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TEXAS FELONY CASE PROCEDURE GENERAL OUTLINE

Thank you for choosing me to assist you with your legal needs. I take the position that you are retaining me to work and worry over your case so that you are less burdened with anxiety and even fear for your future. I will work hard to provide you with aggressive, effective legal representation but I will need your help developing your defense, marshaling your evidence and communicating with your witnesses. Please provide me the name, address, phone number, e-mail address and an outline of the expected testimony of all your potential witnesses (including character witnesses).

I hope the following general outline will assist your understanding of the process involved in your defense. Please keep in mind that some Judges have their own unique procedures that we can discuss as those situations arise. A criminal prosecution begins with an arrest. The arresting officer will produce a written report, which is referred to by different names, such as factual narrative, arrest report, offense report, or police report. This report is presented to the District Attorney's Office, and if all the necessary paperwork is submitted, the case is considered filed, and will be pre-assigned to one of the District Courts in the county where the offense is alleged to have been committed.

Misdemeanors are straight filed with a county court and felonies are submitted to a Grand Jury of at least 12 citizens for their determination of a "true bill" or a "no bill" of indictment.

The members of the Grand Jury will review the allegation submitted by the police and decide whether or not to charge you with the crime. If they decide to charge you with a crime, they will issue an indictment, which is a document setting out the elements to the offense. If they decide not to charge you with a crime, they will issue a "no bill" and the criminal proceedings stop. If "true billed," the case is assigned to a district (felony) court for disposition.

After a Grand Jury issues an indictment, the District Attorney's Office will assign a prosecutor to pursue the State's case against you. The next step in the process is for the prosecutor assigned to your case to read through the file, contact witnesses, and make a plea

bargain offer. This is done in every case, and I am required to inform you of every plea bargain offer that is made by the State. You are the only person who can accept or reject a plea bargain offer. I cannot accept or reject an offer on your behalf, which is why I will notify you of each plea bargain offer, even if you have advised me that you do not intend to accept any plea bargain offers. We will not agree to any offer until we are provided review of all the evidence the law requires them to disclose to us, including but not limited to police reports, forensic reports, videotapes, photographs, witness statements, etc… **The plea bargain negotiation phase can last only a few court settings, or for several months, depending upon the diligence and reasonableness of the individual prosecutor assigned to your case.** There is no way to change prosecutors or courts, so we must do the best we can with whomever the District Attorney's Office has assigned to your case.

At some point, the **plea bargain negotiations** will come to an end, either because we have reached an agreement, or because the prosecutor has made the best offer we can extract and continued negotiations would be fruitless. At this point, you will be required to make a decision about your case. ***I will highlight hereafter the four most common disposition options.***

The ***first option*** is to **accept the best offer** that has been made by the prosecutor.

The ***second option*** is to begin the process of an **open plea**, (assuming the prosecutor is willing to waive a jury trial) which means that you reject the state's offer on a plea bargain, you admit guilt and ask the Judge to decide the punishment.

An open plea is done in two parts. The first part is the entering of a plea of guilty to the charge.

The second part is the punishment hearing. In some counties the probation department is ordered by the Judge to complete a Presentence Investigation Report (PSR), sometimes referred to as a probation report. To complete this report, the probation officer will interview you to obtain your personal history, educational history, work history, criminal history, and any substance abuse or mental illness history. **Please note that you can be drug tested at this interview, so please avoid possible serious consequences by getting drug free immediately if this is an issue for you.** The probation report also includes a summary of the charges filed against you, a supervision risk assessment, results of a substance abuse evaluation, and any explanation of the offense that you wish to provide. Attorneys are not allowed to accompany their clients to the PSR interview. Once this report is completed, the case is ready for a punishment hearing before the Judge.

At this hearing, the Judge will review the report and you will be given an opportunity to testify if we agree that you should do so. My practice is to review the probation report with you first so that we can make sure there are no factual errors, or the need for additional information that was not included in the report. After you and I have reviewed the report (but please remember that PSRs are not done in all counties), we will go over any questions that I will ask you during this hearing. If you elect to testify, the prosecutor will have an opportunity to cross-

examine you during this hearing, and the Judge can also ask questions of you. After all testimony (including that of your witnesses and prosecution witnesses, if any) has been offered, the Judge will make a decision as to the appropriate punishment for the case. There is a very limited right to appeal the Judge's decision from an open plea, which usually means the decision is final.

The ***third option*** available is to **set the case for a trial**. You have a right to have a jury hear the case, or have a judge hear the case (assuming the prosecutor is willing to waive a jury trial). Trials are conducted in two phases; the first phase is referred to as *the guilt/innocence phase*, which is where the State will call any witnesses they have and offer any additional evidence in an effort to convince the jury or judge of guilt beyond a reasonable doubt. Evidence can be in the form of physical evidence collected by the police, testimony of witnesses (including police officers), expert witness testimony for any forensic evidence collected, and testimony from any other relevant witness that is allowed by the Court.

At the end of the guilt/innocence phase of the trial, if there is a finding of guilty, then the second phase will be conducted, which is *the punishment phase*. This phase of trial is similar to the punishment hearing conducted at the end of an open plea. If a jury is selected to assess punishment, then no probation report (PSR) is prepared, so the only information the jury will have is testimony and evidence offered during the punishment phase of the trial. If the Judge is elected to assess punishment, then a probation report (PSR) can sometimes be prepared and supplemented with any additional testimony and evidence that is offered by either side.

It is possible to have a jury decide the guilt/innocence portion of a trial and then have the Judge assess punishment. It is also possible to have the jury decide both phases of the trial. However, if you elect the Judge to decide the guilt/innocence phase of the trial, then the Judge will also hear the punishment phase.

There is ***fourth option***, which isn't used often, but it is available. It is generally referred to as a **slow plea**. A slow plea is where an accused pleads guilty to the crime, but elects the jury to assess punishment. This most often is done in situations where a Judge is prohibited by law from granting probation on a particular category of crime (typically aggravated or deadly weapon cases) or that particular Judge presiding is not expected to be the better choice.

Additional information that you should be aware of while your case is pending is that **criminal cases tend to move slowly.** There are long periods of time where there isn't much happening. These time periods are generally followed by relatively short periods of time where there is a flurry of activity. This generally occurs because all scheduling is subject to the Court's calendar, and we are limited to when we can fit into the court's existing, voluminous docket. This is most noticeable when scheduling a case for an open plea or a trial. The Court advises me of the available dates and I must choose one. Sometimes, the first available dates are months away and we have very little input. It is difficult for a trial to commence on its first trial setting. **Trial reset dates** are measured in months and not weeks.

I am limited in what I can discuss with your family members, and your family doesn't always understand the need for this, but let me assure you that it is done for your protection. Remember that what you say to me is protected by law under the Attorney/Client privilege. However, what you say to your family, friends, any co-defendants, or fellow inmates is not protected. Jail phone conversations are recorded and fellow inmates can be called to testify to your alleged admissions in the jail.

I advise you not to discuss the facts of the charges against you with anyone but me. There is very little to be gained by discussing your case with others, and a great deal at risk. Avoid discussing facts of your case in letters written to family or friends because these letters can be read by and seized by the jail staff. If you are out on bond, do not discuss the facts of your case in e-mails, text messages, voice-mails, letters or on social media.

If a police officer or prosecutor attempts to discuss anything with you, do not unless I am notified and given an opportunity to be with you. Law enforcement personnel, whether police officers, investigators, or prosecutors are supposed to advise me first before making an effort to discuss something with you, but may fail to do so. Unless I direct you otherwise, do not discuss anything with them. Please note that many prosecutors (or their investigators) do take the time to listen to recordings of your non-attorney phone conversations from the jail. That is nearly unbelievable, but it is allowed and true.

A number of judges are strict regarding **courtroom decorum**. You, your family and your witnesses should be attired in a manner respecting the dignity of the court. All persons entering the courtroom need to be dressed in clean, modest and appropriate attire. Unacceptable attire includes: shorts, cut-offs, sandals, flip-flop style shoes, t-shirts, muscle shirts, tube tops, halter tops, athletic/gymnasium attire, tank tops, open shirts, hats, drooping/saggy pants, clothing indicating illegal drug use, gang affiliation or containing offensive, vulgar, racist, sexist, or obscene language, and shirts that are not tucked in. Food, beverages, water bottles, and chewing gum are not allowed in the courtroom. Cellular telephones, pagers, cameras, laptop computers, i-Pads, recorders, or any other device that may cause a distraction to the court are also not allowed in the courtroom. They are subject to seizure and you are subject to contempt of court sanctions.

I hope this general outline is helpful to you. There are exceptions to many of the foregoing general outline statements. I can advise you of those exceptions which specifically apply to you as we move through the stages of your defense.

Once again, thank you. I appreciate your confidence in me and I look forward to working with you toward the best possible conclusion on this serious undertaking.

Please contact me if any concern or question arises. I am often in court, so it is easier to reach me in late afternoons or early evenings. Please contact me with any specific questions that may arise.

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DAVID R. SCOGGINS

TEXAS AND FEDERAL CRIMINAL DEFENSE

FOR OVER 35 YEARS

Disclaimer: The legal information presented herein should not be construed to be formal legal advice nor the formation of a lawyer/client relationship. General advice should always be tested by the particular case. Legal advice is almost always case specific. Statues, ordinances, legal procedures, case law and rules of evidence are often revised. If you have a specific question, give me a call.