

**Non-Appearance Violations**

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**Non-Appearance Violations**

- VPTA
  - Violation of Promise to Appear
- FTA
  - Failure to Appear
- City Ordinance Appearances
- Other
  - Parents, JNA, Parks & Wildlife

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**Today's Agenda**

- Definitions
- If and When Charges May be Brought
- Creating Cases
- How Defendants May Handle These Cases
- Fines / Court Costs / Fees

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## Non-Appearance Charges

- Separate and distinct criminal charge
  - Original case sometimes called "underlying" charge
- Does not affect issuance of warrants on original charge
- Does not affect reporting of original charge under DPS's FTA program

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## VPTA and FTA

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## Violate Promise to Appear (VPTA)

- Person willfully violates written promise to appear in court as provided by this subchapter (traffic citation) regardless of the disposition of the charge

### Section 543.009, T.C.

- Separate and distinct **criminal** charge

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## Failure to Appear (FTA)

- Defendant lawfully released from **custody** with or without bail and intentionally or knowingly fails to appear in accordance with the terms of the release.

### Section 38.10, P.C.

- Separate and distinct **criminal** charge

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## Failure to Appear (FTA)

- Defense to prosecution if the defendant had reasonable excuse for failing to appear in accordance with his release
  - Who decides?

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## Custody

- VPTA – “traffic **citation**”
  - Who can write?
  - In custody?
- FTA – “released from **custody**”
  - Who can take into custody?
  - Are all citations “custody”?
- Only peace officers can take into custody – by citation or arrest



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## Citations

- Peace Officer's Authority to issue:
  - Section 543.003, T.C.
    - For offenses under Subtitle C, T.C.
  - Article 14.06(b), C.C.P.
    - For Class C misdemeanors except Public Intoxication

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## Cannot Process VPTA or FTA Unless ...

- Can only charge on a **criminal** offense
- Defendant must have been in **custody (or had traffic citation issued)** and released by peace officer
- Defendant must have **agreed to appear and didn't**

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## Which to Process?

- VPTA
  - Violations of Subtitle C, T\_\_\_\_\_C\_\_\_\_\_
    - "Rules of the Road" - Criminal violations
    - Issued by peace officer
- FTA
  - All other criminal violations
  - Issued by peace officer

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## VPTA & FTA Not Interchangeable ...

- Azeez v. State (City of Houston)
  - Texas Court of Criminal Appeals
  - March 5, 2008
- Accepted rules of statutory code construction
  - The more specific law applies
- TMCEC's The Recorder
  - June 2008
  - [www.tmcec.com](http://www.tmcec.com)

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## VPTA or FTA?

- Registration
- Speeding
- Running Red Light
- Cameras at Red Lights
- Failure to Maintain Financial Responsibility
- Driver's License & Commercial Driver's License
- Fail to Yield ROW
- Disorderly conduct
- Parking

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## Required to Process?

- No
- Prosecutors decision to charge
  - But Judges may decide
- Should weight advantages and disadvantages
  - What are some?

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## VPTA and FTA

- Questions?

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## Other Non-Appearance Situations

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## City Ordinance Appearances (COA)

- Defendant lawfully issued a **citation** requiring defendant to appear and obtaining promise to appear in writing

### City Ordinance (home rule cities) Chapter 51.072 L.G.C.

- Separate and distinct **criminal** violation

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## Other Non-appearances ...

- Parent served a summons to appear with child
  - Article 45.0215(d), C.C.P.
- Notice to JNA (juvenile now adult) of “continuing obligation to appear”
  - Article 45.060, C.C.P.
- Parks & Wildlife Officers authorized to issue citations
  - Usually filed in JP Courts
  - Sections 31.125 and 31.127, Parks and Wildlife Code

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## Creating and Handling Non-appearance Cases

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## Creating a FTA, VPTA or COA Case

- Starts with a Sworn Complaint
- Create New Case
  - The **charge** is not the same – different case no.
    - court costs not be the same as underlying case
  - The “**officer**” is not the same
  - The **violation location** is not the same
  - The **fine** does not have to be the same
  - Different probable cause affidavit

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## How Defendants Handle Cases

- The same as any other case
  - Pay, TPP, Community Service, CTS, etc.
  - Note: VPTA conviction reported to DPS (3333)
- If defendant does not come in on this charge:
  - Issue warrant
    - Do probable cause affidavit
  - Report to DPS (Omnibase) Program
  - Collection Agency



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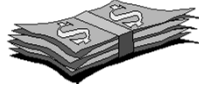
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## Fines / Court Costs / Fees

- VPTA
  - Maximum fine \$200
  - Court costs – same as other  
Subtitle C violations BUT **no \$5.00 arrest fee**
  - Warrant, collection, FTA (Omnibase), TPP fees are the same
  - **Special Expense Fee of \$25.00** if ordinance on file (45.203 CCP)



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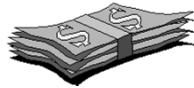
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## Fines / Court Costs / Fees

- FTA
  - Maximum fine \$500
  - Court costs – same as other  
non-Subtitle C violations BUT **no \$5.00 arrest fee**
  - Warrant, collection, FTA (Omnibase), TPP fees are the same
  - **Special Expense Fee of \$25.00** if ordinance on file (45.203 CCP)



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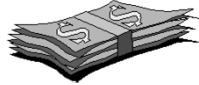
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## Fines / Court Costs / Fees

- COA

- Maximum fine \$500
- Court costs – same as other
- non-Subtitle C violations BUT **no \$5.00 arrest fee**
- Warrant, collection, FTA (Omnibase), TPP fees are the same
- **No Special Expense Fee**



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## Summary - VPTA

- VPTA Filed

- Defendant was arrested or received a citation from a \_\_\_\_\_ **(in custody)** for a violation of an offense under \_\_\_\_\_ **of the Transportation Code** and promised to \_\_\_\_\_ but did not

- Fines/Costs/Fees

- Maximum fine and court costs/fees same as other traffic offenses EXCEPT **no \$5 \_\_\_\_\_**
- May charge an **additional \_\_\_\_\_ fee for warrant service** if have an ordinance on file

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## Summary - FTA

- FTA Filed

- Defendant has been in \_\_\_\_\_ (including received a non-traffic citation) by a \_\_\_\_\_ on a class 'c' \_\_\_\_\_ charge other than traffic and was released to \_\_\_\_\_ but did not

- Fines/Costs/Fees

- Maximum fine and court costs the same as another other non-traffic class 'c' misdemeanor except **no \$5 \_\_\_\_\_ fee**
- May charge an **additional \_\_\_\_\_ fee for warrant service** if have an ordinance on file

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## Summary - COA

- COA filed (home rule cities only)
  - Defendant issued \_\_\_\_\_ by a \_\_\_\_\_ officer on a city ordinance and promised to \_\_\_\_\_ but did not
- Fine/Court Costs/Fees
  - Maximum fine and court costs the same as another other non-traffic class 'c' misdemeanor except **no \$5** \_\_\_\_\_ fee

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## Contact

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- Legislation
  - [www.capitol.state.tx.us](http://www.capitol.state.tx.us)

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