contempt orders must be carefully worded. If an order requires a person to pay a single lump sum for multiple violations, then the entire order is void if even one of those acts is found not to be a proper basis of contempt.⁴³ However, if the order lists an amount for each individual violation, then an improper violation could simply be struck and the person required to pay the remaining amount.

If a person is held in contempt but not imprisoned, then he may be able to seek relief through a writ of mandamus. The standard is similar to a writ—the contemnor must show that he is unquestionably entitled to relief.

Continued on page 33 in the orange box

³³ *Rosser v. Squier*, 902 S.W.2d 962 (Tex. 1995) (noting maximum punishment of \$3,000 for six violations).

³⁴ *In re B.G.B.*, 580 S.W.3d 310, 316 (Tex. App.—Tyler 2019, no pet.).

³⁵ *In re Mittelsted*, 661 S.W.3d 639, 656 (Tex. App.—Houston [14th Dist.] 2023, no pet.).

³⁶ *In re Henry*, 154 S.W.3d 594, 596 (Tex. 2005).

³⁷ *Chambers*, 898 S.W.2d at 259-60; *B.G.B.*, 580 S.W.3d at 316.

³⁸ *Henry*, 154 S.W.3d at 96.

³⁹ *Id.*

⁴⁰ *Rossier*, 902 S.W.2d 962; *In re Cisneros*, 487 S.W.3d 237, 241 (Tex. App.—El Paso 2015, no pet.).

⁴¹ *Ex parte Eureste*, 725 S.W.2d 214, 216 (Tex. Crim. App. 1986).

⁴² *Ex parte Barnett*, 600 S.W.2d 252, 256 (Tex. 1980).

⁴³ *Henry*, 154 S.W.3d at 598; see also *Mittelsted*, 661 S.W.3d at 655.

‘Modern-day bank robbery’

During an open plea on a case involving Romanian defendants who placed credit card skimmers and pin-hole cameras around Dallas County,

I argued to the judge, “It’s a modern-day bank robbery, but instead of stealing from banks, they are stealing from everyday people—783 people.”

In July 2025, I got a call from Special Agent Jerry Alvarez with the Texas Financial Crimes Intelligence Center (Texas FCIC). Agents there were following another group of Romanian skimmers. I had previously handled a case involving a similar group, so he wanted to give me a heads-up that they had another one under surveillance.

Like the group before them, these criminals were placing skimmers and pin-hole cameras at ATMs inside several CVS and Walgreens locations throughout South Dallas. A manager at Walgreens noticed the skimmer inside one of the ATMs and, having worked with Special Agent Alvarez in the past, called him to come out and take a look.

Once there, Texas FCIC agents secured the ATM and began reviewing surveillance videos to determine who had placed it there. They discovered that the day before, a man had been standing by the ATM, pulled the pin-hole camera out of his shorts and secured it onto the machine. Using the store’s closed-circuit footage and security videos from surrounding businesses, investigators identified the vehicle the three suspects arrived in. It was parked two businesses over.

The following day, the vehicle was located near a CVS. After the suspects left the store, Texas FCIC agents went inside. They did not locate a skimmer but found glue residue on the ATM left behind from the placement and removal of a pin-hole camera. After a day of surveillance, the three suspects were arrested and their Airbnb searched.

This was my second group of Romanians involved in skimming cases and there is a third group I’m dealing with now. I also had prior interactions with a fourth Romanian group the year before that involved Sam’s Club and the theft of almost \$700,000 in food stamps. I’m not sure why the Dallas–Fort Worth area is being hit so hard by Romanian credit card skimmers, but I know from working with Texas FCIC that the



By Aja Reed

Assistant Criminal District Attorney in Dallas County

problem isn’t limited to Dallas. They are hitting other major cities in Texas and across the nation.

Skimmers and how they work

There are two basic types of skimming devices. The first is what is referred to as a deep-insert skimmer. It is thinner than a credit card and is inserted into the ATM card slot. Once a customer enters a debit card, the deep-insert skimmer records the bank account information. These devices work in conjunction with a pin-hole camera. It is the smallest camera you can imagine, about the size of the tip of a pin. It is attached to the ATM and records unsuspecting victims as they type in their PINs (personal identification numbers).

Once the skimmer has been in place for a couple of days, both devices are removed from the ATM and the data is downloaded onto a laptop. The suspects then match up the timing of the card swipe with the entry of the PIN. Once they have a match, they re-encode another card—typically a stolen gift card—with the account data using a re-encoding machine and a laptop. They then write the PIN on a small sticky note attached to the gift card because the cards are used repeatedly.

The other type of skimmer is called an overlay. This larger device fits over the front of the ATM. I’ve also had cases in which the overlay was placed directly onto the point-of-sale terminal at a small grocery store. The overlay records the data as customers swipe their debit cards, but it doesn’t require a pin-hole camera because it records the PIN as it’s typed in. The overlay is

then removed, the data is downloaded onto a laptop, and it's then re-encoded onto gift cards.

Once criminals have your account information and PIN, they can drain your bank account, the amount of which is limited only by your bank's daily withdrawal limit. Texas FCIC has found that these groups aren't just targeting debit cards. They are also stealing food stamp benefits using the same methods.

How the Romanians work

The Romanians follow a general timeline. When they arrive in a new city, they rent out an Airbnb. They ship their equipment and supplies to the city rather than risk getting pulled over while transporting them in a vehicle. They usually have multiple types of skimmers designed to fit different types of ATMs. In fact, this group had a skimmer labeled Buc-ee's.

Once they are set up, they spend a couple of days conducting surveillance to determine the best ATM locations, which size skimmer they will need, the best place to park, and other logistical details. Then they install the skimmers and pin-hole cameras. They periodically go back and check on their skimmers to make sure they haven't been removed. They then remove them, download the data, and install additional skimmers. They continue this process for a week or two.

Then comes the cash-out phase. The cash-out will be done quickly, typically within two or three days, before banks detect any fraud and while the criminals can still withdraw as much cash as possible. At the same time, they pack up the equipment and get it ready to ship to the next city. They will stay in one location for only about three weeks. In my prior case, the group had operated in Dallas, California, Kansas, and then returned to Dallas. This is one reason these groups are so difficult to catch—they move quickly, they are highly transient, and they abandon belongings at the first sign of trouble.

Romanian vs. Romani

There is a distinction between Romanian organized criminal groups and organized criminal groups made up of Romani families. Although both may originate from Romania and may have connections to Romania, they are not necessarily part of the same criminal organization or network.

In our experience, some of the Romani organized criminal groups operate more like tradi-

To sum it all up

With luck, you will never have to use the information from this article. But if you do find your-

self involved in a contempt proceeding, there are a few questions that can help you quickly get a handle on the situation:

- Did the offensive behavior happen in front of the judge? Is the offender an officer of the court, meaning an attorney, bailiff, court reporter, etc.? If your answers are "no" or "yes," respectively, then you need to fulfill all due process requirements.
- Was there a court order specific enough to support a finding of contempt?
- Did the offender have the ability to comply with the order? If not, did the offender put herself in the position of not being able to comply?
- Did the offender receive personal notice of the contempt charge and the ability to defend against it in some form?

This is far from an exhaustive study of contempt, but I hope it will provide a good base of knowledge. Whether you are contemplating courses of actions, you become involved in a hearing at a judge's request, or you hear those magic words ("You're in contempt") yourself, I hope this article will help you find the information you need. ❀

tional family-based organized crime organizations. The criminal activity is often centered on extended families, with different members taking on different roles and generating money for the family. Leadership and influence can remain within the family, with older generations grooming younger ones to continue the criminal enterprise. Some groups also maintain their own internal criminal resolution or customary judicial practices rather than relying exclusively on the formal government system.

These groups can operate in relatively small, independent cells or family groups throughout the United States. They may have relationships with other families or criminal groups in Romania and may send proceeds back to Romania while still maintaining family members and an active criminal presence in the United States.

That is different from simply saying that all the Romanian groups are connected. In the particular investigation in this article, we identified this group as a Romanian organized criminal group, separate from the traditional family-based Romani organized crime groups. At this time, we have not identified a direct organizational connection between this group and the other Romanian or Romani groups that we have prosecuted or are currently prosecuting. The fact that these groups are Romanian or originate from the same general region does not, by itself, establish that they are connected.

Back to my case

When Texas FCIC finally arrested the three suspects, officers executed a search warrant on the Airbnb. What they found was astonishing:

\$32,700 in cash; 237 re-encoded gift cards; SD cards containing victims' card numbers; ATM skimming parts to construct a total of 115 skimmers; 71 pin-hole cameras; six PIN pad overlays; materials to build skimmers as well as the tools to remove them; two re-encoding machines; 25 fraudulent passports and international IDs; laptops; and several cell phones.

One of the biggest challenges after the arrest was determining the suspects' true identities because they possessed so many fraudulent passports and international IDs. They were finally identified as Gheorge Ciprian Hilitanu, Victor Tecu, and Ionut Firan Alexandrau, all from Romania. They had no prior criminal history.

I charged each of them with engaging in organized criminal activity, unlawful use of a wire or electronic communication, fraudulent use or possession of more than 50 credit or debit cards, and tampering with a government record (for all the fake international IDs and passports).

Once Texas FCIC had everything analyzed, it was determined there were 783 unique stolen victim accounts. Seven hundred eighty-three individual victims. It wasn't possible to calculate the total financial loss, but we knew exactly how many people had been victimized simply because they had used an ATM.

An open guilty plea

Hilitanu elected to go open on punishment because he rejected my offer of 20 years in prison. During the open plea, I called Special Agent Alvarez to educate the judge on how skimmers work. Using demonstrative videos, I highlighted the ease with which these devices can be placed and the clarity of the videos from the pinhole cameras. I also played the surveillance videos from the stores showing each of the defendants pulling cash out of the ATMs. By the time they were arrested, they were in the midst of the cash-

Photos of the IDs, gift cards, and cash (below left) and the skimmers and parts of skimmers (below right) the defendants used to steal from victims.



out phase and were boxing up their equipment to move on to the next city. We had caught them just in time.

When it came time for closing arguments, the sheer number of devices was compelling evidence. But the most powerful evidence was the number of victims: 783.

In handing down her sentence, the judge said that while each withdrawal may have been only \$200, the maximum at most ATMs, it could have a huge financial ripple effect on each victim's life. She noted that anyone can become a victim of this type of crime. She sentenced Hilitanu to 30 years on the engaging and fraudulent use charges and 20 years on the tampering and the unlawful use of electronic communication charges.

Following Hilitanu's open plea, the other two defendants accepted the State's offer of 20 years apiece.

Help for future cases

One reason this prosecution was successful was the close working relationship our office has developed with the Texas Financial Crimes Intelligence Center. As financial crimes continue to grow in complexity, prosecutors and investigators increasingly rely on specialized resources. The Texas FCIC has become an invaluable partner by providing experienced special agents who understand the sophisticated methods used by today's financial criminals. The agency continues to expand across Texas, and every special agent is a licensed peace officer with extensive experience investigating complex financial crime schemes.

The Texas FCIC's mission extends well beyond conducting investigations. The agency works alongside local law enforcement by providing investigative assistance, technical expertise, and training on emerging financial crime trends. Its special agents routinely assist with cases involving ATM skimming, ATM jackpotting, point-of-sale skimming, gas pump skimming, business email compromise (BEC), money laundering, cryptocurrency-related offenses, tap-to-pay fraud, gift card fraud, and organized criminal enterprises that exploit elderly victims for financial gain. These investigations often span multiple jurisdictions; involve intricate, hard-to-trace schemes; and require extensive analysis to identify the individuals responsible.

Just as important, the Texas FCIC serves as a key resource for prosecutors. Financial crime cases can be difficult to present to a jury because of the volume of records and the intricacy of the underlying scheme. Texas FCIC assists prosecutors in organizing evidence, tracing the movement of funds, and translating complicated financial schemes into presentations that juries can understand. Its support allows prosecutors to focus on proving the elements of the offense while ensuring the jury can clearly follow the crime from beginning to end.

Skimming cases are not difficult to prove, but the perpetrators are difficult to catch. These groups are sophisticated and move quickly. Groups have moved through Dallas without us knowing they were here until abandoned skimmers were discovered in ATMs or other targeted machines.

If you get one of these cases, it is important to work closely with both the merchant and the investigating law enforcement agency. Stores are highly motivated to assist because these crimes affect their customers. Everyone involved has an interest in protecting the public. The surveillance videos will be among your strongest pieces of evidence. You should also be prepared to educate the judge or jury on how skimmer devices and pin-hole cameras work because most people have no idea how easily these crimes can be committed.

Most importantly, emphasize that this crime can happen to anyone. There are a few things consumers can do to protect themselves:

- use tap to pay or a digital wallet;
- if you cannot tap to pay, use the chip reader rather than swiping the card;
- use credit cards rather than debit cards, as credit cards offer better fraud protection;
- monitor your bank accounts;
- when withdrawing cash from an ATM, shield your hand while typing in your PIN; and
- rather than using an ATM to withdraw cash from your account, go inside the bank to see a teller. (For more information on how to protect yourself, please visit <https://fcic.texas.gov/consumer>.)

For these criminal groups, it is a low-risk crime with a high payoff. It's certainly easier than robbing a bank. ❖

TCOLE compliance for prosecutor offices

Last year, Jeff Case, a DA Investigator in Wilbarger County, did all prosecutor investigators a service by laying out several TCOLE (Texas Commission on Law Enforcement) requirements that were arriving all at once:

new-hire documentation, the Target 100 training initiative, new model policies, and minimum standards for law enforcement (LE) agencies. His article answered the question many of us were asking at the time: “What changed?”¹

A year later, the question itself has changed. The policies have been adopted, the first round of deadlines have passed, TCOLE has continued amending its rules, and agencies are being audited under the new framework. The question now is: “Can we prove we are doing what our policies say we do?”

That is a different kind of compliance problem, especially for a county or district attorney’s office. We are law enforcement agencies for TCOLE purposes, but most of us do not look like traditional patrol departments. Our investigators may work in unmarked vehicles, support prosecutors and grand juries, locate witnesses, execute warrants, handle evidence, provide courtroom security, and assist other agencies. Human resources, payroll, purchasing, records, information technology, and risk management may all be county functions located outside the investigative division. A policy written for a police department does not always fit neatly into that structure.

I have learned that compliance is no longer just a policy-binder project; it is an operational system and a Greek tragedy. The policy must match the mission; somebody must own each reporting requirement; and the office must be able to produce the supporting record when TCOLE asks for it. The policy will also have to navigate the waters of bureaucracy (aka county government).

¹ Read his article at www.tdcaa.com/journal/tcoles-requirements-for-prosecutors-offices.



By Federico Gutierrez

Chief Investigator in the 49th Judicial District Attorney's Office

Model policies are now part of the operating environment

The four TCOLE model-policy deadlines Jeff discussed in last year’s article have all passed. The Medical and Psychological Examination of a Licensee policy had an agency-adoption date of September 1, 2024. The Hiring Procedures, Misconduct Allegations, and Personnel Files policies each had an adoption date of June 1, 2025. TCOLE continues to instruct every LE agency to adopt the model policy or a substantively similar one and submit it to TCOLE.²

The important development since last year’s article is that several of these concepts are no longer living only in a model-policy document. Effective November 1, 2025, amended 37 Texas Administrative Code §211.29 placed significant misconduct-investigation and file-maintenance duties directly into the rule governing agency chief administrators. Among other things, the rule requires an agency to initiate an appropriate investigation when it becomes aware of qualifying misconduct; complete the investigation even if the licensee separates; make required reports

² Texas Commission on Law Enforcement (TCOLE), *The Briefing*, July 2026, p. 14, “Adopted Model Policies,” www.tcole.texas.gov/document/briefing-july-2026.pdf.

to TCOLE; maintain personnel and department files; and provide those files when required.³

For chief investigators, that changes the mindset. A policy cannot simply be adopted, signed, and shelved. If the policy requires an investigation, notification, file entry, training record, or report, there needs to be a repeatable process that makes that action happen and leaves a record showing that it happened.

The audit file is not the same thing as the HR personnel file

One of the most useful documents is TCOLE's current Appointing Agency Audit Checklist. It tells an agency what TCOLE expects to find in an appointment file, depending on whether the person is a new licensee, has a break in service of 180 days or less, or has a break longer than 180 days.⁴

The checklist includes familiar documents such as the Personal History Statement, F-5R, National Decertification Index check, Background Confirmation Form, applicable L-2 and L-3 records, CCH and fingerprint returns when required, proof of citizenship and education when applicable, military discharge records, certified court dispositions, annual firearms qualification, and the L-1 or L1-T. The checklist also warns agencies not to submit the L-1 until all required pre-appointment documentation is in place and states that the BCF must be approved before the L-1 is entered in TCLEDDS (Texas Commission on Law Enforcement Data Distribution System).⁵

But the sentence I would put a box around is at the bottom of the checklist: TCOLE directs agencies to keep all auditable documents together in a secure but easily accessible folder, separate from personnel files or unrelated documents, and to retain that audit file for at least five years after termination of the appointment.

That can be counterintuitive in a prosecutor's office. County HR departments may have an excellent employment file. The elected prosecutor may have an administrative file. The investigative division may have training records. None of that necessarily means the TCOLE audit file is complete. The person responsible for TCOLE compliance should be able to pull one licensee's audit file and walk through the current checklist line by line without hunting through several departments.

There is also a second distinction worth remembering. Under the TCOLE Personnel Files model policy, "personnel file" and "department file" have specific meanings. The personnel file includes commendations, disciplinary documents arising from sustained misconduct, and periodic supervisor evaluations. Other agency-use information, including certain records involving allegations that are not sustained, belongs in the department file under the model-policy framework.⁶ These TCOLE categories do not always match the names your county HR department uses. Agree on the vocabulary before the auditor arrives.

A recent audit

Chief Investigator Ruben J. Segovia of the Criminal District Attorney's Office in Bexar County recently shared with fellow investigators the result of his May 27, 2026, TCOLE audit. He reported that the review took three to four hours and resulted in no deficiencies. The TCOLE Chief Administrator Audit Scoresheet classified the review as a successful audit and reflected a Career Audit Score of zero.⁷

What I found just as useful was what happened after a successful audit. Chief Segovia explained that he nevertheless came away with two additional policies he intended to create and put in place. In other words, "no deficiencies" did not mean "nothing left to improve." The audit also served as technical assistance and a chance to

There is also a second distinction worth remembering. Under the TCOLE Personnel Files model policy, "personnel file" and "department file" have specific meanings.

³ 37 Tex. Admin. Code §211.29; Texas Register, adopted rule effective Nov. 1, 2025, www.sos.state.tx.us/texreg/archive/October242025/Adopted%20Rules/37.PUBLIC%20SAFETY%20AND%20CORRECTIONS.html.

⁴ TCOLE, Appointing Agency Audit Checklist, Rev. 7-11-25, www.tcole.texas.gov/document/agency-audit-checklist-rev7-4-25.pdf.

⁵ *Id.*

⁶ Texas Commission on Law Enforcement, State of Texas Model Policy: Personnel Files, www.tcole.texas.gov/document/mp-pf.pdf; Tex. Occ. Code §1701.4535.

⁷ TCOLE, Chief Administrator Audit Scoresheet, Ruben J. Segovia, May 27, 2026 (copy provided to author); email from Chief Ruben Segovia regarding audit experience (copy provided to author).

Prosecutor offices frequently hire experienced peace officers from other agencies. This practice can create a false sense of simplicity because the applicant is already licensed. TCOLE's model hiring policy and audit checklist show why that assumption is risky.

tighten the agency's compliance program before a gap became a deficiency.

The scoresheet itself is worth understanding. TCOLE's form describes a baseline audit; a successful audit; an audit with deficiencies; and an audit involving multiple, repeated, or uncorrected deficiencies. It also explains that corrective action is tied to an agency chief administrator's career audit score and that rule violations discovered during an audit may be referred separately to TCOLE Enforcement.

That is consistent with the rule. Under 37 Texas Administrative Code §211.26, LE agencies are audited at least once every five years, and agencies with deficiencies may be evaluated more frequently. If deficiencies are identified, the chief administrator must tell TCOLE in writing within 30 days what corrective steps are being taken and the expected compliance date. TCOLE may perform a follow-up audit, and failure to correct deficiencies may lead to administrative penalties or other disciplinary action.⁸

Texas Occupations Code §1701.507 separately authorizes an administrative penalty against a law enforcement agency or governmental entity of up to \$1,000 per day, per violation. The statute requires a Chapter 2001 proceeding and directs TCOLE to consider the seriousness and history of the violation, deterrence, corrective efforts, and other matters justice may require.⁹ That is not an automatic \$1,000 fine every time an auditor finds an error, but it should get every chief administrator's attention.

Hiring is still where small gaps become large problems

Prosecutor offices frequently hire experienced peace officers from other agencies. This practice can create a false sense of simplicity because the applicant is already licensed. TCOLE's model hiring policy and audit checklist show why that assumption is risky.

A background investigator must obtain the required consent, review prior law-enforcement employment records, check the National Decer-

tification Index, complete the required criminal-history and fingerprint work, document the review, and make the required TCOLE submissions. TCOLE's Hiring Procedures model policy says prior-agency file review may be done electronically or in person, but not simply by telephone. If a prior agency has no records, does not respond, or no longer exists, the investigator should document what was done to locate the records and why they could not be obtained.¹⁰

The practical answer is to make the current TCOLE audit checklist part of the hiring packet. Do not wait until after the investigator is appointed to discover that a fingerprint return, certified disposition, background confirmation, or prior-agency documentation is missing. A supervisor should perform a second-person review before the L-1 is submitted. In short, your elected prosecutor may not be aware how intrusive TCOLE requires the licensing component to be.

Misconduct investigations require a reporting workflow

The Misconduct Allegations model policy is another area where prosecutor offices should slow down and map the process. The policy:

- requires an appropriate administrative or criminal investigation when the agency becomes aware of qualifying misconduct,
- calls for completion within 180 days absent other controlling law or agreements,
- requires reporting of certain criminal investigations to TCOLE within 30 days after completion, and
- requires a summary report of an administrative misconduct investigation within the applicable reporting period. Separation does not end the duty to finish the investigation.¹¹

This becomes especially important in a prosecutor office because the same event can touch several roles at once: the elected prosecutor, chief investigator, county HR, civil counsel, internal-

⁸ 37 Tex. Admin. Code § 211.26; Texas Commission on Law Enforcement, TCOLE Statutes and Rules Handbook (Nov. 1, 2025), pp. 20-21, <https://tcole.texas.gov/document/tcole-handbook-2025.pdf>.

⁹ Tex. Occ. Code §1701.507; 37 Tex. Admin. Code §223.2.

¹⁰ Texas Commission on Law Enforcement, State of Texas Model Policy: Hiring Procedures, www.tcole.texas.gov/document/mp-hp.pdf; Tex. Occ. Code §1701.451.

¹¹ Texas Commission on Law Enforcement, State of Texas Model Policy: Misconduct Allegations, www.tcole.texas.gov/document/mp-ma.pdf; Tex. Occ. Code §1701.4522.

affairs investigator, and sometimes a criminal prosecutor. Decide in advance who opens the administrative file, who watches the 180-day clock, who determines whether a Misconduct Investigation Report is required, who makes the TCOLE submission, and where the final report is stored. A shared calendar entry or a simple tracking log can prevent a missed statutory or policy deadline.

TCOLE's new employment database changes the day-to-day workflow

Another major change since Jeff's article is the statewide OpenText Records Repository, or OTRR. TCOLE announced in its July 2026 *The Briefing* newsletter that OTRR is now available statewide and that agencies can begin submitting personnel files for separated licensees. Background investigators will use OTRR to access personnel files, medical and psychological examination failure records, Misconduct Investigation Reports, fitness-for-duty records, and department-file documents as allowed by law.¹²

Access is not automatic. Chief administrators or delegates must assign OTRR roles through the new Assignment Status Manager in TCLEDDS. TCOLE also cautions that existing SecureShare users will not automatically carry over to OTRR as SecureShare is phased out. For agencies with zero to 99 peace officers, TCOLE currently allots two OTRR users.

That is a small administrative detail with a large operational consequence. If only one person knows the system and that person is out, retires, or changes assignments, a hiring or separation deadline can become somebody else's emergency. Designate a primary and backup user, make sure both can actually log in, and document the office's upload and background-investigation workflow now.

Prosecutor offices have a classification issue

Effective November 1, 2025, TCOLE amended Rule 211.1 to add definitions for full-time peace officer, part-time peace officer, and reserve law enforcement officer. TCOLE explained that the

change was intended to improve the correct categorization of appointments.¹³

This matters to prosecutor offices that use retired officers, unpaid investigators, or investigators who work limited schedules. The label an office has historically used is not necessarily the appointment category TCOLE will apply. In our office, we reviewed the status of non-payroll investigators in light of the new definitions and the statutory authority for prosecuting attorneys to appoint reserve investigators. The broader lesson is simple: Compare every investigator's actual work, compensation, benefits, and statutory appointment authority against the current TCOLE definition, then make sure TCLEDDS reflects the correct category. A short conversation with your regional TCOLE field agent can save a much longer correction later.

Do not copy a patrol policy without adapting it

One reason these requirements are puzzling for CA and DA investigators is that some minimum standards were drafted around functions our offices rarely perform. Vehicle pursuits are an easy example. We investigators have traditionally driven unmarked units and do not conduct routine traffic enforcement or patrol. That does not mean the office should ignore a required policy; it means the policy should accurately state the office's mission, equipment, authorization, supervisory expectations, and operational limitations.

The same principle applies to evidence storage, uniforms, public-access signage, use of force, communications equipment, and other minimum standards. A policy that says your office never does things it never does is not better compliance. Rather, a policy that clearly explains how the requirement applies to your actual operation is far more useful to your investigators and to an auditor.

TCOLE's pending September 1 framework is also worth watching closely. In May 2026, TCOLE proposed amendments to Rule 211.16 that expressly listed agencies consisting of

One reason these requirements are puzzling for CA and DA investigators is that some minimum standards were drafted around functions our offices rarely perform.

¹² Texas Commission on Law Enforcement, *The Briefing*, July 2026, pp. 2–6, www.tcole.texas.gov/document/briefing-july-2026.pdf.

¹³ 37 Tex. Admin. Code §211.1; Tex. Gov't Code §41.102; *Texas Register*, adopted rule effective Nov. 1, 2025, www.sos.state.tx.us/texreg/archive/October242025/Adopted%20Rules/37.PUBLIC%20SAFETY%20AND%20CORRECTIONS.html.

The practical effect of that policy list became clearer while Brad Hendricks, an Assistant Criminal District Attorney in the Civil Division of the Kaufman County District Attorney's Office, and I compared our manuals.

county or district attorney investigators among the entities presumed to provide public benefit. The same proposal would require an annual continued-compliance report between January 1 and March 1. TCOLE's July 2026 *The Briefing* reports that the commission adopted amended §211.16 on June 25, 2026, with an effective date in the proposed text of September 1, 2026.¹⁴ Because the final filed text should control, chiefs should verify the final version as it is published before relying on any specific new subsection.

The practical effect of that policy list became clearer while Brad Hendricks, an Assistant Criminal District Attorney in the Civil Division of the Kaufman County District Attorney's Office, and I compared our manuals. We exchanged ideas to comply with the directives set out in §211.16, including domestic-abuse protocols and barricaded-subject response. For active-shooter response, Hendricks obtained ALERRT's model policy and modified it to better fit a district attorney's office while keeping the ALERRT framework at its core. That is the balance prosecution offices should be looking for: Meet the standard but write the policy for the agency that will actually have to use it.¹⁵

The same exchange exposed another requirement that is easy to overlook. The proposed §211.16 text requires a public area with written notices posted and visible 24 hours a day explaining how to obtain immediate emergency assistance, how to make a nonemergency crime report, and how to submit a compliment or complaint about an agency member. That sounds simple until the courthouse doors lock. Hendricks asked his TCOLE representative how Kaufman County should comply when it has no public lobby open around the clock. The repre-

sentative advised that placing the required notices in the notice box outside the courthouse door would satisfy the requirement. That is field guidance rather than language in the rule, but the lesson is valuable: If your building is not open 24 hours, do not wait for an audit to decide what "visible 24 hours a day" means at your location. Ask your field service agent, document the answer, and build the solution into your compliance file.

Know to whom the September 1 deadline applies

House Bill 33 created Public Information Officer (PIO) certification requirements, but prosecutor offices should be careful not to read that requirement too broadly. Government Code §411.3735 applies the law-enforcement-agency PIO requirement to municipal police departments, sheriff's offices, county constable's offices, school district police departments, and the Department of Public Safety. Separately, Government Code §418.332 requires a municipality, county, independent school district, open-enrollment charter school, and the Texas Division of Emergency Management to employ or appoint a PIO. The proposed §211.16 language tracks the specifically listed LE agencies and does not list county or district attorney investigator agencies in its PIO subsection.¹⁶

For a prosecutor office, that distinction points toward coordination rather than duplication. The county's certified PIO may already satisfy the county-level obligation, while a district attorney's investigative agency is not expressly listed among the agencies subject to §211.16's PIO subsection. Covered PIOs who were already serving before House Bill 33 took effect have until September 1, 2026, to obtain the required certification. Before creating a separate investigative-division position solely for compliance, confirm the office's status with TCOLE and county counsel, and document the answer.

¹⁴ *Texas Register*, proposed amended 37 Tex. Admin. Code §211.16, May 22, 2026, www.sos.state.tx.us/texreg/archive/May222026/Proposed%20Rules/37.PUBLIC%20SAFETY%20AND%20CORRECTIONS.html; TCOLE, *The Briefing*, July 2026, p. 14 (reporting adoption June 25, 2026).

¹⁵ Email from Brad Hendricks, Assistant Criminal District Attorney, Civil Division, District Attorney's Office in Kaufman County, regarding §211.16 policy development, ALERRT model-policy adaptation, and 24-hour public-notice guidance from the office's TCOLE representative (copy provided to author).

¹⁶ Tex. Gov't Code §§411.3735, 418.332-.334; HB 33, 89th Leg., R.S. (2025), enrolled version, <https://capitol.texas.gov/tlodocs/89R/billtext/html/HB00033F.htm>; Texas Commission on Law Enforcement, *The Briefing*, July 2026, p. 7, Public Information Officer Certification, www.tcole.texas.gov/document/briefing-july-2026.pdf; *Texas Register*, proposed amended 37 Tex. Admin. Code §211.16, May 22, 2026.

Training did not end with Target 100

The 2021–2025 training cycle that drove the Target 100 push is over, but training compliance should remain on the chief administrator’s dashboard. The current two-year unit runs from September 1, 2025, through August 31, 2027. TCOLE’s current guidance requires peace officers to complete at least 40 hours for the unit, including the legislative update, “Protecting Your TCOLE License,” and 16 hours of ALERRT (Advanced Law Enforcement Rapid Response Training). TCOLE also states that peace officers must have completed ALERRT Level 1 by August 31, 2027.¹⁷

Do not wait until the summer of 2027 to run the report. Review each investigator’s MyTCOLE compliance status at least quarterly and build enough lead time for course availability, travel, medical leave, military duty, and new appointments.

The system that has worked for me

If I had to reduce TCOLE audit readiness to one practice, it would be this: Build the audit before the audit is scheduled. Keep a master TCOLE compliance folder for the agency’s adopted policies, proof that the policies were submitted, current organizational information, minimum-standard documentation, user-access assignments, annual reporting confirmations, and correspondence with the field service agent. For each licensee, maintain the separate auditable appointment file required by the TCOLE checklist. Use the current checklist as the file index. Review the files periodically and again before any appointment or separation submission. Thank you, Deputy Chief Ricardo Mendez, for maintaining this methodology within our agency.

Next, assign an owner and a backup for every recurring duty: TCLEDDS, OTRR, hiring backgrounds, misconduct reports, training compliance, firearms qualification, racial-profiling reporting or exemption, PIO compliance, and policy updates. In a prosecutor office, responsibility can easily fall between the investigative division and county administration because each

assumes the other is handling it. Put the assignment in writing.

Finally, maintain a relationship with your TCOLE field service agent. The experience shared by Chief Segovia reinforces something I have also found: The field service side of TCOLE can be a valuable technical-assistance resource. Asking a question before an appointment, filing, or policy decision is much easier than explaining the same issue during an audit.

Final thoughts

The new TCOLE environment can feel awkward for prosecutor investigators because we are being measured under standards designed for the entire Texas law-enforcement community while our day-to-day mission is different. However, the solution is not to treat the rules as somebody else’s problem. Our advantage is that prosecutor offices already understand proof. We build cases by documenting what happened, when it happened, who was responsible, and where the evidence can be found. TCOLE compliance requires the same approach.

There’s a lesson here in Homer’s *Odyssey*. Odysseus always knew his destination was Ithaca, but reaching it required him to adapt to the conditions he encountered along the way. TCOLE sets the destination by establishing the standards an agency must meet. How a prosecutor office sails there can, and should, reflect its own mission, staffing, facilities, and responsibilities. We can make a policy our own without changing the destination. We can chart our own course, but we still must reach Ithaca.

Adopt the right policy. Make the policy fit the office. Assign responsibility. Keep the proof. Then audit yourself before TCOLE does. ✱

The new TCOLE environment can feel awkward for prosecutor investigators because we are being measured under standards designed for the entire Texas law-enforcement community while our day-to-day mission is different. However, the solution is not to treat the rules as somebody else’s problem.

¹⁷ Texas Commission on Law Enforcement, *The Briefing*, October 2025, pp. 4-5, www.tcole.texas.gov/document/briefing-october-2025.pdf; 37 Tex. Admin. Code §218.3.

TDCAA's upcoming in-person conferences and online courses

Visit www.tdcaa.com/training for more information on any of these courses and to register for them.

TDCAA in-person conferences

Civil Practitioner Boot Camp, October 14–16, at the Embassy Suites by Hilton, 270 Bass Pro Dr., in Round Rock.

Key Personnel & Victim Assistance Coordinator Conference, November 4–6, at the Sheraton Fort Worth, 1701 Commerce St., in Fort Worth.

Elected Prosecutor Conference, December 2–4, at the Texas A&M Hotel & Conference Center, 177 Joe Roult Blvd., in College Station.

Prosecutor Trial Skills Course, January 10–15, 2027, in Austin.

Investigator Conference, February 8–11, 2027, in Conroe.

Train the Trainer, March 1–5, 2027, in San Antonio.

Specialty Conference (topic TBD), April 6–9, in Galveston.

Civil Law Conference, May 12–14, 2027, in Conroe.

Prosecutor Trial Skills Course, July 11–16, 2027, in Austin.

Advanced Trial Advocacy Course, July 26–30, 2027, at Baylor Law School in Waco.

Annual Criminal & Civil Law Conference, September 22–24, 2027, in Galveston.

Key Personnel & Victim Assistance Coordinator Conference, November 3–5, 2027, at a location to be determined.

Elected Prosecutor Conference, December 1–3, 2027, at a location to be determined.

TDCAA online courses

Visit our website at www.tdcaa.com/training/#online-training for more information about any of these courses and to register for them.

Mandatory *Brady* Training (2026 update)

This 1.25-hour online training course on a prosecutor's duty to disclose exculpatory and mitigating evidence and information satisfies the mandatory training requirements of Government Code §41.111 and the rules adopted by the Court of Criminal Appeals. Under those rules, every attorney prosecuting a criminal case other than a Class C misdemeanor must complete one hour of instruction on a prosecutor's duty to disclose such evidence and information in the first 180 days of serving in such a capacity. Prosecutors are required to take a refresher course every four years thereafter, and this course is offered for both purposes. In addition, every attorney completing this online course will receive 1.25 hours of CLE ethics from the State Bar of Texas.

Credit approval and disclaimer: This course has been approved by the Texas Court of Criminal Appeals for 1.25 hours of credit toward the training required to satisfy the Court's rules adopted pursuant to Texas Government Code §41.111. Any opinions or interpretations expressed in the course are those of the maker and are not endorsed by the Court of Criminal Appeals. If you are in doubt in a particular fact scenario, the Court of Criminal Appeals strongly suggests that you seek independent legal advice or clarification regarding your duty to disclose information.

2026 Ethics Update

This two-hour course features C. Scott Brumley, County Attorney in Potter County, and Ariane Flores, Assistant County Attorney in Williamson County. Scott takes us on a tour of our favorite ethical vacation retreat, Conflicts Island. He covers a wide range of situations and examples so that TDCAA members—especially our civil practitioners—are ready in case they find themselves caught on Conflicts Island.

In the age of “right now” news, prosecutor offices are bombarded with media requests. While we may wish to keep our communities fully informed, Ariane explains the ethical concerns

raised by speaking to the media about ongoing litigation and highlights the ethical duties that all prosecutors must follow in cases involving both criminal defendants and juveniles. Every attorney completing this online course will receive two hours of CLE ethics credit.

Diminishing Diminished Capacity

Defense arguments for diminished capacity happen every day in courtrooms across Texas, but knowing how to combat these arguments can be tough. Join Lauren Bard, Assistant District Attorney in Harris County, as she explains what diminished capacity is, what it isn't, and how to properly keep it out of your next trial. Viewers who complete the course will receive one hour of CLE.

Forensics in the Courtroom: DNA

When prosecutors ask in jury selection what sort of scientific evidence the jury expects the State to produce at trial, the first response is often "DNA." But presenting DNA evidence to a jury can be intimidating. After all, we are attorneys, not scientists! If you've ever felt this way about presenting DNA evidence, please join Tiffany Larsen, Assistant District Attorney in Brazos County, as she walks through what prosecutors should understand about DNA and how to use this evidence in the courtroom. Tiffany breaks down DNA terminology, testing, and results and explains different ways to use those results in the courtroom. Viewers who complete the course will receive 1.75 hours of CLE.

Forensics in the Courtroom: Genetic Genealogy

In the last few years, genetic genealogy has swiftly transformed from an easy way to build a family tree to a cutting-edge tool for solving both cold cases and active investigations. Join Leighton D'Antoni, Assistant Criminal District Attorney in Dallas County, as he explains the emerging importance of genetic genealogy and how it can be used by law enforcement and prosecutors to bring justice to crime victims. If you need a DNA refresher, TDCAA recommends viewing "Forensics in the Courtroom: DNA" before moving on to this one. Viewers who complete this course will receive 0.75 hours of CLE.

How Does a County Buy & Sell Property?

Great question! There is much to consider. Follow along as Jennifer Fox, Assistant County Attorney in Fort Bend County, explains the ins and outs of buying and selling county property. She covers what items should be included in a purchase agreement when the county buys land, the best method for selling public property, and what procedures must be followed for a successful transaction. This course is free of cost.

Fundamentals of Child Welfare Law

Many Texas prosecutor offices have taken on the important responsibility of representing the Department of Family and Protective Services (DFPS) in legal proceedings related to child welfare in their jurisdiction. In this six-part video course, you will learn the fundamental skills of child welfare law specifically designed for prosecutors who represent DFPS. This course is presented by highly experienced Texas prosecutors and DFPS attorneys.

Introduction to Juvenile Law

This course covers the fundamentals of juvenile law ranging from terminology all the way to juvenile trials and confidentiality as it relates to juveniles. Our team of juvenile experts are from across the state and give insight for prosecutors practicing in both rural and urban jurisdictions. The course will help both prosecutors new to juvenile law as well as veteran prosecutors who would like to learn more about this often overlooked but crucial area of our justice system. Viewers who complete the course will receive 4 hours of CLE. ✱

Law enforcement training using actors

We've all been there: Seated at a long table, in a row of long tables, in a sterile, windowless, fluorescent-lit room with 50-plus colleagues, all watching a presenter read PowerPoint slides for what may seem like days but only qualifies as an hour or so of credit.

"Training" is the technical term for this experience.¹

And as mind-numbing as some continuing legal education can be, our colleagues in law enforcement have it worse: Along with the sterile-room, PowerPoint-reading modality, they have to complete a quiz at the end.

Over the course of my career—this is my 25th year being a lawyer—I have had the pleasure and responsibility of training well over 10,000 people. Whether it was as a Violence Against Women Act (VAWA) prosecutor at the DA's Office in El Paso County, as the Director of Policy at the Texas Council on Family Violence, or even now as Division Chief of the Protective Order Unit at the County Attorney's Office in El Paso County, my responsibilities have long included training others, including law enforcement.

I try to keep my presentations interesting. I abandoned PowerPoint sometime in the mid-2010s, turning to Prezi² when possible. I employ approaches that take seriously the different kind of learners in any given crowd (auditory, visual, social, linguistic, etc.),³ meaning, I get people to move around, have them work individually and



By Aaron Setliff

Assistant County Attorney in El Paso County

in groups and report back, use both projected and printed images in my presentations, include humor and varying tones—you get it. I work to bring all the positive energy and good vibes I can muster and honestly solicit and respond to questions and even critiques in real time with a collaborative approach.

But (#realtalk), sometimes even I get bored with my presentations.

Training officers on intimate partner violence

My main emphasis has for decades now been addressing intimate partner violence. Of course, our allies in law enforcement represent one of the most important tools for addressing safety for victims and accountability for offenders, a front line that can profoundly and positively affect the lives of vulnerable people based on an ability to put quality training into action. Thought of in that way, and suddenly that phased-in PowerPoint presentation doesn't cut it.

Quick segue alert: In the fall of 2025, I performed in a play in Las Cruces, New Mexico, a city about 40 minutes from El Paso. Yes, a play.⁴ Yes, I know I'm a lawyer. The play's director, Wil Kil-

¹ I have to say that over the years, one important exception to this has always been TDCAA's approach to training. I appreciate that the association takes into account all of the training modalities in crafting its training. For more on the amazing training opportunities through TDCAA, head to www.tdcaa.com/training.

² Spoiler alert: I used Prezi for our presentation for Violence Against Women Act funding with the Rio Grande Council of Governments. You can access it at prezi.com using the search term "Scenes to Serve."

³ See, for example, "7 Common Types of Learners; How to Identify and Support Them" at <https://schoolofacademics.co.uk/7-common-types-of-learners>.

⁴ "Um, why?" you ask. Suffice it to say acting in community theater has been a challenge to myself to get out of my comfort zone. Plus, courtroom work is not much removed from the theater life. See <https://readthereporter.com/courtroom-drama-how-jury-trials-mirror-live-theater>.

roy, is also the Chair of the New Mexico State University (NMSU) Theater Department. He walked into rehearsals one day and mentioned a need for a couple actors to participate in a gig related to training law enforcement. You can imagine this piqued my interest. I contacted the organizer, Monica Mojica, another theater professor at NMSU, and she gave me the 411.

Turns out that New Mexico had created a statutorily mandated, innovative training modality. Local law enforcement agencies use paid actors to represent victims, suspects, and others experiencing challenges in prepared scenarios to which officers respond under supervision of superior officers. Let me repeat: They use actors to help train peace officers, who learn—in real time in a convincing yet safe setting—to employ best practices, including community policing, de-escalation techniques, and evidence-based approaches.

I told myself, “Self, we need to upscale this to El Paso with a focus on domestic violence.” And that was the beginning of “Scenes to Serve.” Our version came to fruition as a prosecutor-informed but still law enforcement-focused approach with content specifically related to protective order enforcement and domestic violence high risk.

I’m skipping a few steps for brevity, so here are the main points. We worked with the local Rio Grande Council of Governments (RIOCOG), which was, frankly, a key move to garner buy-in from law enforcement. We assembled a corps of planners that included Marisa Quintanilla from RIOCOG; Reginald Moton, the El Paso Police Department’s Commander; Joe Gonzalez, Senior Division Chief in the El Paso County Attorney’s Office; Sandra Garcia, Executive Director of the Center Against Sexual and Family Violence, and me. Using VAWA funding (a grant from the Governor’s Office to the RIOCOG directly) and Domestic Violence High Risk Team funding (made available through the amazing Texas Council on Family Violence⁵), the RIOCOG contracted with Monica Mojica (the theater professor at NMSU) to bring the training to El Paso.

To keep the project moving forward, I assembled the above collaborating partners via Zoom for a series of planning meetings. On those calls,

we talked through the structure, timing, and other logistics and came to consensus on the approach. We also divvied up responsibilities including: writing the scenarios (I took this one based on nine real-world incidents I have encountered); drafting the protective orders we would be using; finding and arranging the venue; crafting the TCOLE (Texas Commission on Law Enforcement) lesson plan; arranging for actors; and answering their questions. Prior to each call, I crafted agendas and to-do lists and kept the calls short. The actors got the scenarios prior to the training day, and Monica worked with them to prepare their characters and props, which they supplied.

Overall, people involved in the project spent differing amounts of time to move it forward. My involvement probably was the greatest, only because I acted as a kind of ringleader amongst equals to keep the project moving. I also wrote the scenarios, which took a couple days, and the TCOLE lesson plan (required for officers to get credit), which also took about a day. Others also spent a good amount of time preparing.⁶

“Scenes to Serve”

For a full day on June 23 and a half day on June 24, we held Scenes to Serve. Almost 125 supervisors and detectives from the El Paso Police Department, including three lieutenants, split up into three groups of 30–40 and completed nine one-hour scenarios related to protective order investigation and prosecution and high-risk domestic violence (DV) cases.⁷ In each scenario, two investigating officers heard the bare minimum from “dispatch” and were supervised by two additional officers (who knew all the details of the written scenario). We also stationed assistant county attorneys from the Protective Order (PO) Unit in most sessions to shepherd the officers through salient points of law such as excited utterances, the dynamics of strangulation, and firearms prohibitions related to protective orders.

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⁵ Shout out and tons of credit to TCFV DVHRT Director Rosie Martinez and CEO Gloria Terry who both also attended the event.

⁶ The good news is that if you want to get started on a project like this, you can just press the “easy button” and call us to help. We are happy to share our materials and suggestions.

⁷ For more on the DVHRT project led by TCFV, head to <https://tcfv.org/dvhr-resources/>.



Actors and officers going through scenarios during the "Scenes to Serve" training.

In one scenario, the protective order directed officers to accompany the applicant-victim to the common household to remove the respondent and arrest him if he did not leave; when they discovered a gun, matters escalated. In another scenario, a mom with a protective order against her adult bipolar son changed her mind in wanting police intervention, despite the son camping out on her front porch. In a third, officers arrived to discover the victim of LGTBQIA+ violence actually had a broken finger that he had tried to conceal. And in a fourth, a woman barged into a Circle K crying and hysterical after experiencing violence, so the clerk called police just before the woman ran out of the store.

I wrote all the scenarios based on actual cases I have seen over the years. The last one at the Circle K happened to Maria Luisa Corral, who was killed by her intimate partner months after the clerk at the gas station called police for her. I helped prosecute that murder, and it still affects

me to this day.⁸ I even served as the actor playing a respondent and a suspect in a couple of cases, and I discovered first-hand how officers neutralize a potential threat.

Assorted written comments from the attendees:

- "The scenarios were very realistic; this is something a lot of officers can benefit from."
- "Refreshing way to review such complex scenarios."
- "This was a great training."
- "Awesome class. Learned different ways to handle family violence calls."
- "The acting was next level. Made it fun! Great acting."

In addition to the live training, we filmed several of the sessions with an intent to make them available (with some editing) for law enforcement training. Although using actors is the "gold standard" for this kind of training, as Monica Mojica puts it, we identified value in video recordings as a supplement to "Scenes to Serve."

"Did it all go according to plan?" you ask. Great question! Yes and no. One consideration involved upscaling "Scenes to Serve" to a larger audience: In New Mexico they use two supervisory officers, two investigating officers, and one or two actors. In our version, we incorporated a large audience of 30–40 people to maximize the number of participants. This brought with it the reality that we need to think through sound and potentially microphones. That said, having too many officers engaged is a great problem to have!

We also received the reasonable suggestion that it helped when we had assistant county attorneys in each session to explicate the law. We stationed lawyers in most of the scenarios but not all. Law enforcement supervisors of course know a great deal about law enforcement operations and best practices, but all agreed having the

⁸ For more on Maria Luisa Corral's story, go to <https://kvia.com/news/2007/08/24/flores-found-guilty-of-murdering-maria-luisa-corral>. The Borderland Crimes Podcast addressed the murder and the experience of Maria's daughter, Mary, growing up without her mom. Access this podcast by searching "Borderland Crime" and "I want my mother's story known."

lawyers available in every session brings greater clarity.⁹

More sessions on the way

The event in June has fostered a ground swell of interest from attendees and partners. As you read above, attendee evaluations were strong, and when my partners in planning and I sat for a debrief afterward, continuing and expanding the project ranked as a strong priority. Frankly, it was a no-brainer.

Moving into fall and into 2027, we have begun planning for at least 10 additional one-day trainings of 30–40 patrol officers at a time so that by the end of the year, we will have conducted a “Scenes to Serve” training with the entire patrol division of the El Paso PD. In addition, we will host three one-day events with cadets who have graduated from the academy; a one-day training in February with the El Paso Sheriff’s Office, which will include our law enforcement partners in smaller communities within El Paso County; and a one-day “Scenes to Serve” in more rural communities in neighboring Hudspeth and Culberson Counties in March.

Check out this assessment from Sandra Garcia, the Executive Director of the Center Against Sexual and Family Violence here in El Paso: “‘Scenes to Serve’ creates an environment that comes as close as possible to real-world domestic violence response without the consequences of an actual crisis. Using trained actors in realistic, scenario-based exercises, officers and supervisors practice their responses, pause to discuss decision-making, and unpack the many options available. This strengthens critical thinking, reinforces best practices, and prepares law enforcement professionals to make informed, victim-centered decisions in the field. This program equips officers with the skills and confidence to carry these lessons forward, multiplying its impact throughout the department.”

⁹ In my defense, as mentioned above, the New Mexico model chiefly uses law enforcement to run its own training. So, in this first-time training, we used a hybrid approach. The lesson is that it is important for law enforcement to be involved because officers listen better to their colleagues, but lawyers can help explain fine legal points such as excited utterances, predominant aggressor, and strangulation.

Bring this to your community

Consider bringing a version of “Scenes to Serve” to your neck of the Piney Woods, the Plains, the Hill Country, the Rio Grande Valley, or wherever you do your great and life-saving work. We are excited and happy to help! Need aid writing or thinking up the scenarios? Use ours, or call me and I’ll help you come up with some of your own.¹⁰ Want to know how to connect with actors in your community? Monica will work with you.¹¹ Need help rounding up law enforcement? Commander Reginald Moton at El Paso PD will give them a call.¹² Need funding? Consider working with your local Council of Governments to apply for available funds—we can share the RIOCOG’s application—or contact the Texas Council on Family Violence and consider starting a Domestic Violence High Risk Team.¹³

In short, you gotta get in on this. As TCFV’s CEO Gloria Terry said when she attended the event, “When we [ask] what are some steps [where] we can prevent domestic violence from impacting our Texas families, it’s trainings like what’s happening today.” ❄

¹⁰ My email address is a.setliff@epcountytx.gov.

¹¹ Monica’s email address is mmojica@kastllaw.com.

¹² Ha, you thought I might include his email? Write to me and I can get you in contact with Commander Moton.

¹³ I can also connect you with Rosie and Gloria.

Remaining anchored: why we keep opening the next file

It is a nearly inevitable truth that upon my introduction to someone new that I am a Child Protective Services (CPS) prosecutor, I am met with sad and concerned expressions.

The question that nearly always follows: “How do you do *that* job?” Which is a fair question.

Let’s ask ourselves as CPS prosecutors: How do we manage this work, which can be so emotionally difficult and demanding? What keeps us opening the next file?

One of the many difficulties in the practice of child protection law is that every case on our desk represents a family who was already struggling long before CPS arrived. We prosecutors step into families’ worst times. The first chapters in these children’s lives are already written with so many moments of trauma woven throughout. We step into stories of addiction, violence, neglect, mental illness, poverty, and years (even decades) of generational trauma. None of us caused those circumstances, and very few of them can be neatly repaired by a court order—but we can do our part to improve what comes next.

This realization can either discourage us or anchor us. I choose to let it anchor me.

I choose to remind myself that our responsibility in this practice is not to fix every family. Our responsibility is to faithfully do the work that the law entrusts to us: to protect children and create opportunities for permanency when families cannot safely provide it themselves. And perhaps, through faithful work, we can ensure the next chapters in a child’s life tell a different story.

But this choice is just that: an active practice and decision to be made.

My intention with this article is to discuss some of what can keep us anchored and sane. This article is not, however, intended as a self-care or self-help guide. Just as when I started writing a series of articles for this journal nearly a year ago, my intention is to give voice to those of us who represent CPS. And as I close the series, let’s visit what brought us into this practice as CPS prosecutors—and what keeps us here.



By Leslie Odom

Assistant County & District Attorney in Ellis County

We choose to walk into the brokenness

As we begin each workday, another file awaits us. And when we choose to open it, we find ourselves stepping into another family’s brokenness. I don’t say this with cynicism—I say it to remind us, to ground us. We didn’t cause the brokenness we walk into, and this work asks so much of those who choose to do it. What about us draws us into this particular practice? Yes, some of us might be “voluntold” into it, but so many of us feel called into it and choose to remain. Why?

In gathering my thoughts for this article, I stumbled across something published by the American Bar Association’s Children and the Law section in 2024.¹ While the piece is really intended to inform its readers regarding recruitment strategies, the authors reference a few studies examining what draws attorneys to this particular practice and encourages them to remain long-term. The results are noteworthy. Studies indicate that child welfare attorneys’ motivations tend to be altruistic and grounded in a desire to help people. Doesn’t this ring true for us as CPS prosecutors? We certainly don’t endeavor for money, prestige, or “the win.” We seek to make a difference for those around us,

¹ www.americanbar.org/content/dam/aba/administrative/child_law/attorney-recruitment-retention.pdf.

particularly children. I reference this to remind all of us to identify and not lose sight of the reason you joined this practice.

Remaining anchored

If we willingly enter broken places, the obvious next question becomes: How do we keep those broken places from breaking us? I've come to believe the answer is not becoming hardened. It's becoming anchored.

If we are in this practice for any period of time, we need anchors, things that keep us secure and above water when the work threatens to pull us under. I've found a few that have made all the difference. Yes, we are prosecutors. But we are also spouses, parents, friends, siblings, people of faith, and members of our communities. The work we do is meaningful, but it should never become the entirety of who we are. If every success defines us and every tragedy consumes us, we've surrendered too much of ourselves to the job.

Child protection prosecution cannot be done in isolation. Some of the hardest days I've experienced have become bearable because I could walk down the hall and talk with colleagues who understand exactly what happened. Whether it's CPS caseworkers or fellow prosecutors, don't underestimate the value of processing difficult cases with the people who carried them alongside you.

More broadly speaking, healthy office culture matters more than we sometimes acknowledge. I've been fortunate to work in offices that celebrate victories, encourage one another, and recognize the emotional weight this work carries. No office is perfect, but working with people who genuinely function as a team makes difficult seasons more sustainable.

And even if you sometimes feel like you're on "CPS island" within your own office, remember that you're part of a much larger community. Organizations including Texas Lawyers for Children, TDCAA, and the Child Protection Section of the State Bar remind us that there are prosecutors across Texas carrying this same responsibility.

Beyond that, I encourage you to pay attention to yourself after the especially difficult days. An emotionally charged docket or a particularly painful emergency removal can leave you mentally exhausted long after the event ends. Recognizing that exhaustion isn't weakness; it's an acknowledgment that this work affects us because we care. Give yourself permission to close

your door, take a walk, or simply acknowledge today was heavy.

What belongs to us

One of the strongest anchors I've found is learning to distinguish between what belongs to me and what never did. Remaining anchored requires knowing the difference.

We didn't create the addiction.

We didn't create the abuse.

We didn't create the mental illness.

We cannot fix every family.

What does belong to us is very different. Ours is the responsibility to know the law, know the facts, and prepare our cases thoroughly. Ours is the responsibility to present the evidence with integrity, support our caseworkers, and advocate in pursuit of the child's best interest.

Earlier this year I heard the phrase "detached compassion," and it has stayed with me.² The concept isn't about caring less. It's about caring deeply without assuming ownership of burdens that aren't ours (and never were). It isn't emotional indifference. It's the ability to care without assuming responsibility for things beyond our control.

Knowing that truth and living it are two different things. Looking back on my own practice some years ago, I remember that a time came when I had begun carrying things that weren't my responsibility. Every hearing came home with me. Every difficult decision was replayed in my mind during the drive home. Every loss felt personal. Eventually I realized I wasn't just carrying my duties—I was shouldering burdens that never belonged to me in the first place. Stepping away from CPS prosecution for a few years gave me the distance to recognize something I couldn't see while I was in it. I still loved the work. My commitment hadn't changed. But my understanding of what I was responsible for had.

I'm not suggesting that any of us must step away from CPS prosecution to achieve this clarity or that I couldn't have done so without taking a break. This is just the account of my experience.

All of that is to say this: Advocacy in this practice doesn't require ownership of every problem. We can care deeply without taking on every burden as ours. In fact, I believe we serve this work better when we remember the difference.

Earlier this year I heard the phrase "detached compassion," and it has stayed with me. The concept isn't about caring less. It's about caring deeply without assuming ownership of burdens aren't ours (and never were).

² Self-Care and Burnout: Taking Care of Yourself, Be'Atrice Randall, Advanced Child Protection Law 2026.

*Optimism says,
“Everything will work
out.” Hope tells us,
“This work is still
worth doing.”*

Recognizing hope

Once we stop carrying other people’s burdens, we finally have room to carry something else: hope. Child welfare work demands hope. Not the kind that assumes every family will heal or that every case will end with reunification, but the kind that believes our work still matters even when the outcome isn’t the one we prayed for.

One of the unique challenges of CPS prosecution is that we often witness a family’s struggles over time. We see the relapse, the setback, and the removal following an unsuccessful monitored return,³ but we are also able to witness recovery, reunification, or a joyful adoption. We become familiar with the people involved and, over the course of months or even years, we experience the many ups and downs of a child’s case alongside the CPS team. That continuity can carry significant emotional weight. It can also remind us why hope matters: because sometimes, after all the setbacks, we get to witness a child’s story change for the better.

This brings to mind a particularly difficult case in which our team experienced all the ups and downs. After some time of relapse and recovery, the father in the case made progress and exhibited positive behavioral changes. We attempted a monitored return of his young son to him. But this man’s addiction to methamphetamine eventually led to another removal. We later attempted a return to the little boy’s mother. Ultimately, we discovered that she, too, could not break old bad habits and provide safety for her son. In other words, during just this one CPS case, the little boy had been removed from his parents three times! Being a part of multiple removals of a child from his parents can be so very heartbreaking.

In those moments, though, I step back and remind myself (and the CPS team) that this heartbreak is not the result of my actions, my choices, or that of the CPS caseworkers. Instead, with a little continued hope, dedication, and wonderful casework, that little boy can ultimately be provided with safety and permanency.

That’s what hope looks like in these cases. It’s that something is better because someone cared enough to keep working on it. A parent gets sober. A relative steps forward, and a child who was terrified becomes comfortable in a safe placement.

³ Tex. Family Code §263.403, Monitored Return of Child to Parent.

A sibling group stays together. An adoption happens. A teenager graduates. The case doesn’t end the way anyone expected, but the child is safe. And these are the reasons and moments that keep me believing the work matters.

Optimism says, “Everything will work out.” Hope tells us, “This work is still worth doing.”

When we need help

I’m still practicing these principles myself. If we do find ourselves requiring more assistance, there are so many resources available. The American Bar Association, for instance, has its Commission on Lawyer Assistance Programs.⁴ It supports state-level programs such as our Texas Lawyers’ Assistance Program (TLAP).⁵ If this work ever begins to take more from you than you can reasonably carry, there are resources available. Please use them.

Opening the next file

Tomorrow, another file will be waiting on your desk. You’ll open it knowing what every child welfare prosecutor eventually learns, that you cannot save every family and not every case will end the way you hoped. Yet each file represents a child whose story is still being written. For a brief period of time, we CPS prosecutors have the privilege—and the responsibility—of helping shape one chapter of that story.

Our obligation is not to control the ending. It is to fulfill the role we have been entrusted with—to prepare thoroughly with our CPS client, present the evidence in court, and seek an outcome that protects the children and provides for their permanency.

We didn’t cause the brokenness. We can’t fix all of it. But we can faithfully do our part. And if we remember only the tragedies, we will begin to believe tragedy is all there is. Remaining anchored means remembering the victories as intentionally as we remember the losses—the child who found permanency, the parent who finally embraced change, the sibling group who stayed together, the teenager who discovered hope. Those moments may not erase the heartbreak,

Continued on page 67 in the orange box

⁴ Visit www.americanbar.org/groups/lawyer_assistance for more information.

⁵ Visit www.tlaphelps.org for more information; you can also call or text 800/343-8527.

Faith was his weapon

On March 18, 2024, Mary Doe¹ walked into the Waco Police Department (WPD) to report a crime that she never expected would be prosecuted.

Mary told Detective Bradley Delange that she wanted to report a sexual assault that had occurred more than 10 years earlier, and she knew that the matter was beyond the statute of limitations.² But Mary felt she needed to make a report for her own healing and to help any other victims who might be out there.

That conversation launched a two-year nationwide sexual assault investigation into a man named Anthony Odiong, a serial rapist whose weapon was neither force nor fear, but faith. Odiong, a Catholic priest, sexually abused multiple women over 15 years by exploiting their devout Catholic faith and his own position.

We ultimately indicted him for sexually assaulting three of those women, Mary Doe, Abbie Williams, and Jane Doe, between the years of 2008 and 2011 in McLennan County. While those crimes occurred beyond sexual assault's normal 10-year statute of limitations, the crime has no time limit for prosecution if probable cause exists to believe that the defendant has committed the same or a similar sex offense against five or more victims.³

On June 2, 2026, the case culminated with convictions on three counts of sexual assault, and prison sentences of life, 20 years, and 20 years, as well as fines totaling \$30,000.

Anthony Odiong's case offers lessons on relentless police work, creativity in charging decisions, the importance of mastering procedure and evidence rules, and courtroom advocacy. We write this article with the hope that the case's lessons might help police and prosecutors secure justice for victims and accountability for offenders who might otherwise be overlooked.



By Ryan Calvert

First Assistant Criminal District Attorney, &

Liz Buice

Assistant Criminal District Attorney, both in McLennan County

Mary's story

Mary initially sought spiritual counseling from Odiong to help navigate trauma from her recent divorce from an abusive husband and the stress of being a newly single mother to several children. Odiong gradually introduced physical contact into their counseling sessions, which escalated until the two eventually had a full sexual relationship that lasted for years.

Detective Delange focused his investigation on proving sexual assault under §22.011(b)(10) of the Texas Penal Code, which states that sex is legally without consent if the defendant "is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as a spiritual adviser."

Mary and Odiong's sexual relationship ended in 2011 when three of Mary's children walked in on them having sex. Mary told Delange that her son, Peter,⁴ then 14 years old, ran to a neighbor's home and reported what he had just seen. That neighbor happened to be Dr. Todd Still, Dean of Baylor University's Truett Seminary. Thus, faculty and administrators at Baylor, where Mary worked, quickly became aware of the incident.

In 2012, Odiong was reassigned to Rome, Italy, and then in 2015, he received a new assignment at a parish in Luling, Louisiana, a suburb of New Orleans.

¹ All victims will be referred to by the pseudonyms used in the case.

² Tex. Code Crim. Proc. Art. 12.01(2)(E) states that sexual assault of an adult typically has a 10-year limitations period.

³ Tex. Code Crim. Proc. Art. 12.01(1)(C)(ii).

⁴ A pseudonym.

The enormous effort paid off. In Odiong's emails, Detective Delange discovered sexually explicit messages between the priest and a fourth woman.

Mary spent years believing that she was the only woman with whom Odiong had ever had sex. Then, in February 2024, she saw two news articles in *The Guardian* newspaper describing sexual misconduct allegations by at least two women against Father Odiong and a lawsuit filed by one of those women against the Catholic Archdiocese of New Orleans.⁵ Mary read the articles and, to her horror, initially thought that she was reading about herself. At that point, she decided to make a police report.

Relentless police work

What Detective Delange knew (that Mary did not) was that sexual assault has no time limit on prosecution if probable cause exists to believe that Odiong committed similar acts against five or more victims. In addition to Mary Doe, Delange knew from *The Guardian* articles that there were at least two other women. He contacted the attorney in the articles who filed the lawsuit against the New Orleans Archdiocese and asked her to forward his contact information to the women the articles described. That's how he met Hadassah Doe, who lived in Ohio, and Jane Doe, a Waco-area resident who called the attorney after seeing *The Guardian* articles.

In Hadassah's case, Odiong instructed her to perform sex acts on him in exchange for receiving absolution for her sins. In Jane's case, she sought counseling from Odiong on how to save her failing marriage. Odiong told Jane he could repair her marriage while simultaneously escalating his physical contact with her. She confided in Odiong that she and her husband had a long-running argument over his desire to have anal sex and her persistent refusal. Odiong instructed Jane that her duty was to submit to anal sex with her husband and that afterwards, she needed to report the details of the experience back to him.

Mary, Hadassah, and Jane gave us probable cause for three victims, but we could not prosecute without discovering at least two more.

These three women all reported that Odiong had frequently communicated with them through text, email, and Facebook, so Detective Delange secured search warrants for the priest's Apple iCloud, email, and social media accounts.

Delange and fellow detective Zach Koenig then began the tedious process of sorting through literally hundreds of thousands of Odiong's communications over more than a decade.

Their enormous effort paid off. In Odiong's emails, Delange discovered sexually explicit messages between the priest and a fourth woman, Waco-area resident Abbie Williams. The emails occurred prior to Odiong's 2012 departure from McLennan County to Rome and made clear that Odiong and Williams shared a lengthy sexual relationship that was also very spiritual in nature.

To Abbie's stunned surprise, Detective Delange contacted her in the spring of 2024 and asked to interview her about Odiong. Like the other women, Abbie was a devout Catholic who sought spiritual guidance from the priest to help process abuse she suffered in childhood. As she shared her difficulties with him, he continually told her how beautiful and insightful she was, gave her extended hugs and kisses, and eventually progressed to engaging in sex with her.

In Odiong's iCloud account, Delange also found two images among the more than 20,000 photographs that stood out to him. One was a close-up photograph of a pre-pubescent child's vagina. The other was of what appeared to be a female child's breast. No other pornography existed in Odiong's account and Delange had no information about how or why Odiong came to possess those images. However, the detective knew that Odiong still regularly visited Waco, including long after those images were saved from his phone. Delange felt that those two images at least amounted to probable cause to arrest the priest for possessing child pornography in McLennan County. Delange hoped that arresting him on that charge may advance the larger sexual assault investigation.

Following the articles in *The Guardian*, Odiong had been relieved of duty by the New Orleans Archdiocese and he moved to Florida. On July 16, 2024, Delange and a team of United States Marshals travelled to Florida and arrested Odiong at his home. Delange also secured a warrant to search his cell phone.

Detectives Delange and Koenig continued their painstaking search for evidence by reading tens of thousands of text messages and emails in the phone. That exhaustive process led to the discovery of the all-important fifth victim, Presley Jones. Presley was one of Odiong's parishioners in Luling, Louisiana. Odiong's texts with her made clear that 1) Presley was a devout Catholic,

⁵ www.theguardian.com/us-news/2024/feb/22/catholic-priest-texas-anthony-odiong-new-orleans and www.theguardian.com/us-news/2023/dec/07/new-orleans-archdiocese-anthony-odiong-gregory-aymond.

2) Odiong was her spiritual director, and 3) the two were engaged in a secret sexual relationship. Shockingly, the texts also revealed that Presley had a young daughter, born in 2023, and that Odiong was the child's father.

So Delange, Koenig, and WPD Victim Assistance Coordinator Melissa Beseda travelled to New Orleans to meet Presley Jones. She was terrified to speak with them about Odiong and was distraught throughout the interview. Presley described how Odiong first kissed her as she gave him her confession at church. Things progressed to a sexual relationship and Presley became pregnant, giving birth to their daughter in 2023. After meeting Presley, Delange and Koenig realized that Odiong's phone contained photographs of Odiong, wearing his priestly vestments, performing the baptism of his own daughter in church with Presley and other members of her family looking on.

Delange and Koenig took DNA samples from Presley, her daughter, and Odiong himself. Laboratory DNA testing later confirmed that Odiong was indeed the father of Presley's child.

Delange also found text messages between Odiong and another New Orleans congregant, Lisa Smith, that suggested a relationship beyond priest and parishioner. In late 2024, Delange and ADA Liz Buice (one of the co-authors of this article) travelled to New Orleans to interview Lisa, who confirmed that Odiong kissed and sexually touched her, but she denied ever having sex with him.

With statements from Mary Doe, Hadassah Doe, Jane Doe, Abbie Williams, and Presley Jones, we now had probable cause that Odiong had sexually exploited five parishioners.

Delange executed a search warrant for records from the Catholic Diocese of Austin, which Waco is within, and obtained similar records from the New Orleans Archdiocese. The diocesan records showed that while Odiong was the priest at Saint Peter's Catholic Student Center in Waco, three female Baylor University students complained to church officials about him inappropriately touching and flirting with them. Delange tracked down those three women, Margaret Doe, Judith Doe, and Miriam Doe. Despite the passing of 15 years, all three remembered well their interactions with Odiong.

Church records also showed that the Austin Diocese was made aware of the 2011 incident when Mary Doe's children caught their mother and Odiong having sex. Mary's son Peter re-

but they remind us why we continue opening the next file.

And if, years from now, we can still recognize ourselves in the mirror—still compassionate without becoming cynical, still hopeful without being naïve, still willing to open the next file—then perhaps we will have done more than practice law. We will have helped write a better chapter for children whose stories desperately need one. ❀

Unfortunately, when Odiong committed his crimes in 2008 to 2012, Texas law did not allow stacking of sentences for multiple adult sexual assault charges. Fortunately, though, the law provided another solution.

canted his statement about what he had seen when interviewed by church officials. Thus, no formal church action was taken against the priest in 2011.

Detective Delange also interviewed Dr. Todd Still, who had lived down the street from Mary Doe back in 2011. Dr. Still confirmed that his 14-year-old neighbor Peter banged on his door one evening exclaiming, “I just caught the priest f—ing my Mom!” Dr. Still immediately reported the incident to Baylor University’s Chaplain, Dr. Burt Burleson.

Delange and First Assistant DA Ryan Calvert (the other co-author of this article) then interviewed Dr. Burleson, who explained that shortly after hearing from Todd Still, he confronted Odiong and told the priest that he knew about the sexual relationship with Mary Doe. Dr. Burleson also told Odiong that he was going to report the matter to the Austin Diocese. In response, Odiong smiled and said, “We are but men.”

Creativity in charging decisions

We indicted Anthony Odiong in 2024 for sexually assaulting Mary Doe, Jane Doe, and Abbie Williams in McLennan County. (The remaining two victims, Hadassah Doe and Presley Jones, had been assaulted in other jurisdictions.) All the charged crimes occurred prior to 2012, which is when Odiong left Waco for Rome. Thus, each indictment contained the following language alleging a statute of limitations exception:

And it is further presented that probable cause exists to believe that the Defendant has committed the same or a similar sex offense against five or more victims, resulting in the above-described offense(s) having no statute of limitations.

Mary Doe’s indictment alleged two counts: Count One charged Odiong with penetrating Mary’s vagina with Odiong’s sexual organ without her consent. Count Two alleged penetration of Mary’s mouth with Odiong’s sexual organ without her consent.

Abbie Williams’s indictment alleged that Odiong penetrated Abbie’s vagina with his sexual organ without her consent.

Odiong never had sexual intercourse with Jane Doe. Instead, Jane’s charge stemmed from Odiong using his position to cause Jane to submit to anal penetration by her husband, despite her repeated expressions that she did not want to.

Under Texas law, Odiong is criminally responsible for the penetration of Jane’s anus if it would not have occurred “but for” Odiong’s conduct.⁶ Jane made very clear that she would never have consented to anal sex with anyone *but for* Odiong’s spiritual instructions to do so. Thus, Jane’s indictment alleged that Odiong caused the penetration of Jane’s anus by another person without her consent.

We felt that Odiong deserved more than the 20-year maximum penalty normally carried by adult sexual assault charges. Unfortunately, when Odiong committed his crimes in 2008 to 2012, Texas law did not allow stacking of sentences for multiple adult sexual assault charges.⁷ Fortunately, though, the law provided another solution.

The second-degree felony charge of sexual assault becomes a first-degree felony if the victim is someone whom the defendant was legally prohibited from marrying or purporting to marry by §25.01 of the Texas Penal Code (the bigamy statute).⁸ Abbie Williams and Jane Doe were both married to their husbands when Odiong sexually assaulted them and thus could not have legally married Odiong. Consequently, Abbie’s and Jane’s indictments contained language that they were people whom Odiong was legally prohibited from marrying or purporting to marry, which enhanced those cases to first-degree felonies, punishable by five to 99 years or life in prison.

Procedure and evidence rules

While the case was pending, Presley Jones (whose daughter Odiong fathered) became uncooperative and would not respond to emails or calls. We secured out-of-state subpoenas for both Presley Jones and Lisa Smith, the other woman in New Orleans whom Odiong had kissed. When we went to New Orleans, we tried to locate and serve Presley, including by staking out her home day and night. We also spoke to her neighbors, visited (and were asked to leave) her mother’s workplace at a very famous restaurant in the French Quarter, and contacted her sister. Finally, we enlisted the help of some great prosecutors

⁶ Tex. Pen. Code §6.04.

⁷ Note that, as of September 1, 2025, adult sexual assault sentences can be stacked. Tex. Pen. Code §3.03(a)(2-a).

⁸ Tex. Pen. Code §22.011(f).

and investigators in the DA's Office in Jefferson Parish. Unfortunately, Presley eluded all our efforts to locate her.

We could not secure her testimony at trial but found a different way to get her story in front of the jury. While in New Orleans, we met again with Lisa Smith. Lisa knew Presley Jones and could identify her as a member of Odiong's congregation. That testimony, coupled with DNA results proving Odiong's paternity of Presley's daughter, was sufficient to prove probable cause for statute of limitations purposes. It also made great evidence under Texas Rule of Evidence 404(b) and at punishment.

In addition, Mary Doe's son, Peter, had never spoken to law enforcement about what he witnessed that day when he was 14. Detective Delange learned that Peter, now an adult, lived in Portland, Oregon. In February 2025, he and Ryan Calvert travelled there to find and interview Peter.

Because we wanted a genuine reaction from him about Anthony Odiong, we deliberately did not warn him that we were coming. Peter worked at a business near downtown, and we walked into that business with two uniformed Portland police officers and asked to speak with Peter, who was standing behind the counter. Peter was clearly stunned to see us and had no idea who we were or why we were there. We asked Peter to step outside.

As we stood on the street, Delange explained to Peter that we were from Waco and wanted to talk to him about Anthony Odiong.

Peter immediately began to cry.

Delange asked, "Who is Anthony Odiong to you?"

Through tears, Peter said, "He's the priest I caught f—ing my mom!"

We knew then that Peter would be powerful witness.

One concern we had during preparation was that a largely Baptist jury pool may not grasp how a Catholic person's relationship with a priest is different from what typically exists between a Protestant minister and congregant. Within the Catholic faith, the priest administers sacraments that convey God's grace to the parishioner. For example, priests are vested with the power to absolve the parishioner's sins through the sacrament of reconciliation, also commonly known as confession. We worried that, without a clear understanding of that relationship's power imbalance,

jurors might see Odiong's behavior as merely sex between consenting adults.

To address those concerns, we wanted to call a Catholic priest as an expert to explain a priest's role, spiritual power, and authority over Catholic faithful, and to show jurors that Odiong's behavior is neither consistent with nor condoned by church doctrine. We found out that a friend in law enforcement had a good relationship with a high-ranking priest in another Texas city. Through channels, we reached out to that priest and explained what we needed. Within a few days, a response came with a list of four names of priests we should contact. All were high-ranking, very experienced, and highly respected. Ultimately, we chose Monsignor John Paul Kimes as our expert priest for trial. When we explained our need to educate McLennan County jurors on how a Catholic priest differs from a Protestant minister, Msgr. Kimes immediately responded, "I grew up in Alabama. I speak Baptist!"

We also feared that jurors would be judgmental of Mary Doe and Abbie Williams for willingly having sex with Odiong for years. We wanted to help jurors understand how a clergyman could manipulate intelligent, educated women into behavior that they knew was inappropriate. A local professor at Baylor University referred us to another researcher with whom he has worked, Dr. Hermina Nedelescu of the Scripps Research Institute in San Diego. Dr. Nedelescu is a neuroscientist and trained theologian. She studies maladaptive behaviors and how clergy abuse causes victims to experience severe trauma-induced dysregulation, keeping them in an abusive cycle.

When we spoke with Dr. Nedelescu, she knew about Odiong's case from news coverage. As we described the case's particular facts to her, she became excited and spoke about how our victims' behaviors are very consistent with the research on how clergy abuse affects adults. Dr. Nedelescu explained how the same negative reinforcement patterns that trap people in drug addiction also apply to clergy sexual abuse victims. The brain seeks relief from negative experiences such as pain, depression, or fear. The drug (or in this case, positive, faith-affirming, or hope-giving moments with a priest) provide temporary relief from those negative states. The brain rewires to keep going back to that source of comfort because of the extreme discomfort the body is in.

Finally, we were blessed in this case with expert witnesses who were also fact witnesses. Dr.

When we explained our need to educate McLennan County jurors on how a Catholic priest differs from a Protestant minister, Msgr. Kimes immediately responded, "I grew up in Alabama. I speak Baptist!"

After explaining the law, I sought to challenge for cause any jurors who would not convict a clergyman of sexual assault if the sex was physically consensual, even if the evidence proved beyond a reasonable doubt that the clergyman exploited the victim's emotional dependency. A significant number of jurors were struck for cause on that issue.

Todd Still, to whom Mary Doe's son initially reported Odiong's behavior, has been a minister for decades and is the longtime Dean of Baylor University's Truett Seminary. As a professional minister, Dr. Still was horrified by Odiong's behavior and distraught about the damage such conduct inflicts upon ministry as a whole.

Similarly, Dr. Burt Burleson, who confronted Odiong after learning of the Mary Doe incident, was Baylor's Chaplain, Dean of Spiritual Life, and a pastor for more than 30 years. He had written his doctoral thesis on maintaining appropriate boundaries as a pastor in a counseling environment. Burleson gave us a copy of that thesis, written in 1994, in which he literally wrote that when a pastor engages in inappropriate behavior with a congregant, he cannot excuse it by simply saying, "We are but men"—the very words Odiong spoke to Burleson when confronted about Mary Doe.⁹

Courtroom advocacy

We were more concerned about voir dire than any other phase of trial. Odiong's case presented several issues that we felt would likely result in numerous jurors being struck for cause. For example, in Mary Doe's and Abbie Williams's cases, we were prosecuting Odiong for physically consensual sex between two adults. We knew that some jurors would not convict of sexual assault under those circumstances, regardless of the law's clergy provision.

We noticed that the sexual assault statute's provisions governing clergy and mental health service providers are right next to each other, have identical structures, and are the only two provisions in that law written in such a way. So, to help jurors understand and accept the clergy law's principle in voir dire, we sought to bootstrap it to the mental health services provider law.¹⁰ Early in voir dire, Ryan asked the panel whether anyone could think of a profession in which clients commonly develop emotional dependencies on the professional.

"Therapists," a juror immediately said.

He asked the juror to explain, and she responded that counseling patients share their in-

nermost vulnerabilities with a therapist. That puts the therapist in a position of power and trust, and patients can develop strong dependencies on therapists.

He asked the panel if they agreed with the juror's assessment. Everyone did. I then asked if any other professions created a similar dynamic.

"Clergy," another juror immediately responded.

Ryan asked the panel whether they agreed. The vast majority did, but some did not. Those jurors who disagreed were struck.

After that discussion, he told the jurors about the clergy provision in the sexual assault statute. Discussing the principle before the law gave us a more accurate read on how particular jurors felt about the issue.

After explaining the law, he sought to challenge for cause any jurors who would not convict a clergyman of sexual assault if the sex was physically consensual, even if the evidence proved beyond a reasonable doubt that the clergyman exploited the victim's emotional dependency. A significant number of jurors were struck for cause on that issue.

Additionally, in Jane Doe's case, Odiong was charged with sexual penetration physically performed by Jane's husband, rather than by Odiong. We knew jurors might struggle to convict a defendant for sexual assault when he was not even present when the sexual penetration occurred. Ryan put photographs of Elon Musk, Coach Bill Belichick, President Abraham Lincoln, Osama Bin Laden, and General George Patton on the screen and asked jurors what those men had in common.

"They're leaders," a juror replied.

He asked whether those men "caused" real events to occur. Everyone agreed they had. He next asked whether those men physically *did* those events themselves. For example, was Bill Belichick throwing or catching passes for the New England Patriots? Was Abraham Lincoln firing a musket in the Civil War? Was Elon Musk personally piloting rockets into space? All jurors agreed that even though these men did not physically perform those acts, they caused the events to occur by giving orders and direction.

Once the panel was comfortable with that concept, Ryan discussed "but-for causation" under Texas law.¹¹ That discussion led to several

⁹ "We are but men" is a biblical reference to Acts 14:15.

¹⁰ Indeed, clergy members are included in the statute's definition of "mental health services provider." Tex. Pen. Code §22.011(c)(4)(E).

¹¹ Tex. Pen. Code §6.04.

other challenges for cause on jurors who would not convict a defendant of sexual assault unless he physically performed the sexual penetration, even if the evidence proves beyond a reasonable doubt that the defendant's conduct caused that sexual penetration without the victim's consent.

Third, because Odiong was not a convicted felon, he was probation-eligible on his sexual assault charges. Probation for sex crimes is a concept that jurors often struggle with, so Ryan gave the jury panel some hypothetical scenarios illustrating the infinite range of facts that satisfy sexual assault's legal definition but are far less "scary" than typical sexual assault scenarios.

We also anticipated that the defense would try to challenge jurors for not considering probation when a defendant faced *multiple* sexual assault charges. So, before voir dire began, we seized the opportunity to provide the court and the defense with the coolest-named piece of caselaw in history, *Shot With Two Arrows v. State*, which holds that a juror's inability to consider probation for multiple charges "is inconsequential because the juror must only be able to consider the minimum sentence in an appropriate case, not ... multiple convictions for separate offenses."¹² Preemptively giving that caselaw to the court neutralized the multiple-charge issue before it happened.

In the end, 56 out of 100 prospective jurors were struck for cause, and we felt good that the seated jurors were committed to following the law.

At trial, we wanted to seize upon the "primacy effect," which is a well-researched psychological phenomenon wherein people better retain the first information they receive, begin making up their minds about issues almost immediately, and tend to stick to an opinion once it is formed.¹³ We decided to lead off with two of Mary Doe's children, including her son, Peter. Both children described the period from 2008 to 2011 as a turbulent time for their family because Mary had recently divorced their abusive father. The kids also testified that their mother leaned heavily on her devout Catholic faith to navigate those troubles and that Mary sought counseling from their family's priest, Father Odiong.

Then both children emotionally described walking into Mary's bedroom and finding Odiong having sex with their mother. Peter admitted that in his statement to church officials in 2011, he falsely recanted his report of catching Odiong with Mary because he feared his mother might lose her job at Baylor.

Then Msgr. John Paul Kimes, while wearing the collar of a Catholic priest, beautifully explained to jurors how a priest is literally a conduit of grace between God and a Catholic parishioner, how priests are granted power to absolve sins, and how priests are never, ever "off duty."

Thus, very quickly and without subjecting Mary Doe to cross-examination, jurors learned that:

- Mary was a deeply faithful Catholic in a traumatic situation;
- she sought help from Odiong as her priest;
- priests can wield enormous influence over their parishioners;
- two witnesses saw Odiong having sex with Mary; and
- Odiong essentially confessed to having sex with her.

Because Msgr. Kimes was so effective in describing the powerful role priests can play in Catholics' lives, we called Jane Doe immediately after him. Jane's testimony was heart-wrenching. She described her desperation to save her failing marriage and how she sought spiritual counseling from Odiong specifically for that purpose. Jane confided in him about how she and her husband fought for years over his desire to have anal sex and her steadfast refusal to do it.

Jane, who had children, testified that Odiong asked her whether it sometimes hurt when her babies breastfed.

"Yes," Jane replied.

Odiong then asked whether Jane would ever have denied her children nourishment just because it hurt, or would she have called police on her children for causing her pain?

"Of course not," Jane replied.

Odiong then told Jane that it was the same with her husband. He instructed Jane that she and her husband were one flesh and that she must submit to anal sex with her husband and then report back to him what the experience was like.

Jurors openly wept as Jane described her pain from being anally penetrated and how she endured the experience by repeatedly telling herself, "I wouldn't call the police on my babies."

In the end, 56 out of 100 prospective jurors were struck for cause, and we felt good that the seated jurors were committed to following the law.

¹² 64 S.W.3d 606, 607 (Tex. App.—Fort Worth 2001, no pet.).

¹³ Susan Belmore & Michael Hubbard, "The Role of Advanced Expectancies in Person Memory," *Journal of Personality & Social Psychology*, 53, 61-70 (1987).

When it came to Abbie Williams, she was by far the most fragile of Odiong's victims. In each meeting with her, Abbie never wavered in how Odiong had taken sexual advantage of her, but she was truly terrified of testifying in a public courtroom.

Jane testified that she returned to Odiong a few days later, still bleeding from her anus, and told him how awful the experience was. Odiong responded by laughing and telling her that it was “good for her humility.”

Statute of limitations

Prosecutors are not required to address the statute of limitations unless the defense raises the issue.¹⁴ If the defense does raise it, then prosecutors must prove beyond a reasonable doubt that the case is not time-barred.¹⁵

Odiong raised the limitations issue in a pretrial motion to dismiss. Significantly, the limitations exception in Odiong's case is that “*probable cause exists*” that he committed similar acts against five or more victims.¹⁶ For decades, courts have held that prosecutors can establish probable cause through hearsay.¹⁷ Courts have also consistently held that hearsay evidence is admissible to a jury if the defense makes probable cause an issue at trial.¹⁸

At a pretrial hearing, Odiong's defense team refused to waive the statute of limitations claim and stated their intention to raise the matter in front of the jury. We responded that the defense had now made the existence of probable cause of five or more victims an issue before the jury, so hearsay evidence was admissible to prove probable cause, with appropriate limiting instructions. The trial court agreed.

To show probable cause of sexual exploitation beyond Mary Doe's and Jane Doe's testimonies, we also called Lisa Smith. Lisa identified Presley

Jones from the photograph of Presley, her daughter, and Odiong at the baby's baptism. Then we called Melissa Beseda, the Victim Assistance Coordinator with WPD who helped interview Presley. Melissa explained that she met Presley and her baby in New Orleans. Because hearsay was admissible, Melissa told jurors how Presley reported that Odiong kissed her during confession, and he eventually progressed to having sex with her, resulting in a pregnancy and the birth of her daughter. We further presented DNA confirmation that Odiong fathered Presley's child.

We also called Detective Koenig to prove probable cause. He testified that he travelled to Ohio and interviewed Hadassah Doe. Koenig relayed Hadassah's report that Odiong was her priest and that he required her to perform sex acts in exchange for absolution of her sins.

When it came to Abbie Williams, she was by far the most fragile of Odiong's victims. In each meeting with her, Abbie never wavered in how Odiong had taken sexual advantage of her, but she was truly terrified of testifying in a public courtroom. Abbie was also married and, even right up until trial, her husband remained unaware that she had been sexually involved with their family's priest for several years, despite our repeated offers to help her talk with him.

Because of Abbie's anxiety, we subpoenaed her to arrive at the courthouse prior to voir dire so she could be sworn in and ordered by the judge to return for her testimony. She arrived as scheduled, entered the courtroom, and was sworn. She then left the courtroom and nearly collapsed with a panic attack in the hallway.

The following day, Abbie did not return to court and even disappeared from home without her cell phone. We initially planned to issue a writ of attachment to have police find her and bring her to court. However, due to her tenuous emotional state, her status as a sexual assault victim, and two other charges to proceed on, we decided not to issue what amounted to an arrest warrant for her.

Therefore, our only option was to dismiss Abbie's case. Ryan worried that dismissing one case mid-trial might damage jurors' views of the other two cases, but Liz immediately knew how to handle it. She called DA Investigator David Parkinson to testify and had him explain that Abbie was under subpoena, that she had appeared in court and was sworn in, and that she had gone on the run without her phone. In front of the jury, Liz presented our dismissal to the

¹⁴ *Proctor v. State*, 967 S.W.2d 840, 844 (Tex. Crim. App. 1998).

¹⁵ *Id.*

¹⁶ Tex. Code Crim. Proc. Art. 12.01(1)(C)(ii). This change to the statute of limitations was passed as an amendment to another sex crime bill (HB 189 in 2015), and it was written by Rob Kepple, then-Executive Director of TDCAA. It was known as the “Bill Cosby rule” after his scandal broke.

¹⁷ *Mohr v. State*, 488 S.W.2d 81, 82 (Tex. Crim. App. 1972).

¹⁸ *Livingston v. State*, 739 S.W.2d 311 (Tex. Crim. App. 1987); *Murphy v. State*, 640 S.W.2d 297, 299 (Tex. Crim. App. 1982); *Lillard v. State*, 994 S.W.2d 747, 752 (Tex. App.—Eastland, 1999, no pet.); *Cacy v. State*, 901 S.W.2d 691, 701 (Tex. App.—El Paso, 1995, pet. ref'd).

judge and explained that we were not willing to arrest Abbie and force her to testify due to her fragile emotional state.

Then, with the case dismissed, Liz established probable cause that Abbie was another victim by having Investigator Parkinson give hearsay testimony about Abbie's statements that Odiong was her priest and took sexual advantage of her for years. Liz and David completely neutralized what could have been a disaster.

Following closing arguments and two hours of deliberations, the jury convicted Odiong on all remaining counts. In a special issue, jurors also found that Jane Doe was a person whom Odiong was prohibited from marrying under the bigamy statute, thus enhancing that charge to a first-degree felony.

Punishment

In the punishment phase, we called two of the three Baylor students who had complained about Odiong in 2010 and 2011. The women, now in their late 30s, recalled their shock and discomfort at their priest telling them how "hot" they were, touching their buttocks, kissing them on their face, and once nibbling on one woman's ear.

We also felt that Odiong's secret 3-year-old daughter was a reason his punishment should be severe. Even though Presley Jones did not testify, evidence showed that she was raising Odiong's daughter as a single mother, and both Presley and the child were living without the support a father would normally provide. Melissa Beseda, the Waco PD Victim Assistance Coordinator, testified that when she and the detectives were in New Orleans, they noticed that Presley did not have a proper car seat for her daughter. Melissa and the detectives went to the store and bought one for her with their own money.

To further highlight Odiong's failure to support his child, we called the McLennan County Jail's commissary administrator, who testified that Odiong spent more than \$20,000 on phone calls from the jail since his arrest in July 2024.

For Odiong's part in punishment, the defense called a psychologist who testified that he assessed Odiong and found him to be at low risk to reoffend. However, on cross-examination, that psychologist agreed that Odiong showed narcissistic traits, conceded that the priest had lied to him during their assessment by denying having any children, and acknowledged as a mental health services provider that having sex with those you counsel is "highly illegal."

The defense also called a few character witnesses who testified about what Odiong has meant to them as a priest. On cross-examination, we asked whether they had been giving Odiong money since his arrest. They had. We then asked whether Odiong had ever asked them to send money for the support of his daughter. He had not, and they, of course, had no idea he had a daughter.

In closing arguments, we asked jurors to send a message that would echo all the way to Rome that Anthony Odiong must never again have the chance to manipulate or exploit women. "Some-day he will answer to God," Liz Buice said, "but today, he answers to the 12 of you."

In less than two hours, jurors assessed the maximum possible punishments on all charges.

Immediately following the trial, we received phone calls from Abbie Williams and Presley Jones. Both women apologized for lacking the strength to testify, and both emotionally thanked us for holding Odiong accountable. We heard obvious relief in the voices of both women when we spoke to them after the trial. Abbie in particular sounded lighter and more at peace than we had ever heard her.

Conclusion

This case illustrates the age-old expression that "where there is a will, there is a way." Mary Doe had no idea when she walked into the Waco Police Department that she was kicking off a chain of events that would, without question, spare more women from becoming sexual assault victims. Because Detective Delange was on duty that day, Mary's courageous act grew into justice for other women across our country.

Our great hope is that the example of Odiong's case helps police and prosecutors deliver justice to often-overlooked adult victims of clergy sexual abuse, and to bring accountability to the perpetrators. Vulnerable people simply must be able to safely trust pastors with their fears and struggles. Odiong's case, we pray, reminds ministers that violating the trust of those whom they serve carries real and potentially severe consequences in Texas. ✱

To further highlight Odiong's failure to support his child, we called the McLennan County Jail's commissary administrator, who testified that Odiong spent more than \$20,000 on phone calls from the jail since his arrest in July 2024.

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Punishment & Probation, written by TDCAA Publications Director Diane Beckham, covers all the law relevant to sentencing. *Punishment & Probation*, first published in 2014, has been updated with the latest statutes (from the 2025 legislative session) and caselaw from the U.S. Supreme Court and Texas courts.

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