

Supreme Court of Texas

Misc. Docket No. 25-9059

Preliminary Approval of New Texas Rule of Appellate Procedure 31.8

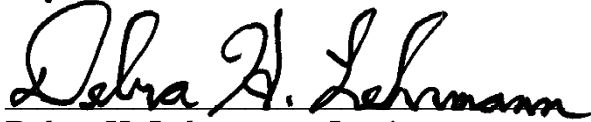
ORDERED that:

1. The Court invites public comments on proposed new Texas Rule of Appellate Procedure 31.8.
2. To effectuate the Act of May 29, 2025, 89th Leg., R.S., ch. 339 (S.B. 9), the new rule is effective September 1, 2025. But it may later be changed in response to public comments. The Court requests public comments be submitted in writing to rulescomments@txcourts.gov by December 1, 2025.
3. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to the Governor, the Lieutenant Governor, and each elected member of the Legislature; and
 - d. submit a copy of this Order for publication in the *Texas Register*.

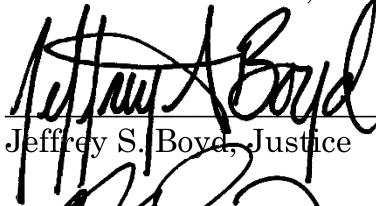
Dated: August 29, 2025.



James D. Blacklock, Chief Justice



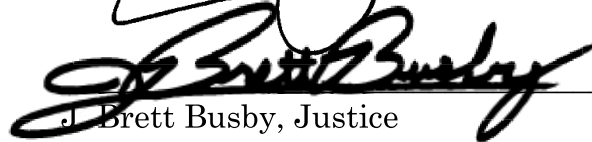
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



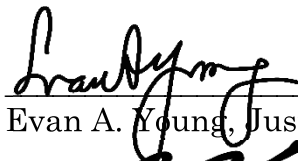
J. Brett Busby, Justice



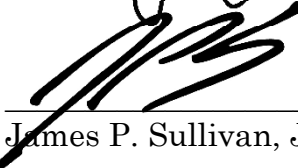
Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice



James P. Sullivan, Justice

TEXAS RULES OF APPELLATE PROCEDURE

Rule 31. Appeals in Habeas Corpus, Bail, and Extradition Proceedings in Criminal Cases

31.8. Expedited Appeal by the State of an Order Granting Bail

- (a) *Application.* This rule applies to an appeal by the State of a magistrate's order granting bail, in an amount considered insufficient by the prosecuting attorney, to a defendant who:
- (1) is charged with an offense under any of the following sections of the Penal Code:
 - (A) section 19.02 (murder);
 - (B) section 19.03 (capital murder);
 - (C) section 22.02 (aggravated assault) if;
 - (i) the offense was committed under section 22.02(a)(1); or
 - (ii) the defendant used a firearm, club, knife, or explosive weapon, as those terms are defined in section 46.01 of the Penal Code, during the commission of the assault;
 - (D) section 20.04 (aggravated kidnapping);
 - (E) section 29.03 (aggravated robbery);
 - (F) section 22.021 (aggravated sexual assault);
 - (G) section 21.11 (indecentcy with a child);
 - (H) section 20A.02 (trafficking of persons); or
 - (I) section 20A.03 (continuous trafficking of persons); or
 - (2) is charged with an offense punishable as a felony while the defendant was released on bail for an offense punishable as a felony at the time the instant offense was committed.

(b) *State's Notice of Appeal.*

- (1) Contents. The State's notice of appeal must comply with Code of Criminal Procedure Article 44.01 and expressly state that the appeal is an expedited appeal under Articles 44.01(a)(7), (f-1), and (f-2) and this rule.
- (2) Time and Where to File. Within 10 days after an order is signed granting bail in an amount considered insufficient by the prosecuting attorney, the State must file the notice of appeal with the district clerk.
- (3) Service of Notice and Rule. The State must immediately serve on the defendant the notice of appeal and a copy of this rule.

(c) *Appellate Record.*

- (1) State Duties. The State must file with its notice of appeal a bookmarked appendix containing a certified or sworn copy of:
 - (A) the order granting bail in an amount considered insufficient by the prosecuting attorney, bail findings, bail conditions, and any supervision order;
 - (B) any reporter's record from a bail hearing resulting in the order granting bail in an amount considered insufficient by the prosecuting attorney, including any exhibits; and
 - (C) every document that was filed with or presented to the magistrate making the bail decision, including as applicable:
 - (i) the charging documents;
 - (ii) the risk assessment;
 - (iii) the mental health assessment under Code of Criminal Procedure Article 16.22;
 - (iv) the arraignment forms;
 - (vi) the indigency affidavit;
 - (vii) the magistrate's orders for emergency protection or other protective orders in effect; and

- (viii) the pretrial supervision documents, including documents related to violations.
- (2) **Supplementation Permitted.** The defendant may supplement the State's record with a certified or sworn copy of any additional material filed with or presented to the magistrate that the State failed to provide.
- (d) *Reporter's Record.* The magistrate must ensure that any reporter's record from a bail hearing is prepared within 5 days of the State's requesting the record and arranging for payment.
- (e) *Further Bail Decisions.* While the appeal is pending, the State must immediately notify the court of appeals and supplement the record if any subsequent action has been taken on the bail order.
- (f) *Briefing on Appeal.*
 - (1) **Form and Length.** Briefs need not comply with Rule 38 and may be in the form of a motion or letter. A brief must not exceed 3,000 words.
 - (2) **No Extensions.** No extensions of time will be granted.
 - (3) **State's Brief.** The State's brief must include the identity of parties and counsel, specify the reasons it considers the bail amount insufficient, and be supported by citations to authorities and to the record. The State's brief must also include the State's requested relief on appeal, including the bail amount the prosecuting attorney considers sufficient. The State must file a brief within 5 days after filing the notice of appeal.
 - (4) **Defendant's Brief.** The defendant's brief, if any, should respond to the State's brief. The defendant's brief must be filed within 5 days after the State's brief is filed.
- (g) *Representation on Appeal.* The defendant's trial counsel, if any, is authorized to respond to the State's appeal.
- (h) *Order by the Court of Appeals.*
 - (1) **Review and Time.** The court of appeals must conduct a de novo review of all issues presented, expedite the appeal, and issue an order within 20 days after the date the appeal is filed.
 - (2) **Types of Orders.** The court of appeals may:

- (A) affirm the bail amount set by the magistrate;
 - (B) modify the bail amount set by the magistrate; or
 - (C) reject the bail amount set by the magistrate and remand the case to the magistrate, with or without guidance, for modification of the bail amount.
- (3) Opinion Not Required. The court of appeals may hand down a written opinion but is not required to do so.
- (i) *Implementation of Modified Bail Amount.* If the court of appeals modifies the bail amount, the court of appeals must direct the magistrate to certify the bail form on the court of appeals' behalf, update any reporting systems, and submit any required forms by the relevant deadlines.

Comment to 2025 change: New Rule 31.8 is added to implement the amendments to Article 44.01 of the Code of Criminal Procedure.