

Overturing Texas Sex-Crime Convictions

Trial or Plea

A Comprehensive Guide for Attorneys

Matthew Daher

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Chapter 1: Introduction

Sex-crime convictions occupy a singular position in the American criminal justice system. The allegations are devastating. The sentences are among the longest in the penal code. The collateral consequences, including lifetime sex-offender registration, extend well beyond the prison walls. And the stigma attached to these charges creates enormous pressure on defendants to resolve cases quickly, often through guilty pleas, even when viable defenses exist.

Texas, in particular, demands close attention. The state's penal code prescribes mandatory minimum sentences for many sex offenses, especially those involving children. Aggravated sexual assault of a child under six carries a minimum of 25 years with no possibility of parole. Aggravated sexual assault of a child under 14 carries a minimum of 5 years but exposes defendants to life sentences. These sentencing realities create a coercive dynamic at the plea-bargaining stage: defendants who might prevail at trial face catastrophic penalties if they lose, making even innocent individuals receptive to plea offers that guarantee a shorter sentence than the maximum.

At the same time, Texas has become one of the most active states in the country for post-conviction exonerations. The National Registry of Exonerations documents dozens of Texas sex-crime exonerations over the past two decades. Dallas County alone has produced more exonerations than most entire states. Several Texas counties have established Conviction Integrity Units that actively review questionable convictions. This track record reflects both the scope of the problem and the availability of meaningful post-conviction remedies.

This guide is written for practicing attorneys who handle sex-crime post-conviction work in Texas, whether on direct appeal, through habeas corpus proceedings, or both. It is also intended to be useful for trial attorneys evaluating their cases before conviction, because understanding how convictions are later overturned illuminates what can go wrong at every earlier stage.

Two Post-Conviction Paths

Texas law provides two principal avenues for challenging a sex-crime conviction after it becomes final.

Direct appeal is available to defendants convicted at trial. The appeal must be filed within 30 days of sentencing (or 90 days if a motion for new trial is filed). The appellate court reviews the trial record for legal errors: improper admission or exclusion of evidence, defective jury instructions, prosecutorial misconduct, constitutional violations. The standard of review varies by issue but is generally deferential to the trial court. Direct appeals do not permit the introduction of new evidence.

Article 11.07 habeas corpus is the broader and, for many sex-crime cases, the more consequential remedy. An 11.07 application may be filed at any time after a felony conviction becomes final. Unlike direct appeal, it permits the introduction of evidence outside the trial record, including recantation testimony, newly discovered forensic evidence, and proof of facts that were not available at the time of trial or plea. Crucially, Article 11.07 is available to

defendants who pled guilty, not just those convicted at trial. This makes it the primary vehicle for challenging guilty pleas based on innocence, coercion, or ineffective assistance of counsel.

The distinction matters enormously in sex-crime cases. As the case studies in the next chapter demonstrate, a significant number of innocent defendants plead guilty to sex offenses. They do so for understandable reasons: the sentences at stake are extreme, the evidence often comes down to a child's word against the defendant's, and the emotional dynamics of the courtroom strongly favor the prosecution. For these individuals, the 11.07 habeas application is not merely an option. It is the only path to relief.

What This Guide Covers

The chapters that follow are organized around the practical realities of post-conviction sex-crime work in Texas:

- **Chapter 2** presents five detailed case studies of men recently exonerated of sex crimes in Texas. Three of the five pled guilty. All five ultimately obtained relief through Article 11.07 habeas corpus applications. Their stories illustrate the range of failures that produce wrongful sex-crime convictions, from false accusations and inadequate forensic interviews to ineffective defense counsel and prosecutorial misconduct.
- **Chapters 3 and 4** examine the two post-conviction paths in detail: direct appeals after trial conviction, and Article 11.07 habeas corpus applications.
- **Chapter 5** focuses specifically on challenging guilty pleas, a critical topic given that the vast majority of sex-crime convictions in Texas result from pleas rather than trials.
- **Chapters 6 and 7** address the common substantive issues that arise in sex-crime post-conviction cases (false accusations, forensic interview failures, inadequate defense investigation, Brady violations, false or misleading expert testimony) and the practical strategies for investigating and litigating these claims.

The goal throughout is to provide a working framework for attorneys evaluating potential cases, identifying viable claims, and building effective post-conviction presentations. Sex-crime post-conviction work is demanding, both technically and emotionally. But as the five exonerations profiled in the next chapter demonstrate, it is also some of the most consequential work a criminal defense attorney can do.

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Chapter 2: Five Men Exonerated

The five cases that follow are all recent Texas sex-crime exonerations. They span multiple counties, multiple decades of alleged conduct, and a range of procedural histories. Some defendants went to trial; others pled guilty. Some had DNA evidence that ultimately proved their innocence; most did not. What they share is that each man was convicted of a sex crime he did not commit, spent years in prison, and eventually obtained relief through the Texas habeas corpus process.

These are not abstractions. They are case studies in how the system fails and how it can be made to correct itself. Each one contains lessons for attorneys handling sex-crime cases at any stage.

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Adam Sanchez (Bexar County)

The Accusation

In April 2017, Amanda Sanchez called police in San Antonio to report that her two children had disclosed sexual abuse by their father, Adam Sanchez. The children, identified in court records as A.S. (a six-year-old girl) and A.H.S. (a five-year-old boy), told their mother they had been sexually abused. At the time, Amanda Sanchez was living with her boyfriend, T.G.

On May 9, 2017, CPS investigator Tammy Smiley interviewed the children. A.H.S. said his father had forced him to perform sex acts with his sister. A.S. said her father had sexually assaulted her and forced her to perform sex acts with her brother. A.S. also stated that some of the events occurred at the home of a man named Avian Sanchez, a friend of her father.

Two days later, on May 11, 2017, Adam Sanchez was arrested and indicted on six counts of child sexual assault. He was 34 years old. Unable to make bail, he remained in the Bexar County Jail.

The Expanding and Collapsing Allegations

After Sanchez's arrest, the children's accounts began to shift in ways that, in hindsight, should have raised serious concerns. On June 29, 2017, both children told investigators that Avian Sanchez had also sexually abused them. Police interviewed Avian, who denied the allegations. Then, in July 2017, the children recanted the accusations against Avian entirely. A.H.S. said he did not know why he had made up the story. A.S. offered a striking explanation: she said she had accused Avian because she was worried her father would get hurt in jail and wanted him to have a friend there.

The fact that two young children fabricated sexual abuse allegations against one named individual, then admitted doing so within weeks, was a significant red flag regarding the reliability of their other allegations. It demonstrated that these children were capable of making false accusations and had done so for reasons that had nothing to do with actual abuse.

Inadequate Defense

Despite the obvious vulnerabilities in the prosecution's case, Sanchez's defense was, by all accounts, minimal. His court-appointed attorney was Virginia Maurer. The court did not approve funds for a defense investigator, James McKay, until August 31, 2018, more than fifteen months after Sanchez's arrest.

Sanchez himself was functionally illiterate, which made him heavily dependent on his attorney to explain the case, evaluate the evidence, and develop a strategy. According to his later account, Maurer visited him only three times during the nearly two years between his arrest and his plea. She initially told him that "everything was looking good," but as the case approached a trial date, she reversed course and told him "things were not good." She pressured him to accept a plea.

McKay, the investigator, later stated in an affidavit that Maurer would not meet with him to discuss the case. He made few inquiries and worked so little on the matter that he did not bill the county for his time.

The Guilty Plea

On April 11, 2019, after more than a year and a half in jail, Adam Sanchez entered no contest pleas to three counts of aggravated sexual assault of a child. He was sentenced to 25 years in prison.

The plea was the product of desperation, not guilt. Sanchez was illiterate, isolated, and wholly reliant on an attorney who had done almost nothing to investigate his case. He was scared. He did not want his children to go through the ordeal of a trial. And he faced the possibility of a far longer sentence if convicted at trial on all six counts.

The Recantations

In late 2020, Amanda Sanchez contacted Adam and told him the children had recanted their accusations.

A.S., now older, provided an affidavit describing what had actually happened. She said that T.G., her mother's boyfriend, had physically and mentally abused both her and her brother. The children were "scared of him." She and her brother had touched each other's genitals on one occasion. When T.G. discovered this, he became enraged and accused Adam Sanchez of teaching the children to behave that way. T.G. kept yelling until A.H.S. falsely agreed that their father was to blame. A.S. explained that her knowledge of sexual matters came from seeing a video on a phone and from watching the television show *Law & Order: SVU*.

A.H.S.'s affidavit was equally direct: "I told a lie about my dad because my mom's ex-boyfriend [T.G.] was mad at me and my sister and [T.G.] was always hitting us and hurting us. I said that my dad did things to me because that is what [T.G.] wanted me to say and I just did not want to be in trouble."

Post-Conviction Relief

In December 2020, Sanchez submitted an intake form to the Conviction Integrity Unit in the Bexar County District Attorney's office. The CIU expressed interest in the case.

On December 15, 2021, now represented by attorney Dayna Jones, Sanchez filed an Article 11.07 habeas corpus application. The petition raised two grounds: first, that the children's recantations constituted newly discovered evidence of actual innocence; and second, that Maurer had provided ineffective assistance of counsel by failing to investigate the case and coercing a guilty plea. (Maurer had died in September 2020 and could not respond to the allegations.)

The habeas petition emphasized the instability of the children's original accounts, particularly the fabricated and then recanted accusations against Avian Sanchez. As the motion stated: "A simple review of the discovery establishes that there was a possible defense."

At an evidentiary hearing in 2022, the children testified about the false accusations and their recantations. The Bexar County judge recommended that the writ be granted, and Sanchez was released on October 14, 2022.

The Texas Court of Criminal Appeals granted the writ on June 19, 2024. All charges were dismissed on July 31, 2024.

The contributing factors identified in this case were perjury or false accusation and inadequate legal defense. There was no DNA evidence.

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Brice Blankenship (Waller County)

The Accusation

On May 9, 2016, Brice Blankenship, age 27, was arrested in Waller County on charges that he had sexually molested his stepdaughter, K.H. The charge was super aggravated assault of a child under six, carrying a mandatory minimum sentence of 25 years with no possibility of parole. The maximum sentence was life.

The allegation was that in late 2013 or early 2014, when K.H. was approximately two and a half years old, Blankenship put his penis in her mouth. The accusation did not surface until September 2015, when K.H. was four years and five months old.

A Troubled Household

K.H.'s mother, K.B., was separated from Blankenship by the time the allegations emerged. Their relationship had been marred by drug use, verbal abuse, and physical violence. K.B. had been arrested for assaulting Blankenship. The couple had maintained a room in their home that they used for consuming methamphetamine, cocaine, marijuana, and alcohol.

How the Allegation Emerged

The sequence of events that produced the accusation against Blankenship is critical.

On September 10, 2015, K.H. told her mother that Delbert Vickers, K.B.'s then-boyfriend, had sexually molested her. K.B. filed a police report. A hospital examination showed no evidence of assault. CPS was notified, and a forensic interview was scheduled.

On the morning of the scheduled interview about Vickers, K.B. dropped K.H. at the home of her sister, A.H. Before the interview, A.H. questioned K.H. on her own. During that questioning, K.H. said for the first time that Blankenship had put his penis in her mouth while they were in his van watching Scooby-Doo.

K.B. then took K.H. to the Waller County Sheriff's office. Two days later, a forensic interview was conducted at the Fort Bend Child Advocacy Center by interviewer Heather Burger. During the interview, K.H. blurted out that "Daddy" (Blankenship) had put his "pee-pee" in her mouth. She also said that others had molested her, including other children and an adult she identified as "Kinsey."

Both Blankenship and Vickers were charged.

The Forensic Interview Problems

The quality of K.H.'s forensic interview would become a central issue in the case. Defense attorney Lee Van Richardson Jr. retained Dr. Bryan Sweeney, a forensic psychologist from Webster, Texas, to evaluate the interview. Dr. Sweeney identified multiple problems with Burger's technique: the interviewer never established whether K.H. understood the difference between truth and a lie; K.H. could not state her birthday or age by numbers; Burger asked multiple leading questions; and when K.H. said "all my friends do that to me too" and named other people, Burger did not follow up on these statements but instead tried to keep the child "in a specific lane."

Two Trials

Blankenship's first trial, in February 2019, ended in a mistrial when the jury could not reach a verdict.

Before the retrial, Blankenship rejected a plea offer of 10 years, as he had before the first trial.

The retrial took place in November 2021. The prosecution's case rested primarily on K.H.'s testimony. She was now 10 years old. She said the abuse happened in Blankenship's purple van, but his van was black and had no video system. (His previous vehicle, a GMC Yukon, had video capability.)

A.H. (K.H.'s aunt) testified for the defense. She described K.H. as "overly sexualized" for her young age. A.H. had found K.H. fondling the penis of A.H.'s one-and-a-half-year-old son. She had also found K.H. naked from the waist down in bed with her son.

The defense planned for Dr. Sweeney to testify about the specific deficiencies in Burger's forensic interview. However, before he could offer that testimony, the prosecution objected on the ground that Sweeney had only watched ten forensic interviews and had never conducted one himself. The judge barred that portion of his testimony. The prosecution then called a rebuttal witness, Fiona Remko, the director of the Fort Bend Child Advocacy Center where the interview was conducted, who said the interview was conducted properly.

Conviction and Brady Violation

On December 3, 2021, Blankenship was convicted. He was sentenced to 40 years.

Three days after the conviction, prosecutor Melissa Hudspeth disclosed that A.H. (the aunt who had testified for the defense) had a prior theft conviction with a jail sentence. This information should have been disclosed before trial, as it was impeachment evidence that the defense was entitled to under *Brady v. Maryland*. The defense filed a motion for new trial on Brady grounds, which was denied.

In October 2022, Delbert Vickers (K.B.'s boyfriend, who had also been accused by K.H.) pled guilty and was sentenced to 10 years.

In November 2022, the Texas 14th Court of Appeals affirmed Blankenship's conviction on direct appeal.

The 11.07 Habeas Application

In June 2023, attorney Randy Schaffer filed an Article 11.07 habeas petition on Blankenship's behalf. The petition raised three grounds: first, that the prosecution had failed to disclose A.H.'s theft conviction in violation of *Brady v. Maryland*; second, that Richardson had been ineffective in failing to retain a qualified expert on forensic interview techniques; and third, that Richardson had failed to cross-examine K.B. about inconsistent statements she made between the two trials.

In September 2023, Judge Albert McCaig Jr. recommended that the writ be granted. The judge found that Blankenship did not receive a fair trial. The defense was "greatly damaged" by the lack of a qualified expert on forensic interviewing. At the hearing, Schaffer demonstrated that Burger's interview of K.H. "was inadequate."

On November 1, 2023, the Court of Criminal Appeals granted the writ, vacated the conviction, and ordered a new trial. Blankenship was released on bond on November 27, 2023.

On May 8, 2025, the prosecution dismissed the case.

The contributing factors were perjury or false accusation, official misconduct (the Brady violation), and inadequate legal defense. There was no DNA evidence.

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Calvin Reed (Harris County)

The Accusation

In June 2006, a six-year-old girl identified as T.R. told her foster mother, Vertina R., that Calvin Reed had sexually assaulted her. Reed, then 20 years old, was Vertina's cousin. The alleged assault had occurred in March 2006, when Reed was 19.

T.R. repeated her claims during a forensic interview at the Children's Assessment Center in Houston on July 27, 2006.

Reed was arrested on March 30, 2007, and charged with aggravated sexual assault of a child. Attorney Richard Wheelan was appointed to represent him.

The Guilty Plea and Revocation

On February 22, 2008, Reed pled guilty. Rather than a prison sentence, he was placed on deferred adjudication with community supervision.

Less than a year later, on January 15, 2009, the State moved to revoke Reed's deferred adjudication. The revocation was granted, and Reed was sentenced to 20 years in prison. The records regarding the specific reason for revocation were sealed.

The Recantation

Around 2015, T.R. recanted her allegations against Reed. She first told her birth mother, then told Reed's wife, that Reed had not assaulted her.

The truth, as T.R. later testified, was that the actual abuser was Alex R., Vertina's husband. Alex had threatened to send T.R. back to CPS and separate her from her sister if she identified him as the perpetrator. T.R. was six years old at the time and complied with the threat by naming Reed instead.

T.R. testified that she was 15 years old when she learned that Reed had been arrested based on her allegations. After her 2006 statement to investigators, she was never interviewed again by either the prosecution or the defense. (Alex R. was later convicted of indecency with a child in a separate investigation.)

The 11.07 Habeas Application

On January 24, 2017, Reed, now represented by attorney Aimee Bolettino, filed an Article 11.07 habeas petition. The petition raised two grounds: first, that T.R.'s recantation constituted newly discovered evidence of actual innocence; and second, that Wheelan had provided ineffective assistance of counsel by failing to investigate before advising Reed to plead guilty.

The petition noted that Wheelan, who died in 2008, had not properly investigated the case, had failed to interview witnesses, and that records showed only one possible conversation with Reed between his arrest and his guilty plea.

Contested Proceedings

At the evidentiary hearing, T.R. testified in detail about the false accusation and the reasons for it. She explained the threats by Alex R. and her fear of being separated from her sister.

The State presented evidence that in 2010, during an investigation into Alex R., T.R. had told a forensic examiner that both Reed and another relative had abused her. The State argued that the recantation was inconsistent and had been influenced by family members and by Reed's wife, with whom T.R. had lived for a period. The State also contended that Wheelan had been effective, noting that he had negotiated a favorable plea to deferred adjudication rather than prison time.

The Harris County judge who heard the evidence recommended that the writ be granted on actual innocence grounds, finding T.R.'s recantation credible and Wheelan's representation ineffective.

Reed was released on June 26, 2019.

On November 1, 2021, the judge forwarded findings to the Court of Criminal Appeals, recommending that the writ be granted. On May 31, 2023, the Court of Criminal Appeals granted the writ, with two judges dissenting. The charges were dismissed on June 28, 2023.

The contributing factors were perjury or false accusation and inadequate legal defense. There was no DNA evidence.

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Marshall Moreno (Travis County)

The Domestic Violence Call

On July 5, 1999, Austin police responded to a domestic disturbance call at the home of Marshall Moreno and his partner, Rhonda Moore. Moore was arrested for assaulting Moreno in the presence of the couple's two children: S.M. (a 10-year-old boy) and A.M. (a 7-year-old girl who was five days from her eighth birthday).

Four days later, on July 9, the children were removed from the home and placed in foster care. That same day, counselor Melissa Greer at the Children's Advocacy Center interviewed A.M. The girl described the domestic violence she had witnessed. She made no mention of sexual abuse.

On July 16, the police report was changed, reversing the roles: Moore was reclassified as the victim, and Moreno became the suspect. A warrant was issued for Moreno's arrest. He was at the time under community supervision for an earlier domestic violence conviction. His supervision was revoked, and he was sentenced to 240 days in the Travis County Jail.

Repeated Denials, Then Disclosure

Between August 1999 and January 2000, A.M. met weekly with therapist Michele Chandler, who had been assigned by CPS. Chandler asked A.M. whether her father had touched her inappropriately. A.M. said no.

A.M. went through multiple foster placements. She and her brother were removed from one placement after foster parents reported the siblings were "sexually acting out" with other children.

The children were eventually placed with the B. family group foster home. On August 30, 2001, the foster mother reported that A.M. had misbehaved sexually with other foster siblings.

A.M. began seeing a new therapist, Laura Johnson. On September 13, 2001, more than two years after A.M. was removed from her father's home, Johnson asked A.M. whether she had been sexually abused. For the first time, A.M. said that Moreno had sexually abused her before she entered foster care.

The Investigation

On October 12, 2001, A.M. was interviewed by Alisa Clanin at the Children's Advocacy Center. The interview was videotaped. A.M. provided details of abuse and said that her mother had walked in on Moreno and hit him with a broom or stick. She said she was eight at the time and that Moreno was arrested that night. However, A.M. had been removed from the home before her eighth birthday, and Moreno's arrest occurred no earlier than July 16, 1999, creating a timeline inconsistency.

Dr. Beth Nauert examined A.M. and found no evidence of physical injuries or scarring.

Moreno was arrested on December 6, 2001, at age 39. He was charged with aggravated sexual assault and two counts of indecency with a child.

The Trial

Trial began on July 22, 2003, in Travis County before Judge Brenda Kennedy. The judge allowed A.M. to testify via closed-circuit television rather than in the courtroom.

A.M.'s testimony contained multiple inconsistencies when compared with her prior statements. She had told therapist Johnson that she bled on the sheets, but at trial she could not remember that detail. She had told Dr. Nauert that Moore was the first person she disclosed the abuse to, but she testified that Johnson was the first. She had told interviewer Clanin that her mother hit Moreno with a stick upon discovering the abuse, but she did not include that detail in her trial testimony.

Rhonda Moore testified about the fighting and abuse in the household. She said A.M. had never told her about sexual abuse. When asked whether she had ever witnessed anything sexual, Moore said: "I came in one time, and he popped up out of the bed, but I don't know what was happening." She never actually saw sexual activity.

Dr. Nauert testified that a normal physical examination does not preclude abuse. Dr. William Carter, a psychologist presented as an expert witness, testified about delayed disclosure in child sexual abuse cases. Carter had never interviewed A.M., yet he told the jury he could identify abused children by "a certain look in the eye."

Defense attorney Nate Stark argued that A.M.'s testimony was inconsistent and had been shaped by repeated meetings with prosecutors and healthcare workers. Prosecutor Melinda McCracken countered that A.M. had no incentive to lie, pointing to A.M.'s crying on the stand as the "smoking gun" that Carter said could not be faked.

On July 24, 2003, Moreno was convicted. He was sentenced to 36 years on the sexual assault charge, plus concurrent sentences of 6 and 12 years on the two indecency counts.

Direct Appeal

Moreno pursued a direct appeal, arguing that Judge Kennedy had erred in allowing A.M. to testify via closed-circuit television in violation of the Sixth Amendment right to confrontation. On March 10, 2005, the Third District Court of Appeals affirmed the conviction, holding that the right to face-to-face confrontation is not absolute.

The Recantation and Hidden Evidence

In late 2020, A.M., now an adult known as D.B. (having been adopted by the B. family), contacted Charles Press, director of the Actual Innocence Clinic at the University of Texas School of Law. She recanted her trial testimony.

Press contacted the Travis County District Attorney's Conviction Integrity Unit, which investigated the case and shared the case file.

On November 4, 2024, Press filed an Article 11.07 habeas petition. The petition included a sworn affidavit from D.B., now 33 years old, in which she stated that her adoptive mother had pressured her to falsely accuse her father and to testify against him. D.B. wrote: "Keeping up with this lie has been eating me up from inside. I was tired of feeling guilt every single day of my life."

The petition also included correspondence between Dr. Carter (the prosecution's expert witness) and prosecutor Fagin. The correspondence revealed that Carter had been given details of A.M.'s prior statements and her physical examination results before trial, enabling him to tailor his testimony. Two days before trial, Carter wrote to Fagin: "I've been thinking about how to best explain your V's testimony (and inconsistencies) to the jury." He also discussed strategies for undermining Moore's expected testimony.

The petition further revealed that Fagin had expressed doubts about the complainant's credibility in an email to a therapist, noting that A.M. seemed to describe events from when she was three years old, not from the summer of 1999.

Exoneration

On July 10, 2025, an evidentiary hearing was held before Judge Brandy Mueller. D.B. testified that Moreno had never sexually abused her and that her trial testimony was false. "I felt pressured with my adopted family. I felt like I had to do it to please them." She said she had been afraid to tell the truth because she did not want to upset the stability of her new life.

On September 15, 2025, Judge Mueller recommended that the Court of Criminal Appeals grant habeas relief on actual innocence grounds. In her findings, the judge wrote: "To the extent that other witnesses corroborated D.B.'s false trial testimony, such corroboration was based entirely upon her false outcry; no independent or physical evidence supported the conviction."

On November 20, 2025, the CCA granted the petition.

On December 18, 2025, all charges were dismissed on actual innocence grounds. Marshall Moreno was released after 24 years of incarceration. Travis County District Attorney Jose Garza stated: "Although dismissing his cases won't undo the 24 years Mr. Moreno spent incarcerated, we hope it helps him as he works toward rebuilding his life."

The contributing factors were false or misleading forensic evidence (Dr. Carter's tailored expert testimony) and perjury or false accusation. There was no DNA evidence.

Tyrone Day (Dallas County)

The Accusation

In the early morning hours of October 25, 1989, Dallas police responded to a report by an 18-year-old woman identified as A.C. She reported that she had been sexually assaulted. A.C. was deaf and unable to speak. She wrote out her account: she and a deaf and mute friend had been walking in the Fair Park neighborhood when a Black man approached and offered them drugs. After she refused, the man forced her into an apartment where he and two other men sexually assaulted her.

While A.C. was still at the scene giving her report, 19-year-old Tyrone Day happened to walk by. A.C. pointed to him and indicated he was one of her attackers. Day was arrested on the spot.

A sexual assault kit and clothing were collected at Parkland Hospital.

The Guilty Plea

Day maintained his innocence, but on February 2, 1990, he pled guilty to rape. His defense attorney advised him that he would likely be paroled after four years and warned that a trial conviction could result in a life sentence. Day had significant health issues and two young daughters. Facing those realities, he accepted the plea.

He was sentenced to 40 years.

Day was not released on parole until January 6, 2015, more than 26 years after his arrest.

Decades of Effort

During his imprisonment, Day repeatedly sought to prove his innocence. In 2000, he wrote to the Innocence Project at the Benjamin N. Cardozo School of Law in New York. In 2001 and again in 2005, he filed petitions requesting DNA testing of the sexual assault kit and clothing collected from A.C. Both petitions were denied after the Dallas County District Attorney's office opposed them.

In 2008, after the Dallas County DA established a Conviction Integrity Unit, Innocence Project attorney Vanessa Potkin and the CIU agreed to test the physical evidence. The testing was extensive and took years.

The DNA Results

The results were unambiguous. DNA profiles of two unknown men were identified, along with a low-level profile of a third male. Tyrone Day was excluded from all three profiles.

One of the profiles matched an individual identified as R.W. in CODIS, the FBI's database of approximately 20 million DNA profiles. When contacted, R.W. admitted that he had promised A.C. marijuana in exchange for sex and then refused to pay. Through R.W., investigators identified another man, C.D., whose DNA matched another of the profiles recovered from the evidence.

The Complainant's Revised Account

Between 2018 and 2019, the CIU conducted three interviews with A.C. using an ASL interpreter. A.C. gave varying accounts of the events. She ultimately said she had been exchanging sex for drugs. When she did not receive the drugs she was promised, she felt she was a victim. She told investigators that if the man had given her the marijuana, she would not have said she was raped.

A.C. also admitted that when she identified Day, he was on an upstairs breezeway of an apartment complex and she was about 50 feet away in a police car. She said she did not identify Day by his face, but based only on the hat he was wearing.

Exoneration

On March 10, 2023, Dallas County Judge Carter Thompson agreed to joint findings of fact in a habeas petition presented jointly by CIU chief Cynthia Garza and Day's attorneys: Vanessa Potkin of the Innocence Project, Gary Udashen of the Innocence Project of Texas, and Jenae Ward and Paul Genender of the law firm Weil, Gotshal & Manges.

On April 26, 2023, the Court of Criminal Appeals granted the writ and vacated the conviction. The charge was dismissed on May 24, 2023.

During his 26 years in prison, Day studied horticulture at Trinity Valley Community College. After his release, he co-founded Restorative Farms, an urban farming operation in Dallas. He stated: "It has been a long, hard journey for my family and me, but I never lost faith that my innocence would be proven."

Day was awarded \$2,227,716 in state compensation.

The contributing factors were mistaken witness identification and perjury or false accusation. DNA evidence was critical to the exoneration.

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Common Threads

These five exonerations are separated by geography, time, and circumstance. Adam Sanchez was a functionally illiterate father in San Antonio accused by his own children. Tyrone Day was a teenager in Dallas identified by a stranger from 50 feet away. Marshall Moreno spent 24 years in a Travis County prison based on testimony that a child's adoptive family pressured her to give. Yet beneath their differences, these cases share structural patterns that reveal systemic vulnerabilities in how Texas investigates, prosecutes, and defends sex-crime allegations.

False Accusations Were Present in Every Case

All five exonerations involved false accusations. In three of the five (Sanchez, Reed, Moreno), the accusers were children who later formally recanted their allegations. In Blankenship, the child's allegations were undermined by evidence of a flawed forensic interview, Brady violations, and inadequate defense representation, though no formal recantation occurred. In Day's case, the

complainant ultimately admitted that the encounter was transactional and that she identified Day based on a hat seen from 50 feet away, not based on recognition of her attacker.

The reasons for false accusations varied. In Sanchez, the children were coerced by their mother's abusive boyfriend. In Reed, the child named Reed because the actual abuser (her foster father) threatened to send her back to CPS. In Moreno, the child was pressured by her adoptive family. In Blankenship, the child's initial disclosure concerned a different man entirely, and the accusation against Blankenship emerged only after the child's aunt questioned her on the morning of a forensic interview about someone else. These patterns underscore that false sex-crime accusations, particularly by children, are often the product of manipulation, fear, or suggestive questioning by adults rather than spontaneous fabrication.

Inadequate Legal Defense in Three of Five Cases

In three of the five cases (Sanchez, Blankenship, Reed), inadequate legal defense was identified as a contributing factor in the wrongful conviction. Moreno's case involved a different set of systemic failures: false or misleading forensic evidence and perjury or false accusation.

Sanchez's attorney visited him three times in nearly two years, refused to meet with the court-approved investigator, and pressured a functionally illiterate client to plead guilty. Reed's attorney had, at most, one conversation with his client between arrest and plea and failed to interview any witnesses. Blankenship's trial attorney failed to retain a properly qualified expert on forensic interview techniques, a failure that the habeas court found "greatly damaged" the defense. In Moreno's case, the prosecution's expert witness collaborated with prosecutors to tailor his testimony, and this was not uncovered until decades later.

These failures are not anomalies. They reflect the structural realities of indigent defense in serious felony cases: underfunded counsel, insufficient investigative resources, and overwhelming caseloads that leave attorneys unable to prepare adequately for cases carrying decades-long sentences.

Three of Five Men Pled Guilty Despite Being Innocent

Sanchez, Reed, and Day all entered guilty pleas to crimes they did not commit. Their reasons for doing so followed a common pattern: each faced extreme potential sentences at trial, each was advised by counsel that a plea was the pragmatic choice, and each felt that the system was stacked against him.

Sanchez was illiterate, had been in jail for nearly two years, and his attorney told him things were "not good." Reed was offered deferred adjudication, a seemingly favorable outcome compared to the prison sentence he risked at trial. Day was told he would likely be paroled in four years; he served 26. In each case, the guilty plea became an obstacle to relief, because the defendant had waived many of the procedural protections available after trial.

These cases powerfully refute the assumption that a guilty plea is reliable evidence of guilt. In sex-crime cases, where penalties are severe, evidence is often uncorroborated, and the stigma of the accusation itself is overwhelming, innocent people plead guilty for rational reasons.

Article 11.07 Was the Vehicle for Relief in Every Case

All five men obtained relief through Article 11.07 habeas corpus applications. Even Blankenship, who was convicted at trial and pursued a direct appeal, ultimately prevailed through habeas rather than on appeal. Moreno likewise lost his direct appeal before obtaining habeas relief more than two decades later.

For the three men who pled guilty, Article 11.07 was the only available post-conviction remedy. This underscores the critical importance of the habeas process for sex-crime cases, particularly for defendants whose guilty pleas foreclose direct appellate review.

Recantation Evidence Was Key in Three of Five Cases

In the Sanchez, Reed, and Moreno cases, the complainant's formal recantation was the central piece of evidence supporting habeas relief. Texas courts are famously skeptical of recantation testimony, and for understandable reasons: recantations can be the product of pressure, sympathy, or manipulation, just as the original accusations can be. But in each of these cases, the recantation was corroborated by circumstantial evidence, was consistent with inconsistencies in the original allegations, and was found credible by the habeas court. In Blankenship's case, relief was based on Brady violations and ineffective counsel rather than a formal recantation, though the credibility of the child's allegations was significantly undermined at the habeas hearing.

In Day's case, recantation played a different role. The complainant did not recant the claim that she was victimized; rather, she revised her account to reveal that the encounter was consensual and transactional, and that she identified Day based on a hat, not his face. The DNA evidence independently proved Day was not one of the men involved.

DNA Was Decisive in One Case

Only Tyrone Day's exoneration involved DNA evidence. The sexual assault kit and clothing, preserved for decades, yielded profiles of three men, none of whom was Day. One profile led investigators to R.W., who admitted to the transactional encounter.

In the other four cases, there was no DNA evidence. The convictions rested on testimony alone, primarily the testimony of children. This is typical of sex-crime cases, where physical evidence is often absent or inconclusive and the case hinges on credibility determinations.

The Role of Conviction Integrity Units

Conviction Integrity Units played a role in three of the five exonerations. The Bexar County CIU engaged with Sanchez's case after he submitted an intake form. The Dallas County CIU was instrumental in Day's case, agreeing to DNA testing and conducting the interviews with A.C. that revealed the true nature of the encounter. The Travis County CIU investigated Moreno's case after being contacted by the Actual Innocence Clinic at UT Law.

The existence and active engagement of these units materially contributed to the outcomes. Attorneys handling post-conviction sex-crime cases in Texas should be aware of which counties have functioning CIUs and should consider engaging them early in the process, particularly when new evidence of innocence exists.

The Human Cost

The combined time these five men spent incarcerated for crimes they did not commit is staggering. Marshall Moreno served approximately 24 years. Tyrone Day served more than 26 years. Calvin Reed served approximately 11 years. Adam Sanchez served roughly 5 years. Brice Blankenship served approximately 2 years from conviction to release on bond. Together, they lost approximately 68 years of their lives.

These numbers represent careers never built, children raised without fathers, relationships destroyed, and health deteriorated in prison conditions. Day, who had significant health issues at the time of his plea, spent more than a quarter century behind bars. Moreno entered prison at 39 and was released as a man in his sixties. Sanchez's children grew up without him during formative years.

Systemic Vulnerabilities

Taken together, these five cases illuminate systemic vulnerabilities at every stage of sex-crime prosecution: in how allegations are initially investigated and documented; in how forensic interviews of child complainants are conducted; in how defense attorneys prepare (or fail to prepare) for cases involving uncorroborated testimony; in how prosecutors handle exculpatory evidence; in how expert witnesses are vetted and their testimony presented; and in how the plea-bargaining process operates under the pressure of extreme mandatory minimum sentences.

No single reform would have prevented all five of these wrongful convictions. But attorneys who understand these failure points are better positioned to identify vulnerabilities in their own cases, whether at trial, on appeal, or in habeas proceedings. The chapters that follow provide the legal and practical framework for doing exactly that.

* * *

Chapter 3: Texas Direct Appeals in Sex-Crime Cases

Introduction

A direct appeal is the first and most critical opportunity to challenge a sex-crime conviction. In Texas, direct appeals are limited to the trial record: the appellate court reviews only what happened in the courtroom, as reflected in the clerk's record and reporter's record. No new evidence may be introduced. This constraint makes error preservation at trial an essential precondition for effective appellate advocacy.

This chapter covers the appellate timeline, the mechanics of preserving error, and the substantive issues most frequently raised in sex-crime appeals. It also addresses the standards of review that appellate courts apply to each category of claim.

* * *

3.1 Preserving Error at Trial

The most brilliant appellate argument is worthless if the underlying error was not properly preserved. Texas Rule of Appellate Procedure 33.1(a) requires two things: (1) a timely, specific request, objection, or motion in the trial court that states the precise grounds for complaint, and (2) a ruling by the trial court on that request. If the court says "move along" or simply ignores the objection, error is not preserved. Counsel must press for an actual ruling.

Timely, Specific Objections

A general objection will rarely suffice. In the sex-crime context, this matters enormously. A generic "hearsay" objection does not preserve a Confrontation Clause challenge under *Crawford v. Washington*. A general relevance objection does not preserve a Rule 404(b) or Article 38.37 challenge to extraneous offense evidence. The objection must name the specific ground. If multiple grounds exist, counsel should articulate each one.

Continuing Objections and Offers of Proof

When the same category of objectionable evidence will recur throughout trial, counsel should request a running (continuing) objection rather than objecting before the jury each time inadmissible evidence is offered. Texas Rule of Evidence 103 permits this approach, and it avoids the strategic cost of repeated objections that may alienate the jury.

Conversely, when the court excludes defense evidence, counsel must make an offer of proof under Rule 103(a)(2) to preserve that exclusion for appeal. The offer should include the substance of the excluded testimony or exhibit so the appellate court can evaluate what the jury missed.

Motions in Limine vs. Actual Objections

A motion in limine, by itself, does not preserve error. It merely asks the court to require opposing counsel to approach the bench before raising a topic. Even if the court grants a motion in limine, counsel must still object when the evidence is actually offered at trial. Failure to object at that moment waives the issue. The motion in limine is a useful tactical device for teeing up an issue, but it is not a substitute for a contemporaneous trial objection.

The Motion for New Trial as a Preservation Vehicle

Certain claims cannot be raised on appeal unless first presented in a motion for new trial. The most important of these is ineffective assistance of counsel (IAC). Because the trial record almost never contains evidence of counsel's strategic reasoning, a motion for new trial with an accompanying evidentiary hearing is the mechanism for developing that record. If appellate counsel fails to file the motion within 30 days of sentencing (or fails to obtain a hearing within the 75-day window), the IAC claim may be unreviewable on direct appeal.

The motion for new trial is also the proper vehicle for claims of jury misconduct, newly discovered evidence that surfaces in the immediate aftermath of trial, and other matters outside the trial record. Courts of appeals have found appellate counsel ineffective for missing the 75-day ruling deadline, underscoring how seriously Texas courts treat this procedural step.

Practical tip: Even when trial and appellate counsel are different attorneys, the handoff must happen quickly. Appellate counsel should be retained (or at least consulted) well before the 30-day motion-for-new-trial deadline expires. A missed deadline here forecloses an entire category of claims.

* * *

3.2 The Appellate Timeline

Notice of Appeal

The defendant must file a written notice of appeal within 30 days of the date the trial court imposes or suspends the sentence in open court. Tex. R. App. P. 26.2(a). If the defendant timely files a motion for new trial, this deadline extends to 90 days after sentencing. Tex. R. App. P. 26.2(a)(2).

This deadline is jurisdictional. There is no general "good cause" exception in criminal cases, though Rule 26.3 provides a narrow 15-day grace period in which the defendant may file both a late notice of appeal and a motion for extension with a reasonable explanation. Beyond that window, the court of appeals cannot hear the case, and the conviction becomes final for purposes of post-conviction relief.

Record Preparation

After the notice of appeal is filed, the trial court clerk prepares the clerk's record (containing the indictment, motions, orders, jury charge, and judgment) and the court reporter prepares the

reporter's record (transcripts of all proceedings). Both records are due within 60 days of sentencing. If a motion for new trial was filed, both are due within 120 days. Tex. R. App. P. 35.2.

In practice, record preparation frequently runs past these deadlines. Extensions are common and routinely granted. In complex sex-crime trials with multiple days of testimony and voluminous exhibits, the record may take considerably longer.

Briefing Deadlines

Once the appellate record is filed, the appellant's brief is due 30 days after the later of the clerk's record or reporter's record being filed. The State's brief is due 30 days after that. The appellant may file a reply brief within 20 days. Tex. R. App. P. 38.6.

Extensions are routinely requested and granted. Briefing alone can stretch to several months. Oral argument is not automatic; the court may decide the case solely on the written submissions.

Intermediate Courts of Appeals and the CCA

Texas has 14 intermediate courts of appeals with geographically defined jurisdiction. The appeal goes to the court of appeals covering the county where the trial court sits. These courts have mandatory jurisdiction: they must accept a properly filed appeal.

After the intermediate court rules, the losing party may file a Petition for Discretionary Review (PDR) with the Texas Court of Criminal Appeals (CCA) within 30 days. Tex. R. App. P. 68.2. The CCA's review is entirely discretionary. It accepts a small percentage of petitions, generally focusing on cases that present novel legal issues, conflicts among the courts of appeals, or questions of statewide significance.

Practical tip: The entire direct appeal process, from notice of appeal through CCA disposition, can take two to four years. In sex-crime cases with severe sentences (25-year mandatory minimums, life sentences), this timeline underscores the importance of pursuing every viable issue. But it also means the client must understand from the outset that the appellate process is a long one.

* * *

3.3 Common Appellate Issues in Sex-Crime Cases

A. Sufficiency of the Evidence

The sole standard for evaluating evidentiary sufficiency in Texas criminal cases is the *Jackson v. Virginia* standard: viewing the evidence in the light most favorable to the verdict, the appellate court asks whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. The CCA confirmed in *Brooks v. State* that this is the exclusive sufficiency test, eliminating the old factual sufficiency review.

In sex-crime cases, sufficiency challenges face an additional obstacle. Texas law is emphatic that a conviction for sexual assault of a child can rest on the testimony of the child victim alone, with

no requirement for physical evidence or corroboration. Article 38.07 of the Code of Criminal Procedure eliminates the corroboration requirement for victims under 18. The "one witness rule" holds that the testimony of a single credible witness is sufficient to sustain a conviction.

Because appellate courts will not second-guess the jury's credibility determinations, sufficiency challenges are extremely difficult when the child's testimony is the primary evidence. Even significant inconsistencies in the victim's account will not render the evidence insufficient if a rational jury could have resolved them in the State's favor.

Sufficiency challenges become more viable when they are paired with other claims. If improperly admitted evidence (such as inadmissible outcry testimony or unreliable expert testimony) was essential to the State's case, and the remaining properly admitted evidence is thin, a combined evidentiary-error-and-sufficiency argument can succeed.

B. Confrontation Clause Challenges

The Sixth Amendment's Confrontation Clause guarantees the accused the right to confront witnesses against him. In sex-crime cases involving child victims, this right generates recurring appellate issues.

Closed-circuit television testimony. Article 38.071 of the Code of Criminal Procedure allows a child witness younger than 13 to testify outside the defendant's physical presence via closed-circuit television in certain sex-offense cases. The constitutional framework comes from *Maryland v. Craig*, which held that this procedure is permissible when the trial court makes a case-specific finding that the child would suffer serious emotional trauma from testifying in the defendant's presence. The other elements of confrontation (oath, cross-examination, observation of demeanor) must be preserved. Appellate challenges typically target the adequacy of the trial court's case-specific finding or the procedures used during the remote testimony.

Crawford and testimonial hearsay. *Crawford v. Washington* fundamentally reshaped Confrontation Clause analysis by holding that testimonial out-of-court statements are inadmissible unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine. In the sex-crime context, this affects forensic interview recordings (statements by a child to a forensic interviewer at a child advocacy center are generally testimonial because their primary purpose is evidence-gathering for prosecution). If the child does not testify at trial, these recordings are typically inadmissible under *Crawford*.

Medical statements. Statements made to medical providers for treatment purposes may fall under the medical-treatment hearsay exception and may be non-testimonial under *Crawford*. However, this determination is highly fact-dependent. When a forensic nurse examiner's primary purpose is evidence collection rather than treatment, the statements may be testimonial.

Preservation note: Confrontation Clause objections must be made specifically at trial. A general "hearsay" objection does not preserve a *Crawford* challenge. Defense counsel must explicitly invoke the Confrontation Clause.

C. Outcry Witness Testimony Under Article 38.072

Article 38.072 of the Code of Criminal Procedure creates a statutory hearsay exception for the "outcry" statement of a child victim (younger than 18, or a person with a disability) in sex-offense cases. (The age threshold was raised from 14 to 18 by SB 1527, effective September 1, 2023.) It permits the first adult to whom the child described the offense to testify about the child's out-of-court account.

Admissibility requirements. The statute imposes four conditions: (1) the State must provide the defense at least 14 days' notice of its intent to offer the outcry statement, including the name of the outcry witness; (2) the trial court must conduct a hearing outside the jury's presence to find that the statement is reliable based on the time, content, and circumstances; (3) the child must testify at trial or be available to testify; and (4) the witness must be the first adult to whom the child described the offense in some discernible manner.

Common appellate challenges. The "first person told" requirement is the most frequently litigated aspect. Under *Garcia v. State*, the proper outcry witness is the first adult to whom the child made a statement describing the offense, not merely the first person to hear any general comment or cry for help. If the State designates someone other than the true first person told, that designation is erroneous. Courts have also held that there can be one outcry witness per discrete criminal act, so multiple outcry witnesses may be permitted when the statements describe separate offenses.

Other challenges include arguing that the trial court abused its discretion in finding the statement reliable, that the outcry witness exceeded the scope of what Article 38.072 permits (essentially becoming a conduit for impermissible bolstering), and that the State provided insufficient notice.

Preservation requirements. To preserve error, defense counsel must object at the pretrial reliability hearing, specifying the exact ground (wrong outcry witness, lack of reliability, insufficient notice). A general hearsay objection is insufficient if the specific Article 38.072 argument is not articulated. If the issue is preserved, counsel should also request a running objection for any continuing testimony.

D. Expert Testimony Challenges

Texas uses the *Kelly v. State* framework for evaluating the reliability of scientific evidence, which is substantively similar to the federal Daubert standard. The proponent of scientific evidence must demonstrate by clear and convincing proof that (1) the underlying scientific theory is valid, (2) the technique applying the theory is valid, and (3) the technique was properly applied. For "soft science" fields such as behavioral science, the CCA applies a modified framework under *Nenno v. State* that relaxes certain factors (like error rate and testability) while still requiring a showing of reliability.

CSAAS testimony. Child Sexual Abuse Accommodation Syndrome (CSAAS) testimony is one of the most contested expert issues in sex-crime appeals. CSAAS describes behavioral patterns observed in sexually abused children, including secrecy, helplessness, entrapment and accommodation, delayed and unconvincing disclosure, and retraction. Texas courts generally permit CSAAS testimony for the limited purpose of explaining why a child's behavior (delayed

reporting, recantation) is not inconsistent with having been abused. It helps "disabuse the jury of misconceptions" about how child victims behave.

CSAAS testimony is not admissible as direct proof that abuse occurred. When an expert crosses from educating the jury about behavioral patterns into opining that the specific child was, in fact, abused, the testimony becomes impermissible bolstering. Defense challenges should focus on: (1) the lack of scientific validity of CSAAS as a diagnostic tool (it was never designed as one), (2) whether the expert is using CSAAS beyond its limited permissible scope, and (3) whether the testimony improperly comments on the child's truthfulness.

Forensic interview experts. Experts who conducted or reviewed forensic interviews may testify about interview protocols and the child's behavior during the interview. The defense can challenge this testimony when the expert effectively vouches for the child's truthfulness, which is prohibited.

Delayed outcry experts. Experts who testify about why children delay disclosing abuse face the same constraints. The testimony is generally admissible to explain the phenomenon, but it cannot be used as evidence that abuse occurred.

Preservation. A Kelly/Daubert objection and/or a Rule 702 objection (not helpful to the jury, or more prejudicial than probative under Rule 403) should be raised at the earliest opportunity, ideally in a pretrial motion and again when the testimony is offered. The intermediate courts of appeals vary somewhat in their treatment of CSAAS admissibility, so counsel should research the specific appellate district.

E. Brady Violations on Direct Appeal

Under *Brady v. Maryland*, the prosecution must disclose material evidence favorable to the defense. A Brady violation requires three elements: (1) the State suppressed evidence in its possession, regardless of good or bad faith; (2) the evidence is favorable to the defendant (exculpatory, impeaching, or mitigating); and (3) there is a reasonable probability that, had the evidence been disclosed, the result would have been different.

The Michael Morton Act, enacted in 2013 and codified in Article 39.14, broadened prosecutorial disclosure obligations well beyond the constitutional Brady floor. The Act requires the State to disclose, upon timely request, essentially all evidence and information material to the case, including impeachment and mitigating information.

Common Brady issues in sex-crime cases. These include failure to disclose impeachment evidence about the child victim or outcry witnesses (prior inconsistent statements, history of false allegations, mental health records, CPS investigation findings); failure to disclose exculpatory forensic evidence or the absence of expected physical evidence (a forensic exam showing no evidence of trauma); failure to disclose favorable information about State witnesses (deals, benefits, disciplinary records, evidence of bias); and failure to disclose CPS records that may contain exculpatory information, alternative suspects, or recantations.

Preservation. Brady claims are unique because, by definition, the defendant does not know about the suppressed evidence and therefore cannot object to its nondisclosure at trial. Brady claims can be raised for the first time on direct appeal if the facts appear in the record, though they are more

commonly raised in post-conviction habeas proceedings when the suppressed evidence comes to light later.

F. Jury Charge Errors

Jury charge errors rank among the most frequently raised issues in Texas criminal appeals. Under Article 36.14 of the Code of Criminal Procedure, the trial court has an independent duty to correctly instruct the jury on the applicable law.

Lesser-included offenses. Under the two-prong Rousseau/Hall test (as clarified by *Grey v. State*), a lesser-included offense instruction is required when (1) the lesser offense is included within the proof necessary to establish the charged offense and (2) some evidence exists that, if the defendant is guilty, he is guilty only of the lesser. In sex-crime cases, common lesser-included offense disputes involve whether indecency with a child is a lesser-included offense of sexual assault of a child; whether sexual assault of a child (second-degree felony) is a lesser-included offense of aggravated sexual assault of a child (first-degree felony); and, in continuous sexual abuse cases under Penal Code Section 21.02, the relationship between the continuous offense and the individual predicate acts.

Defensive instructions. When the evidence raises a defensive theory (consent in adult sexual assault cases, alibi, or mistake of fact), the defendant is entitled to a jury instruction on that defense. Errors in formulating or omitting defensive instructions are frequently raised on appeal.

Harm analysis (the Almanza framework). The CCA's decision in *Almanza v. State* established a two-tiered harm test for jury charge errors. If error was preserved by a timely objection, reversal is required if the error caused "some harm" to the defendant, a relatively low threshold. If error was not preserved, reversal is required only if the error was so "egregious" that the defendant was denied a fair and impartial trial. Egregious harm is assessed by examining the entire jury charge, the state of the evidence, the arguments of counsel, and any other relevant information in the record. Errors that rise to egregious harm are those that affect the very basis of the case, deprive the defendant of a valuable right, vitally affect the defensive theory, or make the State's case for conviction clearly and significantly more persuasive.

G. Extraneous Offense Evidence

Rule 404(b) and Article 38.37. Rule 404(b) of the Texas Rules of Evidence generally prohibits evidence of other crimes, wrongs, or acts to prove character and action in conformity therewith. However, such evidence may be admissible for other purposes: motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

Article 38.37 of the Code of Criminal Procedure creates a broad exception to Rule 404(b) specifically for sex offenses against children. Section 1, the original 1995 provision, permits evidence of other acts committed by the defendant against the same child victim for its bearing on relevant matters, including the state of mind of the defendant and child, and the previous and subsequent relationship between them. Section 2, added in 2013, goes much further: it permits the State to introduce evidence that the defendant committed separate sexual offenses against other children (not just the named victim), and this evidence is admissible "for any bearing the evidence has on relevant matters, including the character of the defendant and acts performed in

conformity with the character of the defendant." This is a dramatic departure from normal Rule 404(b) protections.

Section 2 includes safeguards: the trial court must hold a hearing outside the jury's presence and determine that the evidence is adequate to support a finding by the jury that the defendant committed the separate offense beyond a reasonable doubt. The evidence also remains subject to the Rule 403 balancing test (probative value vs. unfair prejudice).

Appellate challenges. Defense counsel can argue that the trial court abused its discretion by admitting extraneous offenses whose prejudicial effect substantially outweighed their probative value; that the State did not prove the extraneous offense adequately at the Article 38.37 hearing; that the State failed to provide adequate pretrial notice; or that Article 38.37 Section 2 itself violates due process by permitting inherently prejudicial character evidence. Texas appellate courts have generally upheld the constitutionality of Section 2, but the CCA has not issued a definitive opinion resolving all constitutional challenges, making this an evolving area of law.

H. Sentencing Issues

The severe punishment structure for sex offenses against children generates its own category of appellate issues.

Aggravated sexual assault of a child under Penal Code Section 22.021 is a first-degree felony with a standard range of 5 to 99 years or life. When the victim is under 6, or under 14 with certain additional aggravating factors (use of a deadly weapon, bodily injury, threats of death), the so-called "super aggravated" provision under Penal Code Section 22.021(f) raises the mandatory minimum to 25 years with no parole eligibility. (As of September 1, 2025, HB 1422 raised the age threshold from under 6 to under 10.) Probation and deferred adjudication are unavailable. Under Penal Code Section 12.42(c)(3)-(4), a prior conviction for a sexually violent offense can elevate the charge to a capital felony with life without parole.

Continuous sexual abuse of a young child under Penal Code Section 21.02 carries 25 years to life, with no probation or deferred adjudication available.

Appellate sentencing issues include: whether the evidence supports application of the super-aggravated punishment range; whether the jury was properly instructed on the applicable range; whether the trial court improperly stacked sentences (consecutive sentences on multiple counts can produce effective life sentences even without a "life" verdict); and whether mandatory minimums combined with parole ineligibility constitute cruel and unusual punishment. The cruel-and-unusual argument is frequently raised but rarely successful under current Texas and federal precedent.

* * *

3.4 Standards of Review

Understanding the applicable standard of review is essential because it determines the lens through which the appellate court will evaluate the trial court's decisions.

Abuse of Discretion

This highly deferential standard applies to most evidentiary rulings, including admission or exclusion of evidence, expert testimony (Kelly/Daubert challenges), extraneous offense evidence (Rule 404(b)/Article 38.37), and outcry witness testimony (Article 38.072 reliability findings). The appellate court will uphold the trial court's ruling so long as it falls within the "zone of reasonable disagreement." Trial courts are rarely reversed on evidentiary rulings under this standard.

De Novo Review

The appellate court reviews pure questions of law without deference. This includes statutory interpretation, constitutional questions, whether a particular offense qualifies as a lesser-included offense of another, and the application of law to undisputed facts (for example, whether undisputed facts establish a Brady violation). Sufficiency of the evidence is also reviewed de novo under the *Jackson v. Virginia* standard, with the evidence viewed in the light most favorable to the verdict.

Harm Analysis

Texas uses a two-track system for preserved errors. Constitutional error (Tex. R. App. P. 44.2(a)) requires reversal unless the State proves beyond a reasonable doubt that the error did not contribute to the conviction or punishment. This standard applies to Confrontation Clause violations, due process violations, and other federal constitutional errors. Non-constitutional error (Tex. R. App. P. 44.2(b)) requires the court to disregard the error unless it affects the defendant's "substantial rights," a less demanding standard that considers whether there is a reasonable probability the error affected the verdict.

Jury charge errors follow the separate Almanza framework discussed above, with its two-tiered "some harm" (preserved) and "egregious harm" (unpreserved) analysis.

Practical tip: The distinction between constitutional and non-constitutional error can be outcome-determinative. When an evidentiary ruling implicates both a rule of evidence and a constitutional provision (for instance, an outcry statement that violates both Article 38.072 and the Confrontation Clause), counsel should articulate both grounds. The constitutional harm standard is significantly more favorable to the defendant.

* * *

3.5 Practical Considerations for Appellate Counsel

Sex-crime appeals present unique challenges beyond the legal issues. The emotional nature of these cases permeates the appellate process. Appellate courts afford substantial deference to jury credibility findings, particularly when the jury chose to believe a child victim. Even when an appellate court acknowledges error, it may find the error harmless given the strength of the victim's testimony and the gravity of the charges. There is also a practical reality, difficult to

quantify but impossible to ignore, that appellate courts exercise caution before reversing sex-crime convictions involving young children.

Effective appellate strategy in this area requires discipline and focus. The strongest approaches typically combine evidentiary challenges (improper outcry testimony, unreliable expert testimony, inflammatory extraneous offenses) with jury charge errors and, where applicable, Confrontation Clause violations. A careful review of the trial record for both preserved errors and potentially egregious unpreserved errors is indispensable. Because preservation at trial is so critical, early involvement of appellate counsel, even before trial concludes, can be the difference between a winning appeal and a procedurally barred one.

* * *

Chapter 4: Article 11.07 Habeas Corpus Applications

Introduction

When direct appeal fails, or when the claims that matter most cannot be raised within the four corners of the trial record, Article 11.07 of the Texas Code of Criminal Procedure provides the principal mechanism for post-conviction relief. Unlike a direct appeal, a habeas corpus application allows the applicant to develop new evidence, present witnesses, and raise issues that were invisible on the trial record.

For sex-crime convictions, Article 11.07 is particularly significant. Many of the strongest grounds for relief in these cases (ineffective assistance of counsel, newly discovered evidence, complainant recantations, Brady violations involving evidence discovered after trial) require factual development that only the habeas process permits. This chapter covers the structure and procedure of 11.07 applications, the categories of claims that Texas courts recognize, and the practical realities of pursuing habeas relief in sex-offense cases.

* * *

4.1 Overview of Article 11.07

What It Is

Article 11.07 governs applications for writs of habeas corpus filed after a final felony conviction in a non-capital case. It is the state-level equivalent of federal habeas corpus (though it operates under different rules and with different limitations). The writ allows a convicted person to challenge the legality of confinement by raising constitutional violations, jurisdictional defects, and fundamental errors that undermine the integrity of the conviction.

Who Can File

Any person confined pursuant to a final non-capital felony conviction may file an 11.07 application. "Final conviction" means that all direct appeals have been exhausted or the time for filing a direct appeal has expired. Article 11.07 applies only to felonies. Misdemeanor post-conviction writs fall under Article 11.09, and cases involving community supervision (probation) that have not been revoked are governed by Article 11.072.

Cognizable Grounds

A threshold principle governs the scope of habeas review: Article 11.07 is available only for jurisdictional defects, fundamental errors, and constitutional violations. Ordinary statutory or procedural errors, even mandatory ones, are generally not cognizable. The major exception is that

a void or unauthorized sentence (for example, punishment exceeding the statutory range) is always cognizable because it constitutes a jurisdictional defect. Many otherwise non-cognizable errors can become cognizable, however, when reframed as ineffective assistance of counsel claims: if trial counsel failed to object to an error, the failure itself may constitute a constitutional violation.

* * *

4.2 The 11.07 Process Step by Step

The habeas process is bifurcated between two courts. The application is filed in the convicting court (the district court that entered the judgment of conviction), which serves as the CCA's fact-finding arm. The Texas Court of Criminal Appeals has exclusive, statewide jurisdiction over the final disposition. No intermediate court of appeals plays any role.

Step 1: Filing the Application

The applicant files the application with the clerk of the convicting court, using the official form prescribed by the CCA (available from district court clerks and on the CCA's website). The application must be complete: all sections must be filled out, including those that do not apply (marked "N/A"). It must be verified under penalty of perjury. Each legal ground must be supported by specific facts, not bare legal conclusions. Supporting documentation (affidavits, exhibits, expert reports) should be attached. The entire form must be filed; partial submissions are returned.

Practical tip: The quality of the initial application matters enormously. A well-organized application with detailed factual allegations and strong supporting affidavits gives the convicting court a clear roadmap. A conclusory application invites summary denial. For IAC claims, an affidavit from trial counsel (or an explanation of why one is unavailable) is important. For actual innocence claims, affidavits from recanting witnesses or experts are critical.

Step 2: Service on the State

The clerk serves a copy of the application on the district attorney (or the attorney representing the State in the convicting court).

Step 3: State's Answer

The State files its answer. The statute provides 30 days after receipt for the State to respond. The answer typically addresses both the factual allegations and the legal sufficiency of the claims.

Step 4: Convicting Court Review and Order Designating Issues

Within 20 days after the time for the State's answer expires, the convicting court must determine whether there are "controverted, previously unresolved facts which are material to the legality of the applicant's confinement." If no controverted facts exist, the court may resolve the application on the existing record, enter findings of fact and conclusions of law, and transmit the record to the

CCA. If controverted facts do exist, the court enters an Order Designating Issues (ODI), which specifies the factual disputes that must be resolved.

Step 5: Fact-Finding (The 180-Day Period)

Once an ODI is entered, the convicting court proceeds to resolve the designated issues. It may order affidavits, depositions, interrogatories, additional forensic testing, or a live evidentiary hearing. The court has 180 days from the date the State received the application to complete the entire fact-finding process (not 180 days from the ODI). On the 181st day, the district clerk must forward the writ record to the CCA regardless of whether the court has resolved the issues, unless the court has obtained an extension from the CCA before the deadline.

Step 6: Findings and Transmission

After resolving all issues, the convicting court enters specific findings of fact and conclusions of law. The court may include a recommendation to grant or deny relief. The clerk then transmits the complete record to the CCA under one cover.

Step 7: CCA Disposition

The CCA reviews the record and issues its final ruling. In most cases, the CCA disposes of the application without oral argument, based solely on the written record.

* * *

4.3 Cognizable Claims

A. Actual Innocence

Texas recognizes freestanding claims of actual innocence under the framework established by *Ex parte Elizondo*. To prevail, the applicant must show by clear and convincing evidence that no rational juror would have convicted in light of the new evidence. The court weighs the newly available evidence against the totality of the guilt evidence presented at trial. The question is whether the new evidence, considered alongside the trial record, so undermines the State's case that no reasonable juror could find guilt beyond a reasonable doubt.

This is the most demanding standard among cognizable habeas claims. The evidence must "unquestionably establish" innocence. Newly discovered evidence that may support the claim includes trustworthy witness recantations, exculpatory scientific evidence, credible eyewitness accounts, and critical physical evidence.

Application to sex-crime cases. Actual innocence claims are particularly significant in sex-offense cases because these convictions often rest entirely on the complainant's testimony. When the same complainant later recants, the recantation strikes at the foundation of the State's case. But courts treat recantations with considerable caution.

The habeas court must first assess whether the recantation is credible, examining factors such as the specificity and detail of the recantation, the witness's demeanor, whether the recantation is

corroborated by other evidence, and whether the witness provides a plausible explanation for both the original false allegation and the decision to recant. Even a credible recantation must then be weighed against the totality of the trial evidence.

The case of *Ex parte Tuley* illustrates the framework in action. Tuley was convicted of aggravated sexual assault based on a child complainant's allegations. The complainant recanted within days of making the accusations, telling a witness the allegations were not true. After a habeas hearing, the convicting court found the innocence evidence "so far outweighed" the guilt evidence "as to be entirely one-sided." Before the eventual guilty plea, the jury had been deadlocked, with reportedly ten of twelve jurors favoring acquittal even without the sworn recantation. The CCA granted relief.

Child recantations: special credibility concerns. Courts recognize that children who have suffered sexual abuse sometimes recant due to family pressure, guilt about the accused's incarceration, or a desire to restore normalcy. CSAAS literature identifies recantation as a recognized phenomenon. For this reason, a child's recantation does not automatically mean the original disclosure was false. Factors supporting credibility include: the complainant is now an adult and provides a detailed, coherent explanation; the recantation is corroborated by independent evidence; the complainant identifies a plausible motive for the original false allegation (coaching in a custody dispute, anger at the accused); and the complainant is willing to testify under oath and submit to cross-examination.

B. Ineffective Assistance of Counsel

IAC is the most commonly raised claim in 11.07 applications, and the habeas writ is the preferred vehicle for it. The direct appeal record rarely contains the information needed to evaluate trial counsel's reasoning and strategy. In habeas proceedings, counsel can be called to testify, and the factual record can be developed.

The governing standard comes from *Strickland v. Washington*. The applicant must prove both prongs: (1) counsel's representation fell below an objective standard of reasonableness (deficient performance), and (2) there is a reasonable probability that, but for counsel's errors, the outcome would have been different (prejudice). There is a strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance. To overcome it, the applicant must demonstrate that counsel's decisions were not the product of any reasonable trial strategy.

Common IAC claims in sex-crime cases. Failure to investigate the complainant's background, including prior false allegations, motive to fabricate, or inconsistent statements to others. Failure to retain or consult appropriate experts (forensic psychologists, DNA analysts, medical experts who could challenge the State's physical evidence). Failure to challenge the State's expert testimony through a Kelly/Daubert motion. Failure to cross-examine the complainant or key witnesses effectively. Failure to request appropriate jury instructions, including lesser-included offense instructions that might have resulted in a less severe conviction. Failure to object to inadmissible evidence (improperly designated outcry witnesses, unreliable expert testimony, extraneous offenses admitted without the required hearing).

The channeling function. Many otherwise non-cognizable errors become cognizable when framed as IAC. For example, a pure evidentiary error at trial is not cognizable on habeas. But if

counsel failed to object to that error, the failure becomes a constitutional claim of ineffective assistance.

C. Brady Violations

Brady v. Maryland requires the State to disclose material evidence favorable to the defense. In the 11.07 context, Brady claims are cognizable constitutional violations. The three elements remain the same as on direct appeal: (1) the State suppressed evidence, (2) the evidence was favorable to the defendant, and (3) there is a reasonable probability that the outcome would have been different had the evidence been disclosed.

Brady claims are often more naturally suited to habeas proceedings than to direct appeal because, by definition, the defendant did not know about the suppressed evidence at the time of trial. Post-conviction investigation may uncover evidence that was withheld: impeachment evidence about State witnesses, exculpatory CPS records, forensic results that were never turned over, or information about deals offered to cooperating witnesses.

A common shortcoming in habeas Brady claims is failing to adequately address the materiality element. Identifying suppressed evidence is not enough; the applicant must explain, with specificity, how that evidence would have changed the outcome of the trial.

D. False Testimony and Recantation

Texas law recognizes several distinct claims related to false testimony, each with its own materiality standard.

State's knowing use of false testimony. When the State knowingly presents false or perjured testimony, due process is violated if there is a reasonable likelihood that the false testimony affected the outcome. This is a lower materiality threshold than Brady because the State's culpability is greater. Under *Ex parte Ghahremani*, testimony is "false" if it gives the jury a false impression, even if no one explicitly lied.

State's inadvertent use of false testimony. When the State unknowingly presents testimony that later turns out to be false, the materiality standard is higher than for knowing use but lower than the actual innocence standard.

Recantation as newly discovered evidence. When a witness (including the complainant) recants trial testimony, the recantation may support an actual innocence claim under Elizondo, as discussed above. The recantation must be credible and must be weighed against all the evidence of guilt from trial. In cases where the complainant was the sole witness (common in sex-crime prosecutions), a credible recantation can be outcome-determinative.

E. New Scientific Evidence: Article 11.073 and Chapter 64

Article 11.073: the "junk science writ." Enacted in 2013, Article 11.073 provides a targeted mechanism for challenging convictions based on scientific evidence that has been undermined by advances in the relevant field. The applicant must show: (1) relevant scientific evidence is currently available that was not available at trial because the factual basis was not ascertainable through reasonable diligence, or the new scientific evidence contradicts scientific evidence the

State relied on at trial; (2) the new evidence would be admissible under the Texas Rules of Evidence; and (3) had the new evidence been presented at trial, the applicant would not have been convicted, by a preponderance of the evidence.

In determining whether evidence was "ascertainable," the court considers whether the field of scientific knowledge, the testifying expert's knowledge, or the scientific method on which the evidence was based has changed since trial. A landmark application of 11.073 was the exoneration of Steven Mark Chaney, whose murder conviction was overturned after advances in forensic odontology undermined the bite-mark evidence used against him. In sex-crime cases, Article 11.073 may be relevant when convictions relied on since-discredited forensic techniques or outdated medical conclusions (for example, interpretations of physical findings that the medical community no longer considers reliable indicators of abuse).

Critically, Article 11.073 claims are exempt from the successive-writ bar of Article 11.07 Section 4. The legislature recognized that scientific knowledge evolves over time, and applicants should not be penalized for failing to raise a scientific challenge before the relevant field had changed.

Chapter 64: post-conviction DNA testing. Chapter 64 of the Code of Criminal Procedure allows a convicted person to file a motion in the convicting court for forensic DNA testing of biological evidence. The applicant must show that the evidence still exists and is in testable condition, the chain of custody is sufficient, there is a reasonable likelihood the evidence contains biological material suitable for DNA testing, and by a preponderance of the evidence, the applicant would not have been convicted if exculpatory DNA results had been obtained.

Chapter 64 does not itself provide habeas relief. Rather, if DNA testing produces exculpatory results, the applicant then uses Article 11.07 as the vehicle to seek relief from the conviction based on those results. In sex-crime cases where biological evidence was collected but never tested (or tested with older, less discriminating methods), Chapter 64 can open the door to powerful exculpatory evidence.

* * *

4.4 Evidentiary Hearings

When Hearings Are Held

An evidentiary hearing is not automatic. The convicting court holds one only when it determines that there are controverted, previously unresolved facts material to the applicant's claims that cannot be adequately resolved through affidavits alone. Common situations that warrant a live hearing include credibility determinations (evaluating a recanting witness), contested IAC claims where trial counsel's testimony is needed, disputes about what evidence existed or was available at the time of trial, and complex factual scenarios requiring cross-examination.

If the convicting court resolves the application without a hearing when one was warranted, the CCA may remand for a hearing.

What Happens at the Hearing

The Texas Rules of Evidence apply. The proceedings function much like a bench trial on the habeas claims. Both sides may call and cross-examine witnesses. Documentary evidence and affidavits may be introduced. In IAC claims, trial counsel is typically called to testify about strategy and decision-making. In recantation cases, the recanting witness testifies and is subject to cross-examination by the State. The State may present its own witnesses and evidence. A court reporter transcribes the proceedings, and the transcript must be prepared within 15 days of the hearing's conclusion.

Burdens of Proof

The general burden in habeas proceedings is preponderance of the evidence. But the applicable legal standard varies by claim type. Actual innocence claims require clear and convincing evidence that no rational juror would convict. IAC and Brady claims require a reasonable probability of a different outcome. Claims involving the State's knowing use of false testimony require a reasonable likelihood that the false testimony affected the outcome. Article 11.073 claims require a preponderance showing that the applicant would not have been convicted.

* * *

4.5 CCA Disposition Options

Once the convicting court transmits the record, the CCA has several options.

Deny relief on the merits, based on the convicting court's findings and the CCA's own independent review of the record. This is the most common outcome.

Dismiss the application on procedural grounds (not a merits determination). Common bases include the successive-writ bar, mootness, or noncompliance with filing requirements.

Grant relief. The CCA may vacate the conviction and order a new trial, or in rare cases order the applicant discharged outright.

Remand the case to the convicting court for additional fact-finding, an evidentiary hearing, or supplemental findings. This occurs when the CCA determines that issues were not adequately addressed below.

File and set the case for briefing and/or oral argument. This happens in a small minority of cases (roughly 10% or fewer) and typically signals that the CCA views the application as raising significant issues.

In most cases, the CCA disposes of the application without oral argument, based solely on the written record.

* * *

4.6 Successive Applications and the Section 4 Bar

The successive-writ bar is one of the most important procedural hurdles in 11.07 practice. Under Section 4 of Article 11.07, if a subsequent application is filed after the final disposition of an initial application challenging the same conviction, the CCA may not consider the merits unless the applicant demonstrates one of two things.

New factual or legal basis. The current claims could not have been presented in the prior application because the factual or legal basis was unavailable at that time. A factual basis is "unavailable" if it was not ascertainable through the exercise of reasonable diligence on or before the date the prior application was filed. A legal basis is "unavailable" if it was not recognized by, and could not have been reasonably formulated from, a final decision of the U.S. Supreme Court, any U.S. Court of Appeals, or any Texas appellate court on or before that date.

Actual innocence gateway. By a preponderance of the evidence, but for a violation of the United States Constitution, no rational juror could have found the applicant guilty beyond a reasonable doubt.

The Section 4 bar means that the first 11.07 application is, in many respects, the most consequential filing a habeas applicant will ever make. All known claims should be raised in the initial application. Omitting a claim that could have been raised risks forfeiting it permanently.

Important exception. Article 11.073 (junk science writ) claims are specifically exempt from the successive-writ bar. The legislature recognized that scientific knowledge evolves and applicants should not be penalized for failing to raise a scientific challenge before the relevant field had developed.

Practical tip: Before filing a second or subsequent application, counsel should carefully evaluate whether the claims satisfy Section 4's gateway requirements. Filing successive applications that do not meet the standard wastes the applicant's credibility with the CCA and may create the impression that the applicant is simply recycling previously rejected arguments.

* * *

4.7 No Statute of Limitations, but Laches

Unlike federal habeas corpus, which imposes a one-year filing deadline under AEDPA, Texas imposes no statute of limitations on 11.07 applications. An applicant may file years or even decades after conviction.

However, the CCA has recognized the common-law doctrine of laches as a potential bar to relief. Under *Ex parte Perez* and its progeny, the State can argue that the applicant's unreasonable delay has caused material prejudice to the State's ability to retry the case. The modern approach applies a sliding scale: the longer the delay (particularly beyond five years after direct appeals conclude), the less evidence the State needs to demonstrate prejudice. Prejudice may include loss of witnesses, faded memories, destroyed evidence, or any circumstance that places the State in a materially less favorable position to retry the defendant.

Application to sex-crime cases. Laches presents a particular tension in sex-offense cases. These cases often rest on the testimony of a single complainant, and the passage of time can make it genuinely difficult for the State to reconstruct its case if a new trial is ordered. At the same time, delayed habeas filings are common in sex cases because new evidence (such as a complainant's recantation) may not emerge for many years, sometimes not until the complainant reaches adulthood and comes forward on their own initiative. Counsel should be prepared to explain any delay and to argue that the delay was not within the applicant's control.

* * *

4.8 Interaction with Sex Offender Registration (Chapter 62)

Sex offender registration under Chapter 62 of the Code of Criminal Procedure is one of the most burdensome collateral consequences of a sex-crime conviction. Understanding how habeas relief interacts with registration is essential for both the applicant and counsel.

Registration Is Tied to the Conviction

Chapter 62 defines a "reportable conviction or adjudication" as a conviction for specified sexual offenses. The registration duty attaches regardless of the pendency of an appeal or habeas proceeding. The applicant remains subject to all registration requirements throughout the entire habeas process.

When Habeas Relief Terminates Registration

Under Article 62.101, if the conviction that is the basis for the registration duty is "set aside on appeal by a court," the duties imposed by Chapter 62 terminate. This applies when the CCA grants habeas relief and vacates the underlying conviction. Registration duties also terminate if the person receives a pardon based on subsequent proof of innocence.

Practical Considerations

If the CCA vacates the conviction outright or orders the applicant discharged, registration should terminate. However, the applicant may need to take affirmative steps to ensure DPS removes the information from the registry.

If the CCA grants a new trial rather than outright acquittal, the registration question becomes more complex. The applicant may still face registration requirements until the case is fully resolved. If the case is retried and the applicant is acquitted (or convicted of a non-registrable offense), registration duties should end. If the applicant is reconvicted of a registrable offense, registration continues.

Chapter 62, Subchapter I (Articles 62.401 through 62.408) provides a separate mechanism for early termination of registration for certain eligible registrants. This process is distinct from habeas relief.

An important limitation. Habeas corpus generally cannot be used to challenge sex offender registration requirements independently of the underlying conviction. Most courts have held that

registration alone does not constitute "custody" for habeas purposes. The remedy is to challenge the conviction itself through Article 11.07.

* * *

4.9 Strategic Considerations for 11.07 Practice

Treat the First Application as the Only Application

Because of the successive-writ bar, the first 11.07 application should be treated as if it is the only chance to obtain relief. All known claims should be raised. All available supporting evidence should be gathered and attached. Omitting a claim that could have been raised in the first application may permanently foreclose it.

Invest in the Factual Record

The quality of the application and supporting materials directly affects the outcome. The convicting court's findings of fact are entitled to deference from the CCA if they are supported by the record. This means that the factual presentation in the habeas proceedings is where the case is won or lost. Detailed affidavits, expert reports, documentary evidence, and witness testimony at the evidentiary hearing all matter.

Prepare for the Long Timeline

The 11.07 process, from filing through CCA disposition, can take one to three years or longer, particularly if the convicting court holds an evidentiary hearing and the CCA remands for additional findings. Clients need to understand this timeline. For individuals serving decades-long sentences, the process is worth pursuing even if it is protracted.

Coordinate with Other Relief Mechanisms

Article 11.07 does not exist in isolation. Counsel should consider whether Chapter 64 DNA testing should be pursued before or concurrent with the habeas application. If new scientific evidence supports a claim, Article 11.073 provides a specific (and successive-writ-bar-exempt) pathway. If Brady evidence has been discovered, the application should address whether the evidence triggers Michael Morton Act obligations as well as constitutional Brady requirements.

Remember the Registration Consequences

For clients on the sex offender registry, the stakes of habeas relief extend far beyond incarceration. A successful 11.07 application that vacates the conviction can terminate registration obligations, restore civil rights, and remove one of the most pervasive collateral consequences of a sex-crime conviction.

* * *

Conclusion to Chapters 3 and 4

Direct appeal and habeas corpus represent the two primary avenues for challenging a Texas sex-crime conviction. They serve different but complementary functions. Direct appeal is confined to the trial record and focuses on errors that occurred during the proceedings. Habeas corpus allows the development of new evidence and the litigation of claims that could not have been raised on appeal. Together, they provide the framework within which convicted individuals can seek meaningful review of their convictions.

In sex-crime cases, the interplay between these two processes is especially important. Preservation of error at trial determines what can be raised on direct appeal. Claims that cannot be raised on appeal (particularly ineffective assistance of counsel) become the province of habeas corpus. And the severe sentencing structure, combined with collateral consequences like sex offender registration, means that the stakes of post-conviction litigation are extraordinarily high. Effective advocacy requires mastery of both the appellate and habeas processes, a thorough understanding of the substantive issues unique to sex-crime prosecutions, and the disciplined execution of procedural requirements at every stage.

* * *

Chapter 5: Challenging Guilty Pleas via Article 11.07

Why This Chapter Matters

Of the five exonerations profiled in Chapter 2, three involved men who pled guilty to sex crimes they did not commit. Adam Sanchez pled no contest to three counts of aggravated sexual assault of a child after his court-appointed attorney pressured him into it. Calvin Reed pled guilty and accepted deferred adjudication after his attorney had, at most, one conversation with him between arrest and plea. Tyrone Day pled guilty to rape on his attorney's advice that he would be paroled in four years; he served twenty-six.

These are not outliers. The National Registry of Exonerations documents that innocent people plead guilty to serious felonies with troubling regularity. In sex-crime cases, the dynamics that produce false guilty pleas are especially powerful. The sentences are extreme: aggravated sexual assault of a child under six carries a mandatory minimum of 25 years with no parole eligibility. The evidence often consists entirely of a child's testimony, which juries are inclined to believe. The stigma attached to the accusation itself can make a defendant feel that no jury will give him a fair hearing. And the gap between the plea offer and the potential trial sentence is often so vast that even an innocent person may calculate that the risk of trial is too great.

For these defendants, Article 11.07 habeas corpus is not merely one option among several. It is the only meaningful path to relief. A guilty plea forecloses direct appeal on most issues. It waives the right to challenge the sufficiency of the evidence, procedural errors, and evidentiary rulings. What remains is the habeas process, and only if the applicant can navigate its demanding standards.

This chapter examines how to do that.

* * *

What a Guilty Plea Waives

The General Rule

A guilty plea that is made voluntarily and with understanding is conclusive as to the defendant's guilt. It admits all facts charged in the indictment and waives all non-jurisdictional defects in the prior proceedings. This is the foundational principle, established through decades of Texas Court of Criminal Appeals case law and reaffirmed in cases such as *Ex parte McCain* (Tex. Crim. App. 2002).

By entering a valid guilty plea, a defendant generally waives:

- **Sufficiency of the evidence.** The plea itself supplies the evidence of guilt. There is nothing left for an appellate court to review.
- **Procedural errors** at earlier stages of the case, including improper pretrial rulings, evidentiary issues, and denied motions to suppress.
- **Non-constitutional statutory violations** in the proceedings leading to the plea.
- **Complaints about the indictment** that do not rise to the level of a jurisdictional defect.

What Survives

Several categories of claims remain cognizable on habeas despite a guilty plea:

- **Jurisdictional defects.** If the trial court lacked jurisdiction over the offense, the conviction is void. This includes a charging instrument that fails to satisfy constitutional requisites or a court without subject-matter jurisdiction.
- **Involuntary plea claims.** A guilty plea that was not knowingly, intelligently, and voluntarily made can be challenged through habeas. This is the most commonly raised ground in guilty-plea habeas applications.
- **Ineffective assistance of counsel** that rendered the plea involuntary.
- **Actual innocence** supported by newly discovered evidence.
- **Illegal or void sentences** (for example, a sentence that exceeds the statutory range).
- **Double jeopardy** violations.

The practical implication is clear: after a guilty plea, the only viable habeas claims involve the voluntariness of the plea itself, the adequacy of counsel in the plea process, or newly discovered evidence of innocence. Everything else is gone.

* * *

Involuntary Plea Claims

The Legal Framework

A guilty plea is constitutionally valid only if it is made knowingly, intelligently, and voluntarily. To challenge a plea as involuntary, the habeas applicant must overcome a presumption of voluntariness created by the plea paperwork: the written admonishments, the plea agreement, and the judicial colloquy. The burden falls on the applicant, and the standard is preponderance of the evidence. (*Ex parte Morrow*, Tex. Crim. App. 1997.)

Under the totality of the circumstances, a plea may be involuntary if:

- The defendant did not understand the charges or the consequences of the plea.
- The plea was induced by threats, misrepresentations, or improper promises.
- Counsel gave incorrect legal advice that materially affected the decision to plead.
- The defendant was mentally incompetent at the time of the plea.

Coercion and Misrepresentation

A plea is involuntary when the defendant was unconstitutionally coerced by the State, the trial judge, or defense counsel into accepting a plea agreement. Coercion by counsel takes various forms: telling the client he has "no choice" but to plead, threatening to withdraw from representation if the client refuses, grossly overstating the likely trial sentence to frighten the client, or refusing to prepare for trial to force the client's hand.

Misrepresentation of law can also render a plea involuntary. In *Ex parte Harrington* (Tex. Crim. App. 2010), the CCA granted relief where counsel failed to investigate whether a prior conviction used to enhance the charge actually belonged to the defendant. The applicant showed his plea was involuntary because, but for counsel's failure to investigate the enhancement, he would not have pled guilty. Similarly, in *Ex parte Briggs*, a Texas appellate court found a plea involuntary where trial counsel misrepresented the admissibility of key evidence, leading the defendant to plead when the evidence might have been suppressible.

Failure to Admonish Under Article 26.13

Texas Code of Criminal Procedure Article 26.13 requires the trial court to admonish the defendant before accepting a guilty plea. Required admonishments include:

- The range of punishment attached to the offense, including any enhancements.
- The fact that any plea agreement is not binding on the court (in non-binding plea situations).
- Immigration consequences (deportation, exclusion, denial of naturalization) for non-citizen defendants.
- Sex offender registration requirements under Chapter 62 (if applicable).
- The rights being waived (right to jury trial, right to confront witnesses, privilege against self-incrimination).

The admonishment may be oral or written. If written, the court must receive a signed statement from the defendant and counsel acknowledging understanding.

An important limitation applies in sex-crime cases: substantial compliance with Article 26.13 is sufficient, unless the defendant affirmatively shows that he was not aware of the consequences and was misled or harmed. For sex offenses specifically, failure to give the Chapter 62 registration admonishment is explicitly not grounds to set aside the conviction under Article 26.13(e). This statutory gap means that defendants who were never told about the registration consequences of their plea cannot use that failure alone to obtain relief.

Mental Competency

A defendant who is mentally incompetent at the time of the plea cannot enter a knowing and voluntary plea. Competency requires that the defendant have a sufficient present ability to consult with counsel with a reasonable degree of rational understanding, and a rational and factual understanding of the proceedings.

Proving incompetency retrospectively is difficult. The applicant must typically present psychiatric records, testimony from mental health professionals, or other documentation showing that, at the time of the plea, the defendant was unable to meaningfully participate. The fact that a

competency evaluation was never conducted, despite indications of mental illness, can support the claim.

The Plea Colloquy and Its Importance

The reporter's record of the plea proceeding is critical evidence in any involuntary-plea challenge. If the transcript shows that the judge conducted a thorough colloquy, questioned the defendant about understanding the charges and consequences, the defendant affirmed understanding and voluntariness, and counsel stated on the record that the plea was freely made, then the habeas applicant faces a strong presumption of voluntariness that must be overcome with affirmative evidence to the contrary.

Conversely, a sparse or deficient colloquy may support an involuntariness claim. The first step in evaluating any guilty-plea habeas case should be obtaining and reviewing the reporter's record of the plea hearing. Practitioners should also obtain any written admonishment forms, plea agreements, and judicial acknowledgment forms. These documents together form the evidentiary baseline that the applicant's affidavit and supporting evidence must overcome.

* * *

Ineffective Assistance of Counsel in the Plea Context

The Strickland/Hill Standard

The two-part *Strickland v. Washington* test applies to guilty-plea challenges. The applicant must show:

1. **Deficient performance:** Counsel's representation fell below an objective standard of reasonableness.
2. **Prejudice:** There is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial.

The prejudice prong was adapted to the plea context in *Hill v. Lockhart* (U.S. Supreme Court, 1985). The question is not whether a trial would have resulted in acquittal. The question is whether the defendant was prejudiced by the denial of the entire judicial proceeding to which he had a right. The defendant must show a "reasonable probability" that he would have rejected the plea and gone to trial had he received competent advice.

This is a meaningful distinction. The applicant does not need to prove he would have won at trial. He needs to prove he would have chosen to go to trial.

Common Forms of Plea-Stage IAC

Failure to investigate before advising a plea. This is among the most common and most viable IAC claims in the sex-crime plea context. If counsel advises a client to plead guilty without first investigating the case, the advice rests on an unreasonable foundation. In sex-crime cases, failure to investigate can include: failing to review the forensic interview recording, failing to investigate the complainant's background or prior allegations, failing to consult experts (forensic

interviewers, psychologists, medical experts), failing to investigate potential defenses such as alibi or misidentification, and failing to review CPS records or SANE reports.

The CCA has recognized that "failure to investigate" claims typically require affidavits to develop the record, because the trial court record is usually silent on what investigation counsel did or did not perform. This is one reason why IAC claims are more effectively raised through habeas than on direct appeal. To succeed, the applicant must identify what a reasonable investigation would have revealed and explain why that information would have changed the plea calculus.

Failure to communicate plea offers. In *Missouri v. Frye* (U.S. Supreme Court, 2012), the Court held that the Sixth Amendment requires defense attorneys to communicate formal plea offers from the prosecution. In *Lafler v. Cooper* (U.S. Supreme Court, 2012), the Court addressed situations where counsel's deficient advice led a defendant to reject a favorable plea and go to trial. These precedents establish that plea bargaining is a critical stage of the prosecution and that defendants are entitled to effective representation throughout. In the sex-crime context, this may arise where counsel fails to convey a favorable plea offer (perhaps to a lesser-included offense with a shorter sentence), and the defendant is subsequently convicted of a more serious charge.

Coercing a client to plead guilty. Counsel who pressures a client into pleading guilty, over the client's wishes, renders the plea involuntary. These claims are inherently difficult to prove because they rest on private communications between attorney and client. The applicant's affidavit describing the coercion is essential. Corroborating evidence, such as letters, notes, or testimony from family members who observed the attorney-client dynamic, strengthens the claim considerably.

Failure to advise on collateral consequences. The traditional rule, reflected in *Ex parte Morrow*, distinguished between "direct" consequences (punishment range, mandatory minimums, parole eligibility) and "collateral" consequences (immigration effects, use of pleas in other proceedings). Only failure to advise about direct consequences was held to constitute deficient performance. However, this distinction has eroded since *Padilla v. Kentucky* (U.S. Supreme Court, 2010), which held that immigration consequences are sufficiently intertwined with the criminal process that failure to advise about them constitutes IAC. Texas courts have followed *Padilla*, and Article 26.13 now requires immigration admonishments.

Whether sex offender registration might receive similar treatment remains an open question. Registration under Chapter 62 is arguably as life-altering as deportation: it restricts where a person can live and work, requires ongoing compliance for years or decades, and carries its own criminal penalties for violation. The current statutory framework, which treats failure to admonish about registration as non-reversible error, may not be the final word on whether counsel's failure to advise about registration constitutes IAC.

Building the IAC Record When Trial Counsel Is Unavailable

A recurring practical problem in sex-crime habeas cases is that trial counsel may be deceased or otherwise unable to testify by the time the habeas application is filed. This was the situation in both the Sanchez and Reed cases. Sanchez's attorney, Virginia Maurer, died in September 2020

before the habeas petition was filed. Reed's attorney, Richard Wheelan, died in 2008, nine years before the habeas application.

When trial counsel cannot testify, the applicant cannot obtain an affidavit explaining counsel's reasoning or strategy. This cuts both ways. On one hand, the State cannot point to an affidavit from counsel articulating a reasonable strategic basis for the decisions in question. On the other hand, the applicant must establish deficient performance through other means.

Practical approaches include:

- **The court record itself.** Billing records (or the absence of billing), case file notes, and docket entries can establish what investigation did or did not occur. In Sanchez's case, the court-approved investigator McKay submitted an affidavit stating that Maurer would not meet with him and that he had done so little work he did not bill the county.
- **Affidavits from the applicant.** The applicant's sworn account of interactions with counsel, the advice given, the frequency of meetings, and the circumstances of the plea decision.
- **Third-party witnesses.** Family members, co-defendants, or other individuals who observed the attorney-client relationship or who were present during relevant conversations.
- **Expert testimony.** In some cases, an expert on criminal defense standards can testify that counsel's conduct fell below the standard of care, based on the available record.

The absence of trial counsel's testimony does not defeat an IAC claim. It simply requires the applicant to build the record through alternative sources.

* * *

Actual Innocence as a Gateway

The Elizondo Standard Applied Post-Plea

Texas recognizes a freestanding claim of actual innocence on habeas corpus. This means an applicant can obtain relief based solely on new evidence of innocence, without needing to attach the claim to a separate constitutional violation. This is broader protection than what federal habeas currently provides.

The standard is "extraordinarily high." The applicant must show, by clear and convincing evidence, that no reasonable juror would have convicted the applicant in light of the new evidence. The CCA has phrased this as requiring that the new evidence "unquestionably establishes" the applicant's innocence. (*Ex parte Elizondo*; *Ex parte Tuley*; *Ex parte Thompson*.)

Critically, a guilty plea does not bar an actual-innocence claim. In *Ex parte Tuley* (Tex. Crim. App. 2003), the CCA stated that it "does not make the distinction between those who have pleaded guilty and those who have pleaded not guilty" for habeas claims, and that it is "unpersuaded that equitable principles should prevent an innocent person from obtaining relief simply because he pleaded guilty."

The Guilty Plea as an Obstacle

The guilty plea creates a significant practical hurdle, even though it does not create a legal bar. The applicant must explain why, if truly innocent, he chose to plead guilty. Courts will weigh the plea as evidence of guilt. But the CCA has recognized that a plea's reliability is itself called into question when new evidence supports a finding that innocence has been "unquestionably established."

In practice, the most successful post-plea innocence claims present a compelling explanation for the guilty plea alongside the evidence of innocence. In the Sanchez case, the explanation was clear: a functionally illiterate defendant, visited only three times by his attorney in nearly two years, pressured to plead by an attorney who had done no meaningful investigation. In the Day case, the explanation was equally compelling: a 19-year-old told he would be paroled in four years, facing a potential life sentence at trial. In the Reed case, the deferred adjudication offer appeared favorable compared to the prison time Reed risked at trial.

These explanations do not need to be extraordinary. They need to be plausible and consistent with the reality that innocent people, facing the coercive dynamics of sex-crime prosecution, make rational decisions to plead guilty.

DNA Evidence Post-Plea: Chapter 64

Chapter 64 of the Texas Code of Criminal Procedure provides a statutory mechanism for post-conviction DNA testing that is specifically available to defendants who pled guilty. Article 64.03 explicitly provides that the convicting court is prohibited from finding that identity was not an issue solely on the basis of a guilty plea, confession, or similar admission.

The applicant must show by a preponderance of the evidence that he would not have been convicted if exculpatory DNA results had been obtained. The evidence must still exist, be in testable condition, and have a sufficient chain of custody. The statute also allows retesting with "newer testing techniques that provide a reasonable likelihood of results that are more accurate and probative than the results of the previous test."

In Tyrone Day's case, the sexual assault kit and clothing collected in 1989 were preserved for decades. When finally tested, they yielded DNA profiles of three men, none of whom was Day. One profile led investigators to R.W., who admitted to the encounter. The DNA evidence, combined with the complainant's revised account, was decisive.

For attorneys evaluating sex-crime guilty-plea cases, the first question should always be whether biological evidence exists and whether it has been tested with current technology.

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Recantation Evidence After a Guilty Plea

Courts' Historical Skepticism

Texas courts are deeply skeptical of recantation testimony. The general judicial attitude is that recantations are inherently unreliable. The reasoning is understandable: the witness may be

recanting due to pressure from the defendant or the defendant's family; the witness may have emotional reasons for wanting to take back the accusation (guilt over the defendant's imprisonment, desire to restore family relationships); and the witness has now given two contradictory statements, meaning one of them is necessarily false.

After a guilty plea, recantation evidence faces an additional layer of skepticism. The court must weigh not only the credibility of the recantation but also the fact that the defendant previously admitted guilt. Why did the defendant plead guilty if the allegations were false?

What Makes a Recantation Credible

Courts evaluating recantations consider several factors:

- **Specificity and detail.** A recantation that provides a detailed, internally consistent explanation for why the original accusation was false is more credible than a vague or conclusory one.
- **Plausible motive for the original false allegation.** If the recanting witness can explain why they made a false accusation (coercion by a third party, custody dispute, fear, coaching), the recantation gains credibility.
- **Corroboration.** Independent evidence supporting the recantation is nearly essential to meeting the "unquestionably established" standard. Corroborating evidence might include: third-party witnesses who can testify about the circumstances of the original accusation, evidence of coaching or suggestive interviewing techniques, physical or forensic evidence inconsistent with the original allegations, and records (texts, emails, social media posts, letters) that support the recantation narrative.
- **Willingness to testify under oath.** A recanting witness who testifies at a live evidentiary hearing and submits to cross-examination is far more persuasive than one who provides only a written affidavit.
- **Timing.** A recantation that comes soon after the conviction may be viewed as more credible than one that surfaces many years later, though late recantations are not categorically barred.

Child Recantations: The Special Difficulty

Child recantations in sex-crime cases occupy uniquely contested territory. Courts recognize a phenomenon, sometimes called "recantation syndrome" or described as part of the "child sexual abuse accommodation syndrome," in which children who have genuinely been abused later recant due to family pressure, guilt, or a desire to restore normalcy. Expert testimony frequently establishes that recantation by an abused child is "not at all unusual." Courts are therefore reluctant to accept child recantations at face value.

At the same time, children also make false accusations. They can be coached, led by suggestive interview techniques, or manipulated by adults with their own agendas. A child's recantation may reflect the truth, not a retreat from it.

The challenge is distinguishing between these two scenarios. Several factors favor credibility:

- The complainant is now an adult and provides a detailed, coherent explanation of why the original allegations were fabricated.

- The recantation is corroborated by independent evidence, such as third-party witnesses or evidence of the original coercion.
- The complainant provides a plausible motive for the original false allegation (coaching by a parent in a custody dispute, threats by the actual abuser, anger at the accused).
- The original allegation lacked corroboration beyond the complainant's own statements.
- The recanting complainant testifies at a live evidentiary hearing and submits to cross-examination.

Among the exonerations from Chapter 2, Sanchez's case illustrates how child recantations can succeed. Both children recanted and explained, with specificity, that their mother's boyfriend T.G. had coerced them. The recantations were corroborated by the children's earlier fabricated-and-recanted accusations against Avian Sanchez, which demonstrated the children's susceptibility to adult pressure. Reed's case followed a similar pattern: the complainant explained that the actual abuser, her foster father Alex R., had threatened her into naming Reed. The recantation was corroborated by Alex R.'s later conviction for indecency with a child in a separate case.

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Deferred Adjudication: Article 11.072 vs. Article 11.07

The Two-Track System

Texas has distinct habeas provisions depending on the procedural posture of the case.

Article 11.072 applies to cases where the defendant is currently on, or has completed, community supervision (whether deferred adjudication or "straight" probation). Key features of this track: the application is filed in the convicting court, the convicting court rules on it, and denial can be appealed to the intermediate courts of appeals and then to the CCA. The applicant must challenge the legal validity of the conviction or the order imposing community supervision.

Article 11.07 applies to final felony convictions where the defendant has been sentenced to incarceration. The application is filed in the convicting court but transmitted to the CCA for final decision. Denial by the CCA is final and cannot be appealed.

When Each Applies

While still on deferred adjudication (not yet adjudicated): The proper vehicle is Article 11.072. The defendant can challenge the voluntariness of the plea, IAC in the plea process, or other constitutional defects.

After deferred adjudication is revoked and sentence is imposed: Once the court adjudicates guilt and imposes a sentence, the case becomes a final felony conviction and the proper vehicle is Article 11.07. The defendant may raise cognizable habeas claims, including that the underlying guilty plea was involuntary or that counsel was ineffective.

This distinction was directly relevant in Calvin Reed's case. Reed originally pled guilty on deferred adjudication. Less than a year later, his deferred adjudication was revoked and he was

sentenced to 20 years. At that point, his only habeas option was Article 11.07, which he used to obtain relief based on the complainant's recantation and his original counsel's ineffectiveness.

Practical Considerations

After revocation of deferred adjudication, the defendant faces the full range of punishment for the original offense, which in sex-crime cases can be severe. At the revocation stage, the trial court's discretion is broad, and direct appeal rights are limited. This makes the initial plea decision, and the quality of counsel's advice at that stage, critically important. Attorneys evaluating deferred-adjudication sex-crime cases that have been revoked should focus on the original plea process: was the plea voluntary, did counsel adequately investigate before advising the plea, and did counsel properly advise the client about the risks of deferred adjudication (including the possibility of revocation and the full punishment range)?

One additional complication: some plea agreements include waivers of the right to file a habeas application. The CCA addressed habeas waivers in *Ex parte Insall* (Tex. Crim. App. 2007), holding that while such waivers are theoretically enforceable if knowingly, intelligently, and voluntarily made, the waiver in that case was not enforced. Multiple judges expressed the view that habeas waivers are practically unenforceable because a defendant cannot knowingly waive the right to challenge future, unforeseeable events. Nonetheless, the waiver itself can be challenged on grounds that it was involuntary or the product of IAC, and a waiver obtained through the same deficient process that produced the plea does not insulate the plea from attack.

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Case Studies: Lessons from the Exonerations

The three guilty-plea exonerations from Chapter 2 illustrate the principles discussed above in stark terms.

Adam Sanchez pled no contest after nearly two years in jail with an attorney who visited three times, refused to work with the court-approved investigator, and pressured an illiterate client to accept the plea. His habeas petition raised both actual innocence (the children's recantations) and IAC (failure to investigate, coercion of the plea). Because his attorney had died, the IAC record was built through the applicant's own affidavit, the investigator's affidavit describing Maurer's refusal to engage, and the case file itself. Both the habeas court and the CCA found the claims meritorious.

Calvin Reed pled guilty on deferred adjudication, which was later revoked. His habeas petition raised actual innocence (T.R.'s recantation revealing the actual abuser) and IAC (Wheelan's failure to investigate). Like Sanchez, Reed's attorney had died before the habeas proceeding, requiring alternative evidence of deficient performance. The billing records showed, at most, one conversation between attorney and client. The Harris County habeas court found both the recantation credible and Wheelan's representation ineffective, and the CCA granted relief.

Tyrone Day pled guilty on his attorney's advice that he would be paroled in four years, a catastrophic misrepresentation. He served 26 years. His habeas petition was supported by DNA evidence excluding him from the sexual assault kit and by the complainant's revised account. The

Dallas County CIU played a central role, agreeing to DNA testing that the DA's office had twice opposed. The DNA results provided the kind of unambiguous evidence that can overcome even the strongest presumption of voluntariness attached to a guilty plea.

Each case demonstrates that challenging a guilty plea via Article 11.07 is difficult but not impossible. Success requires strong new evidence, a clear explanation for the guilty plea, and either proof that counsel's failures contributed to the plea or evidence so compelling that it "unquestionably establishes" innocence regardless of the plea's procedural regularity.

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Chapter 6: Common Issues in Sex-Crime Cases

The exonerations profiled in Chapter 2 did not arise from random failures. They emerged from recurring structural problems that appear again and again in Texas sex-crime prosecutions. False accusations, flawed forensic interviews, unreliable expert testimony, absent physical evidence, and inadequate defense preparation are not isolated incidents. They are patterns. Understanding these patterns is essential for attorneys evaluating potential post-conviction claims, because the same issues that produce wrongful convictions are the issues that, properly identified and documented, produce habeas relief.

* * *

False Accusations and Recantation Evidence

Why False Accusations Occur

False sex-crime accusations are not limited to any single cause. In the cases examined in this guide, the sources of false accusations included:

- **Coercion by a third party.** In the Sanchez case, the children's mother's boyfriend, T.G., physically and mentally abused the children and pressured them into accusing their father. In the Reed case, the actual abuser (the foster father) threatened to send the child back to CPS if she identified him, so she named Reed instead.
- **Pressure from adults in the household.** In the Moreno case, the complainant was pressured by her adoptive family to maintain allegations against her biological father. She later said she "felt like I had to do it to please them."
- **Custody disputes.** While not directly present in the five featured cases, custody disputes remain one of the most common contexts for false sex-crime allegations nationwide. A parent engaged in a contentious custody fight may coach a child, consciously or unconsciously, to make allegations that improve the parent's position.
- **Suggestive questioning by adults.** In the Blankenship case, the accusation against Blankenship emerged only after the child's aunt questioned her on the morning of a forensic interview about a different suspect. The aunt's questioning was not recorded, its methods are unknown, and its suggestive potential is significant.
- **Misidentification.** In the Day case, the complainant identified Day from approximately 50 feet away based on his hat, not his face, while he happened to walk past the crime scene.

The common thread is that false accusations rarely spring from a child's unprompted imagination. They are typically the product of adult influence, whether through deliberate coaching, unintentional suggestion, or coercive pressure.

The Legal Framework for Evaluating Recantations

As discussed in Chapter 5, recantation evidence is treated with deep judicial skepticism. The framework for evaluating recantations in Texas habeas proceedings requires the habeas court to assess credibility (specificity, plausibility, corroboration), weigh the recantation against the totality of the guilt evidence from trial (or the plea), and determine whether, considering the recantation alongside all other evidence, no rational juror could have convicted.

For practical purposes, the most important variable is corroboration. A recantation supported by independent evidence (the prior false-and-recanted accusations in Sanchez, the actual abuser's later conviction in Reed, the DNA exclusion in Day) is far more likely to succeed than an uncorroborated change of heart.

Building a Credible Recantation Case

Attorneys working with recanting witnesses should focus on:

3. **Documenting the recantation thoroughly.** Obtain a detailed sworn affidavit covering: what actually happened, why the original accusation was false, who influenced or coerced the original accusation, when the witness first tried to tell the truth, and why the witness waited as long as they did.
4. **Securing corroboration.** Identify third-party witnesses, records, or physical evidence that support the recantation. Look for evidence of the original coercion or suggestion. Investigate the person the recanting witness identifies as the actual perpetrator, if applicable.
5. **Preparing the witness for an evidentiary hearing.** The habeas court's credibility finding is critical and receives deference from the CCA. The witness must be prepared to testify consistently and withstand cross-examination.
6. **Addressing the "recantation syndrome" argument.** The State will argue, often with expert support, that recantation is consistent with genuine abuse. The applicant should be prepared to distinguish the specific facts of the case from the general phenomenon.

* * *

Forensic Interview Failures

What a Proper Forensic Interview Looks Like

Forensic interviews of child complainants are typically conducted at child advocacy centers by trained interviewers following established protocols (such as the NICHD Protocol, CornerHouse, or Finding Words/ChildFirst). A properly conducted forensic interview should include:

- **A rapport-building phase** in which the interviewer establishes comfort and explains the purpose of the interview.
- **A truth/lie competency check** in which the child demonstrates an understanding of the difference between truth and falsehood and agrees to tell the truth.
- **Open-ended questions** that allow the child to provide a narrative account in their own words, without suggestion.
- **Avoidance of leading questions**, particularly in the initial phases of the interview.

- **Follow-up on all disclosures**, including disclosures about people other than the suspected perpetrator.
- **Neutral and non-suggestive body language and verbal responses** from the interviewer.

Common Failures

In practice, forensic interviews frequently deviate from these standards. The most common failures include:

- **Failure to establish truth/lie competency.** In the Blankenship case, Dr. Bryan Sweeney identified this as a fundamental problem with Heather Burger's interview of K.H. The interviewer never established whether the four-year-old child understood the difference between truth and a lie.
- **Leading questions.** Interviewers who ask questions containing the answer they expect (such as "Did Daddy touch you there?") rather than open-ended questions (such as "Tell me what happened") risk contaminating the child's account.
- **Tunnel vision on a single suspect.** When K.H. told the interviewer in the Blankenship case that "all my friends do that to me too" and named other people, the interviewer did not follow up. Instead, she tried to keep the child focused on the suspected perpetrator. This is a significant failure: if the child is disclosing abuse by multiple people, each disclosure must be explored.
- **Failure to record the interview.** While most child advocacy centers now record forensic interviews, pre-interview conversations and informal questioning by family members or investigators are rarely documented. In the Blankenship case, the aunt's questioning of K.H. on the morning of the interview was never recorded.
- **Multiple interviews or preparation by adults before the interview.** When a child has been questioned by parents, relatives, or investigators before the formal forensic interview, the child's account may already be shaped by suggestion. The forensic interview cannot undo this contamination.

How to Challenge Flawed Interviews

Challenging a flawed forensic interview requires expert analysis. A qualified forensic psychologist or specialist in forensic interviewing can review the interview recording and identify specific departures from accepted protocols. The expert can testify about how those departures may have affected the reliability of the child's statements.

In the Blankenship case, the defense retained Dr. Sweeney for exactly this purpose, and his analysis identified multiple problems. However, the trial court barred the most critical portion of his testimony after the prosecution objected that Sweeney had only watched ten forensic interviews and had never conducted one himself. The habeas court later found this exclusion to have "greatly damaged" the defense.

This sequence illustrates two practical lessons. First, the expert must be unimpeachably qualified. An expert who has conducted forensic interviews, not merely reviewed them, is harder for the prosecution to exclude. Second, if the trial court improperly excludes the expert, the exclusion itself may become the basis for an IAC or due process claim on habeas.

Expert Witness Issues

Prosecution Experts

Prosecution experts in sex-crime cases fall into several categories, each presenting distinct challenges:

CSAAS (Child Sexual Abuse Accommodation Syndrome) testimony. CSAAS, developed by Dr. Roland Summit in 1983, describes behavioral patterns observed in sexually abused children, including secrecy, helplessness, entrapment and accommodation, delayed and unconvincing disclosure, and retraction. Texas courts generally permit CSAAS testimony for the limited purpose of explaining why a child's behavior (such as delayed reporting or recantation) is not inconsistent with abuse. However, CSAAS testimony crosses the line when it is used as direct proof that abuse occurred. An expert who uses CSAAS to opine that the child was in fact abused has moved from permissible education into impermissible bolstering.

Defense challenges to CSAAS testimony should focus on: the lack of scientific validity of CSAAS as a diagnostic tool (it was never designed as one), whether the expert is using CSAAS beyond its limited permissible scope, and whether the testimony improperly comments on the truthfulness of the child. A Kelly/Daubert reliability objection and a Rule 702 objection should be raised at the earliest opportunity.

Delayed disclosure experts. Similar to CSAAS testimony, experts who testify about why children delay disclosing abuse face the same boundary between explaining a phenomenon and vouching for the truth of an accusation.

"Armchair" experts. In the Moreno case, Dr. William Carter testified as an expert witness even though he had never interviewed the child. He told the jury he could identify abused children by "a certain look in the eye." Post-conviction investigation revealed that Carter had coordinated his testimony with prosecutor Fagin through correspondence in which he discussed how to "best explain" the complainant's testimony and inconsistencies. This kind of coordination between an expert and the prosecution, while perhaps more common than courts would like to acknowledge, crosses the line into manufactured testimony. When discovered, it provides powerful grounds for habeas relief.

Defense Experts

Effective defense work in sex-crime cases frequently requires expert assistance in one or more of the following areas:

- **Forensic interview analysis.** An expert who can identify specific departures from accepted interviewing protocols and explain their potential impact on the child's statements.
- **Memory and suggestibility.** Experts on children's memory, suggestibility, and the effects of repeated questioning can help the factfinder understand how false memories form and how children can come to believe events that did not occur.

- **Forensic psychology.** A psychologist who can evaluate the child's allegations in the context of the family dynamics, the investigation, and the child's developmental level.
- **Medical evidence.** When the prosecution presents medical findings as corroboration of abuse, a defense medical expert can explain alternative explanations or the significance (or insignificance) of the findings.

The Challenge of Getting Defense Experts Admitted

The Blankenship case illustrates a recurring problem: even when the defense retains a qualified expert, the prosecution may successfully object to the expert's testimony, and the trial court may exclude it. The exclusion of Dr. Sweeney's testimony about the interview's specific deficiencies, based on his limited hands-on experience, left the defense without the ability to present its most important critique of the State's case.

Attorneys retaining defense experts should anticipate Daubert/Kelly challenges and ensure the expert's qualifications are comprehensive. An expert who has both conducted and reviewed forensic interviews, who has published in the field, and who can articulate the connection between their analysis and accepted scientific literature is far harder to exclude. When the trial court does exclude a qualified expert, the record must be preserved (through an offer of proof) for potential appellate or habeas review.

* * *

Child Witness Credibility

Texas Law Allows Conviction on Uncorroborated Child Testimony

Texas Code of Criminal Procedure Article 38.07 provides that a conviction for a sexual offense may rest on the testimony of the child victim alone, with no corroboration requirement, as long as the victim was under 18 at the time of the offense. The "one witness rule" holds that the testimony of a single credible witness is sufficient to sustain a conviction.

This legal framework makes the credibility of the child witness the single most important issue in most sex-crime cases. If the jury believes the child, the conviction will be upheld on appeal regardless of what other evidence is present or absent.

Inconsistencies Between Outcry, Forensic Interview, and Trial Testimony

In practice, child complainants' accounts frequently change between the initial outcry, the forensic interview, and trial testimony. In the Moreno case, the inconsistencies were substantial: A.M. told different people different things about who she first disclosed to, whether she bled, whether her mother walked in on the abuse, and the timeline of events.

These inconsistencies can cut both ways. Defense attorneys argue that they undermine credibility. Prosecutors respond that inconsistencies are expected from children recounting traumatic events over time, and they often call experts to explain this phenomenon. Appellate courts consistently hold that the jury is entitled to resolve inconsistencies in the State's favor, making this issue difficult to win on appeal.

On habeas, however, inconsistencies in the original testimony can corroborate a recantation. If the complainant's story changed multiple times before the recantation, the recantation is consistent with a pattern of unreliability rather than a departure from a consistent account.

Delayed Disclosure

Delayed disclosure (the gap between the alleged abuse and the child's first report) is a frequent feature of sex-crime cases. Prosecutors present expert testimony explaining that delayed disclosure is common among abuse victims. Defense attorneys argue that the delay undermines the accusation's credibility.

In the Moreno case, the delay was over two years. A.M. was repeatedly asked by a therapist whether her father had touched her inappropriately, and she consistently said no. The disclosure came only after A.M. was placed in a new foster home, began seeing a new therapist, and was asked directly whether she had been sexually abused. The defense argued that the disclosure was the product of suggestion rather than genuine memory. The jury disagreed.

Delayed disclosure is relevant both at trial and on habeas. On habeas, evidence that the disclosure was the product of therapeutic suggestion or adult pressure, rather than the child's own recollection, can support an IAC claim (counsel failed to challenge the circumstances of the disclosure) or an actual-innocence claim (the disclosure was false).

The Emotional Impact of Child Testimony

Child testimony carries enormous emotional weight. Jurors who see a child describe sexual abuse, particularly a child who cries on the stand, are powerfully affected. In the Moreno case, prosecutor McCracken pointed to A.M.'s crying as the "smoking gun," and Dr. Carter testified that such emotional displays could not be faked.

This dynamic creates a challenging environment for the defense at trial and a significant obstacle on appeal. Appellate courts give deference to the jury's credibility determinations, and the emotional impact of child testimony is, by design, part of the evidence the jury considers. On habeas, however, the focus shifts from what the jury believed to what the evidence now shows. A credible recantation, supported by evidence that the original testimony was false, can overcome even the most emotionally powerful trial testimony.

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Absence of Physical or DNA Evidence

Normal Physical Exams Are Common

In the Moreno case, Dr. Beth Nauert examined A.M. and found no evidence of physical injuries or scarring. She then testified that a normal physical examination does not preclude abuse. This testimony reflects established medical consensus: normal physical findings are the expected result in the majority of child sexual abuse examinations, particularly when the examination occurs long after the alleged abuse.

This creates a paradoxical situation for the defense. The absence of physical evidence does not help the defendant, because the prosecution explains it away. But the presence of physical evidence would hurt the defendant. The defense is effectively unable to use the medical examination in its favor, regardless of the result.

How Prosecutors Frame the Absence of Evidence

Prosecutors in sex-crime cases are well prepared for the absence of physical evidence. Their standard approach includes expert testimony that normal findings are expected, emphasis on the child's testimony as sufficient standing alone under Article 38.07, and argument that the absence of physical evidence simply means the type of contact alleged does not necessarily leave physical traces.

Defense attorneys should counter by emphasizing what the evidence does and does not show, by challenging whether the prosecution's medical expert is qualified to make the specific claims offered, and by framing the absence of evidence within the broader context of the case's weaknesses.

When DNA Can Help: Chapter 64

Post-conviction DNA testing under Chapter 64 is available when biological evidence exists and has been preserved. In sex-crime cases, the most common sources of testable evidence are sexual assault kits, clothing, and bedding.

As discussed in Chapter 5, Chapter 64 specifically prohibits the court from finding that identity was not an issue solely because of a guilty plea. The applicant must show by a preponderance that he would not have been convicted if exculpatory DNA results had been obtained. The statute also permits retesting with newer technology.

Tyrone Day's case demonstrates the transformative potential of DNA testing. The sexual assault kit collected in 1989 was preserved for decades. Modern testing yielded profiles of three men, excluding Day entirely. For attorneys evaluating post-conviction sex-crime cases, particularly older cases where evidence may have been collected but never tested (or tested with outdated technology), Chapter 64 should be explored as a matter of course.

* * *

Working with Conviction Integrity Units

What CIUs Are

Conviction Integrity Units are divisions within district attorney's offices that investigate claims of wrongful conviction. Unlike traditional prosecution units, CIUs are tasked with reviewing cases where the integrity of the conviction is in doubt, regardless of whether the original prosecution was conducted by the same office.

Which Texas Counties Have CIUs

Texas has been a national leader in establishing CIUs. As of early 2026, counties with active or recently active Conviction Integrity Units include:

- **Dallas County**, which has one of the most established and prolific CIUs in the country. The Dallas CIU was instrumental in Tyrone Day's exoneration, agreeing to DNA testing and conducting the interviews that revealed the true nature of the encounter.
- **Bexar County** (San Antonio), whose CIU engaged with Adam Sanchez's case after he submitted an intake form and helped facilitate his exoneration.
- **Harris County** (Houston), which has a CIU that has handled numerous post-conviction cases.
- **Travis County** (Austin), whose CIU investigated Marshall Moreno's case after being contacted by the Actual Innocence Clinic at UT Law, leading to his exoneration after 24 years.
- **Tarrant County** (Fort Worth) and **Collin County** (McKinney) have also established CIUs, and other Texas counties may follow.

The number and activity level of CIUs continues to grow, and attorneys should verify the current status and intake procedures for any specific county.

How to Submit a Case to a CIU

Most CIUs accept cases through written intake forms. The process varies by county, but the typical steps are:

7. **Contact the CIU to request intake materials.** Some CIUs have online submission forms; others require contact by mail or email.
8. **Submit a detailed summary of the case**, including the nature of the conviction, the grounds for believing the conviction is wrongful, a description of any new evidence, and the current procedural posture.
9. **Provide supporting documentation.** This may include affidavits from recanting witnesses, expert reports, DNA test results, or other new evidence.
10. **Be patient.** CIUs have limited resources and significant backlogs. Initial review may take months.

The Advantages of CIU Involvement

CIU involvement confers significant practical advantages:

- **Access to the prosecution's file.** The CIU can review the original case file, including materials that may not have been disclosed to the defense, such as internal correspondence, investigation notes, and witness statements.
- **Joint investigation.** The CIU and defense counsel can cooperate on investigation, sharing resources and information.
- **Joint recommendations.** When the CIU agrees that the conviction is wrongful, it can join in the habeas petition or file agreed-upon findings of fact. A joint recommendation from the prosecution and the defense carries substantial weight with the habeas court and the CCA. In

Tyrone Day's case, the Dallas County CIU chief joined in the habeas petition, and the CCA granted the writ. In Marshall Moreno's case, the Travis County DA's office supported the habeas petition after its own investigation confirmed the complainant's recantation.

- **Credibility with the court.** A habeas petition supported by the prosecution's own CIU is treated differently from a petition opposed by the State. When the CIU agrees that the conviction should be set aside, the court has less reason to question the applicant's evidence.
- **Faster resolution.** Cases with CIU support tend to move more quickly through the habeas process than contested cases.

Engaging a CIU: Practical Advice

Attorneys should consider contacting the relevant CIU early in the post-conviction process, particularly when:

- New evidence of innocence is strong and can be documented.
- The case involves a complainant who has recanted or is willing to recant.
- DNA or other forensic evidence may be available for testing.
- The case file may contain undisclosed Brady material.

The CIU is not the applicant's attorney and does not represent the applicant's interests. It represents the interests of justice. But when those interests align, as they did in the Sanchez, Day, and Moreno cases, CIU involvement can be the single most important factor in obtaining relief.

Not every CIU will agree to investigate every case, and not every investigation will lead to a favorable conclusion. But the existence of these units in major Texas counties represents a meaningful resource for attorneys pursuing post-conviction relief in sex-crime cases, and engaging them should be part of the standard practice for any case involving credible new evidence of innocence.

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Chapter 7: Practical Strategies for Practitioners

The preceding chapters have examined the legal frameworks, procedural requirements, and substantive issues that define sex-crime post-conviction work in Texas. This chapter turns to the practical question: how should an attorney approach these cases?

Sex-crime post-conviction work demands a combination of doctrinal fluency, investigative diligence, and sensitivity to the human dimensions of every case. The five exonerations profiled in Chapter 2 did not happen by accident. They happened because capable attorneys identified viable claims, developed the factual record needed to support them, and presented their cases effectively to the courts. This chapter distills the practical lessons from those cases and from the broader body of Texas post-conviction practice into actionable guidance.

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7.1 Building the Record at Trial

For attorneys who represent defendants at the trial stage, the single most important contribution to any future post-conviction case is a well-preserved record. Many otherwise meritorious appellate and habeas claims fail because trial counsel did not preserve the error. In sex-crime cases, several categories of objections and record-building steps are especially critical.

Specific Objections That Must Be Made

Outcry witness testimony (Article 38.072). When the State seeks to introduce outcry testimony, defense counsel must make timely, specific objections at the pretrial reliability hearing required by the statute. A general "hearsay" objection is insufficient. Counsel should challenge the designation of the outcry witness by arguing, where appropriate, that the designated witness was not the first adult to whom the child disclosed the offense. Counsel should also challenge the reliability of the statement by examining the time, content, and circumstances under which the child made it. If the objection is overruled, counsel should request a running objection to avoid repeated objections in front of the jury.

Expert testimony. Defense counsel must challenge prosecution experts under the Kelly/Nenno reliability framework before they testify. This includes CSAAS testimony, delayed-disclosure experts, and forensic interview experts. The objection should specify whether the challenge is to the scientific validity of the theory, the qualifications of the expert, or the improper scope of the testimony (such as an expert who moves from explaining general behavioral patterns to vouching for the truthfulness of the specific complainant). A Rule 403 objection (unfair prejudice substantially outweighs probative value) should be lodged alongside the reliability challenge. Both should be raised in a pretrial motion in limine and again when the testimony is offered.

Confrontation Clause. Defense counsel must specifically invoke the Confrontation Clause when challenging the admission of testimonial hearsay, such as forensic interview recordings, statements to law enforcement, or out-of-court statements introduced through witnesses other than the declarant. A general hearsay objection does not preserve a Crawford issue. This distinction is critical: if the trial court admits a forensic interview recording over a hearsay objection alone, the Confrontation Clause issue is forfeited on appeal.

Extraneous offense evidence (Article 38.37). When the State seeks to introduce evidence of uncharged sexual offenses against the same child (Section 1) or other children (Section 2), counsel must demand the pretrial hearing required by the statute. At that hearing, counsel should challenge whether the State has produced adequate evidence that the defendant committed the extraneous offense. Counsel should also lodge a Rule 403 objection on the record. Even though appellate courts have generally upheld the constitutionality of Article 38.37, Section 2, the due process challenge should still be raised to preserve the issue for potential future development.

Making Offers of Proof

When the trial court excludes defense evidence, counsel must make an offer of proof under Texas Rule of Evidence 103(a)(2). Without one, the appellate court cannot evaluate what the excluded evidence would have shown, and the issue is waived.

The offer of proof should be as detailed as possible. If a defense expert is excluded from testifying about deficiencies in a forensic interview, counsel should place the expert on the stand outside the jury's presence and elicit the full substance of the proposed testimony. If a defense witness is barred from testifying about the complainant's prior false accusations or statements inconsistent with the trial testimony, counsel should question the witness fully on the record. A bare proffer by counsel ("the witness would have testified that...") is less persuasive than actual testimony preserved in the reporter's record.

Requesting Specific Jury Instructions

Jury charge errors are among the most frequently successful appellate issues. Counsel should submit written proposed jury instructions and object to the charge on the record. Key areas include:

- **Lesser-included offenses.** If the evidence supports conviction on a lesser offense only, counsel must request the lesser-included instruction. Failure to request it may waive the issue for appeal.
- **Defensive instructions.** If the evidence raises a defensive theory (alibi, consent in adult cases, lack of intent), counsel must request the appropriate instruction.
- **Limiting instructions on extraneous offenses.** When the court admits extraneous offense evidence under Article 38.37, counsel should request a limiting instruction directing the jury on the permissible use of the evidence. Even though Section 2 evidence is admissible for "any bearing on relevant matters, including the character of the defendant," a limiting instruction may still be warranted in some circumstances, and the request preserves the issue.

Counsel should object in writing to any instruction that misapplies the law, and the objection should state the specific grounds. Under the Almanza framework, a preserved charge error

requires reversal upon a showing of "some harm," a significantly lower threshold than the "egregious harm" required for unpreserved errors.

Using the Motion for New Trial

The motion for new trial is an essential bridge between trial and appellate proceedings. It must be filed within 30 days of sentencing, and the court has 75 days from sentencing to rule on it before it is overruled by operation of law.

The motion for new trial serves two critical functions. First, it extends the notice-of-appeal deadline from 30 days to 90 days. Second, and more importantly, it provides the only mechanism for developing a record on issues that are not apparent from the trial transcript.

Ineffective assistance of counsel. If newly retained or appointed appellate counsel identifies potential IAC claims, the motion for new trial is the place to raise them. Through an evidentiary hearing on the motion, counsel can call the trial attorney to testify about strategic decisions, place investigative failures on the record, and document what a reasonable investigation would have uncovered. Without this hearing, the appellate court will almost certainly find the record insufficient to evaluate the claim.

Newly discovered evidence. If evidence emerges shortly after trial (a recantation, a new witness, exculpatory forensic results), counsel should raise it in the motion for new trial. While such evidence can also be raised through an 11.07 habeas application, raising it early through the motion preserves the issue and may lead to quicker relief.

Preserving Forensic Interview Recordings

In child sex-crime cases, the forensic interview recording is among the most important pieces of evidence, for both the prosecution and the defense. Counsel should request production of all forensic interview recordings, both the recorded sessions and any notes or reports prepared by the interviewer. Counsel should also request any prior CPS interviews, law enforcement interviews, and therapy records documenting the child's statements.

If the forensic interview is not produced or has been lost or destroyed, this should be raised immediately. The destruction of evidence that is potentially exculpatory may support a due process claim. At a minimum, counsel should place the State's failure to preserve the recording on the record.

These recordings are critical for post-conviction review. As the Blankenship case demonstrated, an expert's evaluation of the forensic interview technique can be the foundation of a successful habeas claim. Trial counsel should ensure that copies of all recordings are preserved in the case file, because retrieving them years later for habeas proceedings can be difficult or impossible.

7.2 Identifying 11.07 Issues in Post-Conviction Review

For attorneys evaluating a sex-crime conviction for potential habeas relief, the initial case assessment is the most important step. A thorough evaluation requires a combination of record review, client interview, and independent investigation.

Evaluating a Case for Habeas Potential

Not every sex-crime conviction warrants an 11.07 application. The threshold question is whether the case presents a cognizable claim with enough factual support to survive the State's answer and, ideally, warrant an evidentiary hearing.

The most commonly successful grounds in sex-crime habeas applications are actual innocence based on recantation evidence, ineffective assistance of counsel (at trial or in the plea process), Brady violations involving suppressed evidence, and false or misleading expert testimony. A case that presents one or more of these issues, supported by facts that can be developed through affidavits and witness testimony, is a strong candidate for habeas review.

Red Flags That Suggest Meritorious Claims

Experienced post-conviction attorneys look for certain indicators that a sex-crime conviction may be unreliable:

- **Sole-witness testimony with no physical corroboration.** While Texas law permits conviction based on a child's testimony alone, the absence of any corroborating physical evidence means the case stands or falls on the complainant's credibility. If that credibility is later undermined, the conviction is vulnerable.
- **Very young complainants.** Children under six or seven are particularly susceptible to suggestive questioning, coaching, and the influence of adults who have their own motives for encouraging an accusation. The Sanchez case involved complainants who were five and six years old when the allegations were first made, and the Blankenship case involved a complainant who was four.
- **Custody disputes or hostile third parties.** When the accusation emerges during a custody dispute, a contentious divorce, or a period when the complainant is in the care of someone who has a grievance against the defendant, the possibility of coaching or fabrication is heightened. In the Sanchez case, the children's accusations were driven by their mother's abusive boyfriend.
- **Inconsistencies across multiple statements.** If the complainant's account changed significantly between the initial disclosure, the forensic interview, and the trial testimony, those inconsistencies merit careful examination. The Moreno case is illustrative: A.M.'s statements to her therapist, to the forensic interviewer, and at trial contained multiple contradictions.
- **Suggestive forensic interviews.** Interviews that involve leading questions, failure to establish the child's ability to distinguish truth from fiction, and failure to follow up on exculpatory statements are all red flags. The Blankenship case turned in part on the interviewer's failure to address K.H.'s statement that "all my friends do that to me too."

- **Counsel who did minimal investigation.** If the trial or plea attorney spent little time with the client, did not hire an investigator, did not consult experts, and did not review discovery materials, the case may present a viable IAC claim. The Sanchez and Reed cases are stark examples.

Obtaining the Record

The post-conviction attorney should obtain the complete trial record as early as possible. This includes:

- The reporter's record (trial transcript or plea colloquy transcript)
- The clerk's record (indictment, motions, orders, jury charge, judgment)
- Discovery materials provided to trial counsel
- Police reports and CPS records
- Forensic interview recordings
- Medical examination reports
- Expert reports
- Trial counsel's case file (if available)

In some cases, obtaining these materials requires filing requests with the trial court, the district attorney's office, or law enforcement agencies. For cases that are more than a few years old, records may have been lost, destroyed, or archived. Starting this process early is essential.

Interviewing the Client

A detailed client interview is foundational. The attorney should explore:

- The client's account of the underlying events, including whether the client maintains innocence or has a different version of events from the trial testimony
- What happened during the plea process (if applicable): what the attorney told the client about the evidence, the sentence exposure, and the likelihood of conviction at trial
- The client's understanding of the plea admonishments and whether the client felt coerced or pressured
- What investigation the trial attorney conducted, whether experts were consulted, and whether the client was involved in strategic decisions
- Any post-conviction developments, including contact with the complainant, recantation information, or new witnesses

For incarcerated clients, these interviews may need to take place during prison visits, through legal mail, or by phone. (Section 7.5 below addresses the practical challenges of client communication.)

Contacting Trial Counsel

If the trial attorney is still alive and practicing, habeas counsel should contact them early. Trial counsel's testimony about their reasoning and strategy is often the most important evidence in an IAC claim. Under the Strickland standard, the applicant must overcome a "strong presumption" that counsel's conduct was the product of reasonable trial strategy. Obtaining an affidavit or

deposition from trial counsel about what they did (and did not do) is essential to meeting this burden.

If trial counsel has died (as in the Sanchez and Reed cases), the record must be developed through other means: the case file, billing records, correspondence, and testimony from investigators, co-counsel, or the client.

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7.3 Engaging Qualified Experts

Expert testimony is frequently the difference between a successful and unsuccessful habeas application. In sex-crime post-conviction work, several categories of experts are particularly valuable.

Types of Experts

Forensic psychologists specializing in forensic interview evaluation. These experts review forensic interview recordings and assess whether the interview was conducted in accordance with accepted protocols (such as the NICHD protocol or CornerHouse RATAC model). They can identify leading questions, suggestive techniques, failure to assess the child's developmental capacity, and other deficiencies that may have produced unreliable statements. The Blankenship case demonstrates both the value of this expertise and the importance of selecting a properly qualified expert.

DNA and forensic biology experts. For cases where biological evidence exists (sexual assault kits, clothing, bedding), a qualified DNA expert can evaluate whether testing was performed properly, whether modern techniques could yield more informative results, and whether exclusionary results support an innocence claim. The Day case shows the power of DNA evidence in post-conviction proceedings.

Medical experts. In cases where the prosecution relied on physical examination findings to corroborate the complainant's account, a medical expert can review the examination results and assess whether the findings actually support the allegations. Research in pediatric medicine has evolved significantly in recent decades, and findings once interpreted as evidence of abuse are now understood to be normal anatomical variants or the result of other causes.

False confession and coerced plea experts. In cases where the defendant pled guilty under coercive circumstances, an expert on false confessions and plea coercion can explain the psychological dynamics that lead innocent people to plead guilty. These experts can testify about the documented prevalence of false guilty pleas, the risk factors that increase susceptibility (youth, intellectual disability, mental illness, extreme sentence differentials), and the specific factors present in the case at hand.

Finding and Vetting Experts

The lesson of the Blankenship case is clear: the expert must be qualified to withstand a Daubert/Kelly challenge. Dr. Sweeney was barred from testifying about the specific deficiencies

in the forensic interview because he had only watched ten forensic interviews and had never conducted one himself. This limitation "greatly damaged" the defense.

When selecting an expert, counsel should verify:

- The expert's academic credentials and professional experience in the specific field
- The number of forensic interviews the expert has reviewed or conducted (for forensic interview experts)
- Whether the expert has been qualified as an expert in Texas courts before
- Whether the expert has published peer-reviewed research in the relevant area
- Whether the expert's methodology and conclusions are consistent with the current state of the field

Counsel should also prepare the expert for the State's challenge to their qualifications. A detailed curriculum vitae, a list of prior court qualifications, and a clear articulation of the expert's methodology should be ready before the hearing.

Funding for Experts

Court-appointed counsel can seek court-approved funding for expert services under *Ake v. Oklahoma*, which requires the State to provide an indigent defendant access to expert assistance when the defendant's sanity or another issue requiring expert evaluation is "likely to be a significant factor at trial." Texas courts have extended this principle to post-conviction proceedings in appropriate cases.

To obtain funding, counsel should file a motion demonstrating:

- The specific expertise needed and why it is necessary to the habeas claim
- The estimated cost of the expert's services
- Why the applicant cannot afford to retain the expert privately
- How the expert's testimony will be material to the court's resolution of the habeas application

Courts are more likely to approve expert funding when the motion clearly articulates how the expert's work relates to a cognizable habeas claim. Generic requests for "investigation" are less successful than targeted requests for specific expert evaluations tied to specific legal issues.

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7.4 Obtaining and Presenting Recantation Evidence

As the case studies in Chapter 2 demonstrate, recantation evidence is central to most sex-crime exonerations. Three of the five exonerations profiled in this guide involved formal complainant recantations (Sanchez, Reed, Moreno), and a fourth (Day) involved the complainant substantially revising her account. But recantations are also the most scrutinized form of evidence in habeas proceedings. Courts approach them with well-documented skepticism, and the State will vigorously challenge their credibility. Effective presentation of recantation evidence requires careful preparation.

How Recantations Come About

Recantations in sex-crime cases typically emerge through one of several pathways:

- **Family contact.** A family member reaches out to the incarcerated defendant with information that the complainant has expressed doubt about the accusations or has stated that the events did not happen as described. In the Sanchez case, Amanda Sanchez contacted Adam to tell him the children had recanted. In the Reed case, T.R. told Reed's wife that Reed had not assaulted her.
- **Guilt over time.** As complainants mature, particularly those who were children at the time of the allegations, they may experience remorse about a false accusation that led to someone's imprisonment. In the Moreno case, D.B. contacted the Actual Innocence Clinic at UT Law because "keeping up with this lie has been eating me up from inside."
- **The complainant reaching adulthood.** A complainant who was a child at the time of the accusation may reach adulthood and, free from the influence of the adults who shaped the original allegation, decide to tell the truth. The passage of time can remove the pressures (custody disputes, threats from actual abusers, adoptive family dynamics) that produced the false accusation in the first place.

Best Practices for Documenting a Recantation

A recantation must be carefully documented to withstand judicial scrutiny. The core document is a detailed sworn affidavit from the recanting witness. That affidavit should include:

- **A clear statement that the original allegations were false.** The witness should state unambiguously that the events described at trial (or in the plea proceedings) did not occur as described.
- **A detailed explanation of why the original allegations were false.** The witness should describe how the false accusation came about: who influenced the child, what pressures were applied, what the child's state of mind was at the time, and what specific events led to the fabrication.
- **An explanation of why the witness is recanting now.** Courts will scrutinize the timing and motivation for the recantation. The affidavit should address why the witness did not come forward sooner and what prompted the decision to recant.
- **Corroboration from third parties.** If other individuals can corroborate aspects of the recantation (for example, family members who witnessed the coaching, friends to whom the complainant confided the truth before the formal recantation, or records that support the recanting witness's account), their affidavits should be obtained and filed alongside the recantation.

Ethical Considerations

Attorneys should never contact a complainant directly to solicit a recantation. In Texas, a complainant in a sex-crime case is a crime victim under the law, and direct contact by the defendant's attorney raises serious ethical issues, including potential witness tampering charges and violations of the Texas Disciplinary Rules of Professional Conduct.

Recantations should come about naturally, typically through the complainant's own initiative, through family members, or through the work of an innocence organization. If the complainant initiates contact or indicates a willingness to recant, the attorney should document the circumstances carefully to demonstrate that no improper influence was exerted.

If a third party (such as a family member) reports that the complainant has recanted, the attorney should consider having an investigator, not the attorney personally, conduct the initial contact with the complainant. The investigator should document the encounter thoroughly and should not use leading questions or pressure the complainant in any way.

Preparing the Recanting Witness for the Evidentiary Hearing

The evidentiary hearing is where the recantation is tested. The habeas judge will assess the recanting witness's credibility based on demeanor, consistency, and the coherence of the account. The State will cross-examine the witness aggressively.

To prepare the recanting witness, counsel should:

- Review the witness's prior statements (forensic interview, trial testimony, police reports, CPS records) and identify every inconsistency between the original account and the recantation
- Ensure the witness can explain each inconsistency and has a coherent, truthful explanation for the discrepancies
- Prepare the witness for the State's likely cross-examination themes: that the recantation is the product of pressure from the defendant's family, that the witness is motivated by a desire to free the defendant rather than by the truth, and that "recantation syndrome" means the recantation (not the original accusation) is the false statement
- Conduct a thorough practice session where the witness is questioned in the manner they will experience at the hearing

Anticipating the State's Counterarguments

The State will typically argue:

- **Coaching or pressure.** That the defendant's family members pressured the complainant to recant. In the Reed case, the State argued that T.R.'s recantation had been influenced by Reed's wife.
- **"Recantation syndrome."** That recantation is a recognized behavior pattern among actual abuse victims, and therefore the recantation itself is evidence that the abuse occurred. The State may present expert testimony on this point.
- **Inconsistency.** That the recanting witness has now given two contradictory sworn accounts, and the original account (given closer in time to the events) should be credited.
- **Motive.** That the complainant has personal reasons for recanting that are unrelated to the truth (restoring family relationships, guilt about the defendant's imprisonment, financial incentives).

Counsel should be prepared to counter each of these arguments with specific evidence. Corroborating witnesses, contemporaneous records, and evidence of the circumstances

surrounding the original accusation (coaching, suggestive interviews, threats by third parties) are all valuable in rebutting the State's position.

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7.5 Client Communication

Sex-crime post-conviction cases routinely span years. Maintaining effective communication with an incarcerated client throughout this process is both a professional obligation and a practical necessity.

Challenges of Prison Communication

Communication with incarcerated clients is subject to significant logistical constraints:

- **Mail delays.** Legal mail between an attorney and an incarcerated client can take days or weeks, depending on the facility. Some institutions review legal mail for contraband, which can add further delays.
- **Limited phone access.** Prison phone calls are typically restricted to certain hours, are expensive, and are time-limited. Scheduling a call requires advance coordination with the client.
- **Literacy issues.** As the Sanchez case illustrates, some clients are functionally illiterate and cannot meaningfully engage with written correspondence. For these clients, in-person visits or phone calls are the only effective means of communication.
- **Limited internet access.** Most incarcerated individuals have no access to email or electronic communication, though some facilities now offer limited tablet-based messaging systems.

Setting Realistic Expectations

At the outset of the representation, counsel should clearly explain the timeline and process for an 11.07 habeas application. Clients and their families should understand that:

- Gathering records and developing the factual basis for the application can take months.
- After filing, the State has 30 days to respond, and the convicting court has 180 days to resolve the case (with extensions).
- If an evidentiary hearing is ordered, scheduling and conducting it may take additional months.
- After the convicting court issues its findings, the record is transmitted to the CCA, which may take a year or longer to rule.
- The total process from filing to final resolution frequently takes two to four years, and in some cases longer. The Moreno case took approximately five years from D.B.'s initial contact with the Actual Innocence Clinic to the dismissal of all charges, and more than a year from the filing of the habeas petition to final resolution.

Clients who enter the process expecting quick results will become frustrated and may lose confidence in their attorney. Clear communication at the beginning prevents this.

Keeping Clients Informed

Even when there is nothing new to report, counsel should communicate with the client at regular intervals. A brief letter or phone call confirming that the case is progressing, identifying the current stage of the proceedings, and explaining the next steps can maintain the client's trust and engagement.

When significant developments occur (the State files its answer, the court orders a hearing, the CCA issues a decision), counsel should communicate the development promptly and explain its implications.

Managing the Emotional Toll

Sex-crime post-conviction cases carry an enormous emotional burden for clients and their families. The client has been convicted of one of the most stigmatizing categories of crime. They may face hostility from other inmates. Their families may be struggling with the financial and emotional consequences of the conviction. The prospect of relief, combined with the uncertainty of the outcome, creates a cycle of hope and anxiety that can be psychologically devastating.

Counsel should be attuned to these dynamics without becoming the client's therapist. Referrals to prison counseling services or family support organizations can be appropriate. Honest communication about the strengths and weaknesses of the case, without either false optimism or unnecessary pessimism, helps the client manage expectations.

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7.6 Working with Conviction Integrity Units

Conviction Integrity Units have become an increasingly important component of the Texas post-conviction landscape. Three of the five exonerations in Chapter 2 involved CIU participation, and in each case, the CIU's involvement materially contributed to the outcome.

Which Texas Counties Have CIUs

As of early 2026, several Texas counties maintain active Conviction Integrity Units:

- **Dallas County** has one of the most established CIUs in the country, having contributed to dozens of exonerations since its founding in 2007.
- **Harris County** (Houston) operates a CIU that has reviewed numerous cases and contributed to multiple exonerations.
- **Bexar County** (San Antonio) has a CIU that was involved in the Sanchez exoneration.
- **Travis County** (Austin) has a CIU that played a significant role in the Moreno exoneration.
- **Tarrant County** (Fort Worth) operates a CIU.
- Other counties, including Collin County, have established or are developing similar units.

The existence and activity level of CIUs varies. Some operate with dedicated staff and formal intake processes; others are more limited in scope. Defense counsel should research the specific CIU in the relevant county to understand its procedures and capacity.

How to Submit a Case

Most CIUs accept submissions through a formal intake process. The submission typically includes:

- A summary of the case and the basis for the claim of wrongful conviction
- Identification of the specific new evidence or legal issues that support the claim
- Supporting documentation (affidavits, records, expert reports)
- Contact information for the applicant and counsel

The Sanchez case provides a template: Sanchez submitted an intake form to the Bexar County CIU in December 2020, the CIU expressed interest, and the formal habeas petition was filed approximately one year later. Early engagement with the CIU allowed the investigation to proceed in parallel with the preparation of the habeas application.

Benefits of CIU Involvement

CIU involvement offers several significant advantages:

Independent investigation. CIUs conduct their own investigation of the case, including interviewing witnesses, reviewing evidence, and consulting experts. This independent review can uncover evidence that defense counsel alone might not have access to. In the Day case, the Dallas County CIU conducted multiple interviews with the complainant and agreed to DNA testing that ultimately proved Day's innocence.

Joint recommendations carry enormous weight. When a CIU joins the defense in recommending habeas relief, the joint recommendation carries substantial persuasive force with both the convicting court and the CCA. A case in which the prosecution and the defense agree that the conviction is unreliable is far more likely to result in relief than one in which the State opposes the application.

Potential for quicker resolution. CIU involvement can streamline the habeas process. When the CIU and the defense present agreed findings of fact and conclusions of law, the convicting court can adopt them without the need for a contested evidentiary hearing. In the Day case, the Dallas County judge agreed to joint findings presented by the CIU and Day's attorneys.

CIUs Are Not Adversaries

A critical point for defense attorneys to understand: Conviction Integrity Units are not adversaries in post-conviction proceedings. Their mission is to identify and correct wrongful convictions. CIU prosecutors are typically distinct from the trial prosecutors who obtained the original conviction. They approach the case with an investigative mindset rather than a prosecutorial one.

This does not mean CIUs are uncritical. They conduct rigorous evaluations and will decline to support a case they do not find meritorious. But their posture is fundamentally different from that of a trial prosecutor defending a conviction.

Timing

Defense counsel should consider engaging the CIU before or simultaneously with filing the 11.07 application. There is no procedural requirement to file the habeas application first, and early CIU involvement can shape the investigation in productive ways.

However, counsel should not delay filing the habeas application indefinitely while waiting for a CIU response. CIUs have limited resources and may take months to evaluate a submission. Filing the 11.07 application starts the statutory clock and preserves the client's interests. The CIU investigation can proceed in parallel.

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Chapter 8: Conclusion

This guide has examined the legal landscape of Texas sex-crime post-conviction work from multiple angles: the procedural framework of direct appeals and Article 11.07 habeas applications, the specific challenges of overturning guilty pleas, the substantive issues that arise in sex-crime cases (false accusations, flawed forensic interviews, inadequate defense investigation, prosecutorial misconduct, misleading expert testimony), and the practical strategies that effective practitioners employ to investigate and litigate these claims.

Several themes run through every chapter.

Texas provides meaningful paths to relief for the wrongly convicted. Article 11.07 habeas corpus, in particular, offers a broad and flexible mechanism for challenging convictions based on evidence that was not available at trial. Unlike many jurisdictions, Texas imposes no statute of limitations on habeas applications, recognizes freestanding claims of actual innocence, permits habeas challenges after guilty pleas, and has created specialized vehicles for challenging convictions based on discredited science (Article 11.073) and DNA evidence (Chapter 64). The system is imperfect, and proceedings can take years. But the remedies are real and have produced real results.

Sex-crime convictions are particularly vulnerable to the failures this guide has described.

These cases often rest on the uncorroborated testimony of a single complainant, frequently a child. The emotional weight of the allegations creates enormous pressure on juries to convict and on defendants to plead guilty. Forensic interviews of young children are susceptible to suggestive techniques. Expert testimony, particularly CSAAS evidence and testimony on "delayed disclosure," can cross the line from permissible education into impermissible bolstering. Mandatory minimum sentences of 25 years or more create a coercive plea-bargaining dynamic that can push innocent defendants to plead guilty. And the stigma attached to sex offenses makes these cases uniquely resistant to post-conviction scrutiny, even when the evidence of error is compelling.

Capable attorneys can make the system work. The five men profiled in Chapter 2 are proof of that. Adam Sanchez, Brice Blankenship, Calvin Reed, Marshall Moreno, and Tyrone Day collectively spent approximately 68 years in prison for crimes they did not commit. Each was ultimately exonerated, but none was exonerated by accident. In every case, a dedicated attorney (Dayna Jones, Randy Schaffer, Aimee Bolettino, Charles Press, Vanessa Potkin and her co-counsel) identified the viable claim, developed the evidence, and presented it effectively to the courts. In three of the five cases, Conviction Integrity Units played a critical supporting role. These outcomes required persistence, expertise, and, in several cases, years of sustained effort.

Diligence, skepticism, and compassion are the essential qualities. Diligence, because post-conviction work demands exhaustive investigation: obtaining and reviewing trial records, tracking down witnesses, retaining qualified experts, and building a factual record that can withstand the State's opposition. Skepticism, because not every claim of innocence is meritorious, and an attorney who accepts every client's account uncritically does a disservice to the client, the

court, and the profession. Compassion, because these cases involve human beings who have suffered enormously, whether they are incarcerated individuals who have lost years of their lives, complainants who were manipulated into making false accusations as children, or families torn apart by wrongful convictions.

The work is difficult, and the outcomes are uncertain. Article 11.07 applications are denied far more often than they are granted. Evidentiary hearings are hard to obtain. The CCA rules against applicants in the vast majority of cases. But the stakes justify the effort. When a conviction is wrong, every day of incarceration is an injustice, not only to the person in prison, but to the integrity of the legal system itself.

Defense attorneys occupy a unique position in this system. They are, in many cases, the only advocates standing between a wrongfully convicted person and a lifetime of incarceration, sex-offender registration, and social stigma. The five exonerations in this guide demonstrate that the system can correct its errors when attorneys bring the necessary skill, preparation, and commitment to the task. The work that remains is to ensure that more attorneys are equipped to do so, and that the structural conditions that produce wrongful convictions in sex-crime cases receive the sustained attention they demand.

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