Municipal Court Clerk Certification Program

Level I

2011

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Municipal Court Clerk Certification Program

Level I

Sponsored By

Texas Court Clerks Association
Texas Municipal Courts Association
Texas Municipal Courts Education Center
Texas State University - San Marcos
MUNICIPAL COURT CLERK CERTIFICATION PROGRAM

The Texas Municipal Courts Education Center, the Texas Court Clerks Association, and the Texas Municipal Courts Association, in cooperation with Texas State University-San Marcos sponsor the Municipal Court Clerks Certification Program. This optional program for municipal court clerks is designed with three levels of certification. In order to advance through the three levels, clerks must pass standardized written exams and satisfy other conditions.

How to Use the Study Guide

The Level I study guide provides basic information about duties and procedural issues that commonly confront municipal court support personnel, and assists clerks in preparing for the Level I exam. Each section explores the sources of authority for performing certain functions, along with the procedures to help municipal courts manage their volume of cases. The text has been updated with the 82nd Legislative changes.

The material in the guide is divided into sections with related questions following each topic. Answers to the questions may be found at the end of each section. To help clerks find specific topics, a reference guide and glossary are located at the back of the study guide.

The best way to prepare for the Level I exam is to read and answer the questions for each section of the study guide. For any terms introduced, check the glossary at the end of the study guide. Next, review the material in each section and work through all the questions. Upon completion of each section, check your answers with the answer key and correct your work.

Secondary Source of Law

Every effort has been made to ensure the accuracy and completeness of this work. However, the guide is a summary of applicable law and is not an authority. Throughout the text, the law is frequently paraphrased to facilitate understanding.

This study guide is for educational purposes only and may not be used as a substitute for legal advice or counsel. Should any material in this publication conflict with constitutional, statutory, or case law, the law provided by the constitution, statute, or case prevails.

Judges and court staff should contact their city attorneys with any specific questions about the operations of their courts, and remember that the views expressed in these guides do not reflect those of the Texas Municipal Courts Education Center or the Board of Directors, the State Justice Institute, the Texas Municipal Courts Association, the Texas Court Clerks Association, or Texas State University-San Marcos.
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HELPFUL ORGANIZATIONS

A practical method of obtaining additional knowledge about the municipal court and judicial process is to seek assistance from experienced courts in neighboring cities. An on-site visit to a neighboring court while court is in session may be particularly beneficial, especially for new judges and other court officials. Various agencies and associations, in addition to the Texas Municipal Courts Education Center, are also available to lend assistance to municipal courts. Following is a list of offices that have an interest in assisting municipal courts.

**Attorney General’s Office**
P.O. Box 12548
Austin, TX 78711-2548
(512) 475-4683
www.oag.state.tx.us

**Commission on Judicial Conduct**
300 W. 15th Street, Suite 415
P.O. Box 12265
Austin, TX 78711-2265
(512) 463-5533
(877) 228-5750 (toll free)
www.scjc.state.tx.us

**Comptroller of Public Accounts**
111 E. 17th Street
P.O. Box 13528
Austin, TX 78711-3528
(512) 463-4276
Quarterly Reports and Court Costs
(800) 531-5441, Ext. 34276
www.window.state.tx.us

**Office of Court Administration and Texas Judicial Council**
205 W. 14th Street, Suite 600
P.O. Box 12066
Austin, TX 78711-2066
General Information
(512) 463-1625
Monthly Reports
(512) 463-1640
Case Management Software
(512) 463-1642
Collections
(512) 936-0991
www.courts.state.tx.us

**Office of the Governor**
P.O. Box 12428
1100 San Jacinto
Austin, TX 78711
Criminal Justice Division
(512) 463-1367
www.governor.state.tx.us

**Secretary of State**
P.O. Box 12887
Austin, TX 78711
Statutory Documents Section
(512) 475-0775
www.sos.state.tx.us

**State Bar of Texas**
P.O. Box 12487 Capitol Station
Austin, TX 78711
MCLE Credit
(512) 463-1463
www.texasbar.com

**Texas Court Clerk Association**
Mr. David Preciado
San Antonio Municipal Court
401 South Frio St., Rm. 104
San Antonio, Texas 78207
(210) 207-7109
(281) 207-4258 (fax)
www.texascourtclerks.org

**Texas Office for the Deaf and Hard of Hearing Services**
P.O. Box 12904
Austin, TX 78711
General Information
(512) 407-3250
Certified Interpreters
(512) 473-9205
www.dars.state.tx.us

**Texas Department of Health**
Office of Tobacco Prevention & Control
1100 W. 49th Street
Austin, TX  78756-3199
(888) 963-7111 (toll free)
www.dshs.state.tx.us

**Texas Department of Licensing and Regulation**
P.O. Box 12157
Austin, TX 78711
(512) 463-6599
Licensed Court Interpreter Board
(512) 463-1668
www.license.state.tx.us
Search for Licensed Court Interpreters
www.license.state.tx.us/LicenseSearch/

**Texas Department of Transportation**
Operations Division-TS
125 E. 11th Street
Austin, TX 78701-2483
(512) 416-3175
www.dot.state.tx.us

**Texas Department of Public Safety**
5805 N. Lamar
Austin, TX 78752
General Information
(512) 424-2000
Records
(512) 424-2600
Safety Responsibility
(512) 424-2600
Traffic Reporting
(512) 424-2028
www.txdps.state.tx.us

**Texas Education Agency**
1701 N. Congress
Austin, TX 78701
Approved DSC Schools
(512) 463-9734
www.tea.state.tx.us

**Texas Municipal Courts Association**
Hon. Robert C. Richter
Treasurer
1350 NASA Road One, Ste. 200
Houston, TX 77058
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(281) 333-1814 (fax)
www.txmca.com

**Texas Municipal League**
1821 Rutherford Lane, Ste. 400
Austin, TX 78754-5128
(512) 231-7400
www.tml.org

**Texas State Library and Archives Commission**
State and Local Records
P.O. Box 12927
Austin, TX 78711-2927
(512) 454-2705
www.tsl.state.tx.us

**Texas Teen Court Association**
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Irving Teen Court
(972) 721-3601
www.texasteencourt.com
### ABBREVIATIONS

The following abbreviations are used throughout this Level I study guide:

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<td>C.C.P.</td>
<td>Code of Criminal Procedure</td>
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<td>CDL</td>
<td>Commercial Driver’s License</td>
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<td>CMV</td>
<td>Commercial Motor Vehicle</td>
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<td>C.P.R.</td>
<td>Civil Practices and Remedies Code</td>
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<td>DIC</td>
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<td>DL</td>
<td>Driver’s License</td>
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<td>DPS</td>
<td>Department of Public Safety</td>
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<tr>
<td>E.C.</td>
<td>Education Code</td>
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<tr>
<td>e.g.</td>
<td>exempli gratia (for example)</td>
</tr>
<tr>
<td>F.C.</td>
<td>Family Code</td>
</tr>
<tr>
<td>F. Supp.</td>
<td>Federal Supplement</td>
</tr>
<tr>
<td>G.C.</td>
<td>Government Code</td>
</tr>
<tr>
<td>L.G.C.</td>
<td>Local Government Code</td>
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<td>OCA</td>
<td>Office of Court Administration</td>
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<td>O.C.</td>
<td>Occupations Code</td>
</tr>
<tr>
<td>P.C.</td>
<td>Penal Code</td>
</tr>
<tr>
<td>H.S.C.</td>
<td>Health and Safety Code</td>
</tr>
<tr>
<td>S.W.2d</td>
<td>Southwestern Reporter, Second Series</td>
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<tr>
<td>Tex. App.</td>
<td>Texas Court of Appeals</td>
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<td>Tex. Crim. App.</td>
<td>Texas Court of Criminal Appeals</td>
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<tr>
<td>T.A.C.</td>
<td>Texas Administrative Code</td>
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<td>TML</td>
<td>Texas Municipal League</td>
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<tr>
<td>T.C.</td>
<td>Transportation Code</td>
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<td>V.T.C.S.</td>
<td>Vernon’s Texas Civil Statutes</td>
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# An Overview of the Courts

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INTRODUCTION

The judicial system in the United States is an adversarial system. An adversary is a contestant who, like a boxer in a boxing match, tries to win while working within the rules of the match or the boundaries of the law. Similarly, an adversarial legal system is one in which the lawsuit or case is viewed as a struggle between two sides. Each side acts in its own interest, presenting its case in the best possible light to the court. The judge remains neutral and dispassionately decides questions of law (disputed legal contentions) and, when there is no jury, questions of fact (disputed factual contentions). The theory of this process is that the trier of fact (judge or jury) will be able to determine the truth if the opposing parties present their best arguments and show the weaknesses in the other side’s case. Decisions are based upon the evidence presented and the applicable law.

PART 1

HISTORY OF THE JUDICIAL PROCESS

A. Common Law

The American legal justice system has its origins in the English system of common law. Common law refers to the body of law that developed in England and the American colonies before the American Revolution. Today, it is viewed as principles, customs, and rules of action that are accepted as part of the justice system. Many common law principles have been incorporated into current codes and statutes. For instance, the waiver of trial by jury (Arts. 1.13 and 45.025, C.C.P.), the defense of necessity (Sec. 9.22, P.C.), and justification as a defense (Sec. 9.02, P.C.) all spring from the English common law. Other common law principles have not been codified, or written into statutes, such as the court’s inherent power. The inherent power of the judiciary is that authority which is essential to the existence, dignity, and functions of the court originating from the very fact that it is a court. In re Integration of the Neb. Bar Assn., 133 Neb. 283, 275 N.W. 265, 267 (1937).

B. Constitutional Law

After the American Revolution, the founders of this new nation produced a most remarkable document we know as the U.S. Constitution. The Constitution established a system of government to be directed by laws and principles. One principle is known as the separation of powers. To prevent the accumulation of too much power into too few hands, the U.S. Constitution divides government power into three branches: the legislative, the executive, and the judicial. The legislative branch makes or enacts the law; the executive branch enforces the law; and the judicial branch interprets and applies the law.

Although the three branches must function together cohesively to fulfill the obligations of government, each branch must perform its duties independently. Every time a court does its job as it is supposed to, independent of the other branches of government and according to the law, that court is playing its part in the constitutional plan.

Underlying the separation of functions into three branches is the theory of checks and balances. The founding fathers believed that if governmental power was divided into three branches, no one branch would be able to dominate the other two, and thereby impose its own will on an unconsenting public. Separation of powers, while sometimes cumbersome and sometimes the
source of tension between the government’s branches, is one of the fundamental principles of American democracy. Keeping the branches and their functions separate is one of the keys to the system of checks and balances.

The first 10 amendments to the U.S. Constitution are known as the *Bill of Rights*. These rights are intended to protect individual citizens against government tyranny and lawlessness. American courts, from their inception, are charged with interpreting the meaning of such protections as freedom from unwarranted searches and seizures, the right to counsel, the right to trial by jury, and the privilege against self-incrimination.

C. **Federal and State Law**

Like the U.S. Constitution, the Texas Constitution also establishes three branches of government: the legislative, the executive, and the judicial. As a component of the judicial branch, municipal courts are unique in that they are the only state trial courts to operate at the city-level of government. Nevertheless, despite their existence at the local level of government, municipal courts, like all state courts, are obligated to follow federal law and to give precedence to the U.S. Constitution over federal law, treatises, and state law. U.S. Const. Art. VI. Accordingly, in adjudicating cases, municipal courts are required to construe and apply common law, both federal and state law, and local ordinances.

Q. 1. **What is meant by the statement: “The American judicial system is an adversarial system”**?

Q. 2. **Define common law and give an example applicable to municipal courts**.

Q. 3. **Describe the role of each branch of government**.

Q. 4. **Why did the Founding Fathers design a government based on the principle of separation of powers**?

Q. 5. **What are the first 10 amendments to the Constitution called**?

True or False

Q. 6. **Since municipal courts are local courts, they do not have to follow the statutes and rules passed at the state and federal levels**.

**PART 2**

**TEXAS JUDICIAL SYSTEM**

Please refer to *Appendix A* to see a graphic representation of the court structure of Texas.

A. **Court Structure of Texas**

There are two basic types of courts in Texas: trial courts and appellate courts. The structure of the present court system was established in 1891 by an amendment to the Texas Constitution. The amendment established a bifurcated system for appellate courts, which means that the
highest appellate court handling civil appeals in Texas and the highest appellate court handling criminal appeals are two separate courts—the Texas Supreme Court and the Texas Court of Criminal Appeals.

1. **Appellate Courts**

   The appellate courts of the Texas judicial system are:
   
   - the Texas Supreme Court, the highest final state appellate court for civil and juvenile cases;
   - the Texas Court of Criminal Appeals, the highest final state appellate court for criminal cases; and
   - 14 Courts of Appeals, intermediate appellate courts for civil and criminal appeals from trial courts.

   Appellate courts do not have trials or jurors, nor do they hear witnesses. Rather, these courts review the actions and decisions of the lower courts on questions of law or allegations of procedural error. In carrying out this review, the appellate courts are usually restricted to the transcripts of the trial proceedings and exhibits presented in the trial court.

   a. **The Texas Supreme Court**

   The Texas Supreme Court has final appellate jurisdiction in statewide civil and juvenile cases. A civil case usually deals with private rights of individuals, groups, or businesses. A civil lawsuit may be brought when one person feels wronged or injured by another person. An example is a lawsuit for recovery of damages suffered in a car accident. Juvenile cases in juvenile court are also civil.

   In addition to hearing oral arguments and writing decisions for cases on appeal, the Supreme Court is empowered to make and enforce all necessary rules of civil trial practice and procedure. The Legislature has authorized the Supreme Court and the Court of Criminal Appeals collectively to promulgate the rules of evidence and appellate procedure used in both criminal and civil matters. The Supreme Court also has original jurisdiction to issue writs and to conduct proceedings for the involuntary retirement or removal of judges. To ensure the efficient administration of justice in Texas, the Supreme Court has many administrative duties that include:

   - promulgating the rules of procedure for the Commission on Judicial Conduct and the rules for the operation of certification of court reporters;
   - equalizing the dockets of the 14 Courts of Appeals; and
   - supervising the operations of the State Bar of Texas.

   The Supreme Court is composed of one Chief Justice and eight Justices, who are elected in partisan elections on a statewide basis for six-year terms of office. Vacancies between elections are filled by gubernatorial appointment with the advice and consent of the State Senate, until the next general election. To be eligible to serve as a justice on this court, a person must be licensed to practice law in Texas, be a U.S. and Texas citizen, be at least 35 years of age, and have been a practicing lawyer, or a judge of a court of record, for at least 10 years. Tex. Const. Art. V, Sec. 2.
b. The Texas Court of Criminal Appeals

The jurisdiction of the Court of Criminal Appeals extends to all criminal cases heard by the intermediate courts of appeals and those criminal cases coming directly from the district courts when the death penalty has been imposed. A criminal case is a legal action brought by the government against a person charged with committing a crime. Some examples are the offenses of speeding and driving without financial responsibility.

The Court of Criminal Appeals has been authorized by the Legislature to promulgate the rules for judicial education.

The Court of Criminal Appeals consists of one Presiding Judge and eight Judges, who must have the same qualifications, and are elected in the same manner, as the justices of the Supreme Court.

c. Courts of Appeals

Each of the 14 Courts of Appeals hears the appeals from the trial courts located within its respective district. The appeals are based upon the “record” (a written transcription of the testimony given, exhibits introduced, and the documents filed in the trial court) and the supplementary written briefs and oral arguments of the appellate lawyers. The Courts of Appeals do not receive testimony or hear witnesses when considering cases on appeal.

Each Court of Appeals has at least three judges: a chief justice and two other justices. The Legislature, however, may increase the number whenever the workload of an individual court requires additional judges.

Judges of the Courts of Appeals are elected in partisan elections for six-year terms of office by the voters in their districts. They must have the same qualifications for office as the justices of the Supreme Court of Texas.

The Courts of Appeals are located in 13 cities. See the following map and corresponding list of numbered districts for help in identifying them all.
2. **Trial Courts**

The trial courts are those courts in which trials are held, witnesses are heard, testimony is received, and exhibits are offered into evidence. In a criminal case, the judge or the jury determines whether the defendant is guilty or not guilty beyond a reasonable doubt of the crime alleged. Defendants in criminal cases and the parties in civil lawsuits have the right to a trial by a jury of either six or 12 local citizens. Except in capital murder cases, the parties have the right to waive a trial by jury and to have the judge presiding over the case make the final determination of guilt and sentencing.

The trial court structure in Texas has several different levels, each level handling different classifications of cases. The state trial courts of general jurisdiction are known as the district courts. The county level courts consist of the constitutional county courts, the county courts at law, and the statutory probate courts. Municipal courts are located in each municipality and the justice of the peace courts are located in precincts of each county of the state. Municipal, justice of the peace, and county courts are courts of limited jurisdiction.

a. **District Courts**

District courts are courts of general jurisdiction. They generally have original jurisdiction in all criminal cases of the grade of felony (the most serious crimes), misdemeanors involving official misconduct, and misdemeanors transferred to the district court under Article 4.17, C.C.P., involving non-attorney judges in a county court. The civil jurisdiction is more complex and extends to cases of divorce, suits for title to land or enforcement of liens on property, contested elections, suits for slander or defamation, and all civil matters wherein the amount in controversy is $200 or more. In counties having statutory county courts at law, the district courts generally have exclusive jurisdiction in civil cases where the amount in controversy is $10,000 or more, and concurrent jurisdiction with the statutory county courts at law in cases where the amount in controversy exceeds $500, but is less than $10,000.

The district courts hear contested matters involved in probate cases and have general supervisory control over the county commissioners. In addition, district courts have the power to issue writs of habeas corpus, mandamus, injunction, certiorari, sequestration, attachment, garnishment, and all other writs necessary to enforce their judgments.

Appeals from judgments of district courts are to the Court of Appeals that has jurisdiction over the district court.

b. **County-Level Courts**

The Texas Constitution provides for a county court in each county. Generally, “constitutional” county courts have concurrent jurisdiction with justice of the peace courts in civil cases where the amount in controversy exceeds $200, but does not exceed $10,000; general jurisdiction over probate cases; and exclusive original jurisdiction over misdemeanors where punishment for the offense is by fine exceeding $500 and/or a jail sentence not to exceed one year. County courts have jurisdiction over Class A misdemeanors (a fine not to exceed $4,000 and/or a jail sentence of up to one year) and B misdemeanors (punishable by a fine not to exceed $2,000 and/or a jail sentence not to exceed 180 days).
County courts generally have appellate jurisdiction (usually by trial de novo, which means trying a matter anew; the same as if it had not been previously heard before and as if no decision had been previously rendered) over cases tried originally in the justice of the peace courts and municipal courts. Original and appellate judgments of the county courts may be appealed to the appropriate Court of Appeals.

The Constitution provides that the county judge “shall be well informed in the laws of the State . . . .” This has been interpreted to mean that neither formal study of law nor a license to practice law is a necessary qualification to hold the office of county judge.

Under its constitutional authorization to “establish such other courts as it may deem necessary...[and to] conform the jurisdiction of the district and other inferior courts thereof,” the Legislature has created statutory county courts and statutory probate courts, primarily in metropolitan counties, to provide assistance to the single “constitutional” county court. Some statutory county courts have family law jurisdiction. County court at law judges are required to be at least 25 years old, a resident of the county, and a licensed attorney with four years experience practicing law.

c. Municipal Courts

Under its constitutional authority to create “such other courts as may be provided by law,” the Legislature has created municipal courts in each municipality in Texas Sec. 29.002, G.C. Presently, municipal courts are operating in approximately 916 cities in Texas. Metropolitan cities usually have more than one municipal court. These courts have original and exclusive jurisdiction over violations of city ordinances and the resolutions, rules, and orders of a joint airport board that occur in the territorial jurisdiction of the city and on property owned by the city in the city’s extraterritorial jurisdiction. There is one exception to municipal court’s exclusive original jurisdiction over city ordinance violations and that exception is found in Sec. 4.11(c), C.C.P. This statute provides that justice courts have concurrent jurisdiction with municipal courts in city sign ordinance violations arising under Sec. 216.902, L.G.C., when the violation occurs in the city’s extraterritorial jurisdiction. Such violations are generally punishable by fines of up to $500, but fines of up to $2,000 may be established for violations relating to fire safety, zoning, public health, and sanitation. Municipal courts also have concurrent jurisdiction with justice courts in misdemeanor cases occurring within the territorial limits and on property owned by the city in the city’s extraterritorial jurisdiction that are punishable by fine and such sanctions, if any, as authorized by statute not consisting of confinement in jail or imprisonment. Art. 4.14, C.C.P. and Sec. 29.003, G.C.

Municipal courts have limited civil jurisdiction. One example of civil jurisdiction is the court’s authority to hear cases and assess civil penalties in dangerous dog cases under Chapter 822 of the Health and Safety Code. Furthermore, certain municipalities may declare the violation of city ordinances relating to parking and stopping vehicles to be civil offenses and prescribe civil penalties. These cities must establish an administrative adjudication hearing procedure for these offenses.

Municipal judges also serve as magistrates of the State. In this capacity, the municipal judge has authority to issue warrants for the apprehension and arrest of persons charged with the commission of an offense. As a magistrate, the municipal judge may issue search warrants, arrest
warrants, and emergency protection orders; hold preliminary hearings; discharge an accused; or set bail, when applicable.

The majority of municipal courts are not courts of record, and appeals from non-record courts go to the county court, the county court at law, or the district court for trials de novo.

Under the authority of Chapter 30 of the Government Code, a municipal court may become a court of record. In a court of record, a formal record and transcript are made of the proceedings in the trial and appeals are made on the record. Such appeals are generally heard in the county court or county court at law, but the Legislature has authorized both the City of El Paso and the City of Dallas to create municipal courts of appeals to hear appeals from those cities’ municipal courts. The statutes creating these municipal courts of record require that the judges be licensed to practice law in Texas. No such provision is required of other municipal judges.

On September 1, 2007, Chapter 469 of the Health and Safety Code was amended to allow municipalities to establish drug court programs. In the past, only counties could establish these types of courts. Drug courts are special courts that handle only offenses in which an element is the use or possession of alcohol; the use, possession, or sale of a controlled substance, controlled substance analogue, or marihuana; or an offense in which the use of alcohol or a controlled substance is suspected to have significantly contributed to the commission of the offense, and the offense did not involve the possession or use of a firearm or other dangerous weapon, the use of force against another, or the death of or serious bodily injury to another. Municipal drug courts’ jurisdiction would include offenses such as: public intoxication, possession of drug paraphernalia, driving under the influence of alcohol by a minor (DUI), purchase of alcohol by a minor, attempt to purchase alcohol by a minor, consumption of alcohol by a minor, possession of alcohol by a minor, and misrepresentation of age by a minor. Other fine-only offenses which could be heard in drug courts are those where alcohol or a controlled substance is suspected to have significantly contributed in the commission of the offense.

Municipal courts occupy a unique position in the Texas judicial system. More citizens come into personal contact with municipal courts than with all other Texas courts combined. The reason for the vast majority of appearances is for traffic citations. For most citizens—whether appearing as a defendant, witness, or juror—this may be their only personal contact with the judicial system, and as such, this contact in municipal court will form a lasting impression of the justice system as a whole.

d. Justice of the Peace Courts

The Texas Constitution provides that each county is to be divided into at least one and not more than eight justice precincts. In each precinct, there should be one or two places for justices of the peace. A justice of the peace is elected by voters of the respective precinct of the county in partisan elections for four-year terms of office. There are no special statutory or constitutional qualifications to hold this office. Approximately 820 justice of the peace courts are in operation today in Texas.

Justices of the peace have original jurisdiction in misdemeanor criminal cases where the punishment upon conviction may be fine-only or by fine and, as authorized by law, sanctions not consisting of confinement or imprisonment. Justice courts have concurrent jurisdiction in one instance over municipal ordinance violations involving the regulation of signs in a city’s
extraterritorial jurisdiction. Art. 4.11(c), C.C.P. In addition to the jurisdiction and powers provided by the Constitution and other laws, the justice court has original jurisdiction of the following:

- civil matters in which exclusive jurisdiction is not in the district or county court and in which the amount in controversy is not more than $10,000, exclusive of cost. Sec. 28.003, G.C.;
- cases of forcible entry and detainer;
- foreclosure of mortgages; and
- enforcement of liens on personal property in cases in which the amount in controversy is otherwise within the justice court’s jurisdiction.

However, justice courts do not have jurisdiction over:

- a suit on behalf of the State to recover a penalty, forfeiture, or escheat;
- a suit for divorce;
- a suit to recover damages for slander or defamation of character;
- a suit for trial of title to land;
- or a suit for the enforcement of a lien on land. Sec. 27.031, G.C.

Trials in justice of the peace courts are not of record. Appeals from these courts are trial de novo in the county court, the county court at law, or the district court.

Like municipal judges, justices of the peace are also magistrates and therefore have authority to issue arrest warrants. As a magistrate, among other things, the justice of the peace may hold preliminary hearings, discharge the accused, remand the accused to jail, and set bail, when applicable.

B. Cooperation Within the Judicial System

Each court is a member of the judicial branch of government that must conduct its business separately from and independently of the other two branches of government.

Courts are bound to interpret laws and apply them to the facts presented by the cases tried. They are bound by laws enacted by the Legislature and by rules promulgated by bodies given rule-making authority, like the Texas Rules of Evidence and Texas Rules of Appellate Procedure. Courts must also apply the principle of stare decisis that makes legal precedent of higher courts binding on lower courts. It requires lower level trial courts to respect and follow the decisions of all Texas appellate courts and regional federal courts, when applicable, even when the individual judge disagrees with the decisions.

Courts must also be aware of and work with other agencies within the judicial system. For instance, functions such as administrative adjudication of parking offenses or supervision of defendants performing community service are usually done by other persons or agencies—not the judge or the clerk. These functions, however, substantially impact the courts’ functions.
So, while it is true that courts must do their jobs relatively independently, it is equally true that courts do not operate in a vacuum. They must work within the framework of the judicial system and within the three-branch system of government.

C. Funding

The state provides full funding and salaries for the Texas Supreme Court and the Texas Court of Criminal Appeals and provides the salaries for the appellate and district judges of Texas. Some counties supplement this base salary. Counties pay the costs of “constitutional” county courts, county courts at law, justice of the peace courts, and the operating costs of district courts. The cities finance the operation of the municipal courts and the salaries of all municipal court personnel.

Q. 7. What are the two highest appellate courts in Texas? __________________________
Q. 8. Explain the difference between a civil and criminal matter. ______________________

Q. 9. Which is the highest Texas appellate court with jurisdiction over juveniles? ______
Q. 10. How are Texas appellate judges selected and how long are their terms? ______

Q. 11. How are appellate courts different from trial courts? __________________________

Q. 12. What is meant by trial de novo? ________________________________

Q. 13. Explain how the jurisdiction of justice courts is different from municipal courts.____

Q. 14. Why are lasting impressions of the American justice system often formed in municipal courts? ________________________________

Q. 15. What court(s) have jurisdiction in the cases described below:
- An appeal from a district court __________________________
- A divorce case ________________________________
- A speeding ticket ________________________________
- A felony murder case ________________________________
- An appeal from a municipal court __________________________
- A child support or child custody case ________________________________
- An ordinance violation ________________________________
- An appeal from justice courts ________________________________
- A death penalty appeal ________________________________
- An appeal from a municipal court of record __________________________
PART 3
THE MUNICIPAL COURT ROLE IN LOCAL GOVERNMENT

A. Separation of Powers

The separation of powers doctrine applies at the municipal level just as it does at the state and federal levels. The mayor, city manager, and operating departments are the local equivalent to the federal executive branch that is the president and all the executive agencies. The city council is the legislative branch, which enacts laws. The municipal court is the judicial branch. Each of these branches must operate independently of each other. This means that the municipal court must not operate as a rubber stamp for the mayor, the city manager, the police department, or any other operating department. The defendant and defense counsel should receive the same fair treatment and consideration from the court that the police and prosecution receive.

A common complaint regarding municipal courts is that they engage in “cash register justice.” A significant portion of the budget for many cities comes from fines collected in municipal court. But a judge may not consider the raising of revenue as an aspect of judicial duties. The judge should not increase fines for the purpose of enhancing his or her position before the city council as a revenue producer.

Section 720.002, T.C., prohibits state agencies and political subdivisions from imposing traffic revenue quotas on municipal or county court judges and justices of the peace. While the prohibition does not keep cities from getting budget information or projections from courts, it does forbid the establishment or maintenance of a system for evaluating, promoting, compensating, or disciplining these judges on the basis of revenues collected from traffic convictions.

In the 81st Regular Legislative Session, the Legislature repealed Subsection (c) of Sec. 720.002, T.C. That section provided that municipalities could consider the amount of money collected from a municipal court when evaluating that judge’s performance. Clearly, this prior subsection undermined the objective of an unbiased judiciary and it is no longer in effect.

B. Relations with City Departments

Municipal courts should recognize the necessity for cooperating with the other departments in administrative and other areas wherever possible without compromising the independence or integrity of the judiciary. The following section outlines some of the more pertinent areas of interdepartmental relations for municipal courts.

1. Mayors and City Managers

Judges should be aware that mayors and city managers have to be concerned with revenues—both expenditures and collections—as the executive branch, they are responsible for the city’s budget. Because the court’s budget comes out of the city’s budget and because some of the fines and fees collected by the court are deposited in the municipal treasury, judges and clerks have some concerns and responsibilities regarding revenue. The recording, handling, and reporting procedures must meet city approval and will be audited by the city.

Nonetheless, judicial decisions may only be made on the basis of facts proved by evidence presented at trial and the applicable law(s). For instance, a judge may not ignore evidence and
law and assess a fine in a case solely because the city needs money. Likewise, if the city council passes an ordinance, council members should not ask the judge to apply the law selectively (i.e., charge one defendant the maximum, but let another go free). A mayor or council member must not privately tell the judge that a certain defendant is “a really bad guy” and should be assessed maximum punishment. The clerk must be careful to avoid becoming the messenger of these facts, thereby influencing the judge unethically.

2. City Attorneys and Prosecutors

The municipal court and the city attorney interact during the prosecution of municipal court cases. The city attorney or a deputy city attorney has a duty to prosecute the State’s case in municipal court. Close coordination with the city attorney’s office is necessary, particularly in the scheduling and reviewing of cases and the preparing and reviewing of complaints.

It is the prosecutor who decides which complaints should be filed. The city attorney, not the judge, should advise and direct peace officers in preparing criminal cases. The court must remain apart from investigating or filing cases, to preserve impartiality for judging the evidence presented at trial. Although it is a common practice for court clerks to prepare complaints filed in court, it should be remembered that it is the responsibility of the State, through the city attorney, to decide which cases to prosecute.

3. Police

Law enforcement is part of the executive branch of government, and should be educated in the constitutional rights guaranteed to all citizens, even those accused of crimes. Police officers may look to the city attorney for advice in investigating and preparing for criminal cases.

In cities where the municipal court clerk also serves as police dispatcher and where the offices of the court are located in the same building as the police department, conflict is possible. Judges, clerks, and police departments must exercise great care to honor the separateness of each department. Intermingling creates the appearance of impropriety, if not actual impropriety, and adversely affects public perceptions of both offices. The court should strive to keep the departments separate. The separation emphasizes and enhances the integrity and impartiality of the court as well as the integrity of the police department.

A more serious difficulty occurs when the judge or clerk fraternizes with the police officers who will be testifying in court. In order to maintain independence and impartiality, neither the judge nor the clerk should ever discuss any case with a police officer outside the courtroom.

Often citizens come to the court to file “citizen complaints.” When citizens wish to present complaints or to file criminal charges, they should go to the police department or the prosecutor, but not directly to the court. The police have the power and duty to investigate, which the court lacks, and may make a professional determination of whether or not to recommend the filing of criminal charges. This procedure keeps the court from becoming embroiled in controversy or stepping outside the judicial boundaries. It also preserves the court’s impartiality for cases that result in trial.

Various city department officials may file code violation complaints in municipal court in addition to or in the absence of code enforcement officers. The acceptance of these complaints for prosecution is a matter for the prosecutor to determine, not the court. As in all cases, the court
should remain impartial in hearing evidence in these cases. City employees are no more entitled to special consideration than are peace officers.

True or False
Q. 16. City managers may establish traffic revenue quotas as part of evaluating the court’s performance. ______
Q. 17. It is proper for a court to follow the recommendations of a city auditor regarding recording, handling, and reporting procedures for court costs and fines. ______
Q. 18. Judges may consider factors related to revenue for the city in determining the fine and court costs in an individual’s case. ______
Q. 19. Prosecutors help investigate and decide what complaints are filed in court. ______
Q. 20. The judge and clerk may help the prosecutor, police officer, and/or code enforcement officer investigate a crime. ______

PART 4
BASIC MUNICIPAL COURT ORGANIZATION

Although some of the fundamental elements of municipal courts in Texas are authorized or required by law, municipalities have latitude in prescribing the organizational structure of the court. In Texas, cities are created under statutes that make them either home-rule or general-law cities. Home-rule cities have been empowered to enact charter and ordinance provisions not inconsistent with state law that prescribe structural details of local court organization. Texas statutes also provide general-law cities with some choices regarding the organization of the court. Thus, variations exist throughout the state with regard to court organization. The basic organization of the municipal court consists of judges, court clerks, prosecutors, bailiffs, warrant officers, and defense counsel.

A. Officers of the Court

1. Judge

The judge is responsible for presiding over trials and other court proceedings, for performing certain magistrate functions, and for the general administration of the court. The judge must be impartial, ensure that justice is done, and rule on matters presented by the parties. The judge is not an adversary and must decide questions only on the basis of law. He or she must never assume the role of prosecutor or of defense counsel nor act as a special advisor to the police or as a rubber stamp of law enforcement. The judge must never be influenced by the city to produce revenue or to enforce laws selectively.

The judge must allow the prosecution and the defense, as well as all other components of the system, to perform their duties vigorously, but always within the limits allowed by law. The judge will rely heavily on administrative support by the clerk. However, the judge can never delegate judicial duties to the clerk. The judge must not allow the clerk to influence judicial decisions or the verdict. Only the evidence presented and the applicable law can be the legitimate basis for any judicial decision.
Where there is more than one judge in a municipality, one judge is generally designated the presiding judge or the administrative judge. As the chief administrator for the court, the presiding judge is responsible for organizing and scheduling court activities, developing and maintaining policies and procedures, allocating the workload, assigning cases to the various courts, supervising court support personnel, and performing a variety of other administrative functions.

While the presiding judge establishes judicial policy and general court procedures, the clerk helps to implement those policies and procedures. Despite the close working relationship between the judge and clerk, there must be a clear separation between judicial and administrative functions.

**a. Qualification and Selection**

Separate statutory authorization for the selection of municipal judges exists for home-rule cities and for general-law cities.

- Home-rule cities provide that the judge may be selected in the manner prescribed by the city charter. Sec. 29.004(a), G.C. The selection may be by election or by appointment.

- General-law cities may provide for the appointment or election of the judge by ordinance. The election of judges must be conducted in the same manner and for the same term as the mayor.

**b. Term of office**

A municipal judge’s term of office is two years unless the municipality sets a term of four years. Tex. Const. Art. XI, Sec. 11, and Sec. 29.005, G.C. The term of office for judges in municipal courts of record is established by the special statute that created them.

See TMCEC Study Guide Level I, *Authorities and Duties* for a detailed discussion on the role of the judge.

**2. Court Clerk**

Court clerks look to the judge for direction in matters pertaining to overall court policy and judicial procedures. The clerk’s primary responsibilities include processing the clerical work of the court; administering daily operations of the court; maintaining court records, including the docket; coordinating the scheduling of cases; and performing other duties as may be outlined in the city charter or ordinances. In the absence of more detailed, written administrative duties for a clerk by the governing body, the judge may assign various administrative duties.

The court clerk must fulfill all duties impartially and competently. Within the role of administratively assisting the court as a whole, the court clerk is responsible for seeing that the court’s papers are accurate, orderly, and complete. While the clerk’s duty is to serve all participants equally in the legal system, the clerk must remain independent of any particular participant. This means that the clerk must be as courteous and helpful to defense lawyers as prosecutors and to defendants as police officers. The clerk must never attempt to influence the outcome of any case.
Each participant has a right to know and understand the court’s procedures. The court clerk can have a tremendous impact on participants’ perceptions of the justice system. The clerk should provide participants with information on court procedures while avoiding giving legal advice.

The court clerk is responsible for and involved in the planning, scheduling, and coordinating of the clerical activities of the municipal court and performs a variety of functions that are fundamental and important to the overall administration of non-judicial functions. The responsibility of the court clerk’s position and the scope of duties have greatly increased in recent years. The professionalism, timeliness, and accuracy of the court clerk’s actions are important to the proper operation of the municipal court.

a. Qualification and Selection

The city council may establish the qualifications for the position of the court clerk. Qualifications vary greatly depending on the size and workload of the court, the nature of the cases processed, the size of the staff and how the workload is distributed, and whether the court’s work is done by computer or manually. Knowledge of court functions and procedures, advanced clerical skills, experience in dealing with the public, knowledge of accounting or bookkeeping, office and personnel management skills, and knowledge of caseflow management are most desirable. Where courts have automated court records, clerks may also be required to possess certain computer skills.

In a general-law city, the court clerk is usually appointed by the city council. However, some cities provide, by ordinance that the city secretary serve as ex officio court clerk. The city secretary who serves in an ex officio capacity may be authorized to appoint a deputy to serve as court clerk. When a city elects the municipal judge, the clerk is elected in the same manner unless an ordinance designates the city secretary to serve as court clerk. In a home-rule city, the charter provides for the appointment, election, or hiring of the court clerk. Sec. 29.010(a) and (d), G.C.

The position of deputy court clerk is not mentioned in statute. Generally, deputy court clerks are hired employees.

b. Compensation

The salary of the court clerk can be prescribed by the city charter in home-rule cities. Such compensation is paid out of the city treasury. The city council sets the court clerk’s salary, like the other officers of the court. The Texas Municipal League (TML) publishes an annual salary survey. Contact TML at 512.231.7400 or go to their website: www.tml.org for more information.

See TMCEC Study Guide Level I, Authority and Duties for a more extensive description of the clerk’s duties and the contrast between judicial and ministerial duties.

3. Prosecutor

The prosecutor’s role is to seek justice. In the broad view, the prosecutor represents the public’s interest in enforcing the criminal law strictly but fairly. The prosecutor also has a duty to maintain public respect for the system. The Code of Criminal Procedure provides that it is the primary obligation for municipal court prosecutors not to convict but to see that justice is done. Art. 45.201, C.C.P.
The prosecutor, who may be the city attorney or a deputy city attorney, is responsible for investigating and prosecuting all cases in municipal court. This includes preparing all complaints. It is the prosecutor who must present and prove the criminal charges filed in the State’s name.

a. Term of Office

The city attorney’s term, subject to conditions regarding removal, may be set by ordinance, charter, or the agreement for employment. Deputy city attorneys assigned as municipal court prosecutors work at the pleasure and discretion of the city attorney.

b. Duties and Responsibilities

Just as municipal court clerks perform many of the same duties as their counterparts at the county and district levels, the city prosecutor performs basically the same role as the prosecuting attorney in other criminal trial courts. Although most cases in municipal courts are less complex than those in county and district courts, the volume of cases is much greater. The prosecutor’s time for case preparation and consultation with police officers, witnesses, and complainants is usually limited. In municipal court, the prosecutors have discretion over decisions such as which cases to prosecute and trial strategy, but prosecutors may not dismiss charges or cases, except upon written grounds and with the judge’s approval. Arts. 45.201 and 32.02, C.C.P.

Duties of the city prosecutor are as follows:

- investigate the facts surrounding alleged offenses and decide whether to file charges;
- prepare and draft complaints. The court clerk may assist the prosecutor in preparing routine complaints. However, ultimate responsibility for the legal sufficiency and accuracy of complaints is the prosecutor’s;
- administer oaths to persons filing complaints before the court (Art. 45.019(e), C.C.P.);
- prepare and present the State’s case to the court;
- arrange for the appearance of the State’s witnesses, including requests for subpoenas and attachments;
- file motions with the court that may be necessary to present cases fully and to see that justice is done;
- request dismissal of cases under proper circumstances and cite the legal grounds for dismissal;
- advise the police department in case preparation, legal procedures, and requirements, and other legal questions; and
- discuss pending cases with defendants or, if represented by counsel, with their attorneys prior to the courtroom hearing.

With the county attorney’s consent or assistance, prosecutors are statutorily allowed to prosecute appeals. Art. 45.201, C.C.P. The prosecutor may make arrangements with the county attorney or criminal district attorney and the county judge to prosecute municipal court appeal cases.
4. **Bailiff**

In many cities, a police officer serves as bailiff. In some cities, the bailiff may be appointed by the judge. In the larger cities with more than one court, the presiding judge usually appoints the bailiffs.

**a. Qualifications**

There are no statutory qualifications for bailiffs. Minimum qualifications for the position of bailiff commonly include the following: high school graduation or G.E.D.; knowledge of the operations, procedures, and decorum of the municipal court; and experience in dealing with the public.

**b. Duties and Responsibilities**

The bailiff is directly responsible to the judge and has the duty of maintaining order, security, and decorum while the court is in session. The bailiff generally opens and closes court sessions. He or she may be assigned other duties, including maintaining custody of and escorting those convicted to the clerk to arrange payment. Bailiffs also administer oaths to witnesses (if directed and authorized by the judge); attend to the jury, keeping them together and separate from all other citizens during deliberations; carry written communications between the jury and the judge; and inform the judge when a verdict has been reached. Bailiffs may also assist defendants and other citizens present by explaining court procedures and answering questions. Also, they relay messages and perform other tasks assigned by the judge.

5. **Warrant Officer**

The primary role of the warrant officer is to serve all processes or papers issued by a municipal court, in other words, to deliver writs or summons to the party to whom it is addressed.

In small and medium-sized cities, this function is usually conducted by the police department and sometimes by those specially designated as warrant officers. As peace officers, warrant officers must comply with the minimum educational, training, physical, mental, and moral standards established by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). Ch. 1701, C.C.P. and T.A.C.

The Code of Criminal Procedure provides that all process issuing out of the municipal court shall be served by a police officer or city marshal under the same rules that apply to service by sheriffs and constables of process issuing out of justice court. Art. 45.202, C.C.P. Failure, neglect, or refusal to serve process may make the responsible officer liable for a fine of $10 to $200 for contempt of court. Art. 2.16, C.C.P.

6. **Defense Counsel**

The role of defense counsel is to represent a client zealously within the bounds of the law. Like the prosecutor, the defense counsel has a duty to maintain public respect for the system. Even citizens who have committed crimes are entitled to have their rights respected and to be treated fairly. Upon a guilty verdict, defense counsel has a duty to argue for fair punishment.
True or False
Q. 21. The judge plays an adversarial role in court. ______
Q. 22. If there is not a prosecutor, the judge or the clerk should serve as the prosecutor and represent the State. ______
Q. 23. The prosecutor, with the consent of the judge, has the authority to dismiss a case. ______
Q. 24. The prosecutor is responsible for preparing and drafting complaints and may ask the clerk for assistance. ______
Q. 25. Both a bailiff and a warrant officer must comply with TCLEOSE training and standards. ______

PART 5
STATEMENT OF OFFICER AND OATH OF OFFICE

It is imperative that each official swear to and sign a statement of officer and an oath of office upon each appointment or election and upon reappointment or reelection.

A. Statement of Officer

Upon appointment or election and before assuming the duties of office, all judges and clerks of the court must first file a sworn statement of officer with the records of the office. Usually, the city secretary maintains these records.

Appointed judges and clerks of the court must swear to and sign the following statement:

I, ____________________________, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, of value promised to pay, contributed, or promised to contribute any money, or thing of value, or promised any public office or employment, as a reward to secure my appointment or confirmation thereof, so help me God. Tex. Const. Art. XVI, Sec. 1.

Elected judges and clerks of the court must swear to and sign the following statement:

I, ____________________________, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected so help me God. Tex. Const. Art. XVI, Sec. 1(c).

B. Oath of Office

After filing one of the above statements, the official, whether elected or appointed, must swear to the following oath of office:

I, ____________________________, do solemnly swear (or affirm) that I will faithfully execute the duties of the office of ____________________________ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God. Tex. Const. Art. XVI, Sec. 1(a).
The oath is filed with the city secretary.

Q. 26. How often must the statement of officer and oath of office be filed? _____________
Q. 27. Which must be filed first: the oath of office or the statement of officer? _____________

PART 6
IMAGE OF THE COURT

A. Public Perception

Image is an important part of public perception. Although the image of the municipal court is affected by many different factors, professionalism and impartiality of the court staff are perhaps the most important traits that command respect.

B. Court Decorum

It is essential that judges and clerks conduct themselves and their courts with the utmost decorum and dignity. Decorum requires observance of correct judicial procedure and custom, as well as exercising courtesy before everyone who appears in court. For the court to be effective, it must deserve the respect of the people. Courteous behavior does not guarantee that every person will reciprocate, but it does entitle the court to command that people behave correctly when they are treated with respect.

The fact that the judge and court staff must remain neutral does not mean that they should be detached from the public. Many courts have adopted an innovative management style to running their courts where all defendants, witnesses, attorneys, victims, and staff from cooperating departments are viewed as customers.

C. Court Operations

The court must strive to be accessible to perform its ministerial, clerical, judicial, and magisterial functions by adopting regular hours and being on call for hardship or emergency cases. The court should inspect the physical site and ensure that it is accessible to persons with disabilities.

The physical appearance of the municipal court significantly influences the attitudes of those appearing before the court and the morale of the officials of the court. The court should have facilities that encourage public respect and confidence in the judicial system.

The location of the municipal court is a matter for each city to decide according to its local conditions and needs. An ideal location would be in a separate public building or portion of city hall. An alternative might be to utilize the city council chambers or a city auditorium for the courtroom.

Some municipalities believe that it is convenient to position the court and police department adjacent to each other or in the same building to facilitate the transfer of prisoners to and from the jail. This may be acceptable if the two agencies are completely divided, preferably with separate outside entrances for the police department and the court. The court should not be located within the confines of the police department or the police chief’s office. The appearance
of collaboration between the two can be damaging. Imagine the perspective of a citizen accused of a traffic offense who might appear in court. If the court’s workplace is the same workplace as the officers who wrote the citation or filed the complaint, will citizens be encouraged to believe they will get a “fair shake,” a hearing before a neutral and impartial judge? Will citizens be encouraged to believe that the court has not been influenced by officers’ comments either among themselves or to the court staff?

In the case of part-time judges, the court should not be situated in the judge’s other place of employment, in the judge or clerk’s home, or in any other place that might discourage public attendance or respect. Court should be held in a place, even though it may be humble, that is separate from other operations and devoted for that time only to hearings to determine facts, apply laws, and administer justice.

Q. 28. Explain, in your own words, judicial decorum. ______________________________________

Q. 29. If a court is located near the police department, what are some steps that you can take to maintain a clear separation between the court and law enforcement? ________________________________

PART 7
SUPPORTIVE AGENCIES AND ORGANIZATIONS

Various state agencies, in addition to the Texas Municipal Courts Education Center, are available to lend assistance to municipal courts. The diverse agencies and courts that comprise the Texas justice system must work cooperatively and yet with some measure of independence.

There is interaction and cooperation among municipal courts, various state agencies, and professional organizations where duties overlap and interface. Some of those agencies are profiled here.

A. Attorney General’s Office

The Attorney General created a Municipal Affairs Division in 1992 to work with cities to address their issues and resolve problems. The staff is available to discuss municipal issues with court staff members. The telephone number is 512.475.4683.

The Attorney General’s Office publishes legal opinions on how laws might be interpreted when a provision is ambiguous or contradicts another part of the law. Assistance or copies of opinions may be obtained at P.O. Box 12548, Austin, Texas 78711-2548 or by calling 512.463.2110. These opinions are also available online: www.oag.state.tx.us. Although city officials do not have standing to request that the Attorney General issue an opinion, the letter opinion process is available. Although less authoritative, it is quicker than the formal opinion process and still provides a source of guidance.

Municipal courts are excellent local dissemination sites for information on crime victims’ compensation. The Attorney General’s Office administers the Crime Victims Compensation Fund that provides benefits to crime victims. For additional information, call 800.983.9933.
B. Comptroller’s Office

The Comptroller’s Office is ultimately responsible for the collection of court costs and for their final distribution. They receive municipal court’s quarterly reports. The Comptroller has staff who are available to assist municipal courts and to answer questions about collecting and reporting state court costs on criminal convictions. You may call the Local Government Assistance Division of the Comptroller’s Office toll-free at 800.531.5441, ext. 34276 for quarterly report information or state court costs information. The web address is www.texasahead.org/lga/.

C. State Bar of Texas

The State Bar of Texas, an administrative agency of the state’s judicial branch, is charged with many responsibilities, including providing educational programs for legal professionals and the public, administering the mandatory continuing education for attorneys, and managing the attorney grievance procedure.

For additional information or to learn about the grievance process against attorneys, call 800.204.2222 or 512.463.1463. The State Bar sponsors a peer assistance program for lawyers and judges with alcohol and drug abuse problems. To refer a lawyer or judge, contact 800.343.8527. The State Bar’s web address is www.texasbar.com.

D. State Commission on Judicial Conduct

The Commission investigates and resolves complaints filed against judges. Their work will be discussed at greater length in the study guide Ethics, but it is helpful to note that staff attorneys may be able to assist clerks in working through difficult ethical situations and issues they encounter. The Commission also sponsors a peer assistance program for judges troubled by substance abuse. Contact the Commission at 877.228.5750. The Commission’s web address is www.scjc.state.tx.us.

E. Texas Court Clerks Association

The Texas Court Clerks Association (TCCA) is a non-profit organization established to increase the proficiency of judicial administrators and clerical personnel through education and networking. TCCA offers:

- an annual meeting; and
- regional seminars offered by its local chapters.

TCCA is an affiliate of the Texas Municipal League. It sponsors the Municipal Court Clerks Certification Program in cooperation with the Texas Municipal Courts Education Center, the Texas Municipal Courts Association, and Texas State University-San Marcos.

For information on courses offered by the Texas Court Clerks Association or its local chapters contact the association through its web address at www.texascourtclerks.org.

F. Texas Department of Public Safety

The Transportation Code requires municipal courts to report all traffic convictions or bond forfeitures in traffic cases to the Texas Department of Public Safety (DPS). Sec. 543.203, T.C.
This report should be made in a form acceptable to DPS including the DPS form DR-18, computer records, or copies of citations with the disposition information attached.

Through the Nonresident Violator Compact, compliance with traffic laws may be enforced even when citations are issued to motorists who live outside Texas. The police, municipal and justice courts, and DPS cooperate to enforce it. DPS is the Texas “licensing agency” responsible for receiving reports from local authorities on failure of out-of-state motorists to comply with the terms of traffic citations.

DPS also provides and maintains statewide driving records. Such information may be helpful to the courts in assessing punishment or prescribing rehabilitative techniques for defendants. DPS may also be helpful in determining ownership of out-of-county vehicles for parking violations.

Cities may contract with DPS to deny renewal of the driver’s license of a person who has failed to appear for a complaint, citation, or court order to pay a fine involving a violation of a traffic law. To request a contract, call DPS at 512.424.5974. For information on reporting, call DPS at 512.424.2028. DPS forms can be obtained from DPS through its website at www.txdps.state.tx.us.

G. Texas Judicial Council/Office of Court Administration

All Texas courts are required to report various statistical data to the Texas Judicial Council on a monthly basis. To assist in this data gathering, the Judicial Council has distributed reporting questionnaires and monthly report forms. The data collected is published in an annual report. This may be obtained by contacting the Texas Judicial Council, Office of Court Administration, P. O. Box 12066, Austin, Texas 78711 or calling 512.463.1640. The web address for the Office of Court Administration is www.courts.state.tx.us/oca.

The Texas Judicial Council also maintains liaisons with other judicial and administrative agencies, as well as with the Texas Legislature. Consultation with the Council can often help resolve local judicial problems.

H. Texas Municipal Courts Association

The Texas Municipal Courts Association (TMCA) is a nonprofit association of municipal judges and court support personnel. Its primary purpose is to provide the municipal courts with an efficient organization for the purpose of continuing judicial education and to oversee the grant and programs of TMCEC. The Association also hosts an annual meeting, an annual awards program for outstanding judges and clerks, and an active legislative program. For additional information, contact the Center at 800.252.3718 for the name of the regional director in your area or contact the Association at www.txmca.com.

I. Texas Municipal Courts Education Center

The Texas Municipal Courts Education Center was formed in 1984 by the TMCA to provide extensive, regular education and training programs for municipal judges and court support personnel. The Center is financed by a grant to TMCA from the Court of Criminal Appeals out of funds appropriated by the Legislature to the Judicial and Court Personnel Training Fund. TMCEC conducts seminars in various locations throughout the state to facilitate compliance by municipal judges with the Court of Criminal Appeals’ order mandating continuing education on
an annual basis. Courses are offered for judges, clerks, court administrators, bailiffs, warrant officers, and prosecutors.

The Center publishes a quarterly journal, *The Recorder*, as well as a *Forms Book, Bench Book, Judges’ Manual*, study guides, charts, and other materials to help judges and court support personnel perform their official duties, and understand and apply the law in its current form. The Center’s staff attorneys also provide assistance to municipal judges, clerks, prosecutors, and bailiffs and warrant officers through the toll-free number at 800.252.3718.

At this time, annual attendance at judicial education programs for court support personnel is not mandated, but is highly recommended. Clerks who are participating in the Texas Municipal Court Clerks Certification Program are required to obtain certain educational requirements through TMCEC, TMCA, TCCA, or other approved providers. Specific course locations and dates may be obtained by writing or calling the Center at 800.252.3718. The mailing address is 1609 Shoal Creek Blvd., Suite 302, Austin, Texas 78701. The Center’s web address is www.tmcec.com. Additionally, courses, webinars and vital information is available online at the Online Learning Center at http://online.tmcec.com. Timely updates are also available by following TMCEC on Twitter and Facebook.

J. Texas Municipal League

The Texas Municipal League (TML) provides a variety of services to municipalities and municipal courts. Seminars on various topics, including prosecution in municipal court, are conducted in conjunction with the annual meeting. The League’s legal staff also provides assistance to courts on an “on call” basis. The League monitors legislation proposed and passed by the Legislature to assure that the interests of municipalities are represented. Contact the Texas Municipal League at 1821 Rutherford Lane, Suite 400, Austin, Texas 78754-5128, or call 512.231.7400. The League’s web address is www.tml.org.

Q. 30. Indicate which office(s) to call if you need assistance:
- Training and written materials on how to run your court ______________________
- The proper forms to report traffic convictions or bond forfeitures ______________________
- Statistical data on other courts of your size ______________________
- Driving records ______________________
- Help with collecting the proper court costs ______________________
- General information on city government ______________________
- A question about judicial ethics ______________________
- A question about the crime victims program ______________________
- Questions about the court clerks certification program ______________________
- A legislative proposal regarding prosecutors in municipal court ______________________
Courts play an important role in resolving disputes in American society, although there are many other ways to settle conflicts. Among the most common methods of alternative dispute resolution are negotiation, arbitration, and mediation. Community mediation services may be available in your area to resolve disputes between local residents in cases involving ordinance violations, such as barking dogs, disposal of trash, and disruptive conduct. The State Bar of Texas maintains a list of community dispute resolution centers and can provide you with the name of mediation training programs. To obtain a list, call 512.463.1463, ext. 2024.
APPENDIX A
COURT STRUCTURE OF TEXAS

COURT STRUCTURE OF TEXAS

OCTOBER 1, 2011

Supreme Court
(1 Court — 9 Justices)
- Statewide Jurisdiction —
  • Final appellate jurisdiction in civil cases and juvenile cases.

Court of Criminal Appeals
(1 Court — 9 Judges)
- Statewide Jurisdiction —
  • Final appellate jurisdiction in criminal cases.

Courts of Appeals
(14 Courts — 90 Justices)
- Regional Jurisdiction —
  • Intermediate appeals from trial courts in their respective courts of appeals districts.

District Courts
(456 Courts — 456 Judges)
(390 Districts Containing One County and
97 Districts Containing More than One County)
- Jurisdiction —
  • Original jurisdiction in civil actions over $200, divorce, title to land, contested elections.
  • Original jurisdiction in felony criminal matters.
  • Juvenile matters.
  • 13 district courts are designated criminal district courts; some others are directed to give preference to certain specialized areas.

County-Level Courts
(507 Courts — 507 Judges)
Constitutional County Courts (254)
(One Court in Each County)
- Jurisdiction —
  • Original jurisdiction in civil actions between $200 and $10,000.
  • Probate (contested matters may be transferred to District Court).
  • Exclusive original jurisdiction over misdemeanors with fines greater than $500 or jail sentence.
  • Juvenile matters.
  • Appeals de novo from lower courts or on the record from municipal courts of record.

Statutory County Courts (235)
(Established in 87 Counties)
- Jurisdiction —
  • All civil, criminal, original and appellate actions prescribed by law for constitutional county courts.
  • In addition, jurisdiction over civil matters up to $100,000 (some courts may have higher maximum jurisdiction amount).

Statutory Probate Courts (18)
(Established in 10 Counties)
- Jurisdiction —
  • Limited primarily to probate matters.

Justice Courts
($19 Courts — $19 Judges)
(Established in Precinct Within Each County)
- Jurisdiction —
  • Civil actions of not more than $10,000.
  • Small claims.
  • Criminal misdemeanors punishable by fine only (no confinement).
  • Magistrate functions.

Municipal Courts
(973 Cities — 1,837 Judges)
- Jurisdiction —
  • Criminal misdemeanors punishable by fine only (no confinement).
  • Exclusive original jurisdiction over municipal ordinance criminal matters.
  • Limited civil jurisdiction.
  • Magistrate functions.

1. The dollar amounts are currently unclear.
2. All justice courts and most municipal courts are not courts of record. Appeals from these courts are by trial de novo in the county-level courts, and some instances in the district courts.
3. Some municipal structure courts of record — appeals from these courts are taken on the record to the county level courts.
4. An offense that arises under a municipal ordinance is punishable by a fine not to exceed: (1) $1,000 for offenses that concerns the safety, zoning, and public health or (2) $500 for all others.
ANSWERS TO QUESTIONS

PART 1

Q. 1. An adversarial legal system is one in which the lawsuit or case is viewed as a struggle between two sides. Each side acts in its own interest, presenting its case in the best possible light to the court. The judge remains neutral and dispassionately decides questions of law (a disputed legal contention) and, when there is no jury, questions of fact (a disputed factual contention). The theory of this process is that the trier of fact (judge or jury) will be able to determine the truth if the opposing parties present their best arguments and show the weaknesses in the other side’s case. Decisions are based upon the evidence presented and the applicable law.

Q. 2. Common law refers to that body of law that developed in England and the American colonies before the American Revolution. Today it is viewed as the principles, customs, and rules of action that are accepted as part of the justice system. Many common law principles have been incorporated into current codes and statutes. For instance, the waiver of trial by jury (Arts. 1.13 and 45.025, C.C.P.), the defense of necessity (Sec. 9.22, P.C.), and justification as a defense (Sec. 9.02, P.C.) all spring from the English common law.

Q. 3. The legislative branch enacts the laws; the executive enforces the laws; and the judiciary interprets and applies the laws.

Q. 4. The founding fathers believed that if legal power is divided into three branches, no one branch will be able to dominate the other two and impose its own theory of justice on an unconsenting public.

Q. 5. The Bill of Rights.


PART 2

Q. 7. Texas Supreme Court and Texas Court of Criminal Appeals.

Q. 8. A civil case usually deals with private rights of individuals, groups, or businesses. A civil lawsuit can be brought when one person feels wronged or injured by another person. A criminal case is legal action brought by the government against a person charged with committing a crime.

Q. 9. Texas Supreme Court.

Q. 10. They are elected for six-year terms in a partisan election.

Q. 11. The appellate courts hear cases based upon the “record” (a written transcription of the testimony given, exhibits introduced, and the documents filed in the trial court), and the written and oral arguments of the appellate lawyers. Unlike the trial courts, the Courts of Appeals do not receive testimony nor hear witnesses when considering cases on appeal.

Q. 12. When a case is appealed from a non-record municipal court, it is retried at the higher level as though it is a new case since there is no record of the case from the lower court. Hence, trial de novo means trying a matter anew; the same as if it had not been previously heard before and as if no decision had been rendered.
Q. 13. Justice courts do not have jurisdiction over city ordinances, except in one instance—a violation of a city ordinance violation that arises in a city’s extraterritorial jurisdiction involving signs. They have jurisdiction over small claims and forcible entry and detainer cases—municipal courts do not.

Q. 14. More citizens come into personal contact with municipal courts than with all other Texas courts combined. Persons in any court for the first time will form a lasting impression of the justice system. Public impression of the judicial system is affected and shaped in large measure by the proceedings of the municipal court.

Q. 15. The answers to the subparts of question 15 are found below:

- An appeal from a district court
  Court of Appeals
- A divorce case
  State District Court
- A speeding ticket
  Municipal or Justice of the Peace Court
- A felony murder case
  State District Court
- An appeal from a municipal court
  County Court
- A child support or child custody case
  State District Court
- An ordinance violation
  Municipal Court (with the exception of sign ordinance violations in the city’s extraterritorial jurisdiction which may also be in the justice court)
- An appeal from the justice courts
  County Court
- A death penalty appeal
  Court of Criminal Appeals
- An appeal from a municipal court of record
  County Court

PART 3
Q. 17. True.
Q. 18. False.
Q. 20. False.

PART 4
Q. 22. False.
Q. 23. False.
Q. 24. True.
Q. 25. True.

PART 5
Q. 26. Every time appointment, election, reappointment or reelection occurs; with each new term of office.
Q. 27. The statement of officer.

PART 6
Q. 28. Decorum includes observing correct judicial procedures and customs. Starting on time, allowing time to permit full hearings, being courteous to all who appear in court, and being firm are examples. (Answer varies from clerk to clerk)
Q. 29. If possible, have the municipal court in a separate public building or in a separate portion of city hall. Have separate entrances into the court and into the police department. The court should not be located within the confines of the police department or the police chief’s office. (Answer varies from clerk to clerk)

PART 7
Q. 30. The answers to the subparts of question 31 are found below:

- Training and written materials on how to run your court
  Texas Municipal Courts Education Center
- The proper forms to report traffic convictions or bond forfeitures
  Department of Public Safety
- Statistical data on other courts of your size
  Texas Judicial Council/Office of Court Administration
- Driving records
  Department of Public Safety
- Help with collecting the proper court costs
  Comptroller’s Office
- General information on city government
  Texas Municipal League
- A question about judicial ethics
  Commission on Judicial Conduct
- A question about the crime victims program
  Attorney General’s Office
- Questions about the court clerks’ certification program
  Texas Municipal Courts Education Center or Texas Court Clerks Association
- A legislative proposal regarding prosecutors in municipal court
  Texas Municipal Courts Association or Texas Municipal League
Authority and Duties

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**INTRODUCTION**

The single most important source of municipal court authority and jurisdiction is the Texas Constitution, which gives the State Legislature the power to establish courts and set their jurisdiction when it sees fit. The Legislature exercised this power and created municipal courts in the Corporation Court Law of 1899, which has now been codified in the Texas Government Code. Municipal courts can also look to various other statutes and codes for authority and jurisdiction. In some instances, duties are prescribed by a city charter or by a city ordinance. Most daily work assignments developed to discharge official duties are, however, done through procedures authorized by the judge and administered by the court clerk and other officers of the court.

Legal authority is the right and the power of judges to require obedience to their orders. Municipal judges are public officials who are either elected or appointed to administer laws in cities and perform judicial, magistrate, and ministerial duties. Judicial duties may not be delegated unless expressly authorized by law. If a judicial duty is delegated to a clerk, both the judge and clerk may be subject to liability. Judges may, however, delegate ministerial duties that require no discretion and are generally administrative in nature.

The court clerk carries out the ministerial duties delegated by a judge and performs the administrative and managerial functions for the court. These duties and functions generally include being the custodian of the funds, summoning juries, administering oaths to jurors, and maintaining the trial docket.

Because statutes do not provide much direction for court clerks, clerks can look at a judge’s judicial authority to get a clearer picture of the relationship between the authority of a judge and that of a court clerk. This guide introduces municipal court personnel to municipal court jurisdiction and authority; judicial, magistrate, and ministerial duties; and a court clerk’s duties and authority.

**PART 1**

**TEXAS CONSTITUTION**

**A. Establishes Separation of Powers**

The Texas Constitution in Article II, Section 1, divides the powers of state government into three branches—legislative, executive, and judicial—and states that no person in any of the three branches may exercise the authority attached to any other branch except when expressly permitted by the Constitution. This division is referred to as the “separation of powers” doctrine.

City governments are organized primarily under the same separation of powers plan where each of the branches operate independently. The legislative branch is the city council, which is empowered to make laws (city ordinances). The executive branch, which includes the city manager, administrative and operating departments, and the police department, enforces the laws. The judicial branch, which is the municipal court, interprets laws and adjudicates disputes under the laws. Judges set the fine amounts within the parameters of penalty clauses in ordinances or statutes. City councils are not empowered to set fines for cases filed in municipal
court, but they do have authority to adopt ordinances and create penalties for violating the ordinances.

Courts are an independent branch of the government. Hence, municipal judges do not use their authority to operate as an arm of the mayor, the city manager, the prosecutor, or the police department. If an ordinance is unconstitutional or there is no probable cause for an arrest, the municipal judge has the authority to determine these issues to ensure that citizens’ rights are not being violated by the legislative or executive branches of government.

B. Gives Authority to Legislature to Establish Municipal Courts

The Texas Constitution establishes the judicial branch of the Texas government. Courts established by the Texas Constitution are constitutional courts. Judicial power is vested in the following constitutional courts:

- the Supreme Court;
- the Court of Criminal Appeals;
- courts of appeals;
- district courts;
- county courts; and
- justice of the peace courts.

The Constitution also provides the Legislature authority to establish other courts and to set their jurisdiction and organization. These courts are called the statutory courts. Tex. Const. Art. V, Sec. 1. The Legislature first exercised its authority to create courts when it adopted the Corporation Court Law of 1899, which created “corporation” courts, the precursor to municipal courts. The Legislature has now codified the Corporation Court Law into Chapters 29 and 30 of the Government Code. In Section 29.002 of the Government Code, the Legislature provides that in every municipality a municipal court is created. Hence, when a city incorporates, the Legislature has created a municipal court for that city.

A city can choose to have a municipal court of record or a municipal court of non-record. A municipal court of non-record is one in which the trial proceedings are not recorded and the appeal is a new trial in the county court. A municipal court of record records its trials either by recording equipment or using a court reporter. The appeal is based on the written record of the trial to determine if any error occurred during the trial.

| Q. 1. | What document divides the powers of state government? ______________________________ |
| Q. 2. | What is the separation of powers doctrine? ________________________________ |
| Q. 3. | Name the three branches of city government. ________________________________ |
| Q. 4. | Does the city council have authority to set fines for the judge? _____________ |
| Q. 5. | List the courts established by the Texas Constitution. ______________________ |

2-4 Authority and Duties

Rev. Fall 2011 Level 1
Q. 6. What kind of courts are municipal courts? _________________________________

Q. 7. When is a municipal court created in a municipality? __________________________

Q. 8. Name the two types of municipal courts a city may choose to have. ______________

PART 2
JURISDICTION

Jurisdiction is defined as the authority and legal power to hear and decide cases. Courts created by the Texas Constitution have jurisdiction granted to them by the constitution. The Legislature can expand jurisdiction for these courts, but it cannot take away jurisdiction granted by the Constitution. Courts created by the Legislature have jurisdiction granted to them solely by the Legislature.

The Legislature provides that certain courts have civil jurisdiction, others have criminal jurisdiction, and some courts have both civil and criminal jurisdiction.

A. Civil Cases

Courts that have civil jurisdiction have authority to hear cases that deal with private rights of individuals, groups, or businesses. A civil lawsuit may be brought when one person feels wronged or injured by another person.

B. Criminal Cases

A criminal case is a legal action brought by the government against a person charged with committing a crime. The following is a list of courts that have criminal jurisdiction:

- Court of Criminal Appeals;
- courts of appeals;
- district courts;
- criminal district courts;
- magistrates appointed by the judges of the district in certain counties (See Ch. 54, G.C.) and the magistrates appointed by the judges of the criminal district courts;
- county courts;
- county courts at law with criminal jurisdiction;
- county criminal courts;
- justice courts; and
- municipal courts.

For more information on the differences among the courts listed in Article 4.01, C.C.P., see TMCEC Study Guides Level I, An Overview of the Courts.

Q. 9. Define the term jurisdiction. ____________________________________________
Q. 10. What is the difference between civil and criminal cases? ______________________
_____________________________________________________________________

PART 3
MUNICIPAL COURT JURISDICTION

Since municipal courts are created by statute, their jurisdiction is established by statute. The Legislature provided for municipal courts’ jurisdiction in Art. 4.14, C.C.P., and Sec. 29.003, G.C. Both statutes give municipal courts criminal jurisdiction over offenses that have a penalty of fine only and may include sanctions that do not include confinement. Municipal courts’ jurisdiction is almost exclusively criminal, with a limited exception for municipal courts of record. This type of jurisdiction is called “subject matter jurisdiction.”

In addition to subject matter jurisdiction, municipal courts also have geographic jurisdiction. The municipal court’s geographic jurisdiction includes the city’s territorial limits and, for some offenses, its extraterritorial limits.

Municipal courts’ subject matter jurisdiction is generally over Class C misdemeanors and other fine-only offenses. Over some of these offenses, municipal courts have exclusive original subject matter jurisdiction, and in others, they share concurrent jurisdiction.

The Legislature has also given municipal courts jurisdiction over forfeiture of appearance bonds filed in the municipal courts. A forfeiture is initiated when a defendant has a bond filed with the court to guarantee his or her appearance and fails to appear. Although case law holds that bond forfeitures are criminal cases, a forfeiture is unlike any other criminal case in municipal court in that the court must use the Rules of Civil Procedure. See TMCEC Study Guide Level II, Bond Forfeitures for additional discussion of bond forfeitures.

See the following sections for a discussion of municipal courts’ jurisdiction and refer to Appendices A and B for charts summarizing jurisdiction.

A. Types of Criminal Jurisdiction

1. Exclusive Original Jurisdiction

Original jurisdiction means that a court has authority to try a case and pass judgment on the law and facts. This is contrary to appellate jurisdiction, where the transcript of an appealed case is reviewed to determine if any error has occurred.

Exclusive jurisdiction means that a court’s authority to try certain cases is not shared with another court. Therefore, exclusive original jurisdiction means that the court in which a case is filed has sole jurisdiction and no other court has jurisdiction to hear and determine the case. Municipal courts have exclusive original jurisdiction over violations of city ordinances as well as violations of rules, resolutions, or orders of a joint airport board under Sec. 22.074, T.C., Sec. 29.003, G.C.; and Art. 4.14, C.C.P.

There is one exception to municipal court’s exclusive original jurisdiction over city ordinance violations—city ordinances involving sign ordinance violations in the city’s extraterritorial jurisdiction. A justice court has concurrent jurisdiction with a municipal court in criminal cases
that arise in the municipality’s extraterritorial jurisdiction and that arise under an ordinance of the municipality applicable to the extraterritorial jurisdiction under Sec. 216.902, L.G.C., regarding sign ordinances. Art. 4.11(c), C.C.P.

2. **Exclusive Appellate Jurisdiction**

Municipal courts have appellate jurisdiction in two instances—over red light camera cases and administrative adjudication of parking offenses. The owner of a motor vehicle determined by a hearing officer to be liable for a civil penalty of running a red light may appeal that determination to a judge by filing an appeal petition with the clerk of the municipal court. Sec. 707.016(a)(2), T.C. A person charged with violating the civil administrative parking ordinances of a city may appeal the order of the hearing officer by filing a petition with the clerk of the municipal court. Sec. 682.011, T.C.

3. **Concurrent Original Jurisdiction**

Municipal courts share some of their jurisdiction with other courts—justice of the peace courts and district and county courts. This type of jurisdiction is called concurrent jurisdiction and means that cases may be filed in any of the courts that have authority over certain types of offenses.

a. **Justice of the Peace Courts**

A municipal court has concurrent jurisdiction with the justice of the peace court of a precinct in which the municipality is located. This applies to all criminal cases arising under state law that arise within the territorial limits of the city and property owned by the city in the city’s extraterritorial limits punishable by fine-only and such sanctions, if any, as authorized by statute not consisting of confinement in jail or imprisonment. These cases may be filed in either the justice court or municipal court. Art. 4.14, C.C.P., and Sec. 29.003, G.C.

Chapter 503 of the Transportation Code provides that municipal courts have concurrent jurisdiction with the justice courts for enforcement of offenses pertaining to manufacturers and dealers of vehicles.

Justice courts and municipal courts also have concurrent jurisdiction over city ordinance violations involving sign violations in the city’s extraterritorial jurisdiction. Art. 4.11(c), C.C.P.

b. **District Courts or County Courts**

The governing body of a municipality may, by ordinance, provide that a municipal court of record has civil jurisdiction within the territorial limits and the extraterritorial limits for the purpose of enforcing dangerous structures and junked vehicle ordinances. This jurisdiction is concurrent with a district court or a county court at law for the purpose of enforcing health and safety or nuisance abatement ordinances. Sec. 30.00005, G.C.

Chapter 503, Transportation Code, provides that all municipal courts have concurrent jurisdiction with the county court and the county court-at-law for enforcement of Chapter 503. See 503.092, T.C.
4. **Drug Courts**

On September 1, 2007, Chapter 469 of the Health and Safety Code was amended to allow municipalities to establish drug court programs. In the past, only counties could establish these types of courts. Drug courts are special courts that handle only offenses in which an element is the use or possession of alcohol; the use, possession, or sale of a controlled substance, controlled substance analogue, or marihuana; or an offense in which the use of alcohol or a controlled substance is suspected to have significantly contributed to the commission of the offense and it did not involve the carrying, possessing, or using a firearm or other dangerous weapon, the use of force against a person of another, or the death of or serious bodily injury to another. Municipal drug courts’ jurisdiction would include offenses such as: public intoxication, possession of drug paraphernalia, driving under the influence of alcohol by a minor (DUI), purchase of alcohol by a minor, attempt to purchase alcohol by a minor, consumption of alcohol by a minor, possession of alcohol by a minor, and misrepresentation of age by a minor. Other fine-only offenses that could be heard in drug courts are offenses in which alcohol is suspected to have significantly contributed to the commission of the offense.

**B. Geographic Jurisdiction**

Both municipal courts of record and municipal courts of non-record have geographic jurisdiction that is within the territorial limits of the municipality and property owned by the municipality in the municipality’s extraterritorial jurisdiction. Sec. 29.003, G.C., and Art. 4.14, C.C.P.

1. **Municipal Courts of Record**

Municipal courts of record have additional exclusive original jurisdiction in their territorial limits and their extraterritorial limits. Section 30.00005, G.C., provides that municipal courts of record have jurisdiction, as authorized by Sections 215.072, 217.042, 341.903, and 401.002, L.G.C., over city ordinance violations. These sections, in some instances, also require that the city be a home-rule city in order for the municipal court of record to have jurisdiction. A home-rule city is one that is governed by a charter, which gives it some measure of self-government. A city must have a population of at least 5,000 in order to become a home-rule city.

2. **Non-Record Municipal Courts**

The only statute that provides authority for non-record municipal courts over a city ordinance violation in the city’s extra territorial jurisdiction is Article 4.11(c), C.C.P. The statute provides concurrent jurisdiction for justice and municipal courts over a city’s sign ordinance in the city’s extraterritorial jurisdiction. For non-record courts, other statutes only provide authority for jurisdiction on property owned by the municipality in the municipality’s extraterritorial jurisdiction. See Sec. 29.003, G.C.

An Attorney General Opinion issued in March of 1999 addressed the issue of jurisdiction of nuisance violations in a municipality’s extraterritorial jurisdiction when the municipal court is a court of non-record, opining that when a municipality is authorized to adopt a nuisance ordinance applicable to conduct occurring outside city limits and where the municipality has adopted such an ordinance, a municipal court has implied jurisdiction over cases arising from the

C. Subject Matter Jurisdiction

Subject matter jurisdiction refers to the types of crimes over which a court has jurisdiction. Municipal courts have subject matter jurisdiction over fine-only offenses. Art. 4.14, C.C.P., and Sec. 29.003, G.C. A fine-only offense is defined as one punishable by a fine and any sanctions authorized by statute not consisting of confinement in jail or imprisonment. The fact that a conviction in a municipal court has, as a consequence, the imposition of a penalty or sanction by an agency or entity other than the court, such as a denial, suspension, or revocation of a privilege, does not affect the original jurisdiction of the municipal court. Art. 4.14, C.C.P., and Sec. 29.003, G.C.

Sometimes a fine-only misdemeanor offense is generically referred to as a “Class C misdemeanor.” The Penal Code defines a Class C misdemeanor offense as a misdemeanor punishable by a fine not to exceed $500. Sec. 12.23, P.C. However, Section 12.41, P.C., defines a Class C misdemeanor outside of the Penal Code as any offense punishable by a fine only. Hence, any fine-only offense is considered a Class C misdemeanor regardless of the amount of fine. Municipal court has jurisdiction over Class C misdemeanors. The following sections describe some of the offenses for which municipal courts have jurisdiction.

1. Violations of Ordinances, Resolutions, Rules, and Orders

City councils may establish penalties for city ordinance violations, and joint airport boards may establish penalties for violations of a resolution, rule, or order. The types of penalties that a city or joint airport board may create are regulated by statute. The penalties must conform to the definition of fine-only offenses that a municipality has been given jurisdiction over by Article 4.14, C.C.P., and Section 29.003, G.C. These two statutes have similar provisions, except that Section 29.003 also provides for jurisdiction over resolution, rules, and orders adopted by the joint airport board. City councils and joint airport boards may establish the following penalties:

- a fine of up to $2,000 in all cases arising under the ordinances, resolutions, rules, or orders that govern:
  - fire safety,
  - zoning,
  - public health, and
  - sanitation (including dumping of refuse);
- a fine of up to $500 for all other city ordinance violations or violations of a resolution, rule, or order of a joint board.

2. Violations of Statutes

Municipal courts have subject matter jurisdiction over offenses contained in many different codes; for example, the Alcoholic Beverage Code, the Education Code, and the Transportation Code. Below, a couple examples of Penal Code offenses are detailed.
a. **Theft**

Municipal court jurisdiction over theft varies depending on the amount of pecuniary loss. The following list contains the theft statutes that are Class C misdemeanors and would, therefore, fall under the municipal court’s criminal jurisdiction.

- Theft of property of a value less than $50 (unless committed in an evacuated or disaster area or property stolen from a nonprofit organization). Sec. 31.04, P.C.
- Theft of property of a value less than $20 if the defendant obtained the property by issuing or passing a check or sight order and the person did not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders then outstanding. Secs. 31.03 and 31.06, P.C.
- Theft of services of a value less than $20. Sec. 31.04, P.C.
- Theft of service or credit by intentionally or knowingly making a false or misleading written statement to obtain property or credit for himself, herself, or another if the value of the property or the amount of the credit is less than $50. Sec. 32.32, P.C.

b. **Criminal Mischief**

A person commits the offense of criminal mischief if the person, without the effective consent of the owner, intentionally or knowingly damages or destroys the tangible property of the owner; tampers with tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person; or makes markings, including inscriptions, slogans, drawings, or paintings on the tangible property of the owner. Criminal mischief is a Class C misdemeanor if the amount of pecuniary loss is less than $50 (Sec. 28.03, P.C.) and would, therefore, fall under the municipal court’s criminal jurisdiction.

c. **New Class C Penal Code Offenses**

The 82nd Legislature created several new Class C Penal Code offenses, some of which merit the attention of municipal court personnel, such as the new law concerning “sexting.” See 43.261, P.C.

D. **Jurisdiction over Bond Forfeitures**

Municipal court has jurisdiction in a forfeiture and final judgment of bail bonds and personal bonds taken in criminal cases over which the court has jurisdiction. Art. 4.14(e), C.C.P.

E. **Restitution Jurisdiction**

Statutorily, municipal court has no limit on its jurisdiction over ordering restitution except in one instance—issuance of bad checks. Municipal courts cannot order restitution for an issuance of bad check conviction for more than $5,000. Art. 45.041, C.C.P.

F. **Initiating Jurisdiction**

Municipal court jurisdiction is initiated when a complaint is filed with the court charging a person with the commission of an offense. Art. 45.018, C.C.P. Article 27.14(d), C.C.P., permits the court to use a citation (written notice to appear issued by a peace officer) filed with the court
to serve as the complaint for a defendant to plea. Both the citation and the complaint serve as charging instruments to give the defendant notice of charges filed in the court. If a complaint or a citation is not filed with the court, the court does not have jurisdiction over the defendant. Article 12.02(b), C.C.P., provides that a complaint or information may be presented within two years from the date of the commission of the offense, and not afterward. This rule is called the statute of limitations.

g. Retaining Jurisdiction

The court in which a complaint is first filed retains jurisdiction. Art. 4.16, C.C.P.

| Q. 11. | When a defendant posts a bond to appear in municipal court, and then fails to appear, does the municipal court have jurisdiction to forfeit the bond? |
| Q. 12. | What kind of cases must be initiated in municipal court and not in any other court? |
| Q. 13. | What is municipal court’s jurisdiction over rules, resolutions, and orders of a joint airport board called? |
| Q. 14. | With which courts does municipal court share jurisdiction? |
| Q. 15. | Over which type of offenses does municipal court share jurisdiction? |
| Q. 16. | What is the geographic jurisdiction of the municipal court? |
| Q. 17. | What is a municipal court of record’s jurisdiction over city ordinance nuisance violations? |
| Q. 18. | When a city owns a park outside its extraterritorial limits, what is municipal court’s jurisdiction to hear cases charging fine-only offenses committed in the park? |
| Q. 19. | What are the penalty limits of offenses over which municipal courts have jurisdiction? |
| Q. 20. | Why does municipal court have jurisdiction to hear cases where a conviction may result in the Department of Public Safety suspending the defendant’s driver’s license? |
| Q. 21. | Give an example of an offense that the penalty requires a sanction in addition to paying a fine. |
| Q. 22. | What is the maximum amount of a fine for a Class C misdemeanor offense in the Penal Code? |
| Q. 23. | What is the maximum penalty that a city council can establish for ordinance offenses involving public health and fire safety violations? |
| Q. 24. | What is municipal court’s theft jurisdiction? |
Q. 25. When does municipal court acquire jurisdiction over a person who commits a fine-only offense? ________________________________

Q. 26. When a person who is issued a citation appears in court before the officer files the citation with the court, can the court request and accept a plea from the person? ________________________________

Q. 27. What is the statute of limitations for filing a complaint in municipal court? __________

PART 4
MUNICIPAL JUDGES

A. Appointed or Elected

In a general-law city (a city with a population of under 5,000 or one with a population of more than 5,000 that does not have a home-rule charter), the mayor is the ex-officio judge of the municipal court unless the city passes an ordinance providing for the election or appointment of the judge. If the municipality authorizes an election, the judge must be elected in the same manner and for the same term as the mayor. If the municipality authorizes the appointment, the mayor ceases to be judge on the enactment of the ordinance. The first elected or appointed judge serves until the expiration of the mayor’s term. Sec. 29.004(b), G.C.

A home-rule city, which is a city governed by a home-rule charter, can designate in its city charter whether the municipal judge is elected or appointed.

B. Term of Office

A judge of a municipal court serves for a term of office of two years unless the municipality provides for a longer term pursuant to Article XI, Section 11 of the Texas Constitution. A municipal judge who is not reappointed by the 91st day following the expiration of a term of office shall, absent action by the appointing authority, continue to serve for another term of office beginning on the date the previous term of office expired. Sec. 29.005, G.C.

If a municipal judge of a general-law city is temporarily unable to act, the governing body may appoint one or more persons meeting the qualifications for the position to sit for the regular municipal judge. The appointee has all powers and duties of the office and is entitled to compensation. Sec. 29.006, G.C.

The judge and alternate judges of a municipal court in a home-rule city are selected under the city’s charter provisions relating to the election or appointment of judge. The judge shall be known as the “judge of the municipal court” unless the municipality by charter provides for another title. Sec. 29.004(a), G.C.

C. Oath of Office

Article XVI, Sections 1(a) and 1(c) of the Texas Constitution require all officials who are elected or appointed to take an oath of office. The oath is retained with the official records of the office. Before an elected or appointed official takes the oath of office, however, the official must swear to an anti-bribery statement, also retained with the records of the office. Tex. Const. Art. XVI, Secs. 1(b) and 1(d). The oath and the statement are required every time an official is reelected or
reappointed. The oath and statement of appointed officers must be taken before the official performs the duties of the office. The oath and statement must be sworn to and properly filed every time an official is reelected or reappointed. This includes when a city does not take action to reappoint a judge or appoint another judge by the 91st day following the expiration of a term of office and the judge then continues to serve for another term of office. Before performing any official duties of this next term, the judge must swear to and file the statement and oath of office.

A person administering an oath of office or statement of officer must have authority to administer the oath. Persons who have authority to administer any oath are listed in Section 602.002 of the Government Code and include:

- a judge, retired judge, or clerk of a municipal court;
- a judge, clerk, or commissioner of a court of record;
- a justice of the peace or a clerk of a justice court;
- a retired or a senior judge of a court of record;
- a notary public;
- the attorney general or former attorney general;
- the secretary of state or former secretary of state;
- the lieutenant governor or former lieutenant governor;
- the speaker or former speaker of the House of Representatives;
- legislators and retired legislators; or
- the governor or former governor.

D. Duties

1. Judicial Duties

Judicial duties require an exercise of judgment, a decision of a question of law or fact, or a choice of alternatives. A question of law is an issue involving the application or interpretation of a law. A question of fact is an issue involving resolution of a factual dispute.

Judicial discretion is the exercise of judicial judgment. A judge’s discretion to make decisions must be guided by law and be based on facts and is the power to determine what, under existing circumstances, is right or proper.

The choices made by judges must be lawfully available choices or alternatives. When a law prescribes a certain way to perform a certain action, judges have no discretion. Judicial acts include accepting pleas, assessing fines, and dismissing cases when permitted by statute, issuing warrants and capiases, or granting driving safety courses. Attorney General Opinion H-386 (1974).

For judges to properly exercise judicial discretion, they need a thorough understanding of statutes and case law relevant to the jurisdiction of the court. Judicial discretion is not unrestrained and must be exercised to give effect to the purpose of the law for the interest of justice.

Judicial duties may not be delegated unless there is express authority to do so. Newsom v. Adams, 451 S.W.2d 948 (Tex. Civ. App.–Beaumont 1970, no writ); Attorney General Opinion
Hence, a judge is not permitted to delegate to a court clerk a duty that the judge is required to perform, such as taking a plea or setting a fine. Other duties that judges may perform, such as ministerial duties, may be delegated to court clerks because ministerial duties require no discretion and are generally administrative in nature, such as keeping and maintaining a docket, preparing paperwork for the judge's signature, maintaining files, and providing customer service to court users.

### a. Judicial Duties that May Not Be Delegated

The list below, although not inclusive, presents judicial duties that *may not* be delegated to a clerk.

<table>
<thead>
<tr>
<th>Judicial Duty</th>
<th>Cite</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forfeit bail</td>
<td>Articles 4.14 and 45.044, C.C.P.; Section 29.003(e), G.C.</td>
</tr>
<tr>
<td>Take and accept pleas of guilty, nolo contendere, or not guilty</td>
<td>Articles 27.14, 27.16, 45.021, 45.0215, 45.022, and 45.024, C.C.P.; Attorney General Opinion H-386</td>
</tr>
<tr>
<td>Arraign defendants (a procedure in which a judge identifies the defendant and requests a plea)</td>
<td>Article 26.02, C.C.P.</td>
</tr>
<tr>
<td>Enter a plea of not guilty for a defendant who refuses to plead</td>
<td>Article 45.024, C.C.P.</td>
</tr>
<tr>
<td>Conduct pre-trial hearings</td>
<td>Article 28.01, C.C.P.</td>
</tr>
<tr>
<td>Grant continuances</td>
<td>Chapter 29, C.C.P.</td>
</tr>
<tr>
<td>Conduct trials</td>
<td>Articles 45.025, 45.027, and 45.030, C.C.P.</td>
</tr>
<tr>
<td>Rule on challenges to the array (membership) of the jury pool</td>
<td>Article 36.07, C.C.P.</td>
</tr>
<tr>
<td>Enter judgments</td>
<td>Article 45.041, C.C.P.</td>
</tr>
<tr>
<td>Grant jail-time credit</td>
<td>Articles 42.03, 45.041, and 45.048, C.C.P.</td>
</tr>
<tr>
<td>Determine how a defendant pays fine and costs (time payment, extensions, community service)</td>
<td>Articles 45.041 and 45.049, C.C.P.</td>
</tr>
<tr>
<td>Determine indigence</td>
<td>Articles 43.091, 45.046, 45.048, and 45.049, C.C.P.</td>
</tr>
<tr>
<td>Waive fine and court costs after a defendant defaults and the judge determines that the defendant is indigent and that performing community service would be an undue hardship</td>
<td>Article 43.091, C.C.P.</td>
</tr>
<tr>
<td>Rule on a motion for new trial</td>
<td>Article 45.037, C.C.P.; Section 30.00014(c) and (d), G.C.</td>
</tr>
<tr>
<td>Approve appeal bonds</td>
<td>Article 45.0425, C.C.P.</td>
</tr>
<tr>
<td>Issue arrest warrants for defendants whose cases are filed in municipal court</td>
<td>Article 45.014, C.C.P.</td>
</tr>
<tr>
<td>Issue a capias pro fine</td>
<td>Article 45.045, C.C.P.</td>
</tr>
<tr>
<td>Issue a capias</td>
<td>Article 23.04, C.C.P.</td>
</tr>
<tr>
<td>Issue a summons for a defendant when requested by the prosecutor</td>
<td>Article 23.04, C.C.P.</td>
</tr>
<tr>
<td>Issue a summons for the parent of a person under 17</td>
<td>Articles 45.0215 and 45.054, C.C.P.</td>
</tr>
</tbody>
</table>
Grant deferred disposition | Article 45.051, C.C.P.
---|---
Grant teen court | Article 45.052, C.C.P.
Grant driving safety courses | Article 45.0511, C.C.P.
Conduct stolen or seized property hearings | Chapter 47, C.C.P.
Dismiss cases when required by law or upon prosecutor motion | Article 32.02, C.C.P.
Conduct Marriages | Section 2.202, F.C.

b. Consequences of Delegating Judicial Duties

If a judge delegates a judicial duty to a court clerk, there can be consequences. A number of cases illustrate such consequences.

**Sharp v. State**

In the case *Sharp v. State*, 677 S.W.2d 513 (Tex. Crim. App. 1984), a City of Houston municipal court clerk issued a capias for violating the “helmet safety law.” The defendant was later arrested on the capias and as a result of this arrest was charged with and convicted of possession of methamphetamine. The defendant appealed the possession case. The appellate court held that the deputy municipal court clerk did not have authority to issue a capias. Because a magistrate (judge) failed to direct the issuance of the capias and to determine probable cause, the defendant’s arrest was illegal; thus, the evidence discovered as a direct result of the arrest had to be suppressed.

The procedure to prosecute in Houston was initiated with the officer’s ticket. According to the established procedures, if the defendant failed to appear in court to answer the complaint, the clerk was delegated the authority to stamp the judge’s name and to issue the capias. The Court of Criminal Appeals reviewed this procedure and found that, although Texas municipal clerks were empowered to perform ministerial tasks, such as preparing process under the direction of the judge, they were neither authorized nor trained to determine probable cause to support a warrant ordering a citizen to be arrested. There was no evidence that a judge intervened at any point in the process. The Court of Criminal Appeals concluded that since the judge did not determine whether there was probable cause to issue the arrest warrant, and since the judge did not direct the issuance of the capias, the defendant’s arrest was illegal. Hence, all evidence obtained from the arrest was excluded.

**Crane v. Texas**

*Crane v. Texas*, 759 F.2d 412, 766 F.2d 193 (5th Cir. 1985) points out civil liability when a judge allows someone else to devise a policy delegating a judicial duty. In this case, a district attorney and county attorney were held civilly liable and denied governmental immunity because they devised a policy authorizing the county clerk rather than the judge to issue misdemeanor capiases.

**Daniels v. Stovall**

In *Daniels v. Stovall*, 660 F. Supp. 301 (S.D. Tex. 1987), a justice of the peace delegated his authority to affix his rubber stamped signature to a mental health warrant outside his presence. He reviewed the warrant and adopted it the next business day. The court cited favorably...
Attorney General Opinion JM-373 (1985), which states that a judge may not delegate authority to affix her or his signature unless the signature is affixed under the judge’s personal supervision. Generally, judges have absolute immunity for damages for acts performed in their judicial capacity. This case found, however, that since the judge delegated a judicial duty to his clerk and the clerk performed the duty, neither was immune from civil liability.

In Daniels, the court discussed the approved factors for determining whether a particular action is a judicial action that would be entitled to immunity. The issuance of a mental commitment order is a judicial act, but the manner in which it was issued prevented the act from being covered by judicial immunity. The case set forth factors for determining whether a particular action is judicial. The factors are:

- whether the precise act complained of is a normal judicial function;
- whether the act occurred in the courtroom or appropriate adjunct spaces such as the judge’s chambers;
- whether the controversy centered around a case pending before the court; and
- whether the act arose directly out of a visit to the judge in his or her official capacity.

2. Magistrate Duties

Municipal judges and mayors are magistrates. Art. 2.09, C.C.P. Magistrate authority is additional power and authority granted by the Texas Legislature. Case law provides that a magistrate’s authority is countywide. Gilbert v. State, 493 S.W.2d 783 (Tex. Crim. App. 1973). A mayor who is not a municipal judge can only perform magistrate duties and not judicial duties. Magistrate duties, like judicial duties, cannot be delegated to municipal court clerks.

a. General Duties

Although magistrate duties are broad and scattered throughout various statutes and codes, the general duty of every magistrate is to preserve the peace within his or her jurisdiction by issuing process intended to help prevent and suppress crime and to initiate the arrest of offenders in order that they may be brought to punishment. Art. 2.10, C.C.P.

b. Magistrate Duties for Municipal Judges

The following is a list, although not inclusive, of magistrate duties that a municipal judge has the authority to perform as a magistrate.

<table>
<thead>
<tr>
<th>Magistrate Duties</th>
<th>Cite</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue emergency protection orders for an offense involving family violence</td>
<td>Article 17.292, C.C.P.</td>
</tr>
<tr>
<td>Issue a warrant when any person informs the judge, under oath, of an offense about to be committed</td>
<td>Article 7.01, C.C.P.</td>
</tr>
<tr>
<td>Conduct peace bond hearings</td>
<td>Article 7.03, C.C.P.</td>
</tr>
<tr>
<td>Verbally order a peace officer to arrest, without warrant, when a felony or breach of the peace is committed in the presence or within the view of a magistrate</td>
<td>Article 14.02, C.C.P.</td>
</tr>
<tr>
<td>Accept complaints (probable cause affidavits) and issue arrest warrants and summonses (these complaints are for Class A and B misdemeanors and felony offenses)</td>
<td>Article 15.17, C.C.P.</td>
</tr>
<tr>
<td>Give magistrate warning after arrest</td>
<td>Article 15.17, C.C.P.</td>
</tr>
</tbody>
</table>
Take a plea and set and collect a fine when a defendant is arrested on an out-of-county warrant for a fine-only offense

<table>
<thead>
<tr>
<th>Magistrate Duties</th>
<th>Cite</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conduct examining trials in felony cases to determine probable cause</td>
<td>Article 16.01, C.C.P.</td>
</tr>
<tr>
<td>Determine the sufficiency of sureties</td>
<td>Chapter 17, C.C.P.</td>
</tr>
<tr>
<td>Order a defendant to submit to an examination in a mental health facility determined by a local mental health authority on that authority’s request</td>
<td>Article 16.22, C.C.P.</td>
</tr>
<tr>
<td>Set and accept bail, including personal bonds</td>
<td>Chapter 17, C.C.P.</td>
</tr>
<tr>
<td>Issue search warrants; mere evidence may issue only from an attorney judge</td>
<td>Chapter 18, C.C.P.</td>
</tr>
<tr>
<td>Move to dispose of the weapon if no prosecution or conviction will occur when a weapon has been seized</td>
<td>Article 18.19, C.C.P.</td>
</tr>
<tr>
<td>Conduct license suspension hearings when the defendant has:</td>
<td>Title 7, Subtitle B, T.C. (Section 521.300)</td>
</tr>
<tr>
<td>• been convicted of driving while license suspended;</td>
<td></td>
</tr>
<tr>
<td>• been responsible as a driver for any accident resulting in serious personal injury, property damage, or death;</td>
<td></td>
</tr>
<tr>
<td>• been convicted of habitual reckless, or negligent driving, or is incapable of safe driving;</td>
<td></td>
</tr>
<tr>
<td>• permitted an unlawful or fraudulent use of license;</td>
<td></td>
</tr>
<tr>
<td>• committed an offense in another state or Canadian province that if committed in this state would be grounds for suspension or revocation;</td>
<td></td>
</tr>
<tr>
<td>• been convicted of two or more separate offenses of a violation of a restriction imposed on the use of the license;</td>
<td></td>
</tr>
<tr>
<td>• while under 18 years of age, been convicted of two or more moving violations committed within a period of 12 months;</td>
<td></td>
</tr>
<tr>
<td>• been convicted of the offense of fleeing or attempting to elude police officer under Section 545.421, T.C.;</td>
<td></td>
</tr>
<tr>
<td>• not complied with the terms of a citation issued by a jurisdiction that is a party to the Nonresident Violator Compact of 1977 for a traffic violation to which that compact applies;</td>
<td></td>
</tr>
<tr>
<td>• failed to provide medical records or has failed to undergo medical examinations as required by a panel of the Medical Advisory Board;</td>
<td></td>
</tr>
<tr>
<td>• failed to take or pass an examination required by the director under the Driver’s License Act (now codified into Subtitle B, T.C.); or</td>
<td></td>
</tr>
<tr>
<td>• been reported within the preceding two years by a justice or municipal court for failure to appear or for a default in payment of fine for a misdemeanor punishable only by fine, other than a failure reported under Section 521.3452 committed by a person who is at least 14 years of age but younger than 17 years of age when the offense was committed, unless the court files an additional report on final disposition of the case.</td>
<td></td>
</tr>
</tbody>
</table>

3. **Ministerial Duties**

Ministerial duties are duties in which there is nothing left to discretion, or duties imposed by law, such as maintaining dockets. They are generally administrative in nature and pertain to effectively and efficiently managing the cases filed in the court. Although Canon 3C(1) of the
Code of Judicial Conduct requires judges to diligently and to promptly discharge administrative responsibilities and to maintain professional competence in judicial administration, judges typically delegate ministerial and administrative duties to the clerks.

Statutes provide little guidance regarding ministerial duties. It is only in understanding judicial duties and knowing what a judge cannot delegate that courts determine what duties are ministerial and administrative. Generally, ministerial and administrative duties comprise the following duties, which can be performed by either judges or clerks:

- records management;
- financial management;
- office management;
- preparation of processes (warrants, capias, capias pro fine, judgments, summonses, subpoenas, orders);
- preparation of paperwork for defendants requesting a driving safety course;
- preparation of the budget;
- collection of data for and timely submission of state reports;
- coordination of trial processes;
- coordination of community service and other alternative sentencing options; and
- coordination of enforcement orders with the police department.

E. Authority

1. Administering Oaths

Article 45.019, C.C.P., grants power to administer oaths to a person swearing to a complaint before the municipal court. The following court officials have authority to administer this oath:

- municipal judges;
- clerks of the court;
- deputy court clerks;
- city secretaries;
- city attorneys; and
- deputy city attorneys

Section 602.002, G.C., provides authority for a municipal judge, a retired municipal judge, or clerk to administer any oath. In general-law cities, Section 29.006, G.C., provides that a judge appointed to act for the municipal judge, who is temporarily unable to act, has all powers and duties of the office. In home-rule cities, Section 29.007, G.C., provides that associate judges have the same powers as the presiding judge. Therefore, associate or alternate judges may administer oaths.
2. Dismissing Cases

a. In General

Prosecutors typically have the power to dismiss cases, absent specific statutory authority to the contrary. Texas law generally follows that common law rule, but includes judges in the dismissal process. Art. 32.02, C.C.P. In the Texas model, dismissals may occur through constitutional or statutory authority vesting a trial court with dismissal power, or on the motion of the prosecuting attorney. State v. Morales, 804 S.W.2d 331 (Tex. App.—Austin 1991). Typically, courts may not dismiss without the prosecutor’s consent, and prosecutors cannot dismiss without the court’s approval. State v. Johnson, 821 S.W.2d 609 (Tex. Crim. App. 1991).

If the prosecutor decides not to prosecute a case, the prosecutor must provide a reason in writing for the dismissal. The prosecutor’s motion to dismiss is filed with the court. Article 32.02, C.C.P., requires judicial consent or approval for a case to be dismissed, also known as, the judicial veto. Generally, a judge cannot dismiss a case, except by consenting to and granting a prosecutor’s motion and grounds presented. Flores v. State, 487 S.W.2d (Tex. Crim. App. 1972).

b. Mandatory v. Discretionary Judicial Duty to Dismiss

Some statutes create a mandatory judicial duty to dismiss a criminal charge. In these instances, judges may dismiss in the absence of a prosecutor’s motion. Other statutes give the judge discretion to decide whether or not a case could be dismissed. These statutes are known as “compliance dismissals.” The list of compliance dismissals changes every legislative session. The compliance dismissals now in effect are shown on the compliance dismissal chart in the Appendix C to this Unit.

Note that the language on some offenses states that the judge “shall” dismiss the case in certain instances, for example, the successful completion of deferred disposition or teen court. Other statutes use permissive language, such as the no license plate statute states that the judge may dismiss the offense with a compliance dismissal fee.

3. Authenticating Acts

Article 45.012(g), C.C.P., requires non-record municipal courts to impress a seal on all documents, except subpoenas, issued out of the court and to use the seal to authenticate the acts of the judge and clerk. Section 30.000125, G.C., governs the use of the court seal for courts of record. These two statutes are similar in that they both require the seal to be impressed on all documents, except subpoenas, and to authenticate the acts of the judge and clerk. The two statutes are different in that Article 45.012, C.C.P., does not provide for the wording of the seal, but Section 30.000125, G.C., does contain specific wording for the municipal courts of record seal. That statute requires the following phrase to be included on the seal: “Municipal Court of/in ____________, Texas.” Non-record municipal courts may want to consider using the same or similar wording on their seal.

Neither of the two statutes provides for the appearance of the seal. Before 1999, there was a statute, Article 45.02, C.C.P., requiring the municipal court seal for both record and non-record municipal courts to contain a five-point star, but that statute was repealed. Although the courts
now have no guidance on the appearance of the seal, most courts have retained the appearance that was once required by Article 45.02, C.C.P.

4. **Controlling the Courtroom**

Statutes and the *Code of Judicial Conduct* require judges to maintain order and decorum in the courtroom and to conduct proceedings with dignity in an orderly and expeditious manner so that justice is done. To maintain control, judges have contempt power to regulate conduct in the courtroom. The power must be reasonably exercised and not be arbitrary. Persons in a courtroom should understand the type of conduct required and the consequences of not complying. Judges should establish rules and procedures for courtroom conduct and notify the public of those rules.

F. **Disqualification or Recusal**

When a municipal judge is disqualified or recused, only a judge with authority to try cases in that court may sit for the presiding judge. Under prior law, the procedure for a judge to follow when it was necessary for the judge to disqualify or recuse himself or herself was confusing and contradictory. The 82nd Legislature, has dramatically changed the procedures for judges to follow by repealing Section 29.012, G.C. and enacting Subchapter A-1 of Chapter 29 of the Government Code.

Chapter 30 of the Code of Criminal Procedure provides causes that disqualify a judge. The causes are when a judge:

- is the injured party;
- has been counsel for the state or the accused; or
- is connected to the accused or the party injured by consanguinity or affinity within the third degree as determined under Chapter 573, G.C.

Judges must recuse themselves for one of the above listed causes for disqualification or because of interest or prejudice. See Canon 3B(5), Code of Judicial Conduct.

| Q. 28. When can a mayor in a general-law city be the *ex officio* municipal judge? |                                                                                       |
| Q. 29. What governs the selection of municipal judges in a home-rule municipality? |                                                                                       |
| Q. 30. What must a general-law city do when a municipal judge is temporarily unable to act? |                                                                                       |
| Q. 31. What is a question of law? |                                                                                       |
| Q. 32. What is a question of fact? |                                                                                       |
| Q. 33. What is judicial discretion? |                                                                                       |
| Q. 34. When does a judge not have discretion to perform an action? |                                                                                       |
| Q. 35. Which kind of duty may a judge delegate to a court clerk? |                                                                                       |
True or False
Q. 36. Clerks may set and take bail from a defendant. _____
Q. 37. The clerk may ask the defendant how he or she wants to plea. _____
Q. 38. When a defendant calls the court to request that the clerk reset his or her case to another trial date, the clerk may grant the continuance and reset the case. _____
Q. 39. Clerks may not conduct trials. _____
Q. 40. Clerks may set fines. _____
Q. 41. Clerks may grant extensions and time payment plans to defendants. _____
Q. 42. Clerks may require a defendant to pay a fine by performing community service. _____
Q. 43. The judge has authority to waive the fine and costs after the defendant defaults on payment, is indigent, and unable to perform community service. _____
Q. 44. Clerks may not issue arrest warrants. _____
Q. 45. Municipal court clerks have the authority to issue a capias. _____
Q. 46. Only a judge may issue a summons for a defendant. _____
Q. 47. When a judge is not available, the clerk may grant deferred disposition or teen court. _____
Q. 48. Judges can permit clerks to perform judicial duties and then later adopt the actions of the clerk. _____
Q. 49. Municipal court clerks may stamp the judge’s signature on court documents when the judge is on vacation. _____
Q. 50. When a judge is in the office part-time, the clerk may use the judge’s signature stamp to sign judgments on cases in which a defendant pays a fine at the clerk’s office. _____
Q. 51. Municipal court clerks may stamp the judge’s signature on mental health commitments when the judge is not available and it is an emergency. _____
Q. 52. Municipal court clerks cannot be held liable for performing a judicial duty if the judge requires the clerk to perform the duty. _____
Q. 53. Municipal judges are magistrates. _____
Q. 54. Municipal judges may perform duties that a magistrate has the authority to perform. _____
Q. 55. Municipal judges, acting as magistrates, may issue emergency protection orders for an offense involving family violence. _____
Q. 56. Only justices of the peace may conduct peace bond hearings. _____
Q. 57. Municipal judges, acting as magistrates, may accept a complaint (probable cause affidavit) for a felony. _____
Q. 58. Municipal court clerks may give magistrate warnings after a defendant is arrested when the municipal judge is not available. _____
Q. 59. Municipal judges, acting as magistrates, may issue search warrants. _____
Q. 60. Only justices of the peace may conduct license suspension hearings. _____
Q. 61. Usually, clerks are responsible for establishing and maintaining a financial management program for the court. _____
Q. 62. Although presiding judges have authority to administer the oath to someone swearing to a complaint, associate judges do not. _____

Q. 63. A municipal judge may dismiss a case filed by a citation if the peace officer asks for the dismissal. _____

Q. 64. When defendants present proof that they renewed an expired driver’s license, the clerk may dismiss the case. _____

Q. 65. Clerks may dismiss cases in which defendants renew an expired inspection certificate. _____

Q. 66. Clerks may dismiss an offense for failure to maintain financial responsibility if the judge is on vacation. _____

End True/False

Q. 67. What power does a judge use to exercise control in the courtroom? __________________________________________________________

Q. 68. What Code gives municipal judges the authority to conduct marriage ceremonies? __________________________________________________________

PART 5
MUNICIPAL COURT CLERKS

A. Appointed, Elected, or Hired

A general-law city either has a population under 5,000 or has a population of more than 5,000 without a home-rule charter. A general-law city is one that is governed by the general laws of the state. Section 29.010, G.C., provides for the election or the appointment of a municipal court clerk in general-law cities.

When a municipality provides for the election of a municipal judge, the municipal court clerk is elected in the same manner, unless, by ordinance, the city secretary serves as clerk. A city secretary who serves as clerk may be authorized to appoint a deputy clerk. Sec. 29.010(a), G.C. The position of deputy court clerk is not mentioned in the statutes. Generally, deputy court clerks are hired employees.

A home-rule city has a governing charter and, therefore, has a measure of self-government. The position or office of court clerk in a home-rule city is governed by the city’s charter, ordinance, or personnel policy that can provide for the court clerk to be appointed, elected, or hired.

B. Term of Office

In general-law cities, the municipal court clerk serves a two-year term of office unless the municipality provides for a longer term pursuant to Article XI, Section 11 of the Texas Constitution. If the city secretary serves as clerk, the term of office is during the term of the city secretary. Sec. 29.010(b), G.C.

If the office of municipal court clerk becomes vacant, the governing body of the city shall by appointment fill a vacancy for the unexpired term of office. Sec. 29.011, G.C. If the office becomes vacant, the City Secretary is required to notify the Texas Judicial Council of the vacancy or appointment within 30 days. Sec. 29.013, G.C.
Home-rule cities that provide for the election or appointment of the court clerk can provide for a term of not less than two years and not more than four years pursuant to Article XI, Section 11 of the Texas Constitution.

C. Oath of Office

Article XVI, Sections 1(a) and 1(c) of the Texas Constitution require officials who are elected or appointed to take an oath of office. Before taking the oath of office, the official must swear to the statement of officer and retain the signed statement with the official records of the office. Tex. Const. Art. XVI, Secs. 1(b) and 1(d). The statement is commonly called an anti-bribery statement and is required every time an official is reelected or reappointed. The oath and statement of appointed officer must be taken before performing any duties of office.

A person administering an oath of office or the statement of officer must have authority to administer the oath. Section 602.002, G.C., lists persons who have authority to administer any oath; and includes:

- a judge, retired judge, or clerk of a municipal court;
- a judge, clerk, or commissioner of a court of record;
- a justice of the peace or a clerk of a justice court;
- a retired or a senior judge of a court of record;
- a notary public;
- the attorney general or former attorney general;
- the secretary of state or former secretary of state;
- the lieutenant governor or former lieutenant governor;
- the speaker or former speaker of the House of Representatives;
- legislators and retired legislators; or
- the governor or former governor.

Section 29.007(f), G.C., provides that in home-rule cities that have established the office of municipal court clerk (the clerk is either appointed or elected), the clerk has authority to administer oaths. This statute does not make any exceptions to this authority. Hence, the court clerk could administer an oath of office.

D. Duties

1. General Duties

Clerks perform ministerial and administrative duties. Section 29.010(c), G.C., provides general ministerial duties of a municipal court clerk. The statute requires a municipal court clerk to keep minutes of court proceedings, issue process, and generally perform the duties for the municipal court that a county clerk performs for a county court.

Because statutes do not contain many specific duties for municipal court clerks, it helps to look at the general duties of the county court clerk. As can be seen in the chart below of general county clerk duties, there can be an analogy made with municipal court clerk duties. This list is not inclusive of every county clerk duty because many of their duties are specific to the county
court and do not apply to municipal court. Set out in the following chart is a list of general duties of county court clerks and duties in municipal court that correspond.

<table>
<thead>
<tr>
<th>County Clerk Duties</th>
<th>Corresponding Municipal Clerk Duties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deposit fines and fees in the county treasury.</td>
<td>Deposit fines and fees in the city treasury.</td>
</tr>
<tr>
<td>Make a statement of fines and fees collected on the last day of each term of court.</td>
<td>Make reports to the city council of fines and fees.</td>
</tr>
<tr>
<td>Show from whom fees are received.</td>
<td>Keep records of money collected.</td>
</tr>
<tr>
<td>List jurors’ names and length of service.</td>
<td>Keep records of names and length of service of citizens who serve on municipal court juries.</td>
</tr>
<tr>
<td>Transfer cases. (Section 51.402, G.C.)</td>
<td>A transfer of a case is generally not applicable to municipal courts except when transferring a juvenile to the juvenile court, or when a change of venue for a person allowed to participate in a teen court program has been granted.</td>
</tr>
<tr>
<td>Destroy archived, inactive records. (Section 51.603, G.C.)</td>
<td>Destroy municipal court records retained for a period of time required by the state. (Check with the city secretary for a copy of the city’s ordinance approved by the State Library and Archives Commission governing the retention and destruction of records. Without it, the clerk must get permission from the State Library to destroy records.)</td>
</tr>
<tr>
<td>Maintain fee books. (Article 103.009, C.C.P.)</td>
<td>Keep a record of all fines, fees, court costs, and restitution collected by the court.</td>
</tr>
<tr>
<td>Report monthly to the Office of Court Administration court statistics.</td>
<td>Report monthly court statistics to the Office of Court Administration.</td>
</tr>
</tbody>
</table>

### 2. Required Duties

The following is a list, although not inclusive, of duties that court clerks are required to perform:

<table>
<thead>
<tr>
<th>Required Clerk Duties</th>
<th>Cite</th>
</tr>
</thead>
<tbody>
<tr>
<td>Every clerk of a court of record shall keep a record of each case in which a person is charged with a violation of law regulating the operation of vehicles on highways. Magistrates and judges of non-record courts are required to keep these, but it is usually delegated to the clerk.</td>
<td>Section 543.201, T.C.</td>
</tr>
<tr>
<td>The clerk of every court in which there is a conviction or forfeiture of bail in a case involving a traffic offense must report it to the Department of Public Safety within seven days of the conviction or forfeiture. Judges and magistrates are also required to report.</td>
<td>Section 543.203, T.C.</td>
</tr>
<tr>
<td>When a jury shuffle is requested, the clerk randomly selects jurors by computer or another unbiased process and prints the names in the order selected on a new jury list. The clerk then delivers a copy of the list to</td>
<td>Sections 62.107(c) and 62.108(a), G.C.; Article 35.11, C.C.P.</td>
</tr>
</tbody>
</table>
the prosecutor and the defendant or his or her attorney.

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sections 62.107(c) and 62.108(a), (c), and (d), G.C.</td>
<td>When a person files with the court a permanent exemption from jury duty, the clerk is required to promptly deliver a copy of the permanent exemption to the county tax assessor-collector.</td>
</tr>
<tr>
<td>Whitsitt v. Ramsay, 719 S.W.2d 333 (Tex. Crim. App. 1986)</td>
<td>When a defendant appeals, the clerk is required to forward the record to the appellate court.</td>
</tr>
<tr>
<td>Article 22.10, C.C.P.</td>
<td>When a forfeiture has been declared upon a bond, the judge or clerk shall docket the case upon the scire facias (a special docket for bond forfeitures) or upon the civil docket.</td>
</tr>
<tr>
<td>Article 17.292(g), C.C.P.</td>
<td>If a victim of family violence is not present when an emergency protection order is issued, the clerk must send him or her a copy.</td>
</tr>
<tr>
<td>Article 17.293, C.C.P.</td>
<td>If a magistrate suspends a concealed handgun license when issuing a magistrate’s emergency protection order, the judge or the clerk is required to immediately notify the Texas Department of Public Safety.</td>
</tr>
<tr>
<td>Article 15.26, C.C.P.</td>
<td>A magistrate’s clerk is the custodian of any arrest warrants or affidavits made in support of the warrant. The warrants and affidavits are public information and the clerk has an affirmative duty to make a copy of the warrants and supporting affidavits available for public inspection after the warrants are executed.</td>
</tr>
<tr>
<td>Article 18.01(b), C.C.P.</td>
<td>The clerk is required to make a copy of the affidavit for a search warrant after it has been executed and have it available for public inspection in the clerk’s office during normal business hours.</td>
</tr>
<tr>
<td>Article 26.011, C.C.P.</td>
<td>The clerk is prohibited from requiring the presence of the defendant in order to accept a waiver of arraignment from an attorney representing the defendant.</td>
</tr>
</tbody>
</table>

3. **Administrative Functions**

Municipal court clerks generally perform administrative functions of the court, including:

- preparing process (complaints, warrants, capiases, summons, subpoenas, etc.);
- preparing correspondence and notices;
- processing fine payments and bonds (appearance and appeal bonds);
- maintaining accounting records of the court;
- managing the office;
- coordinating trials and appearances (includes juvenile cases);
- maintaining records;
- producing reports;
  - monthly reports to the Texas Judicial Council;
  - notice of final convictions (reported to DPS);
  - notice of the completion date of driving safety course (reported to DPS);
  - teen court dismissals (reported to DPS);
quarterly court costs reports (reported to State Comptroller’s Office);
notice of violation of Nonresident Violator Compact (reported to DPS);
reports to city council, city manager, and judge;
summary status reports;

- coordinating alternative sentencing (driving safety courses, deferred disposition, teen court);
- coordinating community service;
- coordinating juvenile cases and rehabilitative sanctions;
- processing dismissals;
- processing and coordinating warrant issuance and service;
- managing personnel;
- maintaining a database, if automated;
- coordinating administrative and other hearings;
- processing bond forfeitures;
- processing cash bond forfeitures;
- overseeing budget;
- accepting complaints and entering on docket; and
- performing any other ministerial function that may be delegated by the judge.

4. Custodian of the Funds

Article 17.02, C.C.P., requires peace officers to deposit cash bond money with the custodian of the funds of the court. Generally, the court clerk is designated as the custodian of the funds of the court. A new law was passed in this last legislative session, which significantly changes the processing of cash bonds with regard to the refund of the bond. Article 17.02, C.C.P., was amended to require that the officer receiving the funds shall receipt the funds, and if the bond is to be refunded, the bond should be refunded to the person whose name is on the receipt. If a receipt cannot be produced, the bond may be refunded to the defendant; however, the new statute does not refer to a timeline to produce the receipt.

5. Summoning the Jury

When a defendant does not waive a trial by jury, the judge must issue a writ commanding the proper officer to summon a venire (a list of prospective jurors) from which six qualified persons shall be selected to serve as jurors in the case. The judge may command the court clerk to summon jurors. Art. 45.027, C.C.P.

6. Administering the Oath to Jurors

The judge may direct the court clerk to administer the oath to venire persons (potential jurors) for voir dire (questioning of jurors under oath to determine their qualifications for jury service). Art. 35.02, C.C.P. After six jurors are selected, the court may also direct the clerk to administer an oath to the jurors to try the case properly. Arts. 45.030 and 35.22, C.C.P.
7. **Maintaining the Docket**

Article 45.017, C.C.P., requires judges to keep a docket to enter proceedings in each trial. Nine entries are required to be kept in the docket:

- the style and file number of each criminal action;
- the nature of the offense charged;
- the plea offered by the defendant and the date the plea was entered;
- the date the warrant, if any, was issued and the return made thereon;
- the date the examination or trial was held, and if a trial was held, whether it was by jury or by the justice or judge;
- the verdict of the jury, if any, and the date of the verdict;
- the judgment and sentence of the court, and the date each was given;
- the motion for new trial, if any, and the decision thereon; and
- whether an appeal was taken and the date of that action.

Since judges are required to keep a docket and there is no discretion as to the information required to be maintained, judges may delegate this duty to the clerk.

8. **Fraudulent Documents**

When a court clerk has a reasonable basis to believe in good faith that a document or instrument previously filed, recorded, offered, or submitted for filing is fraudulent, the clerk shall: (1) notify in writing the aggrieved person against whom the purported judgment, act, order, directive, or oral process is rendered; or (2) if the document or instrument purports to create a lien on real or personal property, notify the aggrieved person in writing at the stated or last known address of the person named in the document. The clerk is required to provide this written notice no later than the second business day after the date that the document or instrument is offered or submitted for filing. Sec. 51.901, G.C.

The clerk is also required to post a warning sign with letters at least one inch in height that is clearly visible to the general public near the clerk’s office stating:

> IT IS A CRIME TO INTENTIONALLY OR KNOWINGLY FILE A FRAUDULENT COURT DOCUMENT OR INSTRUMENT. Sec. 51.904, G.C.

E. **Authority**

1. **Administering Oaths**

Article 45.019, C.C.P., grants the power to administer the oath to a person swearing to a complaint before the municipal court. The following court officials have the authority to administer this type of oath:

- municipal judges;
- clerks of the court;
- deputy court clerks;
- city secretaries;
• city attorneys; and
• deputy city attorneys.

Section 602.002, G.C., provides authority for a municipal judge, retired municipal judge, or clerk to administer any oath. Section 29.007(f), G.C., also provides authority for a clerk in a home-rule municipality who is an appointed or elected clerk to administer oaths.

2. Issuing Subpoenas

There is no discretion regarding whether to issue a subpoena. Edmondson v. State, 43 Tex. 230 (1875). A defendant has the right to have some type of compulsory process (subpoena) for obtaining witnesses. Art. 1.05, C.C.P. Thus, a municipal court clerk must issue a subpoena if requested.

Article 24.01(d), C.C.P., states that a judge or a clerk issuing a subpoena shall sign the subpoena and indicate on it the date it was issued, but the subpoena need not be under seal.

3. Authenticating Acts

Article 45.012, C.C.P., requires municipal courts to impress a seal on all documents, except subpoenas, issued out of the court and to use the seal to authenticate the acts of the judge and clerk. This duty may be delegated to the court clerk.

Q. 69. What is a general-law city? ___________________________________________
Q. 70. In a general-law city, is the municipal court clerk hired, appointed, or elected? _____
Q. 71. What is a home-rule city? ___________________________________________
Q. 72. In a home-rule city is the municipal court clerk hired, appointed, or elected? _______

True or False
Q. 73. City secretaries may never hold the office of court clerk. _____
Q. 74. In a general-law city, a court clerk automatically serves for a two-year term unless the city provides by ordinance for a longer term. ______
Q. 75. In a general-law city, the city manager may fill a vacancy for the unexpired term of a court clerk’s office. ______
Q. 76. Every time someone is elected, appointed, or reappointed, he or she is required to swear to an anti-bribery statement and to take an oath of office. ______
Q. 77. An elected or appointed official may perform official duties before filing the anti-bribery statement with the official records of the office. ______

End True/False

Q. 78. List the general duties of the municipal court clerk. ______________________

Q. 79. If a city does not have an ordinance governing the destruction of records and a clerk wants to destroy records, what must the clerk do? ______________________
True/False

Q. 80. Both clerks and judges may establish and maintain a financial management program for the court. _____

Q. 81. Court clerks may prepare warrants but not sign them. _____

Q. 82. Only judges may grant driving safety courses, but clerks may give defendants the paperwork on court requirements for processing their cases. _____

End True/False

Q. 83. What type of records is a municipal court clerk of a court of record required to keep regarding traffic offenses? ____________________________________________

Q. 84. In non-record courts, who is required to keep records of traffic offenses? ____________________________

Q. 85. Who is required to report convictions and bond forfeitures of traffic offenses to the Department of Public Safety? ____________________________________________

Q. 86. When a prospective juror files a permanent exemption with the municipal court clerk, what is the clerk required to do? ____________________________________________

Q. 87. When either the defense or prosecution demands a jury shuffle, what is the clerk required to do? ____________________________________________

Q. 88. When a defendant appeals his or her case, what is the clerk required to do? ____________________________________________

Q. 89. What is a clerk required to do when a bond forfeiture has been declared? ____________________________________________

Q. 90. What is a clerk required to do when the victim is not present when an emergency order of protection is issued? ____________________________________________

Q. 91. What must a clerk or magistrate do when the magistrate suspends a concealed handgun license in an emergency protection order? ____________________________________________

Q. 92. What is a clerk required to do after warrants have been executed? ____________________________________________

Q. 93. Who is custodian of the funds of the court in your city? ____________________________________________

Q. 94. When a defendant does not waive a jury trial, when may the clerk summon prospective jurors? ____________________________________________

Q. 95. When may the clerk administer the oath to prospective jurors for voir dire? ____________________________________________

Q. 96. What information is required to be entered on the docket? ____________________________________________

Q. 97. Why may judges delegate the maintenance of the docket to the clerks? ____________________________________________

Q. 98. List what a clerk is required to do concerning fraudulent documents. ____________________________________________

True or False
Q. 99. Court clerks, deputy court clerks, and city secretaries may administer an oath to someone swearing to a complaint. ____

Q. 100. Municipal court clerks may administer an oath pertaining to any matter in municipal court. ____

Q. 101. Judges may ask the clerk to administer the oath to the six persons chosen for a jury. ____

End True/False

Q. 102. Why do municipal court clerks have authority to issue subpoenas? _______________

Q. 103. What wording goes on a non-record municipal court seal? ______________________

Q. 104. What is the wording on a municipal court of record seal? ______________________

Q. 105. What is the purpose of the municipal court seal? _____________________________

CONCLUSION

After reading this guide, clerks should have a clearer picture of the judicial system and their role in it. Although the judges are responsible for guiding the court, it is the clerks who manage the day-to-day operations to ensure that the ministerial and administrative duties are properly performed. Because clerks see and assist more defendants than the judges, they must understand the differences between judicial and ministerial duties so that they do not step beyond the boundaries of their authority.

Also, the clerks are a buffer between defendants and judges. Many defendants do not understand that the judge may not hear their side of the story unless it is at trial or unless the defendant wants to plead guilty or nolo contendere. To help these defendants understand court procedures, clerks should be good communicators and understand court processes and procedures to be able to properly explain them to the defendants.

There are judges who do not have clerks and must perform the ministerial and administrative work typical of clerks. When a judge does not have a clerk, the judge sees all the defendants who come to the court facility. Without the buffer of a clerk, handling defendants who do not understand the ethical standards required of judges requires good communication skills. Another area of concern for judges without a clerk is the appearance of impropriety when coordinating peace officers’ filing of tickets and the officers’ trial appearances, or providing the prosecutor information needed to prosecute cases. The judge who does not have a clerk must understand the requirements of state reports because there may be financial consequences if they are not properly and timely prepared and submitted. The judge must also have knowledge of financial management in order to properly handle the money received by the court.

Although these functions are necessary to the operation of the court, a judge performing them must do so very cautiously, remembering the Code of Judicial Conduct’s requirement to abstain from the appearance of impropriety.
# APPENDIX A
## MUNICIPAL COURT JURISDICTION

<table>
<thead>
<tr>
<th>City Ordinance</th>
<th>Cite</th>
</tr>
</thead>
<tbody>
<tr>
<td>Territorial limits (exclusive jurisdiction)</td>
<td>Art. 4.14, C.C.P. Sec. 29.003, G.C.</td>
</tr>
<tr>
<td>Property owned by city in extraterritorial limits (exclusive jurisdiction)</td>
<td>Sec. 29.003, G.C.</td>
</tr>
<tr>
<td>Extraterritorial limits: concurrent jurisdiction with justice and county court under Sec. 219.906, L.G.C. (regulating outdoor signs)</td>
<td>Sec. 26.045, G.C. Art. 4.11, C.C.P.</td>
</tr>
<tr>
<td>Appeals of red light civil penalties: A municipal court shall have exclusive appellate jurisdiction within the municipality’s territorial limits in cases arising under Ch. 707, T.C. (Photo Traffic Signal Enforcement)</td>
<td>Sec. 29.003(g), G.C.</td>
</tr>
<tr>
<td><strong>Municipal Court of Record Only:</strong> Criminal cases arising under ordinances adopted by home-rule cities involving (exclusive jurisdiction):</td>
<td>Sec. 30.00005, G.C.</td>
</tr>
<tr>
<td>• Cases arising from the inspection of dairies, slaughterhouses, or pens in or outside the city limits from which milk or meat is furnished to the residents of the city. (Sec. 215.072, L.G.C.)</td>
<td></td>
</tr>
<tr>
<td>• Nuisances within 5,000 feet of the city limits. (Sec. 217.042, L.G.C)</td>
<td></td>
</tr>
<tr>
<td>• Cases from the following areas owned by and located outside a home-rule city: Parks and grounds; lakes and land contiguous to and used in connection with a lake; and speedways and boulevards. (Sec. 341.903, L.G.C.)</td>
<td></td>
</tr>
<tr>
<td>• Watersheds if population greater than 750,000 and groundwater constitutes more than 75 percent of city’s source of water supply. (Sec. 401.002)</td>
<td></td>
</tr>
<tr>
<td><strong>Municipal Court of Record Only:</strong> By ordinance, the governing body can provide for concurrent civil jurisdiction with county courts to enforce nuisance abatement and junk vehicle provisions of Ch. 503, T.C.</td>
<td>Sec. 30.00005(d), G.C.</td>
</tr>
<tr>
<td>Territorial limits: resolution, rule, or order (exclusive jurisdiction) Property owned by city in extraterritorial limits (exclusive jurisdiction)</td>
<td>Sec. 29.003, G.C. Sec. 29.003, G.C.</td>
</tr>
<tr>
<td><strong>Joint Board Operating an Airport</strong></td>
<td></td>
</tr>
<tr>
<td>Territorial limits</td>
<td>Art. 4.14, C.C.P. Sec. 29.003, G.C.</td>
</tr>
<tr>
<td>Fine-only offenses (concurrent jurisdiction with justice court)</td>
<td></td>
</tr>
<tr>
<td>Property owned by city in extraterritorial limits (concurrent jurisdiction with justice court)</td>
<td>Sec. 29.003, G.C.</td>
</tr>
<tr>
<td>Territorial limits and property owned by the city in extraterritorial limits (concurrent jurisdiction with the justice court, county court, and county court-at-law for enforcement of Ch. 503, T.C.)</td>
<td>Sec. 503.092(b), T.C.</td>
</tr>
</tbody>
</table>

*Secs. 341.903 and 401.002, L.G.C., only provide authority to a home-rule municipality*

Abbreviations:

- C.C.P. = Code of Criminal Procedure
- G.C. = Government Code
- L.G.C. = Local Government Code
- T.C. = Transportation Code
### APPENDIX B: WHOSE JOB IS IT?

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>JUDGE</th>
<th>CLERK</th>
<th>MAGISTRATE</th>
<th>PROSECUTOR</th>
<th>OTHER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Review probable cause for A &amp; B misdemeanor &amp; felony warrants</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Approve charges and dictate language in charging instruments</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Administer oath to affiant swearing to complaint (charging instrument) in municipal court</td>
<td>X</td>
<td></td>
<td>X</td>
<td>city secretary, city and deputy city attorney</td>
<td></td>
</tr>
<tr>
<td>Administer oath to affiant swearing to complaint – A &amp; B misdemeanors &amp; felonies</td>
<td></td>
<td></td>
<td></td>
<td>district and county attorney</td>
<td>X</td>
</tr>
<tr>
<td>Maintain the docket</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Formally accept pleas from defendants</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Set fines</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grant extensions for payment</td>
<td>X</td>
<td></td>
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<tr>
<td>Accept plea bargains</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sign judgments</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issue arrest warrants</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issue capiases or capias pro fine</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issue summons</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Execute warrants, capiases, or summons</td>
<td></td>
<td></td>
<td></td>
<td>peace officer</td>
<td>X</td>
</tr>
<tr>
<td>Set bail</td>
<td>X</td>
<td></td>
<td>X</td>
<td>peace officer in limited circumstances</td>
<td>X</td>
</tr>
<tr>
<td>Deliberate on evidence for determination of guilt</td>
<td>X</td>
<td></td>
<td></td>
<td>jurors</td>
<td>X</td>
</tr>
<tr>
<td>Rule on law or facts at trial</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grant continuances</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rule on motions</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Request witness subpoenas</td>
<td></td>
<td></td>
<td>X</td>
<td>defendant</td>
<td>X</td>
</tr>
<tr>
<td>Issue subpoenas</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Serve subpoenas</td>
<td></td>
<td></td>
<td></td>
<td>peace officer or 18 years old &amp; not a party</td>
<td>X</td>
</tr>
<tr>
<td>Dismiss cases</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Prepare file for appellate court</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grant a driving safety course</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grant deferred disposition</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issue magistrate’s order of emergency protection</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Administer magistrate warnings</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>
# APPENDIX C: COMPLIANCE DISMISSAL CHART

<table>
<thead>
<tr>
<th>Offense</th>
<th>Statute</th>
<th>Length of Time to Comply</th>
<th>Other Required Conditions</th>
<th>Amount of Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expired Motor Vehicle Registration</td>
<td>Section 502.407(b), Transportation Code</td>
<td>20 working days after the date of the offense or before the defendant’s first court appearance, whichever is later.</td>
<td>Court may dismiss. Defendant must show proof of payment of late registration fee to county assessor-collector.</td>
<td>Not to exceed $20. Fee Optional.</td>
</tr>
<tr>
<td>Operate Motor Vehicle Without Registration Insignia Properly Displayed</td>
<td>Section 502.473(a) &amp; (d), Transportation Code</td>
<td>Statute does not specify.</td>
<td>Court may dismiss. Defendant must show that motor vehicle was issued a registration insignia that was attached to the motor vehicle establishing that the vehicle was registered for the period during which the offense was committed.</td>
<td>Not to exceed $10. Fee Required.</td>
</tr>
<tr>
<td>Attaching or Displaying on a Motor Vehicle a Registration Insignia that is Assigned for a Period other than the Period in Effect</td>
<td>Section 502.475(a)(3) &amp; (c), Transportation Code</td>
<td>Before defendant’s first court appearance.</td>
<td>Court may dismiss.</td>
<td>Not to exceed $10. Fee Required.</td>
</tr>
<tr>
<td>Operate Motor Vehicle Without Two License Plates</td>
<td>Section 504.943(a) &amp; (d), Transportation Code</td>
<td>Before the defendant’s first court appearance.</td>
<td>Court may dismiss.</td>
<td>Not to exceed $10. Fee Required.</td>
</tr>
<tr>
<td>Attaching or Displaying on a Motor Vehicle a License Plate that is Obscured or Assigned for a Period Other than the Period in Effect</td>
<td>Section 504.945(a)(3), (5), (6), (7) &amp; (d), Transportation Code</td>
<td>Before the defendant’s first court appearance.</td>
<td>Court may dismiss.</td>
<td>Not to exceed $10. Fee Required.</td>
</tr>
<tr>
<td>Expired Driver’s License</td>
<td>Section 521.026(a), Transportation Code</td>
<td>20 working days after the date of the offense or before the defendant’s first court appearance, whichever is later.</td>
<td>Court may dismiss.</td>
<td>Not to exceed $20. Fee Optional.</td>
</tr>
<tr>
<td>Fail to Report Change of Address or Name</td>
<td>Section 521.054(d), Transportation Code</td>
<td>20 working days after the date of the offense.</td>
<td>Court may dismiss.</td>
<td>Not to exceed $20. Fee Required. Court may waive in the interest of justice.</td>
</tr>
<tr>
<td>Violate Driver’s License Restriction or Endorsement</td>
<td>Section 521.221(d), Transportation Code</td>
<td>Before the defendant’s first court appearance.</td>
<td>Court may dismiss. Driver’s license endorsement was imposed because of a physical condition that was surgically or otherwise medically corrected before the date of the offense, or in error and that is established by the defendant; and DPS removes the restriction or endorsement before the defendant’s first court appearance.</td>
<td>Not to exceed $10. Fee Required.</td>
</tr>
<tr>
<td>Operate Vehicle with Defective Required Equipment (or in Unsafe Condition)*</td>
<td>Section 547.004(c), Transportation Code</td>
<td>Before the defendant’s first court appearance.</td>
<td>Court may dismiss. Does not apply if the offense involves a commercial motor vehicle.</td>
<td>Not to exceed $10. Fee Required.</td>
</tr>
<tr>
<td>Expired Inspection (less than 60 days)</td>
<td>Section 548.605(b), Transportation Code</td>
<td>20 working days after the date of the offense or before the defendant’s first court appearance, whichever is later.</td>
<td>Court shall dismiss.</td>
<td>Not to exceed $20. Fee Required.</td>
</tr>
<tr>
<td>Expired Inspection (more than 60 days)</td>
<td>Section 548.605(c), Transportation Code</td>
<td>20 working days after the date of the offense or before the defendant’s first court appearance, whichever is later.</td>
<td>Court may dismiss. No Fee Authorized.</td>
<td></td>
</tr>
<tr>
<td>Expired Disabled Parking Placard (less than 60 days)</td>
<td>Section 681.013(b), Transportation Code</td>
<td>20 working days after the date of the offense or before the defendant’s first court appearance, whichever is later.</td>
<td>Court shall dismiss.</td>
<td>Not to exceed $20. Fee Required.</td>
</tr>
<tr>
<td>Expired Disabled Parking Placard (more than 60 days)</td>
<td>Section 681.013(c), Transportation Code</td>
<td>20 working days after the date of the offense or before the defendant’s first court appearance, whichever is later.</td>
<td>Court may dismiss. No Fee Authorized.</td>
<td></td>
</tr>
<tr>
<td>Expired Certificate of Number</td>
<td>Section 31.127(f), Parks and Wildlife Code</td>
<td>10 working days after the date of the offense.</td>
<td>Court may dismiss. Certificate of number cannot be expired more than 60 days.</td>
<td>Not to exceed $10. Fee Required.</td>
</tr>
</tbody>
</table>

Rev. 08/11
ANSWERS TO QUESTIONS

PART 1
Q. 1. The Texas Constitution.
Q. 2. The government is divided into three branches—executive, legislative, and judicial—and no person in any of the three branches may exercise the authority attached to any other branch except where expressly permitted by the Constitution.
Q. 3. The three branches of city government are the legislative branch that is the city council; the executive branch that includes the city manager, all administrative departments, and the police department; and the judicial branch that is the municipal court.
Q. 4. No (the city council does, however, have authority to adopt ordinances and create penalties for violating the ordinances).
Q. 5. The following courts are constitutional courts because they were established by the Texas Constitution: Supreme Court, Court of Criminal Appeals, the courts of appeals, the district courts, the county courts, and the justice of the peace courts.
Q. 6. Municipal courts are statutory courts because they were created by the Texas Legislature.
Q. 7. A municipal court is created when a municipality is incorporated.
Q. 8. Municipal court of record or non-record municipal court.

PART 2
Q. 9. Jurisdiction is authority and legal power to hear and decide cases.
Q. 10. A civil lawsuit may be brought when one person feels wronged or injured by another person. A criminal case is a legal action brought by the government against a person charged with committing a crime.

PART 3
Q. 11. Yes.
Q. 13. Exclusive original jurisdiction.
Q. 14. Municipal courts share jurisdiction with justice of the peace courts and municipal courts of record share limited jurisdiction with county and district courts.
Q. 15. Municipal court has concurrent jurisdiction with the justice of the peace court of a precinct in which the municipality is located in all criminal cases arising under state law that arise within the territorial limits of the city and property owned by the city in the city’s extraterritorial limits, and are punishable by fine-only and such sanctions, if any, as authorized by statute not consisting of confinement in jail or imprisonment. Municipal courts of record also share jurisdiction with county and district courts over the enforcement of dangerous structures and junked vehicle ordinances.
Q. 16. The geographic jurisdiction of the municipal court includes the territorial limits of the city and property owned by the city within the city’s extraterritorial limits. Municipal courts of record also have jurisdiction over certain ordinances within the city’s extraterritorial jurisdiction.
Q. 17. A municipal court of record has geographical jurisdiction over nuisance violations in the city’s territorial limits and its extraterritorial limits.

Q. 18. Municipal court does not have any jurisdiction over those offenses because the offenses occur outside of municipal court’s extraterritorial geographic jurisdiction.

Q. 19. Municipal courts have jurisdiction over offenses that are punishable by a penalty of a fine only and other sanctions, if any, which are authorized by statute and do not consist of confinement in jail or imprisonment. Municipal courts have jurisdiction over any offense regardless of the amount of fine penalty as long as no confinement is included as a sanction.

Q. 20. Article 4.14, C.C.P., and Section 29.003, G.C., provide that municipal courts have jurisdiction over fine-only offenses that do not include confinement and provides that a sanction, such as a denial, suspension, or revocation of a privilege, does not affect the original jurisdiction of the municipal court, by an agency or entity other than the court.

Q. 21. Answers for this question may vary, but one example of an offense that has a sanction in addition to the fine is the offense of possession of alcohol by a minor that requires upon conviction that the defendant take an alcohol awareness course and complete community service hours.

Q. 22. $500.

Q. 23. A fine not to exceed $2,000.

Q. 24. Answer:
- Theft of property of a value less than $50. Sec. 31.04, P.C.;
- Theft of property of a value less than $20 if the defendant obtained the property by issuing or passing a check or sight order and the person did not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders then outstanding. Sec. 31.03, P.C.;
- Theft of services of a value less than $20. Sec. 31.04, P.C.; and
- Theft of service or credit by intentionally or knowingly making a false or misleading written statement to obtain property or credit for himself or another if the value of the property or the amount of the credit is less than $50. Sec. 32.32, P.C.

Q. 25. When a complaint or citation is filed with the court.

Q. 26. No, because there are no charges filed by a complaint or by a citation. The filing of the complaint or citation initiates the case and gives the municipal court jurisdiction.

Q. 27. Two years from the date of the commission of the offense.

PART 4

Q. 28. In a general-law city, the mayor is the ex-officio judge of the municipal court. The mayor continues as municipal judge during his or her term as mayor unless the municipality, by ordinance, authorizes the election of a judge or provides for the appointment and qualifications of a judge by ordinance. After the ordinance is adopted by the city council, the mayor ceases to act in the capacity of a judge, even if the position of judge is vacant.
Q. 29. The city’s charter.

Q. 30. If a municipal judge of a general-law city is temporarily unable to act, the governing body may appoint one or more persons meeting the qualifications for the position to sit for the regular municipal judge. The appointee has all powers and duties of the office and is entitled to compensation.

Q. 31. A question of law is an issue involving application or interpretation of a law.

Q. 32. A question of fact is an issue involving resolution of a factual dispute.

Q. 33. Judicial discretion is the exercise of judicial judgment. Judges’ discretion to make decisions must be guided by law and be based on facts and is the power to determine what, under existing circumstances, is right or proper.

Q. 34. When a law prescribes a certain way to perform a certain action, the judge has no discretion.

Q. 35. Judges can delegate a ministerial duty to the clerk.

Q. 36. False.

Q. 37. False.

Q. 38. False.


Q. 40. False.

Q. 41. False.

Q. 42. False.

Q. 43. True.

Q. 44. True.

Q. 45. False.

Q. 46. True.

Q. 47. False.

Q. 48. False.

Q. 49. False.

Q. 50. False.

Q. 51. False.

Q. 52. False.

Q. 53. True.

Q. 54. True.

Q. 55. True.

Q. 56. False.

Q. 57. True.

Q. 58. False.

Q. 59. True.

Q. 60. False.

Q. 61. True.


Q. 63. False. (Only a prosecutor may request a case be dismissed.)
Q. 64.  False.
Q. 65.  False.
Q. 66.  False.
Q. 67.  Contempt power.
Q. 68.  Family Code.

PART 5
Q. 69.  A general-law city is one with a population under 5,000 or with a population of more than 5,000 that does not have a home-rule charter and is, therefore, governed by the general laws of the state.
Q. 70.  In general-law cities, the municipal court clerk may be either appointed or elected.
Q. 71.  A home-rule city is one that has a charter that governs it, and, therefore has a measure of self-government.
Q. 72.  In a home-rule city, the municipal court clerk may be hired, appointed, or elected.
Q. 73.  False.
Q. 74.  True.
Q. 75.  False.
Q. 76.  True.
Q. 77.  False.
Q. 78.  Answer:
- keep minutes of the court proceedings;
- issue (prepare) process; and
- generally perform the duties for the municipal court that a county clerk performs for a county court.
Q. 79.  The clerk must get permission from the State Library and Archives Commission to destroy the records.
Q. 80.  True.
Q. 81.  True.
Q. 82.  True.
Q. 83.  Municipal court clerks of courts of records are required to keep a record of each case in which a person is charged with a violation of law regulating the operation of vehicles on highways.
Q. 84.  In non-record courts, judges and magistrates are required to keep records of traffic offenses. Keeping these types of records is a ministerial duty that judges may delegate to the clerk.
Q. 85.  Municipal court clerks, judges, and magistrates are required to report convictions and bond forfeitures of traffic offense to the Department of Public Safety.
Q. 86.  The clerk is required to deliver a copy of the permanent exemption to the county tax assessor/collector.
Q. 87.  The clerk is required to randomly select jurors by computer or another process of random selection and shall write or print the names in the order selected on the jury list. The clerk shall deliver a copy of the list to the prosecutor and to the defendant or his or her attorney.
Q. 88. The clerk has a mandatory ministerial duty to forward the appeal to the appellate court.

Q. 89. When a forfeiture has been declared, the judge or clerk shall docket the case upon the scire facias (a special docket for bond forfeiture) or upon the civil docket.

Q. 90. The clerk is required to send a copy of the order to the victim.

Q. 91. The clerk or judge must immediately notify the Texas Department of Public Safety.

Q. 92. Keep a copy of the warrants and supporting affidavits on file for public viewing.

Q. 93. Answer may vary from city to city.

Q. 94. A clerk may summon prospective jurors when the judge issues a writ commanding the clerk to summon a list of citizens from which six qualified persons shall be selected.

Q. 95. The clerk may administer the oath to prospective juror for voir dire when directed to do so by the judge.

Q. 96. Answer:
   - the style and file number of each criminal action;
   - the nature of the offense charged;
   - the plea offered by the defendant and the date the plea was entered;
   - the date the warrant, if any, was issued and the return made thereon;
   - the date the examination of trial was held, and if a trial was held, whether it was by jury or by the justice or judge;
   - the verdict of the jury, if any, and the date of the verdict;
   - the judgment and sentence of the court, and the date each was given;
   - the motion for new trial, if any, and the decision thereon; and
   - whether an appeal was taken and the date of that action.

Q. 97. Since judges are required to keep a docket and there is no discretion as to the information required to be maintained, judges may delegate this duty to the clerk.

Q. 98. A municipal court clerk is required to notify in writing the aggrieved person against whom the purported judgment, act, order, directive, or oral process is rendered. If the document or instrument purports to create a lien on real or personal property, the clerk is required to notify in writing the person named in the document at his or her stated or last known address. The clerk is required to provide this written notice not later than the second business day after the date that the document or instrument is offered or submitted for filing. The clerk is also required to post a warning sign with letters at least one inch in height that is clearly visible to the general public near the clerk’s office stating: IT IS A CRIME TO INTENTIONALLY OR KNOWINGLY FILE A FRAUDULENT COURT DOCUMENT OR INSTRUMENT.

Q. 99. True. This authority is found in Art. 45.019, C.C.P.

Q. 100. True.

Q. 101. True.
Q. 102. Municipal court clerks have the authority to issue subpoenas because there is no discretion in issuing a subpoena. Defendants have a right to some type of compulsory process compelling the attendance of witnesses at a trial.

Q. 103. The statute requiring the seal does not provide the wording of the seal.

Q. 104. “Municipal Court of/in ___________, Texas.”

Q. 105. The purpose of the court seal is to authenticate the acts of the judge and clerk.
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INTRODUCTION

Ethics is one of the most important topics for clerks to study because of the contact that they have with the judge, the parties, and the public. In every court, incidents occur daily that require clerks to make ethical judgments over what to do or say.

The court clerk plays an essential role in assuring the integrity and efficiency of the courts and in maintaining public confidence in the fairness of the Texas judicial system. Clerks not only perform the administrative work of the courts (i.e., caseflow and records management, filing, collecting court costs and fines), but they also provide guidance to court users and help shape the public’s perception of the Texas system of justice. Clerks act as a liaison between the public and the judiciary. They must find the proper balance among responsibilities as public servants, as court clerks, as city employees, and as individuals. In addition to the difficulty in maintaining this delicate balance, non-judicial employees are expected to abide by the same rules that apply to the judges as outlined in the canons of the Code of Judicial Conduct. The term “canon” refers to a standard of ethical conduct for members of the judiciary. The Code of Judicial Conduct, which is promulgated by the Texas Supreme Court, states basic standards and assists judges and clerks in establishing and maintaining high standards of judicial and personal conduct.

As clerks read this study guide, they will find that the ethical standards found in the Code of Judicial Conduct were written to be broad and flexible enough to offer guidance to judges and clerks in all Texas courts. Because ethical rules cannot address every situation, personal integrity and judgment are crucial to the judicial system.

Q. 1. Define canon. __________________________________________________________

Q. 2. What is the intent of the Code of Judicial Conduct? ____________________________________

PART 1
ETHICS AND INTEGRITY

Generally, when a person thinks about ethics, he or she thinks of what is right or wrong. Webster’s Dictionary defines ethics as “the discipline dealing with what is good and bad and with moral duty and obligation; a set of moral principles or values.”

What a person considers to be ethical depends on that person’s value system. A value system consists of personal beliefs developed through life experiences and teachings. A person’s values are standards which he or she believes in strongly and do not change or compromise unless there is a very good reason to do so.

To better serve the judicial system, municipal court clerks should strive for high personal integrity. Webster’s Dictionary defines integrity as “strict personal honesty and independence.” Essentially, integrity is adhering to one’s moral values or putting into practice one’s values and beliefs. The following is a list of suggestions to help clerks strive for and attain integrity and professionalism:

• have a positive attitude;
• carry out responsibilities in as courteous a manner as possible;
• support open communication, hard work, and dedication;
• avoid conflicts of interest;
• respect privileged information;
• do not attempt to use the official position to secure unwarranted privileges or exemptions;
• keep up-to-date on the laws;
• eliminate fraud and mismanagement of funds;
• eliminate verbal or nonverbal manifestations of bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status;
• adopt time and stress management skills; and
• be committed to the standards in the Code of Judicial Conduct.

Q. 3. Define ethics. ____________________________________________________________
Q. 4. Define integrity. __________________________________________________________

PART 2
COMMISSION ON JUDICIAL CONDUCT

The Texas Constitution requires the Commission on Judicial Conduct (the “Commission”) to maintain information about the misconduct or disability of judges, to receive complaints from any source, and to investigate complaints against judges. The constitution provides the Commission authority to issue admonitions, warnings, reprimands, training sanctions, and order formal hearings concerning the public censure, removal, or retirement of a judge.

Generally, the Commission’s goals are to:
• preserve the integrity of all judges in the state;
• ensure public confidence in the judiciary; and
• encourage judges to maintain high standards of both professional and personal conduct.

To achieve these goals, the Commission not only issues sanctions or secures the removal of judges from office who violate legal or ethical standards, but also offers assistance to judges who have an underlying personal impairment that may be connected to the misconduct. In addition, the Commission members and staff participate as faculty members in continuing education programs at all levels of the judiciary.

The Commission issues annual reports, available online at www.scjc.state.tx.us. The information in this guide uses the Commission’s annual reports through the most current report, 2010.

The Commission’s authority is exercised over more than 3,800 judges and judicial officers in Texas, including appellate judges, district judges, county judges, justices of the peace, municipal judges, masters, magistrates, and retired and former judges who are available for assignment as visiting judges. The Commission does not have jurisdiction over federal judges and magistrates,
administrative hearing officers for state agencies, such as the State Office of Administrative Hearings, or private mediators or arbitrators.

A. Authority for Operation of the Commission

The State Commission on Judicial Conduct was created by an amendment to the Texas Constitution in 1965. The Texas Constitution, Section 1-a, Article V, and Chapter 33 of the Texas Government Code are the sources of authority under which the Commission operates.

B. Procedures

The constitutional and statutory provisions, together with the Procedural Rules for the Removal or Retirement of Judges promulgated by the Texas Supreme Court, make up the procedural framework within which the Commission operates.

1. Complaints

A file is initiated by a written complaint. Prior to filing a written complaint, the complainant may contact the Commission by telephone. If the caller is interested in filing a complaint, the caller is sent an outline of policies and procedures together with an affidavit form. While the complaint may be sworn to, the Commission also considers letters and news clippings as a basis for opening a file. The Commission may initiate an inquiry on its own motion, particularly in a case where the actions of a judge are reported by the news media and appear to be possible misconduct or appear to bring discredit upon the judiciary.

A complainant may request that the Commission keep his or her identity confidential. The Commission must notify complainants of the actions taken on their complaints. However, if a complaint goes to formal proceedings, the judge does have a right to confront witnesses, including the complainant.

When a complaint is received, a file is established and reviewed by the executive director. The case is analyzed and assigned to a staff attorney who reviews the allegations. A preliminary screening determines if further investigation is appropriate. On occasion, an individual will complain to the Commission about the actions of law enforcement officers, corrections officials, lawyers, or even the federal judiciary. In these instances, no case is opened and the individual is notified that the Commission has no jurisdiction in the matter. In other cases, the complainant may be disgruntled with a judge’s decision, particularly in emotionally charged litigation such as divorce/custody cases, contested probate cases, or criminal trials. Such matters are properly matters for appeal. In all cases, the complainant is notified by mail that the complaint has been received. If the complaint is vague in its allegations, the complainant may be asked for more specific detail or additional documentation.

If further inquiry is appropriate, the judge is informed in writing that an investigation has commenced and of the nature of the matter being investigated. The judge may be requested to respond in writing to specific inquiries or to explain the judge’s authority for the actions in question. Facts may be further investigated on-site or through telephone interviews. At times, the Commission may request investigative assistance from other agencies such as the Department of Public Safety, the Texas Ranger Service, or a district attorney’s office. The Commission has the right to subpoena judges to appear or to produce documents and to depose witnesses.
Each complaint is briefed by staff along with any investigative results and presented to the Commission at its regularly scheduled meeting in Austin every other month. On occasion, the Commission will convene special meetings. There, the Commission may request further investigation, or it may ask that the judge provide further information. The Commission may also dismiss the case at its first presentation.

At the conclusion of every case, the complainant is notified of the final outcome in accordance with statutory requirements. In situations where a public sanction has been issued, the complainant is provided with a copy.

2. Confidentiality

The Commission is not governed by the Texas Public Information Act (Ch. 552, G.C.), the Open Meetings Act (Ch. 551, G.C.), or the Texas Administrative Procedures Act (Ch. 2001, G.C.), as it is considered to be a part of the judiciary with its own constitutional and statutory provisions regarding the confidentiality of papers, records, and proceedings.

a. Records and Information

The availability of information and records maintained by the Commission is governed by Rule 12 of the Texas Rules of Judicial Administration, the Texas Constitution, and the Texas Government Code.

Although generally information is confidential, (Secs. 33.032 and 33.0321, G.C.) there are some exceptions, which include:

- public sanctions;
- suspension orders and proceedings;
- voluntary agreements to resign in lieu of disciplinary proceedings;
- papers filed in formal proceedings when formal charges are filed; and
- if issues concerning a judge or the Commission is made public by sources other than the Commission, the Commission may make a public statement.

b. Proceedings

Commission proceedings are confidential and privileged until the convening of a formal hearing unless:

- a judge who is appearing before the Commission elects to have the hearing open to the public or to persons designated by the judge;
- the Commission issues a public admonition, warning, reprimand, or requirement that a person obtain additional training or education, in which case, all papers, documents, evidence, and records considered by the Commission shall be public; or
- the judge appeals a private sanction.

When the Commission determines that formal proceedings are in order, confidentiality ends upon the convening of a formal proceeding, and such a hearing is public.
3. **Meeting with the Commission**

Although the meeting with the Commission is confidential in accordance with constitutional requirements, the judge has the right to waive confidentiality and open the meeting. The judge may be represented by legal counsel. If the judge wishes to introduce the testimony of others, it must, at this point, be written. Only the judge may present oral testimony under oath.

4. **Possible Actions by the Commission**

The following information explains the possible actions of the Commission.

a. **Dismissal**

Prior to the decision to dismiss, the Commission often expends considerable resources in fact collection. The Commission may choose to dismiss a case for a variety of reasons, including:

- corrective action;
- no misconduct;
- lack of proof;
- no jurisdiction - the actions were within judicial discretion;
- the judge’s action did not rise to the level of judicial misconduct; or
- the judge agreed to voluntarily resign from judicial office in lieu of disciplinary action.

A complainant may request reconsideration of a dismissal of a complaint. The request must be received within 30 days of notification of the dismissal and must contain new evidence or factual material. Reconsideration can be requested only once.

b. **Amicus Curiae Program**

Amicus Curiae is a judicial disciplinary and educational program initially funded by the Legislature in 2001. Amicus Curiae (Amicus), which means “friend of the court,” provides authority for the Commission to order additional training and education when a judge has been found to have violated a Canon of Judicial Conduct. It does not replace the regular disciplinary procedures, but rather supplements them. The Amicus program also helps identify sources of diagnosis and treatment for impaired judges. A referral to Amicus by the Commission through the disciplinary process is confidential, but does not protect a judge from sanctions if the Commission has deemed that a judge has violated a canon.

Amicus also provides the opportunity for judges who need help to seek assistance through the Amicus program outside the disciplinary process. This program helps all judges, attorney and non-attorney. For assistance, contact the Commission on Judicial Conduct at 877.228.5750 or 512.463.5533.

c. **Sanctions**

In cases of judicial discipline, the Commission considers the purpose of a sanction not to secure vengeance, retribution, or punishment, but to deter any similar misconduct by judges in the future, to promote proper administration of justice, and to reassu
system in this State neither permits nor condones misconduct. The judicial officers of this State, even those sanctioned, are dedicated to the principle of government through rule of law and are deserving of continued confidence in their honor and integrity.

No sanction is issued by the Commission unless the judge involved has been advised of the nature of the allegations and has been afforded an opportunity to respond. No public sanction is issued unless the judge has been afforded an opportunity to appear.

Any sanction issued by the Commission may be appealed by the judge to a special court of review composed of three justices from Courts of Appeals selected by the Chief Justice of the Supreme Court. The review is de novo under rules of law, evidence, and procedure for civil actions. The special court of review may dismiss or affirm the Commission’s decision. It may also impose a lesser or greater sanction or institute formal proceedings.

Causes for sanction of a judge may be due to willful or persistent conduct that is clearly inconsistent with the proper performance of duties or casts public discredit upon the judiciary or administration of justice. Improper conduct includes, but is not limited to:

- failure to execute the business of the court in a timely manner;
- incompetence in the performance of the duties of office;
- willful violation of a provision of the Texas Constitution, the Texas Penal Code, or the Code of Judicial Conduct, or persistent or willful violation of the Rules of the Supreme Court of Texas;
- inappropriate or demeaning courtroom conduct (i.e., yelling, profanity, gender bias, or racial slurs);
- improper communication with only one of the parties or attorneys in a case;
- failure to disqualify in a case where the judge has an interest in the outcome (It could involve ruling in a case in which the parties or attorneys are within a prohibited degree of kinship to the judge.);
- failure to cooperate with the Commission or abide by an agreement entered with the Commission; and
- failure to cooperate with respect to his or her obligations arising from an inquiry by the Commission.

Judicial misconduct may also include out-of-court conduct that is subject to the same review by the Commission. Examples include:

- a public comment regarding a pending case;
- theft;
- driving while intoxicated;
- sexual harassment; or
- official oppression.

The Commission does not have authority to change decisions of any court or to act as an appellate review board. The Commission does not give legal advice, issue advisory opinions, or sanction judges who act in good faith in reaching a legal decision, making findings of fact, or applying the law as the judge understands it.
The Commission may impose the following sanctions:

(1) **Additional Training**

Requiring a judge to obtain additional continuing education is a sanction that the Commission believes is especially effective. Such an order can be tailored to remedy any particular problem area in the judge’s understanding of the judicial process.

(2) **Private Admonition**

A written private admonition is the least onerous of all sanctions that may be imposed by the Commission. A private admonition indicates to the judge that his or her actions were inappropriate and suggests a preferred approach to handling similar situations.

(3) **Private Warning or Reprimand**

A written private warning is stronger than an admonition, and a private reprimand is stronger still, spelling out the findings of fact and specifying the standards of law or ethics violated.

(4) **Public Admonition or Warning**

A public admonition or warning is similar to a private admonition or warning except that it is released to the public. This is meant to instruct other members of the judiciary and to reassure the public that their interests are being protected and that the high standards of the Texas judiciary are being maintained.

(5) **Public Reprimand**

The most serious of all sanctions that can be issued, other than formal proceedings, is the public reprimand. This sanction is issued when the Commission believes that a judge has committed serious misconduct, and both the public and the judiciary would be best served by a public statement of the judge’s misconduct.

(6) **Suspension**

A judge, indicted with a felony offense or charged with a misdemeanor involving official misconduct, may be suspended from office with or without pay pending resolution of the criminal charges. In a situation where a judge is suspended because of pending criminal charges, the Commission undertakes its own examination. The Commission does not proceed as in the manner of a criminal case, and it does not determine guilt or innocence by the evidentiary standard of beyond a reasonable doubt. Rather, by using the preponderance of the evidence standard, the Commission determines whether or not the judge has brought discredit upon the judiciary or engaged in willful or persistent conduct that is clearly inconsistent with the proper performance of judicial duties.

(7) **Removal or Censure**

The Commission may seek the removal or censure of a judge through formal proceedings which essentially amount to a public trial. Subpoena power is provided to enable the Commission to carry out its work.
C. Formal Proceedings

When the Commission determines that formal proceedings are in order, confidentiality ends. A formal proceeding is an adjudicative proceeding in which the judge is entitled to due process of law in the same manner as any person whose property rights are in jeopardy. The Commission seeks the appointment of a master by the Supreme Court. After a public hearing, with the master presiding, the master makes findings of fact. The Commission may then dismiss the complaint, publicly censure the judge, or forward the findings with a recommendation for removal. Public censure following a formal proceeding is “tantamount to denunciation of the offending conduct,” and a more severe action than remedial sanctions that may be issued prior to a formal proceeding. In the event of a recommendation for removal, the Supreme Court appoints a seven-judge tribunal made up of justices from courts of appeal throughout Texas. Appeal from a decision of the tribunal is directly to the Supreme Court, which considers the case under the substantial evidence rule.

Section 33.038, G.C., provides for automatic removal of judges who are convicted or given deferred adjudication for felony offenses or misdemeanor offenses involving official misconduct. Judges who are removed or involuntarily retired may be prohibited from holding a judicial office in the future. In addition, district and appellate judges who are removed by the Commission may not be eligible for judicial retirement benefits.

At the conclusion of every case, the complainant is notified of the final outcome in accordance with statutory requirements. In situations where a public sanction has been issued, the complainant is provided a copy.

Q. 5. What is the goal of the Commission on Judicial Conduct? ____________________________________________

Q. 6. How does the Commission endeavor to achieve its goal? ____________________________________________

Q. 7. What provides authority for the Commission on Judicial Conduct to operate? ______

__________________________________________

True or False

Q. 8. A file is initiated with the Commission on Judicial Conduct when the Commission receives a telephone complaint. ______

Q. 9. Complainants may request the Commission on Judicial Conduct keep their identity confidential. ______

Q. 10. The Commission on Judicial Conduct does not allow complaints to be filed anonymously. ______

Q. 11. Information gathered by the Commission on Judicial Conduct may never be made public. ______

Q. 12. All proceedings of the Commission on Judicial Conduct are conducted publicly. ______

Q. 13. The Commission on Judicial Conduct may dismiss a case if a judge took corrective action in the case against him or her. ______
Q. 14. Amicus Curiae is a special program developed by the Commission on Judicial Conduct to address judicial impairments. ____

Q. 15. Improper conduct includes failure to conduct court business in a timely manner. ____

Q. 16. Judges could be reprimanded for incompetence in the performance of their duties. ____

End True/False

Q. 17. Rank the following actions by the Commission in order of severity. (1= the most)

____ Removal-Censure
____ Private Admonition
____ Public Reprimand
____ Public Admonition

PART 3
ETHICS COMMITTEE

The Ethics Committee of the Judicial Section of the State Bar of Texas issues opinions on ethical issues faced by Texas judges. Although these are not binding on the Commission on Judicial Conduct, the reasoning of these opinions is insightful and usually parallels the Commission. Some of these opinions are noted in the commentary following the Canons of the Code of Judicial Conduct provided in Part 4 of this guide. These opinions may also be accessed online at http://www.courts.state.tx.us/judethics/canons.asp.

PART 4
CODE OF JUDICIAL CONDUCT

Canon 1 of the Code of Judicial Conduct requires judges to participate in establishing, maintaining, and enforcing high standards of conduct to uphold the integrity and independence of the judiciary. Canon 3C(2) of the Code says that judges should require staff, court officials, and others subject to the judge’s direction and control to observe the same standards of fidelity and diligence that apply to the judge. Consequently, clerks should observe the same professional standards as the judge.

This study guide includes portions of the code that relate to the municipal courts. Due to the structure and jurisdiction of the municipal courts, some canons do not apply to the municipal and justice courts, and have not been included here.

For a complete copy of the Code, contact the Commission on Judicial Conduct at 877.228.5750 (toll free) or 512.463.5533. The Code of Judicial Conduct can also be viewed online at http://www.courts.state.tx.us/judethics/ethicsop.asp or at TMCEC’s website.

The Code of Judicial Conduct consists of specific rules set forth in sections under broad captions called canons following an introductory preamble. Commentary has been added to help clerks gain a better understanding of the canons.
Preamble

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code of Judicial Conduct are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards, which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

Commentary: Although the Preamble does not specially mention court support personnel, Canon 3C(2) says that a “judge should require staff, court officials, and others subject to the judge’s direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.” Also, Canons 3B(4), 3B(6), and 3B(10) specifically mention court staff and personnel under the judge’s direction and control. Although the Commission on Judicial Conduct does not accept complaints against a clerk, the judge may be held responsible for the clerk’s actions in a disciplinary proceeding.

Q. 18. Upon what principle is our legal system based? ________________________________

Q. 19. Why should clerks observe the same professional standards as judges? __________

Q. 20. What might happen if a clerk’s conduct is improper? __________________________

Q. 21. What is the role of the clerk in the court? _________________________________

Canon 1: Upholding the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct and should personally observe those standards so that the integrity and independence of the judiciary is preserved. The provisions of this Code are to be construed and applied to further that objective.

Commentary: An honorable judicial system is one that is held in high esteem. It is a system that people respect. It is a system built on the principle of an independent judiciary.

It may be difficult for municipal courts to appear independent when they work in close proximity to law enforcement. However, municipal courts must be separate from and not show favoritism to the police. If the court is located in the same building as the police department, the court...
should have a separate entrance. The court should have its own telephone line that is answered “Municipal Court.” Having a separate room to conduct court business helps the court avoid the appearance of impropriety.

If a clerk is supervised by someone in the executive branch, such as a finance director or a police captain, he or she might have a difficult time appearing and acting independent. In this instance, the supervisor could be more interested in revenue or prosecuting a case than in impartial justice. Also, some clerks wear different hats; they may be the police secretary or dispatcher in addition to their duties as court clerk. When conducting the business of the court, however, clerks should always exhibit behavior that reflects the independence and impartiality of the judicial system. Remember that public access to the justice system usually occurs through a direct encounter with court personnel.

True or False

Q. 22. The judicial system is built on the principle of being independent from the other branches of government. ____

Q. 23. When the telephone for the court is answered “police department,” it may give the public the impression that they will not be treated fairly or impartially. ____

Q. 24. Having a separate room away from the public where peace officers may swear to complaints and conduct other court business, helps the court avoid the appearance of impropriety. ____

Canon 2: Avoiding Impropriety and the Appearance of Impropriety in All of the Judge’s Activities

A. A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

C. A judge shall not knowingly hold membership in any organization that practices discrimination prohibited by law.

Commentary: Judges are required to conform to the standards of behavior established by the Code of Judicial Conduct and must avoid even the appearance of impropriety. Impropriety is improper conduct not in accordance with fact, truth, correct procedures, and ethical standards. The commission of criminal acts, including DWI and disorderly conduct, have been the basis of past sanctions against judges.

Neither a judge nor a clerk should abuse the power inherent in his or her position over other persons. Misuse of office would include:

- using the position to seek special privileges for himself, herself, or others;
- accepting gifts, favors, or loans for promises to influence official actions;
- doing favors for friends or family;
- endorsing a particular driving safety course;
- offering preferential treatment;
- retaliating against another using the powers of the court; and
- misusing public resources, letterhead stationary, or equipment.

Remember:
- clerks and judges are in positions of public trust;
- be concerned about both actual impropriety and the appearance of impropriety (e.g., the police officer who takes a coffee break in the clerk’s office);
- avoid stating personal views about people or issues that may be pending before the court; and
- the canons govern your behavior in and out of the courtroom.

True or False
Q. 25. A municipal judge may use court letterhead to write members of a fraternity urging them to join the local chapter. _____
Q. 26. A municipal judge may voluntarily testify for someone else as a character witness. _____
Q. 27. A municipal judge or clerk may be a member of the Ku Klux Klan. _____
Q. 28. Indicate whether the following behaviors are proper or improper for a clerk.
   (P=Proper; I=Improper)
   ___ Telling the judge about the belligerent attitude of a defendant scheduled for a
   bench trial.
   ___ Recommending a specific driving safety school to a defendant.
   ___ Using court stationary to offer a product or service for purchase to earn extra
   money.
   ___ Looking up your girlfriend’s traffic record.
   ___ Drinking beer while working overtime at the office.
   ___ Asking an officer to not file a traffic ticket against a friend.
   ___ Closing the court or decreasing fines to put pressure on the city council to
   increase salary and benefits for court personnel.

Q. 29. The Code of Judicial Conduct governs a municipal judge and clerk’s behavior in and out of the courtroom. _____

Canon 3: Performing the Duties of Judicial Office Impartially and Diligently
A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge’s other activities. Judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:
B. Adjudicative responsibilities.
(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.

(2) A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge’s direction and control.

(5) A judge shall perform judicial duties without bias or prejudice.

(6) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not knowingly permit staff, court officials, and others subject to the judge’s direction and control to do so.

(7) A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status against parties, witnesses, counsel, or others. This requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding.

(Canon 3B(8) which deals with ex parte is not included here because municipal court judges do not have to comply with that section of Canon 3. Instead, they have a specific canon, Canon 6C(2), dealing with ex parte.)

(9) A judge should dispose of all judicial matters promptly, efficiently, and fairly.

(10) A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge’s court in a manner which suggests to a reasonable person the judge’s probable decision on any particular case. This prohibition applies to any candidate for judicial office, with respect to judicial proceedings pending or impending in the court on which the candidate would serve if elected. A judge shall require similar abstention on the part of court personnel subject to the judge’s direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge or judicial candidate is a litigant in a personal capacity.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity. The discussions, votes, positions taken, and writings of appellate judges and court personnel about causes are confidences of the court and shall be revealed only through a court’s judgment, a written opinion, or in accordance with Supreme Court guidelines for a court approved history project.
C. Administrative Responsibilities

(1) A judge should diligently and promptly discharge the judge’s administrative responsibilities, without bias or prejudice, and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge should require staff, court officials, and others subject to the judge’s direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

(5) A judge shall not fail to comply with Rule 12 of the Rules of Judicial Administration, knowing that the failure to comply is in violation of the rule.

D. Disciplinary Responsibilities

(1) A judge who receives information clearly establishing that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge’s fitness for office shall inform the State Commission on Judicial Conduct or take other appropriate action.

(2) A judge who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action.

Commentary: Canon 3B(1) refers to disqualification and recusal (the process by which a judge is disqualified or disqualifies himself or herself from hearing a case because of interest or prejudice). There are several provisions in Texas law that should be read along with Canon 3.

*Texas Constitution, Article V, Section 11.* No judge shall sit in any case wherein he or she may be interested, or where either of the parties may be connected with him or her, either by affinity or consanguinity, within such a degree as may be prescribed by law, or when he or she shall have been counsel in the case.

*Government Code, Section 21.005.* A judge or a justice of the peace may not sit in a case if either of the parties is related to him or her by affinity or consanguinity within the third degree.
Code of Criminal Procedure, Article 30.01. No judge or justice of the peace shall sit in any case where he or she may be the party injured, or where he or she has been counsel for the State or the accused, or whether the accused or the party injured may be connected with him or her by consanguinity or affinity within the third degree.

Thus, disqualification is required in a criminal case if the accused or the plaintiff is related to the judge by consanguinity or affinity within the third degree. Black’s Law Dictionary defines consanguinity to mean “blood relationship; the connection of persons descended from the same stock or common ancestor.” Affinity means “relation which one spouse because of marriage has to blood relatives of the other.”

Canon 3B(2) requires judges to be faithful to the law and to maintain professional competence in it. Likewise, clerks should be conscientious in learning about the law that governs ministerial duties and court procedures. They should maintain professional competence by attending annual judicial education seminars for court support personnel.

Canon 3B(3) requires the judge to maintain order and decorum in proceedings. Clerks may help by informing participants in court proceedings about proper conduct. The court may want to develop a pamphlet of do’s and don’ts on courtroom behavior to hand out to court participants.

Canon 3B(4) requires the judge to “be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others . . . and should require similar conduct of . . . staff. . . .” The conduct of the staff reflects the attitude of the court toward court participants. Being patient, dignified, and courteous lets defendants know that the court is impartial and fair. Sometimes this may be hard to do when defendants are being difficult because they are emotional or fearful of the judicial process. Having a pamphlet about court procedures, understanding that this is a stressful situation for citizens, remaining calm, and handling the defendant patiently and courteously helps citizens get through the process and maintain confidence in the judicial system. Trial judges have been sanctioned for non-verbal expressions of bias against a party and for yelling at attorneys.

Canon 3B(6) specifically lists many of the groups that one must be careful not to show bias or prejudice towards. Remember that clerks represent the court system to the public. If a witness, defendant, victim, attorney, or other user of the court perceives that a court employee is biased against certain types of persons based on their characteristics, that person may assume that the entire system is biased and unfair.

Bias and discrimination can be overt (in the open) or covert (hidden). Treating persons of one racial group rudely is an example of improper overt behavior. Holding certain assumptions about individuals based on race, sex, religion, or other characteristics, and letting these assumptions influence the way you react to those individuals is a hidden form of bias. The clerk should balance neutrality with sensitivity for the needs and mental states of persons appearing in court. Determining the needs of persons with disabilities, language barriers, and victims in family violence cases, for example, should be evaluated on a case-by-case basis.

Canon 3B(9) requires judges to be prompt, efficient, and fair in all judicial matters. The actions of the clerk have a great impact on the judge’s administration of justice because administrative functions of the clerk’s office often determine how efficiently cases progress through the judicial system. The case Chapman v. Evans, 744 S.W.2d 133 (Tex. Crim. App. 1988), highlights the importance of why the court must efficiently manage cases. The Court of Criminal Appeals held
that “the primary burden is on the prosecution and the courts to ensure that defendants are speedily brought to trial . . . . Both the trial court and prosecution are under a positive duty to prevent unreasonable delay . . . . [O]ver crowded trial dockets alone cannot justify the diminution of the criminal defendant’s right to a speedy trial.” To efficiently manage the workload of the court, clerks should be knowledgeable of court procedures and processes, records management, financial management, and office management. Clerks and judges together should develop an operations and procedures manual for the court to increase efficiency and give clerks guidance on how to manage office functions.

Canon 3B(10) provides that neither the judge nor the clerk should make comments about cases pending before the court. Commenting would make it appear to the public that a decision has already been made about the case before the judge heard the evidence and arguments. In addition, neither can make comments about a case on appeal. When controversial cases appear in the court, there may be public criticism of the court’s handling of the case. It must be accepted silently or handled by the city’s public information department or public officials not in the judicial branch. Although clerks and judges may not comment on cases, they can explain court procedures.

Canon 3C(1) requires judges to diligently and promptly discharge administrative responsibilities and to cooperate with other judges and court officials in the administration of court business. Hence, judges and clerks should work together to ensure that cases, all processing, and the management of the day-to-day operations of the court are proper, effective, and prompt.

Canon 3C(2) provides that judges require court staff to observe the standards of fidelity and diligence that apply to the judge. Fidelity means a quality or state of being faithful and accurate in details. Diligence is steady, earnest, and energetic application and effort; in other words, it is a persevering application of the standards of the Code of Judicial Conduct.

Canon 3C(5) requires judges to comply with Rule 12 of the Rules of Judicial Administration and provides that failure to do so would be a violation of the Code of Judicial Conduct. Rule 12 concerns judicial records. It provides which judicial records are open to public review and which records are exceptions to the Rule. See Part 5 of this study guide for more information on Rule 12.

True or False
Q. 30. A municipal judge has a duty to take some action against another judge who is violating the Code of Judicial Conduct. ____
Q. 31. A municipal court clerk has a duty to report to his or her judge unethical conduct of another court employee. ____
Q. 32. A municipal judge has the authority to initiate disciplinary actions against an attorney who presented false evidence to the court. ____
Q. 33. A judge would be disqualified from hearing her brother’s speeding ticket because they are related by consanguinity within the second degree. ____
Q. 34. A judge should not hear her husband’s speeding ticket because they are related by affinity within the first degree. ____
Q. 35. A municipal court clerk may use racial epithets to refer to witnesses. ____
Q. 36. A municipal court administrator may participate in a trip paid for by an attorney who practices before a municipal judge for whom the clerk works. ____

End True/False

Q. 37. Indicate proper or improper behavior for a clerk. (P=Proper; I=Improper)

___ Informing defendants how to properly conduct themselves in court.
___ Shouting at a belligerent defendant.
___ Telling sexual or racial jokes to jurors while they are waiting to be called into the courtroom.
___ Not explaining all the court options to members of a certain ethnic group.
___ Responding to a news reporter who asks you to review an article for legal accuracy. It contains information about a Class C misdemeanor assault that appeared in your court and is part of a larger civil suit for sexual harassment.
___ Developing a records management program to help the court manage the progress of the cases through the court.
___ Sending the required monthly reports to the State late because the city manager wants the warrants updated so the city can attempt to collect that revenue.
___ Working with the judge to oversee the administration of the court.
___ Providing information requested under Rule 12.

Canon 4: Conducting the Judge’s Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations

A. Extra-judicial Activities in General

A judge shall conduct all of the judge’s extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge’s capacity to act impartially as a judge; or

(2) interfere with the proper performance of judicial duties.

B. Activities to Improve the Law

A judge may:

(1) speak, write, lecture, teach, and participate in extra-judicial activities concerning the law, the legal system, the administration of justice, and non-legal subjects, subject to the requirements of this Code; and

(2) serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He or she may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

C. Civic or Charitable Activities

A judge may participate in civic and charitable activities that do not reflect adversely upon the judge’s impartiality or interfere with the performance of judicial duties. A
A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the profit of its members, subject to the following limitations:

1. A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly or frequently engaged in adversary proceedings in any court.

2. A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, but may be listed as an officer, director, delegate, or trustee of such an organization, and may be a speaker or a guest of honor at an organization’s fund raising events.

3. A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

D. Financial Activities

1. A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge’s impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. This limitation does not prohibit either a judge or candidate from soliciting funds for appropriate campaign or office holder expenses as permitted by law.

2. Municipal judges do not have to comply with Canon 4D(2).

3. Municipal judges do not have to comply with Canon 4D(3).

4. Neither a judge nor a family member residing in the judge’s household shall accept a gift, bequest, favor, or loan from anyone except as follows:

   a. A judge may accept a gift incident to a public testimonial to the judge; books and other resource materials supplied by publishers on a complimentary basis for official use; or an invitation to the judge and spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

   b. A judge or a family member residing in the judge’s household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a gift from a friend for a special occasion such as a wedding, engagement, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

   c. A judge or a family member residing in the judge’s household may accept any other gift, bequest, favor, or loan only if the donor is not a party or person whose interests have come or are likely to come before the judge;
(d) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member residing in the judge’s household, including gifts, awards and benefits for the use of both the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.

E. Fiduciary Activities

*Municipal judges do not have to comply with Canon 4E.*

F. Service as Arbitrator or Mediator

An active full-time judge shall not act as an arbitrator or mediator for compensation outside the judicial system, but a judge may encourage settlement in the performance of official duties. (*Municipal judges do not have to comply with Canon 4F unless the court on which the judge serves may have jurisdiction of the matter or parties involved in the arbitration or mediation.*)

G. Practice of Law

*A municipal judge does not have to comply with 4G except:* An attorney judge shall not practice law in the court on which he or she serves or in a proceeding in which he or she has served as a judge or in any proceeding related to a proceeding in which he or she has served as a judge.

H. Extra-Judicial Appointments

*Municipal court judges do not have to comply with Canon 4H.*

I. Compensation, Reimbursement, and Reporting

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge’s performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge’s family. Any payment in excess of such an amount is compensation.

(2) Public Reports. A judge shall file financial and other reports as required by law.

**Commentary:** This canon provides guidance on judges’ activities and avoiding impropriety in their activities, including civic, charitable, and community events. The prestige of the court should never be used for fundraising or to promote membership in organizations that the judge or clerk supports. Examples of improper conduct are shown below.

- The court’s letterhead may not be used to promote charitable activities, personal financial matters, or the private interests of others.
• No member of the court staff or his or her immediate family may accept any gift, bequest, favor, or loan if the donor is a party or person whose interests have come or are likely to come before the court.
• The judge or any member of the court staff may not solicit funds for any educational, religious, charitable, fraternal, or civic organizations. For example, clerks should not sell candy or other products for their children to raise money for such things as band or girl or boy scouts at the court.

Permitted Activities:
• receiving a gift incidental to a public testimonial;
• receiving books or other material supplied by publishers on a complimentary basis for official use;
• accepting ordinary social hospitality;
• accepting a gift, bequest, favor, or loan from a relative;
• accepting a gift from a friend for a special occasion such as a wedding, engagement, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship; and
• accepting free passes to movies, football games, college plays, etc., only if the gift is from an entity whose interests has not come and is not likely to come before the judge, and if it is clearly understood that the gift is not an effort to seek a favor.

The following checklist of questions helps judges and clerks to reflect on the requirement of maintaining impartiality and avoiding impropriety.
• Does the activity reflect adversely on the impartiality of the court?
• Does the activity detract from the dignity of the office?
• Does the activity involve considerable controversy?
• Does the activity have the appearance of improper political endorsement?
• Does the activity involve membership or leadership in an organization that frequently comes before the court?
• Does the activity involve the use of the prestige of the judicial office to promote the private interest of others?
• Is the judicial office being used for fund-raising or membership solicitation?
• Does the activity involve membership in an organization that illegally discriminates?
• Will the proposed activity or involvement interfere with the proper performance of judicial or ministerial duties?

Q. 38. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)

___ Writing, with the judge, a weekly column about legal matters and court activity for the local newspaper.
___ Teaching classes for the Texas Municipal Courts Education Center.
___ Speaking to high school students in a government class on “Your Rights in Traffic Court.”
___ Selling tickets for your daughter’s booster club to a group taking a driving safety course.
___ Traveling free to Las Vegas on a law firm’s private plane. The law firm frequently handles traffic tickets in your court.
___ Accepting gifts from a friend or a relative on special occasions when the friend or relative is not before the court.
___ Accepting free legal publications from TMCEC.
___ Accepting an invitation to a Christmas party that is being conducted by a company that has a pending case in your court.
___ Using court stationary to write a letter to a company that has failed to provide you with promised service.
___ Having your title as court clerk listed by your name on a letter being sent by a local charity organization that is soliciting toys for disadvantaged children.

Canon 5: Refraining from Inappropriate Political Activity

(1) A judge or judicial candidate shall not:
   (i) make pledges or promises of conduct in office regarding pending or impending cases, specific classes of cases, specific classes of litigants, or specific propositions of law that would suggest to a reasonable person that the judge is predisposed to a probable decision in cases within the scope of the pledge;
   (ii) knowingly or recklessly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent; or
   (iii) make a statement that would violate Canon 3B(10).

(2) A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this Canon and Canon 3B(10).

(3) A judge shall resign from judicial office upon becoming a candidate in a contested election for a non-judicial office either in a primary, general, or special election. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or while being a candidate for election to any judicial office. (Municipal judges do not have to comply with Canon 5(3)).

(4) A judge or judicial candidate subject to the Judicial Campaign Fairness Act, Tex. Elec. Code Sec. 253.151, et. seq. (the “Act”), shall not knowingly commit an act for which he or she knows the Act imposes a penalty. Contributions returned in accordance with Sections 253.155(e), 253.157(b), or 253.160(b) of the Act are not a violation of this paragraph.

Commentary: While political activism is a right of citizens, clerks must be careful not to use the courthouse as a forum for their political ideas. Wearing or displaying political buttons and stickers or allowing a candidate to place political brochures or advertisements in the court can
lead to the actual or apparent loss of independence. Ethics Opinion 234 says “The code does not prohibit political activities by the administrator, provided that she engages in them away from the courthouse, during non-court hours, on her own time, and without giving the impression that she speaks for the judge. The administrator must remember that the judge for whom she works cannot lend the prestige of his office to advance . . . political interest.”

Q. 39. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)

___ Making public statements in the local restaurant about persons running for city council.
___ Commenting privately to your spouse as to whom would be the best candidate for mayor.
___ Wearing political T-shirts and buttons for local political races while at work.
___ Talking to defendants about who will be the best candidate for mayor.

Canon 6: Compliance with the Code of Judicial Conduct

(Note: Canon 6 sections A, B, and D through G not included here.)

Canon 6C: Justices of the Peace and Municipal Court Judges

(1) A justice of the peace or municipal court judge shall comply with all provisions of this Code, except the judge is not required to comply:

(a) with Canon 3B(8) pertaining to ex parte communications; in lieu thereof a justice of the peace or municipal court judge shall comply with 6C(2) below;
(b) with Canons 4D(2), 4D(3), 4E, or 4H;
(c) with Canon 4F, unless the court on which the judge serves may have jurisdiction of matter or parties involved in the arbitration or mediation; or
(d) if an attorney, with Canon 4G, except practicing law in the court on which he or she serves, or acting as a lawyer in proceeding in which he or she has served as a judge or in any proceeding related thereto.
(e) with Canon 5(3).

(2) A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider ex parte or other communications concerning the merits of a pending judicial proceeding. This subsection does not prohibit communications concerning:

(a) uncontested administrative matters;
(b) uncontested procedural matters;
(c) magistrate duties and functions;
(d) determining where jurisdiction of an impending claim or dispute may lie;
(e) determining whether a claim or dispute might more appropriately be resolved in some other judicial or non-judicial forum;
(f) mitigating circumstances following a plea of nolo contendere or guilty for a fine-only offense; or

(g) any other matters where ex parte communications are contemplated or authorized by law.

H. Attorneys.

Any lawyer who contributes to the violation of Canons 3B(7), 3B(10), 4D(4), 5, or 6C(2), or other relevant provisions of this Code, is subject to disciplinary action by the State Bar of Texas.

Commentary: Ex parte communication includes any communication to the judge involving less than all parties who have a legal interest in a pending case. It may be oral or written. For example, judges are prohibited from engaging in the following conduct:

- meeting with either the prosecutor or defense to privately discuss the merits of a pending case;
- personally investigating the facts of a case, for example: driving by the scene of the accident before the case is heard (or sending the clerk to the scene);
- talking with a defendant on the telephone about the merits of the defendant’s case;
- dismissing a ticket without a hearing and a prosecutor’s motion because it is an old friend;
- hearing the defendant’s side of the story privately outside of trial;
- reading correspondence from defendants who write to the judge to tell their side of the story; or
- reading an officer’s notes on the back of a citation.

The clerk is often in a role to protect the judge from ex parte communication by screening the mail and telephone calls. Also, clerks may not initiate ex parte communication with defendants or their attorneys. If a defendant blurts out information about the case, clerks must not pass it along to the judge. The public does not always understand that a judge cannot talk to one side without the other side being present. Clerks must remember that Canon 3B(4) requires clerks to be courteous, patient, and dignified with defendants.

How often have you heard a defendant say, “I just have one question for the judge.” However, once the defendant sees the judge, the defendant may attempt to explain what happened. When screening whom a judge sees, clerks should know that a defendant who is not contesting the case but is pleading guilty or nolo contendere may talk to the judge about mitigating circumstances after the plea. Canon 6C(2) does not prohibit communications concerning uncontested administrative or procedural matters and determining if the court has jurisdiction of a case. Remember that defendants and/or persons wishing to file a case should be referred to the prosecutor’s office.

Clerks should talk with their judges to establish a policy and procedure for assisting defendants who do not understand ex parte. The court may want to establish a plea docket for those defendants who want to plead guilty or no contest but want to talk to the judge. When judges review case files, clerks should not tag correspondence to the file that presents evidence. If a
judge does not have a clerk and must see the public and answer the telephone, he or she should immediately tell citizens that he or she cannot hear the facts of the case except at trial.

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<tr>
<th>True or False</th>
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<tr>
<td>Q. 40. When a citizen wants to file a case and the clerk is unsure whether the municipal court has jurisdiction, the judge may talk to the person to see if the case should be filed in municipal court. ___</td>
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<tr>
<td>Q. 41. A judge may talk with a person who wants to file a claim in municipal court for restitution for $700 for a fence that was damaged by a vehicle that lost control and drove through it. ___</td>
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<td>Q. 42. A letter to the judge from a defendant telling the defendant’s side of his or her case is not considered ex parte communication. ___</td>
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<td>Q. 43. The officer’s notes on the back of a citation are not considered ex parte communication. ___</td>
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<td>Q. 44. A judge may talk with a defendant on the telephone about his or her case, because a telephone conversation is not an official court appearance. ___</td>
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<tr>
<td>Q. 45. It is not ex parte communication to tell the judge about a death threat made by a defendant to the victim. ___</td>
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<tr>
<td>Q. 46. It is not ex parte communication to inform the judge about information from a defendant relating to the defendant’s case pending in the court. ___</td>
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**Canon 7: Effective Date of Compliance**

A person to whom this Code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it.

**Canon 8: Construction and Terminology of the Code**

A. Construction

The Code of Judicial Conduct is intended to establish basic standards for ethical conduct of judges. It consists of specific rules set forth in Sections under broad captions called Canons.

The Sections are rules of reason, which should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office to provide a structure for regulating conduct through the State Commission on Judicial Conduct. It is not designed or intended as a basis for civil liability of criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be
imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

B. Terminology

(Not all terms included here.)

(1) “Shall” and “shall not” denotes binding obligations the violation of which can result in disciplinary action.
(2) “Should” or “should not” relates to aspirational goals and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined.
(3) “May” denotes permissible discretion or, depending on the context, refers to action that is not covered by specific proscriptions.

(Sections (4) through (6) not included here.)

(7) “Knowingly,” “knowledge,” “known,” or “knows,” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.
(8) “Law” denotes court rules as well as statutes, constitutional provisions, and decisional law.

(Sections 9 and 10 not included here.)

(11) “Require.” The rules prescribing that a judge “require” certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term “require” in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control.

True or False

Q. 47. If a canon says a judge shall or shall not conduct himself or herself in a certain manner, the judge does not have discretion in that matter. ____

Q. 48. “May” means that the judge has permissible discretion. ____

Q. 49. If a rule requires certain conduct of others, the judge must exercise reasonable direction and control over the conduct of anyone who is subject to the judge’s direction and control. ____
ANSWERS TO QUESTIONS

INTRODUCTION
Q. 1. The term “Canon” refers to standards of ethical conduct for members of the judiciary.
Q. 2. The Code of Judicial Conduct is intended to state basic standards and to assist judges and clerks in establishing and maintaining high standards of judicial and personal conduct.

PART 1
Q. 3. Generally, ethics is defined as what is right and wrong. It is the discipline dealing with what is good and bad; with moral duty and obligation. It is a set of moral principles or values.
Q. 4. Integrity is strict personal honesty and independence. It is adherence to one’s moral values or practicing what one claims to believe in.

PART 2
Q. 5. The goals of the Commission on Judicial Conduct are:
(1) to preserve the integrity of all judges in the state;
(2) to ensure public confidence in the judiciary; and
(3) to encourage judges to maintain high standards of both professional and personal conduct.
Q. 6. To achieve these goals, the Commission not only issues sanctions and secures the removal of judges from office who violate legal or ethical standards, but also offers assistance to judges who have an underlying personal impairment that is connected to the misconduct. In addition, the Commission participates as faculty members in continuing education programs at all levels of the judiciary.
Q. 7. The State Commission on Judicial Conduct was created by an amendment to the Texas Constitution in 1965. The Texas Constitution, Section 1-a, Article V, and Chapter 33 of the Texas Government Code are the sources of authority under which the Commission operates.
Q. 10. False.
Q. 11. False.
Q. 12. False.
Q. 15. True.
Q. 16. True.
Q. 17. Rank the following actions in order of severity. (1=the least.)
1. Removal-Conviction.
4 Private Admonition.
2 Public Reprimand.
3 Public Admonition.

PART 4

Q. 18. Our legal system is based upon the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us.

Q. 19. It is required by the Code of Judicial Conduct. Canon 3C(2) of the Code says that judges should require staff, court officials, and others subject to the judge’s direction and control to observe the standards of fidelity and diligence that apply to the judge.

Q. 20. The judge could be sanctioned by the Commission on Judicial Conduct.

Q. 21. The role of the clerk is to maintain public confidence in the municipal court by upholding and maintaining the standards established by the Code of Judicial Conduct.

Q. 22. True.
Q. 23. True.
Q. 24. True.
Q. 25. False.
Q. 27. False.
Q. 28. Indicate whether the following behaviors are proper or improper for a clerk. (P=Proper; I=Improper)
   I Telling the judge about the belligerent attitude of a defendant scheduled for a bench trial.
   I Recommending a specific driving safety school to a defendant.
   I Using court stationary to offer a product or service for purchase to earn extra money.
   I Looking up your girlfriend’s traffic record.
   I Drinking beer while working overtime at the office.
   I Asking an officer to not file a traffic ticket against a friend.
   I Closing the court or decreasing fines to put pressure on the city council to increase salary and benefits for court personnel.

Q. 29. True.
Q. 30. True.
Q. 31. True.
Q. 32. True.
Q. 33. True.
Q. 34. True.
Q. 35. False.
Q. 36. False.
Q. 37. Indicate proper or improper behavior for the clerk. (P=Proper; I=Improper)
P Informing defendants how to properly conduct themselves in court.
I  Shouting at a belligerent defendant.
I  Telling sexual or racial jokes to jurors while they are waiting to be called into the courtroom.
I  Not explaining all the court options to members of a certain ethnic group.
I  Responding to a news reporter who asks you to review an article for legal accuracy. It contains information about a Class C misdemeanor assault that appeared in your court and is part of a larger civil suit for sexual harassment.
P  Developing a records management program to help the court manage the progress of the cases through the court.
I  Sending the required monthly reports to the State late because the city manager wants the warrants updated so the city can attempt to collect that revenue.
P  Working with the judge to oversee the administration of the court.
P  Providing information requested under Rule 12.

Q. 38. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)
P  Writing with the judge a weekly column about legal matters and court activity for the local newspaper.
P  Teaching classes for the Texas Municipal Courts Education Center.
P  Speaking to high school students in a government class on “Your Rights in Traffic Court.”
I  Selling tickets for your daughter’s booster club to a group taking a driving safety course.
I  Traveling free to Las Vegas on a law firm’s private plane. The law firm frequently handles traffic tickets in your court.
P  Accepting gifts from a friend or a relative on special occasions when the friend or relative is not before the court.
P  Accepting free legal publications from the Texas Municipal Courts Education Center.
I  Accepting an invitation to a Christmas party that is being conducted by a company that has a pending case in your court.
I  Using court stationary to write a letter to a company which has failed to provide you with promised service.
I  Having your title as court clerk listed by your name on a letter being sent by a local charity organization that is soliciting toys for disadvantaged children.

Q. 39. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)
I  Making public statements in the local restaurant about persons running for city council.
P  Commenting privately to your spouse as to who would be the best candidate for mayor.
I  Wearing political T-shirts and buttons for local political races while at work.
I  Talking to defendants about who will be the best candidate for mayor.

Q. 40. True.
Q. 41. True (The municipal court does not have jurisdiction of this case. The judge may talk with the defendant to explain that he or she has no authority over this case and it must be filed in another court.).

Q. 42. False.

Q. 43. False.

Q. 44. False.

Q. 45. True.

Q. 46. False.

Q. 47. True.

Q. 48. True.

Q. 49. True.
Procedures Before Trial

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INTRODUCTION

In municipal court, a case is usually initiated by a peace officer filing a sworn complaint or a written notice to appear, commonly called a “citation,” or “ticket” with the court. Citizens may also file charges by complaint, but they are generally investigated first by a city department, such as the police department or code enforcement, and reviewed by the prosecutor prior to the filing of the formal criminal charge.

Both the complaint and citation give notice of criminal charges filed against a person. The complaint, the formal charging instrument is filed when a judge, clerk, or deputy clerk accepts it.

After a charge is filed, the clerk enters the case on a docket and assigns a docket number that is noted on all papers associated with the case. The clerk prepares a jacket or file for the case and files the case in the active files.

Because the clerk is responsible for maintaining court records, the clerk is considered the custodian of court records. This duty includes keeping records updated, properly maintained, and archived. This chapter discusses complaints, dockets, noncontested cases, warrants and capiases, pre-trial matters, procedures for handling failures to appear, fees, and the Nonresident Violator Compact, in relation to a case’s progression through the justice system.

A brief overview is included of search warrants, bail, and bond forfeitures. More detailed explanations of these areas are contained in the TMCEC Level II Study Guide.

PART 1
COMPLAINTS

A. Purpose

1. Notifies Defendant of Charge

One of the fundamental rights afforded defendants is notice of specific charges filed against them. Art. 1.05, C.C.P. In the case of Kindley v. State, 879 S.W.2d 261 (Tex. App.—Austin 1982, pet ref.), the court said that a charging instrument must notify a person of the offense alleged so that he or she may prepare a defense. Defendants are entitled to notice not later than the day before the date of any proceeding in the case. Defendants may, however, waive the right to notice. Art. 45.018, C.C.P.

2. Initiates Proceedings

The filing of the complaint initiates proceedings in the court. When the court accepts a complaint, the case is considered to be filed. As a general rule, a sworn complaint must be filed with the municipal court to vest jurisdiction in the court. Ex parte Greenwood, 307 S.W.2d 586 (Tex. Crim. App. 1957).

B. Types

In municipal court, defendants can be charged by a written notice to appear issued by a peace officer (the citation) or by a complaint. A city code enforcement officer, animal control officer, or
citizen usually initiates charges in the court by filing a sworn complaint. A defendant is entitled to know the charges against him or her as alleged in the formal charging instrument; however, the defendant may also waive that notice and enter a plea on the citation alone.

1. **Complaint**

The complaint is a sworn allegation charging an accused with the commission of an offense. Art. 45.018, C.C.P. The complaint must allege that the accused committed an offense against the laws of this state and must assert that the affiant has good reason to believe and does believe that the accused committed an offense. Art. 45.019(a)(4), C.C.P. All elements necessary to constitute an offense must be alleged in the complaint. *Villareal v. State*, 729 S.W.2d 348 (Tex. App.—El Paso 1987, no pet).

2. **Written Notice to Appear**

If a culpable mental state is an element of the offense, the complaint must also allege the culpable mental state to indicate the defendant’s state of mind at the time of the offense. The four culpable mental states are intentionally, knowingly, recklessly, or with criminal negligence. Some offenses, including most traffic offenses, do not require a culpable mental state.

A written notice to appear issued by a peace officer is commonly called a “citation” or “ticket” and is filed with the court to initiate proceedings. Section 543.003, T.C., authorizes peace officers to issue written notices to appear in lieu of arrest for *Rules of the Road* Subtitle C, Title 7, Transportation Code offenses. Article 14.06(b), C.C.P., provides authority for a peace officer to issue a citation for Class C misdemeanors, except for public intoxication. Since peace officers may not issue a citation for public intoxication, a sworn complaint must be filed to initiate the proceedings for that offense. Also, any time a person is arrested in lieu of the citation being issued, the charges filed must be initiated by sworn complaint. In other words, the issuance of a citation serves as a substitution for the formal arrest in most situations. Public intoxication is an exception, as one of the elements of that offense is that the person is intoxicated to the degree that the person may endanger himself or herself or another. Obviously, it is not in the interest of the public or the individual to simply issue a citation requiring the promise to appear when that person, at the time of the detention is a danger to himself, herself or another. Conversely, there are two instances in the Transportation Code where a law enforcement officer is required to issue a citation rather than take the person into custody—those offenses are speeding and open container. Sec. 543.004, T.C.

a. **When a Citation Serves as the Complaint**

A written notice to appear for a fine-only misdemeanor offense may substitute for the sworn complaint for defendants to plead not guilty, guilty, or nolo contendere. Art. 27.14(d), C.C.P. A legible duplicate copy must have been given to the defendant. Art. 27.14(d), C.C.P.; Attorney General Opinions JM-869 (1988) and JM-876 (1988).

b. **When a Defendant Pleads Not Guilty**

If a defendant pleads not guilty, the court must file a complaint that complies with the requirements of Chapter 45 of the Code of Criminal Procedure. Art. 27.14(d), C.C.P. If a
defendant wants the prosecution to proceed on the written notice to appear, i.e., citation, the defendant may waive the filing of a sworn complaint. If the prosecutor agrees with the defendant, the agreement must be in writing signed by both the prosecutor and the defendant, and filed with the court. Without such an agreement, a sworn complaint must be filed in the case. Art. 27.14(d), C.C.P.

c. When a Defendant Fails to Appear

When a defendant fails to appear, after having been issued a citation and thereby promising to appear to answer the charges, a complaint must be filed which conforms to the requirements of Chapter 45, C.C.P. Art. 45.014, C.C.P.

C. Requirements

The requirements for the formal charging instrument, the complaint are found in Article 45.019, C.C.P.

1. Written

The complaint must be written. Art. 45.019(a)(1), C.C.P. Although the prosecutor is responsible for composing the wording on a complaint, the preparation of the complaint is a task which commonly has fallen on the court clerk, especially in this era of electronic ticket writers and court software that automatically generates complaints based on the citations submitted.

a. Wording

The complaint shall begin: “In the name and by the authority of the State of Texas” and shall conclude: “Against the peace and dignity of the State.” If the offense is an ordinance violation, it may also conclude: “Contrary to the said ordinance.” Art. 45.019(a)(7), C.C.P. An ordinance is a law passed by the local city council.

Article 45.019, C.C.P. requires that the complaint include:

- the name of the accused, if known, and if unknown, a reasonably definite description (A defendant’s name cannot be changed on the complaint even with his or her consent. If the name is spelled wrong and the State wants to change it, a new complaint must be sworn to. Franklyn v. State, 762 S.W.2d 228 (Tex. App.-- El Paso 1988));
- that the accused committed an offense against the laws of the State;
- that the offense was committed in the territorial limits of the city in which the complaint is made;
- the date of the offense as definitely as the affiant is able to provide (The date of the offense must be before the filing of the complaint and within the statute of limitations. Green v. State, 799 S.W.2d 756 (Tex. Crim. App. 1990)). For misdemeanors, the statute of limitations is two years from the date of the commission of the offense. Art. 12.02, C.C.P. The day upon which the offense is committed and the day upon which the charges are brought are not considered. Art. 12.04, C.C.P.; and
that the affiant has good reason to believe and does believe the accused has committed an offense.

Frequently, defendants are charged with committing more than one offense on a traffic citation. When a clerk receives a citation with multiple offenses listed on it, each offense is a separate charge and should be alleged on separate complaints. Each complaint will contain the name of the defendant, the date of the offense, and one of the offenses cited.

b. Location of Offense

The particular location within the court’s jurisdiction where a violation was committed need not be alleged if the violation is one that could occur at any place within that jurisdiction. Bedwell v. State, 155 S.W.2d 930 (Tex. 1941). For example, an offense that does not require that a specific location be alleged is the offense assault by threat, as long as the complaint alleges that the offense occurred within the territorial limits of the city. Keep in mind that while preparing the language of the complaint is a responsibility often delegated to court clerks, consult with your city attorney as questions arise.

c. Culpable Mental States

Generally, a person commits an offense only if he or she voluntarily engages in criminal conduct, including an act, an omission, or possession. Sec. 6.01(a), P.C. A person does not commit an offense unless he or she intentionally, knowingly, recklessly, or with criminal negligence engages in conduct as the definition of the offense requires. These required culpable mental states must be alleged in the complaint. Sec. 6.02(a), P.C.

If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element. Sec. 6.02(b), P.C. For an offense that is a violation of a city ordinance punishable by a fine exceeding $500, a culpable mental state is required to be pled in the complaint regardless of whether one is prescribed in the offense. Sec. 6.02(f), P.C.

Offenses that do not require a culpable mental state to be pled can be found in the Transportation Code. Zulauf v. State, 591 S.W.2d 869 (Tex. Crim. App. 1979).

If the definition of an offense does not prescribe a culpable mental state, but one is required, Section 6.02(c), P.C., says the required culpable mental state must be intentional, knowingly or recklessly. Section 6.02(d), P. C., provides that culpable mental states are classified according to relative degrees, from highest to lowest, and are defined as follows:

- **Intentionally** - A person acts intentionally, or with intent, with respect to the nature of conduct or to a result of conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result.

- **Knowingly** - A person acts knowingly, or with knowledge, with respect to the nature of conduct or to circumstances surrounding conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly, or with knowledge, when the person is aware that the conduct is reasonably certain to cause the result.
Procedures before Trial

- **Recklessly** - A person acts recklessly, or is reckless, with respect to circumstances surrounding conduct or the result of conduct when the person is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor’s standpoint.

- **Criminal Negligence** - A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding conduct or the result of conduct when the person ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor’s standpoint.

If you prepare complaints, check with your city attorney or prosecutor to determine what culpable mental state, if any, is needed.

2. **Signed**


3. **Sworn to**

A complaint must be sworn. Art. 45.019, C.C.P. The person swearing to the complaint must have good reason to believe and does believe that the defendant committed the act alleged in the complaint.

a. **Oath**

Statutes do not provide specific wording for the oath administered to an affiant swearing to a complaint. The following is a sample oath a court may want to consider using: “Do you solemnly swear (or affirm) that the information contained in this complaint is true and correct (so help you God)?”

b. **Affiant**

The person swearing to the complaint is the affiant. Any credible person acquainted with the facts of the alleged offense either by personal knowledge or hearsay may be an affiant. *Cisco v. State*, 411 S.W.2d 547 (Tex. Crim. App. 1968). An example of an affiant with personal knowledge is a peace officer who personally observed a person speeding and swears to the complaint. An example of a hearsay affiant is a person who has not observed the offense, but reviews an arrest report and then swears to the complaint. This person has good reason to
believe, based upon information provided by the officer who personally observed the offense, that the offense was committed, and can be a court clerk or deputy court clerk.

The following is a list of procedures on how to administer an oath to an affiant:

- affiant reviews complaint;
- affiant and person administering oath both raise their right hand;
- oath is administered;
- affiant signs complaint; and
- person administering oath signs jurat.

c. Jurat

The certificate of the person before whom the complaint is sworn is called a “jurat.” It is the clause written at the foot of an affidavit, such as a complaint, stating when and before whom the affidavit was sworn.

If a complaint does not contain a jurat, it is insufficient to constitute a basis for a valid conviction. If the jurat shows that the affidavit was sworn before someone who had no authority to administer the oath, the complaint is invalid. If the jurat is not signed, the complaint is invalid. State v. Pierce, 816 S.W.2d 824 (Tex. App.—Austin 1991, no pet.) An undated jurat renders a complaint defective. Shackelford v. State, 516 S.W.2d 180 (Tex. Crim. App. 1974).

Article 45.019, C.C.P., lists persons who have authority to administer the oath to someone swearing to a municipal court complaint and includes the municipal judge, court clerk, deputy court clerk, city secretary, city attorney, or deputy city attorney. Also, Section 602.002, G.C., provides authority for a clerk to administer any oath.

4. Sealed

Municipal court complaints are required to have a court seal. Article 45.012, C.C.P., requires municipal courts to impress a seal on all documents, except subpoenas, issued out of the court and to use the seal to authenticate the acts of the judge and clerk. This statute is a general statute that applies only to non-record municipal courts. Municipal courts of record have a specific statute, Section 30.000125, G.C., regarding their seal. These two statutes are similar in that they both require the seal to be impressed on all documents, except subpoenas, and to authenticate the acts of the judge and clerk. The two statutes are different in that Article 45.012 does not provide for the wording of the seal for non-record courts, but Section 30.000125 does contain specific wording for the municipal courts of record seal. That statute requires the following phrase to be included on the seal: “Municipal Court of/in____________, Texas.” Non-record municipal courts may want to consider using the same or similar wording on their seal.

Unfortunately, neither of the two statutes provides for the appearance of the seal. Before 1999, Article 45.02, C.C.P., required the municipal court seal for both record and non-record municipal courts to contain a five-point star, but that statute was repealed. Although the courts now have no guidance on the appearance of the seal, most courts have retained the appearance that was once required by Article 45.02, C.C.P.
### D. Objections by Defendant

A defendant waives and forfeits the right to object to a defect, error, irregularity in form, or substance of the complaint if the defendant does not object before the commencement of the trial on the merits. A court may require that objections be made at an earlier time such as at a pre-trial hearing. Art. 45.019(g), C.C.P.

<table>
<thead>
<tr>
<th>True or False</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Q. 1. If a municipal court does not have a complaint or citation filed, the court may not accept a plea of guilty from the defendant.</td>
<td></td>
</tr>
<tr>
<td>Q. 2. A complaint is a charging instrument filed in municipal court.</td>
<td></td>
</tr>
<tr>
<td>Q. 3. Municipal court defendants do not have a right to notice of the crime with which they are being charged.</td>
<td></td>
</tr>
<tr>
<td>Q. 4. Citizens have just as much right as peace officers to file a complaint with the court.</td>
<td></td>
</tr>
<tr>
<td>Q. 5. A complaint gives notice to a defendant of the offense with which he or she is charged.</td>
<td></td>
</tr>
<tr>
<td>Q. 6. A defendant may object to an error in a complaint at any time, even during the trial.</td>
<td></td>
</tr>
</tbody>
</table>

End True/False

<p>| | |</p>
<table>
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<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Q. 7. A citizen comes to court to complain about a neighbor’s dog running at large, but does not want to sign a written complaint. No complaint is filed. May the municipal court hear this case?</td>
<td></td>
</tr>
<tr>
<td>Q. 8. Since the preparation of the complaint is a ministerial duty, who usually prepares the complaint?</td>
<td></td>
</tr>
</tbody>
</table>

End True/False

| Q. 9. If someone swears to a complaint, he or she is declaring by oath the truth of the information contained in the complaint. |   |
| Q. 10. Only the officer who personally observed an offense may be an affiant on a complaint. |   |
| Q. 11. A court clerk may not be an affiant on a complaint. |   |
| Q. 12. A hearsay affiant is one who is acquainted with the facts of the case, but did not personally observe the offense. |   |
| Q. 13. A complaint is defective if either the affiant or the person administering the oath stamps their signature instead of actually writing it. |   |

End True/False

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Q. 14. Who may administer the oath to an affiant swearing to a complaint in municipal court?</td>
<td></td>
</tr>
<tr>
<td>Q. 15. Define the word “jurat.”</td>
<td></td>
</tr>
</tbody>
</table>
True or False

Q. 16. A municipal court clerk of a non-record court has authority to administer any oath pertaining to a duty of the court. ____

Q. 17. A deputy clerk may only administer the oath to the person swearing to a complaint and not any other affidavit. ____

Q. 18. A clerk or deputy court clerk must be a notary public to administer any oath in the court. ____

Q. 19. A person swearing to a complaint must sign his or her name in front of the person administering the oath. ____

Q. 20. The date the complaint is sworn does not have to be noted in the jurat. ____

Q. 21. A complaint is valid as long as it has been sworn to even if the person administering the oath does not sign the jurat. ____

Q. 22. A complaint must begin with the following words: “In the name and by the authority of the State of Texas.” ____

Q. 23. A city ordinance complaint for the offense of a dog running at large must conclude with the words “Contrary to the said ordinance.” ____

End True/False

Q. 24. What words are required to be on the seal of a municipal court of record? ____________________________________________________________

Q. 25. May a court seal be created electronically? ____________________________________________________________

Q. 26. What is the purpose of the court seal? ____________________________________________________________

Q. 27. What kind of words should be used to describe the offense in a complaint? ______

Q. 28. If the name of a person is not known, how should a complaint describe the accused? ____________________________________________________________

Q. 29. Why does the complaint have to allege the date of the offense? __________

True or False

Q. 30. A complaint that says “has good reason to believe” and does not include the statement “does believe” is defective. ____

Q. 31. A complaint does not have to state that the offense was committed in the city in which it occurred. ____

Q. 32. If a defendant’s name is misspelled on a sworn complaint, the court clerk may correct it and the prosecution may proceed on the complaint. ____

Q. 33. When an officer loses a ticket and finds it three months later and then files it with the court, the court has jurisdiction to try the case. ____

Q. 34. The specific location where an offense occurs must always be stated in the complaint. ____
Q. 35. If the prosecutor decides to file the offense of failure to appear on old cases that have already gone to warrant, the failure to appear must have occurred less than two years previously. ____

Q. 36. If a defendant is being charged with more than one offense, the court may put all the offenses on one complaint. ____

Q. 37. A person acts voluntarily if he or she acts from choice or free will. ____

Q. 38. If a person is required by a city to register his or her dog and fails to do so, the failure to act is considered an offense. ____

Q. 39. Penal Code offenses do not require a culpable mental state. ____

Q. 40. Many Transportation Code offenses do not require a culpable mental state. ____

End True/False

Q. 41. Which city ordinances must allege a culpable mental state even though the offense may not prescribe one. ______________________________________________________________________________________

Q. 42. List the culpable mental states from the highest to the lowest……………………………………

Q. 43. If a statute does not state that a culpable mental state is required, which culpable mental state should be alleged in the complaint? ______________________________________________________________________________________

True or False

Q. 44. The law considers that a person who walks into a store and steals a scarf has a conscious desire to commit theft. ____

Q. 45. A person who recklessly damages someone else’s property even though they might not have intended to do it may be charged with a crime. ____

Q. 46. Criminal negligence is the highest degree of a culpable mental state. ____

End True/False

Q. 47. What culpable mental states may be pled in a complaint charging a city ordinance violation? ______________________________________________________________________________________

True or False

Q. 48. The offense of disorderly conduct may not be filed in municipal court by citation, but must be initiated by a sworn complaint. ____

Q. 49. The municipal court may use a citation filed with the court to serve as the complaint even if the defendant has lost his or her copy. ____

Q. 50. The court may use the copy of the citation to serve as the complaint as long as the court’s and the defendant’s copy is legible. ____

Q. 51. A defendant may plead guilty, not guilty or nolo contendere when a citation has been filed with the court. ____

Q. 52. If a peace officer erroneously issues a citation for the offense of public intoxication, it may serve as the complaint. ____
Q. 53. If a citation has been filed to initiate the proceedings in court, when does a sworn complaint have to be filed?

Q. 54. What must a complaint contain when a defendant pleads not guilty?

Q. 55. When the sworn complaint is filed, is this a new case or the same case that was initiated by the citation?

Q. 56. When may the trial be on the citation instead of the sworn complaint?

Q. 57. If a citation is filed with the court and the defendant fails to appear, what must the court have on file before issuing an arrest warrant?

### PART 2

#### DOCKETS

**A. Maintenance**

A docket is a formal record of court proceedings. The judge must keep a docket and enter proceedings in each trial. Art. 45.017, C.C.P. Because keeping a docket is not discretionary, the judge usually delegates the maintenance of the docket to the clerk.

**B. Format and Information**

There is no requirement that the docket be kept in a well-bound book. (Local Government Records Law, Secs 201.001-205.009; Attorney General Opinion DM-139). Information in a docket may be processed and stored by use of electronic data processing equipment at the discretion of the judge. Arts. 45.012(b)(3) and 45.017(b), C.C.P. If a court stores and maintains the docket electronically, the court is not required to simultaneously maintain a paper copy of the docket. In fact, courts that keep the great bound docket book now are the rare exceptions.

Article 45.017, C.C.P., requires the following information be entered in the docket:

- the style and file number of each criminal action;
- the nature of the offense charged;
- the plea offered by the defendant and the date the plea was entered;
- the date the warrant, if any, was issued, and the return thereon;
- the time when the examination or trial was held and if a trial was held, whether it was by jury or by the justice or judge;
- the verdict of the jury, if any, and the date of the verdict;
- the judgment and sentence and the date each was given;
- a motion for new trial, if any, and the decision thereon; and
- whether an appeal was taken and the date of that action.

As a case proceeds through the judicial system, the clerk enters the required information on the docket. Remember that only brief entries of the information are required. For example, the entry of the judgment on the docket may be that the defendant was found guilty and assessed a fine of $100 and costs. This entry is made after a judge renders and signs a judgment.
Q. 58. When a judge enters proceedings on a docket, what is he or she doing? __________
Q. 59. Why does the court keep a docket? ____________________________
Q. 60. Define judgment. ____________________________
Q. 61. Why may a clerk enter proceedings on a docket?________________________

True or False
Q. 62. The style and file number of each case must be entered on the docket. _____
Q. 63. A docket does not have to include the type of offense with which the person is charged. _____
Q. 64. When a judge issues a warrant, only the date that it is issued must be noted on the docket. _____
Q. 65. The docket must show whether the trial was conducted by the judge or by the jury. _____
Q. 66. Even when a case is dismissed, the dismissal judgment must be entered on the docket. _____
Q. 67. The court is not required to enter on the docket the issuance of a capias pro fine. _____

End True/False

Q. 68. Who has the authority to decide whether to process and store the information on the docket electronically? ____________________________
Q. 69. If information is stored electronically, does the court still have to maintain a simultaneous record in a docket book that is a bound book? ____________________________

PART 3
NONCONTESTED PROCEEDINGS

Defendants who do not wish to contest the charges against them may plead either guilty or nolo contendere (no contest) and pay a fine. In some instances, the court may also require the defendant to comply with other sanctions. Adult defendants can plead guilty or nolo contendere without appearing in open court by delivering or mailing to the court a plea and waiver of jury trial or payment of the fine and costs. Defendants who do not want to contest charges against them may still present evidence to mitigate the fine to be used during the court’s determination of punishment. Art. 45.023, C.C.P.

A. Pleas of Guilty or Nolo Contendere

A plea of guilty is a formal admission of guilt wherein the defendant confesses to committing the charged crime. A plea of nolo contendere means the defendant is not contesting the charges filed against them. Literally, nolo contendere is a Latin phrase meaning, “I will not contest.” Although this plea has a similar legal effect as pleading guilty, the defendant does not admit or deny the charges, but still pays a fine and court costs. The principal difference between a plea of guilty and a plea of nolo contendere is that the nolo plea may not be used against the defendant in a civil action based upon the same acts.
Pleas of guilty and nolo contendere must be made intelligently and voluntarily. Defendants who plead guilty or nolo contendere must also waive the right to a jury trial in writing. Art. 45.025, C.C.P. When a defendant waives a trial by jury, the judge hears and determines the cause without a jury.

**B. Payment of Fine – Plea of Nolo Contendere**

Defendants may pay a fine by mail or by delivering the payment to the court in person or through the defendant’s counsel. The amount accepted by the court constitutes a written waiver of a jury trial and a finding of guilty in open court, as though a plea of nolo contendere had been entered by the defendant. After a clerk receives the payment, the clerk must give the case to the judge to accept the payment. After the judge enters a judgment, the clerk notes the judgment on the docket. Art. 27.14(c), C.C.P.

**C. Appearances**

Defendants who do not wish to contest their cases must still make some type of appearance to dispose of them. Adult defendants may appear in person or by counsel in open court, by mail, by delivering a plea and waiver of jury trial to the court, or by payment of the fine and costs. Art. 27.14, C.C.P.

1. **Open Court**

Adult defendants may appear in person or by counsel in open court to enter a plea. Art. 27.14(a), C.C.P. This procedure is called sometimes referred to as the arraignment. Art. 26.02, C.C.P. At the arraignment a judge identifies the defendant, explains the charge, and requests a plea. If the defendant pleads guilty or nolo contendere, the judge can listen to mitigating circumstances before setting the fine.

2. **Delivery of Plea in Person**

Adult defendants can make an appearance by delivering in person to the court a plea of guilty or nolo contendere and a waiver of jury trial. Art. 27.14(b), C.C.P. If the court receives the plea and waiver before the defendant is scheduled to appear, the court disposes of the case without requiring a court appearance by the defendant. The clerk usually receives these types of pleas and transmits them with the waiver of jury trial to the judge to accept and enter a judgment. Only the judge has the authority to request and accept a plea, and this duty may not be delegated to other court personnel. Attorney General Opinion H-386 (1974).

The court must give notice to the defendant either in person, by hand delivery, or by certified mail with return receipt requested of the amount of any fine assessed in the case and, if requested by the defendant, the amount of an appeal bond. Typically, the clerk provides a hand-delivered notice when the defendant delivers the plea and waiver to the court. After the defendant receives the notice, he or she must pay the fine and costs assessed or post an appeal bond before the 31st day after receiving the notice. Art. 27.14(b), C.C.P.

3. **Mailed Plea**

Adult defendants may also make an appearance by mailing a plea of guilty or nolo contendere and a waiver of jury trial to the court. If the court receives the plea and waiver before the
If a defendant is scheduled to appear, the court simply disposes of the case without requiring further court appearance. Art. 27.14(b), C.C.P. If a defendant makes his or her appearance by mail, the court must notify the defendant by certified mail, return receipt requested, of the amount of the fine assessed and, if requested by the defendant, the amount of an appeal bond. The defendant must pay the fine and costs or post an appeal bond before the 31st day after receiving the notice. Art. 27.14(b), C.C.P.

A document is considered timely filed with the clerk of a court if it is deposited with the U.S. Postal Service in a first class postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed and is received not later than the 10th day after it is required to be filed. Do not count Saturdays, Sundays, or legal holidays when calculating this time period. This is called the “Mailbox Rule.” Art. 45.013, C.C.P. Consequently, courts should consider waiting an additional 10 days after a person is scheduled to appear before preparing warrants or filing failure to appear or violation of promise to appear charges.

**D. Alternative Sentencing**

If a defendant does not want to contest a charge, he or she may also request a driving safety course, teen court, or deferred disposition. Each of these alternatives requires the defendant to first plead guilty or nolo contendere.

<table>
<thead>
<tr>
<th>True or False</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q. 70. A defendant who pleads nolo contendere will be found guilty by the court. ____</td>
</tr>
<tr>
<td>Q. 71. A defendant involved in an accident who pleads nolo contendere to the traffic charge may have the plea held against him in a civil suit. ____</td>
</tr>
<tr>
<td>Q. 72. Defendants who plead either guilty or nolo contendere, and are not eligible for a driving safety course, must pay a fine and court costs. ____</td>
</tr>
<tr>
<td>Q. 73. Pleading guilty means that a defendant admits to having committed the crime. ____</td>
</tr>
</tbody>
</table>

**End True/False**

| Q. 74. What is the arraignment? ________________________________|
| Q. 75. If an adult defendant’s attorney appears in open court, does the defendant have to personally appear? _____________________________|
| Q. 76. When a defendant delivers a plea to the court, what additional information must be included with the plea? ____________________________|
| Q. 77. May the court require an adult defendant’s personal appearance if the defendant delivers the plea of guilty or nolo contendere and a waiver on or before his or her appearance date? ________________________________|
| Q. 78. When a defendant delivers the plea and waiver to the court and requests the amount of fine and appeal bond, what is the court required to do? __________________|
True or False

Q. 79. When a defendant pays a fine and court costs, the payment constitutes a plea of nolo contendere and a written waiver of jury trial. ____

Q. 80. If a defendant’s charge is the result of having caused an accident, the judge has the authority to require that person to make an appearance in open court. ____

Q. 81. A defendant has 31 days to either pay a fine or present the court with an appeal bond from the time that he or she enters a plea by mail. ____

Q. 82. When a defendant mails a plea of guilty or nolo contendere and waiver of jury trial to the court, the court considers that the defendant has made an appearance. ____

Q. 83. If a defendant mails the plea and waiver to the court after his or her appearance date, the court may make the defendant make a personal appearance. ____

Q. 84. When a defendant mails the plea and waiver to the court, he or she has up to 31 days from the date of receiving notice of the amount of fine to pay the fine. ____

Q. 85. A defendant who makes an appearance by mail has the right to appeal his case. ____

Q. 86. A defendant who mails a plea and waiver of jury trial to the court may also include payment of the fine. ____

Q. 87. When a defendant pays the fine and costs through the mail, the court considers that the defendant appeared. ____

Q. 88. When the defendant mails the money to the court, he or she is pleading guilty. ____

Q. 89. If the defendant sends in the wrong amount, the clerk must, before he or she gives the case to the judge, contact the defendant and try to get the rest of the money. ____

PART 4
PRE-TRIAL

The court may set any criminal case for a pre-trial hearing before it is set for trial and direct the defendant and his or her attorney and the prosecutor to appear for the pre-trial. Art. 28.01, Sec. 1, C.C.P. Pre-trial hearings provide an effective means of caseflow management because they:

- handle the defendant’s challenges to the charges filed;
- dispose of issues that do not relate to the merits of the case; and
- assure in advance that the time set for disposition of noncontested cases will not be taken up by other matters.

To expedite the pre-trial process, clerks might want to establish procedures that include:

- making time deadlines for notifying parties of the pre-trial;
- handling filed motions, which may include date stamping the motion when it is filed and noting the cause number of the case on the motion;
- providing the judge and prosecutor with a copy of the filed motions; and
- filing the original motion with the case.
A. Notice

Section 3 of Article 28.01, C.C.P., says that notice of a pre-trial hearing is sufficient if given:

- in open court in the presence of the defendant or his or her attorney;
- by personal service upon the defendant or his or her attorney;
- by mail at least six days prior to the date set for hearing; or
- if the defendant has no attorney, addressed to the defendant at the address shown on the bond; if the bond shows no address, sent to one of the sureties on the bond.

If the envelope containing the notice is properly addressed, stamped, and mailed, the State is not required to show how it was received.

B. Pre-Trial Issues

Some courts require every case set for a jury trial to go to a pre-trial first; other courts require a pre-trial depending on the circumstances of the case. Courts use the pre-trial process to resolve issues relating to the case, but not concerning the merits of the case. The pre-trial process should not be used as a tool to thwart a defendant’s effort at obtaining a trial.

The first appearance, sometimes referred to as the “arraignment,” is usually conducted at pre-trial as well. The Code of Criminal Procedure sets out general purposes and procedures for arraigning citizens accused of committing criminal offenses. The purpose of an arraignment is to establish the identity of the defendant to take the defendant’s plea, and determine if the defendant wants to hire an attorney or waive having an attorney represent them. If the defendant refuses to enter a plea at the time of arraignment, then the court must enter a plea of not guilty. Arts. 27.16 and 45.024, C.C.P. A plea of not guilty means that the defendant is informing the court that he or she denies guilt or has a defense in the case, and that the State must prove what it has charged in the complaint.

Arraignment is required for all felonies and for misdemeanors where the sentence involves possible incarceration. Art. 26.01, C.C.P. However, if an attorney representing a defendant presents a waiver of arraignment, the court cannot require the presence of the defendant as a condition of accepting the waiver. Art. 26.011, C.C.P.

Where the penalty is by fine only, the judge is not required to conduct an arraignment, but the procedure to identify the defendant and request a plea is still often referred to as such.

In addition to arraignment, pre-trial is used to determine the following matters (Art. 28.01, Sec. 1, C.C.P.):

- exceptions to the form or substance of the indictment or information, which initiate proceedings in county and district court; defendants in municipal court may file a motion that says there is a problem with the form or substance of the complaint;
- motions for continuance;
- motions to suppress evidence, or to keep secret from the jury;
- discovery, used to obtain facts and information about the case;
• entrapment, when law enforcement officers induce a person to commit a crime not contemplated by the person solely to institute a criminal prosecution against the person;
• motion for appointment of interpreter; and
• election of whether the jury or judge decides punishment on a finding of guilty in a jury trial.

C. Pre-Trial Motions

The court may, but does not have to, require all motions to be on file at least seven days prior to the date of the pre-trial hearing provided that the defendant has sufficient notice of such hearing to allow him or her not less than 10 days in which to raise or file such preliminary matters. Art. 28.01, Sec. 2, C.C.P.

PART 5
FAILURE TO APPEAR

A. Failure to Appear (FTA)

When a defendant is released from custody and intentionally and knowingly fails to appear in accordance with the terms of release, he or she can be charged with the separate offense of failure to appear. The offense is a Class C misdemeanor if the offense for which the actor’s appearance was required is punishable by fine only. Sec. 38.10, P.C. A defendant that has not been in custody, and consequently, has never promised to appear, cannot be charged with the offense of failure to appear. In this instance, the court would issue a warrant of arrest or capias. Remember, a person that has been detained by a peace officer and then released upon the issuance of a citation, that person has been released from custody and by signing the citation has promised to appear in court.

B. Violate Promise to Appear (VPTA)

A person who willfully violates a written promise to appear in court commits a misdemeanor regardless of the disposition of the charge on which the person was arrested. Sec. 543.009, T.C. The offense of violate promise to appear may be charged only when the underlying offense is an offense in Subtitle C of Title 7 of the Transportation Code (Chs. 541-600). Since no specific penalty is provided for the offense of violate promise to appear, the court must look to the general penalty found in Section 542.401, T.C, of a fine of not less than $1 or more than $200.

C. Filing FTA or VPTA

A defendant that does not appear in court as scheduled is not automatically going to be charged with a nonappearance crime. Only the prosecutor may decide whether to file the charge of failure to appear or violation of promise to appear. Clerks do not make this decision.

Both of these charges are initiated by a sworn complaint and filed on a new docket. Usually the bailiff, warrant officer, or marshal is the affiant.
D. Charts

The following chart illustrates instances it is possible to file failure to appear or violate promise to appear charges.

<table>
<thead>
<tr>
<th>Class C Misdemeanor Offenses</th>
<th>Failure to Appear Sec. 38.10 Penal Code</th>
<th>Violate Promise to Appear Sec. 543.009, T.C.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registration Law Subtitle A, Chapter 502, T.C.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Driver’s License Law Subtitle B, Chapter 521, T.C.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Commercial Driver’s License Law Subtitle B, Chapter 522, T.C.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Subtitle C, Rules of the Road, T.C.</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Financial Responsibility Law Subtitle D, Chapter 601, T.C.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Other Transportation Code offenses outside Subtitle C, Rules of the Road</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Alcoholic Beverage Code</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Education Code</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Health and Safety Code</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Penal Code</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>City Ordinances</td>
<td>Yes¹</td>
<td>No</td>
</tr>
</tbody>
</table>

¹ If a non-peace officer, such as a code enforcement officer, issues a citation, failure to appear may not be filed.

The following chart indicates some differences between the two charges:

<table>
<thead>
<tr>
<th>Differences</th>
<th>Failure to Appear Sec. 38.10, P.C.</th>
<th>Violate Promise to Appear Sec. 543.009, T.C.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision to file charge</td>
<td>City prosecutor</td>
<td>City prosecutor</td>
</tr>
<tr>
<td>Charge initiated by sworn complaint</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Culpable mental state</td>
<td>Intentionally and Knowingly</td>
<td>Willfully</td>
</tr>
<tr>
<td>Custody of defendant required</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Defendant released on bail required</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Maximum possible fine if convicted</td>
<td>$500.00</td>
<td>$200.00</td>
</tr>
</tbody>
</table>

True or False

Q. 90. A defendant who has been served with a summons and then fails to appear may be charged with the offense of failure to appear. ____

Q. 91. A defendant who is released without bail and then fails to appear may not be charged with the offense of failure to appear. ____

Q. 92. The culpable mental state of the offense of failure to appear is intentionally or knowingly. ____
Q. 93. The offense of failure to appear is a Class C misdemeanor if the offense for which the person was required to appear is also a Class C misdemeanor. ____

Q. 94. The maximum amount of fine that may be assessed for the offense of failure to appear is $200. ____

Q. 95. A municipal court clerk may sign as affiant on a complaint for failure to appear. ____

Q. 96. The culpable mental state for the offense of violation of promise to appear is willful conduct. ____

Q. 97. If the charge for which the defendant’s appearance was required is dismissed, the offense of violation of promise to appear must also be dismissed. ____

Q. 98. When a defendant charged with the offense failure to maintain financial responsibility, which is in Subtitle D of the Transportation Code, fails to appear, he or she may be charged with violation of promise to appear. ____

Q. 99. The maximum fine that a court may assess for the offense of violation of promise to appear is $200. ____

Q. 100. If the charge for which the defendant’s appearance is required is a traffic offense, a municipal court clerk may not sign as affiant on a complaint for violation of promise to appear. ____

Q. 101. When a defendant fails to present evidence of completing a driving safety course, the court has the option of whether to require a show cause hearing. ____

Q. 102. When the court sets a show cause hearing, the notice to the defendant is sent by regular mail. ____

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**PART 6**

**WARRANTS, CAPIASES, AND SUMMONSES**

This section provides an overview of probable cause and the types of writs issued by municipal courts. First, what is a “writ?” Originally, a writ was a letter or command from the King, usually written in Latin, and sealed with the Great Seal. Now, a “writ” is referred to an order of the court ordering a person to perform an or refrain from some specified act. We deal with several types of writs in municipal court: an arrest warrant is a writ, as is a capias. In order for a judge to issue a warrant or capias, the judge must have probable cause to issue such an order.

Although municipal court clerks have no authority to determine probable cause, typically, they prepare affidavits of probable cause for peace officers and others. After an affidavit is sworn, it is presented to a judge or a magistrate who determines if the probable cause in the affidavit is sufficient to issue an arrest warrant.

After a judge issues a warrant, the clerk’s role as custodian of the records is to coordinate with the police department the handling of the warrant. Some courts give the police department a copy of the warrant; some give them the original. Some courts are connected electronically with the police department. Some courts provide the police department with a list of defendants to whom warrants have been issued.

Article 15.26, C.C.P., makes it the official duty of the magistrate’s clerk to be the custodian of arrest warrants or affidavits made in support of the warrant. Warrants and affidavits are public
information after the warrants are executed. The clerk has an affirmative duty to make a copy of the warrants and supporting affidavits available for public inspection after the warrants are served.

A. Probable Cause

No warrant shall issue, but upon probable cause. U.S. Const., Amend. IV; Tex. Const. Art. I, Sec. 9; and Art. 1.06, C.C.P. Probable cause is the amount of evidence necessary to cause a person to believe someone has committed a crime. An arrest warrant, a summons, and a capias require probable cause before being issued.

A municipal court clerk lacks authority to determine probable cause. Only a judge or magistrate may determine probable cause. Sharp v. State, 677 S.W.2d 513 (Tex. Crim. App. 1984). Probable cause can be presented to a judge or magistrate by an affidavit or by additional wording contained in a complaint. The test in determining if a complaint shows probable cause is whether it provides a neutral and detached magistrate with sufficient information to support an independent judgment that probable cause exists for the issuance of a warrant. Rumsey v. State, 675 S.W.2d 517, (Tex. Crim. App. 1984).

B. Service of Process

1. Process Defined

Processes are written orders issued by a judge or a magistrate and include a warrant of arrest, capias, capias pro fine, and summons.

2. City Police Officers and Marshals

City police officers and marshals serve municipal court process under the same rules and laws governing the service of process by sheriffs and constables. Art. 45.202, C.C.P. A city police officer or marshal may serve all process issuing out of municipal court anywhere in the county in which the municipality is situated. If the municipality is in more than one county, they may serve process throughout those counties. Art. 15.16-15.17, C.C.P.

The officer executing a warrant of arrest shall, without unnecessary delay, but no later than 48 hours, take the person or have him or her taken before the magistrate who issued or is named in the warrant, if the magistrate is in the same county where the person is arrested. If the issuing or named magistrate is in another county, the person shall, without unnecessary delay, be taken before a magistrate in the county in which the person was arrested. Arts. 15.16-15.17, C.C.P. If it is more expeditious to the person arrested, the officer may take the person before a magistrate in a county other than the county of arrest. Art. 15.16(b), C.C.P.

C. Warrant of Arrest

1. Defined

A warrant of arrest is a written order from a magistrate directed to a peace officer or some other person specially named to take a person into custody. Art. 15.01, C.C.P. A warrant orders the arrest of an accused. Art. 45.014, C.C.P.
2. **Authority to Issue**

A judge may issue arrest warrants for fine-only misdemeanors filed in municipal court. Art. 45.014, C.C.P. Municipal judges and city mayors are also magistrates and have additional authority to issue warrants. Art. 2.09, C.C.P. A magistrate may issue a warrant of arrest for Class A and B misdemeanors and felonies. Art. 15.03, C.C.P.

a. **Issued by Judge**

When a sworn complaint or affidavit based on probable cause is filed, the judge may issue a warrant of arrest for charges over which the judge has jurisdiction. Art. 45.014, C.C.P.

A warrant issued pursuant to Article 45.014, C.C.P. must:

- issue in the name of “The State of Texas;”
- direct the proper peace officer or some other person specially named in the warrant;
- include a command that the body of the accused be taken and brought before the authority issuing the warrant, at the time and place there named;
- state the name of the person whose arrest is ordered, if it be known, and if not known, the person must be described as in the complaint;
- state that the person is accused of some offense against the laws of the State and name the offense; and
- be signed by the justice/judge and name his or her office in the body of the warrant or in connection with his or her signature.

b. **Issued by Magistrate**

A magistrate may issue a warrant of arrest in any case in which the magistrate is authorized by law to verbally order the arrest of an offender; when a person makes an oath before the magistrate that a person has committed an offense against the laws of the State; and in any case named in the Code of Criminal Procedure where the magistrate is specially authorized to issue a warrant. Art. 15.03, C.C.P.

Article 15.02, C.C.P., provides that a warrant issued by a magistrate must:

- issue in the name of “The State of Texas;”
- specify the name of the person whose arrest is ordered, if it be known; if unknown, then some reasonably definite description must be given of him or her;
- state that the person is accused of some offense against the laws of the State and name the offense; and
- be signed by the magistrate and name his or her office in the body of the warrant or in connection with his or her signature.

A warrant issued by a magistrate, except a mayor, extends to every part of the State, and any peace officer to whom the warrant is directed is authorized to execute it in any county in the state. Art. 15.06, C.C.P. The peace officer receiving the warrant must execute it without delay.

The officer or person executing a warrant of arrest shall, without unnecessary delay, take the person or have him or her taken before the magistrate who issued the warrant or before the
magistrate named in the warrant if the magistrate is in the same county where the person is arrested. If the issuing or named magistrate is in another county, the person arrested shall without unnecessary delay be taken before some magistrate in the county in which the person was arrested. Art. 15.16, C.C.P. If it is more expeditious to the person arrested, the officer may take the person before a magistrate in a county other than the county of arrest. Art. 15.16(b), C.C.P.

c. **Issued by Mayor**

A warrant issued by a mayor as a magistrate cannot be executed in another county other than the one in which it is issued. The exception to this is when it is endorsed by a judge of a court of record, in which case it may be executed anywhere in the State, or if it is endorsed by a magistrate in the county in which the accused is found, it may be executed in that county. If it is endorsed by a magistrate where the accused is found, the endorsement is as follows: “Let this warrant be executed in the County of __________.” If the warrant is endorsed by a judge of a court of record, the endorsement is “Let this warrant be executed in any county of the State of Texas.” Any other words of the same meaning will be sufficient. The endorsement shall be dated and signed officially by the magistrate making it. Art. 15.07, C.C.P.

D. **Capias**

1. **Defined**

A capias is a writ (written order) issued by the judge of the court having jurisdiction of a case after commitment or bail and before trial, or by a clerk at the direction of the judge and directed "to any peace officer of the State of Texas," commanding the officer to arrest a person accused of an offense and bring the arrested person before that court immediately on a day or at a term stated in the writ. Art. 23.01, C.C.P.

2. **Authority to Issue**

In misdemeanor cases, the capias or summons issues from a court having jurisdiction of the case. Art. 23.04, C.C.P. Where a forfeiture of bail is declared, a capias shall be immediately issued for the arrest of the defendant. Art. 23.05, C.C.P.

Municipal court clerks may prepare the capias, but the municipal judge must issue the capias. Although Article 23.01 provides that the capias may be issued by the clerk at the direction of the judge, this provision only applies to district clerks under certain conditions. The 80th Legislature codified the *Sharp v. State* case that involved a City of Houston municipal court clerk who issued a capias writ for violating the “helmet safety law.” The defendant was later arrested on that writ and, as a result of this arrest, was charged with and convicted of possession of methamphetamine. The appellate court held that authority was not vested in the deputy municipal court clerk under Texas law to issue a capias. Because a magistrate had failed to direct the issuance of the capias and to determine probable cause, the defendant’s arrest was illegal and the evidence discovered as a direct result of the arrest was suppressed. In *Crain v. State*, 759 F.2d 412 (1986), a district attorney and county attorney were held liable because the district attorney had devised a county policy authorizing clerks, rather than judges, to issue misdemeanor capiases.
3. **Requisites**

Article 23.02, C.C.P., provides the requirements of a capias. It must:

- run in the name of “The State of Texas;”
- name the person whose arrest is ordered, or if unknown, describe the person;
- specify the offense of which the defendant is accused and state that the offense is against the penal laws of the State;
- name the court to which and the time when it is returnable (A capias does not lose its’ force if not executed and returned at the time fixed in the writ. It may be executed at any time afterward. All proceedings under such capias shall be as valid as if the same had been executed and returned within the time specified in the writ. Art. 23.07, C.C.P.); and
- be dated and attested officially by the authority issuing the same.

4. **Return**

A return of the capias shall be made to the court from which it is issued. If it has been executed, the return shall state what disposition has been made of the defendant. If it has not been executed, the cause of the failure to execute it shall be fully stated. If the defendant has not been found, the return shall further show what efforts have been made by the officer to find him or her, and what information the officer has as to the defendant’s whereabouts. Art. 23.18, C.C.P.

The clerk is responsible for coordinating the handling of the capias between the court and police department. If a peace officer is unable to serve the capias and returns it to the court, the clerk should bring this information to the attention of the judge and the prosecutor.

E. **Capias Pro Fine**

A capias pro fine is an order of the court directing a peace officer to bring a defendant who fails to satisfy a judgment before the court immediately or to place the defendant in jail until the business day following the date of the defendant’s arrest if he or she cannot be brought before the court immediately. Art. 45.045, C.C.P.

F. **Summons**

1. **Defined**

A summons gives notice to a person, association, or corporation that a charge has been filed in court. It provides the address of the court and a date and time the defendant is required to appear.

2. **Requisites**

   a. **For a Defendant**

   A summons issued by a judge for a misdemeanor follows the same form and procedure as in a felony case. Art. 23.04, C.C.P. The summons is in the same form as a capias, except it summons a defendant to appear before the proper court at a stated time and place. Art. 23.03(b), C.C.P.
Article 23.03(d), C.C.P., requires that a summons issued for a felony include the following notice, clearly and prominently stated in English and in Spanish: “It is an offense for a person to intentionally influence or coerce a witness to testify falsely or to elude legal process. It is also a felony offense to harm or threaten to harm a witness or prospective witness in retaliation for or on account of the service of the person as a witness or to prevent or delay a person’s service as a witness to a crime.”

A summons issued by a magistrate for a defendant is in the same form as a warrant, except it summons a defendant to appear before a magistrate at a stated time and place. Art. 15.03(b), C.C.P.

b. **For a Corporation or Association**

If the court is issuing a summons for a corporation or association, the form of the summons is different. It shall be in the form of a capias and shall provide that the corporation or association appear before the court named at or before 10 a.m. of the Monday next after the expiration of 20 days after it is served. If service is upon the Secretary of State or the Commissioner of Insurance, the summons shall provide that the corporation or association appear at or before 10 a.m. of the Monday next after the expiration of 30 days after service. A certified copy of the complaint must be attached to the summons. Art. 17A.03, C.C.P.

3. **Authority to Issue**

a. **Judicial Authority**

In a misdemeanor case, the summons is issued by a court having jurisdiction in the case. Art. 23.04, C.C.P. This summons should not be confused with a jury summons, which is a notice a clerk sends to a prospective juror requiring his or her appearance for jury service. A municipal court may also issue a summons for a corporation or association under Article 17A.03, C.C.P.

The summons for a defendant may be issued *only* upon request of the attorney representing the State. Art. 23.04, C.C.P. There is no requirement in Chapter 17A that a prosecutor make a request for issuance of a summons to a corporation or association.

b. **Magistrate Authority**

A magistrate may issue a summons for Class A and B misdemeanors and felonies, and in any case where a warrant may be issued. Art. 15.03, C.C.P.

4. **Service**

a. **On the Defendant**

Articles 23.03(c) and 15.03(b), C.C.P., provide for how a peace officer serves a summons. The methods of service are:

- delivering a copy to the defendant personally;
- leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion residing therein; or
- mailing it to the defendant’s last known address.
b. **On the Corporation**

Peace officers can serve a summons on a corporation the following ways:

- by personally delivering a copy of it to the corporation’s registered agent for service;
- if a registered agent has not been designated or the officer cannot locate the agent after diligent effort, by personally serving the president or a vice president of the corporation; or
- if the attempt to effect service is unsuccessful, by serving the summons on the Secretary of State by personally delivering a copy of it to the Secretary or the Assistant Secretary of State, or to any clerk in charge of the corporation department at the Secretary of State’s office. Art. 17A.04, C.C.P.

c. **On the Association**

A peace officer shall personally deliver a copy of a summons to a high managerial agent at any place where business of the association is regularly conducted. If the officer certifies on the return that diligence was used to attempt service, but failed to serve a high managerial agent or employee of suitable age and discretion, then the officer may serve it to any member of the association. Art. 17A.05, C.C.P.

5. **Enforcement**

When a defendant fails to respond to a summons issued by a judge who has jurisdiction over the case, the judge enforces the summons by issuing a capias. Art. 23.03(b), C.C.P.

If counsel fails to appear for the corporation or association, it is deemed to be present in person for all purposes and the court shall enter a plea of not guilty and the court may proceed with trial, judgment, and sentencing. Art. 17A.07, C.C.P. No individual may be arrested upon a complaint, judgment, or sentence against a corporation or association. Art. 17A.03(b), C.C.P.

When a defendant fails to respond to a summons issued by a magistrate, the magistrate enforces the summons by issuing a warrant of arrest. Art. 15.03(b), C.C.P.

G. **Warrant for Seizure of Animals**

A municipal judge may issue a warrant to order the seizure of an animal being cruelly treated. Sec. 821.022, H.S.C. On a showing of probable cause to believe that an animal has been or is being cruelly treated, the court shall issue the warrant and set a time within 10 days of the date of issuance for a hearing to determine whether the animal has been cruelly treated.

The officer executing the warrant must impound the animal and give written notice to the owner of the animal of the time and place of the hearing. If an owner is divested of ownership, he or she may appeal the order. Sec. 821.025, H.S.C.

H. **Search Warrants**

1. **Defined**

A search warrant is a written order issued by a magistrate. Municipal judges are magistrates. Art. 2.09, C.C.P. The search warrant directs a peace officer to search and seize property or things and
bring the seized property before the magistrate. It may also order an officer to search for and photograph a child and to bring the exposed film to the magistrate. Art. 18.01, C.C.P. A search warrant must be supported by a sworn affidavit setting forth substantial facts establishing probable cause for its issuance. This affidavit is public information if executed, unless it has been ordered to be sealed, and the clerk must make a copy of the affidavit available for public inspection during normal business hours. Art. 18.01(b), C.C.P.

2. Authority to Issue

As a general rule, only municipal judges sitting in a court of record may issue evidentiary search warrants to order seizure of non-contraband items. The exception to this rule is if the county does not have a municipal court of record or a county judge that is an attorney. Art. 18.01(i), C.C.P. Note, however, that the 81st Regular Legislature amended Article 18.01, C.C.P., to authorize any magistrate who is a licensed Texas attorney to issue a search warrant to collect a blood specimen for certain intoxication or alcohol offenses and refuses to submit to a breath or blood alcohol test. Consequently, it appears that municipal courts with attorney judges now have authority to issue blood warrants.

3. Nuisance Abatement

The governing body of a municipality may, by ordinance, provide authority for a judge of a municipal court of record to issue a search warrant for the purpose of investigating a health and safety or nuisance abatement ordinance violation. Sec. 30.00005, G.C.

Also, a municipality may, by ordinance, provide authority for a municipal judge of a court of record to issue a seizure warrant for the purpose of securing, removing, or demolishing property that is a nuisance or removing debris from a property. Sec. 30.0005, G.C. Is your court a court of record?

| Q. 103. Clerks are required to have copies of warrants and affidavits on file for public viewing after the warrants have been executed. |
| Q. 104. The amount of evidence necessary for a finding of probable cause is evidence that causes a judge to believe that someone has committed a crime. |
| Q. 105. A judge does not need probable cause to issue a capias. |
| Q. 106. Probable cause is reasonable grounds for presuming that someone committed a crime. |
| Q. 107. Complaints alone are enough evidence to establish probable cause. |
| Q. 108. Probable cause must always be in a separate affidavit from a complaint. |
| Q. 109. Judges must always remain neutral when assessing probable cause. |

End True/False

Q. 110. Why can a municipal court clerk not issue a warrant or capias?

___________________________________________________________
Q. 111. Who has the authority to serve warrants issued by the municipal judge?  
___________________________________________________________________

Q. 112. When applicable, what rules must be followed when municipal court process is served?  
___________________________________________________________________

Q. 113. When a city is situated in only one county, where may city peace officers serve municipal court warrants, summons, and capiases?  
___________________________________________________________________

Q. 114. When a city is situated in more than one county where may city peace officers serve warrants?  
___________________________________________________________________

Q. 115. May a city peace officer serve a warrant of arrest in a neighboring city?  

Q. 116. Who may the court order to bring a person accused of a crime before the court?  

Q. 117. What kind of order is a warrant of arrest?  
___________________________________________________________________

True or False

Q. 118. Mayors do not have the authority to issue warrants for felonies.  ____

Q. 119. Municipal judges are magistrates.  ____

Q. 120. Being a magistrate gives municipal judges additional authority.  ____

End True/False

Q. 121. In what name must a warrant be issued?  
___________________________________________________________________

Q. 122. To whom is a warrant directed?  
___________________________________________________________________

Q. 123. When a person is arrested, where is the officer supposed to take that person?  

Q. 124. If the court does not know the name of the person for whom the warrant is being issued, what description must be on the warrant?  
___________________________________________________________________

Q. 125. Must the warrant state the offense for which the person is being charged?  

Q. 126. Where must the judge’s office be named in the warrant?  
___________________________________________________________________

True or False

Q. 127. A warrant issued by a magistrate must command that the person be brought before the magistrate.  ____

Q. 128. A warrant issued by a magistrate must have his or her office named in the warrant or in connection with his or her signature.  ____

Q. 129. A warrant issued by a magistrate does not have to name the offense of which a person is accused.  ____

End True/False

Q. 130. May someone other than a peace officer serve a warrant?  

Q. 131. Who has the authority to serve a warrant issued by a magistrate?  

Q. 132. Who has the authority to serve a warrant issued by a municipal judge?  

True or False
Q. 133. A warrant issued by a municipal judge may only be served in the county in which the city is located. ____
Q. 134. After a judge issues a warrant, the clerk should deliver it to the police department to be served. ____
Q. 135. The officer’s first responsibility when he or she arrests a person is to take the person before the magistrate named in the warrant within 10 hours of the arrest. ____
Q. 136. If a person is arrested in a county other than the one from which the warrant was issued, the peace officer must transport the person immediately to the magistrate who issued the warrant. ___
Q. 137. One of the clerk’s responsibilities when processing a warrant is to make certain that the judge has information on the service or processing of the warrant. ___

End True/False

Q. 138. Who must endorse a warrant issued by a mayor so that it can be served in any county in the state? ____________________________________________________________
Q. 139. What is the required wording of the endorsement? ____________________________

True or False
Q. 140. A writ is a written order. ____
Q. 141. A magistrate has the authority to issue a capias. ____
Q. 142. When a defendant is arrested on a capias, the officer must bring the person before the court immediately or on a certain day stated in the capias. ____
Q. 143. A judge has authority to issue a capias. ____
Q. 144. A capias must name “The State of Texas.” ____
Q. 145. The court must know the name of the defendant before it can issue a capias. ____
Q. 146. The offense noted in the capias must be an offense that is against the penal laws of the state. ____
Q. 147. The capias does not have to state a time when it is to be returned to the court. ____
Q. 148. When a judge issues a capias, he or she is required to certify it by signing his or her name. ____
Q. 149. A municipal court clerk has the authority to issue a capias. ____
Q. 150. All mayors have authority to issue a capias. ____
Q. 151. A judge who has the authority to hear a case has the authority to issue a capias. ____

End True/False

Q. 152. When must a court issue a capias?
________________________________________________________________________
Q. 153. What happens if a peace officer does not serve a capias by the date fixed in the capias?

___________________________________________________________________

Q. 154. If a capias is not served until after the date fixed in the capias, are the proceedings under the capias still valid?

___________________________________________________________________

Q. 155. May a city peace officer serve a capias?

___________________________________________________________________

Q. 156. Where is a capias returned to?

___________________________________________________________________

Q. 157. When a defendant is arrested, what information is required to be on the return?

_____ 

Q. 158. What information is required to be on the return when the peace officer was unable to serve the capias?

___________________________________________________________________

Q. 159. When the peace officer can’t find the defendant, what must the peace officer do with the capias?

___________________________________________________________________

Q. 160. What is the clerk’s responsibility when a peace officer cannot locate the defendant?

Q. 161. What information should a clerk coordinate with the police department and the judge so that the judge may assess a warrant fee upon conviction?

___________________________________________________________________

True or False

Q. 162. A municipal court clerk has the authority to issue a summons. _____

Q. 163. Municipal judges may issue a summons. _____

Q. 164. Mayors have no authority to issue a summons. _____

Q. 165. Magistrates may issue a summons. _____

Q. 166. Municipal court summons must follow the same form and procedure of the summons issued by the district court. _____

Q. 167. A summons issued by the municipal judge is supposed to be in the same form as a felony warrant of arrest. _____

Q. 168. A summons for a corporation or association requires the court to wait 20 days after service on the corporation or association before requiring an appearance by counsel for the corporation or association. _____

Q. 169. The summons does not have to contain a notice in Spanish that it is an offense to intentionally influence, coerce, or harm a witness. _____

Q. 170. A summons tells the defendant to appear in court at a stated time and place. _____

Q. 171. The only time that a municipal judge may issue a summons is when the city prosecutor makes a request for its issuance. _____

Q. 172. A summons issued for a corporation or associate must be served in person. _____

End True/False

Q. 173. What is the form of a summons issued by a magistrate?

___________________________________________________________________

Q. 174. What does a summons issued by a magistrate do?

___________________________________________________________________

Q. 175. When may a magistrate issue a summons?

___________________________________________________________________
True or False
Q. 176. When a defendant is served with a summons, he or she is arrested and taken into custody. _____
Q. 177. A copy of the summons must be given to the defendant personally. _____
Q. 178. A summons may be served by mailing it. _____
Q. 179. Municipal court clerks have the authority to serve a summons. _____
Q. 180. The defendant must be of a suitable age before the officer may serve the summons on him or her. _____

End True/False

Q. 181. When a defendant fails to respond to a summons issued by the court (judge), what type of order does the court issue? ____________________________________
Q. 182. When a defendant fails to respond to a summons issued by a magistrate, what type of order does the magistrate issue? ____________________________________
Q. 183. What information must a municipal judge have before issuing a warrant for seizure of an animal? ____________________________________
Q. 184. When must a hearing be conducted to determine if an animal has been cruelly treated? ____________________________________
Q. 185. What is the responsibility of the officer executing the warrant? ______________________
Q. 186. Does the owner of an animal that is ordered, seized, and sold at a public auction have a right to appeal the order? ____________________________________

True or False
Q. 187. A search warrant is a verbal order of a magistrate. _____
Q. 188. A city peace officer has authority to execute a search warrant. _____
Q. 189. A search warrant may command a peace officer to search for and photograph a child and to bring the exposed film to a magistrate. _____
Q. 190. A search warrant may command a peace officer to search for and seize a person’s property. _____
Q. 191. A municipal judge who is a licensed attorney may issue any type of search warrant. _____
Q. 192. After a search warrant is executed, the clerk must make a copy of the affidavit and have it available to the public. _____

H. Fees Attached to Writs

1. Arrest Fee

Courts must collect a $5 fee upon conviction when a peace officer issues a written notice to appear (citation) in court for a violation of a traffic law, municipal ordinance, or penal law of this state or makes a warrantless arrest. Art. 102.011(a) C.C.P. The definition of conviction for the
purpose of collecting the arrest fee is defined in Section 133.101, L.G.C., and provides that a person is considered to have been convicted in a case if:

- a judgment, a sentence, or both a judgment and a sentence are imposed on the person;
- the person receives community supervision, deferred adjudication, or deferred disposition; or
- the court defers final disposition of the case or imposition of the judgment and sentence.

Note, if a charge is initiated by the filing of a complaint, such as a citizen complaint or a code enforcement complaint, the arrest fee may not be collected. Why? There has been no arrest and release with the issuance of a citation in these instances. Likewise, if a peace officer files a charge by complaint and obtains a warrant of arrest, the court may not collect the arrest fee. The arrest fee is not be collected for the offenses of failure to appear and violation of promise to appear since these charges are initiated by complaint and a warrant is issued.

When a city officer issues a citation or makes a warrantless arrest, the city keeps the entirety of the arrest fee. If a peace officer with statewide authority, such as a DPS officer, issues the citation, one dollar must be reported to the Comptroller. The statute does not require that the arrest fee be used for a specific purpose, and it may be deposited into the general revenue fund.

2.  **Warrant Fee**

Warrant fees are costs collected as a result of services performed by a peace officer. Article 102.011(a)(2), C.C.P., requires that a $50 warrant fee be collected upon conviction if a warrant, capias, or capias pro fine is processed or executed by a peace officer. The definition of conviction for the purpose of collecting the warrant fee is defined in Section 133.101, L.G.C. as discussed in the section above.

A warrant, capias, or capias pro fine is executed if the officer serves the warrant by arresting the defendant. The statute does not define processing, so each clerk should ask the judge to determine what he or she considers as “processing.” Some processes that a judge might consider are making telephone calls to the defendant, writing courtesy letters, or entering the warrant into the local police department computer by the law enforcement agency. Regardless of what the judge accepts as processing, documentation of the processing must be provided to the judge before he or she may assess the fee.

If a law enforcement agency other than the one whose court issued the warrant, capias, or capias pro fine executes it, that agency may request the $50 fee. The request must be made within 15 days after the arrest. If that agency fails to request the fee, it is still required to be collected, but it is paid into the issuing city’s treasury. If a peace officer employed by the city where the warrant, capias, or capias pro fine was issued executes or processes the warrant, the $50 fee would be collected and paid into the city treasury. If a peace officer with statewide authority executes or processes the warrant, $10 of the $50 fee must be remitted to the state the last day of the month following the quarter in which it was collected.

If the warrant is executed or processed but there is no conviction, the $50 fee may not be assessed or collected. If the warrant is not processed or served by a peace officer, the court may not assess the fee. For instance, when the warrant is given to a warrant collection agency to
process, the fee may not be collected because a warrant collection agency generally employs people who are not peace officers. However, if the court first gave the warrant to the local police department for some type of processing before sending the warrant to the warrant collection agency, the court could assess the fee.

The statute does not require that this fee be used for any specific purpose. It may be placed in the city’s general revenue fund used for any lawful purpose, including the $40 that is left after a peace officer with statewide authority executes or processes a warrant.

3. Special Expense Fee: Warrants

Article 45.203, C.C.P., says that cities must, by ordinance, prescribe rules not inconsistent with state law, as may be proper to enforce the collection of fines. This statute also provides authority to adopt an ordinance for the collection after due notice of a special expense fee not to exceed $25 for the issuance and service of a warrant of arrest for the offenses of failure to appear (Sec. 38.10, P.C.) and violation of promise to appear (Sec. 543.009. T.C.).

The statute requires that the warrant of arrest be executed; just processing it does not count. Because of this, the fee may not be collected if a defendant voluntarily surrenders himself or herself to the court or the defendant appears after a courtesy letter from the court or peace officer. The statute requires that the fee be deposited into the municipal treasury. Some cities pay the warrant fee to peace officers who serve the warrant outside their regular duty hours. Attorney General Opinion JM-462 (1986) addresses this issue. The opinion says, in part, that members of a regular police force may legally serve arrest warrants outside of their regular hours, but may not receive the warrant fee as compensation for such service. Cities must compensate officers as they otherwise would when they work overtime. Hence, cities should consult with their city attorney regarding the payment of peace officers.

True or False

Q. 193. Courts only collect the arrest fee when a defendant is arrested and taken to jail. ____
Q. 194. The arrest fee is $5. ____
Q. 195. The city must remit $1 of the arrest fee for every arrest that a city officer makes. ____
Q. 196. The warrant fee can be collected upon conviction of a defendant when a peace officer processed the warrant or the court clerk wrote letters to the defendant. ____
Q. 197. If another law enforcement agency executes the warrant, the court is required to send the $50 warrant fee to the other law enforcement agency even if the defendant is found not guilty. ____
Q. 198. The warrant fee must be allocated to the police department budget. ____
Q. 199. The court may collect the $25 special expense fee on warrants only after the city has adopted an ordinance requiring the fee to be collected. ____
Q. 200. The $25 special expense fee can be assessed on all charges when the judge issues warrants. ____
A. **Definition of Bail**

Bail is the security given by the accused that he or she will appear and answer the accusation brought against him or her. Bonds are a type of bail and include personal or surety bonds or a cash deposit. Arts. 17.01 and 17.02, C.C.P.

B. **Bail Rules Applicable to Every Court**

The rules regarding bail are applicable to all courts. They apply when a judge or magistrate sets and takes bail, when a peace officer takes bail, or when a witness is required to give bail. Art. 17.38, C.C.P.

C. **Records of Bail**

A magistrate or other officer who sets the amount of bail or who takes bail must record the following information in a well-bound book:

- the name of the person whose appearance the bail secures;
- the amount of bail;
- the date bail is set;
- the magistrate or officer who sets bail;
- the offense or other cause for which the appearance is secured;
- the magistrate or other officer who takes bail;
- the date the person is released; and
- the name of the bondsman, if any. Art. 17.39, C.C.P.

If a state law relating to the keeping of records by a local government officer or employee requires the records to be kept in a “book,” “record book,” or “well-bound book,” or contains any similar requirement that a record be maintained in bound paper form, the record may be maintained on microfilm or stored electronically in accordance with the requirements of the Local Government Code chapters 204 and 205 and rules adopted under those Chapters unless the law specifically prohibits those methods. Sec. 201.004, L.G.C.

D. **Personal Bond Offices**

In a county that has a personal bond office, a court that releases an accused on personal bond on a recommendation of a personal bond office, must assess a personal bond fee of $20 or three percent of the amount of the bail fixed for the accused, whichever is greater. The court may waive the fee or assess a lesser fee if good cause is shown. Art. 17.42, C.C.P. Article 17.03(g), C.C.P., provides that the court may order the personal bond fee to be:

- paid before the defendant is released;
- paid as a condition of bond;
- paid as court costs;
- reduced as otherwise provided for by statute; or
• waived.

If there is a personal bond office in the county from which the warrant for arrest was issued, the court releasing a defendant on his or her personal bond must forward a copy of the personal bond to the personal bond office in that county. Art. 17.031(b), C.C.P.

E. Cash in Lieu of Surety

A defendant in any criminal action, upon execution of a bail bond, may deposit with the custodian of funds of the court in which the prosecution is pending current money of the United States in the amount of the bond in lieu of having sureties. Art. 17.02, C.C.P.

Cash funds deposited must be receipted by the officer receiving the money and deposited with the custodian of the funds of the court (usually, the city designates the court clerk as the custodian of the court funds). Prior to this last legislative session, a cash bond had to be refunded to the defendant if and when the defendant complies with the condition of his or her bond, and upon order of the court. Take note—this law has changed. In the last legislative session, effective September 1, 2011, Article 17.02 C.C.P. was amended in an effort to insure that persons who post cash bonds for the defendant get that money back, rather than having the refunded bond go to the defendant. The statute now states that if a bond is to be refunded, that the bond be refunded to the person whose name is on the receipt issued when the bond was posted. If a receipt is not produced, then the bond can be refunded to the defendant. The statute is silent as to how long the court should wait for the receipt to be produced.

F. Refunds

Bonds must be refunded when conditions of the bond are complied with. Tex. Atty. Gen. Op. C-740 (1966); De Leon v. Pennington, 759 S.W.2d 201, 202 (Tex. App.—San Antonio, 1988 no writ). When a defendant has made all required appearances and the case has been adjudicated, the defendant is no longer under bond. If the defendant had filed a cash bond with the court, the court would order the bond refunded to the defendant. After the order of refund, the clerk would process the paperwork for the finance department to process a check for the refund. Note, as mentioned above, if someone other than the defendant posted the cash bond, the refund should be issued to the person named on the receipt.

PART 8

BOND FORFEITURES

When a defendant posts bond, he or she agrees as a condition of being released, to appear in court. The failure to perform the condition on the bond causes the court to declare forfeiture of the bail. The term “forfeiture” simply means to become liable for the payment of a sum of money as a consequence of a certain act. In other words, a bond forfeiture is a lawsuit to recover the amount of a bond from a defendant or surety because of the violation of the conditions of the bond. Generally, Chapter 22, C.C.P., governs bond forfeiture proceedings. The exception to using the procedures in Chapter 22 is found in Article 45.044, C.C.P. This statute provides another method of forfeiting a cash bond applicable to municipal and justice courts.
A. Procedures when Forfeited

When a defendant fails to appear in court, bail is required to be forfeited. Art. 22.01, C.C.P. Before bail is forfeited, the defendant’s name must be called distinctly at the courthouse door. Art. 22.02, C.C.P. If the defendant fails to appear or to answer, the clerk prepares a judgment nisi for the judge’s signature. A judgment nisi recites the amount of the forfeiture, who is liable for the judgment, and that the judgment will be made final unless good cause is shown as to why the defendant did not appear.

The clerk enters the judgment nisi on the scire facias docket, which is a civil docket especially for bail forfeitures. Next, the clerk prepares a citation. The clerk may serve the citation by certified mail, return receipt requested, restricted delivery, if requested by the prosecutor. Otherwise, the clerk can give the citation to a peace officer to serve. Arts. 22.03-22.08, C.C.P. For information on Bond forfeiture proceedings, see TMCEC Study Guide Level II, Bond Forfeitures.

B. Alternative Procedures for Forfeiting a Cash Bond

Article 45.044, C.C.P., permits a judge to forfeit a cash bond for fine and costs if the defendant:

- enters a written and signed plea of nolo contendere and a waiver of jury trial; and
- fails to appear according to the terms of the defendant’s release.

The judge must immediately notify the defendant of the conviction, forfeiture, and the right to apply for a new trial within 10 days from the judgment. If the defendant applies for a new trial, the court must permit the defendant to withdraw the previously entered plea of nolo contendere and waiver of jury trial.

If the defendant does not request a new trial within 10 days of the judgment, the judgment becomes final and the court reports the court costs to the State Comptroller and turns the fine portion of the bond over to the general revenue fund of the city. If the defendant has been in jail, the court must also give jail-time credit at $50 for a period of time specified in the judgment. Period of time is defined to mean not less than eight hours or more than 24 hours. This may result in the court refunding part or all of the bond.

True or False

Q. 201. Defendants may not use cash as security on a bail bond. _____
Q. 202. When a defendant posts a bond with the court, he or she is promising to appear in court at a later date. _____
Q. 203. When the court allows a personal bond, the security is the person’s word that he or she will appear in court. _____

End True/False

Q. 204. Do defendants charged with Class C misdemeanors in municipal court have to follow the same bail rules as someone posting a bond for trial in district court? ______________
Q. 205. Could municipal court witnesses be required to post bail? _____________________
Q. 206. What is a person who takes bail required to do? ____________________________
Q. 207. Is the court required to keep bail records in a well-bound book? ________________

True or False

Q. 208. In a county that has a personal bond office, a municipal judge must always collect a $20 fee when releasing a defendant on a personal bond. ____

Q. 209. A personal bond fee is either $20 or three percent of the amount of the bail. ____

Q. 210. The court does not have authority to waive the personal bond fee. ____

Q. 211. In a county that has a personal bond office, the clerk or judge is required to forward a copy of all personal bonds to the personal bond office. ____

Q. 212. A defendant may make a decision to post cash instead of obtaining sureties for his or her bond. ____

Q. 213. A cash bond received by a peace officer must be deposited with the custodian of the funds of the court. ____

Q. 214. When a defendant is convicted, the court may use the cash bond to pay the fine and costs. ____

End True/False

Q. 215. When a defendant complies with the conditions of a bond by making all required appearances in court, may a court keep the bond to pay the fine if the defendant is convicted? ________________

Q. 216. When is the court required to forfeit a defendant’s bail? ______________________

Q. 217. When a defendant fails to appear, what must the court do? ______________________

Q. 218. What is a judgment nisi? ________________________________________________

Q. 219. What is a scire facias docket? ________________________________________________

Q. 220. Does the court clerk have the authority to serve a citation in a bond forfeiture case? ________________

Q. 221. When may a judge take a bond for the fine and costs? ______________________

Q. 222. When the judge takes a defendant’s bond for fine and costs, what is the judge required to do? ________________________________________________

Q. 223. If the defendant wants a new trial, what must the defendant do? ______________________

Q. 224. When the defendant requests a new trial, what must the court do? ______________________

Q. 225. When the defendant does not request a new trial, what does the court do with the bond money? ______________________
ANSWERS TO QUESTIONS

PART 1

Q. 1. True.
Q. 2. True.
Q. 3. False.
Q. 4. True.
Q. 5. True.
Q. 7. No. (Before the municipal court can try a case, a sworn written complaint must be filed to give the court jurisdiction.)
Q. 8. Clerk.
Q. 10. False. (Anyone credible of belief who knows facts about the offense may swear to the complaint. This person is called a hearsay affiant.)
Q. 11. False.
Q. 12. True.
Q. 15. The jurat is the certificate of the person who administers the oath to someone swearing to an affidavit such as a complaint or probable cause affidavit. It is located at the end of the affidavit and states when and before whom the affidavit was sworn.
Q. 16. True.
Q. 17. False. (Deputy clerks are clerks and may administer any oath pertaining to a duty of the court.)
Q. 18. False.
Q. 20. False.
Q. 22. True.
Q. 23. False (It may conclude with the words “Contrary to the said ordinance.”)
Q. 25. Yes.
Q. 26. It authenticates the acts of the judge and clerk.
Q. 27. It must state that the accused committed an offense against the law of the State. Therefore, it should contain the language of the statute regarding the elements of the offense.
Q. 29. To show that the complaint is within the statute of limitations.
Q. 41. An offense that is a violation of a city ordinance that is punishable by a fine exceeding $500 is required to have a culpable mental state pled in the complaint regardless of whether one is prescribed in the offense. Sec. 6.02(f), P.C.

Q. 42. Intentionally, knowingly, recklessly, and criminal negligence.

Q. 43. One of the following should be alleged: intentionally, knowingly, or recklessly.

Q. 44. True.

Q. 45. True.

Q. 46. False. (Intentionally is the highest degree.)

Q. 47. The same culpable mental states that may be pled in complaints charging state law violations: intentionally, knowingly, recklessly, or criminal negligence.

Q. 48. False.

Q. 49. True.

Q. 50. True.

Q. 51. True.

Q. 52. False.

Q. 53. A sworn complaint must be filed if the defendant requests a trial unless the defendant and prosecutor agree in writing to go to trial on the citation and file the agreement with the court. (Note: If a defendant fails to appear and the court will be issuing warrants, an affidavit establishing probable cause must be prepared for each offense before a warrant may be issued.)

Q. 54. The complaint must comply with the requirements in Chapter 45 of the Code of Criminal Procedure.

Q. 55. This is the same case that was initiated by the citation. Both the citation and complaint will have the same docket numbers. The sworn complaint may initiate a new case if the prosecutor chooses to file it as a new case.

Q. 56. The trial may proceed on the citation when the defendant and prosecutor agree in writing to go to trial on the citation and file the agreement with the court.

Q. 57. An affidavit establishing probable cause.
PART 2
Q. 58. The judge notes brief entries of the proceedings in a particular case. (For example, a warrant issued or a trial conducted and the judgment.)
Q. 59. The law requires that a judge keep a docket.
Q. 60. A judgment is the official decision of a court showing the conviction, acquittal, or dismissal of charges against the defendant. It terminates any further action in the court. It is written and must be signed by the trial judge and entered on the docket.
Q. 61. The maintenance of a docket is a ministerial duty. A clerk may enter proceedings on a docket because the judge is required to keep the docket, and the law specifically states the information that must be contained in it. The judge has no discretion in performing this duty.
Q. 62. True.
Q. 63. False.
Q. 64. False.
Q. 65. True.
Q. 66. True.
Q. 67. True.
Q. 68. The judge.
Q. 69. No.

PART 3
Q. 70. True.
Q. 71. False.
Q. 72. True.
Q. 73. True.
Q. 74. Arraignment is the procedure where the judge asks the defendant to identify himself or herself and requests a plea.
Q. 75. No.
Q. 76. The waiver of jury trial.
Q. 77. No.
Q. 78. The court must give the defendant notice of the fine and the amount of the appeal bond. The notice may be in person or by certified mail with return receipt requested.
Q. 79. True.
Q. 80. False.
Q. 81. False. (The defendant has up to 31 days from the time he or she receives notice from the court of the amount of fine and appeal bond to either pay the fine or give the court an appeal bond.)
Q. 82. True.
Q. 83. True. (Remember the Mailbox Rule—Art. 45.013, C.C.P. If a defendant makes an appearance by mail, the court must wait an additional 10 working days from the appearance date to see if the person is going to appear by mail.)

Q. 84. True.
Q. 85. True.
Q. 86. True.
Q. 87. True.
Q. 88. False. (The defendant is pleading nolo contendere.)
Q. 89. False.

PART 5
Q. 90. False.
Q. 91. False. (The defendant can be charged with the offense of failure to appear because the defendant has been in jail and released. An element of the offense of failure to appear is that the defendant has been in custody.)
Q. 92. True.
Q. 93. True.
Q. 94. False.
Q. 95. True.
Q. 96. True.
Q. 97. False.
Q. 98. False.
Q. 99. True.
Q. 100. False.
Q. 101. False.
Q. 102. True.

PART 6
Q. 103. True.
Q. 104. True.
Q. 105. False. (A capias is similar to a warrant that orders a peace officer to arrest someone and bring him or her before the court.)
Q. 106. True.
Q. 107. False.
Q. 108. False. (A complaint may contain probable cause if additional information is added to the complaint to cause the judge to believe that this defendant has committed the crime alleged in the complaint.)
Q. 110. A municipal court clerk may not issue a warrant or capias because he or she does not have the authority to determine probable cause. Only a judge or magistrate may determine probable cause.
Q. 111. Any peace officer, including city police officers and marshals.
Q. 112. City police officers must follow, as far as applicable, the same rules and laws governing the service of warrants by sheriffs and constables.
Q. 113. The city police officer may serve process in the county in which the city is located.
Q. 114. The city police officer may serve warrants throughout each county in which the city is located.
Q. 115. It depends on whether or not the neighboring city is located in the same county in which the peace officer’s city is located.
Q. 116. Any peace officer or someone specially named in the warrant.
Q. 117. A written order; writ.
Q. 118. True. (They may do so as a magistrate. See Art. 2.09, C.C.P., which is the statute that lists who are magistrates.)
Q. 119. True.
Q. 120. True.
Q. 121. In the State of Texas.
Q. 122. To the proper officer.
Q. 123. The officer is required to bring the accused before the judge who issued the warrant.
Q. 125. Yes.
Q. 126. Either in the body of the warrant or in connection with the judge’s signature.
Q. 127. False.
Q. 128. True.
Q. 129. False.
Q. 130. Yes. Someone who is specially named in the warrant.
Q. 131. Any peace officer or someone specially named in the warrant.
Q. 132. Any peace officer or someone specially named in the warrant.
Q. 133. False.
Q. 134. True.
Q. 135. False. (The officer must take the person before a magistrate without unnecessary delay, but not later than 48 hours after the arrest.)
Q. 136. False.
Q. 137. True.
Q. 138. Either a judge of a court of record or a magistrate in the county in which the warrant is being executed must endorse a warrant issued by a mayor.
Q. 139. If a magistrate endorses the warrant, the wording is “Let this warrant be executed in the County of ______.” If a judge of a court of record endorses the warrant, the wording is “Let this warrant be executed in any county of the State of Texas.”
Q. 140. True.
Q. 141. False.
Q. 142. True.
Q. 143. True.
Q. 144. True.
Q. 145. False.
Q. 146. True.
Q. 147. False.
Q. 148. True.
Q. 149. False.
Q. 150. False. (A mayor who is also the judge of the city may issue a capias. A capias may be issued only by a judge with authority to hear the case and not by a magistrate. In general-law cities that have not adopted an ordinance to create the position of municipal judge, the mayor is the judge.)
Q. 151. True.
Q. 152. A capias is required to be issued when a forfeiture of bail is declared.
Q. 153. The capias is still valid and may be executed at any time.
Q. 154. Yes.
Q. 155. Yes.
Q. 156. The return is made to the court from which the capias was issued.
Q. 157. The capias shall state what disposition has been made of the defendant.
Q. 158. The officer must state the reason for failing to execute the warrant.
Q. 159. The officer must state on the return what efforts have been made to find the defendant.
Q. 160. The clerk is responsible for coordinating the handling of the capias between the court and police department. If an officer cannot locate a defendant, the officer should return the capias to the court. Then the clerk should let the judge and prosecutor know that the officer could not find the defendant.
Q. 161. The information about the execution or processing of the warrant.
Q. 162. False.
Q. 163. True.
Q. 164. False. (A mayor may issue a summons as a magistrate or if the mayor is also the municipal judge, the mayor may issue the summons as a judge.)
Q. 165. True.
Q. 166. True.
Q. 167. False. (A felony capias)
Q. 168. True.
Q. 169. False.
Q. 170. True.
Q. 171. True.
Q. 172. True.
Q. 173. A summons issued by a magistrate is in the same form as a warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place.

Q. 174. It gives notice to a person that charges have been filed in court against him or her and gives the defendant a day and time to appear in court.

Q. 175. Anytime that he or she may issue a warrant of arrest.

Q. 176. False.

Q. 177. False.

Q. 178. True.

Q. 179. False.

Q. 180. True.

Q. 181. A capias.

Q. 182. A warrant of arrest.

Q. 183. Probable cause that the animal has been or is being cruelly treated.

Q. 184. The hearing is conducted within 10 days after the issuance of the warrant.

Q. 185. The officer shall impound the animal and give written notice to the owner of the animal of the time and place of the hearing.

Q. 186. Yes.

Q. 187. False.

Q. 188. True.

Q. 189. True.

Q. 190. True.

Q. 191. False.

Q. 192. True.

Q. 193. False.

Q. 194. True.

Q. 195. False.

Q. 196. False. (The warrant fee applies only if a peace officer processes the warrant.)

Q. 197. False.

Q. 198. False.

Q. 199. True.

Q. 200. False.

**PART 7**

Q. 201. False.


Q. 203. True.

Q. 204. Yes.

Q. 205. Yes.
Q. 206. The person is required to record the name of the person whose appearance the bail 
secures, the amount of bail, the date bail is set, the magistrate or officer who sets bail, 
the offense or other cause for which the appearance is secured, the magistrate or other 
officer who takes bail, the date the person is released, and the name of the bondsman, 
if any. The bond is to be refunded to the person named on the receipt.
Q. 207. No.
Q. 208. False.
Q. 209. True.
Q. 210. False.
Q. 211. True.
Q. 212. True.
Q. 213. True.
Q. 215. No.
Q. 216. When the defendant fails to appear.
Q. 217. Article 22.02, C.C.P., requires that the court order the defendant’s name called outside 
the courtroom. This is an element of the bond forfeiture lawsuit. This requirement 
makes sure that the defendant had notice that his or her case was being called before 
the court.
Q. 218. A judgment nisi recites the amount of the forfeiture, who is liable for the judgment, 
and that the judgment will be made final unless good cause is shown as to why the 
defendant did not appear.
Q. 219. It is a civil docket in which the court enters proceedings of a bail forfeiture.
Q. 220. Yes, if requested to do so by the prosecutor.
Q. 221. A judge may take a bond for the fine and costs when a defendant has entered a written 
and signed conditional plea of nolo contendere and a waiver of jury trial, and the 
defendant fails to appear according to the terms of the defendant’s release.
Q. 222. The judge is required to notify the defendant immediately of the conviction and 
forfeiture and the defendant’s right to apply for a new trial.
Q. 223. The defendant must make a request for a new trial within 10 days from the date the 
judgment was entered.
Q. 224. The court must allow the defendant to withdraw the plea of nolo contendere and enter 
a plea of not guilty and reinstate the defendant’s bond.
Q. 225. The court reports the court costs to the comptroller’s office and deposits the fine 
portion of the bond in the general revenue fund of the city. If the defendant has been in 
jail, the court is also required to give jail-time credit and may have to refund that 
credit to the defendant.
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INTRODUCTION

The trial system in the United States is adversarial, meaning it is a contest between opposing sides: the defense and the prosecution. The theory of this process is that the trier of fact (judge or jury) will be able to determine the truth when the opposing parties present their best arguments and show the weaknesses in each other’s case. The adversary process is sometimes criticized as focusing on victory for either side, instead of emphasizing the facts of a specific case. Supporters of the system believe that approaching the same set of facts from totally different perspectives uncovers the most accurate truth. Lawyers are bound by their professional ethics to present the facts truthfully.

When a criminal case goes to trial, the prosecution has the burden of proving the defendant’s guilt beyond a reasonable doubt. The standard of proof is higher in criminal prosecutions than in civil lawsuits where the plaintiff must prove his or her case by a preponderance of the evidence (greater weight of the evidence).

Judges preside over trials and protect the rights of those involved by ensuring that attorneys and self-represented defendants follow the rules of evidence and trial procedure. In bench trials, judges listen to the evidence presented on a case and render judgment based upon that evidence. In jury trials, judges instruct the jury regarding the law involved in the case.

Clerks should be knowledgeable enough to provide proper assistance to attorneys and defendants without overstepping the bounds of their authority. This study guide explains defendants’ rights in the trial process and summarizes preparation procedures for pre-trials, jury trials, and bench trials. This guide also discusses court reporters and certified court interpreters as well as the different kinds of contempt sanctions for misconduct in the court.

Q. 1. Describe the adversary process of the U.S. trial system.
____________________________________________________________________
____________________________________________________________________
Q. 2. Who in the trial is the finder of fact? ________________________________
Q. 3. Where should a clerk or judge report an attorney who is acting unethically? _______
Q. 4. Who has the burden of proof in a criminal case? ________________________
Q. 5. What is the standard of proof in a criminal case? _________________________
Q. 6. What is the judge’s role in a bench trial? _______________________________
Q. 7. What is the judge’s role in a jury trial? ________________________________

PART 1
CLERK’S ROLE IN TRIAL PROCESS

In general, the clerk’s role in the trial process includes providing information to defendants about court procedures, managing court participants on the day of trial, scheduling trials, issuing subpoenas, and summoning the jury. Since preparing for a trial includes many technical procedures, knowledge of the trial process will help clerks properly manage trials and provide better service to court participants.
A. Posting the Court Docket
The court must post, in a designated public place in the courthouse, notice of a criminal court
docket setting. Prior to September 1, 2011, the law required that the docket setting be posted at
least 48 hours before the docket setting. Article 17.085, C.C.P., was amended in the 82nd
Legislative Session, and now reads that the clerk shall post the docket “as soon as the court
notifies the clerk of the setting.” This posting is not required when the court provides online
internet access to the court’s criminal case records.

B. Information to Defendants
Because many defendants in municipal court represent themselves, it is important for clerks to
understand trial processes and procedures so that they can properly explain them to all court
participants. In doing so, however, clerks must be cautious not to give legal advice.

Clerks should work with their presiding judge to develop written information for defendants
requesting trials. The following information should be considered for inclusion:

- Pleas
- Pre-Trial Procedures
- Rights
- Continuances
- Bench or Jury Trial
- New Trial
- Fines and Court Costs
- Driving Safety Courses
- Deferred Disposition
- Appeals
- Juveniles

Sample trial information pamphlets are found in the Appendix.

C. Preparation
Clerks should establish procedures for preparing for trials. These may include:

- When a citation is filed, prepare a sworn complaint unless the defendant and
  prosecutor agree in writing to go to trial on the citation and file the agreement with
  the court. Art. 27.14(d), C.C.P. Although the prosecutor is responsible for the legal
  accuracy of the wording on complaints, generally, clerks prepare it.
- Review the complaint for clerical errors, and check to be sure that the complaint is
  properly sworn and the court seal affixed.
- Provide a copy of the complaint to the defendant if the defendant does not waive his
  or her right to notice.
- Give the case file to the prosecutor.
- Ideally, at least two weeks before the trial date, prepare a trial docket and post it in
  the clerk’s office and the police department; send a copy to the prosecutor and to each
  defendant and his or her lawyer.
• Issue subpoenas, if they have not already been issued.
• Summon jurors at least three to four weeks before a trial.
• If it is a jury trial, make certain that the court has enough jury handbooks for jurors to read before the trial.
• If interpreters are needed, make sure that they will be available.
• Review trial forms and make sure they are proper and available to the judge.

D. Management

Whether the trials are bench or jury, the clerk is responsible for coordinating the movement of the people in the court facility. The following is a list of suggestions to help clerks provide guidance to court participants.

• Provide signs throughout the court facility to enable participants to find their own way.
• Provide signs or pamphlets about the rules of the court that should include information about proper dress, tobacco use, courtroom decorum, and the prohibition of carrying guns and other weapons into the court facility.
• If possible, have a deputy clerk act as information officer to direct people.
• Wear nametags so that the court participants know who to ask for assistance.
• Make sure that the court has made all required reasonable accommodations for those with mobility, visual, hearing, or other impairments.
• If the court does not have a pay telephone, the court may want to make a telephone available for court participants to use.
• Since some court participants might need a letter to present to a work supervisor, have forms available for either the judge or clerk to sign.

E. Trial Scheduling

Trial dockets are a listing of cases set for a particular date. These dockets usually include defendants’ names; docket numbers; bonds posted with the court; attorneys’ information; and any other items that courts find helpful to manage trials.

To establish trial dates, courts might want to address the following criteria:

• volume of cases scheduled for trial;
• number of defendants who want to plead guilty or no contest, but are requesting to see the judge before the fine is set;
• type of trial (jury trial or bench trial) or hearing requested (such as an indigent hearing);
• age of defendant, whether adult or juvenile;
• type of case (e.g., city ordinance violation, penal offense, traffic violation);
• peace officers’ work schedules (Since most complaining witnesses are city police officers, clerks should consider their work schedules in setting trial dates. Article 102.011, C.C.P., requires courts to collect from convicted defendants the cost of
overtime paid to a peace officer for time spent testifying in the trial or for traveling to or from testifying.); and

- number of judges available to try cases.

1. Predetermined Scheduling

Predetermined scheduling provides a specific day and time for the defendant to appear. Courts using this method have docket call (calling the names of defendants scheduled for trial on that docket) at the beginning of the court session. Those pleading not guilty are rescheduled for a trial at a later date. Those pleading guilty or no contest might pay a fine, request to take a driving safety course, request that the judge grant deferred disposition, or appeal the conviction.

A problem with this type of scheduling is that the court never knows how many defendants will actually appear on their assigned date. Also, if all the defendants scheduled to appear actually show up, defendants may have to wait a long time for their case to be called. The advantage of this system is that a judge is available to see the defendants when they appear.

a. Peace Officer Citation

Most cases in municipal court are initiated by a peace officer filing with the court a written notice to appear, commonly called a citation. The defendant must have a duplicate copy of the citation. The citation provides an appearance date for the defendant to appear before the court. If a court uses predetermined scheduling, the citation provides a specific date and time for the defendant to appear. At this first appearance, the arraignment, the court explains the charge filed against the defendant and takes a plea. If the plea is not guilty, the court schedules a trial.

b. Citizen Complaint

Generally, complaints initiated by a citizen must be investigated by the police department or by a code enforcement officer to determine if an offense has occurred. Once the investigation determines that an offense has occurred, the citizen can come to the court to swear to a complaint. The prosecutor then determines whether to prosecute the case.

The case is scheduled for an arraignment on a specific date and time. The judge issues a summons or a warrant to notify the defendant of the charges. Sometimes, clerks send a courtesy notice to the defendant telling the person that charges have been filed and that a preliminary hearing is scheduled. When the defendant appears, he or she may plead guilty, nolo contendere, or not guilty. If the plea is not guilty, the court schedules a trial.

Clerks should work with the prosecutor, police department, and code enforcement to establish procedures for processing citizen complaints.

2. Assignment by Court Clerk

The assignment by court clerk method of scheduling cases places the responsibility on the defendant for obtaining a court date. The written notice to appear (citation) just notifies the defendant to appear within a certain number of days or on a specific date without providing a specific time to appear. The defendant, then, is responsible for contacting the court to set up a specific appearance date or trial date. Courts usually have established schedules for pre-trials, bench trials, and jury trials. When the defendant contacts the court, whether by mail or personal appearance, the clerk should provide a procedures pamphlet to the defendant, and if the defendant appears in person, explain court procedures.
When the court places the responsibility on the defendant to establish a court date, the volume of persons appearing at the court and the number of telephone calls are greater. However, the court maintains better control over the trial dockets because the court talks with the defendants before scheduling a hearing or trial. Only those defendants who specifically request a trial are set on the trial docket. The number of defendants set on each docket is controlled by the court clerk.

F. Subpoenas

A subpoena is a writ issued to a person or persons giving an order to appear as a witness. Art. 24.01, C.C.P. Both the defense and prosecution are entitled to subpoena witnesses necessary to the presentation of their respective cases in court. Art. 1.05, C.C.P.

Judges, court clerks, and deputy court clerks have the authority to issue subpoenas, and defendants are entitled to request their issuance to compel the attendance of witnesses in court. Arts. 24.01(d) and 24.03(a), C.C.P. The subpoena must indicate it was issued, but it need not be under court seal. Arts. 24.01(d) and 45.012(g), C.C.P.

Although applications for subpoenas in district court must be in writing and sworn, the Code of Criminal Procedure is silent on whether the application for subpoenas issued out of municipal court must be in writing. Art. 24.03, C.C.P.

Regardless of whether the municipal court asks for the request for subpoena to be in writing or presented orally, the following information is necessary before a subpoena can be issued:

- the name of each witness desired; and
- the location or address of each witness.

1. Types of Subpoenas

a. For Out-of-County Witnesses

The Code of Criminal Procedure has specific provisions regarding application for subpoenas for out-of-county witnesses in felonies and misdemeanor cases that include confinement as part of the punishment. The Code, however, is silent regarding whether a defendant charged with a fine-only misdemeanor is entitled to a subpoena for an out-of-county witness or the enforcement of such a subpoena. Nevertheless, municipal court defendants are entitled to a type of compulsory process compelling the attendance of witnesses. Art. 1.05, C.C.P. Municipal courts are not prohibited from issuing a subpoena for any witness regardless of where the witness resides, but the court may not be able to enforce the subpoena if the witness resides outside the county.

b. For Child Witnesses

When a witness is younger than 18 years, the court may issue a subpoena directing a person having custody, care, or control of the child to produce the child in court. Art. 24.011, C.C.P.

c. Subpoena Duces Tecum

A subpoena duces tecum is a subpoena that directs a witness to bring with him or her any instrument of writing or other tangible thing desired as evidence. Art. 24.02, C.C.P. The subpoena should give a reasonably accurate description of the document or item desired, such as the date, title, substance, or subject. A typical example in municipal court of an item requested by the defendant is the radar unit, repair logs of the radar unit, or any video recording of the stop or arrest.
2. **Service of the Subpoena**

A subpoena can be served by reading it to the witness, delivering a copy to the witness, electronically transmitting a copy of the subpoena with acknowledgment of receipt requested to the last known electronic address of the witness, or by mailing the subpoena certified with return receipt requested to the last known address of the witness. A subpoena may not be mailed if the applicant requests in writing that the subpoena not be served by certified mail or the witness is set to appear within seven business days after the date the subpoena would be mailed. Art. 24.04(a), C.C.P.

The person serving the subpoena must be at least 18 years old or a peace officer and may not be involved in the proceedings for which the appearance is sought. Art. 24.01(b), C.C.P.

A peace officer can be compelled by the court to serve a subpoena. A person who is at least 18 and who is not a peace officer may not be compelled to serve the subpoena unless the person agrees in writing to accept that duty. If the person then neglects or refuses to serve or return the subpoena, he or she may be fined not less than $10 or more than $200 for contempt at the discretion of the court. Art. 24.01(c), C.C.P.

The person serving the subpoena must show the time and manner of service, if served. If he or she fails to serve the subpoena, the person’s return must state the reason for not serving it, the diligence used to find the witness, and any information regarding the whereabouts of the witness. Arts. 24.04 and 24.17, C.C.P.

3. **Refusal to Obey Subpoena**

If a witness refuses to obey a subpoena in a misdemeanor case, the court may fine the witness up to $100. Art. 24.05, C.C.P.

The defendant or state may request a writ of attachment, issued by a clerk of a court under seal, commanding a peace officer to bring the witness before the court immediately or on a day named in the order. The case can be postponed in order for the writ to be served. Art. 24.11, C.C.P.

The procedures for assessing a fine include the following:

- After a fine is entered against a witness for failure to appear, the judgment is conditional. Art. 24.07, C.C.P.
- The witness is given an opportunity at a hearing to present a reason for not obeying the subpoena. The fine may be collected at this time if the judge is not satisfied with the excuse given by the witness. Arts. 24.08 and 24.09, C.C.P.
- When a fine is entered against a witness and the witness appears and testifies, the judge has the discretion to reduce the fine or remit it altogether. The witness, however, is still required to pay all the costs accrued because of his or her failure to appear. Art. 24.10, C.C.P.

4. **Bail for the Witness**

Witnesses may be required to post bail in an amount set by the judge. If the witness is unable to post bail, he or she must be released without security. Art. 24.24, C.C.P.
Q. 8. What is the role of the clerk in the trial process? ____________________________________________
____________________________________________________________________________________

True or False
Q. 9. A clerk may give legal advice to defendants who represent themselves. ____
End True/False

Q. 10. List procedures that a clerk might want to consider when preparing for trials. ______
____________________________________________________________________________________
Q. 11. When may the court proceed to trial using the citation as the charging instrument? __
____________________________________________________________________________________
Q. 12. What should the clerk give the prosecutor to prepare for trial? __________________________
____________________________________________________________________________________
Q. 13. List ways in which a clerk can manage and coordinate people involved in trials. ____
____________________________________________________________________________________
Q. 14. List criteria that you use to establish trial dates._______________________________________
____________________________________________________________________________________
Q. 15. List disadvantages of using a predetermined scheduling system. _________________________
____________________________________________________________________________________
Q. 16. List advantages of using a predetermined scheduling system. _________________________
____________________________________________________________________________________
Q. 17. Why should the police department or the code enforcement officer investigate a
citizen’s complaint? __________________________________________________________________
Q. 18. What is the clerk’s role in handling citizen complaints? _________________________________
Q. 19. When a court uses the assignment by court clerk method of scheduling cases, who is
responsible for obtaining a trial date? ______________________________________________________
Q. 20. List the main disadvantage of using the assignment by court clerk method for
controlling the docket. __________________________________________________________________
Q. 21. List the main advantage of using the assignment by court clerk method for controlling
the trial docket. ________________________________________________________________________
Q. 22. What is a subpoena? __________________________________________________________________
Q. 23. Who is entitled to a subpoena? ______________________________________________________
Q. 24. Who has authority to issue a subpoena? ________________________________________________

True or False
Q. 25. Courts are required to issue subpoenas when requested to by either the State or the
defense. ____
Q. 26. Both the defense and the prosecution are entitled to subpoena witnesses. ____
Q. 27. Deputy court clerks may issue subpoenas. ____
Q. 28. The request for a municipal court subpoena must be in writing. _____
Q. 29. A person requesting a subpoena may request in writing that subpoenas be served in person. _____
Q. 30. A subpoena is not valid unless the municipal court seal is impressed on it. _____
End True/False

Q. 31. To bring in a child witness, who would the court subpoena? ______________________
Q. 32. If a person is 17 years of age, is the court required to subpoena the parent to bring him or her to court to testify? ____________________________
Q. 33. What is a subpoena duces tecum? ____________________________________________
Q. 34. What type of description must the subpoena give of an item requested to be brought to trial? ____________________________

True or False
Q. 35. The clerk may serve a subpoena by sending it in the regular mail. _____
Q. 36. If a subpoena has been requested within seven business days of the trial, it may not be served by mail. _____
Q. 37. A peace officer may be compelled to serve a subpoena. _____
Q. 38. If a peace officer is unable to serve the subpoena, he or she must state the diligence used in attempting to locate the witness. _____
Q. 39. Only the defense may request a writ of attachment. _____
Q. 40. Witnesses who fail to appear after being served with a subpoena may be fined up to $100. _____
Q. 41. Witnesses who have a conditional judgment entered for failing to appear for trial may get the judgment reversed if he or she has an acceptable reason. _____
Q. 42. Judges do not have discretion to reduce the fine or remit the fine if the witness subpoenaed eventually appears and testifies. _____
Q. 43. When a witness is required to post bail, the clerk who issued the subpoena may set the bail. _____

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PART 2
DEFENDANT’S RIGHTS IN PROSECUTION

Defendants appearing in municipal courts generally have the same rights and guarantees afforded any person accused of a crime at any level of the judicial system. These rights are given by the U.S. Constitution, Texas Constitution, and state statutes, most notably the Code of Criminal Procedure. The procedures and practices in municipal courts may be slightly different from county and district courts because Chapter 45, C.C.P., governs municipal court practices. If Chapter 45 does not provide a rule of procedure, the judge shall apply other general provisions of the Code of Criminal Procedure. Art. 45.002, C.C.P.

The Texas Constitution, in Article I, Section 10, and Article 1.05, C.C.P., state that in all criminal prosecutions, defendants have the right to:
• a speedy public trial by an impartial jury (There is no specific requirement that a trial be conducted within a certain number of days. A trial date is set on a case-by-case basis when the defense makes a motion to dismiss the case because the defendant was denied a speedy trial.);
• demand to know the nature and cause of the accusation;
• receive a copy of the charging instrument (complaint). Municipal court defendants have right to notice of a complaint filed against them not later than the day before the date of any proceeding in the prosecution of the defendant. The defendant may waive this notice. Art. 45.018, C.C.P.;
• represent themselves;
• be represented by an attorney;
• be confronted by witnesses against them (the defendant can also cross-examine any state witness);
• compel witnesses to come to court and testify on their behalf (by subpoena);
• testify in their own behalf and have their counsel heard; and
• not be compelled to testify against themselves (may not be considered in determining innocence or guilt).

A. Jury Trial

The 6th and 7th Amendments of the U.S. Constitution guarantee the right to trial by jury. The Texas Constitution, in Article I, Section 10, likewise states that in all criminal prosecutions in Texas the accused has a right to a jury trial. Article 1.12, C.C.P., provides that the right to a jury trial shall remain inviolate. The term “inviolate” means to keep sacred or unbroken. Hence, the right to a jury trial is absolute, and if a defendant does not want a jury trial, he or she must waive that right. Since municipal courts were established by the Legislature to have criminal jurisdiction, defendants in these courts have a right to a jury trial. A defendant has to request a trial by judge if he or she wants one.

B. Speedy Trial

The right to a speedy trial arises from the time the defendant is formally accused or arrested. The speedy trial guarantee made by the 6th amendment of the U.S. Constitution, applies. The Texas Constitution in Article I, Section 10, guarantees that any accused shall have the right to a speedy trial. Article 1.05, C.C.P., codifies this right. Courts must decide each speedy trial issue raised on its own merits. When a defendant comes before a judge and claims that his or her right to a speedy trial was violated, the judge must consider the individual circumstances.

In Chapman v. Evans, 744 S.W.2d 133 (Tex. Crim. App. 1988), the Court of Criminal Appeals stated: “The primary burden is on the prosecution and the courts to ensure that defendants are speedily brought to trial . . . . Both the trial court and prosecution are under a positive duty to prevent unreasonable delay . . . . [O]ver crowded trial dockets alone cannot justify the diminution of the criminal defendant’s right to a speedy trial.”

Clerks should make certain that crowded trial dockets are not the cause of a case being dismissed for violation of the defendant’s right to a speedy trial. Clerks should work with judges and
prosecutors to establish enough trial dates to keep cases from becoming backlogged on the trial docket.

C. Representation by an Attorney

Article 1.051(a), C.C.P., guarantees that defendants in a criminal proceeding are entitled to be represented by counsel in an adversarial judicial proceeding. Both Article I, Section 10 of the Texas Constitution, and Article 1.05, C.C.P., guarantee that defendants have a right to be heard and the right to have their counsel heard. An indigent defendant has the right to have an attorney appointed by the court in a proceeding that may result in punishment by confinement and in other criminal proceedings if the court concludes that the interests of justice require representation. Art. 1.051(c), C.C.P.

Generally, municipal courts have jurisdiction over criminal cases in which jail or prison time is not a possible punishment, except for contempt. Art. 4.14, C.C.P. Therefore, except in contempt hearings, municipal judges do not often provide court-appointed attorneys.

D. Subpoena

A subpoena is a writ issued to a person or persons summoning them to appear as witnesses. Art. 24.01, C.C.P. Both the defense and prosecution are entitled to subpoena witnesses necessary to the presentation of their respective cases in court. Art. 1.05, C.C.P.

E. Public Trial

Defendants in municipal court have a right to a public trial. This right is guaranteed by the U.S. Constitution in the 6th Amendment; in the Texas Constitution in Article I, Section 10; and by Articles 1.05 and 1.24 of the Court of Criminal Procedure, Article 1.24, C.C.P., further provides that the “proceedings” in all criminal courts are public.

F. Appeal

Defendants who are found guilty have the right to appeal their case. Art. 44.02, C.C.P. In municipal courts of non-record, the trial on appeal is de novo, meaning that the defendant gets a new trial as if the trial in municipal court had never occurred. The municipal court case in a non-record court is appealed for a new trial to the county court. In municipal courts of record, the appeal is based on the transcript of the trial and the appellate court determines whether any error occurred during the trial.

True or False
Q. 44. Defendants are entitled to a jury trial. ____
Q. 45. Defendants do not have a right to inspect the complaint against them. ____
Q. 46. Municipal court defendants have a right to a copy of the complaint. ____
Q. 47. The charging instrument in municipal court is the complaint. ____
Q. 48. Defendants may represent themselves at trial. ____
Q. 49. Defendants must request a jury trial if they want one. ____
Q. 50. The right to a speedy trial can arise from the time a defendant is formally accused. ____
Q. 51. Defendants in municipal court have a constitutional right to a speedy trial. ____
Q. 52. A trial court’s delay in hearing a case because of a backlog of cases set for trial cannot be used to justify denying a defendant’s right to a speedy trial. __

Q. 53. An indigent defendant in municipal court has the right to have a court appointed attorney. __

Q. 54. An indigent defendant charged with contempt may be entitled to a court appointed attorney in municipal court. __

Q. 55. If defendants request that their trials be closed and not open to the public, the court must grant that request. __

Q. 56. Defendants convicted of a city ordinance violation do not have the right to an appeal. __

### PART 3
### PRE-TRIAL

The court may set any criminal case for a pre-trial hearing before it is set for trial and direct the defendant and his or her attorney and the prosecutor to appear for the pre-trial. Art. 28.01, Sec. 1, C.C.P. Pre-trial hearings provide an effective means of caseflow management because they:

- handle the defendant’s challenges to the charges filed;
- dispose of issues that do not relate to the merits of the case; and
- assure in advance that the time set for disposition of noncontested cases will not be taken up by other matters.

To expedite the pre-trial process, clerks might want to establish procedures that include:

- making time deadlines for notifying parties of the pre-trial;
- handling filed motions, which may include date stamping the motion when it is filed and noting the cause number of the case on the motion;
- providing the judge and prosecutor with a copy of the filed motions; and
- filing the original motion with the case.

#### A. Notice

Section 3 of Article 28.01, C.C.P., says that notice of a pre-trial hearing is sufficient if given:

- in open court in the presence of the defendant or his or her attorney;
- by personal service upon the defendant or his or her attorney;
- by mail at least six days prior to the date set for hearing; or
- if the defendant has no attorney, addressed to the defendant at the address shown on the bond; if the bond shows no address, sent to one of the sureties on the bond.

If the envelope containing the notice is properly addressed, stamped, and mailed, the State is not required to show how it was received.

#### B. Pre-Trial Issues

Some courts require every case set for a jury trial to go to a pre-trial first; other courts require a pre-trial depending on the circumstances of the case. Courts use the pre-trial process to resolve
issues relating to the case, but not concerning the merits of the case. The pre-trial process should not be used as a tool to thwart a defendant’s effort at obtaining a trial.

The arraignment is usually conducted at pre-trial as well. The Code of Criminal Procedure sets out general purposes and procedures for arraignment citizens accused of committing criminal offenses. The purpose of an arraignment is to establish the identity of the defendant and to take the defendant’s plea, determining if the defendant wants to hire an attorney or waive having an attorney represent them. If the defendant refuses to enter a plea at the time of arraignment, then the court must enter a plea of not guilty. Arts. 27.16 and 45.024, C.C.P. A plea of not guilty means that the defendant is informing the court that he or she denies guilt or has a defense in the case, and that the State must prove what it has charged in the complaint.

Arraignment is required for all felonies and for misdemeanors where the sentence involves possible incarceration. Art. 26.01, C.C.P. However, if an attorney representing a defendant presents a waiver of arraignment, the court cannot require the presence of the defendant as a condition of accepting the waiver. Art. 26.011, C.C.P.

Where the penalty is by fine only, the judge is not required to conduct an arraignment, but it is still utilized in municipal courts to identify the persons before them and request a plea.

In addition to arraignment, pre-trial is to determine the following matters (Art. 28.01, Sec.1, C.C.P.):

- exceptions to the form or substance of the indictment or information, which initiate proceedings in county and district court; (Defendants in municipal court may file a motion that says there is a problem with the form or substance of the complaint.);
- motions for continuance;
- motions to suppress evidence, or to keep secret from the jury;
- discovery, used to obtain facts and information about the case;
- entrapment, when law enforcement officers induce a person to commit a crime not contemplated by the person solely to institute a criminal prosecution against the person;
- motion for appointment of interpreter; and
- election of whether the jury or judge decides punishment on a finding of guilty in a jury trial.

C. Pre-Trial Motions

The court may, but does not have to, require all motions to be on file at least seven days prior to the date of the pre-trial hearing provided that the defendant has sufficient notice of such hearing to allow him or her not less than 10 days in which to raise or file such preliminary matters. Art. 28.01, Sec. 2, C.C.P.

Q. 57. When may the court require a defendant to appear for a pre-trial hearing? __________

Q. 58. How can pre-trial hearings be an effective means of caseflow management? __________

Q. 59. List methods of giving notice of a pre-trial hearing to a defendant’s attorney. __________
Q. 60. List ways in which the defendant is notified of a pre-trial hearing. ______________

Q. 61. What is the purpose of an arraignment in municipal court? ______________

Q. 62. If a defendant refuses to plead, what must the court do? ______________

True or False

Q. 63. A plea of not guilty means that a person is denying guilt or has a defense. ___

Q. 64. Defendants may ask for a continuance at a pre-trial hearing. ___

Q. 65. The court may require defendants to file all motions at least seven days before the pre-trial hearing date. ___

PART 4
CONTINUANCES

A continuance is a postponement of a hearing, trial, or other proceeding to a subsequent day or time. Only judges may grant continuances. Clerks should work with judges to establish a policy for processing motions for continuance.

Article 29.03, C.C.P., requires requests for continuances to be in writing, but does not state a time during which the continuances must be submitted to the court. To help courts manage continuances, courts should establish a policy requiring a motion for continuance to be submitted to the court a certain number of days before trial. Once the court establishes the policy, the clerk should provide a copy of the policy to defendants, defense attorneys, and prosecutors.

Upon receipt of a request for continuance, the clerk should give it to the judge to make a decision. After the judge decides whether or not to grant the motion, the clerk notifies the prosecutor and the defendant of the decision.

If the judge grants a continuance, the court clerk should show the case as continued on the trial docket. The case is then reset and a new notice is sent to the defendant and prosecutor. This information should also be entered on the case file or jacket.

A. Operation of Law

Article 29.01, C.C.P., provides for continuances that come under operation of law, i.e. the judge does not have the discretion to deny the motion. These are for the following reasons:

- a defendant has not been arrested;
- a corporation or association has not been served with the summons; or
- there is not sufficient time for trial at that term of court.

B. Agreement

A criminal action may be continued by consent and agreement of both the defense and prosecutor in open court, only for as long as is necessary. Art. 29.02, C.C.P.

C. Sufficient Cause

The prosecutor or the defendant may request a continuance for cause. The request must be in writing, but it does not have to be in the form of a sworn affidavit. It must fully state the reason
for the motion. The judge then determines if the motion contains sufficient cause to grant a continuance for as long as is necessary. Art. 29.03, C.C.P.

A continuance for cause is the most common type of continuance. Since the granting or denying of a continuance requires a decision, a judge may not delegate this duty to a clerk.

D. **Religious Holy Days**

A continuance for a religious holy day can be requested by a defendant, defense attorney, prosecutor, or juror. Arts. 29.011 and 29.0112, C.C.P. Religious holy day means a day on which the tenets of a religious organization prohibit its members from participating in secular activities, such as court proceedings. Religious organization is defined in Section 11.20 of the Tax Code.

A person seeking the continuance must file with the court an affidavit stating:

- the grounds for the continuance; and
- that the person holds religious beliefs that prohibit him or her from taking part in a court proceeding on the day for which the continuance is sought.

An affidavit filed under this law is proof of the facts stated and need not be corroborated. When a clerk receives this affidavit, the clerk presents it to the judge and notifies the other participants in the trial of the continuance.

E. **Legislative Continuances**

Legislative continuances apply to members and members-elect of the Texas Legislature. A legislative member or member-elect who is either a party or legal counsel for a party may delay any case set for trial until 30 days after the date on which the Legislature adjourns. The legislator requesting a continuance should file an affidavit with the court stating the grounds for the continuance and his or her intent to participate actively in the preparation or presentation of the case. If the attorney for a party to any criminal case is a member or member-elect of the Legislature who was employed on or after the 15th day before the date on which the suit is set for trial, the continuance is discretionary with the court. Otherwise, the continuance is mandatory. Secs. 30.003(b) and (c-1), Civil Practice and Remedies Code.

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Q. 66. List reasons why a court would automatically continue a case. __________________________

Q. 67. Who may request a continuance in open court? ________________________________

Q. 68. How long can a continuance last? ________________________________

Q. 69. Who may request a continuance when the trial date falls on a religious holiday?

________ ________________________________

Q. 70. In what form must a request for a continuance for a religious holiday be made?

____________________________________________________________________

Q. 71. What information must be in the request for the continuance for a religious holiday?

____________________________________________________________________

Q. 72. What is the role of the clerk when he or she receives a request for a continuance?

____________________________________________________________________
True or False

Q. 73. A motion for continuance for cause may be requested by telephone. ____
Q. 74. Defendants who want a continuance may call the court and request a reset from the clerk. ____
Q. 75. A clerk may not grant a motion for a continuance. ____
Q. 76. If a defendant calls and wants to reset the case, the clerk has authority to reset the case. ____
Q. 77. A continuance for cause may be for only as long as is necessary. ____

PART 5
PROSPECTIVE JURORS AND JURY SELECTION

If an accused pleads not guilty and does not waive a trial by jury, the judge is required to issue a writ commanding the proper officer (usually the court clerk) to summon a venire, a list of prospective jurors summoned to serve for a particular term of court.

A written policy should be developed and made available by the court that details the procedures for jury selection: preparing the jury candidate list, summoning the prospective jurors, etc.

A. Prospective Jurors

In municipal court, six qualified persons from the venire shall be selected to serve as jurors. Art. 45.027, C.C.P. In municipal courts of record, ordinances, rules, and procedures concerning a trial by a jury, including the summoning of jurors, must substantially conform to Chapter 45, C.C.P. See Sec. 30.00013(a), G.C. In a municipal court of record, the presiding judge, the municipal court clerk, or the court administrator, as determined by ordinance, shall supervise the selection of persons for jury service. Sec. 30.00013(b), G.C.

Courts are prohibited from summoning prospective jurors to appear for jury service on the date of the general election for state and county officers. Sec. 62.0125, G.C.

Article 45.027(a), C.C.P., requires the judge to issue a writ or venire commanding the proper officer (in municipal court, it is usually the court clerk) to summon a venire from which six qualified persons shall be selected to serve as jurors in the case. Typically, clerks summon prospective jurors approximately three weeks prior to the date of the trial. Jurors may be selected from tax rolls, utility rolls, voter registration rolls, or in any other nondiscriminatory manner. State law requires that a prospective juror live within the city. Sec. 62.501, G.C. Usually a minimum of 30 persons is summoned so that there are an adequate number of qualified persons after exemptions, excuses, and challenges. All prospective jurors must remain in attendance until discharged by the court. Art. 45.027(b), C.C.P.

Courts usually notify prospective jurors by mail. The notice typically includes the date, time, and location at which prospective jurors are to report for jury duty. To help clerks better manage the jury selection process, the notice should state the qualifications and exemptions for jury duty. Either included there or on a separate sheet should be a request for personal information that will aid the defense and prosecution in selecting jurors. Prospective jurors can either mail in this information, or they can bring it in with them on the day of the trial.
1. Qualifications
   
a. Required
   Sections 62.102-62.105, 62.501, and 62.1031, G.C., provide qualifications for prospective jurors. A potential juror must:
   
   - be at least 18 years of age;
   - be a citizen of this state and county in which the person is to serve as a juror (in municipal court, they must also be a resident of the city);
   - be a qualified voter in the state and county, but does not have to be registered to vote;
   - not have been convicted of misdemeanor theft or a felony;
   - not be under indictment or other legal accusation for misdemeanor theft or felony;
   - be of sound mind and good moral character;
   - not be a witness in the case;
   - not have served on the grand jury that issued the indictment (for felonies);
   - not have served on the jury in a former trial of the same case;
   - not have a bias or prejudice, either in favor of or against the defendant or the State;
   - not have already formed an opinion or conclusion as to the guilt or innocence of the defendant which would influence the finding of a verdict in the case;
   - be able to read and write;
   - not have served as a petit juror for six days during the preceding three months in the county court or the preceding six months in the district court;
   - not be interested, directly or indirectly, in the subject matter of the case; and
   - not be related by consanguinity or affinity within the third degree to a party in the case (Chapter 573, G.C.).

b. Hearing Impaired
   People who are hearing-impaired are still qualified to be prospective jurors. Sec. 62.1041, G.C. A hearing-impaired individual is defined to mean an individual who has a hearing impairment, regardless of whether the individual also has a speech impairment that inhibits the individual’s comprehension of proceedings or communication with others. Sec. 57.001(4), G.C. Courts are required to appoint a qualified interpreter for deaf or hearing-impaired jurors or to provide some type of auxiliary equipment to aid the jurors during trial proceedings.

c. Legal Blindness
   Section 62.104, G.C., addresses the issue of whether a legally blind person is qualified to sit as a juror in a civil case. The statute defines legally blind as having not more than 20/200 of visual acuity in the better eye with correcting lenses; or visual acuity greater than 20/200, but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees. The statute does not disqualify a person who is legally blind to sit as a juror in a criminal case.
2. **Exemptions**

   a. **Legal Exemptions**

   Section 62.106, G.C., provides for legal juror exemptions. The potential juror may claim an exemption if he or she:

   - is over 70 years of age;
   - has legal custody of a child or children under the age of 12 years and the jury service would cause the child or children to be left without adequate supervision (take a look at your exemption form. In 2009, the age of the unattended child was raised from 10 to 15 now in 2011, the Legislature changed the age again, from 15 to 12);
   - is a student of a public or private secondary school;
   - is enrolled in an institution of higher education;
   - is an officer or employee of the Senate, the House of Representatives, or any department, commission, board, office, or other agency in the legislative branch of state government;
   - is a primary caretaker of an invalid who is unable to care for himself/herself;
   - is a member of the U.S. military forces serving on active duty and deployed to a location away from the person’s home station and out of the person’s county of residence;
   - has served on a petit jury in the county in the last 24-month period preceding the currently scheduled day of service, unless the county uses a jury plan under Section 106.011, G.C., and the period authorized under Section 62.011(b)(6), G.C., exceeds two years (in a county with a population of at least 200,000); or
   - has served as a petit juror (the ordinary jury for the trial of a civil or criminal action) in the county during the three-year period preceding the date the person is to appear for jury service (Only applies in a county with a population of at least 250,000 where the jury wheel has not been reconstituted after the date the person served as a petit juror. Sec. 62.001, G.C.).

   b. **Permanent Exemption**

   A person who is at least 70 years of age may file for permanent exemption from jury duty. The court clerk shall promptly have a copy of the exemption delivered to the county tax assessor-collector. Secs. 62.107(c) and 62.108(a), (c) and (d), G.C. The county collector is required to maintain a current register of persons who claim and are entitled to a permanent exemption. The name of a person on the register may not be used in preparing the record of names from which a jury is selected.

   c. **Excuse of Juror for Religious Holy Day**

   If a prospective juror is required to appear at a court proceeding on a religious holy day observed by the prospective juror, the court or the court’s designee shall release the prospective juror from jury service entirely or until another day of the term.

   The prospective juror must file an affidavit stating the grounds for the release and that the juror holds religious beliefs that prohibit him from taking part in a court proceeding on the day for which the release from jury duty is sought.
“Religious organization” is defined in Section 11.20, of the Tax Code.

d. Providing False Information

If a person answering a jury summons knowingly provides false information in a request for an exemption or excuse from jury service, he or she is subject to a contempt action punishable by a fine of not less than $100 or more than $1,000. Sec. 62.0141. G.C.

e. Establishing a Postponement

A prospective juror may establish an exemption without appearing in person by filing a signed statement of the grounds for the exemption with the clerk of the court at any time before the date of trial. Art. 35.04, C.C.P.

Section 62.0142, G.C., lets prospective jurors request a postponement of the initial appearance for jury service by contacting the clerk of the court in person, in writing, or by telephone before the date on which the person is summoned to appear. The clerk is required to grant the postponement if:

- the person has not been granted a postponement in that county during the one-year period preceding the date on which the person is summoned to appear; and
- the person and the clerk determine a substitute date on which the person will appear for jury service that is not later than six months after the date on which the person was originally summoned to appear.

The clerk may approve a subsequent request for postponement only for an extreme emergency that could not have been anticipated, such as death in the person’s family, sudden serious illness suffered by the person, or a natural disaster or national emergency in which the person is personally involved.

f. Establishing an Exemption

A person may establish an exemption from jury service without appearing in person by filing a signed statement of his or her exemption with the clerk of the court before the date on which he or she is summoned to appear. Sec. 62.107, G.C.

B. Nonresidents

A jury summons must include a notice that a person claiming a disqualification or exemption based on a lack of citizenship or residence in the county will no longer be eligible to vote if they fail to provide proof of citizenship. Sec. 62.0142, G.C.

Clerks must maintain a list of names and addresses of persons who are excused or disqualified from jury service because they reside outside the county. On the third business day of each month, the clerk must send to the voter registrar of the county a copy of the list of persons excused or disqualified in the previous month because the persons do not reside in the county. The voter registrar must add these persons to the county’s suspended voter list. Sec. 62.114, G.C.

C. Personal Information of Prospective Jurors

Information collected by the court or by a prosecuting attorney during the jury selection process about a person who may serve or does serve as a juror is confidential. Because this information is confidential, it may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel. A party in the trial or a bona fide member of the news media, however,
may apply to the court and, on a showing of good cause; the court must permit disclosure of the information sought. Art. 35.29, C.C.P.

The personal information that courts might request from prospective jurors may include the following:

- home address;
- home telephone number;
- social security number;
- driver’s license number;
- occupation;
- employer;
- length of employment;
- previous employer;
- former occupation, if retired;
- spouse’s name and occupation;
- whether the juror has ever been involved in a lawsuit; and
- when and where the person has previously served as juror.

D. **Juror Compensation**

Municipal courts are not required to pay jurors unless the municipality provides for reimbursement for expenses to the person in an amount determined by the municipality. Sec. 61.001(c), G.C. Municipal courts are, however, required to collect a $4 fee to be used for reimbursement to counties for the cost of those jurors. The fee must be collected on all convictions except for parking or pedestrian offenses and remitted quarterly to the State Comptroller. Art. 102.0045, C.C.P.

Section 61.001, G.C., provides that each grand juror or petit juror in a civil or criminal case in district court, county court, county court at law, or justice court is entitled to receive reimbursement for travel and other expenses, not less than $6 for the first day or fraction of the first day, and $40 for each day or part of each day served as a juror thereafter.

Section 61.003, G.C., says that the court must provide a form letter that, when signed by the prospective juror, directs the treasurer to donate all of the prospective juror’s reimbursement for jury service to:

- Crime Victims Compensation Fund;
- Child Welfare Services Fund;
- any program selected by the commissioners’ court that is operated by a public or private nonprofit organization and provides shelter and services to victims of family violence; or
- any other program approved by the commissioners’ court of the county.

The donation is voluntary, and if the prospective juror donates his or her juror pay, the donation can be for all or a specific amount of the juror’s pay. The Comptroller’s Office is responsible for seeing that the donations are properly accounted. Since municipal courts are not required to pay
jurors, the Comptroller has not devised a form for municipal courts to report juror donations and there is no means for municipal courts to do so.

E. Jury Selection

On the day of the trial, the prospective jurors summoned to appear arrive at the courtroom so that jury selection may begin.

When prospective jurors arrive for jury service, the clerk should provide a copy of the uniform juror handbook (a one page two-sided brochure) developed by the State Bar of Texas for courts to provide to jurors. The jurors should read the handout before the trial begins, and then the court may collect them to hand out to other jury panels. Chapter 23, G.C. Courts that do not have the uniform juror handbook can call the State Bar at 512.463.1463 for free copies or download a copy at TMCEC’s website.

The clerk should have copies of the jury list and juror information sheets for the judge, prosecutor, and defendant. When the jury selection is over, the juror information sheets should be collected. The defendant and prosecutor should not be allowed to remove them from the courtroom because the information is confidential. Art. 35.29, C.C.P.

1. Jury Shuffle

A jury shuffle is required when either the prosecution or defense makes the request that the order of the jury be changed. When a request is made, the judge will have the clerk shuffle the list of jurors. A computer may be able to randomly change the order of the prospective jurors. If the court does not have a computer, the clerk should write the names of the jury panel on separate pieces of paper or cards and place them in a receptacle so that they may be mixed and drawn randomly. Regardless of how the names are shuffled, the names are recorded in the order that they are drawn or selected. The prospective jurors are then seated in the order selected. A copy of the new jury list is given to the prosecutor, the defendant, and the judge. Only one shuffle is allowed under the law. Art. 35.11, C.C.P.

2. Challenge to the Array

The prosecution and the defense may challenge the array (membership) of the jury panel. A challenge may be that the officer summoning the jury willfully summoned prejudiced or biased persons. Art. 35.07, C.C.P. All challenges must be in writing, distinctly stating the grounds for such a challenge, and supported by a sworn affidavit from the defendant or a credible person. A judge shall hear the evidence and decide, without delay, whether or not the challenge should be sustained. A challenge to the array must be heard prior to questioning jurors regarding their qualifications. Art. 35.06, C.C.P.

If a challenge is made and sustained, the judge will order a new jury panel to be summoned by someone other than the person who summoned the original panel. Since court clerks are the ones who usually summon prospective jurors, they should develop a procedure for the random selection. Art. 35.08, C.C.P.

3. Voir Dire

The voir dire process is the screening phase of the jury trial where the venire (prospective jurors) is placed under oath and asked questions by the judge, prosecutor, and defendant or defense attorney. Arts. 35.02 and 35.17, C.C.P. The purpose of this questioning is to discover any prejudices or preconceived opinions about the case. After questioning each prospective juror,
both the prosecution and defense may request the removal of any prospective juror who does not appear capable of making a fair and impartial verdict. When a prospective juror is removed by this process, it is called removal for cause.

A person is disqualified to serve as a petit juror in a particular case if he or she:

- is a witness in the case;
- is interested, directly or indirectly, in the subject matter of the case;
- is related by consanguinity or affinity within the third degree, as determined under Chapter 573, to a party in the case;
- has a bias or prejudice in favor of or against a party in the case; or
- has served as petit juror in a former trial of the same case or in another case involving the same questions of fact.

4. **Peremptory Challenges**

Besides removal for cause under the voir dire process, the state and defense are also allowed three peremptory challenges each. Here, the prosecution and defense may remove up to three prospective jurors without stating a reason for removal, as long as the reasoning is not illegal (such as one based solely upon a person’s race or gender). Art. 45.029, C.C.P. Removing a juror under this process is commonly called striking a juror.

5. **The Jury**

After voir dire and peremptory challenges, the prosecution and defense submit their lists of challenges to the court clerk, who compiles them and then writes or prints the names of the jurors in the order selected. Then the clerk gives a copy of the list to the prosecution, the defense, and the judge and calls the first six names on the list that have not been stricken by either party. Art. 35.26, C.C.P. These six persons form the municipal court jury.

If the court has more than one jury trial scheduled that day, the six jurors selected to hear the first case are not placed back into the jury pool. Some courts conduct voir dire for all the trials scheduled on a certain day before starting any of the jury trials. If clerks are uncertain about how the judge wants this process handled, they should work with their judges to establish procedures.

6. **Pick-Up Jury**

If, after challenges, strikes, or legal exemptions, there are an insufficient number of jurors in attendance, the judge shall order the proper officer, usually a peace officer, to summon a sufficient number of qualified persons to form a new jury panel. Art. 45.028, C.C.P. This is commonly called a “pick-up jury.”

To avoid a pick-up jury and to better manage the court and court participants’ time, the clerk should summon at least 30 persons for each jury trial, although this number fluctuates based on the population. By the time some of the prospective jurors have claimed legal exemptions and others have been removed for cause or by peremptory strikes, the court should still have enough jurors to hear the case.
F. Failure to Appear for Jury Service

Any person summoned for jury duty who fails to attend may be fined not more than $100 for contempt. Art. 45.027, C.C.P. Any person who is charged with this type of contempt is entitled to notice and a hearing before the court.

| Q. 78. | What is a writ? | ____________________________ |
| Q. 79. | What is a venire? | ____________________________ |
| Q. 80. | How many jurors are selected to hear cases in municipal courts? | ________________ |

True or False

Q. 81. The judge is required to issue a writ of venire when a defendant does not waive his or her right to a jury trial. ____
Q. 82. Jurors may be selected only from city tax rolls. ____
Q. 83. When a person does not reside within a city, he or she may not serve as a juror in municipal court. ____
Q. 84. When a court has more than one jury trial scheduled, any person summoned as a juror must remain at the court until discharged. ____
Q. 85. A person who is not registered to vote may not serve on a jury. ____
Q. 86. A person who is accused of or has been convicted of misdemeanor theft may not be a juror. ____
Q. 87. A person must be able to read and write to be a juror. ____
Q. 88. A juror must be unbiased. ____
Q. 89. A person who has legal custody of a child under the age of 12 is automatically exempt from jury duty. ____
Q. 90. A person who is a full-time student may claim an exemption from jury duty. ____
Q. 91. A person who is legally blind is prohibited by law from being a juror in a criminal case. ____
Q. 92. An employee of the State Legislature may claim an exemption from jury duty. ____
Q. 93. A person who cares for an invalid is automatically exempt from jury duty. ____
Q. 94. The judge may reschedule a prospective juror’s jury service for medical and hardship reasons. ____
Q. 95. Persons who are over 70 years of age may request a permanent exemption from jury duty. ____
Q. 96. The municipal court clerk is required to file a request for a permanent exemption with the county tax assessor-collector. ____
Q. 97. A person who is over 70 years of age may not be summoned to sit as a juror even if he or she does not request a permanent exemption. ____
Q. 98. Municipal courts are not required to pay persons who serve as jurors in their courts. ____

End True/False

Q. 99. List information that the court may want to require from jurors. ___________________
| Q. 100. | How can a juror request an exemption? ________________________________ |
| Q. 101. | When may a clerk grant a juror’s request to postpone jury service? |
| Q. 102. | What is the penalty for providing false information in a request for an exemption or excuse from jury service? ________________________________ |
| Q. 103. | What must a clerk do if a person claims an exemption from jury service based on lack of residence? |
| Q. 104. | Since personal information about jurors is confidential, how should clerks handle paperwork containing this information? ________________________________ |
| Q. 105. | Who has authority to release personal information about jurors? __________________ |
| Q. 106. | Under what circumstances may personal information about jurors be released? ______ |
| Q. 107. | What is the maximum penalty that may be assessed when a juror fails to appear in municipal court? ________________________________ |
| Q. 108. | When a juror fails to appear, with what offense is he or she charged? __________ |
| Q. 109. | What are prospective jurors required to do before serving on a jury? __________________ |
| Q. 110. | Who may ask the court for a jury shuffle? __________________________ |
| Q. 111. | Describe how the prospective jurors may be shuffled. ________________________________ |
| Q. 112. | After the jury is shuffled, what should the clerk do with the new list of names? |
| Q. 113. | Who may challenge the membership of the jury? ___________________________ |
| Q. 114. | When a judge sustains the challenge to the array, what does the judge do? ______ |

**True or False**

| Q. 115. | Voir dire is a process where jurors may be removed if they have preconceived opinions about a case. ____ |
| Q. 116. | Only the defense may ask the court to remove a juror because the juror has already decided that the defendant is guilty. ____ |
| Q. 117. | Removing a juror during voir dire is called removal for cause. ____ |

End True/False

| Q. 118. | What happens when either the prosecution or defense strikes a juror? ______ |
| Q. 119. | How many jurors may the prosecution and defense remove without cause? ______ |
| Q. 120. | How are the six persons selected for the jury? ________________________________ |
| Q. 121. | Why would a court have to order additional jurors to be summoned for a trial? _____ |
| Q. 122. | Who usually summons the pick-up jury? ________________________________ |
PART 6
TRIALS

Jurisdiction refers to a court’s legal authority over certain actions. A municipal judge may sit at any time to try cases over which he or she has jurisdiction. Art. 4.15, C.C.P.

A. Judge Disqualified or Recused

When a municipal judge is disqualified or recused, a judge with authority to try cases in that court may sit for the presiding judge. The procedure to replace a judge that is disqualified or must be recused is outlined in the newly adopted Subchapter A-1 of Chapter 29 of the Government Code, effective June 17, 2011. Prior law addressing recusal and disqualification in Section 29.012 of the Government Code was repealed. It is recommended that courts facing these issues read the new Subchapter carefully. See also TMCEC’s Legislative Update ’11 issue of The Recorder at http://www.tmcec.com/Resources/The_Recorder.

1. Causes that Disqualify

Chapter 30 of the Code of Criminal Procedure provides causes that disqualify a judge from hearing a case. The causes are when a judge:

- is the injured party;
- has been counsel for the State or the accused; or
- is connected to the accused or the party injured by consanguinity or affinity within the third degree as determined under Chapter 573, G.C.

Judges must recuse themselves on above listed causes or because of interest or prejudice. Canon 3B(5), Code of Judicial Conduct.

2. Consanguinity and Affinity

a. Determination of Consanguinity

Section 573.022, G.C., defines the degrees of consanguinity (blood relationships).

Two individuals are related to each other by consanguinity if:

- one is a descendant of the other; or
- they share a common ancestor; and
- an adopted child is considered to be a child of the adoptive parent for this purpose.

b. Determination of Affinity

Section 573.024, G.C., defines the degrees of affinity (relationship by marriage).

Two individuals are related to each other by affinity if:

- they are married to each other; or
- the spouse of one of the individuals is related by consanguinity to the other individual.

The ending of a marriage by divorce or death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.
c. Method of Computing Degree of Relationship

Section 573.021, G.C., provides that the degree of a relationship, both consanguinity and affinity, is computed by the civil law method. The following is a chart to help you determine degrees of relationships.

<table>
<thead>
<tr>
<th>Degrees of Relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
</tr>
<tr>
<td>Officer and Spouse</td>
</tr>
<tr>
<td>Parent</td>
</tr>
<tr>
<td>Grandparent</td>
</tr>
<tr>
<td>Great-Grandparent</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

B. Defendant’s Appearance

An adult defendant in municipal court may, with the consent of the prosecutor, appear by his or her attorney, and the trial may proceed without the defendant being in court personally. Art. 33.04, C.C.P. However, if a defendant is not represented by an attorney and fails to appear, the court may not try the case in the defendant’s absence.

A plea of not guilty may be made orally by the defendant or by his or her counsel in open court. If the defendant refuses to plead, a plea of not guilty shall be entered for him or her by the court. Arts. 27.16(a) and 45.024, C.C.P.

C. Right to Jury

Defendants in municipal courts, like defendants in all other courts with criminal jurisdiction, have the right to a jury trial. However, defendants may waive that right and request that a judge hear and decide the case. Arts. 1.05, 1.14, and 45.025, C.C.P.

D. “The Rule”

The proceedings and trials in municipal courts must be public. Art. 1.24, C.C.P. Municipal courts may not exclude anyone from attending trials. The only exception is when “The Rule” (Rule 614, Texas Rules of Evidence) is invoked by either the defense or the prosecution, requiring that witnesses who are not parties be excluded from hearing each other’s testimony. Art. 36.03, C.C.P. The witnesses must wait in a room outside the courtroom and may not discuss the case among themselves. One exception to “The Rule” allows the victim to remain in the courtroom if the court finds that the victim’s testimony would not be materially affected by his or her presence. Art. 36.03, C.C.P.

E. Day of Trial

Generally, the overall process for jury trials and trials before the judge is similar, but there are some differences and local practices may differ from court to court. The biggest difference is that in a jury trial, the jury is the trier of the facts and makes the decision of whether a defendant is
guilty or not guilty. The jury can also decide punishment if the defendant elects for the jury to do so before the trial begins. Arts. 45.036 and 37.01, Sec. 2(b)(2), C.C.P. In a trial before the judge, the judge hears the evidence, makes a decision of guilty or not guilty, and if guilty, decides the punishment.

1. **Opening Announcement**

The bailiff or court clerk should enter the courtroom before the judge and request that all persons stand. When the judge enters the courtroom, all court participants should stand during the opening announcement.

The opening announcement may be that of:

- All present give attention — “All rise!”
- The exact name of the court and municipality — “The Municipal Court of the City of ____________ is now in session.”
- The name of the judge presiding — “The Honorable ____________ Judge presiding.”

After the judge sits, the bailiff or clerk should direct that all others be seated.

2. **Explanation of Rights, Options, and Court Proceedings**

After the announcement that court is in session, the judge typically explains the defendant’s rights, options, and court procedures.

At this time, some defendants might decide not to proceed to trial. Some may request to take a driving safety course or ask the judge to grant deferred disposition. After the introductory statement by the judge and the processing of defendants who change their mind about having a trial, the court may proceed with trials.

3. **Docket Call in Non-Jury Trials**

Usually several cases are set on non-jury trial dockets. After an introductory statement by the judge, the judge may call or instruct the bailiff or clerk to call the names of defendants scheduled for trial on that docket. This process is commonly called a docket call. If a defendant does not answer, the judge may ask the clerk or bailiff to step outside the courtroom and call the name of the defendant. This procedure is required when a defendant has a bond filed with the court. Calling the name outside the courtroom regardless of where the courtroom is located is sufficient compliance with Article 22.02, C.C.P., requiring that the name be called “distinctly.”

When a defendant fails to appear and a bond is filed with a case, after the clerk or bailiff completes the docket call, he or she should swear to an affidavit indicating that the name was called and file the affidavit with the case. This affidavit may be used later as probable cause for issuing warrants for failure to appear.

4. **Jury Selection in Jury Trials**

Before a jury trial begins, the clerk should have already provided the defense, State, and judge with the personal information that the court requested from its jurors. At the conclusion of voir dire or at the conclusion of the trial, the clerk should collect the juror information sheets and file them with the case.

After the announcement that court is in session, the judge may make an introductory statement to the jurors about court proceedings. The cases set for jury trials are called and both the defendant
and the State are asked if they are ready to proceed. Then the judge reviews qualifications and exemptions with the jurors. If any prospective juror wishes to claim an exemption or explain to the judge why he or she is not qualified, he or she may do so at this time.

5. **The Trial**

In both the jury trial and the trial before the judge, the judge calls the defendant to the bench to identify the defendant and ask for a plea. Next, the prosecutor reads the complaint to the defendant.

- After opening statements from the prosecutor and the defense, the prosecutor presents the State’s case by calling witnesses to testify against the defendant.
- After a prosecution witness finishes testifying, the defense is given the opportunity to cross-examine the witness. Cross-examining means that the defendant may ask the witness questions about his or her testimony or other facts relevant to the case. Cross-examination must be in the form of questions only, and the defendant is not allowed to argue with the witness.
- After the prosecution presents its case in chief, the defendant may make an opening statement, if it was reserved until this point, and present his or her case by calling witnesses who know about the incident.
- The prosecutor may cross-examine the witnesses called by the defense.
- The defendant may testify on his or her own behalf, but he or she cannot be compelled to testify. If the defendant does not testify, the defendant’s silence cannot be used against him or her. However, if the defendant testifies, the State may cross-examine the defendant.
- Both sides may put on rebuttal evidence if they so choose. Rebuttal evidence is evidence that either side may present to dispute the other side’s evidence.
- In a jury trial, the judge reads a charge to the jury before closing arguments, containing the law that applies to the case. Many judges prepare the charge in advance and give a copy of it to the prosecutor and defense to review. Other judges require the parties to prepare the court’s charge for the court’s review.
- Finally, the defense and prosecution can present a closing argument on behalf of their case. The closing arguments may be based only on the testimony presented during the trial. The State has the right to present the first and last arguments.

For step-by-step checklists to conduct a jury trial, see the TMCEC Bench Book, available online at www.tmcec.com or also available in a hard copy.

F. **Bench Trial**

In a trial before the judge, the judge hears the evidence and decides whether the defendant is guilty or not guilty based solely upon the evidence presented at trial. If the defendant is guilty, the judge renders a judgment of guilty and assesses punishment according to the penalty allowed for the particular offense. In some instances, based on the circumstances of the case, the judge may even exercise his or her discretion to place the defendant on deferred disposition. If the judge finds that the defendant is not guilty, the judge enters a judgment of not guilty, dismisses the case, and releases the defendant without any liability.
G. Jury Trial

The decision of the jury is called the verdict. When the case is submitted to the jury, the jury retires in the charge of the bailiff or a court officer to deliberate the case. Broadcasting, recording, or photographing a jury while the jury is deliberating is prohibited. If a court has security cameras in the room in which the jury is deliberating, the cameras will have to be turned off. Art. 36.215, C.C.P. It is also a good idea for the court to have policies in place regarding the jurors’ possession and use of cell phones or other internet-capable devices in the deliberation room.

Municipal court jurors are kept together until they agree on a verdict, are discharged, or the court recesses. Art. 45.034, C.C.P. The decision of the jury can be based only on the testimony of witnesses and evidence admitted during the trial. No person is permitted to converse with a juror about the case except in the presence and by the permission of the court. Art. 36.22, C.C.P. If the jury has any questions, they must be addressed to the judge in writing. Then, in the presence of the attorneys, the judge may answer proper questions.

Judges who sequester a jury are required to provide jurors a reasonable time to vote on election day. A court may provide the jurors with transportation to and from their polling places. Sec. 276.009, Election Code.

The jury returns to the courtroom to announce its verdict in open court. After a verdict is announced, the judge renders a judgment. Art. 45.036, C.C.P. If the defendant elected that the jury make the decision of punishment, after a finding of guilty, the jury also assesses the punishment. If the defendant did not elect that the jury make the decision of the punishment, the judge decides punishment if the jury’s decision is guilty. If the decision of the jury is not guilty, the judge enters a finding of not guilty, dismisses the case, and releases the defendant from all liability.

If a jury fails to agree to a verdict after being kept together for a reasonable amount of time, then a mistrial occurs. The case may be tried again as soon as practicable. Art. 45.035, C.C.P.

H. Judgment

Article 45.041, C.C.P., requires all judgments, sentences, and final orders of the judge to be rendered in open court.

1. Not Guilty

If a defendant is found not guilty by either the jury or the judge, the court discharges the defendant without any liability. Upon acquittal of a defendant, the trial court is required to advise the defendant of the right to have all records of the case expunged. Art. 55.02, Sec.1, C.C.P.

2. Guilty

When a defendant is found guilty in either a jury trial or a trial before the judge, the defendant must pay the fine and costs, or, if the defendant is not satisfied with the judgment of the court or the verdict of the jury, he or she may appeal his or her case or request a new trial.

If the offense is a traffic violation, an Alcoholic Beverage Code violation under Chapter 106, or the Penal Code violation of theft of gasoline and the defendant does not appeal, the clerk is required to send, notice of final conviction to the Department of Public Safety. Secs. 543.201-543.206, T.C., and Art. 42.019, C.C.P.
If the defendant served time in jail, the judge must credit the defendant for time served in jail from the time the defendant was arrested until conviction. Arts. 42.03 and 45.041(c), C.C.P. The pre-conviction jail-time credit is not less than $50 for each period of time served as specified by the court in the judgment of the case. “Period of time” is defined as not less than eight hours or more than 24 hours. Art. 45.048, C.C.P. Judgment forms should be reviewed to be certain that they contain the required information regarding “period of time” to be specified for jail credit.

If the trial was a jury trial, Article 102.004, C.C.P., requires the court to impose, in addition to other required court costs, $3 fee upon conviction by a jury. The defendant must also pay upon conviction a $5 fee if the prospective jurors were summoned by a peace officer. Art. 102.011(a)(7), C.C.P.

I. Defendant’s Failure to Appear

Defendants who have been in custody and fail to appear for trial, regardless of whether it is a jury trial or a trial before the judge, can be charged with the offense of failure to appear. Sec. 38.10, P.C. This is a Class C misdemeanor with a maximum fine of $500. The prosecutor makes the decision to charge this offense. After the prosecutor makes the decision, clerks process this charge by preparing the complaint. Like other complaints, any credible person acquainted with the facts can be the affiant.

After the judge determines that there is sufficient probable cause, the judge can issue a warrant for the failure to appear charge along with the warrant for the underlying charge. There must be a sworn complaint and probable cause affidavit for that offense also.

If a defendant has a bond filed with the court and fails to appear, the prosecutor can request that the court forfeit the bond. The forfeiture process is initiated by a judgment nisi (a temporary order that will become final unless the defendant and/or surety shows good cause why the judgment should be set aside). If a cash bond is filed with the court and the defendant has also signed a conditional plea of nolo contendere, the court can forfeit the bond for the fine and costs.

If the defendant did not waive a jury trial and fails to appear for the trial, the judge may order a defendant to pay the costs incurred for impaneling the jury. The court may release the defendant from the obligation for good cause. The court should conduct some type of show cause hearing before releasing a particular party from these expenses. An order to pay may be enforced by contempt as provided in Section 21.002(c), G.C. Art. 45.026, C.C.P. Clerks perform an analysis of the costs of summoning a jury. Items to include in the analysis are:

- clerk’s time to select jurors and prepare and mail jury summons;
- costs of jury summons and envelopes;
- costs of postage or peace officer’s costs if peace officer summoned jury; and
- any other applicable costs.

A defendant has the right to request a jury trial as well as to withdraw the request. However, if the defendant withdraws the request for a jury trial not earlier than 24 hours before the time of trial, the defendant must pay a jury fee of $3 if he or she is convicted of the offense or if final disposition of the defendant’s case is deferred. Art. 102.004, C.C.P.
True or False
Q. 123. Adult defendants requesting a jury trial must personally appear for the trial. _____
Q. 124. Defendants who fail to appear may still be tried in their absence. _____
Q. 125. If a defendant refuses to plead, the court must enter a not guilty plea for him or her. _____
Q. 126. Trials in municipal courts are not open to the public. _____
Q. 127. Municipal courts may exclude city council members from attending trials. _____
Q. 128. Municipal courts may not exclude the news media from attending trials. _____
Q. 129. Witnesses may be excluded from trial only when “The Rule” is invoked. _____
Q. 130. Victims must always be excluded when “The Rule” is invoked. _____
End True/False

Q. 131. Write an opening announcement for your court.
____________________________________________________

Q. 132. On the day of trial, what should clerks do with the juror information sheets? _______
Q. 133. What fee must municipal courts assess when a defendant fails to withdraw a request for jury trial 23 hours before the trial and is then later convicted? __________

True or False
Q. 134. The court is required to call outside the courtroom the names of defendants who have bonds posted and fail to appear at docket call. _____
Q. 135. At trial, the prosecution presents its evidence first. _____
Q. 136. The defense does not have a right to cross-examine the prosecution’s witnesses. _____
Q. 137. The defendant cannot be compelled to testify. _____
Q. 138. The charge to the jury is given after both the defense and prosecution have concluded their evidence. _____
Q. 139. A jury charge is a statement of the law that applies in the case being tried. _____
Q. 140. If a trial is before the judge, the judge makes the decision of whether the defendant is guilty or not guilty. _____
Q. 141. Clerks may influence a judge’s decision about a particular case if the defendant was difficult to handle. _____
End True/False

Q. 142. What is a judgment? ________________________________
Q. 143. What is a verdict? ________________________________

True or False
Q. 144. The jury may consider personal information about a defendant when determining whether the defendant is guilty or not guilty. _____
Q. 145. During deliberation, if a juror has a question, only the defense and prosecution may answer the question. ____
Q. 146. On election day, the municipal court must provide transportation for the jurors to their polling places. ____
End True/False

Q. 147. What is a mistrial? ________________________________________________
Q. 148. After a mistrial has been declared, when must the court conduct another trial? _____
Q. 149. Where are judgments and verdicts required to be rendered? _____________________

True or False
Q. 150. When a defendant is found not guilty, he or she must still pay court costs. ____
Q. 151. When a defendant is found guilty, he or she may request a new trial or appeal the case. _____
End True/False

Q. 152. If a case is a traffic violation, what must the clerk send to the Department of Public Safety upon conviction? ________________________________

True or False
Q. 153. The judge is required to enter in the judgment the period of time for jail credit. ____
Q. 154. Municipal court must grant jail-time credit in the amount of $50 for each part of a day a defendant has spent in jail before conviction. ____
Q. 155. Municipal courts are required to collect a $3 jury fee upon conviction by a jury. ____
Q. 156. When a peace officer summons prospective jurors, the defendant must pay a $5 fee for each juror. ____

PART 7
NEW TRIAL

A. Non-Record Municipal Court

Effective September 1, 2011, a motion for a new trial in a non-record court must be made within five days after the rendition of judgment and sentence and not afterward. Art. 45.037, C.C.P. Previously, defendants had only one day to file a motion for new trial in a non-record court. In no case shall the State be entitled to a new trial. Art. 45.040, C.C.P. Not more than one new trial may be granted to the defendant in the same case. Art. 45.039, C.C.P.

When a clerk of a non-record municipal court receives a motion for new trial, the clerk should notify the judge immediately. The judge must make a decision whether to grant or deny the motion not later than the 10th day after the date that the judgment was entered. If a motion for a new trial is not granted before the 11th day after the date that the judgment was entered, the
motion is considered denied. Art. 45.038, C.C.P. As soon as the judge makes a decision, the clerk should immediately notify the defendant of the decision.

According to the mailbox rule, a document is timely filed with the clerk of a court if the document is deposited with the U.S. Postal Service in a first class postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed with the clerk and the clerk receives the document not later than the 10th working day after the date the document is required to be filed with the clerk. Art. 45.013, C.C.P. If a motion was mailed to the court and received according to the time limits in the mailbox rule, the document would be timely filed. However, since a judge must rule on the motion for new trial by the 10th calendar day after the judgment, the motion for new trial would be overruled by operation of law if the court received the motion after the 10th working day.

In a non-record court, when a new trial has been granted, the judge shall proceed as soon as practicable to try the case again. Art. 45.039, C.C.P.

B. Municipal Court of Record

If the trial is in a court of record, a written motion for new trial along with briefs must be filed with the municipal court clerk not later than the 10th day after the date on which judgment was rendered. The motion must set forth the points of error of which the appellant complains. Sec. 30.00014(c), G.C. The motion for new trial may be amended by leave of the court at any time before action on the motion is taken, but not later than the 20th day after the date on which original or amended motion is filed. The court may, for good cause, extend the time for filing or amending, but the extension may not exceed 90 days from the original filing deadline. If the court does not act on the motion before the expiration of 30 days allowed for determination of the motion, the original or amended motion is overruled by operation of law.

According to the mailbox rule, a document is timely filed with the clerk of a court if the document is deposited with the U.S. Postal Service in a first class postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed with the clerk; and the clerk receives the document not later than the 10th working day after the date the document is required to be filed with the clerk. Art. 45.013, C.C.P.

In a record court, the judge decides, from the briefs submitted with the written motion for new trial, whether to grant a new trial. The court may grant a new trial any time before the record of the case is filed with the appellate court for an appeal. Sec. 30.00022, G.C.

C. New Trial After Cash Bond and FTA

Under Article 45.044, C.C.P., when a defendant posts a cash bond with the court, signs a conditional plea of nolo contendere and then fails to appear, the court is required to forfeit the bond for the fine and costs and notify the defendant immediately of the court’s action. The defendant has 10 days from the date of the judgment of conviction and forfeiture to request a new trial.

The mailbox rule applies to this appeal. If the defendant makes the request for new trial by mail, the request must be made on or before the 10th day after the judgment and received by the clerk within 10 working days after that 10th day. Art. 45.013, C.C.P.
### Trial Processes

#### Part 8
**COURT INTERPRETERS**

Article 38.30, C.C.P., requires that an interpreter be sworn in to interpret for a defendant or witness who does not understand the English language. Article 38.31, C.C.P., requires a qualified interpreter be appointed if a defendant or witness is hard of hearing or deaf. Section 62.1041, G.C., requires courts to reasonably accommodate jurors who are hard of hearing or deaf. All interpreters must be sworn before performing interpretation. Rule 604, Texas Rules of Evidence.

Section 57.001(1), G.C., defines certified court interpreter to mean “an individual who is a qualified interpreter as defined in Article 38.31, C.C.P., or Section 21.003, Civil Practice and Remedies Code, or certified under Subchapter B by the Department of Assistive and Rehabilitative Services to interpret court proceedings for a hearing-impaired individual.”

Section 57.002(5), G.C., defines licensed court interpreter to mean “an individual licensed under Subchapter C by the Texas Commission of Licensing and Regulation to interpret court proceedings for an individual who can hear but who does not comprehend English or communicate in English.”

### A. Licensed Interpreters and County Population

Section 57.002, G.C., requires municipal courts in counties with a population of 50,000 or more to appoint certified or licensed court interpreters. There is one exception to this rule under Subsection 57.002(d). A court may appoint a spoken language interpreter who is not certified or licensed if:

- the language necessary in the proceeding is a language other than Spanish; and
- the court makes a finding that there is no licensed court interpreter within 75 miles who can interpret in the language that is necessary in a proceeding.
In a county with a population of less than 50,000, a court may appoint a spoken language interpreter who is not a licensed court interpreter. Sec. 57.002(c), G.C. Interpreters appointed for a person who is hard of hearing or deaf must be certified regardless of the population of a county.

1. **Other Qualifications**

All interpreters, besides being licensed or certified, must also meet the following qualifications:

- must be qualified by the court as an expert under the Texas Rules of Evidence;
- must be at least 18 years of age; and
- may not be a party to the proceeding.

2. **Court Proceedings**

Chapter 57, G.C., provides for a state-operated licensing and certification program for court interpreters for the deaf and hard of hearing and for foreign language and establishes rules regarding certified and licensed interpreters that apply to court proceedings.

Section 57.001(7), G.C., defines court proceedings to include an arraignment, deposition, mediation, court-ordered arbitration, or other form of alternative dispute resolution. (The Code Construction Act defines the word “includes” in Section 311.005(13), G.C., to be a term of enlargement and not of limitation or exclusive enumeration, and the use of the term does not create a presumption that components not expressed are excluded.) Hence, court proceedings are more than the list enumerated in Section 57.001.

Attorney General John Cornyn addressed the “interpreter issue” in Opinion JC-0584 (2002). One of the issues was whether a clerk receiving a plea from a non-English speaking defendant in the clerk’s office is a court proceeding and whether there must be a licensed court interpreter at the proceeding. The opinion states that a criminal proceeding includes all possible steps in an action from its commencement to its execution. The commencement of the action includes a clerk receiving a plea from a defendant. A court clerk who assists a defendant in filing a plea by conversing in a language other than English does not necessarily violate Chapter 57, G.C. If, however, the clerk does not speak the language of the defendant and must have another clerk interpret, the interpreter must be licensed under Chapter 57, G.C.

B. **Telephone Interpreters**

A qualified telephone interpreter may be sworn to interpret for the person in a trial of a Class C misdemeanor or a proceeding before a magistrate if:

- an interpreter is not available to appear in person before the court; or
- the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or is unfamiliar with the use of slang.

“Qualified telephone interpreter” is defined as a telephone service that employs:

- licensed court interpreters as defined by Section 57.001, G.C.; or
- federally certified court interpreters.

C. **Non-English Speaking Defendants and Witnesses**

The court is required to appoint an interpreter when either a defendant or witness does not understand the English language. Art. 38.30, C.C.P. The role of the interpreter is to translate and
explain the proceedings and to give the defendant a voice in the proceedings. Interpreters must be sworn before performing interpretation. Rule 604, Texas Rules of Evidence.

D. Hearing Impaired Defendants, Witnesses, and Jurors

A hearing impaired individual is defined to mean an individual who has a hearing impairment, regardless of whether the individual also has a speech impairment that inhibits the individual’s comprehension of proceedings or communication with others. Sec. 57.001(4), G.C.

Courts are required to appoint a qualified interpreter for deaf or hearing-impaired persons during trial proceedings. When a defendant or witness is deaf or hard of hearing, the court must appoint a qualified interpreter. Art. 38.31, C.C.P.

For guidance, contact the Deaf and Hard of Hearing Services (Texas Department of Assistive and Rehabilitative Services) at 800.628.5115 or 512.407.3250 in Austin.

E. Violation of Interpreter Rules

Subchapter A, Chapter 57, G.C., contains the general provisions regarding court interpreters. A person may not interpret for a hearing-impaired individual at a court proceeding or advertise or represent that the person is a certified court interpreter unless the person holds an appropriate certificate under Subchapter A of Chapter 57, G.C. Section 57.026, G.C. A person commits a Class A misdemeanor if the person violates Subchapter A of Chapter 57 or a rule adopted under Subchapter A. A person who violates Subchapter A or rules adopted under the subchapter are also subject to administrative penalties assessed by the Department of Licensing and Regulation. Secs. 57.027 and 57.050, G.C.

Additionally, an interpreter’s license may be suspended or revoked if the individual makes a material misstatement in an application for a license; willfully disregards or violates a provision in Subchapter C, G.C.; has been convicted of a felony or of any crime in which an essential element of the offense is misstatement, fraud, or dishonesty; or engaged in dishonorable or unethical conduct likely to deceive, defraud, or harm the public or a person for whom the interpreter interprets. Sec. 57.048, G.C.

True or False

Q. 164. Defendants who do not speak English are required to bring an interpreter with them to translate court proceedings. _____

Q. 165. A family member or friend can be a language interpreter as long as he or she knows both English and the other language that requires interpreting. _____

Q. 166. Courts are required to appoint interpreters for witnesses who do not speak English. _____

Q. 167. An interpreter for a defendant who is hard of hearing must be a certified interpreter. _____

Q. 168. A court that is in a city under 50,000 in population does not have to appoint licensed or certified interpreters. _____

End True/False

Q. 169. When is a municipal court that is located in a county with a population of at least 50,000 not required to appoint a licensed state interpreter for a non-English speaking defendant? ______________
| Q. 170. | When may a court use a qualified telephone interpreter? ____________________________________________ |
| Q. 171. | If a defendant does not speak English, what must the clerk do before trial? __________ |
| Q. 172. | What are courts required to do if a juror is deaf or hearing impaired? ______________ |
| Q. 173. | Who is responsible for paying the costs of services for a hearing impaired juror? ____ |
| Q. 174. | Who should the court call for information about interpreters for the hard of hearing? _ |
| Q. 175. | What is the penalty for interpreting without being licensed by the State? __________ |

**PART 9**  
**COURT REPORTERS**

Only courts of record are required to provide court reporters to preserve a record of cases tried before the court. The court reporter must meet the qualifications provided by law for official court reporters. Sec. 30.00010(a), G.C. An official court reporter must take the oath of office required of other elected or appointed officers of this state. In addition to the official oath, each official court reporter must sign an oath administered by the district clerk. Sec. 52.045, G.C.

The court reporter may use written notes, transcribing equipment, video or audio recording equipment, or a combination of these methods to record the proceedings in the court. The reporter shall keep the record for the 20-day period beginning after the last day of the proceeding, trial, denial of motion for new trial, or until any appeal is final, whichever occurs last. Sec. 30.00010(b), G.C. The court reporter is not required to record testimony unless the judge or one of the parties requests a record. Sec. 30.00010(c), G.C.

Instead of providing a court reporter, the governing body may provide for the proceedings to be recorded by a good quality electronic recording device. If the governing body authorizes the electronic recording, the court reporter is not required to be present to certify the statement of facts. The recording shall be kept for the 20-day period beginning the day after the last day of the court proceeding, trial, or denial of motion for new trial, whichever occurs last. If a case is appealed, the proceedings shall be transcribed from the recording by an official court reporter. Sec. 30.00010(d), G.C.

Section 52.047(a), G.C., requires official court reporters to furnish a transcript to a person requesting a transcript not later than the 120th day after the:
- application for the transcript is received by the court reporter; and
- transcript fee is paid or the person establishes indigence.

**True or False**

Q. 176. Official court reporters are required to take an oath of office just like an elected or appointed official. ____

Q. 177. Court reporters must keep their records of a trial for a 20-day period beginning the last day of the trial or motion for new trial is denied or until an appeal is final. ____

Q. 178. Courts of record must have a court reporter instead of a recording device. ____
PART 10
CONTEMPT

Municipal judges have the power to hold people in contempt of court. Sec. 21.002, G.C. Contempt power is vested in courts so that the proceedings will be conducted with dignity and in an expeditious manner to see that justice is done. There is no statutory definition of contempt, but common law establishes it as conduct that tends to impede the judicial process by disrespectful or uncooperative behavior in open court or through the unexcused failure to comply with clear court orders.

A. Direct and Indirect Contempt

Contempt may occur through direct or indirect means. Direct contempt is an act that occurs in the judge’s presence and under circumstances that require the judge to act immediately to quell a disruption, violence, disrespect, or physical abuse. Indirect contempt occurs outside the court’s presence and includes such acts as failure to comply with a valid court order; failure to appear in court; attorneys appearing late for trial; or filing offensive papers in the court. If a person is charged with indirect contempt, the person has a right to notice of the charge and a trial or hearing in open court, as well as the right to counsel.

B. Civil and Criminal Contempt

Contempt may be civil or criminal. Civil contempt includes willfully disobeying a court order or decree. Criminal contempt includes acts that disrupt court proceedings, obstruct justice, are directed against the dignity of the court, or bring the court into disrepute.

C. Penalties

1. General Penalty

Contempt in municipal court is punishable by up to three days confinement in jail and a monetary sanction of up to $100. Sec. 21.002(c), C.C.P. Because contempt is not a separate offense, or a criminal offense, for that matter, the court does not collect any court costs for it.

2. Failure to Execute Summons, Subpoena, or Attachment

Failure by a sheriff or an officer to execute a summons, subpoena, or attachment may constitute contempt with a sanction of $10 to $200. Art. 2.16, C.C.P.

3. Failure to Appear for Jury Duty

Failure to appear for jury duty in municipal court can constitute contempt with a maximum sanction of $100. Art. 45.027(c), C.C.P.

4. Failure to Pay Costs of Impaneling Jury

Article 45.026, C.C.P., provides that the judge may order a party who demands a jury trial and fails to appear for trial to pay the costs incurred for impaneling the jury. An order to pay may be enforced by contempt as provided in Section 21.002(c), G.C. The court may release the party from the obligation for good cause, as might be evidenced during a show cause hearing.

Q. 179. What is the purpose of contempt power? ________________________________
Q. 180. Name the kinds of contempt and define them. ________________________________  
________________________________

Q. 181. What is the general penalty for contempt in municipal courts? __________________

Q. 182. What is the penalty for contempt by an officer? ________________________________

Q. 183. What is the penalty for failure to appear for jury duty? _________________________

Q. 184. What is the penalty for failing to pay the costs of impaneling a jury after failing to appear  
for the jury trial?_______________________________________________________________

True or False

Q. 185. The clerk may order a person who fails to appear for a jury trial to pay the costs for  
impaneling the jury. ____

Q. 186. The court may release a defendant from paying the costs for impaneling the jury for good  
cause. ____

Q. 187. If a defendant fails to pay the costs of impaneling the jury, the defendant may be found in  
contempt of court. ____
Municipal Court Procedures: Adults

Prepared and Distributed by the Texas Municipal Courts Education Center
TMCEC is funded by a grant from the Texas Court of Criminal Appeals

City:
Address:
Telephone:

This pamphlet is designed to provide information about criminal court proceedings. It is not a substitute for legal advice from a licensed attorney. If you have questions about your best course of action, plea you should enter, your rights, or the consequences of a conviction of the offense with which you are charged, you should contact an attorney. Neither the clerk, judge, nor prosecutor can give you legal advice.

Your Rights
Under our American system of justice, all persons are presumed to be innocent until proven guilty. The State must prove you guilty “beyond a reasonable doubt” of the offense with which you are charged. Every criminal defendant has the right to remain silent and refuse to testify (without consequences). You have the right to retain an attorney and have them try your case or answer your questions. Since offenses in this court are punishable only by fine and not by incarceration, you do not have the right to appointed counsel.

You have the right to a jury trial. You may waive a jury trial and have a trial before the judge, commonly called a “bench trial.” If you elect to represent yourself, no person other than an attorney can assist you during a trial.

At trial you have many rights, including:
1) The right to have notice of the complaint not later than the day before any proceedings in the prosecution;
2) The right to inspect the complaint before trial, and have it read to you at the trial;
3) The right to hear all testimony introduced against you;
4) The right to cross-examine witnesses who testify against you;
5) The right to testify on your own behalf;
6) The right not to testify (your refusal to do so may not be held against you in determining your innocence or guilt); and
7) You may call witnesses to testify on your behalf at the trial, and have the court issue a subpoena (a court order) to any witnesses to ensure their appearance at the trial.

Apprehension
In addition to your rights, you have some legal responsibilities. The law requires you to make an appearance in your case. Your appearance date is noted on your citation or bond, summons, or release papers. You or your attorney may appear in person in open court, by mail, or you may deliver your plea in person to the court. (Juveniles have a separate set of rules for their appearance. Please read the Juveniles pamphlet.)

If your first appearance is to determine your plea. If you waive a jury trial and plead guilty or nolo contendere (no contest), you may present extenuating circumstances for the judge to consider when determining the proper punishment. However, the judge is not required to reduce your fine. If you plead not guilty, the court will schedule a jury trial. You may waive a jury trial and request a bench trial.

When you make your appearance by mail, your plea must be postmarked by your scheduled appearance date. If you plead not guilty, the court will notify you of the date of your trial. If you enter a plea of guilty or no contest, you must also waive your right to a jury trial. You may request the amount of fine and appeal bond in writing and mail or deliver it to the court before your appearance date. You then have up to 31 days from the time you receive a notice from the court to pay the fine or file an appeal bond with the municipal court.

Plea
Unless you are entitled to a compliance dismissal, you must enter one of the following three pleas:

Plea of Not Guilty – A plea of not guilty means that you deny guilt and require the State to prove the charge. A plea of not guilty does not waive any of your rights. A plea of not guilty does not prevent a plea of guilty or no contest at a later time.

Plea of Guilty – By a plea of guilty, you admit that you committed the criminal offense charged.

Plea of Nolo Contendere (no contest) – A plea of nolo contendere means that you do not contest the State’s charge against you.

The difference between a plea of guilty and nolo contendere is that the no contest plea may not later be used against you in a civil suit for damages. For example, in a civil suit arising from a traffic crash, a guilty plea can be used as evidence of your responsibility or fault.

If you plead guilty or no contest, you will be found guilty and be required to pay the fine. A plea of guilty or no contest waives all of the trial rights discussed earlier.

If you are unable to pay the entire fine and costs, you should be prepared to document and explain your financial situation.

Fines, Costs, and Fees
The amount of the fine assessed by the court is determined by the facts and circumstances of the case. Mitigating circumstances may lower the fine, and aggravating circumstances may increase the fine. The maximum fine amount allowed for most traffic violations is $200; for most other violations of State law and city ordinances—$500; for fire safety, health, zoning, and sanitation ordinance violations—$2,000.

Courts are required by the laws of the State of Texas to collect court costs and fees. Because costs vary for different offenses, check with the court for the amount of costs that will be assessed for the violation with which you are charged. If you go to trial, you may have to pay the costs of overtime paid to a peace officer spent testifying at trial. If you request a jury trial and are convicted, a $3 jury fee is assessed. If a warrant was served or processed, a $50 warrant fee is also assessed. If you do not pay the whole fine and costs within 30 days of the court’s judgment, you must pay an additional $25 late payment fee.

Court costs are only assessed if you are found guilty at trial, you plead guilty or nolo contendere, or if you are granted deferred disposition or a driving safety course. If you are found not guilty or the case is dismissed, court costs are not assessed.

Judge’s Ability to Dismiss
The municipal judge is responsible for conducting a fair, impartial, and public trial. The case against you is brought by the State of Texas through the prosecutor, not the court. Therefore, the judge may not dismiss a case without the prosecutor having the right to try the case.

There are several exceptions to this rule, including deferred disposition, driving safety courses, and compliance dismissals.

Trial Procedures
If you need a continuance, you must put the request in writing with your reason for your request and submit it to the court prior to trial. You may request a continuance for the following reasons:
1) A religious holy day where the tenets of your religious organization prohibit members from participating in secular activities such as court proceedings (you must file an affidavit with the court stating this information);
2) You filed a motion to suppress evidence that the judge denied;
3) By agreement of the parties (you and the prosecutor).

The judge decides whether or not to grant the continuance. Failure to submit the request in writing may cause your request to be denied. If you choose to have the case heard before a jury, you have the right to question jurors about their qualifications to hear your case. If you think that a juror will not be fair, impartial, or unbiased, you may ask the judge to excuse the juror. You are also permitted to strike three members of the jury panel for any reason you choose, except a strike based solely upon race or gender.

As in all criminal trials, the trial begins with opening arguments from each party. Then the State presents its case first by calling witnesses to testify against you. You then have the right to cross-examine the State’s witnesses. You may not, however, argue with the witnesses. Cross-examination must be in the form of questions.

After the prosecution has rested, you may present your case. You have the right to call witnesses who know anything about the incident. The State has the right to cross-examine the witnesses that you call. If you so desire, you may testify on your own behalf, but as a defendant, you may not be compelled to testify. It is your choice, and your silence cannot be used against you. If you do testify, the State has the right to cross-examine you.

After all testimony is concluded, both sides can make closing arguments. This is your opportunity to summarize the evidence, present your theory of the case, argue why the State has failed to meet its burden of proof, and make other arguments allowed by law. The State has the right to present the first and last arguments.

In determining the defendant’s guilt or innocence, the judge or jury may consider only the testimony of witnesses and evidence admitted during the trial. The judge or jury must find the defendant guilty “beyond a reasonable doubt.”

You may elect the jury to assess the fine if you are convicted. If the jury does not select an appeal bond if you were convicted.

**Driving Safety Course**

If you are charged with a traffic offense, you may be eligible to ask the judge to order a driving safety course to dismiss the charge. The request must be made on or before the appearance date on the citation. It must be made in person, by counsel, or by certified mail. (If you are under age 17, you must appear in open court with a parent or guardian to make the request.) If you are operating a motorcycle, a motorcycle operator’s license is required. If you are charged with allowing a child to ride unsecured in a safety belt or a child passenger safety seat system, you must take a special driving course that has four hours of training in child passenger safety seat systems. At the time of the request, you must do the following:

1. Plead guilty or no contest;
2. Pay court costs;
3. Pay a $10 administrative fee, if required;
4. Present proof of financial responsibility (insurance); and
5. Present a valid Texas driver’s license or permit.

To be eligible, you:

1. Cannot have had a driving safety course or motorcycle operator’s course for a traffic offense within the last 12 months from the date of the current offense;
2. Cannot currently be taking the course for another traffic violation;
3. Cannot be the holder of a commercial driver’s license (CDL) or have held a CDL at the time of the offense; and
4. Have not committed one of the following offenses:
   - Failure to Give Information at Accident Scene;
   - Leaving Scene of Accident;
   - Passing a School Bus;
   - A serious traffic violation, which applies to commercial motor vehicle operators;
   - An offense in a construction or maintenance work zone when workers are present;
   - Speeding 25 mph or more over limit; or
   - Speeding 95 mph or more.

The case will be deferred for 90 days. During that time you must:

1. Complete a driving safety course approved by the Texas Education Agency or a motorcycle operator’s course approved by the Department of Public Safety and present the completion certificate to the court;
2. Present a certified copy of your driving record from the Department of Public Safety that shows that you have not had a driving safety course within the preceding 12 months from the date of the current offense; and
3. Swear to an affidavit that you were not taking a driving safety course at the time of the request for the current offense and that you have not taken one that is not shown on your driving record.

If you do not present the required documents in time, the court will notify you to return to court and explain why you failed. The judge may, but is not required to, allow you to file the proper papers for an extension at that time. Your failure to be present at that hearing will result in a conviction, a fine being assessed, and a capias pro fascie for your arrest being issued.

**Deferred Disposition**

The judge may, in his or her discretion, defer disposition on most cases. The holder of a commercial driver’s license (CDL) is not eligible for deferred disposition on traffic violations, and neither is a person charged with a traffic offense in a work zone with workers present. Costs must generally be paid when the court grants deferred. If you complete the required terms, the case is dismissed, and the court may impose a special expense fee not to exceed the maximum fine amount authorized by state law. The deferred period cannot exceed 180 days.

**New Trial and Appeal**

If you are found guilty, you may make an oral or written motion to the court for a new trial. The motion must be made within five days after the court’s rendering of a judgment of guilt. The judge may grant a new trial if it appears that justice has not been done in your case. Only one new trial may be granted. Defendants in courts of record should check with the court for rules regarding new trials.

If you are found guilty, you have the right to appeal your case. To appeal, you must file an appeal bond with the municipal court within 10 days of the judgment. The court must set the appeal bond amount for at least twice the amount of the fine and costs. For an appeal bond, see the section for special rules for appealing made by mail. Defendants in courts of record should check with the court for rules regarding appeals.

Updated 9/11
Municipal Court Procedures: Children Ages 10-16

Prepared and Distributed by the Texas Municipal Courts Education Center

TMCEC is funded by a grant from the Texas Court of Criminal Appeals

City:
Address:
Telephone:

This pamphlet is designed to provide information about criminal court proceedings involving children. It is not a substitute for legal advice from a licensed attorney. If you have questions about your best course of action, what plea you should enter, your rights, or the consequences of a conviction of the offense with which you are charged, you should contact an attorney. Neither the clerk, judge, nor prosecutor can give you legal advice.

Your Rights

Under our American system of justice, all persons are presumed to be innocent until proven guilty. The State must prove you guilty beyond a reasonable doubt” of the offense with which you are charged. Every criminal defendant has the right to remain silent and refuse to testify (without consequences). You have the right to retain an attorney and have them try your case or answer your questions. Since offenses in this court are punishable only by fine and not by incarceration, you do not have the right to appointed counsel. Although your parents or guardians must appear with you, they may not act as your counsel (or attorney) unless they are, in fact, a licensed attorney.

You have the right to a jury trial. You may waive a jury trial and have a trial before the judge, commonly called “a bench trial.” At trial you have many rights including:

1) The right to have notice of the complaint at least 10 days prior to the trial; 2) The right to inspect the complaint before trial, and have it read to you at the trial; 3) The right to have all testimony introduced against you; 4) The right to cross-examine witnesses who testify against you; 5) The right to testify on your own behalf; 6) The right not to testify (your refusal to do so may not be held against you in determining your innocence or guilt), and 7) You may call witnesses to testify on your behalf at the trial, and have the court issue a subpoena (a court order) to any witnesses to ensure their appearance at the trial.

Appearance

In addition to your rights, you have some legal responsibilities. The law requires you to make an appearance in your case. Your appearance date is noted on your citation, bond, summons, or release papers. You and a parent or guardian must appear in person in open court. You are not allowed to appear by mail or by delivery of a plea or fine to the clerk’s office. You have an absolute right to be accompanied by your retained attorney. Your parent or guardian, however, must still appear with you even if your attorney accompanies you to court.

Your first appearance is to determine your plea. If you enter a plea of guilty or no contest, you must also waive your right to a jury trial. Be prepared to pay the fine or file an appeal bond with the court. You may present extenuating circumstances for the judge to consider when determining the proper punishment. However, the judge is not required to reduce your fine. If you plead not guilty, the court will schedule a jury trial. You may waive a jury trial and request a bench trial.

Pleas

Unless you are entitled to a compliance dismissal, you must enter one of the following three pleas. The plea must be made by the defendant charged with the offense. Parents or guardians, while they must be present, may not enter a plea on a child’s behalf.

Plea of Not Guilty – A plea of not guilty means that you deny guilt and require the State to prove the charge. A plea of not guilty does not waive any of your rights. A plea of not guilty does not prevent a plea of guilty or no contest at a later time.

Plea of Guilty – A plea of guilty, you admit that you committed the criminal offense charged.

Plea of Nolo Contendere (no contest) – A plea of nolo contendere means that you do not contest the State’s charge against you.

The difference between a plea of guilty and nolo contendere is that the no contest plea may not be used against you in a civil suit for damages. For example, in a civil suit arising from a traffic accident, a guilty plea can be used as evidence of your responsibility or fault.

If you plead guilty or no contest, you will be found guilty and should be prepared to pay the fine. A plea of guilty or no contest waives all of the trial rights discussed earlier. If you are unable to pay the fine and costs, you should be prepared to document and explain your financial situation.

Fines, Costs, and Fees

The amount of the fine assessed by the court is determined by the facts and circumstances of the case. Mitigating circumstances may lower the fine, and aggravating circumstances may increase the fine. The maximum fine amount allowed for most traffic violations is $200, for most other violations of State law and city ordinances—$500; for fire safety, health, zoning, and sanitation violations—$2,000.

Courts are required by the laws of the State of Texas to collect court costs and fees. Because costs vary for different offenses, check with the court for the amount of costs that will be assessed for the violation with which you are charged. If you do not pay the fine and costs within 30 days of the court’s judgment, you must pay an additional $25 late payment fee.

Court costs are only assessed if you are found guilty at trial, if you plead guilty or no contest, or if you are granted deferred disposition, teen court, or a driving safety course. If you are found not guilty or the case is dismissed, court costs are not assessed.

Deferred Disposition

The judge may, in the judge’s discretion, defer disposition on most cases. Costs must generally be paid when the court grants deferred. The court may also impose educational terms, different types of treatment, or other terms, and the court may impose a special expense fine not to exceed the maximum fine amount authorized by state law. If you complete the required terms, the case is dismissed. The deferred period cannot exceed 180 days.

Discharge by Community Service or Tutoring

The judge may, in the judge’s discretion, allow you to discharge your obligation to pay a fine and costs by performing community service or attending a tutoring program. This must be granted by the court. Please let the judge know if you are unable to pay the fine and costs.
Judge’s Ability to Dismiss
The municipal judge is responsible for conducting a fair, impartial, and public trial. The case against you is brought by the State of Texas through the prosecutor, not the court. Therefore, the judge may not dismiss the case without the prosecutor having the right to try the case.

There are several exceptions to this rule, including deferred disposition, drug treatment, community service, and compliance dismissal.

Trial Procedures
If you need a continuance, you must file the request in writing with your reason for your request and submit it to the court prior to trial. You may request a continuance for the following reasons:

1. A religious holy day where the tenets of your religious organization prohibit members from participating in secular activities such as court proceedings (you must file an affidavit with the court stating this information).
2. You feel it is necessary for justice in your case; or
3. By agreement of the parties (you and the prosecutor).

The judge decides whether or not to grant the continuance. Failure to submit the request in writing may cause your request to be denied.

If you have a jury trial or bench trial scheduled, the case proceeds the same as if you were an adult. See the Adult pamphlet for information on trial procedures.

Continuing Obligation to Appear
You and your parents or guardians have a duty to continue appearing in court even after you reach age 17. If you fail to appear before reaching age 17, you can be arrested and brought before the court. If you fail to appear before your 17th birthday and after notification from the court, you can be charged with the additional offense of violation of continuing obligation to appear and be arrested in the same manner as any other adult.

Obligation to Notify Court of Address Change
You and your parents or guardians have an obligation to inform the court in writing at any time you change your address. You must notify the court within seven (7) days of any change of address. This obligation continues until your case is fully resolved and all fines and costs are paid or discharged. If you do not notify the court within seven (7) days of any change of address, you may be arrested.

Mandatory Alcohol and Tobacco Courses and Community Service
If you are found guilty of or placed on deferred disposition for an alcohol offense, the court must order you to complete an alcohol awareness course. The court must also order you to complete a period of community service.

If you are found guilty of or placed on deferred for a tobacco offense, the court must order you to complete a tobacco awareness course.

Contempt
If you fail to pay your fine and costs, or violate other orders in the court’s judgment, the court must provide an opportunity for you to explain your conduct. The court at this time may:
1. Determine that you are not in contempt;
2. Refer your case to the county juvenile court as delinquent conduct; or
3. Retain jurisdiction and find you in contempt and assess a fine up to $500 and/or order the Texas Department of Public Safety to suspend your license until you comply with the court’s order.

Failure to Pay a Fine and Turning Age 17
Even when you turn 17, you are still obligated to discharge your responsibility to the court by paying your fine. If you do not, at age 17, the court may issue a capias pro fine for your arrest. You may then be committed to jail until you have earned enough jail credits to satisfy the fine(s) and costs owed.

Driver’s License Suspension
You may be denied issuance of a driver’s license or, if you have a driver’s license, your privilege to drive may be suspended until you comply with the order(s) of this court. The following is a list of acts that can cause you to be denied or to lose your license:
1. Failing to appear in court;
2. Failing to pay or discharge your fine and costs;
3. Failing to take and present proof of taking an alcohol or tobacco awareness course; and
4. Violating a court order in the court’s judgment.

Some offenses, such as the Alcoholic Beverage Code or the Texas Code of Criminal Procedure, require a court order to the Department of Public Safety to deny issuance of or to suspend a defendant’s driver’s license for a period of time.

Expunction Rights
The records of this court, including all records in your case, are public and accessible to the public. However, if you are convicted of an offense in this court, the records in your case will be deemed confidential once you satisfy the requirements of the court’s judgment against you. Confidential records can only be released to you, your parent, attorney, or social worker.

You may be entitled to an expunction of the records of a conviction in your case.

For a single conviction, you may petition this court for an expunction after your 21st birthday. For a single conviction, you may petition this court for an expunction after your 18th birthday. For a single conviction for failure to attend school violation, you may petition this court for an expunction after your 18th birthday. For a single conviction for failure to appear in court violation, you may petition this court for an expunction after your 18th birthday. If you successfully comply with the court’s orders in a failure to attend school case, the court shall expunge the records relating to your case.

For a single conviction of any other non-traffic violation, you may petition this court for an expunction after your 18th birthday. Ask the court for proper forms for the application for expunction. The court’s judgment on expunction is a minimum of $30. If you have questions concerning the right to, need for, or consequences of expunction, please consult with a licensed attorney.

New Trial and Appeal
If you are found guilty, you may make an oral or written motion to the court for a new trial. The motion must be made within 5 days after the court’s rendering of its judgment. The judge may grant a new trial if persuaded that justice has not been done in your case. Only one new trial may be granted. Defendants in courts of record should check with the court for rules regarding new trials.

If you are found guilty, you have the right to appeal your case. To appeal, you must file an appeal bond with the municipal court within 10 days of the judgment. The court must set the appeal bond amount for at least twice the amount of the fine and costs. Defendants in courts of record should check with the court for rules regarding appeals.

Updated 9/11
ANSWERS TO QUESTIONS

INTRODUCTION
Q. 1. It is a contest between opposing sides. The opposing sides are the defense and the prosecution.
Q. 2. The finder of fact is the judge in non-jury trials and the jury in jury trials.
Q. 3. An attorney who is acting unethically should be reported to the State Bar of Texas.
Q. 4. The State (prosecutor) has the burden of proof in a criminal case.
Q. 5. The standard of proof in a criminal case is guilt beyond a reasonable doubt.
Q. 6. In a trial before the judge, the judge’s role is to listen to the evidence and render a judgment based upon that evidence.
Q. 7. The judge in a jury trial instructs the jury as to the law involved in the case. A judge presides over the trial and has the duty of protecting the rights of those involved. Judges must make sure that the attorneys and self-represented defendants follow the rules of evidence and trial procedure.

PART 1
Q. 8. The clerk’s role in the trial process includes providing information to defendants, preparing for the trial, managing court participants, scheduling cases for trial, issuing subpoenas, and summoning the jury.
Q. 10. Preparatory procedures may include:
  • Complaint prepared;
  • Complaint reviewed for typing errors, dates, properly sworn, and court seal affixed;
  • Copy provided to defendant;
  • Prosecutor has file or copy of file to prepare case for trial;
  • Trial docket typed and posted;
  • Subpoenas issued;
  • Jury summoned;
  • Juror handbooks available;
  • Interpreters notified to be available, if needed; and
  • All trial forms reviewed and made available to the judge.
Q. 11. The court may go to trial on a citation when the defense and prosecution agree in writing to go to trial on the citation and file the agreement with the court.
Q. 12. The clerk should give the prosecutor the case file.
Q. 13. Management and coordination of people at trials may include:
- provide signs throughout the court to enable participants to find their way;
- provide signs or pamphlets about the rules of the court which should include information about proper dress, tobacco use, courtroom decorum, and the prohibition of carrying guns and other weapons into the court facility;
- if possible, have a deputy clerk act as information officer to direct people;
- wear name tags, so the court participants know who to ask for assistance;
- make sure that the court has made all required reasonable accommodations for those with mobility, visual, hearing, and other impairments;
- if the court does not have a pay telephone, make one telephone available for court participants to use; and
- since some may need a letter to present to a work supervisor, have forms available for either the judge or clerk to sign.

Q. 14. Each clerk will have a different answer for this question, but it may include such issues as peace officer’s days and times off and on duty; availability of judge and prosecutor; type of case; type of trial (bench or jury); age of defendant; etc.

Q. 15. The disadvantages of a predetermined scheduling system are: (1) it is difficult for the court to manage the trial docket because the court never knows how many defendants will actually appear at that particular date and time; and (2) defendants have to wait a long time for their cases to be called.

Q. 16. The advantages of a pre-determined scheduling system are: (1) it provides a definite date and time for defendants to appear when they are issued a citation; and (2) a judge will be available when the defendant appears.

Q. 17. To determine if an offense has occurred.

Q. 18. The clerk’s role is to establish procedures to coordinate the processing of citizen complaints with the police department, prosecutor, code enforcement, etc.

Q. 19. The defendant.

Q. 20. The disadvantage of using the assignment by court clerk method is that it causes the clerk’s office to handle more telephone calls and foot traffic.

Q. 21. The assignment by the court clerk method helps clerks to have better management control over the dockets because the court talks with the defendants before scheduling a hearing or trial. Only those defendants who specifically request a trial are set on the trial docket. The number of defendants set on each docket is controlled by the court clerk.

Q. 22. It is a writ issued to a person or persons giving an order to appear as a witness.

Q. 23. Both the defense and the prosecution are entitled to subpoena witnesses.

Q. 24. The judge, the court clerk, and the deputy clerk.

Q. 25. True.


Q. 27. True.

Q. 29. True.
Q. 30. False.
Q. 31. The court may subpoena a person having custody, care, or control of the child to produce the child in court.
Q. 32. No.
Q. 33. It is a subpoena that directs a witness to bring with him or her any instrument of writing or other tangible thing desired as evidence.
Q. 34. The subpoena should give a reasonably accurate description of the document or item desired at trial.
Q. 35. False.
Q. 36. True.
Q. 37. True.
Q. 38. True.
Q. 40. True.
Q. 41. True.
Q. 42. False.
Q. 43. False.

PART 2
Q. 44. True.
Q. 45. False.
Q. 46. True.
Q. 47. True.
Q. 48. True.
Q. 49. False (Defendants are entitled to a jury trial. They automatically get a jury trial and must waive that right if they do not want one. They have to ask for a bench trial if they want one.)
Q. 50. True.
Q. 51. True.
Q. 52. True.
Q. 53. False.
Q. 54. True.
Q. 55. False.
Q. 56. False.

PART 3
Q. 57. The court may set any criminal case for a pre-trial.
Q. 58. Pre-trials help courts in caseflow management by:
(1) handling the defendant’s challenges to the charges filed;
(2) disposing of issues that do not relate to the merits of the case; or
(3) assuring in advance the time set for disposition of non-contested cases will not be taken up by other matters. Clerks may be able to list other ways that conducting pre-trials help manage their trial dockets.

Q. 59. A defendant’s attorney may be notified of a pre-trial hearing in one of the following ways:
(1) in open court;
(2) by personal service on the attorney; or
(3) by mail at least six days prior to the date set for the hearing.

Q. 60. Defendants may be notified of a pre-trial hearing in one of the following ways:
(1) in court in the presence of the defendant;
(2) by personal service upon the defendant;
(3) by mail at least six days prior to the date set for hearing; or
(4) if the defendant has no attorney, such notice shall be addressed to defendant at the address shown on the bond; if the bond shows no address, it should be sent to one of the sureties on the bond.

Q. 61. The purpose of arraignment is to establish the identity of the defendant and take the defendant’s plea.

Q. 62. The court must enter a not guilty plea for him or her.

Q. 63. True.
Q. 64. True.
Q. 65. True.

PART 4

Q. 66. The reasons that a court would automatically continue a case are:
(1) the defendant has not been arrested;
(2) a corporation or association has not been served with the summons; and
(3) there is not sufficient time for trial at that term of court.

Q. 67. Either the defense or the prosecution may request a continuance in open court.
Q. 68. A continuance may be only for as long as is necessary.
Q. 69. The following persons may request a continuance because a court date falls on a religious holy day: defendant, defense attorney, or prosecutor.
Q. 70. The request must be made by an affidavit.
Q. 71. The request must state the grounds for the continuance and that the party holds religious beliefs that prohibit him or her from taking part in a court proceeding on the day for which the continuance is sought.
Q. 72. When a clerk receives a request for a continuance, the clerk should present it to the judge and notify the prosecutor or the defense, whichever the case may be, of the continuance.

Q. 73. False.
Q. 74. False.
Q. 75. True.
Q. 76. False.
Q. 77. True.

PART 5
Q. 78. A written order of the court.
Q. 79. A list of prospective jurors to be summoned to serve for a particular term of the court.
Q. 80. Six.
Q. 81. True.
Q. 82. False.
Q. 83. True.
Q. 84. True.
Q. 85. False.
Q. 86. True.
Q. 87. True.
Q. 88. True.
Q. 89. False.
Q. 90. True.
Q. 91. False.
Q. 92. True.
Q. 93. False.
Q. 94. True.
Q. 95. True.
Q. 96. True.
Q. 97. False.
Q. 98. True.
Q. 99. The court may want to require the following information from jurors:
  • home address;
  • home telephone number;
  • social security number;
  • driver’s license number;
  • occupation;
  • employer;
• length of employment;
• previous employer;
• former occupation, if retired;
• spouse’s name and occupation;
• whether the juror has ever been involved in a lawsuit; and
• when and where the person has previously served as juror.

Q. 100. A prospective juror may establish an exemption without appearing in person by filing a signed statement of the grounds for the exemption with the clerk of the court at any time before the date of trial. Art. 35.04, C.C.P.

Q. 101. The clerk is required to grant the postponement of jury service if:
• the person has not been granted a postponement in that county during the one-year period preceding the date on which the person is summoned to appear; and
• the person and the clerk determine a substitute date on which the person will appear for jury service that is not later than six months after the date on which the person was originally summoned to appear.

Q. 102. If a person answering a jury summons knowingly provides false information in a request for an exemption or excuse from jury service, he or she is subject to a contempt action punishable by a fine of not less than $100 nor more than $1,000. Sec. 62.0141, G.C.

Q. 103. Clerks must maintain a list of names and addresses of persons who are excused or disqualified from jury service because of nonresidence in the county. On the third business day of each month, the clerk must send to the voter registrar of the county a copy of the list of persons excused or disqualified in the previous month because the persons do not reside in the county. The voter registrar must add these persons to the county’s suspended voter list. Sec. 62.114, G.C.

Q. 104. Clerks should make sure that this information is not available to the public. It may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel, except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court in which the person is serving or did serve as a juror.

Q. 105. On a showing of good cause, the court shall permit disclosure of the information sought. Art. 35.29, C.C.P.

Q. 106. On a showing of good cause, the court shall permit disclosure of the information sought on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court in which the person is serving or did serve as a juror.

Q. 107. $100.


Q. 109. Prospective jurors are required to read the jury handbook.

Q. 110. Either the prosecutor or the defendant or defendant’s attorney may demand a jury shuffle.
Q. 111. If the court is computerized, the court may have the computer shuffle and randomly select the names. If the court does not have a computer, the clerk should place the names of the jury panel in a receptacle, which should be shaken to mix up the names.

Q. 112. Regardless of how the names are shuffled, the names are recorded in the order that they are drawn or selected by the computer. The prospective jurors are then seated in the order selected. A copy of this new list is then given to the prosecution, defense, and judge.

Q. 113. The prosecutor, the defendant, or the defendant’s attorney may challenge the membership of the jury.

Q. 114. The judge orders a new jury panel to be summoned. The judge must order someone other than the person who summoned the original panel to summon the new panel.

Q. 115. True.


Q. 117. True.

Q. 118. The juror is removed. The prosecutor or defendant does not have to state a reason for asking the court to remove the juror.

Q. 119. Each may remove three jurors without assigning a reason to the request for removal. A juror may be removed for any reason, except for an illegal one.

Q. 120. After voir dire and peremptory challenges, both the prosecutor and defendant give their lists to the court clerk who writes or prints the first names on the lists that have not been struck by either party. Then the clerk gives a copy of the list to the prosecutor, defendant, and judge.

Q. 121. If, after voir dire and peremptory challenges, the court does not have enough jurors to hear the case, the court would have to order a pick-up jury.

Q. 122. Usually, a peace officer is ordered to summon a pick-up jury.

PART 6

Q. 123. False (A defendant may, with the consent of the prosecutor, appear by his or her attorney and the trial may proceed without the defendant being present).

Q. 124. False.

Q. 125. True.

Q. 126. False.

Q. 127. False.

Q. 128. True.

Q. 129. True.

Q. 130. False.

Q. 131. Sample announcement:
   “All rise! The Municipal Court of the City of __________ is now in session. The Honorable Judge __________ presiding.”
Q. 132. On the day of trial, the clerk should give a copy of the juror information sheets to the prosecutor, defendant, and judge. At the conclusion of the trial, the clerk should collect them and file them with the case.

Q. 133. A $3 fee.

Q. 134. True.

Q. 135. True.

Q. 136. False.

Q. 137. True.

Q. 138. True.

Q. 139. True.

Q. 140. True.

Q. 141. False.

Q. 142. The judgment is the decision of the judge.

Q. 143. The verdict is the decision of a jury.

Q. 144. False.

Q. 145. False.

Q. 146. False.

Q. 147. If a jury fails to agree to a verdict after being kept together for a reasonable amount of time, then a mistrial is declared.

Q. 148. Another trial may be conducted as soon as practicable.

Q. 149. In open court.

Q. 150. False.

Q. 151. True.

Q. 152. A notice of final conviction.

Q. 153. True.

Q. 154. False (The court must credit not less than $50 for a period of time that is specified in the judgment. The period of time can be from eight hours to 24 hours. This also applies after conviction.)

Q. 155. True.

Q. 156. False. (Only one $5 fee is collected upon conviction, not one for each juror.)

PART 7

Q. 157. False. The law now provides for 5 days.

Q. 158. True.

Q. 159. The State is never entitled to a new trial in municipal court.

Q. 160. One day.

Q. 161. Under the mailbox rule, a document is timely filed with the clerk of a court if the document is deposited with the U.S. Postal Service in a first class postage prepaid envelope properly addressed to the clerk on or before the date the document is
required to be filed with the clerk and the clerk receives the document not later than the 10th day after the date the document is required to be filed with the clerk.

Q. 162. The judge must rule on a motion for new trial not later than the 10th day after the date that the judgment was entered.

Q. 163. The motion is overruled by operation of law.

PART 8

Q. 164. False. (The court is required to provide a state certified interpreter.)

Q. 165. False. (If the court is located in a county with a population of more than 50,000, the court must appoint a state certified interpreter. If the city is located in a county of less than 50,000, the court must qualify the interpreter under the Rules of Evidence.)

Q. 166. True.

Q. 167. True.

Q. 168. False (Only a city located in a county that has a population of less than 50,000 may appoint an interpreter that is not licensed. The interpreter must be qualified under the Texas Rules of Evidence.)

Q. 169. Section 57.002, G.C., requires municipal courts in counties with a population of 50,000 or more to appoint certified or licensed court interpreters. There is one exception to this rule under Subsection 57.002(d). A court may appoint a spoken language interpreter who is not certified or licensed if:
   • the language necessary in the proceeding is a language other than Spanish; and
   • the court makes a finding that there is no licensed court interpreter within 75 miles who can interpret in the language that is necessary in a proceeding.

Q. 170. A qualified telephone interpreter may be sworn to interpret for the person in a trial of a Class C misdemeanor or a proceeding before a magistrate if:
   • an interpreter is not available to appear in person before the court; or
   • the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or is unfamiliar with the use of slang.

“Qualified telephone interpreter” is defined as a telephone service that employs:
   • licensed court interpreters as defined by Section 57.001, G.C.; or
   • federally certified court interpreters.

Q. 171. If a defendant does not speak English, the clerk should make sure that a state certified interpreter is available for all court proceedings.

Q. 172. Provide an interpreter or some type of auxiliary aid.

Q. 173. The city.

Q. 174. The Office for Deaf and Hard of Hearing services at 512.407.3250 or 800.628.5115.

Q. 175. A Class A misdemeanor.
PART 9
Q. 176. True.
Q. 177. True.
Q. 178. False.

PART 10
Q. 179. Contempt power is given to the courts so that the proceedings will be conducted with dignity and in an expeditious manner so that justice may be done.
Q. 180. Direct contempt means an act that occurs in the judge’s presence and under circumstances that require the judge to act immediately to quell disruption, violence, disrespect, or physical abuse. Indirect contempt is an act that occurs outside the court’s presence and includes such acts as failure to comply with a valid court order; failure to appear in court; attorney being late for trial; or filing offensive papers with the court. If a person is charged with indirect contempt, the person has a right to notice of the charge, a right to a trial or hearing in open court, and the right to counsel. Civil contempt includes willfully disobeying a court order or decree. Criminal contempt includes acts that disrupt court proceedings, obstruct justice, are directed against the dignity of the court, or bring the court into disrepute.
Q. 181. A fine not to exceed $100 and three days in jail.
Q. 182. A fine of $10 to $200.
Q. 183. A fine of not more than $100.
Q. 184. An order to pay may be enforced by contempt as provided in Section 21.002(c), G.C., which is the general penalty that is punishable by up to three days confinement in jail and a fine up to $100.
Q. 185. False.
Q. 186. True.
Q. 187. True.
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INTRODUCTION

If a defendant is found guilty at trial or if a defendant pleads guilty or nolo contendere, a judgment of guilty is rendered, punishment is assessed, and the method by which the defendant is to satisfy the judgment is set out. A judgment is the final decision of a court. The judgment may be a dismissal of the charges, or an adjudication of guilt and an assessment of punishment if there is a finding of guilty. “Adjudicate” means that the judge makes a final determination of fact and enters a judgment.

Q. 1. What is a judgment? ____________________________________________________________

Q. 2. Define adjudication. ______________________________________________________________

Q. 3. How is a judgment satisfied? ______________________________________________________

Q. 4. Who can make a decision about how a defendant satisfies a judgment? _____________

PART 1
SENTENCING AND PUNISHMENT

A. Penalties

When the court enters a judgment of guilty, the penalty may be a fine and costs or, in some cases, other sanctions. Art. 4.14, C.C.P., and Sec. 29.003, G.C. Article 45.041, C.C.P., provides that the judge may direct the defendant:

- to pay the entire fine and costs when sentence is pronounced, if the defendant is able to pay immediately;
- to pay the entire fine and costs at some later date; or
- to pay a specified portion of the fine and costs at designated intervals.

The court may also direct the defendant:

- to pay restitution, if applicable, to the victim of the offense (for the offense of issuance of bad check, restitution is limited to $5,000); and
- to satisfy any other sanction authorized by law.

1. City Ordinances and Joint Airport Board Resolutions, Rules, and Orders

Article 4.14, C.C.P., and Section 29.003, G.C., establish limits on the maximum penalties that municipal governments may establish for city ordinance violations and that joint airport boards may establish for violations of resolutions, rules, and orders.

Although the city government or joint airport board establishes penalty ranges under state guidelines, it is within the sole discretion of the judge to set fines within the penalty range. It is the judge who establishes a minimum suggested fine schedule that may be printed on the
back of tickets. This schedule is for defendants who do not want to contest the charges filed against them in court, and is sometimes referred to as the “window fine.”

When a contested case goes to trial before the judge, the judge bases his or her decision on the facts of the case presented at trial. When a judge sets a fine, the judge looks to the penalty clause of the ordinance, statute, resolution, rule, or order, and sets the fine at an amount within the limits prescribed by the penalty clause.

The penalty limits that can be adopted by the city or joint airport board are found in Article 4.14, C.C.P., and Section 29.003, G.C. They include:

- a fine not to exceed $2,000 for offenses involving fire safety, zoning, public health, and sanitation offenses (including dumping of refuse); and
- $500 on all other city ordinance violations or violations of the rules, resolutions, or orders of a joint board.

Since each city and joint board may decide to establish different penalty ranges within the guidelines established by statute, courts should examine the penalty clauses of ordinances and resolutions, rules, and orders within their own city before setting fines.

2. State Law Offenses

Fine penalties for violations of state law offenses vary. Courts should review specific and general penalty clauses for each state law offense before assessing a fine.

Municipal courts have concurrent jurisdiction with justice of the peace courts in all criminal cases arising under state law that are punishable by fine only and such sanctions not consisting of confinement in jail or imprisonment. Convictions of certain offenses may also have as a consequence the imposition of a penalty or sanction by an agency or entity other than the court, such as a denial, suspension, or revocation of a privilege. Art. 4.14, C.C.P., and Sec. 29.003, G.C.

3. Class C Misdemeanors

Section 12.23, P.C., provides that an individual found guilty of a Class C misdemeanor shall be punished by a fine not to exceed $500. This definition only governs offenses in the Penal Code. In other codes, Section 12.41, P.C., explains, any fine-only offense is classified as a Class C misdemeanor. An example of an offense that is a fine-only offense outside the Penal Code, but has a maximum penalty of more than $500, is the Transportation Code offense of passing a school bus. The penalty is a minimum fine of $200 and a maximum fine of $1,000. This offense is considered a Class C misdemeanor because it is a fine-only offense. Hence, the municipal court has jurisdiction.

If an offense outside of the Penal Code is defined as a Class C misdemeanor, but the code in which the offense is located does not assign a penalty, the court uses the Penal Code definition of Class C misdemeanor, and the $500 maximum penalty. In some instances, statutes merely state that a particular act is “an offense.” In these cases, if the general penalty clause governing that statute provides for a fine-only penalty, the municipal court has jurisdiction.

For some violations of Class C misdemeanors, the penalty is different depending on the age of the defendant. For example, defendants under the age of 21 charged with the offense of public intoxication are subject to different penalties than are those 21 or older. A person 21
or older faces a penalty of a fine up to $500 while a person under the age of 21 is punished in the same manner as a minor charged with an Alcoholic Beverage Code offense. Sec. 49.02(e), P.C. The penalties for those offenses are found in Section 106.071, A.B.C., and include a fine of up to $500, community service, driver's license suspension, and an alcohol awareness course. Sec. 106.071, A.B.C.

Some fine-only offenses can be enhanced because of prior convictions and remain Class C misdemeanors. For example, a person who has been previously convicted of the offense of failure to maintain financial responsibility and is convicted a second or subsequent time faces an increased penalty from a maximum of $350 to $1,000 and includes impoundment of the vehicle. In order for the enhanced penalty to be assessed, the complaint must allege the prior conviction or convictions. Only the prosecutor has the authority to enhance the charge.

B. Restitution

Article 45.041(b)(2), C.C.P., permits a municipal court to require a defendant to pay restitution to any victim of an offense. Restitution is the act of making good or giving the equivalent of any loss. The amount of restitution that a municipal court may order is unlimited except in one instance—the offense of issuance of bad check. For that offense, restitution is limited to $5,000.

When deferred disposition is granted under Article 45.051, C.C.P., the judge may require the defendant to pay restitution to the victim of the offense in an amount not to exceed the amount of the fine assessed as a condition. For example, a defendant charged with criminal mischief could be required to pay restitution for the property that he or she damaged as long as the restitution did not exceed the amount of the fine.

Section 32.41, P.C., provides that a defendant can be required to make restitution upon conviction for the offense of issuing a bad check, which is a Class C misdemeanor. The statute provides that restitution shall be submitted through the prosecutor’s office if collection and processing were initiated through that office. In other cases, restitution may, with the approval of the court in which the offense is filed, be handled through the court.

When the court requires restitution, the court clerk should keep records of the restitution transactions and coordinate the payment to the victim. The Comptroller may audit municipal court records relating to these payments. Sec. 133.103, L.G.C.

C. Payment of Fine and Costs

1. Jail Time Credit

The judge must credit a defendant for time served in jail. Arts. 42.03, Sec. 2, and 45.041, C.C.P. This includes time served in jail from the time of arrest to conviction and time served after conviction. Art. 45.041(c), C.C.P.

The rate of credit is not less than $50 for a period of time specified in the judgment. “Period of time” is defined to be not less than eight hours or more than 24 hours. Arts. 45.041 and 45.048, C.C.P. When a judge enters judgment, he or she must specify the amount of time that the defendant must serve to receive jail credit.

As custodian of the records, court clerks should properly record jail-time credit. In some instances jail-time credit may have been the method of discharging the total fine; in other instances, it may be just part of the fine. If a defendant does not pay any money to the court
because he or she had sufficient jail credit for both fine and court costs, the Comptroller does not require the court to remit court costs that were not collected in money.

2. Payment by Credit Card

If the governing body of a municipality has authorized collection of fines and costs by credit card or electronic means, the court can allow defendants to pay in that manner.

Credit card means a card, plate, or similar device used to make purchases on credit. Payment by electronic means is defined as payment by telephone or computer, but does not include payment in person or by mail. Secs. 132.002(b)-132.004, L.G.C.

Chapter 132, L.G.C., also authorizes a municipality to provide, through the internet, access to information or collection of payments for taxes, fines, fees, court costs, or other charges. A fee to recover costs for providing access may be charged only if providing the access through the internet would not be feasible without the imposition of the charge. If the city contracts with a vendor to provide the service, any fee charged by the vendor must be approved by the city. Payments collected by a vendor are to be promptly submitted to the city. Currently Chapter 552, G.C. the Public Information Act, makes an exception to public information for debit and credit card numbers of private individuals collected by the city. Corporations and associations that do business with the city using a debit or credit card are also eligible for this exclusion. Sec. 132.007, L.C.G.

Before a court can collect payments by credit card or through the internet, the governing body of a municipality must authorize the collection. If the governing body authorizes the court to collect payments by credit card, the municipality may authorize:

- collection of a fee for processing the payment by credit card; or
- collection without requiring an additional fee.

The governing body of a municipality must set the processing fee in an amount that is reasonably related to the expense incurred by the municipal official in processing the payment by credit card. However, the governing body may not set the processing fee in an amount that exceeds five percent of the amount of the fee, fine, court cost, or other charge being paid.

If, for any reason, a payment by credit card is not honored by the credit card company on which the funds are drawn, the county or municipality may collect a service charge from the person who owes the fee, fine, court costs, or other charge. The service charge is in addition to the original fee, fine, court costs, or other charge and is for the collection of that original amount. The amount of the service charge is the same amount as the fee charged for the collection of a check drawn on an account with insufficient funds.

3. Payment by Community Service

Judges may require defendants who fail to pay previously assessed fines or costs, or who are determined by the court to have insufficient resources or income to pay a fine or costs, to discharge all or part of the fine or costs by performing community service. Art. 45.049, C.C.P.

When a defendant discharges a fine and/or costs by performing community service, the person is satisfying the judgment by another means than cash. The defendant may discharge
an obligation to perform community service by paying at any time the fine and costs assessed.

A community supervision and corrections department or a court-related services office may provide administrative duties and other services necessary for placement in community service programs.

The judge is required to specify the number of hours in the community service order that the defendant is required to work. A judge may not order more than 16 hours per week of community service unless the judge determines that requiring the defendant to work additional hours does not create a hardship on the defendant or the defendant’s dependents.

The community service work must be for a governmental entity or a nonprofit organization which provides services to the general public that enhance social welfare and the general well-being of the community. The governmental entity or nonprofit organization that accepts a defendant ordered to perform community service must agree to supervise the defendant's work performance and report on the defendant’s work to the judge.

A defendant is considered to have discharged not less than $50 of fine or costs for each eight hours of community service performed. Judges are not limited in the amount of credit given as long as it is at least $50 for every eight hours of community service performed.

A municipal judge, officer, or employee of the city is not liable for damages arising from an act or failure to act in connection with manual labor performed by a defendant if the act or failure to act was:

- performed pursuant to court order; and
- not intentional, willfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

Generally, court clerks are responsible for coordinating community service. Coordination includes developing a method of keeping track of defendants performing community service and when their service is to be completed, making certain that the defendant returns proper documentation of completion of community service, and properly recording community service orders and completion of the service.

4. **Installment Payments**

When a judge orders that a fine and costs be paid through installments, clerks must collect a $25 time payment fee from a defendant convicted and ordered to pay a fine, court costs, or restitution who pays any part of the fine, costs, or restitution on or after the 31st day after the date of the judgment. The Comptroller may audit municipal court records relating to these fees. Sec. 133.103, L.G.C.

5. **Waiver of Fine and Costs**

A municipal court may only waive payment of a fine or costs when a defendant defaults on payment of the fine and/or costs if the court determines that the defendant is indigent and discharging the fine and costs under Article 45.049, C.C.P., would impose an undue hardship on the defendant. Art. 45.0491, C.C.P. Article 45.049 provides for the court to require a defendant to perform community service to discharge a fine if a defendant defaults in payment of a fine or is unable to pay a fine.
True or False

Q. 5. When a judge enters a judgment, the penalty is the fine and costs and in some cases, other sanctions. ____
Q. 6. Municipal courts may not require restitution. ____
Q. 7. The clerk has no role in handling the judgment. ____
Q. 8. Statutes do not establish limits on the amount of maximum possible penalties that municipalities may create in their ordinances. ____
Q. 9. If a judge believes that the maximum fine is not high enough, the judge may assess a higher fine. ____
Q. 10. Fine penalties for violations of state law offenses vary. ____
Q. 11. The maximum possible fine for first time offenders of a Class C Penal Code offense is $500. ____
Q. 12. Offenses outside of the Penal Code that are fine-only, regardless of the amount of the fine, are Class C misdemeanors. ____
Q. 13. When a municipal court requires restitution, it may be in an amount up to the amount of the fine assessed except for the offense of issuance of bad check. ____
Q. 14. The maximum restitution that municipal court may require for the issuance of a bad check is $5,000. ____
Q. 15. Clerks should keep records of restitution payments and coordinate payments to victims. ____

End True/False

Q. 16. What are judges required to do when a defendant is arrested, placed in jail, and later convicted? ________________________________

Q. 17. What constitutes a “period of time” for determining jail credit? __________________

Q. 18. What is the clerk’s responsibility regarding records of defendants who have been in jail and later convicted? ________________________________

Q. 19. When may a court collect fines, fees, and bonds by credit card? __________________

Q. 20. What amount may the processing fee not exceed? ________________________________

Q. 21. What happens if a credit card is not honored by the credit card company? ________

Q. 22. If a service charge is assessed, at what amount may it be set? ________________________
True or False

Q. 23. When a defendant fails to pay a previously assessed fine, the court may require a defendant to perform community service to discharge the fine. ____

Q. 24. Judges must specify in a community service order the amount of hours to be worked. ____

Q. 25. Community service may be performed for a governmental entity or a nonprofit organization. ____

Q. 26. If a judge determines that working more than 16 hours a week will not be a hardship, the court may order more time. ____

Q. 27. A judge is not liable for damages arising from an act or failure to act in connection with manual labor if the failure to act was performed under a court order and not intentional, willfully, or wantonly negligent. ____

Q. 28. When a defendant defaults in payment of a fine and the court determines that the defendant is indigent, the court must waive payment of the fine and court costs. ____

Q. 29. The time payment fee is required to be paid by a defendant who pays any part of a fine, costs, or restitution on or after the 31st day after a judgment is rendered. ____

PART 2
REPORT OF CONVICTION

When a judge enters a judgment of guilty, that constitutes a conviction. Courts are required to report convictions in certain cases to the Texas Department of Public Safety (DPS) and may be required to report others to the Texas Commission on Alcohol and Drug Abuse (TCADA). The requirements are listed below:

- **Traffic Offenses** - Courts are required to report to DPS traffic convictions and forfeitures of bail in all traffic offenses. The report must be submitted not later than the 7th day after the date of conviction or forfeiture of bail. The report is to be submitted by the magistrate, judge, or clerk of the court. Sec. 543.203, T.C. Since this statute requires reporting if the offense was a law regulating the operation of a motor vehicle, courts are required to report final convictions or forfeiture of bail on all city ordinance traffic offenses also. Because clerks are the custodians of the records, they usually prepare this report and submit it to DPS. Failure of a judge or clerk to properly and timely report final convictions of traffic offenses may constitute misconduct in office and may be grounds for removal. Sec. 543.206, T.C. Courts may not submit a record of a traffic offense when the court defers disposition of the case under Article 45.051, C.C.P., if the defendant completes the terms of the deferral and the case is dismissed. Sec. 543.204, T.C.

- **Alcoholic Beverage Code Offenses** - Courts must report to DPS convictions and orders of deferred disposition for all Alcoholic Beverage Code offenses and the acquittal of the offense of driving under the influence of alcohol by a minor. Sec. 106.117, A.B.C. Courts must also report the order of deferred disposition of all Alcoholic Beverage Code offenses involving minors when the deferral is ordered. Court must use the DPS form DIC-15 to do this type of reporting. Courts must also furnish upon request to TCADA notice of convictions of Alcoholic Beverage Code offenses. Sec. 106.116, A.B.C.
• Theft of Gasoline - Courts must report to the DPS all convictions of the offense of theft of gasoline. When the department receives notice of a second conviction, it automatically suspends or denies issuance of the driver’s license. Sec. 521.349, T.C. Article 42.019, C.C.P., requires a judge to enter an affirmative finding if it is determined beyond a reasonable doubt that the defendant has committed theft of gasoline. Sec. 31.03, P.C. If the judge enters an affirmative finding as required by this section and determines that the defendant has previously been convicted of the same offense, the judge is required to enter a special affirmative finding in the judgment of that case. Section 521.349 of the Transportation Code authorizes DPS to automatically suspend the defendant’s driver’s license for 180 days from the date of final conviction when there is a special affirmative finding. In the event the defendant’s license is revoked or the defendant does not have a driver’s license, the period of license denial is the 180 days after the date the person applies to the department for reinstatement or issuance of a driver’s license. If the defendant has previously been denied a license under this section or had a license suspended, the period of suspension is one year from the date of a final conviction.

<table>
<thead>
<tr>
<th>True or False</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q. 30. The only traffic convictions that courts are required to report to the Department of Public Safety are convictions for a moving traffic violation. ____</td>
</tr>
<tr>
<td>Q. 31. When a defendant posts a bond and fails to appear for traffic offenses, the court must report the bond forfeiture to the Department of Public Safety when there is a final judgment on the forfeiture. ____</td>
</tr>
<tr>
<td>Q. 32. If a court fails to properly report traffic convictions to the Department of Public Safety, the judge or clerk may be removed for misconduct in office. ____</td>
</tr>
<tr>
<td>Q. 33. Courts are required to report to the Department of Public Safety a conviction for an Alcoholic Beverage Code offense. ____</td>
</tr>
<tr>
<td>Q. 34. Courts are required to report to the Department of Public Safety the acquittal of a defendant charged with driving under the influence of an alcoholic beverage. ____</td>
</tr>
<tr>
<td>Q. 35. The court must report to DPS a conviction for theft of gasoline. ____</td>
</tr>
</tbody>
</table>

PART 3
FINE ENFORCEMENT AND COLLECTION

A. Default in Payments

1. Capias Pro Fine

A capias pro fine is a writ of the court issued by the judge when a judgment has been entered against an adult defendant who is not in custody and the adult defendant fails to satisfy the judgment. A capias pro fine may be issued when an adult defendant fails to satisfy the terms of a judgment, including when a defendant has made arrangements to pay and does not pay, when a defendant fails to perform community service, or when a defendant pays a judgment with a check that does not have sufficient funds in the bank.
The case of *Jones v. State*, 119 S.W.3d 766 (Tex. Crim. App. 2003) points out the importance of judgments and the significance of probable cause when issuing a capias pro fine. The Court stated that judgments on traffic violations are based on a finding “beyond a reasonable doubt.” The Court added, “[t]hus, a judgment for a traffic violation, together with a finding by the court that the defendant has failed to satisfy its terms, will comprise sufficient probable cause to support issuance of the capias pro fine.”

The capias pro fine for a defendant’s arrest shall state the amount of the judgment and sentence and command a peace officer to bring the defendant before the court or place the defendant in jail until the business day following the date of the defendant’s arrest if the defendant cannot be brought before the court immediately. Art. 45.045, C.C.P.

When a defendant fails to make a court-ordered payment, court clerks should research court records to be certain that an error in recordkeeping has not occurred, that the court has a signed judgment, and that the defendant has defaulted in payment of the fine. After gathering the required information, the clerks should present that information to the judge so that the judge may issue the capias pro fine. After a capias pro fine is issued, clerks should give it to the police department to be served. When a defendant is arrested and pays the balance owed on the judgment, or the judge grants time-payment or allows the defendant to discharge the judgment by performing community service, the clerk must devise a method of properly recording the type of payment information.

2. **Indigency Hearings**

“Indigent” is a term used to describe an individual who earns not more than 125 percent of the income standard established by applicable federal poverty guidelines. Sec. 133.002(2), L.G.C. The court has a duty to inquire into reasons for non-payment to avoid jailing indigent defendants who are unable to pay. *Doe v. Angelina County*, 733 F. Supp. 245 (E.D. Tex. 1990) If a defendant is indigent, the court may not jail the defendant or order the defendant to pay the entirety of the costs & fines immediately. Instead, the court must allow the defendant to discharge the fine by community service or on a time payment plan.

If a defendant fails to pay or discharge a fine in a manner ordered by the court, the court can issue a capias pro fine, which is the process of bringing the defendant before the court. If the court is not in session, the defendant can be placed in jail until the business day following the date of the defendant’s arrest. The court may order the defendant to be confined in jail until the judgment is discharged if the judge determines that the defendant intentionally failed to make a good faith effort to discharge the judgment and the defendant is not indigent. A certified copy of the judgment, sentence, and order is sufficient to authorize such confinement. Art. 45.046, C.C.P. If a defendant is indigent, the court may not jail the defendant but must allow the defendant to discharge the fine by community service or through a time payment plan.

3. **Civil Collection of Fines**

Article 45.047, C.C.P., provides authority for municipal courts to collect fines and costs by civil process. One means is by execution, which is a civil process where a defendant’s property may be seized and sold to pay the fine and costs. Section 6.002, Civil Practice and Remedies Code, provides that a municipality may initiate and prosecute suits without giving security for costs and may appeal from a judgment without giving a supersedeas or costs bond. A supersedeas bond is a bond that is required to set aside a judgment or execution and
from which the other party in the lawsuit may be made whole if the action is unsuccessful. A cost bond is a bond that is given by a party to an action to secure eventual payment of such costs as may be required of an appealing party in a civil case. The purpose of the bond is to cover the appellee’s (the party in a cause against whom an appeal is taken) costs in the event that the judgment is affirmed, or confirmed, by the court.

B. Contracts

1. With the Department of Public Safety

A city may contract with the Texas Department of Public Safety (DPS) to deny renewal of the driver’s license of a person who fails to appear for the prosecution of an offense or fails to pay or satisfy a judgment ordering the payment of a fine or costs. Ch. 706, T.C.

When a city contracts with DPS, a peace officer issuing a citation for a violation of a traffic law must provide a written warning that tells a violator that if he or she fails to appear for the prosecution of the offense or fails to pay or satisfy a judgment ordering the payment of a fine and costs in the manner ordered by the court, he or she may be denied driver’s license renewal. The warning is in addition to any other warning required by law and may be printed on the citation.

Before a court can send a clearance report to DPS, defendants must pay a $30 administrative fee and do one of the following:

- perfect (complete) an appeal of the case for which the warrant of arrest was issued or judgment arose;
- post bond or give other security to reinstate the charge for which the warrant was issued; or
- pay or discharge the fine and costs owed on the outstanding judgment, or make suitable arrangements to pay the fine and costs within the court’s discretion.

If the case is dismissed, the defendant must still pay the $30 fee before the court can submit a clearance report. If the defendant is acquitted at trial, or provides proof of financial responsibility or a valid driver’s license in response to those violations, no fee is required.

The defendant must pay or discharge the fine and costs by performing community service. However, the court may submit a clearance report if the defendant makes suitable arrangements to pay within the court’s direction along with payment of the $30 fee. Two additional grounds for discharge without payment of the $30 fee include a report that the original submission was made in error or that the file was destroyed in accordance with a records retention policy. Sec. 706.002-706.006, T.C.

The $30 fee is accounted for in the following manner:

- the fee shall be deposited into the city treasury;
- the account may be interest-bearing (city may keep the interest);
- the city must report yearly to the Comptroller and to DPS the amount of funds received and disbursed;
- the city must remit $20 to the Comptroller on or before the last day of the calendar quarter; and
- the city must retain $10 locally, $6 of which is remitted to OmniBase Services, Inc.
2. **With the Texas Department of Transportation**

A home-rule city may contract with the county assessor-collector or the Texas Department of Transportation (TxDOT) to deny motor vehicle registration to an owner who has an outstanding warrant for failure to appear or failure to pay a fine involving a traffic offense that has a possible maximum fine of $200. Ch. 702, T.C.

3. **With Public and Private Vendors**

Article 103.0031, C.C.P., provides for contracts for collection services. The city may contract for the collection of the following when they are 60 days past due:

- debts and accounts receivable such as fines, fees, restitution, and other debts or costs;
- forfeited bonds (Note: Bonds filed by commercial bail bondsman may not be included in a contract for collection services. Only personal bonds and surety bonds not filed by a commercial bail bondsman may be included.);
- fines and fees assessed by a hearings officer for administrative parking citations; and
- amounts in cases where the accused failed to appear in compliance with a lawful summons; a lawful order of the court; or as specified in a citation, summons, or other notice for administrative parking. (Vendors and attorneys sending a communication to an accused person regarding the amount of payment that is acceptable to the court under the court’s standard policy for resolution of a case, must include a notice of the person’s right to enter a plea or go to trial on any offense charged.)

Article 103.0031(i), C.C.P., allows cities to enter into a contract to collect a debt incurred on an offense that was committed before June 18, 2003.

| Q. 36. | What is a capias pro fine? |
| Q. 37. | What is the clerk’s responsibility when a defendant defaults on payment of a fine and costs? |
| Q. 38. | Who has authority to issue a capias pro fine? |
| Q. 39. | When a defendant is arrested for default in payment of fine, who must conduct the indigency hearing? |
| Q. 40. | If a defendant is indigent, what must the court do? |
| Q. 41. | What is the process called that may be used to sell a defendant’s property to satisfy a fine? |
| Q. 42. | A contract with DPS applies to what offenses? |
| Q. 43. | When a city contracts with DPS, when is the $30 fee required? |
Q. 44. What kind of city may contract with the county and the Texas Department of Transportation for the denial of vehicle registration? ________________________

Q. 45. Vehicle registration may be denied for what offenses? ________________________

Q. 46. What authority does the city have to contract with a vendor for collection of fines? __

Q. 47. When a city contracts with a private or public vendor, how old must the debt or failure to appear be before the court can require the defendant to pay 30 percent of the debt owed? ____________

PART 4
ALTERNATIVE SENTENCING

A. Driving Safety Courses

Defendants charged with traffic offenses, with some exceptions, may request to take a driving safety course to dismiss the charge. Art. 45.0511, C.C.P. The defendant must elect to take the course, enter a plea of guilty or nolo contendere, and pay court costs and any other required fee. The court is required to enter judgment on the plea and defer imposition of the judgment for 90 days.

If the defendant presents evidence of completing the course, a certified copy of his or her driving record as maintained by the Department of Public Safety, and an affidavit indicating that he or she has not taken the course within the last 12 months, the court must dismiss the charge. If the defendant fails to present evidence in a timely manner, the court must schedule a show cause hearing and notify the defendant of the hearing. If the defendant fails to appear or the judge does not allow more time to submit evidence of completion, the judge adjudicates the case and imposes the fine. If an adult defendant does not appeal the case, and the defendant does not pay the fine, the court can issue a capias pro fine to enforce collection of the fine.

B. Deferred Disposition

When a court grants deferred disposition, the court defers further proceedings in the case without entering an adjudication of guilt and places the defendant on probation. Art. 45.051, C.C.P. Only judges have discretion to grant deferred disposition. The clerk’s role is to maintain the court’s order and keep track of the probationary time period.

Deferred disposition applies to misdemeanor offenses punishable by fine only, with a few exceptions. The following offenses are not eligible for deferred disposition.

- Offenses committed in a construction work zone, when workers are present. Sec. 542.404, T.C.
- A minor charged with the offense of consuming an alcoholic beverage if the minor has been previously convicted twice or more of this offense. Sec. 106.04, A.B.C.
- A minor charged with the offense of driving under the influence of an alcoholic beverage if the minor has been previously convicted twice or more of this offense. Sec. 106.041, A.B.C.
A minor who is at least 17 and has previously been convicted two or more times of an offense to which Section 106.071, A.B.C. applies (purchase of alcohol by a minor, attempt to purchase of alcohol by a minor, consumption of alcohol by a minor, possession of alcohol by a minor, and misrepresentation of age by a minor). Sec. 106.071(i), A.B.C.

A defendant charged with a traffic offense who holds or held a commercial driver’s license.

1. **Deferral of Proceedings for Fine-Only Offenses**

The following information outlines the steps for deferred disposition under Article 45.051, C.C.P.

**a. Plea**

A defendant must enter a plea of guilty or nolo contendere, or there must be a finding of guilt before deferred disposition may be granted. Art. 45.051(a), C.C.P.

**b. Court Costs**

After a plea or finding of guilt, the judge may require the defendant to pay court costs before deferring proceedings. Art. 45.051(a), C.C.P.

As an alternative, the judge may allow a defendant to enter into an agreement for payment of court costs in installments during the defendant’s period of probation, require the defendant to discharge the payment of the court costs by performing community service, or through a combination of both. Art. 45.051(a-1), C.C.P.

**c. Fine**

The judge sets the fine and does not enter judgment, but rather, defers further proceedings in the case. Art. 45.051(a), C.C.P.

**d. Alcoholic Beverage Code Offenses**

If the offense being deferred involves a minor being charged with an offense from the Alcoholic Beverage Code, the court must report to the Department of Public Safety the deferred disposition when it is granted on the DIC-15 form.

**e. Time Period**

The judge may place a defendant on probation under deferred disposition for a period not to exceed 180 days. Art. 45.051(a), C.C.P.

**f. Discretionary Terms**

The judge may require the defendant to do any of the following as conditions of probation under deferred disposition (Art. 45.051(b), C.C.P.):

- require payment of a special expense fee to be paid by the end of the probationary period;
- pay restitution to the victim of the offense in an amount not to exceed the fine assessed;
- submit to professional counseling;
- submit to diagnostic testing for alcohol or a controlled substance or drug;
• submit to a psychosocial assessment;
• participate in an alcohol or drug abuse treatment or education program;
• pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs;
• complete a driving safety course approved by the Texas Education Agency;
• present to the court satisfactory evidence that the defendant has complied with each requirement imposed by the judge under this article; and
• comply with any other reasonable condition.

g. Mandatory Terms

Under certain circumstances, the judge must order certain terms as conditions of the deferred. The following is a list of those circumstances.

• If the defendant is under the age of 25 and charged with a moving traffic violation, the court shall require as a term of deferred disposition, a driving safety course. The defendant must submit proof of taking the course. Art. 45.051(b-1), C.C.P. See Appendix A for a list of moving violations as defined by DPS.

• If the defendant has a provisional driver’s license and is charged with a moving traffic violation, the court shall require as a term of deferred disposition that the defendant be examined by DPS as required by Section 521.161(b)(2), T.C. (Art. 45.051 (b-1), C.C.P.) (Note: Sec. 521.161(b)(2) requires DPS to test a person’s ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type that the person will be licensed to operate.) The person must pay DPS a $10 fee for the examination. Note: Persons under the age of 18 have provisional driver’s licenses. Sec. 521.123, T.C. The defendant must submit proof of being examined by DPS.

• If the offense is an Alcoholic Beverage Code offense or the Penal Code offense of public intoxication and the defendant is younger than 21 years of age, as a term of the deferral, the court must require the defendant to take an alcohol awareness course. Sec. 106.115, A.B.C.

• The court must require community service as a term of probation when granting deferred if the offense is one of the following:
  - purchase of alcohol by a minor;
  - attempt to purchase alcohol by a minor;
  - consumption of alcohol by a minor;
  - possession of alcohol by a minor;
  - misrepresentation of age by a minor; or
  - public intoxication.

For a first offense, the court must require not less than eight or more than 12 hours community service. For a subsequent offense, the court must require not less than 20 or more than 40 hours of community service. Sec. 106.071(d)(1), A.B.C.
h. Satisfactory Completion

At the conclusion of the deferral period, if the defendant presents satisfactory evidence that he or she has complied with the requirements imposed in the deferred disposition order, the judge shall:

- dismiss the complaint; and
- clearly note on the docket that the complaint is dismissed and that there is not a final conviction. Art. 45.051(c), C.C.P.

When the complaint is dismissed and there is not a final conviction, the complaint may not be used against the person for any purpose. Art. 45.051(e), C.C.P.

i. Special Expense Fee

A special expense fee may be imposed in an amount not to exceed the amount of fine assessed. Art. 45.051(c), C.C.P. This special expense fee can be paid at any time prior to the end of the probationary period.

j. Failure to Comply with the Terms

When a defendant fails to present satisfactory evidence of compliance of the terms of the deferral within the deferral period, the court shall notify the defendant in writing mailed to the address on file with the court to appear to show cause why the order of deferral should not be revoked. Art. 45.051(c-1), C.C.P.

Article 45.051(d), C.C.P., provides that on a showing of good cause for the failure to present satisfactory evidence of compliance with the requirements, the court may allow an additional period during which the defendant may present evidence of the defendant’s compliance with the requirements. If at the conclusion of this period the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the judge may impose the fine assessed or impose a lesser fine, which results in a final conviction of the defendant. Subsection (d) does not apply to a defendant under age 25 required to complete a driving safety course or retake the driving test under Section 521.161(b)(2), T.C. If the defendant does not complete the driving safety course or the driving test, on the date of the show cause hearing, the judge shall impose the fine. The imposition of the fine constitutes a final conviction of the defendant.

If an adult defendant is not in custody when the court imposes the fine, the court may issue a capias pro fine, which orders a peace officer to bring the defendant before the court. Art. 45.045, C.C.P.

If a defendant under the age of 17 fails to comply, the court must set the defendant for a contempt hearing under Article 45.050, C.C.P. The court may then issue a non-secure custody order for the juvenile defendant to compel his or her appearance.

If a defendant fails to complete the terms of deferred disposition and the judge subsequently adjudicates the defendant’s guilt, the defendant may appeal the conviction.

k. Docket Entries

When a judge grants deferred disposition, the clerk should note the following information in the docket:

- the date the judge granted the deferred disposition;
the deferral period;
the court costs paid and the amount of any special expense fee imposed;
the fine assessed (though not yet imposed); and
whether there was a plea of guilty or nolo contendere, or a finding of guilt after a trial.

At the end of the deferral period, the clerk should note in the docket:
the final judgment—whether the case was dismissed or there was a conviction;
any special expense paid, method of payment, and receipt number of payment;
show cause hearing date, if any;
fine imposed, method of payment, and receipt number, if any; and
appeal made, if any.

I. Reports to Department of Public Safety

- Traffic offenses – If a defendant charged with a traffic offense is granted deferred disposition, the court may not report to DPS that the defendant has been placed on deferred disposition. However, if the defendant fails to complete the terms of deferred disposition and the judge enters a finding of guilty and imposes the fine on the traffic offense, the court is required to notify DPS of the conviction. Sec. 543.204, T.C. The report is to be submitted not later than the seventh day after the date on which the judge adjudicates guilt. Sec. 543.203, T.C.

- Alcoholic Beverage Code offenses – Courts must report to DPS the order of deferred disposition for all minors charged with offenses under the Alcoholic Beverage Code. The report is made at the time the deferred disposition is granted. Sec. 106.117, A.B.C.

2. Deferral of Proceedings for Chemically Dependent Persons

Deferral of proceedings for a chemically dependent person is similar to deferred disposition. The judge may grant a person, charged with an offense that may be related to chemical dependency, deferred disposition under Article 45.053, C.C.P.

The following information outlines the steps involved with deferred disposition for a chemically dependent person.

a. Plea

A defendant must enter a plea of guilty or nolo contendere, or a finding of guilt must be made. The court does not enter an adjudication of guilt on the plea but defers proceedings. Art. 45.053(a), C.C.P.

b. Court Costs

Court costs are required to be collected when deferred is granted.

c. Time Period

The court may defer proceedings for 90 days. Art. 45.053(a), C.C.P.
d. **Application for Treatment**

The court must determine if an application for court-ordered treatment of the defendant is filed in accordance with Chapter 462 of the Health and Safety Code. Art. 45.053(a)(2), C.C.P.

e. **Satisfactory Completion**

Satisfactory evidence of completion would show that a defendant was committed for and completed a court-ordered treatment in accordance with Chapter 462, H.S.C. Art. 45.053(b), C.C.P. If satisfactory evidence is presented at the end of the deferral period, the judge shall dismiss the case. The statute, unlike deferred disposition under Article 45.051, C.C.P., does not provide for an expense fee.

f. **Expunction**

If a complaint is dismissed, there is not a final conviction and the complaint may not be used against the person for any purpose. Records relating to a dismissed complaint may be expunged under Article 55.01, C.C.P.

g. **Failure to Complete**

If evidence of completion is not determined to be satisfactory, the court may:

- impose the fine assessed; or
- impose a lesser fine.

The imposition of a fine constitutes a final conviction of the defendant. Art. 45.053(c), C.C.P.

If a defendant fails to complete the terms of probation and the judge subsequently adjudicates the defendant’s guilt, the defendant may appeal the conviction.

h. **Docket Entries**

The clerk should note the following information in the docket:

- the date the judge ordered the sentence to be suspended and the disposition deferred;
- the deferral period;
- the court costs paid;
- the fine assessed (although not yet imposed);
- whether there was a plea of guilty or nolo contendere, or whether there was a finding of guilt after a trial; and
- the final disposition of the case.

At the end of the deferral period, the clerk should note in the docket:

- the final disposition—whether there was a dismissal or a conviction;
- fine imposed, method of payment, and receipt number, if any; and
- appeal, if any.

Q. 48. How long does a defendant have to take a driving safety course and present evidence of course completion to the court? __________
Q. 49. What evidence must a defendant present the court before a court can dismiss a charge for which a driving safety course was granted?

Q. 50. Who has authority to grant deferred disposition?

Q. 51. List offenses for which a judge has no authority to grant deferred disposition.

Q. 52. If a defendant does not want a trial and asks the judge to grant deferred disposition, what must the defendant do?

Q. 53. How may a court require a defendant to pay court costs when granting a defendant deferred disposition?

Q. 54. What is the maximum amount of time that a judge may place a defendant on probation under deferred disposition?

True or False

Q. 55. The judge may require a defendant who successfully completes his or her deferred to pay the fine. _____

Q. 56. A judge may assess a defendant a special expense fee when granting deferred. _____

Q. 57. When a judge grants deferred disposition to a defendant charged with an Alcoholic Beverage Code offense, the judge must require attendance at an alcohol awareness program. _____

Q. 58. When a defendant under the age of 25 charged with a moving traffic violation is granted deferred, the judge must make the defendant take a driving safety course as a term of the deferred disposition. _____

Q. 59. When a defendant under the age of 25 charged with a moving traffic violation is granted deferred, the only mandatory requirement is to take a driving safety course. _____

End True/False

Q. 60. List the information a clerk should document in the docket when a judge grants a defendant deferred disposition.

Q. 61. When a defendant complies with all the terms of deferred disposition, what is the judge required to do?

Q. 62. What information should be entered in the docket when a defendant completes the terms of deferred disposition?
Q. 63. When deferred disposition is granted, when may the court impose the special expense fee? __________________________________________________________

Q. 64. What is the amount of the special expense fee? __________________________

Q. 65. What must a judge do if a defendant fails to present evidence of completion of the terms of deferred disposition? __________________________________________________________

Q. 66. When is a judge required to submit to the Department of Public Safety a report of a conviction in a traffic case if deferred disposition has been granted? __________________________

Q. 67. For what offenses is the court required to report an order of deferred disposition? __________________________________________________________

Q. 68. When may a defendant appeal his or her case after being granted deferred disposition? __________________________________________________________

PART 5
APPEALS

A. Right to Appeal

A defendant in any criminal action has the right to appeal. Art. 44.02, C.C.P. The right to appeal shall in no way be abridged. Art. 44.07, C.C.P.

B. Appellate Courts

1. Appeals from Municipal Courts

Appeals from a municipal court, including appeals from final judgments in bond forfeiture proceedings, shall be heard by the county court. In cases where the county court has no jurisdiction, appeals shall be heard by whatever is deemed the proper court. Art. 45.042, C.C.P.

a. When Appellate Court Does Not Have Jurisdiction

When an appeal bond is not timely filed, the appellate court does not have jurisdiction over the case and shall remand (send back) the case to the justice or municipal court for execution of the sentence. Art. 45.0426(b), C.C.P. When a defendant fails to file an appeal bond within the required time, the court must send the case to the county court so that they may determine jurisdiction.

b. When Appellate Court Refuses Jurisdiction

A writ of procedendo is a motion submitted by the prosecutor, allowing the county court to declare its lack of jurisdiction and return jurisdiction back to the municipal court to proceed to collect the judgment. If a defendant is not in custody, the court may issue a capias pro fine.

2. Appeals to a Municipal Court

Under Section 707.016, T.C., the owner of a motor vehicle determined by a hearing officer to be liable for a civil penalty may appeal that determination to the municipal judge by filing an appeal petition with the clerk of the court. The petition must be:
- filed before the 31st day after the date on which the administrative adjudication hearing officer entered the finding of liability for the civil penalty; and
- accompanied by payment of the costs required by law for the court.

The court clerk shall schedule a hearing and notify the owner of the motor vehicle and the appropriate department, agency, or office of the date, time, and place of the hearing.

The appeal stops the enforcement and collection of the civil penalty imposed against the owner of the motor vehicle. The owner is required to file a notarized statement of personal financial obligation to perfect the appeal.

This appeal is a trial de novo (new trial) in the municipal court.

C. Appeals from Non-Record Municipal Courts

If an appeal is from a non-record court, the trial in the appellate court shall be de novo, the same as if the prosecution had originally commenced in that court. Art. 45.042(b), C.C.P.

D. Appeals from Municipal Courts of Record

An appeal to the county court from a municipal court of record may be based only on errors reflected in the record. Art. 45.042(b), C.C.P. Refer to Chapter 30 of the Government Code for specific provisions regarding appeals from municipal courts of record.

E. Bond Pending Appeal

Pending the determination of any motion for new trial or the appeal from any misdemeanor conviction, the defendant is entitled to be released on reasonable bail. If a defendant on bail is convicted and appeals, the bond is not discharged until he or she files an appeal bond as required by the Code of Criminal Procedure for appeal from the conviction. Art. 44.04, C.C.P.

F. Appeal Bonds

1. Rules

The rules respecting bail in Chapter 17, C.C.P., are applicable to all undertakings entered into in the course of a criminal action whether before or after indictment, in every case where authority is given to any court, judge, magistrate, or other officer to require bail of a person accused of an offense, or a witness in a criminal action. Art. 17.38, C.C.P.

The rules governing the taking and forfeiture of bail shall govern appeal bonds, and the forfeiture and collection of such appeal bonds shall be in the court to which such appeal is taken. Art. 44.20, C.C.P.

2. Types of Appeal Bonds

Defendants may post either a cash bond or a surety bond with the court. The court may not require cash, but the defendant may post a cash bond in lieu of sureties. Art. 17.02, C.C.P. If the defendant posts cash, it must be accompanied with the bond. It is best to have the defendant present the court with a money order or cashier’s check made payable to the appellate court. If a defendant presents the court with a surety bond, he or she may have one or two sureties on the bond. A judge may permit the defendant to post a personal appeal bond. This bond is discretionary with the court.
3. **Amount of Appeal Bond**

When the court from whose judgment and sentence the appeal is taken is in session, the court must approve the bail. The amount of a bail bond may not be less than two times the amount of fine and costs adjudged against the defendant and may not in any case be for less than $50. The bond must be made payable to the State of Texas. Art. 45.0425, C.C.P.

G. **Appearance Not Required to Post Appeal Bond**

A defendant may mail or deliver in person to the court a plea of guilty or a plea of nolo contendere and a waiver of jury trial. The defendant may also request in writing the address at which he or she requests to be notified of the approved amount of the appeal bond. If the court receives a plea and waiver before the defendant is scheduled to appear in court, the court shall dispose of the case without requiring a court appearance by the defendant. The court shall notify the defendant either in person or by certified mail, return receipt requested, of the amount of fine assessed in the case and, if requested, the amount of an appeal bond that the court will approve. The defendant shall pay the fine assessed or give an appeal bond in the amount stated in the notice before the 31st day after receiving notice. Art. 27.14(b), C.C.P.

Art. 45.0425, C.C.P., says that without requiring a court appearance by the defendant, the court shall approve an appeal bond in an amount that the court, under Article 27.14(b), C.C.P., notified the defendant would be approved if it otherwise meets the requirements of the Code of Criminal Procedure.

H. **Time to Present Court with Bond**

When a defendant enters a plea of guilty or nolo contendere by mail or delivers the plea and waiver to the court facility, the court shall notify the defendant either in person or by certified mail, return receipt requested, of the fine assessed in the case and, if requested by the defendant, the appeal bond that the court will approve. The defendant must pay the fine assessed or give an appeal bond in the amount stated in the notice before the 31st day after receiving the notice. Art. 27.14, C.C.P.

If the defendant appeared in open court, the defendant must give the appeal bond within 10 days after the sentence of the court has been rendered. Art. 45.0426, C.C.P.

1. **Computing Time**

The standard formula for calculating time is to exclude the first day and include the last day. If the last day falls on a Saturday, Sunday, or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday. Sec. 311.014, G.C.

2. **Mailbox Rule**

A bond is considered timely filed if it is mailed in a first class postage prepaid envelope and is properly addressed to the clerk on or before the date that it is required to be filed and the clerk receives it not later than the 10th day after the date that it is required to be filed. Art. 45.013(a), C.C.P. The legible postmark affixed by the U.S. Postal Service is prima facie evidence of the date the document is deposited with the U.S. Postal Service. Art. 45.013(b), C.C.P. Clerks should file stamp the envelope and send it with the transcript on the appeal.

Under the mailbox rule, a “day” does not include Saturday, Sunday, or a legal holiday. Art. 45.013(c), C.C.P.
I. **Perfection of Appeal**

When the appeal bond has been filed with the court that tried the case, the appeal is held to be perfected. Art. 45.0426(a), C.C.P.

J. **Notice of Appeal**

No appeal shall be dismissed because the defendant failed to give notice of it in open court.

K. **Effect of Appeal**

When a defendant files the appeal bond required by law with the judge, all further proceedings in the case in the municipal court shall cease. Art. 45.043, C.C.P. When an appeal bond is filed with the court, the municipal court forfeits jurisdiction to the appellate court.

L. **When a Defendant Pays the Fine**


When a fine has been paid under duress, the appellant has not waived his or her right to an appeal. *Hogan v. Tourland*, 430 S.W.2d 720 (Tex. Civ. App.—Austin 1968).

M. **Role of the Clerk**

1. **Ministerial Duty**


The Texas Court of Criminal Appeals has also characterized the role of the court clerk in the appellate process. The forwarding of appeals is a mandatory ministerial duty and not discretionary for the clerk or the judge for that matter. *Whitsitt v. Ramsay*, 719 S.W.2d 333 (Tex. Crim. App. 1986). See Appendix B for a Checklist for handling appeals—for both non-record courts and record courts.

When a clerk receives an appeal bond from a defendant, he or she should immediately date stamp it with the date it was filed in the court, and then give it to the judge who will decide whether or not to approve the bond. Even if the judge does not approve the bond, the clerk has a mandatory ministerial duty to send the case to the appellate court. The appellate court will make the decision whether it has jurisdiction of the case.

2. **Sending Case to Appellate Court**

In appeals from justice and municipal courts, all the original papers in the case, any appeal bond, and the certified transcript of all the proceedings had before the court shall be delivered without delay to the clerk of the court to which the appeal was taken, who shall file the same and docket the same. Art. 44.18, C.C.P.

When a clerk certifies a transcript, the clerk authenticates it by attesting that the information contained in the transcript is true. An appeal by the defendant or the State may not be dismissed on account of any defect in the transcript. Art. 45.0426(c), C.C.P.
N. Conviction or Affirmance of Judgment on Appeal

In a trial de novo on appeal, when there is a conviction, the fine stays with the county. There is no requirement for the county to return the fine money to the municipal court.

When an appeal is taken from a municipal court of record and the judgment is affirmed on appeal, the fine imposed on appeal and the costs imposed on appeal shall be collected from the defendant and paid into the municipal treasury. Art. 44.281, C.C.P.

O. Withdrawal of Appeal

In non-record courts there is no way to withdraw or dismiss an appeal. In record courts, a defendant or his or her attorney is required to file a motion to withdraw the appeal.

Q. 69. Does someone charged with a city ordinance violation have the right to appeal his or her conviction?

Q. 70. Does someone who fails to appear and is later arrested and convicted have a right to appeal her conviction?

Q. 71. Which court has jurisdiction over municipal court appeals?

Q. 72. When a defendant fails to file his or her bond with the municipal court timely, what happens to the appeal?

Q. 73. What happens when an appellate court determines that it does not have jurisdiction to hear a case?

Q. 74. What happens to a case appealed from a non-record court?

Q. 75. What is the appeal based upon from a record municipal court?

Q. 76. List types of appeal bonds.

Q. 77. What must the amount of an appeal bond be?

True or False

Q. 78. In a non-record municipal court, a defendant can mail to the court a plea of guilty or nolo contendere and appeal his or her conviction without making a personal appearance in court.

Q. 79. When a defendant makes an appearance by mail and requests the amount of the appeal bond, the court may send the information by regular mail.

Q. 80. A defendant who pleads guilty by mail has 31 days from the date the judgment is entered to file an appeal bond with the court.

End True/False

Q. 81. When a defendant appears in open court, how long does he or she have to file the appeal bond with the court?

Q. 82. When calculating when a defendant is to file an appeal bond, does the court count the day judgment was entered?
Q. 83. When calculating time to present the court with an appeal bond, does the court count the 10th day?

Q. 84. When calculating time to present the court with an appeal bond, does the court count the 10th day if it falls on a Saturday?

Q. 85. Explain the mailbox rule.

Q. 86. When is a defendant’s appeal completed?

Q. 87. When can a defendant who has paid a judgment still appeal?

Q. 88. What is the role of a clerk in the appellate process?

Q. 89. If a clerk makes a mistake on the transcript, does this cause the appeal to be dismissed?

Q. 90. When a case is appealed, what does a non-record municipal court send to the appellate court?

Q. 91. What happens to municipal court proceedings when an appeal bond is filed with the court?

Q. 92. What happens to the fine assessed in the county court against a municipal court defendant who has appealed his or her case from a non-record municipal court?

Q. 93. May a defendant withdraw an appeal and pay the fine in a non-record municipal court?

Q. 94. If an appeal is from a court of record, can a defendant withdraw an appeal?
**APPENDIX A: MOVING VIOLATIONS**

From Texas Administrative Code: 37 TAC §15.89(b). Includes whether the Department of Public Safety assigns driver responsibility points to driver license for conviction of offenses.*

*Higher class offenses removed from chart, as of September 2011.

- Figure: 37 TAC §15.89(b)

<table>
<thead>
<tr>
<th>Arrest Title</th>
<th>Driver Responsibility Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aggravated assault with motor vehicle</td>
<td>Yes</td>
</tr>
<tr>
<td>Allow passenger to stand/sit improperly on a school bus</td>
<td>Yes</td>
</tr>
<tr>
<td>Bus driver failed to activate warning signal/equipment</td>
<td>Yes</td>
</tr>
<tr>
<td>Bus failed to stop at RR crossing</td>
<td>Yes</td>
</tr>
<tr>
<td>Bus shifting gears while crossing RR tracks</td>
<td>Yes</td>
</tr>
<tr>
<td>Carry motorcycle passenger under 5; except in side car</td>
<td>Yes</td>
</tr>
<tr>
<td>Changed lane when unsafe</td>
<td>Yes</td>
</tr>
<tr>
<td>Child passenger safety seat offense</td>
<td>Yes</td>
</tr>
<tr>
<td>Coasting</td>
<td>Yes</td>
</tr>
<tr>
<td>Coasting (truck, truck tractor or bus, specify) with clutch disengaged</td>
<td>Yes</td>
</tr>
<tr>
<td>Consume alcohol while driving</td>
<td>Yes</td>
</tr>
<tr>
<td>Criminal negligent homicide with motor vehicle--1st or 2nd degree</td>
<td>Yes</td>
</tr>
<tr>
<td>Crossed RR with heavy equipment without notice</td>
<td>Yes</td>
</tr>
<tr>
<td>Crossed RR with heavy equipment without stop (or safety)</td>
<td>Yes</td>
</tr>
<tr>
<td>Crossing fire hose without permission</td>
<td>Yes</td>
</tr>
<tr>
<td>Crossing physical barrier</td>
<td>Yes</td>
</tr>
<tr>
<td>Cut across driveway to make turn</td>
<td>Yes</td>
</tr>
<tr>
<td>Cut corner left turn</td>
<td>Yes</td>
</tr>
<tr>
<td>Cut in after passing</td>
<td>Yes</td>
</tr>
<tr>
<td>Did not use designated lane or direction</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregard solid green turn signal arrow</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregard warning signs or barricades</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded flashing red signal (at stop sign, etc.)</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded flashing yellow signal</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded lane control signal</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded no lane change sign</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded no passing zone</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded police officer</td>
<td>Yes</td>
</tr>
<tr>
<td>----------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>Disregarded RR crossing gate or flagman</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded signal at RR crossing</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded traffic control device</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded turn marks at intersection</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded warning sign at construction</td>
<td>Yes</td>
</tr>
<tr>
<td>Drive into block where fire engine stopped</td>
<td>Yes</td>
</tr>
<tr>
<td>Driving around barricades</td>
<td>Yes</td>
</tr>
<tr>
<td>Driving under influence</td>
<td>No</td>
</tr>
<tr>
<td>Driving under influence (DUI)--minor</td>
<td>Yes</td>
</tr>
<tr>
<td>Driving under influence of drugs</td>
<td>No</td>
</tr>
<tr>
<td>Driving while impaired</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated &gt; 0.16</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated with child younger than 15 yoa</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated--felony</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated--juvenile</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated--misdemeanor</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated--on beach</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated--probated</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated--under 21</td>
<td>No</td>
</tr>
<tr>
<td>Driving while license disqualified--CMV</td>
<td>No</td>
</tr>
<tr>
<td>Driving while license suspended under provisions of DL laws</td>
<td>No</td>
</tr>
<tr>
<td>Driving while license suspended--SR</td>
<td>No</td>
</tr>
<tr>
<td>Drove center lane (not passing, not turning left)</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on (or across) streetcar tracks where prohibited</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on sidewalk</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side--RR crossing</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side of approaching bridge</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side of divided highway</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side of road</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side road approaching intersection</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side road approaching RR grade crossing</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side road awaiting access to ferry</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove onto (or from) controlled access highway where prohibited</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove through safety zone</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove to left of rotary traffic island</td>
<td>Yes</td>
</tr>
<tr>
<td>Description</td>
<td>Result</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Drove without lights--when required</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove wrong way in designated lane</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove wrong way on one-way roadway</td>
<td>Yes</td>
</tr>
<tr>
<td>Endorsement violation CDL</td>
<td>No</td>
</tr>
<tr>
<td>Fail stop proper place-flash red signal</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to control speed</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to dim headlights--following</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to dim headlights--meeting</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to drive in single lane</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to give hand signals when required</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to give info/render aid</td>
<td>No</td>
</tr>
<tr>
<td>Fail to give one-half of roadway</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to keep to right on mountain road</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to pass left safely</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to pass met vehicle to right</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to pass to right safely</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to signal for stop</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to signal required distance before turning</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to signal turn</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to signal with turn indicator</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to sound horn--mountain road</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop--designated point--at stop sign</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop--designated point--at yield sign</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop and render aid--felony</td>
<td>No</td>
</tr>
<tr>
<td>Fail to stop and render aid--misdemeanor</td>
<td>No</td>
</tr>
<tr>
<td>Fail to stop at marked RR crossing</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop at proper place (at traffic light)</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop at proper place (flashing red signal)</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop at proper place (not at intersection)</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop for approaching train</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop for school bus (or remain stopped, specify)</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop for streetcar--or stop at wrong location</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop--emerging from alley, driveway or bldg.</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to use due care for pedestrian</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to use proper headlight beam</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield at stop intersection</td>
<td>Yes</td>
</tr>
<tr>
<td>Violation</td>
<td>Yes</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>Fail to yield at yield intersection</td>
<td></td>
</tr>
<tr>
<td>Fail to yield for blind or incapacitated person</td>
<td></td>
</tr>
<tr>
<td>Fail to yield right of way</td>
<td></td>
</tr>
<tr>
<td>Fail to yield right of way from private road</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row at open intersection (specify type)</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row leaving (private drive, alley, building)</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row on green arrow signal</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row on green signal</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row on left at obstruction</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row to emergency vehicle</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row to pedestrian at signal intersection</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row to pedestrian in crosswalk</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row to pedestrian in crosswalk--no signal</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row to pedestrian on sidewalk</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row to pedestrian turning right or left at intersection</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row--changing lanes</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row--turning left (at intersection, alley, private road or driveway)</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row--turning right on red signal</td>
<td></td>
</tr>
<tr>
<td>Fail to yield to vehicle in intersection</td>
<td></td>
</tr>
<tr>
<td>Fail to yield to vehicle leaving highway</td>
<td></td>
</tr>
<tr>
<td>Failed to give way when overtaken</td>
<td></td>
</tr>
<tr>
<td>Failed to signal lane change</td>
<td></td>
</tr>
<tr>
<td>Fleeing from police officer</td>
<td></td>
</tr>
<tr>
<td>Following ambulance</td>
<td></td>
</tr>
<tr>
<td>Following fire apparatus</td>
<td></td>
</tr>
<tr>
<td>Following too closely</td>
<td></td>
</tr>
<tr>
<td>Following too closely--caravan</td>
<td></td>
</tr>
<tr>
<td>Following too closely--truck</td>
<td></td>
</tr>
<tr>
<td>Head lamps glaring not adjusted</td>
<td></td>
</tr>
<tr>
<td>Heavy equipment disregarded signal of train</td>
<td></td>
</tr>
<tr>
<td>Illegal backing</td>
<td></td>
</tr>
<tr>
<td>Illegal pass on right</td>
<td></td>
</tr>
<tr>
<td>Illegally passed streetcar</td>
<td></td>
</tr>
<tr>
<td>Impeding traffic</td>
<td></td>
</tr>
<tr>
<td>Improper passing</td>
<td></td>
</tr>
<tr>
<td>Improper turn</td>
<td></td>
</tr>
<tr>
<td>Violation</td>
<td>Yes/No</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Improper turn or stop hand signal</td>
<td>Yes</td>
</tr>
<tr>
<td>Improper use of auxiliary driving lamps</td>
<td>Yes</td>
</tr>
<tr>
<td>Improper use of auxiliary passing lamps</td>
<td>Yes</td>
</tr>
<tr>
<td>Improper use of lighting--hwy. equip.</td>
<td>Yes</td>
</tr>
<tr>
<td>Improper use of spot lamps</td>
<td>Yes</td>
</tr>
<tr>
<td>Improper use of turn indicator</td>
<td>Yes</td>
</tr>
<tr>
<td>Increased speed while being overtaken</td>
<td>Yes</td>
</tr>
<tr>
<td>Interfere with streetcar</td>
<td>Yes</td>
</tr>
<tr>
<td>Intoxication assault</td>
<td>No</td>
</tr>
<tr>
<td>Intoxication assault motor vehicle</td>
<td>No</td>
</tr>
<tr>
<td>Intoxication manslaughter</td>
<td>No</td>
</tr>
<tr>
<td>Intoxication manslaughter motor vehicle</td>
<td>No</td>
</tr>
<tr>
<td>Involuntary manslaughter with motor vehicle</td>
<td>Yes</td>
</tr>
<tr>
<td>Lack of caution on green arrow signal</td>
<td>Yes</td>
</tr>
<tr>
<td>Leaving scene of accident</td>
<td>Yes</td>
</tr>
<tr>
<td>Made U-turn on curve or hill</td>
<td>Yes</td>
</tr>
<tr>
<td>Negligent collision</td>
<td>Yes</td>
</tr>
<tr>
<td>No commercial driver license (CDL)</td>
<td>No</td>
</tr>
<tr>
<td>No double trailer endorsement (CDL)</td>
<td>No</td>
</tr>
<tr>
<td>No driver license</td>
<td>No</td>
</tr>
<tr>
<td>No hazmat endorsement (CDL)</td>
<td>No</td>
</tr>
<tr>
<td>No motorcycle endorsement</td>
<td>No</td>
</tr>
<tr>
<td>No passenger vehicle endorsement (CDL)</td>
<td>No</td>
</tr>
<tr>
<td>No tank vehicle endorsement (CDL)</td>
<td>No</td>
</tr>
<tr>
<td>No school bus endorsement (CDL)</td>
<td>No</td>
</tr>
<tr>
<td>Obstructed view through windshield</td>
<td>Yes</td>
</tr>
<tr>
<td>Obstructing traffic</td>
<td>Yes</td>
</tr>
<tr>
<td>Open Container DRIVER</td>
<td>Yes</td>
</tr>
<tr>
<td>Operate school bus over passenger design capacity</td>
<td>Yes</td>
</tr>
<tr>
<td>Operate school bus with door open</td>
<td>Yes</td>
</tr>
<tr>
<td>Operate vehicle more than one passenger-minor</td>
<td>Yes</td>
</tr>
<tr>
<td>Operate vehicle where prohibited</td>
<td>Yes</td>
</tr>
<tr>
<td>Operate vehicle with child in open bed</td>
<td>Yes</td>
</tr>
<tr>
<td>Passed streetcar on left without reducing speed or without caution</td>
<td>Yes</td>
</tr>
<tr>
<td>Passed vehicle stopped for pedestrian</td>
<td>Yes</td>
</tr>
<tr>
<td>Passed--insufficient clearance</td>
<td>Yes</td>
</tr>
<tr>
<td>Offense</td>
<td>Yes/No</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Passengers/load obstruct driver's view or control</td>
<td>Yes</td>
</tr>
<tr>
<td>Passing authorized emergency vehicle</td>
<td>Yes</td>
</tr>
<tr>
<td>Permitted/operated unsafe vehicle</td>
<td>Yes</td>
</tr>
<tr>
<td>Person(s) riding in trailer or semi-trailer</td>
<td>Yes</td>
</tr>
<tr>
<td>Prohibited motor vehicle on controlled-access highway</td>
<td>Yes</td>
</tr>
<tr>
<td>Racing--drag racing--acceleration contest, etc.</td>
<td>Yes</td>
</tr>
<tr>
<td>Ran red light</td>
<td>Yes</td>
</tr>
<tr>
<td>Ran stop sign</td>
<td>Yes</td>
</tr>
<tr>
<td>Reckless driving</td>
<td>Yes</td>
</tr>
<tr>
<td>Restriction violation--CDL</td>
<td>Yes</td>
</tr>
<tr>
<td>Slower vehicle failed to keep to right</td>
<td>Yes</td>
</tr>
<tr>
<td>Speed under minimum</td>
<td>Yes</td>
</tr>
<tr>
<td>Speeding</td>
<td>No</td>
</tr>
<tr>
<td>Speeding &gt; 10% above posted speed limit</td>
<td>Yes</td>
</tr>
<tr>
<td>Speeding--15 miles or over (CDL)</td>
<td>Yes</td>
</tr>
<tr>
<td>Speeding--school zone</td>
<td>Yes</td>
</tr>
<tr>
<td>Too many riders on motorcycle</td>
<td>Yes</td>
</tr>
<tr>
<td>Turned across dividing section</td>
<td>Yes</td>
</tr>
<tr>
<td>Turned left from wrong lane</td>
<td>Yes</td>
</tr>
<tr>
<td>Turned right from wrong lane</td>
<td>Yes</td>
</tr>
<tr>
<td>Turned right too wide</td>
<td>Yes</td>
</tr>
<tr>
<td>Turned so as to impede or interfere with streetcar</td>
<td>Yes</td>
</tr>
<tr>
<td>Turned when unsafe</td>
<td>Yes</td>
</tr>
<tr>
<td>Unauthorized use of siren, bell or whistle</td>
<td>Yes</td>
</tr>
<tr>
<td>Unsafe speed (too fast for conditions)</td>
<td>Yes</td>
</tr>
<tr>
<td>Unsafe start</td>
<td>Yes</td>
</tr>
<tr>
<td>Unsafe start from parked, stopped or standing position</td>
<td>Yes</td>
</tr>
<tr>
<td>Use of school bus signal for wrong purpose</td>
<td>Yes</td>
</tr>
<tr>
<td>Use wireless device while driving bus</td>
<td>Yes</td>
</tr>
<tr>
<td>Use wireless device while driving--minor</td>
<td>Yes</td>
</tr>
<tr>
<td>Use wireless device in school zone</td>
<td>Yes</td>
</tr>
<tr>
<td>Veh. hauling explosives (or flammable materials) failed to stop at RR crossing</td>
<td>Yes</td>
</tr>
<tr>
<td>Veh. hauling explosives failed to reduce speed at RR crossing</td>
<td>Yes</td>
</tr>
<tr>
<td>Vehicle without required equipment or in unsafe condition</td>
<td>Yes</td>
</tr>
<tr>
<td>Violate DL restriction</td>
<td>Yes</td>
</tr>
<tr>
<td>Violate DL restriction on occupational license</td>
<td>Yes</td>
</tr>
<tr>
<td>Violation</td>
<td>Outcome</td>
</tr>
<tr>
<td>---------------------------------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>Violate operating hours-minor</td>
<td>Yes</td>
</tr>
<tr>
<td>Violated out of service order</td>
<td>Yes</td>
</tr>
<tr>
<td>Violated out-of-service order hazmat and/or passenger</td>
<td>Yes</td>
</tr>
<tr>
<td>Wrong side road--not passing</td>
<td>Yes</td>
</tr>
<tr>
<td>Wrong side, 4 or more lane, two-way roadway</td>
<td>Yes</td>
</tr>
</tbody>
</table>
APPENDIX B
APPEALS CHECKLIST
FOR NON-RECORD MUNICIPAL COURTS

☐ All defendants have a right to appeal their convictions. Art. 44.02, C.C.P.
☐ Defendant is not required to go to trial in order to appeal.
☐ Judgment is entered (conviction). Art. 45.041, C.C.P.
  ☐ Defendant can plead guilty or nolo contendere and appeal.
  ☐ If defendant does not complete a driving safety course or the terms of deferred disposition, after the court enters final judgment, the defendant may still appeal.
☐ Defendant gives notice of appeal (but is not required to do so). Art. 45.0426(c), C.C.P.
☐ Defendant appeared at trial or in open court – 10 days from date of judgment to file appeal bond. Arts. 44.16 and 45.0426(a), C.C.P.
  ☐ Mailbox Rule – If defendant mails the bond on or before the due date and the court receives it within 10 working days from the due date, the bond is properly filed. (Keep envelope) Art. 45.013, C.C.P.
  ☐ If the appeal bond is not timely, the municipal court must still send it to the appellate court.
☐ Defendant appears by mail or in person at the clerk’s window – court must either personally deliver notice of the amount of fine and appeal bond or notify the defendant by certified mail, return receipt requested. Defendant has up to 31 days from the date of receiving the notice to file an appeal bond. Art. 27.14(b), C.C.P.
  ☐ If appeal bond is not timely filed, the municipal court must still send it to the appellate court.
☐ Appeal appearance bond must be at least two times the amount of the fine and court costs, but in no case less than $50. Art. 45.0425(a), C.C.P.
☐ Bond may be cash or surety (court cannot require cash); judge may grant a personal appeal bond. Arts 17.38, 44.20, C.C.P.
  ☐ Conditions of the appeal bond – Must recite that the defendant has been convicted and appealed and will make a personal appearance before the court to which the appeal is taken instanter, if the court is in session, or, if the court is not in session, at its next regular term, stating the time and place of that session, and there remain from day to day and term to term, and answer in the appealed case before the appellate court. Art. 45.0425(b), C.C.P.
☐ When court receives bond, clerk should date stamp day received.
  ☐ Bond filed with court perfects appeal. Art. 45.0426(a), C.C.P.
Give bond to judge to make a determination if the surety is sufficient. Art. 44.04(e), C.C.P. If appeal bond otherwise meets the requirements of the Code of Criminal Procedure, the court must approve the bond. Art. 45.0425, C.C.P.

Clerk makes copies of all original papers in the case file.
Clerk sends the case with all original papers and the bond with a certified transcript to the appellate court (usually county court). Art. 44.18, C.C.P.
Case is tried de novo (new trial) in county court. Arts. 44.17 and 45.042(b), C.C.P.
If defendant is convicted in appellate court, appellate court collects fine and deposits it in the county treasury.
Withdrawal of appeal

- Defendant may not withdraw appeal from a non-record municipal court.
If bond filed after deadline, the appellate court shall remand the case to the municipal court to collect judgment. (If the court receives the case back, the court should notify the defendant that the fine and costs are due in the municipal court. If the defendant fails to pay the fine and costs, the municipal court can issue a capias pro fine for collection of the judgment.)
If the bond is defective in form or substance, the appellate court may allow the defendant to file a new bond. Art. 44.15, C.C.P.
CHECKLIST FOR APPEALS
FROM MUNICIPAL COURT OF RECORD

☐ All defendants have a right to appeal their convictions. Art. 44.02, C.C.P.

☐ Defendant is required to go to trial and a record of the trial must be made.

☐ Judgment is entered (conviction). Art. 45.014, C.C.P.

☐ Defendant makes a written motion for a new trial not later than 10th day after date on which judgment is rendered. Sec. 30.00014(c), G.C.

☐ The motion may be amended with permission of the court not later than the 20th day after the date on which the original motion is filed.

☐ The court may extend the time for filing or amending not to exceed 90 days from the original filing deadline.

☐ If the court does not act on the motion before the expiration of the 30 days allowed for determination of the motion, the original or amended motion is overruled by operation of law.

☐ If the motion for new trial is denied, the defendant must give notice of the appeal not later than the 10th day after the date on which the motion for new trial was overruled. Section 30.00014(d), G.C.

☐ The notice of appeal may be given orally in open court, if the defendant requested a hearing on the motion for new trial.

☐ If there is no hearing on the motion for new trial, the notice of appeal must be in writing and must be filed with the court not later than the 10th day after the motion for new trial is overruled. The court may extend the time period not to exceed 90 days from the original filing deadline for good cause.

☐ The appeal bond must be approved by the court and must be filed not later than the 10th day after the date on which the motion for new trial is overruled. Sec. 30.00015(a), G.C.

☐ The appeal bond must be in the amount of $100 or double the amount of the fines and costs adjudged against the defendant, whichever is greater. Sec. 30.00015(b), G.C.

☐ Conditions of appeal bond – Must state that the defendant was convicted in the case and has appealed; and be conditioned on the defendant’s immediate and daily personal appearance in the court to which the appeal is taken. Sec. 30.00015(c), G.C.

☐ Defendant must pay a $25 fee for the preparation of the clerk’s record. City must establish the fee by ordinance. The clerk shall note the payment of the fee on the docket of the court. The fee will be refunded to the defendant if the case is reversed and dismissed on appeal. Secs. 30.00014(f) and 30.00017, G.C.

☐ Defendant must pay a fee for an actual transcription of the proceedings. Sec. 30.00014(g), G.C.

☐ Defendant must pay for a reporter’s record. Sec. 30.00019(b), G.C.
Record on appeal – must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. Sec. 30.00016, G.C.

- The clerk’s record must conform to the provision in the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. Sec. 30.00017, G.C.

- The bills of exception must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. (Sec. 30.00018, G.C.) (A formal statement in writing of the objections or exceptions taken by a party during the trial of a cause to the decisions, rulings, or instruction of the trial judge, stating the objection, with the facts and circumstances on which it is founded, and, in order to attest its accuracy, signed by the judge.)

- The reporter’s record must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. Sec. 30.00019, G.C.

Transfer of the record – Not later than the 60th day after the date on which the notice of appeal is given or filed, the parties must file the reporter’s record, a written description of material to be included in the clerk’s record in addition to the required material, and any material to be included in the clerk’s record that is not in the custody of the clerk. Sec. 30.00020(a), G.C.

- On completion of the record, the municipal judge shall approve the record in the manner provided for record completion, approval, and notification in the court of appeals. Sec. 30.00020(b), G.C.

- After the judge approves the record, the clerk shall promptly send the record to the appellate court clerk for filing. Sec. 30.00020(c), G.C. The appellate court clerk notifies the defendant and prosecutor that the record has been filed.

- The appellate court determines appeals from the municipal court of record on the basis of errors that are set forth in the appellant’s motion for new trial and presented in the transcript and statement of facts. Sec. 30.00014(b), G.C.

Brief on appeal

- Appellant must file a brief with the appellate court clerk not later than the 15th day after the date on which the clerk’s record and reporter’s record are filed with the appellate court clerk.

- The appellee must file the appellee’s brief with appellate court clerk not later than the 15th day after the date on which the appellant’s brief is filed.

- Each party, on filing the party’s brief with appellate court clerk, shall deliver a copy of the brief to the opposing party and to the municipal judge. Sec. 30.0021, G.C.

Withdrawal of appeal

- Defendant may submit a written motion to withdraw appeal.
If bond is defective in form or substance, the appellate court may allow the defendant to file a new bond. Art. 44.15, C.C.P.

The appellate court clerk shall mail copies of the decision to the parties and to the municipal judge as soon as the decision is rendered.

Disposition on appeal – Appellate court may:

- Affirm the judgment of the municipal court of record;
- Reverse and remand for a new trial;
- Reverse and dismiss the case; or
- Reform and correct the judgment.

If appellate court reverses and dismisses the case, the court must refund the $25 fee for the preparation of the clerk’s record to the defendant. Sec. 30.00014(f), G.C.

If appellate court grants a new trial, it is as if the municipal court of record granted the new trial. The new trial is conducted by the municipal court of record. Sec. 30.00026, G.C.

If the judgment is affirmed, the fine imposed on appeal and the costs imposed on appeal shall be collected from the defendant, and the fine of the municipal court when collected shall be paid into the municipal treasury. Art. 44.281, C.C.P.
ANSWERS TO QUESTIONS

INTRODUCTION
Q. 1. It is the final decision of a court and includes a dismissal if there is an acquittal or an adjudication of guilt and an assessment of punishment.
Q. 2. It is the formal pronouncement of the judgment. Adjudicate means that the judge makes a final determination of fact and enters a judgment. Generally, the judge renders judgment, which means that the judge pronounces judgment, and then enters a judgment. This is a judicial act that only a judge may perform.
Q. 3. By paying the fine immediately, by paying at intervals, or by paying the fine at a specified later date.
Q. 4. Only the judge.

PART 1
Q. 5. True.
Q. 7. False.
Q. 10. True.
Q. 11. True.
Q. 12. True.
Q. 15. True.
Q. 16. The court is required to give the defendant credit on his or her sentence for the time that the defendant spent in jail from the time of his or her arrest and confinement until his or her sentence by the trial court.
Q. 17. “Period of time” is defined as not less than 8 hours or more than 24 hours as specified in the judgment of a case.
Q. 18. As custodian of the records, clerks should properly record jail-time credit on a defendant’s case file and in the docket.
Q. 19. Only after the governing body (city council) has authorized payment of fees, fines, court costs, or other charges by credit card.
Q. 20. The processing fee may not exceed five percent of the amount of the fee, fine, court costs, or other charge being paid.
Q. 21. If a defendant’s credit card is not honored by the credit card company, the city may collect a service charge from the person who owes the fee, fine, court costs, or other charge. (Note: The municipal court may also issue a capias pro fine.)
Q. 22. The amount of the service charge is the same as the fee charged for the collection of a check drawn on an account with insufficient funds.
Q. 23. True.
Q. 24. True.
Q. 25. True.
Q. 27. True.
Q. 28. False. (If the court determines that a defendant after he or she has defaulted in payment of fine and or costs is indigent and that each alternative method of discharging a fine or cost under Article 45.049, C.C.P., would impose a hardship on the defendant, then the court may waive the fine and costs.)
Q. 29. True.

PART 2
Q. 30. False.
Q. 31. True.
Q. 32. True.
Q. 33. True.
Q. 34. True.
Q. 35. True.

PART 3
Q. 36. A capias pro fine is a writ of the court issued when a judgment has been entered against an adult defendant who is not in custody when the defendant fails to satisfy the judgment.
Q. 37. Court clerks should research court records to be certain that an error in recordkeeping has not occurred. Then clerks should present the judge with information that the defendant still owes a fine and costs or part of a fine and costs and that the judgment has not been satisfied.
Q. 38. Only the judge has authority to issue a capias pro fine.
Q. 39. Only the judge who has jurisdiction over the case.
Q. 40. The court has a duty to inquire into reasons for non-payment to avoid jailing indigent defendants and if the defendant is indigent allow the defendant to discharge the fine through community service or through a time payment plan. However, if the court determines that an alternative method of discharging the fine under Article 45.049, C.C.P., would impose an undue hardship, the court may waive the fine and costs.
Q. 41. Execution.
Q. 42. Any fine-only offense.
Q. 43. When a defendant perfects an appeal of the case for which the warrant of arrest was issued or judgment arose; when a defendant posts bond or gives other security to reinstate the charge for which the warrant was issued; when the defendant pays the fine and costs owed on the outstanding judgment or makes suitable arrangement to pay the fine and costs within the court’s discretion.
Q. 44. Any home-rule city may contract.
Q. 45. Vehicle registration may be denied for any traffic offense that has a maximum possible penalty of $200.
Q. 46. Article 103.0031, C.C.P., provides authority for a city to contract with a vendor to collect fines.

Q. 47. The debt or failure to appear must be 60 days or older.

**PART 4**

Q. 48. 90 days.

Q. 49. Evidence of completing the course (uniform certificate); a certified copy of his or her driving record as maintained by the Department of Public Safety; and an affidavit. (Note: If the defendant is on active military duty, the court most likely will not have the defendant’s driving record from DPS.)

Q. 50. Only judges have authority to grant deferred disposition.

Q. 51. The following offenses are not eligible for deferred disposition.

- Offenses committed in a construction work zone, when workers are present are not eligible for deferred disposition. Sec. 542.404, T.C.
- A minor charged with the offense of consuming an alcoholic beverage if the minor has been previously convicted twice or more of this offense. Sec. 106.04, A.B.C.
- A minor charged with the offense of driving under the influence of an alcoholic beverage if the minor has been previously convicted twice or more of this offense. Sec. 106.041, A.B.C.
- A minor who is not a child (under age 17) and who has been previously convicted at least twice of an offense to which Section 106.071, A.B.C. applies. Sec. 106.071(i), A.B.C.
- A defendant charged with a traffic offense who has a commercial driver’s license or had one at the time of the traffic offense was committed.

Q. 52. The defendant must give the court a plea of either guilty or nolo contendere.

Q. 53. The judge can require the defendant to pay court costs before granting deferred disposition, or allow the defendant to pay in installments; by performing community service; or by both installments and community service during the probation.

Q. 54. The deferral period may not exceed 180 days.

Q. 55. False.

Q. 56. True.

Q. 57. True.

Q. 58. True.

Q. 59. False.

Q. 60. The following information should be entered in the docket when a judge grants deferred disposition: (1) the date the judge ordered the sentence to be suspended and the disposition deferred; (2) the deferral period; (3) the court costs paid; (4) the fine assessed; (5) whether there was a plea of guilty or nolo contendere, or whether there was a finding of guilt after the trial.

Q. 61. The judge is required to dismiss the case.

Q. 62. The clerk should note in the docket that the complaint is dismissed. (After the judge signs the dismissal judgment.)
Q. 63. The court may assess a special expense fee to be paid before the end of the deferral period.

Q. 64. The special expense fee may not exceed the amount of the fine that could be imposed.

Q. 65. When a defendant fails to present satisfactory evidence of compliance of the terms of the deferral within the deferral period, the court shall notify the defendant in writing mailed to the address on file with the court to appear to show cause why the order of deferral should not be revoked.

Q. 66. The court does not submit to DPS a record of a traffic case where deferred disposition has been granted unless the defendant fails to complete the terms of deferred disposition and the judge enters a final judgment of guilty. Then the judge reports a conviction to DPS.

Q. 67. The court is required to report an order of deferred disposition for all Alcoholic Beverage Code offenses. The report is made when deferred disposition is granted.

Q. 68. If a defendant fails to comply with the terms of deferred disposition and the court enters a final judgment against the defendant, the defendant may appeal the case.

PART 5

Q. 69. Yes.

Q. 70. Yes.

Q. 71. The county court.

Q. 72. If the defendant fails to file an appeal bond within the required time limit, the municipal court sends the appeal to the county court. The county court has to make the decision whether or not to take jurisdiction of the case. If the county court decides that it does not have jurisdiction, it sends the case back to municipal court. Art. 45.0426(b), C.C.P.

Q. 73. The appellate court sends the case back to municipal court, which can then collect its judgment.

Q. 74. If the appeal is from a non-record court, the trial in the appellate court is a new trial as if the case had originally commenced in that court.

Q. 75. The appeal is based upon errors reflected in the record of the trial.

Q. 76. The types of appeal bonds are: cash appeal bond, surety appeal bond, and personal appeal bond.

Q. 77. An appeal bond may not be less that two times the amount of the fine and court costs, but it may be more. In no case can it be less than $50.

Q. 78. True.

Q. 79. False.

Q. 80. False.

Q. 81. If the defendant appears in open court, the defendant has 10 days after the judgment is entered to present the court with an appeal bond.

Q. 82. No. (The court counts the following day as day one.)

Q. 83. Yes.

Q. 84. No.
Q. 85. The mailbox rule provides that a document may be filed with the court by mailing it in a first class postage prepaid envelope, properly addressed to the clerk, on or before the date the document is required to be filed; and the clerk receives it not later than the 10th day after the date that it is required to be filed. Hence, an appeal bond is timely filed if it is received timely under the mailbox rule.

Q. 86. A defendant’s appeal is completed when the defendant presents the court with an appeal bond in the required time period.

Q. 87. When the defendant was under duress to plea guilty or nolo contendere or to pay the fine. *Hogan v. Tourland*, 430 S.W.2d 720 (Tex. Crim. App.—Austin 1968).

Q. 88. The clerk’s role is characterized as ministerial. When a clerk receives an appeal bond from a defendant, he or she should immediately date stamp it with the date it was filed with the court and then give it to the judge. The clerk has a mandatory ministerial duty to send the appeal to the appellate court.

Q. 89. No.

Q. 90. Along with the transcript, the court is required to send all the original documents in the case. The court keeps copies for its file.

Q. 91. All proceedings in municipal court cease.

Q. 92. If there is a conviction in the county court, the county keeps the fine money and reports the court costs to the State.

Q. 93. No.

Q. 94. Yes.
State and City Reports

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INTRODUCTION

State laws require municipal courts to file reports with certain state agencies and to remit court costs and some fines to the State. The agencies responsible for obtaining the information and money from the courts typically provide guidelines and forms. Usually, clerks submit the reports, although in some instances, statutes provide that the judge is responsible for the maintenance and submission. These duties, although required of the judge, are generally ministerial and administrative in nature. For this reason, the judge may delegate the duties to the clerk.

There are three state agencies that require reporting from all municipal courts: the State Comptroller’s Office (SCO), where quarterly court costs are reported, the Department of Public Safety (DPS) and the Office of Court Administration (OCA).

Some reports help courts enforce appearance and payment of fines in their courts. For example, when a juvenile fails to appear or pay, the court submits a report to the DPS to deny issuance of or to suspend the driver’s license until the juvenile appears and complies with court orders.

Clerks should always submit required reports timely to avoid consequences for improper reporting. For example, the statute governing the reporting of traffic convictions to DPS provides that failure to submit may constitute misconduct of office and be grounds for removal from office. State statutes also provide that if the court does not submit a monthly report of statistics to the OCA, the judge or clerk may be ordered to report by a court of superior jurisdiction. Fiscal liability applies when a court fails to timely and properly report court costs to the State. The State will collect the unpaid amounts from the city including the 10% handling fee that the city would ordinarily keep if it had been properly reported.

Sometimes courts, particularly those without computers, have difficulty collecting data and preparing reports. In this situation, the court must develop manual processing procedures and rules for maintaining the data to help them manage the day-to-day collection of the information to enable them to timely and properly report. If court records are maintained electronically, the computer software programs are designed to properly capture the required information for the reports.

This guide discusses required and optional reports and specific requirements of the reports. The goal of this guide is to help clerks understand how to properly report.

PART 1
REPORTS TO THE DEPARTMENT OF PUBLIC SAFETY

A. Transportation Code

Each magistrate or judge of a non-record court and each clerk of a court of record shall keep a record of each case in which a person is charged with a violation of law regulating the operation of vehicles on highways. Sec. 543.201, T.C. Courts are required to report traffic convictions and bail forfeitures on a form or by a data processing method acceptable to DPS. Section 543.202, T.C., requires courts to report the following information:

- the name, address, physical description including race or ethnicity, date of birth, and driver’s license number of the person charged;
• the registration number of the vehicle involved;
• whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;
• the person’s social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver’s license or commercial driver’s learner’s permit;
• the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;
• if conviction is for speeding, court must report speeding 10% above posted limit or if speeding occurred in a school zone;
• whether a search of the vehicle was conducted and whether consent for the search was obtained;
• the plea, the judgment, and whether bail was forfeited;
• the date of the conviction; and
• the amount of the fine or forfeiture.

1. Reporting Driving Safety and Motorcycle Operator Course Dismissals

Defendants may elect to take a driving safety course (DSC) or a motorcycle operator training course (MOC), whichever is applicable, to have certain traffic violations dismissed. Art. 45.0511, C.C.P. When the defendant completes the course and timely submits proof to the court, the court must dismiss the case and report to DPS the date of completion of the course.

2. Reporting Teen Court Dismissals

If a defendant charged with a traffic offense is granted teen court under Article 45.052, C.C.P., the court is required to report the completion date of the teen court program. Art. 45.052(d), C.C.P.

3. Reporting Traffic Cases Dismissed Under Deferred Disposition

The court is prohibited from submitting a record of a dismissal under deferred disposition to DPS unless the judge subsequently adjudicates the defendant’s guilt because the defendant failed to comply with the terms of the deferred. Then the judge must submit the record not later than the 7th day after the date on which the judge adjudicates guilt. Sec. 543.204, T.C.

a. Reporting Convictions Under Section 521.453, T.C.

Section 521.453, T.C., says that a person may not sell, manufacture, distribute, or possess a document that is deceptively similar to a driver’s license or a personal identification certificate issued by DPS unless the document displays the statement “NOT A GOVERNMENT DOCUMENT” diagonally printed clearly and indelibly on both the front and back of the document in solid red capital letters at least one-fourth inch in height.

DPS will automatically suspend a person convicted of this offense upon receiving a report of conviction from the court. Sec. 521.453, T.C.
• Section 521.346, T.C., provides that the period of suspension shall be for not less than 90 days or more than one year.
• The court must report this conviction on DPS form DIC-21. (Used to report any conviction that carries an automatic driver’s license suspension.)

The court in which the person is convicted may require the surrender of all the driver’s licenses held by the person. Sec. 521.347, T.C. If the court requires a defendant to surrender his or her driver’s license, the clerk must send the license with a report of the conviction or final bond forfeiture to DPS by the 10th day after the license is surrendered. Sec. 521.347, T.C.

b. Reporting Subsequent Offenses for Passing a School Bus

On a second or subsequent conviction the court may order the driver’s license of a person convicted of a second or subsequent offense under Section 545.066, T.C. The suspension cannot be for any longer than six months beginning from the date of conviction. The court uses the DIC-15 form to notify DPS of the court order of suspension.

c. Failure to Comply with the Nonresident Violator Compact

Over 40 states entered into the Nonresident Violator Compact of 1977, recognizing that motorists from out-of-state charged with traffic offenses were formerly faced with inequitable options for handling traffic citations, including mandatory posting of a bond, automatic detention, or immediate transport to court, all requiring significant law enforcement resources, as well. The compact seeks compliance with the laws of each state and to allow motorists to receive the same treatment regardless of their state of origin.

The compact requires that the issuing officer of any citation to an out-of-state motorist who has a driver’s license from a compact state may not require a bond, and must be given a citation rather than face full custodial arrest. Sec. 703.002, Art. III(a), T.C. If the motorist then fails to comply with the terms of their promise to appear, the court must then report the failure to DPS. Sec. 703.002, Art. III(c), T.C.

Once the motorist’s home state receives the DPS report, it must notify the defendant and initiate a suspension action. Sec. 703.002, Art. IV(a), T.C. If the suspension is deemed appropriate under that state’s laws, the defendant’s driver’s license will be suspended until satisfactory evidence is presented of the motorist’s compliance. Sec. 703.002, Art. IV(a), T.C. Members of the compact may also request the suspension of the driver’s license of any Texas resident who fails to respond to a citation in the other state’s respective jurisdiction. Ch. 703, T.C. All states are members except Alaska, California, Michigan, Montana, Oregon, and Wisconsin.

i. Procedures

When an out-of-state violator fails to respond to a citation or to pay a fine for a violation, the court reports this to DPS on the six-copy Notice of Failure to Comply form, which includes vital information about the defendant, the court, and the alleged violation. The steps to report non-compliance of an out-of-state violator are as follows:

• mail the original form (first page) to the defendant;
• hold form in file for 15 days to await response from defendant;
• if defendant fails to answer notice, mail second and third pages of the form to DPS;
• retain the fourth, fifth, and sixth pages of the notice in the court file; and
• when the defendant resolves the case; mail the fourth page (defendant’s receipt) to defendant and fifth page (notice of withdrawal of suspension) to DPS.

ii. Statutorily Exempt Violations
Section 703.002, Article III, T.C. says that no action will be taken under the terms of the Nonresident Violator Compact for the following violations:
• moving traffic violations that carry a suspension;
• equipment violations;
• motor carrier violations;
• lease law violations;
• registration law violations;
• offenses which mandate personal appearance;
• size and weight limit violations;
• parking or standing violations; and
• transportation of hazardous material violations.

iii. Time Limit for Reporting
It is important for the court to promptly file these reports because DPS may not transmit a report on any violation if the date of the transmission is more than six months after the date on which the traffic citation was issued. Sec. 703.002, Art. III(f), T.C.

4. Failure to Report
If a judge, magistrate, or clerk fails to submit a traffic conviction report to DPS, he or she may be removed from office for misconduct. Sec. 543.206, T.C. Misconduct of office is any unlawful behavior by a public officer in relation to the duties of his or her office. It includes a failure to act when there is an affirmative duty to act.

5. Time to Report Convictions or Forfeiture of Bail
Courts are required to report the convictions or forfeiture of bail to DPS by the seventh day after the date of the conviction or forfeiture of bail containing the information noted above. Sec. 543.203, T.C. To count the seven days, start with the day after the date of final judgment or when the final judgment of a bond forfeiture was entered. Sec. 311.014, G.C.

6. Methods of Reporting
The report can be made by different methods.
• If a court reports manually, the court can report by submitting the information on:
  – DPS form DR-18,
  – a legible duplicate copy of the citation, or
- a computer list.

- If the court reports electronically, the court can submit the report by diskette or email, or other acceptable form.

- Courts utilizing a case management software system may choose to extract reports to a file and then upload them to a FTP (File Transfer Protocol) website where the information may be downloaded securely by DPS.

B. **Alcoholic Beverage Code**

Courts are required to report to DPS certain information regarding Alcoholic Beverage Code offenses committed by minors. The Alcoholic Beverage Code defines a minor as a person under the age of 21.

The information maintained by DPS regarding Alcoholic Beverage Code offenses reported by courts is confidential and may not be released, except to law enforcement agencies and to courts to enable them to carry out their official duties. Secs. 106.117(c) and (d), A.B.C.

1. **Reporting Convictions**

Upon conviction, the judge is required to order in the judgment, the suspension or denial of issuance of the minor’s driver’s license for the following Alcoholic Beverage Code offenses:

- Purchase of Alcohol by a Minor (Sec. 106.02);
- Attempt to Purchase Alcohol by a Minor (Sec. 106.025);
- Consumption of Alcohol by a Minor (Sec. 106.04);
- Possession of Alcohol by a Minor (Sec. 106.05); and
- Misrepresentation of Age by a Minor (Sec. 106.07).

The suspension or denial is effective the 11th day after the judgment. The court’s report of the suspension or denial of issuance of driver’s license notifies DPS of the conviction. The court must use the DPS form DIC-15 for the report. The length of suspension or denial is for:

- 30 days for a first conviction;
- 60 days for a second conviction (only if the complaint is enhanced to allege that there was a prior conviction); and
- 180 days for a third or subsequent conviction. If a defendant is under 17 years of age, the third conviction must be transferred to juvenile court unless the city has a juvenile case manager. Art. 45.056, C.C.P. In addition, municipal court does not have jurisdiction over third and subsequent Alcoholic Beverage Code offenses committed by minors age 17 and over because the penalty includes confinement in jail. Sec. 106.71, A.B.C.

2. **Failure to Complete Alcohol Awareness Program or Community Service**

The judge is required to order that a defendant attend an alcohol awareness program and complete a certain number of community service hours for the following offenses:

- Purchase of Alcohol by a Minor (Sec. 106.02);
- Attempt to Purchase Alcohol by a Minor (Sec. 106.025);
- Consumption of Alcohol by a Minor (Sec. 106.04);
- Driving Under the Influence of Alcohol by Minor (DUI) (Sec. 106.041);
- Possession of Alcohol by a Minor (Sec. 106.05); and
- Misrepresentation of Age by a Minor (Sec. 106.07).

If the defendant fails to show evidence of completion of the alcohol awareness program or the performance of the community service:

- the judge is required to order DPS to suspend or deny issuance of the driver’s license for a period of time not to exceed six months (Sec. 106.115(d), A.B.C.); and
- the clerk reports the judge’s order to DPS using form DIC-15, which notifies DPS of the beginning and ending of the suspension or denial of issuance period. Sec. 521.345, T.C.

3. Orders of Deferred Disposition for an Alcoholic Beverage Code Offense

Courts must report to DPS an Alcoholic Beverage Code offense deferred under Article 45.051, C.C.P. Sec. 106.117(a)(3), A.B.C.

- The report must be submitted to DPS when the court grants the deferred. (If the defendant fails to complete the terms of the deferral, the court, upon entering a conviction, orders the defendant’s driver’s license suspended using the DIC-15. The court, however, does not have to notify DPS of this suspension if the defendant failed to complete the alcohol awareness course during the deferral period because the court is required to order DPS to suspend the defendant’s driver’s license for a period not to exceed 180 days.)
- Notice of the deferred disposition must be in a form prescribed by DPS and must contain the driver’s license number, if any, of the defendant. Sec. 106.117(c), A.B.C.
- If the defendant fails to complete the alcohol awareness program, a mandatory condition of deferred disposition, the court must order DPS to suspend or deny issuance of the driver’s license and report this order to DPS on the DIC-15 form.

4. Acquittals of Driving Under the Influence

Section 106.117(a)(4), A.B.C., requires courts to report to DPS the acquittal of the offense of driving under the influence of alcohol (DUI) by a minor. The court must submit this report on the DPS form DIC-15.

C. Penal Code

1. Public Intoxication by a Minor

When a person under the age of 21 is charged with the offense of public intoxication, the court must follow the punishment rules required when a person is convicted of committing an Alcoholic Beverage Code offense. Sec. 49.02(e), P.C.

The court must:

- set the fine at no more than $500;
• order DPS to suspend or deny issuance of the driver’s license;
• require community service; and
• require attendance at an alcohol awareness program.

If the defendant does not complete the alcohol awareness program or perform the community service, the court must order DPS to suspend or deny issuance of a driver’s license for a period not to exceed six months. Secs. 106.071 and 106.115, A.B.C. This suspension or denial of issuance of driver’s license is handled in the same manner as Alcoholic Beverage Code convictions. The following lists the procedures for reporting:

• The suspension takes effect on the 11th day after the date the minor is convicted (date judgment is entered).
• Clerks should submit the report as soon as possible after the judgment date.
• If the conviction is for a first offense, the suspension or denial of issuance of a driver’s license is for 30 days.
• If the charge is filed as a second offense, then the conviction is a second conviction and the suspension or denial is for 60 days.
• To report to DPS the order of driver’s license suspension required upon conviction and the order of driver’s license suspension for failure to complete the alcohol awareness program, courts must use the DIC-15 form.

2. Possession of Alcoholic Beverage in Motor Vehicle

The penal offense of possession of alcoholic beverage in motor vehicle in Section 49.031, P.C., is commonly referred to as “open container.” Although this offense is in the Penal Code, it is considered a traffic offense. Courts are required to report convictions of this offense to DPS. Courts that report manually can submit the conviction report on a copy of the citation with the conviction information noted or use the DPS form DR-18 and complete it like any other traffic conviction.

3. Theft of Gasoline

Municipal court has jurisdiction over theft under Section 31.03, P.C., if the pecuniary loss is less than $50 (not withstanding any enhancements). The court must report all convictions of theft of gasoline to DPS. After DPS receives a report of a second conviction of theft of gasoline, DPS will automatically suspend the defendant’s driver’s license. Sec. 521.349, T.C.

• The conviction is reported in the same manner as traffic convictions and should be reported as soon as possible after the conviction. If a court reports manually, the court can submit the report by one of the following methods:
  – the DPS form DR-18,
  – a copy of the citation, or
  – by computer list. (If the court reports electronically, the report can be submitted by diskette, FTP, or e-mail.)

Section 521.349 of the Transportation Code authorizes DPS to automatically suspend the defendant’s driver’s license for 180 days from the date of final conviction when there is a special
affirmative finding. In the event the defendant’s license is revoked or the defendant does not have a driver’s license, the period of license denial is 180 days after the date the person applies for reinstatement or issuance of a driver’s license. If the defendant has previously been denied a license under this section or had a license suspended, the period of suspension is one year from the date of a final conviction. The period of license denial is one year after the date the person applies to DPS for reinstatement or issuance of a driver’s license.

D. Health and Safety Code – Failure to Complete Tobacco Awareness Program

The court must order a person under the age of 18 convicted of a tobacco offense to complete a tobacco awareness program. Sec. 161.253, H.S.C. Tobacco offenses include possession, purchase, consumption, or receipt of cigarettes or tobacco products. If the defendant fails to complete the tobacco awareness program or tobacco related community service, the court is required to order DPS to suspend or deny issuance of a driver’s license for a period not to exceed 180 days. Sec. 161.254, H.S.C.

The court uses DPS form DIC-15 to report the failure to complete the tobacco awareness program. Although the statute does not provide how long the court has to submit the DIC-15 form, it should be submitted as soon as possible after the judge orders the suspension so that DPS can immediately start the suspension process.

E. Education Code - Failure to Attend School

Article 45.054, C.C.P., governing the offense of failure to attend school, permits the court to order DPS to suspend or deny issuance of a driver’s license or permit. Art. 45.054(f), C.C.P.

- The suspension or denial of issuance of a driver’s license and permit cannot exceed 365 days. Art. 45.054(f), C.C.P.
- The court must use DPS form DIC-15 to report the order of driver’s license suspension.
- The report should be submitted as soon as possible after the order of suspension or denial.

F. Persons Under 17: Failure to Appear, Pay, or Violation of a Court Order

When a person under the age of 17 fails to pay a fine and/or court costs, violates a court order, or fails to appear, the municipal court conducts a contempt hearing. If the court finds the juvenile in contempt, the court may order DPS to suspend or deny issuance of the driver’s license as a sanction of the contempt. Art. 45.050(c)(2), C.C.P.

- When the court reports the order, DPS shall suspend or deny issuance of a driver’s license until the child fully complies. Secs. 521.201(8), 521.294(6), and 521.3451, T.C.
- The report of the suspension or denial of issuance of driver’s license is made on DPS form DIC-81. Final dispositions of the case are also reported to DPS on the DIC-81 form.
- A minor whose license is suspended or revoked under this statute must pay a $100 reinstatement fee to DPS. Sec. 521.313, T.C. The defendant, however, cannot get his
or her driver’s license until the court has sent in a report that the defendant has made a final disposition on the case.

G. **New Trial**

When a defendant requests a new trial, the court does not report a conviction or order of driver’s license suspension or denial unless the defendant is not granted the new trial and does not appeal. If a new trial is granted, the court reports upon conviction at the second trial when the defendant does not appeal. The report is submitted in the same manner as if no new trial had been granted.

H. **Appeals**

When a defendant appeals his or her conviction, the municipal court does not report the conviction or driver’s license suspension because the municipal court judgment is not a final conviction. In non-record courts, if the defendant is convicted at the county level, the county court reports the conviction to DPS. In municipal courts of record, if the judgment is affirmed on appeal, the municipal court reports the conviction.

I. **Chart of Forms**

<table>
<thead>
<tr>
<th></th>
<th>DIC-15</th>
<th>DIC-81</th>
<th>DR-18</th>
<th>DIC-21</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Alcoholic Beverage Code</strong></td>
<td>Chapter 106 (Minors Under Age 21)</td>
<td>Under Age 17</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Conviction: driver’s license suspension or denial of driver’s license (Sec. 106.071, A.B.C.).</td>
<td>• Failure to appear: DPS suspends or denies driver’s license (Sec. 521.3452, T.C.).</td>
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<tr>
<td></td>
<td>• DUI acquittal (Sec. 106.117(4), A.B.C.).</td>
<td>• Failure to pay: court conducts a contempt hearing under Art. 45.050, C.C.P., and orders driver’s license suspended or denied as a sanction; clerk notifies DPS of order.</td>
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<td>• Deferred disposition order (Sec. 106/117(3), A.B.C.).</td>
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<td>• Failure to complete alcohol awareness program: must order suspension or denial of driver’s license (Sec. 106.115(c) and (d), A.B.C.).</td>
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<td>• Failure to complete community service: must order suspension or denial of driver’s license (Sec. 106.115(c) and (d), A.B.C.).</td>
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<td><strong>Education Code</strong></td>
<td>Failure to Attend School (Sec. 25.094, E.C., Art. 45.054(f), C.C.P.)</td>
<td>Under Age 17</td>
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<tr>
<td><strong>Health and Safety Code</strong></td>
<td>Possession, Purchase, Consumption, or Receipt of Cigarettes or Tobacco</td>
<td>Under Age 17</td>
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Failure to complete the tobacco awareness program or tobacco related community service: court must order DPS to suspend or deny issuance of driver’s license (Sec. 161.254, H.S.C).

- Failure to appear: DPS suspends or denies driver’s license (Sec. 521.3452, T.C.).
- Failure to pay: court conducts a contempt hearing under Art. 45.050, C.C.P., and orders driver’s license suspended or denied as a sanction; clerk notifies DPS of order.

### Penal Code

<table>
<thead>
<tr>
<th>Public Intoxication - Sec. 49.02(e), P.C.</th>
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<tbody>
<tr>
<td>- Driver’s license suspensions or denial of driver’s license on convictions.</td>
</tr>
<tr>
<td>- Orders of deferred disposition.</td>
</tr>
<tr>
<td>- Failure to complete alcohol awareness program: court must order suspension or denial of driver’s license.</td>
</tr>
<tr>
<td>- Failure to complete community service: court must order suspension or denial of driver’s license.</td>
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| Motor Vehicle Fuel Theft (Sec. 31.03, P.C.); DPS code 3206. |
| Open Container (Sec. 49.031, P.C.); DPS code 3323. |

<table>
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<tr>
<th>Transportation Code</th>
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<tr>
<td>Passing School Bus (Sec. 545.066(d), T.C.)</td>
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</table>

| If reporting manually, may also use back of citation. |
| - All traffic convictions and final bond forfeitures including city traffic ordinances (Sec. 543.201, T.C.). |
| - Dismissals of DSC or MOC (Art. 45.0511(c), C.C.P.) |

| Convictions of offenses under Sec. 521.453, T.C. (Driver’s license suspension is not less than 90 days or more than one year. Sec. 521.346, T.C.) |

### J. Information Reported on Forms

1. **DIC-15**

Information reported on the DIC-15 form includes the following:
- name, date of birth, race, and gender;
- driver’s license number, identification number, or social security number;
- address;
- specify:
– for alcohol offenses, including public intoxication, the failure to complete the alcohol awareness program or community service;
– for tobacco offenses, the failure to complete the tobacco awareness program;

• date of offense;
• cause number; and
• dates of the suspension:
  – in the case of a conviction of an alcohol offense including public intoxication, since the suspension is automatically effective on the 11th day after judgment, report the 11th day after the judgment as the beginning date and report the ending date of the suspension as noted in the judgment;
  – for second or subsequent passing a school bus offenses;
  – in the case of failure to complete an alcohol awareness program or community service for an alcohol offense, or a tobacco awareness program, report the suspension dates (not to exceed 180 days) noted in the court order; and
  – in the case of failure to attend school, report the dates of the driver’s license suspension ordered by the court as a sanction.

2. DIC-81

To report a failure to appear or contempt for failure to pay, or violation of a court order under Article 45.050, C.C.P. for a person under the age of 17, courts use the DIC-81 form. If the defendant appears in court and complies with all court orders, use the DIC-81 form to report the final disposition.

The following information is required to be reported:

• name, date of birth, race, and gender;
• driver’s license number, identification number, or social security number;
• address;
• offense committed;
• date of offense;
• whether it is failure to appear, contempt for failure to pay, or violation of a court order under Article 45.050, C.C.P.; and
• upon final disposition, date of final disposition.

3. DR-18

Section 543.202, T.C., requires reporting of any traffic conviction, as well as convictions of the penal offense of possession of an alcoholic beverage in a motor vehicle under Section 49.031, or final forfeitures of bonds filed for a traffic offense.

The information must contain the following:

• name and address of the defendant;
• physical description, including race or ethnicity (“Race or ethnicity” means a particular descent, such as Caucasian, African, Hispanic, Asian, or Native American);
• date of birth;
• defendant’s driver’s license number, if any, and type;
• whether the driver’s license is a commercial driver’s license;
• registration number of the vehicle involved;
• specify:
  – if conviction is for speeding, court must report if speeding is 10% above posted limit;
  – if conviction is for no driver’s license, court must report if driver’s license is a Class C, Class B, Class A, or a Class M license;
• whether a search of the vehicle was conducted and whether consent for the search was obtained;
• date and nature of offense;
• date of hearing or trial;
• plea;
• judgment, whether bail was forfeited (final forfeiture), the date of completion of a driving safety course, or date of completion of teen court; and
• amount of fine or forfeiture of bail.

Section 543.202, T.C., requires the DR-18 report of traffic convictions of commercial drivers operating a commercial motor vehicle to contain the following additional information:
• commercial driver’s license number and social security number, if available;
• information that the vehicle was a commercial motor vehicle;
• whether the vehicle was involved in the transporting of hazardous materials; and
• date and nature of offense, including whether the offense was a serious traffic offense as defined in Section 522.003(25), T.C. (arising from excessive speeding 15 mph or more over the posted limit; reckless driving; violations of state and local traffic laws other than parking, weight, or vehicle defect violations arising in connection with a fatal accident; improper or erratic lane change; or following too closely).

4. DIC-21

When a defendant is convicted of an offense charged under Section 521.453, T.C., the court must report this conviction to DPS on the DIC-21 form. This form is used to report any offense that carries an automatic driver’s license suspension upon conviction.
Information that must be reported on DIC-21 includes the following:
• name;
• address of defendant;
• social security number;
• race;
• gender;
• offense committed;
• date offense committed;
• conviction date;
• beginning and ending dates of suspension (Court sets period of suspension for not less than 90 days or more than one year. If the court does not set the period, the department is required to suspend the license for one year. Sec. 521.346, T.C.);
• name and title of person certifying information on report;
• court address;
• docket number; and
• city and county.

K.  Addresses to Send Reports

1.  Automated Reports
Send automated reports to:

Texas Department of Public Safety
Driver Records/Data Submission
P.O. Box 4087
Austin, Texas 78773-0364

The e-mail address for automated reports is: www.data.submission@typs.state.tx.us.

2.  Manual Reports
Send manual reports to:

Texas Department of Public Safety
Driver Records/Ticket Verification
P.O. Box 4087
Austin, Texas 78773-0361

3.  To Correct an Error
A DPS error reporting form may be sent to the above address to correct an error. For failure to maintain financial responsibility errors, DPS must have the correction request in writing.

True or False

Q. 1.  Courts are required to keep and maintain certain information on defendants charged with traffic violations. _____

Q. 2.  Courts must report nonresident defendants convicted of traffic violations within six months. _____

Q. 3.  Courts must report the social security number of any defendant convicted of a traffic offense. _____
Q. 4. Courts must report to DPS forfeitures of bail on defendants charged with traffic violations even though the defendant has not been convicted. _____

Q. 5. Courts must report dismissals when a defendant charged with a traffic offense completes deferred disposition. _____

Q. 6. If a court fails to report traffic convictions to DPS, the judge or clerk could be removed from office for misconduct. _____

Q. 7. When a defendant is convicted of an Alcoholic Beverage Code offense, what information must the court report to DPS? ________________________________

Q. 8. When is a suspension or denial of a driver’s license for a conviction of an Alcoholic Beverage Code offense effective? ________________________________

Q. 9. What DPS form does the court use to report a conviction for an Alcoholic Beverage Code offense? ________________________________

Q. 10. What is the penalty when a defendant over the age of 17 is charged a third time after two prior convictions for the offense of possession of an alcoholic beverage by a minor? ________________________________

Q. 11. What is the maximum driver’s license suspension length a judge can order when a defendant fails to complete an alcohol awareness program? ________________________________

Q. 12. What form is the court required to use to notify DPS of the court’s order suspending the driver’s license of a defendant who failed to complete the alcohol awareness program? ________________________________

Q. 13. When can the court order a driver’s license suspension for a defendant under 17 who fails to pay a fine and costs? ________________________________

Q. 14. When a defendant charged with an Alcoholic Beverage Code offense is granted deferred disposition, what must the court report to DPS? ________________________________

Q. 15. If a defendant is found not guilty of the offense of driving under the influence of alcohol by a minor, what is the court required to report to DPS? ________________________________

Q. 16. What is the penalty for a defendant under the age of 21 convicted of the offense of public intoxication? ________________________________

Q. 17. Although the offense of possession of an alcoholic beverage in motor vehicle is a Penal Code offense, what is the court required to report to DPS? ________________________________

Q. 18. What is the court required to report for conviction of theft of gasoline? ___________
Q. 19. For what offenses must a defendant complete a tobacco awareness program? ______

Q. 20. If a defendant does not complete a tobacco awareness program, what is the court required to order DPS to do? ____________________________

Q. 21. Who is required to keep a record of defendants charged with traffic offenses? ______

Q. 22. Who may keep the records of defendants charged with traffic offenses? ______

True and False
Q. 23. The court is required to send notice of all traffic convictions to DPS. _____

Q. 24. The court must notify DPS of convictions for city ordinance traffic offenses. _____

Q. 25. The court must report final judgments on bond forfeitures for traffic offenses. _____

Q. 26. When clerks receive payments in the office or through the mail, they must give the judge those cases to enter the judgment. _____

Q. 27. When a defendant is granted a time payment plan to pay a fine, the court waits until the final payment before reporting the conviction to the DPS. _____

Q. 28. When a defendant discharges a traffic fine by community service, the court does not report that traffic conviction to DPS because the court did not collect any money. _____

End True/False

Q. 29. List information to be reported to DPS on drivers of CMVs. ______________________

Q. 30. Failure to report traffic convictions to the DPS could constitute what offense? _____

Q. 31. When a defendant is convicted of an offense that requires automatic driver’s license suspension, what may the court do with the defendant’s driver’s license? ______

Q. 32. For offenses that require automatic driver’s license suspension, what is the minimum and maximum amount of time the court may suspend the license? _________________

Q. 33. When a defendant is convicted of an offense that requires an automatic driver’s license suspension, what form must the court use to report that conviction? _________________

Q. 34. When a court reports to the DPS a defendant’s completion of a driving safety course, what information must the court report? _________________

Q. 35. What must the court report when a defendant charged with a traffic offense completes teen court? ____________________________
| Q. 36. | What does a court do when a defendant under the age of 17 fails to appear or fails to pay a fine for a traffic offense? |
| Q. 37. | If an out-of-state defendant fails to appear, what can the court do? |
| Q. 38. | If an out-of-state defendant resolves the case with the court, what is the court required to do? |
| Q. 39. | List violations committed by an out-of-state violator that the court may not report under the Nonresident Violator Compact. |
| Q. 40. | Why should clerks report an out-of-state violator as soon as they fail to appear or fail to pay? |
| Q. 41. | When a court grants deferred disposition to a defendant charged with a traffic offense, what does the court report to DPS? |
| Q. 42. | If a court suspends or denies issuance of a defendant’s driver’s license for a conviction for the offense of failure to attend school, for how long may the suspension or denial be? |
| Q. 43. | What happens if a defendant appeals his or her traffic conviction? |
| Q. 44. | When a defendant convicted of a traffic offense is granted a new trial, when does a court report a conviction? |
| Q. 45. | When a defendant operating a commercial motor vehicle is convicted, what additional information must be reported to DPS? |
| Q. 46. | Which offense is reported on the DIC-21 form? |

### PART 2

**REPORTS TO THE TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE**

Section 106.116, A.B.C., requires courts to furnish upon request a notice of conviction of Alcoholic Beverage Code offenses to the Texas Commission on Alcohol and Drug Abuse (TCADA). These offenses include:

- Purchase of Alcohol by a Minor (Sec. 106.02);
- Attempt to Purchase Alcohol by a Minor (Sec. 106.025);
- Consumption of Alcohol by a Minor (Sec. 106.04);
- Driving Under the Influence of Alcohol by a Minor (Sec. 106.041);
- Possession of Alcohol by a Minor (Sec. 106.05); and
• Misrepresentation of Age by a Minor (Sec. 106.07).

The report must be in the form approved by the TCADA (Sec. 106.116, A.B.C.). If TCADA wants to obtain information from a court, it will send a request to the court with a copy of the form in which to submit the information.

Q. 47. If the Texas Commission on Alcohol and Drug Abuse requests a report from the municipal court, what information is the clerk required to provide? ______________

PART 3
REPORT TO THE OFFICE OF COURT ADMINISTRATION

The Office of Court Administration (OCA) is a state agency established in 1977 under the direction and supervision of the Supreme Court. Its mission is to provide administrative assistance and technical support to all of the courts in Texas. The Texas Supreme Court appoints the Administrative Director of OCA who also serves as the Executive Director of the Texas Judicial Council. Secs. 72.011 and 72.012, G.C.

The Texas Judicial Council is composed of 16 ex officio and six appointed members, and is the policy-making body for the state judiciary. The Council uses the information reported by the courts to the Office of Court Administration to study methods to simplify judicial procedures, expedite court business, and better administer justice. It examines the work accomplished by the courts and submits recommendations for improvement of the system to the Legislature, the Governor, and the Supreme Court.

A. Notification of City Appointments and Elections

The city secretary is required to notify the Texas Judicial Council of the name of each person who is elected or appointed as mayor, municipal judge, and clerk of municipal court within 30 days after the date of the person’s election or appointment. Section 22.073(c) of the Local Government Code was repealed in the 82nd Legislative Session and replaced with Section 29.013 of the Government Code. The new section keeps in place the requirement that the city secretary notify the Judicial Council of the above appointments within 30 days. The new statute also requires that the city secretary or record keeper notify the Texas Judicial Council of any vacancies in those offices within 30 days.

B. Official Municipal Court Monthly Report

It is a duty of each judge, clerk, or other court official to report statistical information pertaining to the business transacted in the court to OCA. If an official fails to submit the report, OCA may request the information from the official. If, after a reasonable amount of time, the official does not supply the information, he or she is presumed to have willfully refused the request. Sec. 71.035, G.C.

At that time, the Attorney General may file and prosecute an action for mandamus on behalf of the Texas Judicial Council. A writ of mandamus is an order from a court of superior jurisdiction compelling the lower court judge or clerk to perform a particular act that he or she has a duty to
do. In this instance, the writ would order the court to submit the monthly report. All courts, except the Supreme Court and the Court of Criminal Appeals, must submit a monthly report.

1. **Time Requirement**

   Municipal judges or clerks must submit to OCA the court activity report for each month by the 20\(^{th}\) day following the end of the month being reported. Secs. 171.1 and 171.2, T.A.C.

2. **Monthly Report Form**

   Courts use the *Official Municipal Court Monthly Report* form provided by OCA to report the activity of the court every one-month period. The report requires the court to identify the name of the municipality, presiding judge, and court clerk along with the mailing address of the court and the name and office telephone number of the person who actually prepares the report. For copies of the report and reporting guidelines, contact OCA at 512.463.1625. Call 512.463.1642 to get login information for reporting online.

3. **Form of the Report**

   The report does not require the court to report every activity, but is designed to report information on the primary activity of the court as defined by OCA. A revised form has recently been implemented as of September 2011. If you have questions about the new form, contact the OCA office. TMCEC has several archived webinars presented by OCA personnel concerning the new form. Those archived webinars can be accessed on at TMCEC’s online learning center. The OCA publishes a booklet of specific instructions for completing the report. Clerks can obtain the instruction booklet by calling 512.463.1625 or by visiting www.courts.state.tx.us/oca.

<table>
<thead>
<tr>
<th>Q. 48.</th>
<th>What is the Office of Court Administration (OCA)?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>____________________________________________</td>
</tr>
<tr>
<td>Q. 49.</td>
<td>What is the mission of OCA?</td>
</tr>
<tr>
<td></td>
<td>____________________________________________</td>
</tr>
<tr>
<td>Q. 50.</td>
<td>What does the Texas Judicial Council do?</td>
</tr>
<tr>
<td></td>
<td>____________________________________________</td>
</tr>
<tr>
<td>Q. 51.</td>
<td>List the names of offices that the city secretary is required to report to the Texas Judicial Council when a person is either elected or appointed to the office.</td>
</tr>
<tr>
<td></td>
<td>____________________________________________</td>
</tr>
<tr>
<td>Q. 52.</td>
<td>How long does the city secretary have to make the report?</td>
</tr>
<tr>
<td></td>
<td>____________________________________________</td>
</tr>
<tr>
<td>Q. 53.</td>
<td>When is a person presumed to have willfully refused to supply information to the Office of Court Administration?</td>
</tr>
<tr>
<td></td>
<td>____________________________________________</td>
</tr>
<tr>
<td>Q. 54.</td>
<td>How is the duty to supply information to the Office of Court Administration enforced?</td>
</tr>
<tr>
<td></td>
<td>____________________________________________</td>
</tr>
<tr>
<td>Q. 55.</td>
<td>Which courts are not required to submit monthly statistical reports to OCA?</td>
</tr>
<tr>
<td></td>
<td>____________________________________________</td>
</tr>
</tbody>
</table>
Q. 56. How often is court activity reported to OCA? ____________________________
Q. 57. What identifying information must the court place on the form? ________________
Q. 58. If the court has no activity, how does the court report that fact? ____________________

PART 4
REPORTS TO STATE COMPTROLLER OF PUBLIC ACCOUNTS

State statutes require courts to collect court costs and fees from defendants convicted of fine-only offenses. Some of the costs and fees are retained by the city; some are required to be remitted to the State. City councils do not have general authority to adopt fees or court costs, unless expressly authorized to do so by statute. Art. 45.203(d), C.C.P. Likewise, judges do not have authority to impose a cost or fee without any legal basis.

Funds that are collected without authority are considered by the State to be unjust enrichment. If the State determines that costs or fees are collected without authority, the Comptroller of Public Accounts requires the money to be returned to the defendants, or if the court is unable to locate the defendants, to turn the money over to the State (to the unclaimed property division of the Comptroller’s Office).

State statutes provide authority in five instances for municipalities to adopt ordinances for the collection of court costs. Article 45.203, C.C.P., authorizes cities to establish a fee by ordinance, not to exceed $25. for executing certain warrants. There is also authority to create by ordinance a building security fee, a technology fee, a juvenile case manager fee, and service fees for collection of fines, costs, and bonds by credit card or electronically.

For more information about the assessment and collection of court costs and fees, call the Local Government Assistance Division of the State Comptroller’s Office toll free at 800.531.5441, extension 34679; or directly at 512.463.4679. For information on reporting, contact the Revenue Accounting Division toll free at 800.531.5441, extension 34276; or directly at 512.463.4276.

A. General Information

1. Definition of Conviction

For the purpose of collecting consolidated court costs, Section 133.101, L.G.C., defines conviction in a case as when:

- a judgment, a sentence, or both a judgment and a sentence are imposed on the defendant;
- the person receives community supervision, deferred adjudication, or deferred disposition; or
- the court defers final disposition of the case or imposition of the judgment and sentence.
This definition of “conviction” can be confusing, as court personnel know that the successful completion of a deferred disposition case results in a dismissal of the case and not a conviction; however, for the purpose of collecting court costs, a deferred dismissal is not a conviction.

2. **Time to Report**

Court costs reports must be filed with the State Comptroller of Public Accounts by the last day of the month following each calendar quarter. If the treasurer does not collect any fees during a calendar quarter, the treasurer must still file a report in the regular manner and report that no fees were collected. Sec. 133.055(b), L.G.C.

For fees collected for convictions of offenses committed on or after January 1, 2004, a municipality or county shall report the fees collected for a calendar quarter categorized according to the class of offense. Sec. 133.0569(b), L.G.C.

3. **Accrued Interest and Handling Fee**

Cities may maintain court costs and fees in an interest bearing account. If reported timely, the city may keep the interest as well as any applicable handling fee. The handling fee is 10% of the Consolidated Fee, State Judicial Supplement Fee, and State Jury Reimbursement Fee; and 5% of the State Traffic Fine.

Under Section 133.058, L.G.C., the city may retain 10% of any collected fee reported timely. This is a general statute that would govern any fee which does not explicitly provide for a handling fee.

If a city fails to report timely, the city must remit 100% of the court costs collected, including handling fees and interest. Sec. 133.055, L.G.C.

4. **Record Keeping**

Although courts are not required to have a separate bank account for court costs, separate records must be kept of collected funds. Costs to be remitted to the State as well as certain local court costs are dedicated and cannot be co-mingled with the city’s general revenue.

5. **Remitting Electronically**

Some cities are required to remit court costs and fees electronically. If $250,000 or more in court costs and fees are remitted to the Comptroller in a state fiscal year (September through August), payments of $10,000 or more must be made by electronic funds transfer in the following fiscal year. When a city is affected by this rule, the Comptroller must notify the city no less than 60 days before the first payment is required to be made. Sec. 404.095, G.C., and Sec. 3.9, Part I, of Title 34, T.A.C. Although a non-qualifying city may not be required to remit electronically, it may voluntarily remit in this manner, but the reporting must still be done manually.

6. **Allocation and Proration**

When judges allow defendants to pay fines and court costs through an installment plan, clerks must ensure proper reporting and remittance of the court costs and fees. The State Comptroller of Public Accounts requires courts to allocate money collected first to court costs and fees, then to fines. They rely on Attorney General Opinion M-1076 (1972). This opinion was reaffirmed in
February 2004, in Opinion No. GA-0147, holding that money collected by a court must be allocated to all court costs before the fine.

When a court collects all costs owed during one quarter even though they were paid through installments, the clerk reports all the costs on that quarter’s report. If the court collects only part of the costs in a reporting quarter, the court must prorate the costs collected among all the court costs, including the local court costs, and report the State’s portion on the quarterly report. If the court does not prorate and report, the city must forfeit its handling fees.

To prorate, the court should use the following formula:

\[
\frac{\text{Amount collected}}{\text{Total costs/fees}} = \text{Percentage to apply to each cost/fee}
\]

The following is an example of how to use the formula: a defendant convicted of the offense of speeding is assessed a fine of $175 and court costs of $90.00, but only pays $45.00.

<table>
<thead>
<tr>
<th>Percentage to apply</th>
<th>Total costs/fees</th>
<th>Cost/fee</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>50%</td>
<td>$45.00</td>
<td>CF</td>
<td>20.00</td>
</tr>
<tr>
<td>50%</td>
<td>$90.00</td>
<td>STF</td>
<td>15.00</td>
</tr>
<tr>
<td>50%</td>
<td>$90.00</td>
<td>SJRF</td>
<td>3.00</td>
</tr>
<tr>
<td>50%</td>
<td>$90.00</td>
<td>SJSF</td>
<td>2.00</td>
</tr>
<tr>
<td>50%</td>
<td>$90.00</td>
<td>IDF</td>
<td>1.00</td>
</tr>
<tr>
<td>56%</td>
<td>$90.00</td>
<td>AF</td>
<td>2.50</td>
</tr>
<tr>
<td>56%</td>
<td>$90.00</td>
<td>TFC</td>
<td>1.50</td>
</tr>
</tbody>
</table>

In the example, the arrest fee and the local traffic fund fee, which stay with the city, are included in the proration. If the court assesses other local fees such as the $3 building security fee or the $50 warrant fee, the proration should also include those fees.

7. **Community Service Credit**

A judge may require a defendant to discharge fines and court costs by performing community service. If the offense occurs on or after January 1, 2004, the court credits no less than $50 toward the fine for every eight hours of community service performed. The judge may grant more than $50 for every eight hours of community service performed, but may not grant less than the $50. Art. 45.049, C.C.P.

If a defendant discharges the total amount due the court, including fine and court costs, by community service, the court does not have to remit to the Comptroller’s Office money that it did not collect. If the defendant discharges only part of the total amount due by community service and pays money for part of the judgment, the community service credit goes first to the fine and then to court costs. Any money collected must be credited and allocated first to court costs. Tex. Atty. Gen. Op. M-1076 (1972).
8. **Jail-Time Credit**

A judge must credit a defendant for time served in jail from the time of arrest to conviction and for time served after conviction. Art. 45.041(c), C.C.P. The rate of credit is not less than $50 for a period of time specified in the judgment. “Period of time” is defined to mean not less than eight hours or more than 24 hours. Arts. 45.041 and 45.048, C.C.P.

As custodians of the records, court clerks are responsible for properly recording jail-time credit. Jail-time credit may either discharge the total fine and costs owed, or just satisfy a portion of the fine and costs. If a defendant does not pay any money to the court because the defendant had sufficient jail-time credit for both fine and court costs, the Office of Public Comptroller does not require the court to remit court costs that were not collected in money. However, if the jail credit does not discharge the total amount owed by the defendant, any actual money collected must be credited first to court costs. Tex. Atty. Gen. Op. M-1076 (1972).

9. **Cash Bond Forfeiture for Fine and Costs**

A judge may enter a judgment of conviction and forfeit a cash bond to satisfy a defendant’s fine and costs if the defendant has posted a cash bond, entered a written and signed plea of nolo contendere and a waiver of jury trial and fails to appear. Art. 45.044, C.C.P. The court must immediately notify the defendant in writing of the judgment, stating that the forfeiture satisfies the defendant’s fine and costs.

The defendant has a right to request a new trial not later than the 10th day after the date of the judgment. If the defendant does not request a new trial, the judgment becomes final.

If the conviction is for a traffic offense, the court must report the conviction to DPS. Since there is a conviction, court costs must be paid to the State. When the defendant has been in jail, the defendant must be given jail credit if applicable. If the credit satisfies all of the fine and costs, the court must refund the bond. If the jail credit does not completely satisfy the fine and costs, any money retained by the court from the bond would be allocated to the court costs first.

10. **Bond Forfeiture**

Although non-Chapter 45 bond forfeitures are considered criminal, the Rules of Civil Procedure apply. The bond forfeiture lawsuit is initiated by a declaration of the forfeiture and entry of a judgment nisi. Ch. 22, C.C.P. The court is required to issue a capias for the defendant. Art. 23.05, C.C.P. If there is a final judgment for the State, the forfeited bond stays with the city. Because there is no criminal conviction, there are no court costs due to the State. If the underlying offense for a bond forfeiture is a traffic offense, the court must report the final forfeiture on the traffic offense as if it were a conviction. For detailed information on bond forfeitures, see TMCEC Level II study Guide, Bond Forfeitures.

11. **Court Costs for Deferred Disposition**

When deferred disposition is granted by the judge, the judge may immediately collect court costs. Art. 45.051(a), C.C.P. As an alternative, the judge may allow a defendant to enter into an agreement for payment of court costs in installments during the defendant’s period of probation, require the defendant to discharge the payment of the court costs by performing community
service, or require both payment of the court costs in installments and performance of community service. Art. 45.051(a-1), C.C.P.

If the defendant complies, the court must dismiss the case. If the court ordered a special expense fee, this fee is a local fee and may be used for any lawful purpose designated by the city. If the defendant fails to comply with the terms of the deferral, the court assesses the fine.

12. **Court Costs for Driving Safety Course**

Court costs must be collected when the court grants the request to take a driving safety course under Article 45.0511, C.C.P. The court may also collect a non-refundable $10 administrative fee. Art. 45.0511(f), C.C.P. If a driving safety course is granted under Subsection (d) of Article 45.0511 (the discretionary provision), the court may, under Subsection (f)(2) of 45.0511, assess a special non-refundable expense fee not to exceed the maximum possible amount of the fine that could have been imposed.

13. **Court Costs on Appeals**

When a defendant files an appeal bond, all further proceedings in a case cease. Art. 45.044, C.C.P. In a non-record court when a conviction is appealed, the municipal court judgment is nullified. Therefore, municipal court does not collect court costs (or the fine). If the defendant is convicted in county court, the county court collects the costs and reports them to the State Comptroller.

In a record court, if the county court affirms the judgment, the municipal court collects the fine and costs and reports the costs. Art. 44.0281, C.C.P.

If a city has contracted with DPS and a defendant has been submitted under the Failure to Appear Program (OmniBase), upon appeal, if the defendant wants to renew his or her driver’s license, the defendant must pay the $30 fee to the municipal court. This is the only exception to paying court costs on appeal. Sec. 706.005(a)(1), T.C.

14. **Waiver of Fine and Costs**

Judges may waive court costs in two instances:

- when teen court is granted; and
- when the court determines that a defendant has defaulted in payment of a fine and/or costs and that the defendant is indigent and performing community service under Article 45.049, C.C.P., would be an undue hardship. Arts. 45.052 and 45.0491, C.C.P.

If a judge waives court costs, the court should document its findings in the order of waiver. When teen court is granted and the judge waives the fees and costs, the court should have an order waiving the costs and/or fees.

15. **Legislative Changes**

Court costs funds are subject to change each legislative session. Changes apply to offenses that occur on or after the date that the changes go into effect. According to Section 51.607, G.C., notwithstanding the effective date of a legislative act, an effective date for new legislation involving court costs and fees may not go into effect between September 1st and December 31st.
of the year immediately following session, unless the new legislation plainly dispenses of this rule. That is why most court costs and fees do not affect courts until January 1st of the year following the legislative session. Therefore, courts have to keep court costs charts from prior years in order to know the correct amount to collect for past offenses.

To help the courts determine if the correct amount is being collected for each year, see the Appendix for court costs charts from 2008 to present. See older court costs charts on the TMCEC website at www.tmcec.com.

B. Current Court Costs

1. Consolidated Fee

The consolidated fee of $40 is collected upon conviction for fine-only misdemeanor offenses other than pedestrian or parking offenses. Sec. 133.102, L.G.C. If reported timely, the court can keep a 10% handling fee.

This fee consolidates the following individual court costs:

- Abused Children’s Counseling
- Crime Stoppers Assistance
- Breath Alcohol Testing
- Bill Blackwood Law Enforcement Management Institute
- Law Enforcement Officers Standards and Education Standards
- Comprehensive Rehabilitation
- Judicial and Court Personnel Training Fund
- Operator’s and Chauffeur’s License
- Criminal Justice Planning
- Juvenile Crime and Delinquency
- Fugitive Apprehension
- Correctional Management Institute
- Fair Defense Account
- Law Enforcement Officers Standards and Education

2. State Traffic Fine

The State Traffic Fine is a $30 court cost collected upon conviction of Subtitle C, Rules of the Road, Transportation Code offenses. This includes parking and pedestrian offenses. The city keeps a 5% handling fee if it is reported and remitted timely to the State Comptroller. Sec. 542.4031, T.C.

3. State Juror Reimbursement Fee

The $4 State Juror Reimbursement Fee went into effect September 1, 2005. It is collected upon conviction of all fine-only offenses except pedestrian and parking offenses. The city keeps a 10% (40 cent) handling fee if reported and remitted timely. Art. 102.0045, C.C.P.

4. State Judicial Support Fee

The State Judicial Support Fee went into effect December 1, 2005. It is collected upon conviction of all fine-only offenses except pedestrian and parking offenses. The 80th Legislative Session increased the amount of this fee from $4 to $6, effective January 1, 2008. The city keeps a 10% handling fee if reported and remitted timely. Sec. 133.105, L.G.C.
The city treasurer must deposit the 10% (60 cent) handling fee into the general fund of the municipality to promote the efficient operation of the municipal court and the investigation, prosecution, and enforcement of offenses that are within the jurisdiction of the court.

5. Support for Indigent Defense Representation Fee

The court is required to collect a $2 fee to be used to fund indigent defense representation through the fair defense account established under Section 71.058 of the Government Code. The fee is collected on all fine-only offenses except parking and pedestrian offenses starting January 1, 2008. The city keeps a 10% (20 cent) handling fee. Sec. 133.107, L.G.C.

6. State Moving Violation Fee

On January 1, 2010, a new court cost of 10 cents was instituted and is imposed on all moving violation convictions. Ninety percent (or 9 cents) of each fee will be sent to the state to be deposited in the Civil Justice Data Repository Fund. Ten percent is retained by the city. This new court cost is found in Article 102.121, G.C., and 102.022, C.C.P.

7. Child Safety Seat Court Cost Repealed

On January 1, 2010, a new 15 cent (.15) court cost was imposed on convictions for child safety seats violations under Section 545.412, T.C. The purpose of the court cost was to collect court costs to fund the purchase of child safety seats for families that could not afford them. While the law was well-intentioned, it was ineffective as the administrative costs were higher than the revenue derived from the court cost. Section 102.122 of the Government Code was repealed effective September 28, 2011.

Q. 59. May a city pass an ordinance to collect court costs without authorization by state law?

Q. 60. For the purpose of collecting consolidated court costs, how is “conviction” defined?

Q. 61. When must a city submit a report on court costs to the State?

Q. 62. If the city keeps the court costs in an interest bearing account, what happens to the interest?

Q. 63. If the city does not report timely, what happens to the handling fee?

Q. 64. Even if the court deposits court costs into the city treasury, what type of records is the court required to keep?

Q. 65. When is a city required to remit court costs electronically?
True or False

Q. 66. When the court collects only part of the fine and costs, the clerk may allocate all the money to the fine. _____

Q. 67. Courts may choose to wait until all court costs are collected before remitting them to the State. _____

Q. 68. When a court prorates court costs and fees, the costs and fees owed to the State must be paid before the costs and fees retained by the city. _____

Q. 69. If a defendant discharges a fine and costs by community service, the city must pay the court costs from the city’s general revenue fund. _____

Q. 70. A defendant cannot discharge court costs by jail credit. _____

Q. 71. When a defendant files a cash bond with the court, signs a conditional no contest plea, and fails to appear, the court can forfeit the bond to pay the fine and court costs. _____

Q. 72. After a court enters a final judgment on a bond forfeiture, the court must remit criminal court costs to the State. _____

Q. 73. Courts may grant deferred disposition and allow defendants to pay court costs during the deferral. _____

Q. 74. Before a driving safety course is granted, the defendant must pay court costs. ______

End True/False

Q. 75. What happens to municipal court proceedings when a defendant files an appeal bond with the court? ____________________________________________

Q. 76. When a case is appealed, must the court collect the court costs? ________________

Q. 77. When may a judge waive court costs and the fine? ____________________________

Q. 78. When the Legislature changes court costs, when do the changes apply? __________

Q. 79. What must a city do if its court does not collect any court costs or fees during a calendar quarter? _____________________________________________

True or False

Q. 80. The Consolidated Fee is collected on all Class C misdemeanor convictions. _____

Q. 81. The court keeps a 10% handling fee on the Consolidated Fee. _____

Q. 82. The State Traffic Fine is collected on all traffic convictions. _____

Q. 83. The court keeps a 10% handling fee on the State Traffic Fine. _____

Q. 84. The State Juror Reimbursement Fee is collected on all Class C misdemeanor convictions. _____

Q. 85. The 60 cents retained by the city from the State Judicial Supplement Fee can be used only to promote the efficient operation of the municipal court. _____
PART 5
LOCAL COURT COSTS

A. State Court Costs Retained by the City

1. Child Safety Fund

a. Parking Offenses

If a parking offense is charged under a city ordinance in a city with a population greater than 850,000, the governing body shall require the assessment of a two to five dollar fee for the Child Safety Fund upon conviction. If a parking offense is charged under a city ordinance in a city with a population fewer than 850,000, the court may collect a court cost not to exceed five dollars upon conviction if the governing body orders the collection of the fund. Art. 102.014, C.C.P.

b. School-Crossing Zone

Article 102.014(c), C.C.P., provides that the court must assess a $25 fee for the Child Safety Fund for any offense under Subtitle C of the Transportation Code, committed in a school-crossing zone. Chs. 541-600, T.C.

School crossing zone is defined in Section 541.302, T.C., as “a reduced-speed zone designated on a street by a local authority to facilitate safe crossing of the street by children going to or leaving a public or private elementary or secondary school during the time the reduced speed limit applies.” In order for the court to assess $25 for offenses committed in the school-crossing zone, the Subtitle C offense must have occurred during the time that the reduced speed limit is in effect.

c. Passing a School Bus

Article 102.014(c), C.C.P., also provides that the court is required to assess $25 for the Child Safety Fund for the offense of passing a school bus. Sec. 545.066, T.C.

d. Failure to Attend School & Parental Offense

Also, courts must collect $20 for the Child Safety Fund for the following offenses:

- parent contributing to nonattendance (Sec. 25.093, E.C.); and
- failure to attend school. Sec. 25.094, E.C.

e. How Fund is Administered

Administration of the Child Safety Fund depends on the size of the city. If a city has a population greater than 850,000, it must deposit the money in the Municipal Child Safety Fund established in the treasury, for the purpose of providing school crossing guard services. Ch. 106, L.G.C. The city may contract with one or more school districts to provide school-crossing guard services and may also provide services to an area of the city that is not a part of the school district. The employment, training, equipping, and location of school crossing guards by a political subdivision are a government function. The city is required to determine the number of school crossing guards needed by the city and then provide for the use of school crossing guards to facilitate the safe crossing of streets by children going to or leaving public, parochial, private,
elementary, and secondary schools. The city must also consider the recommendations of schools and traffic safety experts when determining the need for school crossing guards. Ch. 343, L.G.C.

After contracting with a school district, the city may deduct from the fund the administrative cost of contracting for the services and distributing the funds to the school districts, but this may not exceed 10% of the fund. After paying the expenses of the school crossing guard services, any remaining money in the fund may be used for programs designed to enhance child safety, health, or nutrition; including child abuse intervention and prevention, and drug and alcohol abuse prevention. Art. 102.014(f), C.C.P.

Prior to September 1, 2009, if a city had a population of less than 850,000, the money collected for the Child Safety Fund had to be used for any existing school crossing guard program. If the city did not operate such a program or if the money exceeded the amount necessary to fund it, the city could deposit the additional money in an interest-bearing account or expend it for programs designed to enhance child safety, health, or nutrition; including child abuse prevention and intervention, and drug and alcohol abuse prevention. In the 81st Legislative Session, the Legislature expanded the used of these funds to allow the city to expend the additional money on programs designed to “enhance public safety and security.” Art. 102.014, C.C.P.

f. Optional County Fee for Child Safety

Section 502.173, T.C., provides authority for the commissioners’ court of a county with a population greater than 1.3 million and in which a municipality with a population of more than one million is primarily located to impose an additional fee of not less than 50 cents or more than $1.50 for registering a vehicle in the county. The commissioners’ court of any other county may impose by order an additional fee of not more than $1.50 for registering a vehicle in the county.

A county imposing a fee under this section may deduct 10% of the fees collected for administrative costs. The county may also deduct from the fee revenue an amount proportional to the percentage of county residents who live in unincorporated areas of the county. After making the deductions, the county must send the remainder of the fee to municipalities in the county according to their population.

2. Local Traffic Fund

Section 542.403, T.C., says that a person shall pay a $3 court cost upon conviction of an offense charged under Subtitle C. Although the courts commonly call this the “traffic fund,” the statute does not give it that name and refers to it as just a court cost. The city must deposit this money in the municipal treasury.

Courts must also be careful not to assess the three-dollar cost on traffic offenses outside of Subtitle C, of Title 7, T.C. including failure to maintain financial responsibility, driver’s license offenses, registration offenses, and commercial driver’s license offenses.

3. Arrest Fee

Courts must collect a $5 arrest fee upon conviction when a peace officer issues a written notice to appear (citation) for a violation of a traffic law, municipal ordinance, or penal law of this State, or makes a warrantless arrest. Art. 102.011(a), C.C.P.
If a charge is initiated by a formal charging instrument (complaint), the arrest fee may not be collected. Also, when a peace officer files a charge by complaint and obtains a warrant of arrest, the court may not collect the arrest fee. Likewise, the arrest fee may not be collected for the offense of failure to appear since this charge is initiated by complaint and a warrant is issued.

If a city officer issued the citation or made the warrantless arrest, the city keeps the arrest fee. If a peace officer with statewide authority, such as a DPS officer, issued the citation, 20% ($1) must be reported to the State the last day of the month following the quarter in which it was collected. The statute does not require the arrest fee be used for a specific purpose, and it may be deposited into the general revenue fund.

4. **Warrant Fees**

a. **Warrant Fee**

The Warrant Fee is collected when a peace officer performs certain services. Article 102.011(a)(2), C.C.P., requires a $50 warrant fee be collected upon conviction if a warrant, capias, or capias pro fine is processed or executed by a peace officer.

A warrant, capias, or capias pro fine is executed if the officer serves the warrant by arresting the defendant. Since the statute does not define processing, the judge must determine what he or she will consider as processing. Some processes that a peace officer might conduct are telephone calls to the defendant, courtesy letters, or entering the warrant into the local police department computer. Regardless of what the judge accepts as processing, documentation of the processing by a peace officer must be provided to the judge before he or she may assess the fee.

If a law enforcement agency other than the agency of the court’s jurisdiction that processed the warrant, capias, or capias pro fine executes it, that agency may request the $50 fee. The request must be made within 15 days after the arrest. If that agency fails to request the fee, it is still required to be collected, but is paid into the issuing city’s treasury. If a peace officer employed by the city where the warrant, capias, or capias pro fine was issued executes or processes the warrant, the $50 would be collected and paid into the city treasury. If a peace officer with statewide authority executes or processes the warrant, 20% ($10) must be remitted to the State the last day of the month following the quarter in which it was collected. If the warrant is executed or processed but there is no conviction, no fee may be assessed or collected.

Likewise, if a warrant, capias, or capias pro fine is not processed or served by a peace officer, the court may not assess the fee. For instance, when the warrant is given to a private collection agency to process, the fee may not be collected because a collection agency does not employ peace officers. However, if the court gives the warrant to the local police department for some type of processing before sending the warrant to the collection agency, the court may assess the fee.

The statute does not require that this fee be used for any specific purpose. It may be placed in the city’s general revenue fund and used for any lawful purpose.

b. **Special Expense Fee**

Article 45.203, C.C.P., says that cities must by ordinance prescribe rules, not inconsistent with state law, as may be proper to enforce the collection of fines. This statute also provides authority
to adopt an ordinance for the collection of a special expense fee not to exceed $25 for the issuance and service of a warrant of arrest for the offenses of failure to appear (Sec. 38.10, P.C.) and violate promise to appear (Sec. 543.009, T.C.).

This statute requires the warrant of arrest to be executed; just processing it does not count. The fee may not be collected if a defendant voluntarily surrenders to the court or appears after a courtesy letter from the court or peace officer. The statute requires that the fee be deposited into the municipal treasury. Some cities pay the fee to peace officers who serve the warrant outside their regular duty hours. Attorney General Opinion Number. JM-462 (1986) addresses this issue. The opinion says in part that members of a regular police force may legally serve arrest warrants outside of their regular hours, but may not receive the warrant fee as compensation for such service. Cities must compensate officers as they otherwise would for overtime. Cities should visit with their city attorney regarding the payment of any fees to peace officers.

5. Fees Assessed upon Dismissal of Cases

a. For Driving Safety Course

In addition to the $10 administrative fee discussed in Part 4, Section (A)(12), courts may charge a $10 fee for obtaining a copy of the defendant’s driving record from DPS when the defendant requests to take a driving safety course effective January 1, 2006. Beginning January 1, 2008, courts may charge a $12 fee for using the state electronic internet portal (formally known as Texas Online) to seek this record. If the court collects the fee, the court must send the money to the State Comptroller quarterly.

b. For Teen Court

The judge may assess an optional fee not to exceed $10 when a defendant requests to participate in a teen court program. This fee is retained by the city. Art. 45.052, C.C.P.

The court may assess another $10 fee to cover the cost of administering the teen court. This fee is paid to the teen court program, but the program must account to the court for the receipt and disbursal of the fee.

If the court is located in a county on the Texas-Louisiana border, it may assess two $20 fees instead of the $10 fees. The $20 fees apply to the counties of Bowie, Camp, Cass, Delta, Franklin, Gregg, Harrison, Hopkins, Lamar, Marion, Morris, Panola, Red River, Rusk, Smith, Titus, Upshur, and Wood. Sec. 2056.002, G.C.

Subsection (g) of Article 45.052, C.C.P., provides that a justice or municipal court may exempt a defendant from the requirement to pay court costs or other fees that are imposed by another statute. Thus, judges have authority to waive court costs and fees when granting a defendant the right to participate in a teen court program.

c. For Remediing Certain Defects

Statutes provide discretion for judges to collect fees in certain instances if a defendant remedies particular defects. Although none of the statutes say where the fees are deposited, they do not require the money to be sent to the State. Generally, most cities deposit the fees in the general revenue account.
Some courts mistakenly assess fees when dismissing the charge of failure to maintain financial responsibility. Although the court is required to dismiss the charge if the defendant had valid insurance or other proof of financial responsibility at the time of the arrest, there is no authority to assess a fee when dismissing the charge. For a list of these compliance dismissals or “probation-related” dismissals, see the TMCEC Dismissal Chart.

6. **Fee for Dismissing Failure to Present Driver’s License**

It is a defense to the prosecution of the offense of failure to present a driver’s license for the person to produce in court a driver’s license that is issued to the person appropriate for the type of vehicle operated and valid at the time of the arrest for the offense. This requires a prosecutor’s motion before the judge may dismiss the charge. The judge may assess a fee not to exceed $10 effective if the offense occurred January 1, 2008 or after. Sec. 521.025(f), T.C.

7. **Additional Fees that May be Assessed at Trial**

The court is required to assess certain fees for services of a peace officer. These fees are paid by the defendant upon conviction and can be used by the municipality for any legal purpose. Other fees are required to be assessed depending on the type of trial requested or the actions of the defendant.

a. **For Summoning a Defendant**

When a peace officer serves a summons on a defendant, upon conviction, the court must collect $35 for the officer’s services. Art. 102.011(a)(4), C.C.P. A summons may be served by delivering a copy to the defendant personally, by leaving it at the defendant’s house or usual place of abode with some person of suitable age, or by mailing it to the defendant’s last known address. Arts. 23.03 and 15.03(b), C.C.P.

b. **For Summoning a Witness**

When a peace officer summons a witness by serving a subpoena and the defendant is convicted, the defendant must pay $5 for the services of the peace officer. Art. 102.011(a)(3), C.C.P.

c. **Jury Fees**

When a peace officer summons a jury and the defendant is convicted, the defendant must pay $5 for the services of a peace officer. Art. 102.011(a)(7), C.C.P. Municipal courts must assess a jury fee of $3 upon conviction by a jury, and this may apply even to a defendant who withdraws a request for a jury trial not earlier than 24 hours before the time of the trial. Art. 102.004, C.C.P.

d. **For Summoning the Parents of a Juvenile**

When a peace officer summons the parents of a juvenile to appear with their child in court, upon conviction, the court must assess a fee of $35. Art. 102.011(a)(4), C.C.P.

e. **Cost of Peace Officer Overtime when Testifying**

Defendants must pay the costs of overtime paid to a peace officer for time spent testifying at or traveling to or from trial. Art. 102.011(i), C.C.P. Since the costs are for time spent testifying in
the case, no overtime may be assessed if the officer did not testify. The amount collected varies depending on the officer’s salary and the amount of time spent testifying.

Clerks should work with police departments to make sure the judge has information about officers’ salaries so that the judge may assess this cost. The court should have an affidavit for the officer to sign after testifying so that the court has documentation of the officer’s time and the cost to assess.

f. Failure to Appear for Jury Trial

A municipal court may order a defendant who does not waive a jury trial and fails to appear for trial to pay the costs incurred for impaneling the jury. Art. 45.026, C.C.P. The court may release a defendant from the obligation to pay for good cause. If the court requires the defendant to pay the costs, the order may be enforced as contempt under Section 21.002(c), G.C. Since a defendant may present a reason for not appearing for a jury trial, the court should set the issue for a show cause hearing to give the defendant an opportunity to present his or her reason.

The amount of this cost will vary depending upon the costs incurred by the court. The clerk should do an analysis of the costs for summoning a jury and have it available for the judge, so that the judge may assess the cost. Some possible costs include:

- cost of jury summons (paper and printing costs);
- cost of envelopes and stamps; and
- clerks’ salaries (time spent preparing jury summons, handling requests for exemptions before trial, and managing the jury on the day of trial).

9. Expunction Fees

A defendant who petitions the municipal court for an expunction must pay a $30 fee when filing the petition with the municipal court. This fee is to be used to defray the cost of notifying state agencies of orders of expunction.

10. Travel Costs to Convey Prisoner or Execute Process

Article 102.011(b), C.C.P., requires defendants convicted of a misdemeanor or felony to pay all necessary and reasonable expenses for meals and lodging incurred by peace officers when performing the following services:

- conveying a prisoner after conviction to the county jail;
- conveying a prisoner arrested on a warrant or capias issued in another county to the court or jail of the county; or
- traveling to execute criminal process, summon or attach a witness, or execute process not otherwise described by Article 102.011, C.C.P.

Q. 86. The municipal court in a city with a population greater than 850,000 is required to assess a fee of $8 on parking convictions, depending on the amount set by city council. _____

Q. 87. The municipal court in a city with a population less than 850,000 is required to collect a fee of up to $5 on parking convictions if the city orders the collection. _____
Q. 88. A city with a population of less than 850,000 is not required to order the collection of the parking fee for the Child Safety Fund. ______

Q. 89. When a defendant is convicted of a Subtitle C offense in a school-crossing zone, the defendant is required to pay $25 for the Child Safety Fund. ______

Q. 90. A defendant convicted of passing a school bus does not have to pay $25 to the Child Safety Fund unless the offense occurs within a school-crossing zone. ______

Q. 91. A school-crossing zone is a reduced speed zone to facilitate the safe crossing of students in public schools only. ______

Q. 92. Someone convicted of the offense of parent contributing to nonattendance does not have to pay the $20 for the Child Safety Fund. ______

Q. 93. A city with a population greater than 850,000 is required to use the Child Safety Fund for the purpose of providing school crossing guard services. ______

Q. 94. A city with a population of less than 850,000 must use the money collected for the Child Safety Fund for a school crossing guard program if the city operates one. ______

Q. 95. If a city receives money from the county for the Child Safety Fund, the city must deposit it to the credit of the city’s Child Safety Fund. ______

Q. 96. The $3 Traffic Fund court cost must be collected on all traffic convictions. ______

Q. 97. The court must deposit money collected for the Traffic Fund into the city treasury. ______

Q. 98. The court is required to assess the $5 arrest fee when a defendant is convicted after a warrantless arrest. ______

Q. 99. The court is required to assess the $5 arrest fee when a defendant is convicted after being issued a citation. ______

Q. 100. If a defendant is convicted of the offense of failure to appear, the court is required to assess the $5 arrest fee. ______

Q. 101. When a city police officer issues a citation and there is a conviction, the city must pay the arrest fee to the State. ______

Q. 102. If a peace officer with statewide authority issues the citation and files it in municipal court, the city may keep all of the $5 arrest fee. ______

Q. 103. The warrant fee may be collected only when a peace officer executes or processes the warrant, capias, or capias pro fine. ______

Q. 104. If an agency, other than the one issuing the warrant, executes the warrant, that agency may not request the $50 fee. ______

Q. 105. When a peace officer with statewide authority arrests a person, the court is required to remit $10 of the warrant fee to the State upon conviction. ______

Q. 106. If a city wants to collect a fee not to exceed $25 for failure to appear warrants, the city must adopt an ordinance authorizing the collection of the fee. ______

Q. 107. Cities may pay peace officers the $25 special expense fee for serving warrants outside their regular duty hours. ______

Q. 108. The $10 collected when a court grants a driving safety course must be deposited into the city treasury. ______
Q. 109. When a defendant fails to complete a driving safety course, the court is required to refund the $10 fee or allow the defendant to apply the fee to the fine. _____

Q. 110. The court is required to collect $12 from a defendant requesting a driving safety course to obtain a copy of the defendant’s driver’s license record from DPS. _____

Q. 111. If the court collects a $10 fee to be paid to the teen court program, the program does not have to account to the court for how it uses the money. _____

Q. 112. Judges have authority to waive court costs and fees when a defendant participates in a teen court program. _____

Q. 113. The judge may assess a fee up to $20 when a defendant renews an expired driver’s license, expired registration, or expired inspection certificate and the defendant shows proof to the court. _____

Q. 114. The court may collect a special expense fee not to exceed the amount of the fine when the court grants deferred disposition. _____

Q. 115. If a judge grants a driving safety course to a defendant who has completed a driving safety course in the prior 12 months, the court may require the defendant to pay a fee not to exceed the maximum amount of the penalty for the offense. _____

Q. 116. If a judge allows a defendant to reimburse a victim by paying in installments, the court can require the defendant to pay a $12 fee. _____

End True/False

Q. 117. When a peace officer serves a summons on a defendant, how much must the defendant pay if he or she is convicted? __________________________________________

Q. 118. When a peace officer serves a subpoena, how much must a defendant pay if he or she is convicted? __________________________________________

Q. 119. When a peace officer summons a jury, how much must a defendant pay if he or she is convicted? __________________________________________

Q. 120. What must a child pay for the peace officer’s service of the summons to his or her parent? __________________________________________

Q. 121. What is the amount of the jury fee the court must assess when a defendant is convicted by a jury? __________________________________________

True or False

Q. 122. When an officer testifies during regular duty hours, the defendant, if convicted, must pay the costs of the officer’s time testifying in court. _____

Q. 123. When an off-duty peace officer appears at the trial but does not testify, the court may not assess the costs of the peace officer appearing for the trial. _____

Q. 124. To assess the costs of an officer testifying, the judge may guess at the amount if the peace officer has not provided information to the court of his or her salary. _____

End True/False
Q. 125. If a defendant fails to appear for a jury trial and the court assesses a cost for impaneling the jury, how may the defendant be released from paying these costs? ________________

Q. 126. What are some items that a clerk may consider when preparing an analysis for costs incurred for summoning and impaneling a jury? __________________________

Q. 127. What cost must a petitioner pay when requesting an expunction from municipal court? __________________________

Q. 128. What cost may a municipal judge assess when a city police officer travels to serve municipal court warrants or capiases? __________________________

B. Local Fees Created by Ordinance

The Legislature has provided authority for cities to adopt ordinances to collect some fees. If a city does not adopt the appropriate ordinances, it cannot collect the fees.

There are fees that are added to cases as the result of the actions of defendants. The following information lists fees that courts have authority to, and must, in some situations, collect. Included with each fee is an explanation of the fee, reporting requirements, and if it is a dedicated fee, the specific purpose for which the city must use the money collected.

1. Juvenile Case Manager Fee

Article 102.0174, C.C.P., provides city councils authority to create a juvenile case manager fund and may require a defendant convicted of a fine-only misdemeanor offense to pay a Juvenile Case Manager Fee not to exceed $5. Prior to this statute’s amendment in 2011, a city could collect and accumulate these funds prior to the establishment of the position and the hiring of a juvenile case manager. Article 102.0174, C.C.P. was amended, effective September 1, 2011, and now prohibits a local government from collecting the juvenile case manager fee if they do not employ a juvenile case manager.

2. Building Security Fee

Article 102.017, C.C.P., provides authority for cities to create a $3 Building Security Fee. After the city adopts an ordinance to establish the fund, the court must assess the fee upon all convictions.

The money collected under this fund is dedicated to providing security services for municipal courts. It may be used only for security personnel, services, and items related to buildings that house the operations of municipal courts, including:

- the purchase or repair of x-ray machines and conveying systems;
- handheld metal detectors;
- walk-through metal detectors;
- identification cards and systems;
- electronic locking and surveillance equipment;
bailiffs, deputy sheriffs, deputy constables, or contract security personnel during times when they are providing appropriate security services;

- signage;
- confiscated weapon inventory and tracking systems;
- locks, chains, alarms, or similar security devices;
- the purchase or repair of bullet-proof glass; and
- continuing education on security for court personnel and security personnel.

The 82nd Legislature expanded the list of approved uses for this fund to include warrant officers and related equipment. Sec. 102.107(d)(12).

Attorney General Opinion JC-0014 (1999) states that given the legislative history and the express terms of Article 102.017(d), security items that may be purchased are limited to the items in Article 102.017. However, the 76th Legislature amended Article 102.017 and added the word “including.” The Code Construction Act (Ch. 311, G.C.) says that the word “including” is a term of enlargement and not of limitation or exclusive enumeration, and use of the term does not create a presumption that components not expressed are excluded. Hence, the purchase of security items is not limited to the list, but must be specifically for court security.

### 3. Technology Fee

Article 102.0172, C.C.P., provides authority for a governing body of a municipality to adopt an ordinance to establish a technology fund. The ordinance creates a fee in an amount not to exceed $4 to be collected upon all convictions.

The fund must be dedicated to finance the purchase and maintenance of technological enhancements for the municipal court, including:

- computer systems;
- computer networks;
- computer hardware;
- computer software;
- imaging systems;
- electronic kiosks;
- electronic ticket writers; and
- docket management systems.

The fund is to be administered by or under the direction of the governing body of the municipality. Again, the Code Construction Act (Ch. 311, G.C.) defines “include” and “including” as terms of enlargement and not of limitation or exclusive enumeration. Hence, the purchase of technological enhancements is not limited to the list of items described above.

**True and False**

Q. 129. The Juvenile Case Manager Fee can be used to finance a juvenile case manager or a teen court coordinator. _____
Q. 130. The Building Security Fee must be established by ordinance before the municipal court may collect it. _____
Q. 131. The purpose of the Building Security Fee is to provide all city buildings with security. _____
Q. 132. The city must use the Building Security Fee to purchase security items for the court. _____
Q. 133. The Technology Fee may only be assessed if the city establishes the fund by ordinance. _____
Q. 134. The Technology Fee may not be less than $4. _____
Q. 135. The Technology Fee may be used to pay for maintenance of court technology. _____

PART 6
FINES AND COSTS DIVIDED BETWEEN STATE AND CITY

Some of the fines and costs collected by the municipal court are divided between the State and the city. In these instances, if a court prorates court costs because of a partial payment, the State’s portion does not take precedence over the city’s portion.

A.  Restitution Fee

If the court orders reimbursement to a victim to be made in specified installments, the court may require the defendant to pay a one-time restitution fee of $12. Six dollars of the restitution fee is retained by the city and the other half must be remitted to the State for the Crime Victims Compensation Fund. Art. 42.037(g), C.C.P.

B.  Time Payment Fee

Municipal courts are required to collect a $25 fee from a defendant who pays any part of the fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered assessing the fine, costs, or restitution. The fee is to be deposited in the municipal treasury. Sec. 133.103, L.G.C.

Each quarter, treasury custodians are required to send 50% of the time payment fee to the Comptroller. The other 50% is retained by the city. The city is required to use 10% of the fee ($2.50) for improving the efficiency of the administration of justice. The other 40% ($10) may be used by the city for any lawful purpose.

C.  Over Gross Weight Violations

On conviction of an offense involving operating or loading overweight vehicles under Section 621.506, T.C., the court is required to remit the court costs and 50% of the fine to the Comptroller unless the offense occurred within 20 miles of an international border, in which event, the entire amount may be retained by the city. The city must use the money for road maintenance. Sec. 621.506(g), T.C. The statute does not say how frequently the fine money must be remitted. The Comptroller’s Office has set the reporting cycle to coincide with the quarterly cycle for the basic court costs and fees.
D. **Excess Motor Carrier Fines**

Only certain cities may enforce excess motor carrier violations under Chapter 644, T.C., and those cities may only keep part of the revenue generated. To enforce these types of violations, municipal police officers must be certified by DPS. Police officers of any of the following municipalities are eligible to apply for the certification:

- a municipality with a population of 50,000 or more;
- a municipality with a population of 25,000 or more, any part of which is located in a county with a population of 500,000 or more;
- a municipality in any county bordering Mexico;
- a municipality with a population of less than 5,000, that is located adjacent to a bay connected to the Gulf of Mexico and in a county adjacent to Harris County; or
- Texarkana, Texas.

In each fiscal year, a municipality may keep fines from the enforcement of Chapter 644, T.C., in an amount not to exceed 110% of the municipality’s actual expenses for enforcement of Chapter 644 in the preceding fiscal year, as determined by the Comptroller after reviewing the most recent municipal audit conducted under Section 103.001, L.G.C. If there are no actual expenses for enforcement of Chapter 644 in the most recent municipal audit, a municipality may retain fines in an amount not to exceed 110% of the amount the Comptroller estimates would be the municipality’s actual expenses for enforcement of Chapter 644 during the year. The municipality must send to the Comptroller the amount of the fines that exceeds the limit imposed by the Comptroller. Sec. 644.102, T.C.

Cities that participate in the enforcement of excess motor carrier violations must complete a worksheet provided by the Comptroller’s Office used to calculate the costs of enforcement. To get information regarding this worksheet, the court should call the Local Government Assistance Division of the State Comptroller’s Office toll free at 800.531.5441, extension 34679; or the direct line at 512.463.4679; or the Revenue Accounting Division toll free at 800.531.5441, extension 3476; or the direct line 512.463.4276.

| Q. 136. If the court orders a defendant to pay a victim restitution in installment payments, what is the amount of the restitution fee that the court may require? ______________  |
| Q. 137. How must the court account for the restitution fee? ______________  |
| Q. 138. When is a time payment fee required to be collected? ______________  |
| Q. 139. How is the time payment fee disbursed? ______________  |

True or False

| Q. 140. When a city is not within 20 miles of an international border, the city must remit to the State 50% of the fines collected for over gross weight violations. _____  |
Q. 141. When a city enforces excess motor carrier violations, the city may keep fines from these offenses as long as the amount does not exceed 110% of the city’s actual expenses for enforcement in the preceding fiscal year. _____

End True/False

PART 7
FINES

A. Disposition of Traffic Fines

Section 542.401, T.C., requires cities to expend fine money collected for convictions of Title 7, T.C. offenses for:

- construction and maintenance of roads, bridges, and culverts; and
- enforcement of laws regulating the use of highways by motor vehicles.

Because courts collect fines for offenses in many different statutes, clerks should keep a separate accounting of fine money collected under Title 7, T.C., since statutes require cities to budget this money for certain uses. This type of information needs to be reported to the city accounting department and the person responsible for preparing the budget.

B. Excess Highway Fines

The excess fines law is found Subtitle C, Section 542.402(b), T.C. For cities with a population of fewer than 5,000, the Legislature restricts the amount of revenue that may be retained from offenses under Title 7 (Chs. 501-750) of the Transportation Code. The law basically keeps small cities from collecting too large a portion of their budget from traffic fines.

The law reads, “In each year, a municipality having a population of less than 5,000 may retain, from fines collected from violations of this title and from special expenses collected under Article 45.051, Code of Criminal Procedure, in cases in which a violation of this title is alleged, an amount equal to 30% of the municipality’s revenue for the preceding fiscal year from all sources other than federal funds and bond proceeds.” The restriction applies to not only the fines collected for offenses charged under Title 7, but also to the special expenses collected under Article 45.051, C.C.P., when deferred is granted for Title 7 violations. Sec. 542.402, T.C.

To determine if a city falls within this restriction, the city must look to the most recent federal decennial census. If the city population is now 5,000 or more, but was under 5,000 when the census was taken, the law would apply. However, if the city’s population is now under 5,000 but the census shows the population 5,000 or more, the law would not apply.

Then the city’s previous year’s revenues are totaled, and federal funds and bond proceeds are subtracted. When the fines and special expenses for offenses charged under Title 7, T.C., reach 20%, the court must file a report with the Comptroller’s Office. Failure to report may cause the city to pay for an audit conducted by the Comptroller’s Office. The report must be submitted to the Comptroller’s Office within 120 days after a city’s fiscal year ends. The report must include a copy of the city’s financial statement that is prepared for that fiscal year and filed as required by the Local Government Code, Chapter 103, and show the total amount collected from Title 7 offense fines and special expenses.
The city may keep all the traffic fines and special expenses under Article 45.051, C.C.P., collected for offenses under Title 7 up to 30% of its total revenue in the preceding fiscal year. Federal funds and bond sale proceeds do not count in figuring total revenue.

When fines and special expenses for offenses charged under Title 7, T.C., equal 30% of the budget, all but $1 of each fine or special expense collected for Title 7 offenses must be remitted to the State. The city keeps the $1 as a service fee and remits the revenue with the other quarterly reports.

C.  Fines for Parent Contributing to Nonattendance

If a parent is convicted of the offense of parent contributing to nonattendance, one half of the fine must be paid to the school district in which the child attends school, the open enrollment charter school the child attends, or the juvenile justice alternative education program that the child has been ordered to attend. The other half of the fine goes into the city’s general fund. Sec. 25.093, E.C.

D.  Collection Improvement Programs

Cities with a population of 100,000 or greater are required to develop and maintain a program to improve the collection of court costs, fees, and fines imposed in criminal cases. Art. 103.0033, C.C.P.

The program must consist of the following:

- A component that conforms with a model developed by OCA that is designed to improve in-house collections;
- A component designed to improve collection balances more than 60 days past due, which may be implemented by entering into a contract with a private attorney or public or private vendor in accordance with Article 103.0031, C.C.P.

The Office of Court Administration may use case dispositions, population, revenue data, or other appropriate measures to develop a prioritized implementation schedule for programs. Each city shall at least annually submit to OCA a written report that includes updated information regarding the program. The report must be in a form approved by OCA. The OCA is required to periodically audit cities to verify the information reported and confirm that the city is conforming with the requirements of the program. Art. 103.0033, C.C.P.

Section 133.058(e), L.G.C., provides that a city may not retain court cost handling fees if the city is not conforming with its collection improvement program.

<table>
<thead>
<tr>
<th>True or False</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q. 142. The Transportation Code requires all cities to allocate fine money collected for traffic convictions in a certain manner in the city’s budget. ____</td>
</tr>
<tr>
<td>Q. 143. Cities with a population under 5,000 must pay the State all but $1 of the fines and special expenses under Article 45.0511, C.C.P., collected for offenses under Title 7, T.C., after fines and special expenses reach 30% of their budget. ____</td>
</tr>
<tr>
<td>Q. 144. When a parent is convicted of contributing to nonattendance, the city must pay the fine to the school district. ____</td>
</tr>
</tbody>
</table>
Q. 145. Cities with a population of 100,000 or greater are required to develop and maintain a program to improve the collection of court costs, fees, and fines. _____

Q. 146. The city is required to submit annually a written report about its collection program to the Attorney General’s Office. _____

Q. 147. If a city does not conform with its collection program, the city cannot retain its 10% handling fee or 50% of the time payment fee. _____

PART 8
CITY CONTRACTS

A. With the Department of Public Safety

Cities may contract with DPS to deny driver’s license renewal to a person who fails to appear, fails to pay, or fails to satisfy the judgment in a manner ordered by the court. Ch. 706, T.C. Offenses that may not be reported are traffic offenses with a penalty of more than $1,000. If a city enters into an agreement with DPS, the court is required to collect an additional $30 fee from defendants. Twenty dollars of the fee is remitted to the State; $6 is paid to OmniBase, the vendor that DPS has contracted with; and the city keeps $4.

The court must assess an administrative fee of $30 for each violation for which the person failed to appear for a complaint or citation unless the defendant is acquitted of the charges for which the person failed to appear or fails to pay or satisfy a judgment ordering the payment of a fine and cost in the court order. Hence, the person shall pay the fee when:

- there is an entry of a judgment on the underlying offense reported to DPS;
- the underlying offense is dismissed;
- a bond or other security is posted to reinstate the charge for which the warrant was issued; or
- the person failed to pay a fine or satisfy a judgment in a manner ordered by the court.

DPS may not continue to deny issuance of a driver’s license if they receive notice that the person was acquitted of the charge on which the person failed to appear or that the failure to appear or other court order to pay a fine or costs was sent to DPS in error or has been destroyed in accordance with the political subdivision’s records retention policy.

In Rule 15.119 of Title 37, of the Texas Administrative Code, DPS defined acquittal to mean “an official fact-finding made in the context of the adversary proceeding by an individual or group of individuals with the legal authority to decide the question of guilt or innocence . . . . [A]cquittal also includes a discharge by the court upon proof of actual innocence.” This would include the offense of failure to maintain financial responsibility or failure to display driver’s license and other defenses to prosecution. Upon dismissal of these two charges, the court would not collect the $30 fee and would report these dismissals as acquittals to OmniBase.

The $30 fee is accounted for in the following manner:

- the fee shall be deposited into the city treasury;
- the account may be interest-bearing (city may keep interest);
• the city must report the amount of funds received and disbursed annually to the Comptroller and DPS;
• the city must remit $20 to Comptroller on or before last day of calendar quarter; and
• the city retains $10 ($6 is paid to the vendor) and deposits it in the city’s general fund.

B. With the Texas Department of Transportation

There is no statutory authority to assess a fee for denial of renewal of registration, but a city that enters into this type of contract must notify the county or the Texas Department of Transportation of the following:

• the entry of a judgment and payment of the fine and all court costs;
• perfection of an appeal of the case for which the arrest warrant was issued; or
• dismissal of the charge for which the arrest warrant was issued.

Upon receiving notice from the city, the county may no longer refuse to register the defendant’s vehicle.

C. Private Collection Contracts

Article 103.0031, C.C.P., provides authority for a city to contract for collection services. The vendor’s fee is based on the amount of fine eventually assessed by the court or jury. Contracts with a public or private vendor or attorney must specify a 30% collection fee or it is not authorized by Article 103.0031. Consequently, if the fee is for an amount other than 30%, it cannot be assessed against a defendant and must be paid by the city. The fee does not apply if a case is dismissed, the defendant is acquitted, or to any part of the fine or cost if a defendant is discharged by jail credit or community service. If a defendant makes a partial payment, the vendor is paid its 30%, then the money is allocated on a pro-rata basis to the State and local costs, and any remaining money is applied toward the fine. Tex. Atty. Gen. Op. 0147, (2004).

If the defendant has been given notice of a time and place to appear and failed to appear, the court must wait 60 days before reporting the separate failure to appear charge to the vendor. Subsection 103.0031(i), C.C.P., allows cities to enter into a contract to collect a debt incurred on an offense that was committed before June 18, 2003, but no collection fee applies.

<table>
<thead>
<tr>
<th>True or False</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q. 148. If cities want to deny the renewal of driver’s licenses to defendants who fail to appear or fail to pay, they must contract with DPS. _____</td>
</tr>
<tr>
<td>Q. 149. When a defendant returns to court after being denied renewal of his or her driver’s license, the defendant must pay the court an additional $30 court cost unless the defendant is acquitted. _____</td>
</tr>
<tr>
<td>Q. 150. When a city contracts with the Texas Department of Transportation to deny vehicle registration to defendants who fail to pay or appear, the court must collect upon conviction a $30 fee. _____</td>
</tr>
<tr>
<td>Q. 151. If the defendant failed to appear, a vendor’s fee is based on the amount of fine eventually assessed by the court or jury. _____</td>
</tr>
</tbody>
</table>
Q. 152. Vendor contracts can specify any amount of collection fee. _____
Q. 153. If a defendant makes a partial payment, the vendor is paid after local and state court costs are paid. ______
APPENDIX:
COURT COSTS

The following abbreviations are used in the court costs charts in this Appendix.

- **AF**  Arrest Fee (Article 102.011(a), C.C.P.)
- **BAT**  Breath Alcohol Testing Fund (Articles 102.016 and 102.075, C.C.P.; and Section 133.102, L.G.C.)
- **CCC**  Consolidated Court Cost (Article 102.075, C.C.P. and Section 133.102, L.G.C.)
- **CF**  Consolidated Fee (Section 133.102, L.G.C.)
- **CJP**  Criminal Justice Planning Fund (Articles 102.056 and 102.075, C.C.P., and Section 133.102, L.G.C.)
- **CS**  Child Safety Fund (Article 102.014, C.C.P.)
- **CR**  Comprehensive Rehabilitation Fund (Articles 102.081(a) and 102.075, C.C.P., and Section 133.102, L.G.C.)
- **CVC**  Compensation to Victims of Crime Fund (Article 56.55, C.C.P., and Section 133.102, L.G.C.)
- **FA**  Fugitive Arrest Fund (Article 102.019, C.C.P., and Section 133.102, L.G.C.)
- **GR**  General Revenue (Articles 102.015 and 102.075, C.C.P., and Section 133.102, L.G.C.)
- **IDF**  Indigent Defense Fund (Section 133.107, L.G.C.)
- **JCPT**  Judicial Court and Personnel Training Fund (Section 56.001, G.C., and Section 133.102, L.G.C.)
- **JSF**  Judicial Supplement Fund (Section 133.105, L.G.C.)
- **LEMI**  Law Enforcement Management Institute (Sections 415.082-415.083, G.C., Article 102.075, C.C.P., and Section 133.102, L.G.C.)
- **LEOA**  Law Enforcement Officers Administrative Fund (Sections 415.082-415.083, G.C., Article 102.075, C.C.P., and Section 133.102, L.G.C.)
- **LEOCE**  Law Enforcement Officers Continuing Education (Sections 415.082-415.083, G.C., Article 102.075, C.C.P., and Section 133.102, L.G.C.)
- **LEOSE**  Law Enforcement Officer Standards Education Fund (Sections 415.082-415.083, G.C., Article 102.075, C.C.P., and Section 133.102, L.G.C.)
- **OCL**  Operator’s and Chauffeur’s Fund (Section 601.192, T.C., Article 102.075, C.C.P., and Section 133.102, L.G.C.)
- **SJRF**  State Juror Reimbursement Fee (Article 102.0045, C.C.P.)
- **STF**  State Traffic Fine (Section 542.4031, T.C.)
- **TFC**  Local Traffic Fund (Section 542.403, T.C.)
# COURT COSTS

For Conviction of Offenses Committed on or after September 28, 2011

<table>
<thead>
<tr>
<th>OFFENSE/DESCRIPTION</th>
<th>State CF</th>
<th>Local TFC</th>
<th>Local CS</th>
<th>State STF</th>
<th>State SJF</th>
<th>State IDF</th>
<th>State JSF*3</th>
<th>Total*2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MUNICIPAL ORDINANCES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Parking (authorized by Sections 542.202-542.203, Transportation Code)</td>
<td>N/A</td>
<td>N/A</td>
<td>*1</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>*1</td>
</tr>
<tr>
<td>• Pedestrian</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>• Other Municipal Ordinances</td>
<td>40.00</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>4.00</td>
<td>2.00</td>
<td>6.00</td>
<td>52.00</td>
</tr>
<tr>
<td><strong>STATE LAW</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Transportation Code, Subtitle C, Rules of the Road</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Parking &amp; Pedestrian (in school crossing zone)</td>
<td>N/A</td>
<td>3.00</td>
<td>N/A</td>
<td>25.00</td>
<td>30.00</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>• Parking &amp; Pedestrian (outside school crossing zone)</td>
<td>N/A</td>
<td>3.00</td>
<td>N/A</td>
<td>25.00</td>
<td>30.00</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>• Overtaking &amp; Passing a School Bus, Section 545.066</td>
<td>40.00</td>
<td>3.00</td>
<td>25.00</td>
<td>30.00</td>
<td>4.00</td>
<td>2.00</td>
<td>6.00</td>
<td>110.10*2</td>
</tr>
<tr>
<td>• Other (in school crossing zone)</td>
<td>40.00</td>
<td>3.00</td>
<td>25.00</td>
<td>30.00</td>
<td>4.00</td>
<td>2.00</td>
<td>6.00</td>
<td>110.00*2</td>
</tr>
<tr>
<td>• Other (outside school crossing zone)</td>
<td>40.00</td>
<td>3.00</td>
<td>N/A</td>
<td>30.00</td>
<td>4.00</td>
<td>2.00</td>
<td>6.00</td>
<td>85.00*2</td>
</tr>
<tr>
<td>• Transportation Code, Section 601.192, Failure to Maintain Financial Responsibility</td>
<td>40.00</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>4.00</td>
<td>2.00</td>
<td>6.00</td>
<td>52.00</td>
</tr>
<tr>
<td>• Parking and Pedestrian (Outside Subtitle C)</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>4.00</td>
<td>2.00</td>
<td>6.00</td>
<td>N/A</td>
</tr>
<tr>
<td>• Education Code</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Parent Contributing to Nonattendance, Section 25.093</td>
<td>40.00</td>
<td>N/A</td>
<td>20.00</td>
<td>N/A</td>
<td>4.00</td>
<td>2.00</td>
<td>6.00</td>
<td>72.00</td>
</tr>
<tr>
<td>• Failure to Attend School, Section 25.094</td>
<td>40.00</td>
<td>N/A</td>
<td>20.00</td>
<td>N/A</td>
<td>4.00</td>
<td>2.00</td>
<td>6.00</td>
<td>72.00</td>
</tr>
<tr>
<td>• All other fine only misdemeanors not mentioned above.</td>
<td>40.00</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>4.00</td>
<td>2.00</td>
<td>6.00</td>
<td>52.00*7</td>
</tr>
</tbody>
</table>

Add applicable fees and other costs whenever they apply. See next page of chart for additional costs and fees.

For the purpose of assessing, imposing, and collecting most court costs and fees, a person is considered to have been convicted if, pursuant to Section 133.101, L.G.C., or other specific statutes authorizing court costs - a judgment, a sentence or both a judgment and a sentence are imposed on the person, or the person receives DSC or some form of deferred disposition (see Articles 45.051-45.053, C.C.P.). This expanded definition of "conviction" does not appear in the statute establishing the Juror Reimbursement Fee.

*1 Up to $5 court cost for cities with population less than $85,000 that have adopted proper ordinance, regulation, or order (mandatory).

*2 MVF. Add 10 cent court cost on all moving violations. Article 102.022, Code of Criminal Procedure. Moving violations are found in 37 TAC § 15.89(b). Note that some moving violations are in codes other than the Transportation Code. Note: overtaking and passing a school bus is a moving violation; therefore, the 10 cents has already been calculated into the total.

*3 Judicial Support Fee: Sixty cents of this fee stays with the city to promote efficient operation of the municipal court. See Sec. 133.105(6) L.G.C.

FEES (Add the following fees whenever they apply):

- Administrative Fee: A court may assess up to a $10 fee when a defendant elects to take a driving safety course (DSC) on or before the answer date on the citation (Art. 45.051(XX), C.C.P.). When the court elects to obtain the defendant's driving record, rather than have defendant obtain it, the court may require defendant to pay $10 plus the amount of the state
Applicable fees for services of peace officers under Article 102.011, C.C.P.:
- **Arrest Fee:** $5 for issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, penal law, or for making an arrest without a warrant. When service is performed by a peace officer employed by the State, 20% ($1) is sent to the State.
- **Warrant Fee:** $50 for executing or processing an issued arrest warrant, capias, or capias pro fine. When service is performed by a peace officer employed by the State, 20% ($10) is sent to the State.
- **Summoning a Witness:** $5 for serving a subpoena.
- **Summoning a Jury:** $5 for summoning a jury.
- **Service of any other writ** (includes summons for a defendant or a child's parent): $35.
- **Other costs:** Expenses for peace officer’s time testifying while off duty.

Fees Created by City Ordinance:
- **Juvenile Case Manager Fee:** Up to $5 fee for every fine-only misdemeanor offense if governing body has passed required ordinance establishing a juvenile case manager fund and has hired a juvenile case manager. (Art. 102.0174, C.C.P.)
- **Municipal Court Building Security Fee:** $3 on every conviction if governing body has passed required ordinance establishing building security fund (Art. 102.017, C.C.P.).
- **Municipal Court Technology Fee:** Up to $4 on every conviction if governing body has passed required ordinance establishing the municipal court technology fund (Art. 102.0172, C.C.P.).

**Jury Fee:** $3 fee collected upon conviction when case tried before a jury. $3 fee collected upon conviction if defendant has requested a jury trial and then withdrew the request not earlier than 24 hours before the time of trial; fee to be paid even if case is deferred (Art. 102.004, C.C.P.).

**Restitution Fee:** $12 optional fee for defendants paying restitution in installments (Art. 42.037, C.C.P.)

**Special Expense Fee:** 1) Under Article 45.051, C.C.P., the court may assess a special expense fee not to exceed the amount of fine that could be imposed. (Art. 45.051(c), C.C.P.); 2) An amount not to exceed $25 that may be collected for execution of a warrant for failure to appear or violate promise to appear. City ordinance required to authorize collection (Art. 45.203, C.C.P.).

**Time Payment Fee:** The court shall collect a fee of $25 from a person who has been convicted and pays any part of the fines, court costs, or restitution on or after the 31st day after the date on which the judgment is entered. One-half ($12.50) is sent to the State. One-tenth ($2.50) is retained locally for judicial efficiency. Four-tenths ($10) are retained locally with no restrictions (Sec. 133.103, L.G.C.).

**Traffic Law Failure to Appear (FTA) (Omni Base):** $30 for failure to appear or failure to pay or satisfy a judgment for violation of any fine-only offense if city has contracted with the Department of Public Safety to deny renewal of driver’s licenses. (Two-thirds of $20 are sent to the State. One-third ($10) is retained locally.) Applies to any violation that municipal court has jurisdiction of under Article 4.14, C.C.P. See Chapter 706, T.C.**

**Traffic Law Failure to Appear (Selfflow):** $20 optional fee for failure to appear or satisfy a judgment for violation of a traffic law if the city has contracted with the county assessor-collector pursuant to Chapter 502 of the Transportation Code to deny the registration of vehicles. The optional fee goes to the county or TxDOT to reinburse expenses of the program. See Sec. 702.053 (a-1), T.C. This fee takes effect January 1, 2012.

**Safety Belts & Child Safety Seat System:** City must remit to the State 50 percent of the fines collected for failing to secure a child in a child passenger safety system or to secure a child in a safety belt (Secs. 545.412 & 545.413(b), T.C.). Remittance must be done at the end of the city’s fiscal year.

**Excess Fines:** Cities with population less than 5,000 must remit all but one dollar of fines and special expenses under Article 45.051, C.C.P., for Title 7, T.C., offenses when the fines and special expenses for such offenses reach 30 percent of the city’s budget less any federal money (Section 545.403(b), T.C.).

<table>
<thead>
<tr>
<th>Name of Cost/Fee</th>
<th>Legal Reference</th>
<th>Abbreviation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consolidated Fee</td>
<td>Local Government Code, Section 133.102</td>
<td>CF</td>
</tr>
<tr>
<td>Traffic Fund</td>
<td>Transportation Code, Article 542.049</td>
<td>TPC</td>
</tr>
<tr>
<td>Child Safety Fund</td>
<td>Code of Criminal Procedure, Article 102.014</td>
<td>CS</td>
</tr>
<tr>
<td>State Traffic Fee</td>
<td>Transportation Code, Article 542.043</td>
<td>STF</td>
</tr>
<tr>
<td>State Local Reimbursement Fee</td>
<td>Code of Criminal Procedure, Article 102.004</td>
<td>SRF</td>
</tr>
<tr>
<td>Indigent Defense Fee</td>
<td>Local Government Code, Section 133.107</td>
<td>IDF</td>
</tr>
<tr>
<td>Judicial Support Fee</td>
<td>Local Government Code, Section 133.105</td>
<td>JSF</td>
</tr>
<tr>
<td>Moving Violation Fee</td>
<td>Code of Criminal Procedure, Article 102.022</td>
<td>MVF</td>
</tr>
</tbody>
</table>
ANSWERS TO QUESTIONS

PART 1

Q. 1. True. (The court is required to submit traffic conviction reports to DPS.)
Q. 2. True.
Q. 3. False. (This information is not required to be disclosed.)
Q. 4. True.
Q. 5. False.
Q. 6. True.
Q. 7. The court is required to report the:
   a. conviction:
      • orders of the driver’s license suspension; and
      • failure to complete the alcohol awareness program or community service;
        and failure to pay a violation of a court order;
   b. failure to appear;
   c. orders of deferred; and
   d. acquittals of driving under the influence of an alcoholic beverage.
Q. 8. It is effective 11 days after the judgment is entered.
Q. 10. A fine of not less than $250 or more than $2,000 and/or confinement for up to 180 days. (A class B misdemeanor)
Q. 11. The length of the suspension is a period not to exceed six months.
Q. 12. The DIC-15 form.
Q. 13. The court can order DPS to suspend or deny issuance of the driver’s license when a person fails to pay or violates a court order after conducting a contempt hearing under Article 45.050, C.C.P., retaining jurisdiction, and ordering the suspension as a sanction.
Q. 14. The court must report that deferred disposition was granted and the date granted.
Q. 15. The court is required to report the acquittal to DPS.
Q. 16. When a person under 21 is charged with public intoxication, the court follows the same punishment rules required when a person is convicted of committing an A.B.C. offense. Sec. 49.02(e), P.C. The court sets a fine that may not exceed $500, requires community service, requires attendance at an alcohol awareness program, and orders DPS to suspend or deny issuance of the driver’s license. Sec. 106.071, A.B.C.
Q. 17. Courts must report a conviction of this offense in the same manner as traffic offenses.
Q. 18. The court is required to report convictions to DPS. When a judgment is entered for this offense, the court is required to note an affirmative finding in the judgment. If the offense is a subsequent offense, the court is required to enter a special affirmative finding. When DPS receives the second conviction report, DPS will suspend the driver’s license.
Q. 19. Defendants must complete a tobacco awareness program when convicted of possession, purchase, consumption, or receipt of cigarettes or tobacco products.

Q. 20. The court must order DPS to suspend the minor’s driver’s license or deny issuance of a driver’s license if the minor does not have one for a period of time not to exceed 180 days. The order must specify the period of the suspension or denial. The court uses the DIC-15 form to report the failure to complete the tobacco awareness program.

Q. 21. Each magistrate or judge of a court of non-record and each clerk of a court of record is required to keep records of persons charged with traffic offenses.

Q. 22. Since keeping records is a ministerial duty, usually the clerk of the court maintains all the records including those cases where a traffic offense is charged.

Q. 23. True.
Q. 24. True.
Q. 25. True.
Q. 27. False. (The court must submit the report within 7 days of the judgement.)
Q. 28. False. (The defendant remains convicted of the traffic offense, even if the fine was discharged through community service.)
Q. 29. Section 543.202, T.C., requires that the DR-18 report of traffic convictions of commercial drivers operating a commercial motor vehicle contain the following additional information:

- commercial driver’s license number and social security number, if available;
- the fact that the vehicle was a commercial motor vehicle;
- whether the vehicle was involved in the transporting of hazardous materials; and
- date and nature of offense, including whether the offense was a serious traffic offense as defined in Section 522.003(25), T.C. (Serious traffic offenses arise from excessive speeding 15 mph over the posted limit or more; reckless driving; violations of state and local traffic laws other than parking, weight, or vehicle defect violations, arising in connection with a fatal accident; improper or erratic lane change; or following too closely.)

Q. 30. Misconduct of office; may be grounds for removal from clerk or judge’s position.
Q. 31. The court may require the defendant to surrender to the court his or her driver’s license. If the court takes the license, the clerk must not later than the 10th day after the license is surrendered forward the license together with a record of the conviction to DPS.
Q. 32. The period of suspension may not be for less than 90 days or more than one year.
Q. 33. Courts are required to report on DPS form DIC-21.
Q. 34. The court must report the date that the defendant completed the driving safety course.
Q. 35. The court must report the date the defendant completed the teen court program.
Q. 36. When a person under the age of 17 fails to pay a fine and/or court costs or violates a court order, the municipal court conducts a contempt hearing. If the court retains jurisdiction of the juvenile and finds the juvenile in contempt, the court may order DPS to suspend or deny issuance of the driver’s license as a sanction of the contempt. Art. 45.050(c)(2), C.C.P.

Q. 37. The court must first send the defendant notice reminding the defendant to take care of their business with the court. The court waits 15 days for a response from the defendant.

Q. 38. The court must mail the 4th copy (defendant’s receipt) to the defendant and mail the 5th copy of the notice, which is the notice of withdrawal of suspension to DPS.

Q. 39. No action will be taken under the terms of the Nonresident Violator Compact for the following violations:
- moving traffic violation which alone carries a suspension;
- equipment violations;
- motor carrier violations;
- lease law violations;
- registration law violations;
- offenses which mandate personal appearance;
- size and weight limit violations;
- parking or standing violations; and
- transportation of hazardous material violations.

Q. 40. Clerks should report an out-of-state violator’s failure to appear or failure to pay immediately because DPS may not transmit a report on any violation if the date of the transmission is more than six months after the date on which the traffic citation was issued.

Q. 41. The court only reports a traffic conviction to DPS if the defendant fails to complete the terms of the deferred disposition. The report is submitted after the judge enters a final adjudication in the case (signs the final judgment of guilty).

Q. 42. The suspension or denial cannot exceed 365 days.

Q. 43. The municipal court does not report the conviction to DPS because in a non-record municipal court the judgment is nullified. In municipal courts of record, if the judgment of the municipal court is affirmed, the court reports the conviction to DPS. If the judgment is reversed on the appeal, the municipal court of record does not report the conviction.

Q. 44. The court only reports a conviction if the defendant is convicted in the new trial.

Q. 45. Section 543.202, T.C., requires the DR-18 report of traffic convictions of commercial drivers operating a commercial motor vehicle contain the following additional information:
- commercial driver’s license number and social security number, if available;
- that the vehicle was a commercial motor vehicle;
• whether the vehicle was involved in the transporting of hazardous materials; and
• date and nature of offense, including whether the offense was a serious traffic offense as defined in Section 522.003(25), T.C. (Serious traffic offenses arise from the driving of a commercial motor vehicle for excessive speeding over 15 mph or more; reckless driving; violations of state and local traffic laws other than parking, weight, or vehicle defect violations, arising in connection with a fatal accident; improper or erratic lane change; or following too closely.)

Q. 46. When a defendant is convicted of an offense charged under Section 521.453, T.C., the court must report this conviction to DPS on DPS form DIC-21. This form is used to report any offense that carries an automatic driver’s license suspension upon conviction. Information that must be reported on DIC-21 includes the following:

• name;
• address of defendant;
• social security number;
• race;
• gender;
• offense committed;
• date offense committed;
• conviction date;
• beginning and ending dates of suspension Not less than 90 days or more than one year. If the court does not specify length of suspension, DPS is required to suspend the license for one year. Sec. 521.346, T.C.;
• name and title of person certifying information on report;
• court address;
• docket number; and
• city and county.

PART 2

Q. 47. The clerk must provide notice of the convictions of the Alcoholic Beverage Code offenses on a form approved by the Texas Commission on Alcohol and Drug Abuse.

PART 3

Q. 48. OCA is a state agency and operates under the supervision of the Supreme Court.
Q. 49. The mission of OCA is to provide administrative assistance and technical support to all of the courts in the State.
Q. 50. The Council studies methods to simplify judicial procedures, expedite court business, and better administer justice. It examines the work accomplished by the courts and submits recommendations to the Legislature, the Governor, and the Supreme Court.
Q. 51. The city secretary must notify the Texas Judicial Council of the name of each person who is elected or appointed as mayor, municipal judge, and clerk of the municipal court.
Q. 52. The city secretary must make the report within 30 days after the date of the person’s election or appointment.

Q. 53. If an official does not supply the information requested by OCA after a reasonable amount of time, he or she is presumed to have willfully refused the request.

Q. 54. The duty to supply information to OCA may be enforced with a writ of mandamus, an order from a court of superior jurisdiction compelling the municipal judge or clerk to perform a particular act that he or she has a duty to do.

Q. 55. The Supreme Court and the Court of Criminal Appeals are not required to submit monthly reports.

Q. 56. Court activity for each month must be reported to OCA by the 20th day following the end of the month being reported.

Q. 57. The court must identify the name of the municipality, the presiding judge, the court clerk, the mailing address of the court, the name of the person actually preparing the report, and the office telephone number of that person.

Q. 58. If a court does not have activity in a section of the monthly report, the court should not leave the space blank, but should show “zero” activity.

PART 4

Q. 59. No.

Q. 60. For the purpose of collecting court costs, Section 133.101, L.G.C., defines conviction as:
   • a judgment, a sentence, or both a judgment and a sentence imposed on the person;
   • the person receives community supervision, deferred adjudication, or deferred disposition; or
   • the court defers final disposition of the case or imposition of the judgment and sentence.

Q. 61. Court cost reports must be filed with the state by the last day of the month following each calendar quarter.

Q. 62. The city may keep the interest if it reports timely.

Q. 63. Cities may not keep the handling fee but must remit it to the State.

Q. 64. Courts are required to keep separate records of the funds.

Q. 65. Some cities are required to remit court costs and fees electronically. If $250,000 or more in court costs and fees are remitted to the Comptroller in a state fiscal year (September through August), payments of $10,000 or more must be made by electronic funds transfer in the following fiscal year. If a city is affected by this rule, the Comptroller must notify the city no less than 60 days before the first payment is required to be made. Sec. 404.095, G.C., and Section 3.9, Part I, Title 34, T.A.C. A city may not be required to remit electronically, but may voluntarily remit in this manner. The reporting is always manual.

Q. 66. False.
Q. 67. False.
Q. 68. False.
Q. 69. False.
Q. 70. False.
Q. 71. True.
Q. 72. False.
Q. 73. True.
Q. 74. True.
Q. 75. All municipal court proceedings cease.
Q. 76. No, because the conviction is not final—it is appealed.
Q. 77. A judge may waive the fine and costs when a defendant defaults in payment of fine, is indigent, and performing community service would be a hardship.
Q. 78. If the new legislation imposes a new or changes an existing court or fee, the cost or fee generally does not take effect until January 1st of the year following the legislative session.
Q. 79. The treasurer must still file a report and report that no fees were collected.
Q. 80. False.
Q. 81. True.
Q. 82. False.
Q. 83. False.
Q. 84. False.
Q. 85. False.

**PART 5**

Q. 86. False.
Q. 87. False.
Q. 88. True.
Q. 89. True.
Q. 90. False.
Q. 91. False.
Q. 92. False.
Q. 93. True.
Q. 94. True.
Q. 95. True.
Q. 96. False.
Q. 97. True.
Q. 98. True.
Q. 99. True.
Q. 100. False.
Q. 101. False.
Q. 102. False. (The court must send $1 to the State.)
Q. 103. True.
Q. 104. False.
Q. 105. True.
Q. 106. True.
Q. 107. False.
Q. 108. True.
Q. 110. False.
Q. 111. False.
Q. 112. True.
Q. 113. True.
Q. 114. True.
Q. 115. True.
Q. 116. True.
Q. 117. Thirty-five dollars.
Q. 118. Five dollars.
Q. 119. Five dollars.
Q. 120. Thirty-five dollars.
Q. 121. Three dollars.
Q. 122. False.
Q. 123. True.
Q. 124. False.
Q. 125. For good cause at a show cause hearing.
Q. 126. Some items that a clerk may want to consider when preparing the analysis are costs of jury summons (paper and printing costs); costs of envelopes and stamps; and clerks’ salaries.
Q. 127. Thirty dollars.
Q. 128. The judge may assess all necessary and reasonable expenses for meals and lodging incurred by peace officer and 29 cents a mile for travel.
Q. 129. False.
Q. 130. True.
Q. 131. False.
Q. 132. True.
Q. 133. True.
Q. 134. False.
Q. 135. True.

PART 6
Q. 136. Twelve dollars.
Q. 137. The court must deposit $6 in the city’s general revenue account and remit $6 to State for the Crime Victim’s Compensation Fund.
Q. 138. The time payment fee is due from a defendant who pays any part of a fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered.
Q. 139. Each quarter, the city must send 50% of the time payment fee to the State Comptroller. The other 50% is retained by the city. The city is required to use 10% of the fee ($2.50) for improving the efficiency of the administration of justice. The other 40% ($10) may be used by the city for any lawful purpose.
Q. 140. True.
Q. 141. True.

PART 7
Q. 142. True.
Q. 143. True.
Q. 144. False. (The city must pay one half of the fine to the school district.)
Q. 145. True.
Q. 146. False.
Q. 147. True.

PART 8
Q. 148. True.
Q. 149. True.
Q. 150. False.
Q. 151. True.
Q. 152. False.
Q. 153. False.
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INTRODUCTION

The purpose of this study guide is to familiarize clerks with different aspects of traffic law in the Texas Transportation Code (T.C.). The guide is an overview, not a comprehensive study of the entire Transportation Code, and examines the issues of arrest and appearance, culpability, common penalties, the excess fine law, and quotas. The study guide also includes a discussion of procedures for processing driving safety courses contained in the Code of Criminal Procedure (C.C.P.).

PART 1
TRANSPORTATION CODE

The Transportation Code is organized to facilitate its use. The Code is divided into titles. Each title is divided into subtitles, which in turn are further broken down into chapters, subchapters, and sections. Within the Transportation Code, two primary titles—General Provisions and Vehicles and Traffic—contain information on traffic offenses.

A. Title 1 – General Provisions

Title 1, General Provisions, contains general information on the Transportation Code’s purpose and construction and includes rules regarding aviation, navigation, and pilots. Section 1.002, T.C., provides that Chapter 311, G.C. (the Code Construction Act), applies to the construction of the Transportation Code except where expressly stated.

B. Title 7 – Vehicles and Traffic

The bulk of traffic law matters are contained in Title 7, Vehicles and Traffic. It is divided into the following 10 subtitles.

1. Subtitle A

Subtitle A, Certificates of Title and Registration of Vehicles, contains rules on how vehicles are registered, sold, and tagged. Most of this subtitle is dedicated to special registration rules, but rules regarding operating a vehicle without proper registration are also located here in Chapter 502, Subchapter H - Penalties and Other Enforcement Provisions. The most common of these provisions are Operating a Vehicle Without a License Plate or Registration Insignia (Sec. 502.404, T.C.); Operating a Vehicle with an Expired License Plate (Sec. 502.407, T.C.); and Wrong, Fictitious, or Obscured License Plate (Sec. 502.409, T.C.).

2. Subtitle B

Subtitle B, Driver’s Licenses and Personal Identification Cards, regulates driver’s license requirements, records, applications, examinations, restrictions, expirations, suspensions, and fees. Most of the provisions are administrative and do not affect the daily operation of municipal courts, but offenses such as License to Be Carried and Exhibited on Demand (Sec. 521.025, T.C.); Permitting an Unauthorized Person to Drive (Sec. 522.072, T.C.); and Driving While License Invalid (Sec. 521.457, T.C.) are commonly heard in these courts. In addition, there are
rules regarding dismissal of license citations (Secs. 521.025(d) and 521.026, T.C.) and driver’s license restrictions (Sec. 521.221, T.C.).

3. **Subtitle C**

Subtitle C, *Rules of the Road*, is by far the most often used by municipal courts. Subtitle C is divided into 14 chapters, which go from Chapter 541 through 600. (Note: Chs. 554 to 599 are reserved and do not contain any laws or rules at this time.)

- **Chapter 541, Definitions**, contains the meaning of some of the more commonly used terms in the Transportation Code.

- **Chapter 542, General Provisions**, provides rules for when traffic laws apply and for the authority of local governments to regulate traffic. Sec. 542.202, T.C. This chapter also contains the general penalty for Subtitle C offenses. Section 542.401 provides that a misdemeanor for which no other penalty is provided in Subtitle C is punishable by a fine of $1 to $200. In addition, this chapter includes information on the traffic fund court costs (Sec. 542.403, T.C.); the disposition of fines (Sec. 542.402(a), T.C.); and the excess fines law (Sec. 542.402(b), T.C.). Sections 542.405 and 542.406 provide rules on regulating a municipality’s authority regarding civil enforcement of red light cameras. See also Chapter 707, T.C.

- **Chapter 543, Arrest and Prosecution of Violators**, contains laws regarding when arrests may be made on traffic offenses, written notices to appear, the violation of promise to appear offense, and traffic conviction reporting requirements. The chapter provides that each judge and clerk of a municipal court shall maintain records in all traffic cases and report to DPS all traffic convictions and bond forfeitures on traffic violations. Secs. 543.201 and 543.203, T.C.

- **Chapter 544, Traffic Signs, Signals, and Markings**, includes signal and light definitions and authority for placing control devices upon the public thoroughfares. The chapter also contains the first offenses commonly known as “moving violations,” and familiar offenses, such as disobeying a red light (Sec. 544.007(d), T.C.) and disobeying a stop or yield sign (Sec. 544.010, T.C.). (Note the term “moving violation” has a specific meaning as it pertains to court costs, for example, and not every rules of the road offense is a moving violation and not every moving violation is in the Subtitle C, Rules of the Road—for example, the offense of driving while intoxicated, located in the Penal Code is a moving violation. See “Moving Violations,” *The Recorder*, March 2010.

- **Chapter 545, Operation and Movement of Vehicles**, contains the bulk of traffic offenses. Some of the regulations included are speed restrictions, turning movements, lane usage, right of way rules, and special stops. Parking regulations (Secs. 545.301 - 545.303, T.C.) are also found in Chapter 545, as well as many miscellaneous traffic laws, including safety belt offenses (Sec. 545.413, T.C.); child safety seat laws (Sec. 545.412, T.C.); and children riding in the back of an open vehicle bed (Sec. 545.414, T.C.). Many little used traffic laws are found in the miscellaneous rules of Chapter 545.

- **Chapter 546, Operation of Authorized Emergency Vehicles**, sets out guidelines about when emergency vehicles may speed or disregard traffic regulations.
Chapter 547, Vehicle Equipment, contains numerous regulations regarding necessary equipment on vehicles. It outlines safety, lighting, and other vehicle equipment, and includes laws on window tinting (Sec. 547.609, T.C.); mufflers (Sec. 547.604, T.C.); brakes (Sec. 547.401, T.C.); stop lamps (Sec. 547.323, T.C.); headlamps (Sec. 547.321, T.C.); and taillights (Sec. 547.322, T.C.). If an offense or a question arises about equipment found on a vehicle, it will most likely be found in Chapter 547. It is an offense in Texas to operate or, as an owner, to knowingly permit someone to operate a vehicle that is unsafe or fails to comply with the vehicle regulations of Chapter 547. Sec. 547.004, T.C.

Chapter 548, Compulsory Inspection of Vehicles, provides the rules for inspection of vehicles. Although most of the chapter contains rules and restrictions on inspection stations, fees, and equipment, it does contain offenses that may be filed in municipal court. The most common offense is failing to display an inspection sticker. Sec. 548.602, T.C. Section 548.601 provides that an offense under Section 548.601, unless otherwise specified, is a Class C misdemeanor. The chapter does not define Class C misdemeanor; hence, courts must use the definition contained in the Penal Code, which provides that the maximum penalty is $500.

Chapter 550, Traffic Accidents and Accident Reports, explains how accident reports should be made, recorded, and distributed. There are a few offenses that may be filed in municipal court involving the duty of a motor vehicle operator to notify the owner or to provide information upon striking an unattended vehicle, striking a fixture or highway landscaping, or having an accident where the damage done is less than $200.

Chapter 551, Operation of Bicycles, Mopeds, and Play Vehicles, provides that bicycle riders must obey all traffic laws applicable to a vehicle operator. In addition, there are provisions about the way a bicycle should be ridden and safety equipment that should be on a bicycle. The bicycle rules also apply to mopeds, play vehicles, motor-assisted scooters, and electric personal assistive mobility devices. Provisions of Title 7, T.C., relating to motor vehicles do not apply to motor-assisted scooters. Sec. 551.352, T.C.

Chapter 552, Pedestrians, includes restrictions about when and where pedestrians may walk, including the use of sidewalks (Sec. 552.006, T.C.); crossing at signal lights (Sec. 552.001, T.C.); “jay walking” (Sec. 552.005, T.C.); and solicitation by pedestrians (Sec. 552.007, T.C.).

Chapter 553, Enactment and Enforcement of Certain Traffic Laws in Certain Municipalities, deals with the authority of cities to erect traffic signs.

Chapter 600, Miscellaneous Provisions, provides requirements for dropping material on a highway (Sec. 600.001, T.C.) and authority for peace officers to require a driver to produce identification anytime within 250 feet of a Mexican border checkpoint (Sec. 600.002, T.C.). The chapter also allows school-crossing guards to direct traffic if they complete certain training requirements. Sec. 600.004, T.C.

4. Subtitle D

Subtitle D, Motor Vehicle Safety Responsibility, contains only Chapter 601, which provides that motor vehicle operators must maintain insurance or have some other type of financial
responsibility in the event that they have an accident. This requirement is aimed at protecting other drivers from bearing the cost of injuries or damages when an accident is not their fault. Section 601.191 provides for the offense of failure to maintain financial responsibility.

5. **Subtitle E**

Subtitle E, *Vehicle Size and Weight*, regulates the size and weight of trucks, truck loads including milk and hazardous materials, weight of loads that can be hauled by a truck, transit permits, and the size of a transport vehicle.

6. **Subtitle F**

Subtitle F, *Commercial Motor Vehicles*, primarily provides rules for trucks operated under lease and vehicle marking requirements. Municipal courts may handle some of the offenses, such as failure to carry or present vehicle license receipt (Sec. 621.501, T.C.) or weight violations (Sec. 621.101, T.C.). The subtitle contains commercial motor vehicle safety standards in Chapter 644, which regulate the trucking industry and ensure that federal highway safety regulations are followed by commercial drivers. When cases are filed under this subtitle, the authority to do so comes from Chapter 644 (Sec. 644.151, T.C.).

7. **Subtitle G**

Subtitle G, *Motorcycles and All Terrain Vehicles*, regulates motorcycles and all terrain vehicles. The most common offense from this subtitle is not wearing protective headgear while operating a motorcycle (Sec. 661.003, T.C.). Other portions of the subtitle include motorcycle operating training and safety, all terrain vehicle operation and education, and sale of motorcycles.

8. **Subtitle H**

Subtitle H, *Parking, Towing, and Storage of Vehicles*, provides authority for cities to regulate parking and storage of vehicles. It contains laws regarding privileged (handicapped) parking violations (Sec. 681.011, T.C.); disabled parking placards (Sec. 681.002, T.C.); space designation (Sec. 681.009, T.C.); and enforcement (Secs. 681.010 and 681.011, T.C.). Also found in Subtitle H is authority for certain cities to administratively adjudicate parking citations and allows them to be heard by a hearing officer (Ch. 682, T.C). Subtitle H also regulates the handling of abandoned vehicles (Ch. 683, T.C.).

9. **Subtitle I**


Chapter 702 permits a city to contract with the county or Texas Department of Transportation in the same manner to deny renewal of vehicle registration to persons with traffic warrants (Sec. 702.003, T.C.). Chapter 703, *Nonresident Violator Compact*, allows cities to report out-of-state residents who fail to take care of traffic citations. The subtitle also contains the offense of allowing a dangerous driver to borrow a motor vehicle. This rule allows a person, who lends his or her car to a person whose license is suspended under the driving while intoxicated laws, to be charged (Sec. 705.001, T.C.). Chapter 706 permits a city to contract with DPS to deny renewal of a driver’s license of defendants who fail to appear, fail to pay fine-only offenses, or fail to satisfy a judgment in a manner ordered by the court (Sec. 706.004, T.C.).
Chapter 707 provides the rules for photographic traffic signal enforcement system (red light cameras). Enforcement of red light cameras is civil, but the appeal is to the municipal court.

Chapter 708 contains the provisions for driver’s license points and surcharges. The Driver’s Responsibility System in Chapter 708 is based on a system of points related to traffic convictions that apply surcharges before renewing a driver’s license. DPS promulgates a list of “moving violations” that receive two points each conviction, three if an accident resulted. Speeding less than 10 percent over the posted limit and failure to restrain a child in a passenger safety seat do not receive points. Upon reaching six or more points over 36 months, the driver is accessed a surcharge of $100 plus $25 for each point over six. DPS uses automatic license suspension to collect past due surcharges. For DWI convictions, surcharges vary: $1,000 for the first DWI, $1,500 for a subsequent, and $2,000 for DWI with BAC over 0.16. Failure to maintain financial responsibility triggers an automatic surcharge of $250 per year. Operating a motor vehicle without a proper license results in an automatic surcharge of $100. Surcharges continue for three years. Sec. 708.052, T.C.

Citations issued for a traffic violation must have a statement regarding surcharges. The statement must say: “A conviction of an offense under a traffic law of this state or a political subdivision of this state may result in the assessment on your driver’s license of a surcharge under the Driver Responsibility Program.” The notice must be in bigger print than anything else on the citation. Sec. 708.105, T.C.

Ticket quotas are prohibited under Subtitle I in Section 720.002. Cities are prohibited from requiring or suggesting that judges collect a predetermined amount of money from persons convicted of a traffic offense within a specified period. A violation of this section by an elected official is misconduct and a ground for removal from office.

10. Subtitle J

Subtitle J, Miscellaneous Provisions, is the last subtitle of Title 7. It regulates the operations of automobile clubs (Ch. 722, T.C.); provides requirements for cities and counties to have their name on city or county vehicles (Ch. 721, T.C.); contains the implied consent law, requiring motorists under certain circumstances to consent to an alcohol test or face driver’s license suspension (Ch. 724, T.C.); and regulates the transportation of loose materials (Ch. 725, T.C.). Subtitle J also provides rules about how minors can be charged and processed for traffic offenses (Ch. 729, T.C.); selling a master key for motor vehicle ignitions (Sec. 728.011, T.C.); tampering with certain vehicle equipment (Ch. 727, T.C.); minimum road clearance (Sec. 727.001, T.C.); and driving more than 30 miles per hour in a park bordering the Gulf of Mexico (Sec. 727.002, T.C.).

Q. 1. How is the Transportation Code organized? _________________________________
Q. 2. Most traffic law matters handle by municipal court are located in which title of the Transportation Code? _________________________________
Q. 3. In which subtitle do you find rules on registration? _________________________________
Q. 4. In which subtitle do you find rules on driver’s licenses? _________________________________
Q. 5. In which chapter of Subtitle C do you find rules on arrest and prosecution of traffic violators? _________________________________
Q. 6. In which chapter of Subtitle C do you find the requirements of reporting traffic convictions? ____________________________

Q. 7. Which chapter in Subtitle C regulates the enactment and enforcement of traffic laws in municipalities? ____________________________

Q. 8. In which subtitle do you find rules on maintaining financial responsibility? ________

Q. 9. In which subtitle do you find rules about administrative parking? ____________________________

Q. 10. In which subtitle do you find rules on the Nonresident Violator Compact? __________

Q. 11. In which subtitle do you find rules on contracting with DPS to deny renewal of a driver’s license to defendants who fail to appear, fail to pay, or fail to satisfy a judgment in a manner ordered by the court? ________________

Q. 12. In which subtitle do you find rules regarding surcharges added to driver records for convictions of traffic offenses? ____________________________

Q. 13. Where do you find information about quotas being prohibited? ____________________________

Q. 14. Where do you find information regarding minors and traffic violations? ____________

PART 2
ISSUANCE OF CITATIONS

A. Peace Officer’s Authority to Issue Citations

Peace officers may arrest persons who commit traffic violations. Specific authority for arresting persons who commit Subtitle C, Rules of the Road, violations is found in Section 543.001, T.C., but there is also authority for a peace officer to release a person arrested for a Subtitle C violation by issuing a citation instead. Sec. 543.003, T.C. Section 543.007, T.C., provides additional rules for citations issued to the operator of a commercial motor vehicle or holder of a commercial driver’s license or learner’s permit. Those citations must contain certain information required by DPS to comply with Chapter 522, T.C., and the Federal Commercial Motor Vehicle Safety Act of 1986. The DPS rules are in Section 16.100, Chapter 16, Title 37 of the Texas Administrative Code (T.A.C.).

Under Chapter 543, T.C., in order for the violator to secure release from custody, he or she must sign a promise to appear. Later, if the person fails to appear in court as promised, he or she can be charged with a violation of promise to appear. Sec. 543.009, T.C. This is a separate crime from the underlying traffic offense and is charged by complaint.

If a person violates traffic laws outside of Subtitle C, such as failure to maintain financial responsibility (Subtitle D), no driver’s license (Subtitle B), expired registration (Subtitle A), or not wearing protective headgear while riding a motorcycle (Subtitle G), the peace officer has general authority to arrest without a warrant under Article 14.01(b), C.C.P., for any offense committed in his or her presence or within his or her view. After a peace officer makes an arrest under Article 14, the officer must take the person before a magistrate. The exception to this rule is for Class C misdemeanors.

Subsection (b) of Article 14.06, C.C.P., provides authority for a peace officer to release a person arrested for a Class C misdemeanor by issuing a citation. The one exception is for the offense of
public intoxication where the peace officer may take the person to jail or release him or her to someone who will assume responsibility. Art. 14.031, C.C.P.

If a person fails to appear after having been released by a citation issued under the authority of Article 14.06(b), C.C.P., the person can be charged with the offense of failure to appear. The offense of failure to appear is a Class C misdemeanor if the underlying offense charged in court is a Class C misdemeanor. Sec. 38.10, P.C. The elements of failure to appear require that the person be taken into custody and released with or without bail and then fail to appear according to the terms of the release. When a peace officer stops a person for committing a traffic violation, the person is under arrest and in custody until the officer decides whether to take the person to jail or to release the person by issuing a citation. For offenses outside of Subtitle C, when a person fails to appear, the proper charge is the Penal Code offense of failure to appear.

Article 14.06(c), C.C.P., provides authority for peace officers to issue citations for the following Class A and B misdemeanors:

- Possession of four ounces or less of marihuana (Sec. 481.121(b)(1)-(2), H.S.C.);
- Criminal mischief, where the value of damage done was $50 or more, but less than $500 (Sec. 28.03(b)(2), P.C.);
- Theft, where the value of the property stolen was $50 or more, but less than $500 or the value of property obtained by a hot check was $20 or more, but less than $500 (Sec. 31.03(e)(2)(A), P.C.);
- Theft of service, where the value of the service stolen was $20 or more, but less than $500 (Sec. 31.04(e)(2), P.C.);
- Possession of contraband in a correctional facility, if the offense was punishable as a Class B misdemeanor (Sec. 38.114, P.C.); or
- Driving with an invalid license (Sec. 521.457, T.C.).

<table>
<thead>
<tr>
<th>General Authority to Issue Citations</th>
<th>Specific Authority for Class A and B Offenses</th>
<th>Specific Authority for Subtitle C, T.C., Offenses</th>
</tr>
</thead>
<tbody>
<tr>
<td>A peace officer’s general authority to issue a citation for any Class C misdemeanor, except for the offense of public intoxication, is found in Article 14.06(b), C.C.P.</td>
<td>A peace officer has specific authority to issue citations for certain Class A and B misdemeanor offenses found in Article 14.06(c), C.C.P.</td>
<td>Specific authority for a peace officer to issue a notice to appear for offenses in Subtitle C, T.C., is found in Section 543.003, T.C.</td>
</tr>
</tbody>
</table>

**B. Speeding: Issuance of Citation Required**

Peace officers who stop a person for speeding generally may not take the person into custody. Officers must issue a citation for the speeding offense and release the person if the person signs the citation. If the person refuses to sign the citation, the officer may then take the person before a magistrate. Sec. 543.004, T.C.

Additionally, Subsection 49.031(e), P.C., provides that a peace officer charging a person with open container, instead of taking the person before a magistrate shall issue a written citation. See also Sec. 543.004, T.C.
C. Information on Citations

1. Racial Profiling Information

Although the two statutes noted in the chart following this section do not require information to be gathered for racial profiling data, Article 2.133, C.C.P., requires law enforcement agencies to adopt a detailed written policy on racial profiling, including the collection of information relating to traffic stops in which a citation is issued or an arrest results, including:

- physical description of person;
- person’s gender;
- the person’s race or ethnicity;
- the initial reason for the stop;
- whether the officer conducted a search as a result of the stop and, if so, whether the person consented to the search;
- whether any contraband was discovered and the type of contraband;
- the reason for the search;
- whether the officers made an arrest as a result of the stop, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;
- the street address or approximate location of the stop; and
- whether the officer issued a written warning or citation as a result of the stop.

As of September 1, 2009, law enforcement agencies must require the collection and reporting of certain information related to motor vehicle stops in which a citation is issued or arrest made, including whether the officer knew the race or ethnicity of an individual detained before detaining the individual. Art. 2.132, C.C.P. Section 543.202, T.C., requires the court to report much of this same information to DPS. The best way to collect this information is using the citation.

2. Driving Safety Course Information

Article 45.0511(q), C.C.P., requires that a notice to appear issued for a Subtitle C violation include the following statement:

You may be able to require that this charge be dismissed by successfully completing a driving safety course or a motorcycle operator training course. You will lose that right if, on or before your appearance date, you do not provide the court with notice of your request to take the course.

In its absence, the person may continue to exercise the right to the course until he or she is informed or the case is disposed. Art. 45.0511(r), C.C.P.

3. Failure to Maintain Financial Responsibility Warning

Section 601.233, T.C., requires that a citation for failure to maintain financial responsibility contain the following statement in type larger than other type on the citation except for the type of the statement required by Section 708.105, T.C. (regarding surcharges):
A second or subsequent conviction of an offense under the Texas Motor Vehicle Safety Responsibility Act will result in the suspension of your driver’s license and motor vehicle registration unless you file and maintain evidence of financial responsibility with the Department of Public Safety for two years from the date of conviction. The department (DPS) may waive the requirement to file evidence of financial responsibility if you file satisfactory evidence with the department showing that at the time this citation was issued, the vehicle was covered by a motor vehicle liability insurance policy or that you were otherwise exempt from the requirements to provide evidence of financial responsibility.

4. **Notice of Surcharges**

A citation issued for a traffic offense must include in type larger than any other type on the citation the following statement:

A conviction of an offense under a traffic law of this state or a political subdivision of this state may result in the assessment on your driver’s license of a surcharge under the Driver’s Responsibility Program.

5. **Address Obligation for Juveniles and Their Parents**

Article 45.057(h), C.C.P., provides that a child and parent required to appear before the court have an obligation to notify the court in writing of any change of address. Failure to do so is a Class C misdemeanor. For the obligation to become effective, notice must be provided to the child, parent, or both, which may be on the citation. Art. 45.057(j), C.C.P.

6. **Contract with DPS or TxDOT Notice**

When a city contracts with DPS to deny driver’s license renewal to a person who fails to appear, fails to pay, or fails to satisfy a judgment in a manner ordered by the court, the citation must provide a written warning that if the violator fails to appear in court as provided by law for the prosecution of the offense, fails to pay, or fails to satisfy a judgment ordering the payment of a fine and costs in the manner ordered by the court, he or she may be denied driver’s license renewal. The warning is in addition to any other warning required by law.

For a city contracting with TxDOT in the “Scofflaw” Program, the citation must include a warning that states that if the person fails to appear in court as provided by law for the prosecution of the offense or fails to pay a fine for the violation, the person might not be permitted to register a motor vehicle in Texas. Sec. 702.004(b), T.C.

7. **Commercial Operators and Driver Licenses**

Section 543.202, T.C., requires courts to report the social security number on citations issued to holders of a commercial driver’s license or permit.

Section 543.007, T.C., requires peace officers to collect certain information by DPS rules. Secs. 2002.051-2002.056, G.C.

DPS, in Title 37, Rule 16.100, T.A.C., requires the following information to be noted on a citation issued to a person holding a commercial driver’s license or permit:

- name, address, physical description, and date of birth;
- the person’s driver’s license number;
the registration number of the vehicle involved;
• whether the vehicle was a commercial motor vehicle as defined in Chapter 522, T.C.;
• whether the vehicle was involved in the transporting of hazardous materials; and
• the date and nature of the offense, including whether the offense was a serious traffic
violation as defined in Chapter 522, T.C. (excessive speeding 15 mph or more over;
reckless driving; violation of state and local traffic laws other than parking; weight or
vehicle defect violations, arising in connection with a fatal accident; improper or erratic
lane change; or following too closely). Sec. 522.003(25), T.C.

Since CDL holders are not required to make an appearance in open court, and because such
information is reported to DPS via the citation, the only way this information is guaranteed to be
obtained is if it is collected by a peace officer at the time the citation is issued.

8. Domestic Violence Admonishments on Citations

Effective September 1, 2009, under Art. 14.06, C.C.P., a peace officer who issues a citation to a
person, including a child, for a Class C misdemeanor, other than an offense under Section 49.02,
P.C. (public intoxication), must issue a citation that contains the following admonishment, in
boldfaced or underlined type or in all capital letters:

If you are convicted of a misdemeanor offense involving violence where you are or were a
spouse, intimate partner, parent, or guardian of the victim or are or were involved in another,
similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm,
including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S.C. Section
922(g)(9) or Section 46.04(b), Texas Penal Code. If you have any questions whether these laws
make it illegal for you to possess or purchase a firearm, you should consult an attorney.

9. General Information to Include on Citations

<table>
<thead>
<tr>
<th>General Authority</th>
<th>Subtitle C, T.C. Offenses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 14.06(b), C.C.P., requires that the following information be included on the notice for Class C misdemeanors:</td>
<td>Section 543.003, T.C., requires that the following information be included on the notice for Subtitle C offenses:</td>
</tr>
<tr>
<td>• the time and place to appear before a magistrate;</td>
<td>• the time and place the person is to appear;</td>
</tr>
<tr>
<td>• the name and address of the person charged;</td>
<td>• the name and address of the person charged;</td>
</tr>
<tr>
<td>• the offense charged; and</td>
<td>• the offense charged; and</td>
</tr>
<tr>
<td>• the domestic violence admonishment.</td>
<td>• the license number of the person’s vehicle.</td>
</tr>
<tr>
<td></td>
<td>Note: The complaint and the summons or notice to appear for speeding must specify the maximum or minimum speed limits and the speed the defendant is alleged to have driven.</td>
</tr>
</tbody>
</table>
General Authority | Subtitle C, T.C. Offenses
--- | ---
No signature is required on a citation issued pursuant to a peace officer’s authority under Article 14.06(b), C.C.P., although a peace officer commonly asks for a signature on these citations. Sec. 38.10, P.C. | Section 543.005, T.C. requires a signature on a citation issued for Subtitle C, T.C., offenses. The signature may be obtained on a duplicate form or an electronic device capable of creating a copy of the signed notice. The officer gives a copy of the notice to the person charged and releases him.

E. Appearance Date

Citations issued to persons violating offenses under Subtitle C, Rules of the Road (Chs.541-600), must contain a specific time and place in the citation that the person is to appear before a judge having jurisdiction over the case. This date must be at least 10 days after the date the citation was issued by the peace officer unless the person arrested demands an earlier hearing. Sec. 543.003, T.C.

Article 14.06(b), C.C.P., does not require that the defendant be given a certain number of days before requiring an appearance. It does require the officer to note the magistrate before whom the person is to appear.

Q. 15. Where do peace officers get authority to issue citations to persons violating Subtitle C, Rules of the Road offenses? ________________________________

Q. 16. Under what authority may a peace officer issue a traffic citation for offenses outside of Subtitle C, Rules of the Road? ________________________________

Q. 17. What are the exceptions to peace officers arresting persons whom they believe committed traffic violations? (circle one)
   a. no valid inspection sticker and no valid registration
   b. speeding and possession of an alcoholic beverage in a motor vehicle
   c. violation of a driver’s license restriction and “jaywalking”
   d. failure to maintain financial responsibility and no valid inspection sticker

Q. 18. What if a citation does not notify the defendant of his or her right to take a driving safety course? ________________________________

Q. 19. What must a citation contain regarding the offense of failure to maintain financial responsibility? ________________________________

Q. 20. What must a notice contain regarding surcharges on driver’s licenses? ________________

Q. 21. What should a citation notify a juvenile about regarding his or her address? ________________

Q. 22. If a city contracts with DPS to deny renewal of driver’s licenses, what information should be on the citation issued to traffic violators? ________________

Q. 23. What additional information is required to be on a citation issued to a person who is a holder of a commercial driver’s license? ________________

Q. 24. What general information is required to be on a citation? ________________

Q. 25. In what form may a signature on a citation be obtained? ________________
Q. 26. When does a peace officer not have to obtain a signature on a citation? __________

Q. 27. When a peace officer issues a citation for an offense in Subtitle C, Rules of the Road, how long must the officer give the person to appear in court?
   a. 10 days
   b. 15 days
   c. 20 days
   d. 25 days

**PART 3**

**CULPABILITY**

There is often confusion about whether traffic violations are considered criminal. Put simply, in Texas, traffic cases are criminal matters that are prosecuted by the State. Nevertheless, there are differences between what is normally considered to be criminal conduct and conduct that constitutes a traffic offense. The major difference is the culpable mental state necessary to commit a crime. Criminal activity generally requires that the defendant meant to, intended to, or recklessly committed an offense. For example, the offense of simple assault requires that the actor “intentionally or knowingly” caused physical contact when he or she knew or should have had reason to believe that the victim would regard the contact as offensive or provocative. Sec. 22.01(a)(3), P.C.

Most traffic offenses, despite the fact that they are criminal offenses, do not require a culpable mental state. They are “strict liability” offenses. In other words, when a person operates a vehicle, the person must adhere to a strict standard of care that holds people accountable when they break the law in spite of their intent. This eliminates instances where a person is not held responsible for reckless or negligent actions because they were not familiar with the law or did not intend to violate the law. Additionally, it would be impractical to criminally prosecute traffic violations if the State had to prove a culpable mental state on each offense.

Some traffic-related cases do require culpable mental states, and those are clearly outlined in the law. For example, the offense of knowingly permitting an unauthorized person to drive has a mental state of “knowingly.” Sec. 521.458, T.C.

**True or False**

Q. 28. In Texas, traffic cases are criminal. _____

Q. 29. All traffic offenses require that a culpable mental state be alleged when charging a person with a traffic offense. _____

Q. 30. In Texas, prosecutors must prove that traffic offenders intended to commit the traffic offense. _____

Q. 31. In Texas, drivers must adhere to a strict standard of care when driving. _____
PART 4
PENALTIES

When a defendant is convicted of a fine-only offense, the court orders the defendant to pay a monetary penalty. Penalty ranges can vary for different reasons. The Transportation Code does not treat persons under the age of 17 differently from adults regarding the penalties for traffic violations. Sec. 724.001(c), T.C. Traffic violations are not subject to optional or mandatory waiver requirements to juvenile court. Sec. 51.08, F.C.

A. General Penalties

If an offense in the Transportation Code does not specify a penalty, courts must use the general penalty provision, where applicable. The following chart contains examples of common general penalties.

<table>
<thead>
<tr>
<th>Subtitle</th>
<th>General Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subtitle A (Certificates of Title and Registration of Vehicles)</td>
<td>Registration of Vehicles: maximum fine of $200 (Section 502.401)</td>
</tr>
<tr>
<td>Subtitle B (Driver’s Licenses and Personal Identification Cards)</td>
<td>Driver’s Licenses and Certificates: maximum fine of $200 (Section 521.461)</td>
</tr>
<tr>
<td>Subtitle C (Rules of the Road)</td>
<td>Subtitle C: $1 to $200 (Section 542.401)</td>
</tr>
<tr>
<td>Subtitle E (Vehicle Size and Weight)</td>
<td>Subtitle E: maximum fine $200; penalty escalates for subsequent convictions (Section 621.507)</td>
</tr>
</tbody>
</table>

B. Specific Penalties

General penalty provisions only govern fine ranges when a more specific fine is not included. Some offenses in the Transportation Code fall outside the municipal court jurisdiction. For example, racing on a highway (exhibition of acceleration) is punishable by a jail term not to exceed 180 days and a maximum fine of $2,000. Sec. 545.420, T.C. The punishment includes jail time, which is an instant indication that municipal court lacks jurisdiction over this Class B misdemeanor.

C. Prior Convictions

In some cases, the penalty can increase each time a defendant is convicted of the same offense. The charges, however, must be filed as second or subsequent offenses in order for the higher penalties to apply. For example, defendants convicted of failure to maintain financial responsibility are bound by a $175 to $300 fine for the first offense (Sec. 601.191, T.C.), and a $350 to $1000 fine for subsequent offenses (also includes ordering the sheriff to impound the vehicle) (Secs. 601.191 and 601.261, T.C.).

D. Construction or Maintenance Work Zones

For violations that occurred in a construction or maintenance work zone when workers were present, the penalty may double. For example, for disobeying instructions, signals, warnings, or markings of a warning sign in a construction zone when workers were present, the penalty range is doubled to not less than $2 or more than $400. Sec. 472.022(d), T.C. The higher penalty may not be considered by the judge unless the construction zone is marked by signs that state, “Fines
double when workers present.” The Texas Department of Transportation requires the removal or
covering of signs that restrict speed limits in construction or maintenance work zones when no
hazard exists. Sec. 201.907, T.C.

For violations under Subtitle C committed in a construction or maintenance work zone when
workers were present, the fine is twice the minimum or maximum fine that is applicable to an
offense committed outside a zone. Sec. 542.404, T.C. There are some exceptions when the judge
may not assess a double fine, include: offenses in Chapter 548 involving inspection of vehicles;
offenses in Chapter 552 such as offenses involving pedestrians; and offenses in Sections 545.412
and 545.413 involving safety belts and securing children in child passenger safety seat systems.

When citations are written for offenses that occur in a construction or maintenance work zone
when workers are present, the citation must contain on its face the fact that workers were present
when the offense was committed before the judge can assess the higher fine. Secs. 472.022(d)
and 542.404(a), T.C.

Violations that occur in a construction or maintenance work zone when workers are present are
not eligible for a driving safety course or for deferred disposition. Sec. 472.022(f), T.C. and Arts.
45.051(f)(1) and 45.0511(p)(3), C.C.P.

E. Crash Resulting from Failure to Yield Right-of-Way

Effective September 1, 2009, if it is shown at the trial of a Rules of Road offense in which an
element is a vehicle operator’s failure to yield the right of way to another vehicle that a crash
resulted from that failure to yield, and a person other than the operator suffered bodily injury as a
result, the offense is punishable by a fine of $500 to $2,000. If a person other than the operator
suffered serious bodily injury, the offense is punishable by a fine of $1,000 to $4,000. Sec.
542.4045, T.C.

<table>
<thead>
<tr>
<th>True or False</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q. 32. If an offense has a specific penalty, the general penalty does not apply. _____</td>
</tr>
<tr>
<td>Q. 33. All traffic fines have a maximum fine of $200. _____</td>
</tr>
</tbody>
</table>
| Q. 34. Municipal court does not have jurisdiction over the offense of passing a school bus
loading or unloading children. _____ |
| Q. 35. Municipal court has jurisdiction of exhibition of acceleration. _____ |
| Q. 36. The court can apply enhanced penalties to offenses charged as first time offenses as long
as there are prior convictions. _____ |
| Q. 37. If a Subtitle C, T.C., offense is committed in a construction or maintenance work zone
when workers are present and that fact is alleged and proven, the fine amount is
doubled. _____ |
PART 5
COMMONLY COMMITTED TRAFFIC OFFENSES

A. License Plates and Registration of Vehicles (Subtitle A)

1. Operation of a Motor Vehicle with Expired License Plate

A common offense involving license plates is Operation of a Motor Vehicle with Expired License Plate. Section 502.407, T.C., provides that a person commits an offense if, after the fifth working day after the date the registration expires, the person operates on a public highway during a registration period, a motor vehicle, trailer, or semi-trailer that has attached to it a license plate for the preceding period, and that has not been validated by the attachment of a registration insignia for the registration period in effect.

A charge of operating a vehicle with an expired license plate may be dismissed under certain conditions by the judge without a motion from the prosecutor. Sec. 502.407(b)(1), T.C. The defendant must purchase valid registration within 20 working days after the date of the offense or by the defendant’s first court appearance whichever is later. In addition, the defendant must show proof of payment of the delinquent fee assessed for registering the vehicle late. Sec. 502.407(b)(1)(B), T.C.

2. Wrong, Fictitious, Altered, or Obscured License Plate

Section 502.409, T.C., provides that a person commits an offense if the person attaches to or displays on a motor vehicle a number plate or registration insignia that:

- is assigned to a different motor vehicle;
- is assigned to the vehicle under any other motor vehicle law other than by the Texas Department of Transportation;
- is assigned for a registration period other than the registration period in effect;
- is fictitious;
- has letters, numbers, or other identification marks that because of blurring or reflective matter are not plainly visible at all times;
- has attached an illuminated device or a sticker, decal, or other insignia that is not authorized by law and that interferes with the readability of the letters or numbers on the plate or the readability of the name of the state in which the vehicle is registered; or
- has a coating, covering, or protective material that distorts angular visibility or detectability, or alters or obscures the letters or numbers on the plate, the color of the plate, or another original design feature of the plate.

a. Dismissal

The judge may dismiss the charge of displaying altered or obscured license plates/registration insignia if the defendant remedies the defect before the first court appearance.

b. Penalty

If a defendant is convicted, the fine is not more than $200, unless it is shown at the trial of the offense that the owner knowingly altered or made illegible the letters, numbers, and other
identification marks, in which case the offense is a Class B misdemeanor. Displaying a fictitious license plate is also a Class B misdemeanor. If the judge dismisses the charge, the court must assess up to a $10 administrative fee.

B. Driver’s License (Subtitle B)

1. Failure to Carry and Exhibit

A person operating a motor vehicle on a highway must hold a valid driver’s license that is appropriate for the type of vehicle operated. Motor vehicle operators must display the license on the demand of a magistrate, court officer, or peace officer. Secs. 521.025 and 522.011, T.C.

a. Defense

If a person is charged with failing to carry and exhibit a driver’s license, it is a defense to the prosecution if the person produces in court a driver’s license appropriate for the type of vehicle operated which was valid at the time the citation was issued.

b. Penalty

If the person did not actually have a valid driver’s license at the time he or she committed the offense, the penalty for a:

- first time offense is a fine not to exceed $200;
- second conviction within one year after the date of the first conviction is a fine of not less than $25 or more than $200; and
- third or subsequent conviction within one year after the date of the second conviction is a fine of not less than $25 or more than $500, or confinement in the county jail for not less than 72 hours or more than six months, or both the fine and confinement (a Class B misdemeanor).

The court may charge a $10 dismissal fee when dismissing this charge.

2. Expired Driver’s License

A person who operates a vehicle on a highway in Texas is required to hold a valid driver’s license. Sec. 521.021, T.C. A driver’s license expires on the first birthday of the license holder occurring after the sixth anniversary of the date of the application. Sec. 521.271, T.C.

a. Dismissal

An expired driver’s license charge may be dismissed by the judge if the defendant renews the license within 20 working days from the date of offense or by the defendant’s first court appearance, whichever is later. Sec. 521.026, T.C.

b. Penalty

If a person is convicted of the offense of operating a vehicle with an expired driver’s license, the penalty is a fine not to exceed $200. Sec. 521.461, T.C. If the judge dismisses the charge, the judge may assess a fee of up to $20.
3. Driving While License Invalid

The maximum penalty for driving while license invalid is $500. This traffic offense is a Class C Misdemeanor unless it is shown at trial that the person has been previously convicted of driving while license invalid, the license was previously suspended for driving while intoxicated, or the person is also driving without maintaining financial responsibility in which case the offense is a Class B misdemeanor.

C. Safety Belts and Child Safety Seats (Subtitle C)

The purpose of being required to secure children in child safety seat systems or safety belts along with adults while in motor vehicles is to reduce harm to children and other passengers being transported. To this end, the Legislature created the safety belt and child safety seat system laws.

Adults are required to be secured by a safety belt and children must be secured in child safety seats while being transported in a passenger vehicle. “Passenger vehicle” is defined as a passenger car, light truck, sport utility vehicle, passenger van designed to transport 15 or fewer passengers, including the driver, truck, or truck tractor. Sec. 545.412(f)(2), T.C. Section 541.201, T.C., provides definitions for the above list of vehicles.

Sections 545.412(f)(3) and (4) define the terms “safety belt” and “secured.” Both definitions apply also to Section 545.413. “Safety belt” means a lap belt and any shoulder straps included as original equipment on or added to a vehicle. “Secured” means using the lap belt and any shoulder straps according to the instruction of the manufacturer of the vehicle if the belt is original equipment or the manufacturer of the safety belt if the belt was added to the vehicle. Because the definition of secured requires the use of the shoulder harness along with the lap belt, if a person is not properly secured, he or she could be charged with not wearing a safety belt.

“Child passenger safety seat system” means an infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration. Children must be secured in a child passenger safety seat system according to the instructions of the manufacturer of the safety seat system.

The operator of a passenger vehicle must secure himself or herself with a safety belt. If a child passenger is younger than eight, unless the child is taller than four feet, nine inches, the child must be secured in a child passenger safety seat system. All other children under 17 must be secured with a safety belt. All adults must be secured with a safety belt regardless of their position in the vehicle. For more information, refer to Appendix: Passenger Restraint Laws.

1. Defense

There are several defenses to the prosecution for safety belt laws. They include a person who:

- possesses and presents to the court, not later than the 10th day after the date of the offense, a statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- is employed by the U.S. Postal Service and is performing a duty for that agency that requires the operator to service postal boxes from a vehicle or that requires frequent entry into and exit from a vehicle;
- is engaged in the actual delivery of newspapers from a vehicle or is performing newspaper delivery duties that require frequent entry into and exit from a vehicle;
• is employed by a public or private utility company and is engaged in the reading of meters or performing a similar duty for that company requiring the operator to frequently enter into and exit from a vehicle;
• is operating a commercial vehicle registered as a farm vehicle under the provisions of Section 502.163, T.C., that does not have a gross weight, registered weight, or gross weight rating of 48,000 pounds or more; or
• is the operator of or a passenger in a vehicle used exclusively to transport solid waste and performing duties that require frequent entry into and exit from the vehicle.

2. **Penalty**

The penalty for a driver or passenger, age 15 or older, not secured in a safety seat is a fine of not less than $25 or more than $50. If a driver is charged with not securing a passenger in a child passenger safety seat system who is under eight years of age, unless they are four feet, nine inches in height, the fine is not more than $25 for the first offense and a maximum of $250 for a subsequent offense. Sec. 545.412(b), T.C. If a driver is charged with not securing a passenger younger than 17 years, who is not required to be in a child safety belt, the fine is not less than $100 or more than $200. Sec. 545.413(b), T.C. See Appendix: Passenger Restraints Laws.

3. **Fines Remitted to State**

The city is required to remit to the State half of the fines collected for allowing a child to ride and not be secured by a child passenger safety seat system or a safety belt. The city must remit the fines at the end of the city’s fiscal year each year.

D. **Passing a School Bus**

An operator on a highway must, when approaching from either direction a school bus stopped on the highway to receive or discharge a student, stop before reaching the school bus and not proceed until the school bus resumes motion. Sec. 545.066, T.C. An operator on a highway having separate roadways is not required to stop for a school bus that is on a different roadway; or if on a controlled-access highway for a school bus that is stopped in a loading zone that is a part of or adjacent to the highway and where pedestrians are not permitted to cross the roadway. A highway is considered to have separate roadways only if the highway has roadways separated by an intervening space on which operation of vehicles is not permitted, a physical barrier, or a clearly indicated dividing section constructed to impede vehicle traffic. A highway is not considered to have separate roadways if the highway has roadways separated only by a left turn lane.

1. **Dismissal**

A person convicted of passing a school bus is not eligible to take a driving safety course to have the charge dismissed. Art. 45.0511(p), C.C.P.

The court, however, may grant deferred disposition and have the case dismissed upon completion of all the terms. In this instance, the court does not report the dismissal to DPS.
2. **Penalty**

a. **Fine Range**

Passing a school bus has a very high fine range. For a first conviction, the minimum fine is $200 and the maximum fine is $1,000. Sec. 545.066, T.C. (Note: Although the penalty for passing a school bus is a maximum of $1000, the offense is still a Class C misdemeanor. Section 12.41 of the Penal Code provides that any fine-only offense outside of the Penal Code is a Class C misdemeanor.)

If a defendant causes bodily injury when passing a school bus, the offense becomes a Class A misdemeanor. If the person is convicted a second time for causing bodily injury when passing a school bus loading or unloading children, the offense becomes a state jail felony.

b. **Driver’s License Suspension**

When a defendant is convicted of a second or subsequent offense, the court may order the defendant’s driver’s license suspended for a period of time not to exceed six months. If the judge orders the driver’s license suspension, the clerk reports the order on DPS form DIC-15. Sec. 545.066(d), T.C.

E. **Inspection Certificate (Subtitle C)**

Motor vehicles registered in Texas must display a current and appropriate inspection certificate. After the fifth day after the date of expiration of the period designated for inspection, a person may not legally operate a motor vehicle registered in Texas.

1. **Defense**

It is a defense to prosecution that an inspection certificate for the vehicle is in effect at the time of the arrest. Sec. 548.602, T.C.

2. **Dismissal**

If the defendant did not have a valid inspection, under certain conditions the judge must dismiss the charge, and, under other conditions, the judge has discretion to dismiss. If the inspection certificate is expired for less than 60 days and the defendant obtains a valid inspection certificate within 20 working days, the court must dismiss the charge and require up to a $20 fee. If an inspection certificate is expired for more than 60 days, the court may dismiss the charge. There is no provision in the statute to assess a fee under the discretionary provision. The statute defines working day to mean any day other than a Saturday, a Sunday, or a holiday when county offices are closed. Sec. 548.605, T.C.

3. **Penalty**

A person convicted of the offense of failure to display a current and appropriate inspection certificate is a fine not to exceed $200. Sec. 548.604, T.C.

F. **Financial Responsibility (Subtitle D)**

It is an offense to operate a motor vehicle in Texas without some type of financial responsibility. Sec. 601.051, T.C. This means that a person who is driving and causes an accident must be able
to pay for damages or injuries to another person in the accident. When a person is involved in an accident or is stopped by a peace officer, the person is required to present proof of financial responsibility. Sec. 601.053, T.C. Peace officers may issue citations to persons who fail to present proof. Most commonly this offense is called “no insurance” because liability insurance is the most common way to fulfill the requirement of financial responsibility. Sec. 601.071, T.C.

The statute gives guidance as to what proof of financial responsibility is acceptable and includes the following:

- a vehicle liability insurance policy,
- an insurance binder,
- a surety bond certificate,
- a certificate of deposit with the State Comptroller,
- a certificate of deposit with the county judge, or
- a certificate of self-insurance. Sec. 601.053, T.C.

Section 601.051, T.C., generally provides the requirements for persons to maintain financial responsibility for the motor vehicles that they operate through:

- a motor vehicle liability insurance policy;
- a surety bond filed with DPS (The bond is a lien in favor of the State on the real property described in the bond. The lien exists in favor of a person who holds a final judgment against the person.);
- a deposit in the amount of $55,000 made with the State Comptroller (It can be in cash or securities.);
- a deposit in the amount of $55,000 made with the county judge of the county in which the motor vehicle is registered (It must be made in cash or cashier’s check.); or
- self-insurance. (A person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by DPS. The person must have the ability to pay judgments obtained against him or her.)

Section 601.007, T.C., provides that Chapter 601 does not apply to:

- government vehicles (The vehicle must be owned by the United States, State, or political subdivision, operated by an officer, agent, or employee of the government and be used in the course of employment.);
- tow trucks;
- motor carriers; and
- vehicles transporting persons or cargo.

The above-listed vehicles must maintain liability insurance in an amount set by DPS that does not exceed the amount required for a motor carrier under a federal regulation adopted under 49 U.S.C. Section 13906(a)(1). Sec. 643.101, T.C.

Section 601.076, T.C., requires an owner’s insurance policy to:

- cover each motor vehicle for which coverage is to be granted under the policy; and
- pay on behalf of the named insured or another person who, as insured, used a covered motor vehicle with the express or implied permission of the named insured.
Section 601.077, T.C., requires the owner’s insurance policy to pay, on behalf of the named insured, amounts the insured becomes obligated to pay as damages arising out of the use by the insured of a motor vehicle that the insured does not own.

1. Exceptions

There are exceptions to the financial responsibility law. Vehicles that do not have to be covered with some type of financial responsibility include:

- antique collectables including vehicles that are:
  - at least 25 years old or a former military vehicle;
  - used only for exhibitions, club activities, parades, and other functions of public interest and not used for regular transportation; and
  - on file with DPS stating that the vehicle is a collector’s item and used only for exhibition purposes;

- golf carts; and

- volunteer fire department vehicles. (Vehicle must be registered in the name of the volunteer fire department.)

2. Defense

There are legal defenses to the financial responsibility law. The first and most obvious is that the person has insurance or other proof of coverage. Sec. 601.193, T.C. The offense is for not maintaining a current form of financial responsibility, not for failure to present proof to a peace officer. Therefore, having the proper coverage at the time of the alleged violation is a defense. Purchasing insurance after the citation is issued is not a legal defense.

Another defense is if a motor vehicle is in the possession of a person for the sole purpose to effect repairs on the vehicle. Sec. 601.194, T.C. This is only valid if the mechanic is working on someone else’s car. Sec. 601.194(b), T.C. A person cannot use this defense when repairing his or her own car.

3. Dismissal

If a person charged with failure to maintain financial responsibility produces a motor vehicle insurance policy or certificate of self-insurance to the court that was valid at the time of the citation, the court is required to dismiss the charge after it verifies the document. Sec. 601.193, T.C. Usually, the defendant brings the proof to the court facility and the clerk makes a copy to present to the judge. Sometimes the evidence is clearly acceptable, but other proof may raise a suspicion of authenticity. The statute does not provide procedures for how the court verifies the document or who is to do the verification. Some courts have the clerk call the insurance company to verify the coverage. Others have the prosecutor verify the document since the evidence is a defense to the prosecution. The judge, however, should never do the substantiation, because the judge should not become involved until it is time to hear evidence regarding the case. This would be a violation of the Code of Judicial Conduct. Clerks should work with their judge and prosecutor to establish a procedure for handling these types of cases. In a situation where a document cannot be verified, the defendant should be set for trial.
4. **Penalty**

The fine for a financial responsibility charge is higher than for other traffic violations. A first offense carries a fine of $175 to $350. Sec. 601.191(c), T.C. On the first offense, the judge has the authority to lower the fine below the $175 minimum if the judge finds the person convicted is economically unable to pay the fine. Sec. 601.191(d), T.C. This authority to lower the fine below the minimum does not apply to subsequent offenses.

A second offense carries a minimum fine of $350 with a possible fine up to $1000. Sec. 601.191(c), T.C. On the second offense, courts must also order the sheriff to impound the defendant’s vehicle, if the defendant owns the vehicle. To charge a defendant with a second or subsequent offense, it must be filed as such. It is the prosecutor’s responsibility to review the case and file it as a subsequent offense if he or she wishes.

G. **Motorcycle Protective Headgear (Subtitle G)**

Persons who operate or ride on a motorcycle must wear protective headgear or a helmet.

1. **Exceptions**

There are, however, exceptions to this requirement that include:

- if the person is at least 21 years of age and has successfully completed a motorcycle operator training and safety course; or
- if the person is covered by health insurance for injuries that may be incurred as a result of operating or riding on a motorcycle. Sec. 661.003, T.C.

If motorcycle operators or their passengers can produce evidence to an officer who has lawfully stopped them that they either are at least 21 years of age and have successfully completed the training and safety course or that they have the required medical insurance, peace officers are prohibited from issuing a citation for not wearing a helmet. Sec. 661.003(c), T.C.

2. **Penalty**

Persons convicted of not wearing motorcycle protective headgear may be fined in an amount of $10 to $50. Sec. 661.003(h), T.C.

H. **Privileged (Handicapped) Parking (Subtitle H)**

To be eligible for privileged parking, a person must be legally blind or have substantial mobility problems, including someone who cannot walk over 200 feet without stopping; must use a brace, crutch, cane, prosthetic device, or wheelchair; has severe lung disease; or uses portable oxygen. A person who has a severe cardiac condition, has an arthritic, neurological, or orthopedic condition which limits his or her ability to walk, or has a debilitating condition which, in the opinion of a doctor, limits his or her ability to walk is also considered to have severe mobility problems. Sec. 681.001, T.C.

A person who is disabled must apply to the tax assessor-collector for a disabled parking permit. When approved, the person is given either two window placards or a license tag and one window placard. Sec. 681.003, T.C. These tags or placards allow parking in privileged parking spaces for an unlimited amount of time. Sec. 681.006(a), T.C. Persons with privileged parking tags or placards may also park at parking meters free of charge. Sec. 681.006(b), T.C. There is an
exception to parking free of charge. Persons lawfully parked in a parking garage or lot within the boundaries of a municipal airport must still pay the parking fee. Sec. 681.006(c), T.C. A governmental unit may provide by ordinance that persons parking in specially designated privileged parking spaces in a parking garage, a lot, or a space may be exempt from paying a fee or penalty imposed by the governmental unit for parking in those spaces. Sec. 681.006(e), T.C.

Each governmental building is required to have privileged parking spaces. In addition, local, state, and federal laws require many private businesses to designate privileged parking. Sec. 681.009(c), T.C.

Three groups have authority to enforce privileged parking: peace officers, security guards of private businesses, and persons appointed by the city. Sec. 681.010(b), T.C. The person must take an oath of office and complete a training program. Sec. 681.0101, T.C. Many cities are designating persons with disabilities or other citizens to assist in enforcement.

It is an offense to park a vehicle not bearing either the placard or tag in a space designated as privileged parking. Sec. 681.011(b), T.C. Furthermore, it is an offense to park a vehicle with a tag or placard in a disabled space if, at the time of parking, it is not being used to transport a person with a disability. Sec. 681.011(a), T.C. Parking violations may also be charged against persons who block ramps for the disabled. Sec. 681.011(c), T.C. In addition, persons who have a placard and lend it to someone who is not mobility impaired may also be charged. Sec. 681.011(d), T.C. The 81st Regular Legislature amended Section 681.012, T.C., to provide that a peace officer may seize a disabled placard from a person upon determination that the person’s driver license does not match the placard of the person operation the vehicle or the person being transported. Sec. 681.012(a-1), T.C.

1. **Dismissal**

Someone convicted of a privileged parking offense does not have the right to take a driving safety course to have the offense dismissed. The judge may, however, grant deferred disposition under Article 45.051, C.C.P.

2. **Penalty**

Privileged parking is taken very seriously by the Texas Legislature and the penalties are severe. A person convicted of a privileged parking offense faces high fines, which escalate with subsequent offenses.

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**True or False**

Q. 38. Judges may dismiss the charge of operating a vehicle with expired registration, if the defendant purchased valid registration and paid the late fee within 10 working days and presents the evidence to the court. _____

Q. 39. Peace officers may issue citations to a person driving a vehicle if a license plate holder obscures the name of the state on the license plate. _____

Q. 40. The court may charge a dismissal fee for dismissing a charge of failure to display a driver’s license if the defendant had a valid driver’s license on the day of the arrest. _____
Q. 41. If a person charged with an expired driver’s license obtains a valid driver’s license within 20 working days, the court may dismiss the charge and assess a $20 fee. ____
Q. 42. It is a defense to the prosecution if a person produces in court a valid commercial driver’s license that was valid when the offense occurred even though the license is not valid for the class of vehicle being driven. ____
Q. 43. Under the safety belt law, “passenger vehicle” is defined to mean only a passenger car. ____
Q. 44. Cities must remit one-half of all safety belt fines and fines for not securing a child in a passenger safety seat system to the state at the end of the city’s fiscal year. ____
Q. 45. Persons charged with passing a school bus are not eligible to take a driving safety course. ____
Q. 46. Passing a school bus carries a maximum penalty of $200. ____
Q. 47. Judges are required to dismiss the charge of expired inspection certificate and charge up to a $20 fee if the inspection certificate is expired less than 60 days and the defendant obtains a valid inspection certificate within 20 working days, or before the first court appearance, whichever is later. ____
Q. 48. In Texas, insurance policies must cover vehicles when the insured owner gives permission for someone else to drive his or her vehicle. ____
Q. 49. Only a vehicle liability insurance policy is acceptable proof of financial responsibility. ____
Q. 50. There are no exceptions to the financial responsibility law. ____
Q. 51. Courts are required to dismiss a charge of failure to maintain financial responsibility if a defendant obtains insurance before appearing in court. ____
Q. 52. When a defendant presents proof of financial responsibility to the court, the court must verify it before dismissing the case. ____
Q. 53. The fine for a first conviction for failure to maintain financial responsibility is a minimum fine of $175 and a maximum of $350. ____
Q. 54. On a conviction for a second or subsequent offense of failure to maintain financial responsibility, the court is required to order the impoundment of the vehicle. ____
Q. 55. If a motorcycle operator can produce evidence to an officer who has lawfully stopped them that they are under the exceptions to wearing protective headgear, the officer cannot issue a citation. ____
Q. 56. The penalty for not wearing a helmet is a maximum fine of $200. ____
Q. 57. Only peace officers can enforce privileged parking. ____
Q. 58. Persons who are disabled and have the proper documentation may park at parking meters free. ____
Q. 59. Persons convicted of a parking offense under the privileged parking law face escalating penalties depending on prior convictions. ____
PART 6
QUOTAS

Section 720.002, T.C., *Prohibition on Traffic-Offense Quotas*, prohibits cities from establishing or maintaining a plan to evaluate, promote, compensate, or discipline peace officers according to a predetermined or specified number of any type or combination of types of traffic citations (quotas). Sec. 702.002(a)(1), T.C. This same prohibition also applies to judges. Cities may not evaluate, promote, compensate, or discipline a judge according to the amount of money the judge collects from persons convicted of a traffic offense. Sec. 702.002(a)(2), T.C.

Further, cities may not consider the source and amount of money collected from a municipal court when evaluating the performance of the judge. Section 702.002(c) was repealed by the 81st Regular Legislature. Cities may obtain budgetary information from the municipal court including an estimate of the amount of money the court anticipates will be collected in a budget year. Sections 702.002, T.C.

A violation of Chapter 702, T.C., by an elected official is misconduct and grounds for removal from office. Sec. 702.002(e), T.C.

<table>
<thead>
<tr>
<th>True or False</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q. 60. Although peace officers may not be evaluated on the number of tickets that they issue, they may be evaluated on the type of tickets that they issue. _____</td>
</tr>
<tr>
<td>Q. 61. City officials are prohibited from evaluating or disciplining a judge on the amount of money they collect from persons convicted of traffic offenses and may be removed from office for doing so. _____</td>
</tr>
<tr>
<td>Q. 62. Cities may not obtain budgetary information from a municipal judge because that would require the judge to estimate the amount of money he or she anticipates will be collected in the coming budget year. _____</td>
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</tbody>
</table>

PART 7
DRIVING SAFETY COURSES (DSC)/MOTORCYCLE OPERATOR COURSES (MOC)

A. Application

1. Offenses to Which DSC/MOC Applies

   Article 45.0511, C.C.P., is entitled “Driving Safety Course (DSC) or Motorcycle Operator Course (MOC) Dismissal Procedures.” These remedial courses are applicable to dismiss offenses that are in the jurisdiction of the justice or municipal court and involve the operation of a motor vehicle defined by Section 472.022, T.C.; Subtitle C, Title 7, T.C.; and Section 729.001(a)(3), T.C.
2. **Exceptions**

Defendants eligible for driving safety or motorcycle operators’ courses have the right to take one course in each 12-month period to dismiss certain types of traffic offenses. Article 45.0511, Sections (b)(5), (p), and (s) prohibit the following groups from dismissals through DSC/MOC:

- persons who are alleged to have been speeding 25 mph or more over the speed limit;
- persons driving 95 miles per hour or more;
- an offense committed in a construction or maintenance zone when workers are present;
- persons charged with passing a school bus loading or unloading children;
- persons charged with leaving the scene of an accident after causing damage to a vehicle that is driven or attended;
- persons charged with leaving the scene of an accident and failing to give information and/or render aid;
- persons committing a serious traffic violation; and
- persons who held a commercial driver’s license at the time of the offense or hold a CDL at the time of the request for DSC, including when the person is driving his or her own personal vehicle.

B. **Eligibility and Requirements**

To be eligible for a DSC or a MOC, the defendant:

- may not have completed an approved driving safety course or motorcycle operator course, as appropriate, within the 12 months preceding the date of the offense (see exception below for specialized safety belt course);
- must enter a plea of guilty or nolo contendere on or before the answer date on the citation and present the request to take the course to the court in person, by counsel, or by certified mail (postmarked on or before due date);
- must present to the court a valid Texas driver’s license or permit or proof of active military duty status or be the spouse or dependent child of a person on active military duty; and
- must provide the court evidence of financial responsibility.

C. **Costs**

1. **Mandatory**

Court cost statutes require the defendant to pay all applicable court costs up front when the court grants the request for a driving safety course. Sec. 133.101, L.G.C.

2. **Judge’s Discretion**

a. **Administrative Fees**

The court may require a $10 administrative fee if the request is made on or before the answer date on the citation. Art. 45.0511(f), C.C.P.
If someone has taken a driver’s safety or motorcycle operator’s course in the last 12 months or fails to timely submit their request for a DSC/MOC, the judge may nonetheless grant the course under Article 45.0511(d), C.C.P., at his or her discretion. If the judge allows a defendant to take a driving safety course under this permissive provision, the judge may require a fee in an amount not to exceed the maximum amount of the fine for the offense.

If the person does not complete the course or present the other required evidence and the fine is imposed, the person is not entitled to a refund of the fee under the mandatory or permissive provisions.

b. **Optional Driving Record Fee**

The court may require the defendant to pay a $12 fee for obtaining a copy of the defendant’s driving record from DPS through the Texas online internet portal (formerly referred to as “Texas Online.”) A record must be kept of the fees and they must be remitted to the State Comptroller quarterly who then credits the fees to DPS. Art. 45.0511(c-1), C.C.P.

D. **When Course Granted**

After the defendant enters a plea and makes the request for the course, the court enters judgment on the plea at the time the plea is made, defers imposition of the judgment, and allows the defendant 90 days to successfully complete an approved course and present required evidence of course completion to the court.

E. **Course Requirements**

1. **DSC**

If the offense was committed in a passenger car or a pickup truck, the judge must require the defendant to complete a driving safety course approved by the Texas Education Agency.

2. **MOC**

If the offense was committed on a motorcycle, the judge must require a motorcycle operator course under the motorcycle operator training and safety program approved by the Texas Department of Public Safety.

3. **Special Safety Belt Course**

If the offense charged is either Section 545.412 or 545.413(b), T.C., involving securing children in child safety seat systems or safety belts, defendants have a right to request a driving safety course. The court, after determining if the defendant is eligible, must require a driving safety course that contains four hours of instruction on the effectiveness and safety of using a child safety seat systems and safety belts. Secs. 545.412(g) and 545.413(i), T.C. If the defendant completes the course, the court must dismiss the case and report the completion date of the driving safety course for inclusion in the defendant’s driving record.

A defendant may take a specialized driving safety course for failing to keep a child secured in a child passenger safety seat system or a safety belt even though he or she has taken a regular driving safety course in the last 12 months. The defendant’s driving record and affidavit must show that the specialized driving safety course was not taken in the last 12 months. The Texas Education Agency refers to this specialized DSC as “Seat Belt School.” Art. 45.0511(u), C.C.P.
F. **Requirements for Dismissal**

For dismissal of the case, the defendant must present to the court on or before the 90th day after permission was granted to take the DSC or MOC:

- a certificate of completion of the DSC or MOC;
- the defendant’s driving record as maintained by the Department of Public Safety showing that the defendant had not completed an approved driving safety course or motorcycle operator training course, as applicable, within the 12 months preceding the date of the offense; or
- an affidavit stating that the defendant was not taking a driving safety course or motorcycle operator training course at the time of the request nor has the defendant taken a course in the preceding 12 months from the date of the offense (members of active military duty must swear that they have not taken a course in another state in the preceding 12 months from the date of the offense).

G. **Satisfactory Completion**

When the defendant presents all the evidence required, the court shall remove the judgment and dismiss the charge.

H. **Failure Submit Required Evidence**

If a person fails to present the court with the required evidence of course completion, the copy of the driving record as maintained by the Texas Department of Public Safety, and the affidavit, the court shall set a show cause hearing and notify the defendant by mail of the hearing. If the defendant fails to appear for the show cause hearing, the court shall impose the fine. If the person appears and can show good cause for the failure to furnish evidence to the court, the court may allow an extension of time during which the defendant may present the evidence of course completion and other required evidence.

I. **Appeal**

If a defendant fails to complete the course or fails to submit all the required evidence and the judge subsequently adjudicates the defendant’s guilt, the defendant may appeal the conviction.

J. **Payment of Fine**

Defendants who do not complete the driving safety course and do not appeal must pay the fine. The judge, after a show cause hearing, enters judgment, which may be appealed or paid. When the defendant decides not to appeal, the payment becomes due. If the defendant is unable to pay in full and is placed on a time payment plan, the court will count days from the final judgment at the end of the 90 day period to determine the 31st day for the time payment fee to be added if necessary.

K. **Report to the Texas Department of Public Safety**

If the defendant completes the DSC or MOC and presents satisfactory evidence of the other requirements and the charge is dismissed, the court reports the date of successful completion to DPS. Art. 45.0511, C.C.P.
If the defendant fails to complete the course and does not appeal, the court reports the conviction to the DPS.

True or False

Q. 63. A defendant charged with speeding in a school zone less than 25 mph over the speed limit is eligible for a driving safety course. _____

Q. 64. A person charged with committing a traffic offense in a construction or maintenance zone when workers are present is not eligible for a driving safety course. _____

Q. 65. A person charged with failure to yield-right-of-way and causing an accident is never eligible for a driving safety course. _____

Q. 66. A defendant operating a commercial vehicle at the time of the offense is not eligible to take a driving safety course regardless of the traffic offense he or she is charged with. _____

Q. 67. To attend a driving safety course for dismissal of a citation, all defendants must make a personal appearance at the court on or before the answer date on their citation. _____

Q. 68. Only drivers with a Texas driver’s license or permit are eligible to take a driving safety course. _____

Q. 69. Courts may charge an administrative fee of up to $10 dollars to offset costs involved in the processing of driving safety course requests. _____

Q. 70. When a defendant elects to take a driving safety course, the court must enter judgment but defer imposition of the judgment for 90 days. _____

Q. 71. If the defendant was operating a motorcycle, the court must require the defendant to complete a motorcycle operator-training course approved by DPS. _____

Q. 72. Defendants who have had a DSC in the preceding 12 months are not eligible for the special safety belt course. _____

Q. 73. If a defendant has had a DSC in the preceding 12 months from the date of the current offense, the court may allow a defendant to take a driving safety course, but the court has the discretion to require a special expense fee not to exceed the maximum amount of the possible fine. _____

Q. 74. If a defendant completes the driving safety course and submits the other required evidence, the court is required to remove the judgment and dismiss the charge. _____

Q. 75. If a defendant does not show evidence of completion of a driving safety course, a sworn affidavit, and a copy of his or her driving record from the Texas Department of Public Safety, the court is required to set a show cause hearing and mail notice to the defendant. _____

Q. 76. Defendants who fail to complete a driving safety course do not have the right to appeal. _____

Q. 77. If a defendant completes a driving safety course, the court must report to the Department of Public Safety the date the court dismissed the case. _____
CONCLUSION

Traffic law is a mixture of various laws and regulations with a common purpose. They attempt to protect citizens who travel on the streets and highways. The courts are responsible for knowing and understanding these laws, educating the public on them, and promoting safer driving through punitive or remedial action.
# APPENDIX A: PASSANGER RESTRAINT LAWS

## Passenger Safety Seat Systems and Safety Belts

Effective on offenses committed on or after September 1, 2011

<table>
<thead>
<tr>
<th>Age</th>
<th>Person Responsible</th>
<th>Type of Restraint</th>
<th>Location in vehicle</th>
<th>Cited for</th>
<th>Penalty</th>
<th>Eligible for Special DSC</th>
<th>Eligible for DSC</th>
<th>Eligible for Deferred Disposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child under age 8, unless over 4’9” tall</td>
<td>driver</td>
<td>child passenger safety seat system</td>
<td>front and back seats</td>
<td>child not in passenger safety seat system</td>
<td>maximum $25 for first offense; maximum $250 for subsequent offense</td>
<td>yes</td>
<td>no</td>
<td>yes</td>
</tr>
<tr>
<td>Child at least age 8 and under age 17*</td>
<td>driver</td>
<td>safety belt</td>
<td>front and back seats</td>
<td>child not in safety belt</td>
<td>minimum $100 for first offense; maximum $200 if in passenger vehicle; minimum $1 for maximum $200 if in passenger van</td>
<td>yes</td>
<td>no</td>
<td>yes</td>
</tr>
<tr>
<td>At least age 15</td>
<td>passenger</td>
<td>safety belt</td>
<td>front and back seats</td>
<td>passenger not wearing safety belt</td>
<td>minimum $25 for first offense; maximum $50</td>
<td>no</td>
<td>no</td>
<td>yes</td>
</tr>
<tr>
<td>At least age 15</td>
<td>driver</td>
<td>safety belt</td>
<td>front and back seats</td>
<td>driver not wearing safety belt</td>
<td>minimum $25 for first offense; maximum $50</td>
<td>no</td>
<td>yes</td>
<td>yes</td>
</tr>
</tbody>
</table>

*Children under age 8 that are taller than 4’9” must wear a safety belt.

**Definitions**
- Child passenger safety seat system means an infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.
- Passenger vehicle means a passenger car, light truck, sport utility vehicle, passenger van designed to transport 15 or fewer passengers, including the driver, truck, or truck tractor. Passengers held in the front of the vehicle, if the safety belt is original equipment, or rear seat belts are occupied.
- Passenger safety seat system means an infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.
- Safety belt means a lap belt and any shoulder straps included as original equipment on or added to a vehicle. Secured in connection with use of a safety belt means using the lap belt and any shoulder straps according to the manufacturer of the vehicle, if the safety belt is original equipment, or the manufacturer of the safety belt, if the safety belt has been added to the vehicle.
- Special DSC (emphasizes seatbelts & child safety seat systems)
- Deferred Disposition

**Section 545.412, T.C., does not apply to:**
- A person operating a vehicle transporting passengers for hire, excluding third-party transport service providers when transporting clients pursuant to a contract to provide nonemergency Medicaid transportation; or
- A person transporting a child in a vehicle in which all seating positions equipped with child passenger safety seat systems or safety belts are occupied.

**Defenses to prosecution under Section 545.412, T.C.:**
- The person was operating the vehicle in an emergency;
- The person was operating the vehicle for a law enforcement purpose; or
- The person provides to the court satisfactory evidence that they possess an appropriate child passenger safety seat for each child required to be secured in a child passenger safety seat.

**Defenses to prosecution under Section 545.413, T.C.:**
- The person possesses a written statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- The person presents to the court, not later than the 10th day after the date of the offense, a statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- The person is employed by the United States Postal Service and performing a duty for that agency that requires the operator to service postal boxes from a vehicle or that requires frequent entry into and exit from a vehicle;
- The person is engaged in the actual delivery of newspapers from a vehicle or that requires frequent entry into and exit from a vehicle;
- The person is employed by a public or private utility company and is engaged in the reading of meters or performing a similar duty for that company requiring the operator to frequently enter into and exit from a vehicle;
- The person is operating a commercial vehicle registered as a farm vehicle under the provisions of Section 502.163, T.C., that does not have a gross weight, registered weight, or gross weight rating of 8,000 pounds or more (Section 502.163, T.C., provides for a fee for commercial motor vehicle used primarily for farm purposes); or
- The person is the operator of or a passenger in a vehicle used exclusively to transport solid waste and performing duties that require frequent entry into and exit from the vehicle.

**Amount Due to the State**
- Fifty percent of the fines for convictions for not securing a child in a passenger safety seat system (under Section 545.412, T.C.) or a safety belt (under Section 545.413(b), T.C.) must be remitted to the State Comptroller at the end of the city’s fiscal year.
- Court costs must be remitted quarterly.

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Rev. 08/11

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8-34 Traffic Law  Rev. Fall 2011 – Level I
### APPENDIX B: COMPLIANCE DISMISSAL CHART

#### “PROBATION-RELATED” DISMISSALS

**Effective September 1, 2011**

<table>
<thead>
<tr>
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<th>Defendant Requirements</th>
<th>Fee/Costs</th>
<th>Dismissal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Deferred Disposition – Art. 45.051, C.C.P.</strong></td>
<td></td>
<td></td>
<td><strong>Court, on determining that defendant complied with the requirements imposed by the court, shall dismiss complaint and shall clearly note in the docket that complaint is dismissed and there is not a final conviction. Art. 45.051(c), C.C.P.</strong></td>
</tr>
<tr>
<td><strong>Driving Safety Course/Motorcycle Operator Training Course – Art. 45.0511, C.C.P.</strong></td>
<td></td>
<td></td>
<td><strong>Court may dismiss only one charge for each completion of a course. Art. 45.0511(m), C.C.P.</strong></td>
</tr>
<tr>
<td><strong>Teen Court – Art. 45.052, C.C.P.</strong></td>
<td></td>
<td></td>
<td><strong>Upon presentation of evidence that defendant completed teen court program, court shall dismiss charge. Article 45.052(c), C.C.P.</strong></td>
</tr>
<tr>
<td><strong>Compliance with School Attendance – related order. Art. 45.054 (i), C.C.P</strong></td>
<td></td>
<td></td>
<td><strong>Upon compliance or presentation, court shall dismiss complaint alleging Failure to Attend School (Sec. 25.094, E.C.)</strong></td>
</tr>
<tr>
<td><strong>Commitment of Chemically Dependent Person – Art. 45.053, C.C.P.</strong></td>
<td></td>
<td></td>
<td><strong>Upon presentation of satisfactory evidence that defendant was committed for and completed court-ordered treatment, court shall dismiss charge and shall clearly note in the docket that complaint is dismissed and there is not a final conviction. Art. 45.053(b).</strong></td>
</tr>
<tr>
<td><strong>Attendance at a Tobacco Awareness Program – Sec. 161.253, H.S.C.</strong></td>
<td></td>
<td></td>
<td><strong>Upon presentation of evidence of completion of tobacco awareness program or community service, court shall dismiss charge. Sec. 161.252(f)(2), H.S.C.</strong></td>
</tr>
</tbody>
</table>

---

* Section 133.101, L.G.C.: For the purposes of determining criminal court costs and fees, a defendant is considered to be convicted in a case if:
  - A judgment, a sentence, or both a judgment and a sentence are imposed on the person;
  - The person receives community supervision, deferred adjudication, or deferred disposition;
  - The court defers final disposition of the case or imposition of the judgment and sentence.
<table>
<thead>
<tr>
<th>Offense</th>
<th>Statute</th>
<th>Length of Time to Comply</th>
<th>Other Required Conditions</th>
<th>Amount of Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expired Motor Vehicle Registration</td>
<td>Section 502.407(b), Transportation Code</td>
<td>20 working days after the date of the offense or before the defendant’s first court appearance, whichever is later.</td>
<td>Court may dismiss. Defendant must show proof of payment of late registration fee to county assessor-collector.</td>
<td>Not to exceed $20. Fee Optional.</td>
</tr>
<tr>
<td>Operate Motor Vehicle Without Registration Insignia Properly Displayed</td>
<td>Section 502.473(a) &amp; (d), Transportation Code</td>
<td>Statute does not specify.</td>
<td>Court may dismiss. Defendant must show that motor vehicle was issued a registration insignia that was attached to the motor vehicle establishing that the vehicle was registered for the period during which the offense was committed.</td>
<td>Not to exceed $10. Fee Required.</td>
</tr>
<tr>
<td>Attaching or Displaying on a Motor Vehicle a Registration Insignia that is Assigned for a Period other than the Period in Effect</td>
<td>Section 502.475(a)(3) &amp; (c), Transportation Code</td>
<td>Before defendant’s first court appearance.</td>
<td>Court may dismiss. None.</td>
<td>Not to exceed $10. Fee Required.</td>
</tr>
<tr>
<td>Operate Motor Vehicle Without Two License Plates</td>
<td>Section 504.943(a) &amp; (d), Transportation Code</td>
<td>Before the defendant’s first court appearance.</td>
<td>Court may dismiss. None.</td>
<td>Not to exceed $10. Fee Required.</td>
</tr>
<tr>
<td>Attaching or Displaying on a Motor Vehicle a License Plate that is Obscured or Assigned for a Period Other than the Period in Effect</td>
<td>Section 504.945(a)(3), (5), (6), (7) &amp; (d), Transportation Code</td>
<td>Before the defendant’s first court appearance.</td>
<td>Court may dismiss. None.</td>
<td>Not to exceed $10. Fee Required.</td>
</tr>
<tr>
<td>Expired Driver’s License</td>
<td>Section 521.026(a), Transportation Code</td>
<td>20 working days after the date of the offense or before the defendant’s first court appearance, whichever is later.</td>
<td>Court may dismiss. None.</td>
<td>Not to exceed $20. Fee Optional.</td>
</tr>
<tr>
<td>Fail to Report Change of Address or Name</td>
<td>Section 521.054(d), Transportation Code</td>
<td>20 working days after the date of the offense.</td>
<td>Court may dismiss. None.</td>
<td>Not to exceed $20. Fee Required. Court may waive in the interest of justice.</td>
</tr>
<tr>
<td>Violate Driver’s License</td>
<td>Section 521.221(b), Transportation Code</td>
<td>Before the defendant’s first court appearance.</td>
<td>Court may dismiss. Driver’s license endorsement was imposed because of a physical condition that was surgically or otherwise medically corrected before the date of the offense, or in error and that is established by the defendant; and DPS removes the restriction or endorsement before the defendant’s first court appearance.</td>
<td>Not to exceed $10. Fee Required.</td>
</tr>
<tr>
<td>Operate Vehicle with Defective Required Equipment (or in Unsafe Condition)*</td>
<td>Section 547.004(c), Transportation Code</td>
<td>Before the defendant’s first court appearance.</td>
<td>Court may dismiss. Does not apply if the offense involves a commercial motor vehicle.</td>
<td>Not to exceed $10. Fee Required.</td>
</tr>
<tr>
<td>Expired Inspection (less than 60 days)</td>
<td>Section 548.605(b), Transportation Code</td>
<td>20 working days after the date of the offense or before the defendant’s first court appearance, whichever is later.</td>
<td>Court shall dismiss.</td>
<td>Not to exceed $20. Fee Required.</td>
</tr>
<tr>
<td>Expired Inspection (more than 60 days)</td>
<td>Section 548.605(c), Transportation Code</td>
<td>20 working days after the date of the offense or before the defendant’s first court appearance, whichever is later.</td>
<td>Court may dismiss. No Fee Authorized.</td>
<td>No Fee Authorized.</td>
</tr>
<tr>
<td>Expired Disabled Parking Placard (less than 60 days)</td>
<td>Section 681.013(b), Transportation Code</td>
<td>20 working days after the date of the offense or before the defendant’s first court appearance, whichever is later.</td>
<td>Court shall dismiss.</td>
<td>Not to exceed $20. Fee Required.</td>
</tr>
<tr>
<td>Expired Disabled Parking Placard (more than 60 days)</td>
<td>Section 681.013(c), Transportation Code</td>
<td>20 working days after the date of the offense or before the defendant’s first court appearance, whichever is later.</td>
<td>Court may dismiss. No Fee Authorized.</td>
<td>No Fee Authorized.</td>
</tr>
<tr>
<td>Expired Certificate of Number</td>
<td>Section 31.127(f), Parks and Wildlife Code</td>
<td>10 working days after the date of the offense.</td>
<td>Court may dismiss. Certificate of number cannot be expired more than 60 days.</td>
<td>Not to exceed $10. Fee Required.</td>
</tr>
</tbody>
</table>

*See back of page for list of common equipment violations.
*Operate Vehicle with Defective Required Equipment (or in unsafe condition): Section 547.004, T.C.
Section 547.004 provides that a person commits an offense that is a misdemeanor if the person operates or moves or, as an owner, knowingly permits another to operate or move, a vehicle that:
1. Is unsafe so as to endanger a person;
2. Is not equipped in a manner that complies with the vehicle equipment standards and requirements established by Chapter 547; or
3. Is equipped in a manner prohibited by Chapter 547.

The following is a list of common equipment violations:

- Allowed vehicle in unsafe condition to be moved or driven so as to endanger any person: Section 547.004
- Allow vehicle not equipped with required equipment to be moved or driven: Section 547.004
- Affix unauthorized sunscreensing device to motor vehicle: Section 547.613(a)(2)
- Brakes not maintained in good working order: Section 547.402
- Brakes not on all wheels when required: Sections 547.401 & 547.802
- Clearance (or side markers) improperly mounted: Section 547.354
- Defective brakes or no brakes: Sections 547.401 & 547.408
- Defective exhaust emission system: Section 547.605
- Defective head lamps: Section 547.321, 547.302 & 547.801
- Defective parking lamps: Section 547.383
- Defective safety glazing material: Section 547.608
- Defective stop lamp(s): Section 547.323
- Defective tail lamp(s): Section 547.322
- Defective or no windshield wiper: Section 547.603
- Headlamp improperly located on motorcycle: Section 547.801
- Improper flashing lights: Section 547.702(c)
- Improper use of back-up lamps: Section 547.332
- Improperly directed lamps (over 300 candlepower): Section 547.305
- Mirror violation (none or improperly located): Section 547.602
- Muffler violation (none, defective, loud, cut-out, by-pass): Section 547.604
- No beam indicator: Section 547.333
- No electric turn signal lamps: Section 547.324
- No exhaust emission system (originally equipped but removed): Section 547.605
- No headlamps (when not equipped): Sections 547.321 & 547.801
- No license plate lamp: Sections 547.322 and 547.801
- No multiple beam lighting equipment (or defective): Sections 547.333 & 547.801
- No parking brakes or defective parking brakes: Section 547.404
- No parking lamps: Section 545.383
- No red reflectors on rear: Sections 547.325 & 547.801
- No safety belts: Section 547.601
- No single control to operate all breaks: Sections 547.402 & 547.403
- No stop lamps: Sections 547.323 & 547.801
- No tail lamps: Section 547.322 & 547.801
- No two means of emergency brakes: Section 547.405(a)
- No windshield wiper: Section 547.603
- Obstructed view through windshield or side or rear windows: Section 547.613
- Red lights on front: Section 547.305
- Television receiver, video equipment improperly located (visible to driver): Section 547.611
- Wrong color clearance lamps: Section 547.305
- Wrong color stop light, license plate light, back-up lamp, signal device: Section 547.332
## OTHER DISMISSALS

<table>
<thead>
<tr>
<th>Motions</th>
<th>Hearing</th>
<th>Fee</th>
<th>Dismissal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defense</td>
<td>Pre-trial (prosecutor notified and gets copies) or trial.</td>
<td>None</td>
<td>Depends on information presented at hearing. Judge may grant motion and dismiss.</td>
</tr>
<tr>
<td>State (Prosecutor - City Attorney or Deputy City Attorney)</td>
<td>Pre-trial or trial. Depending on motion, defense gets copy. (If motion to dismiss, court should notify defendant and attorney, if any, if charge dismissed.)</td>
<td>None</td>
<td>Depends on information presented at hearing. Article 32.02, C.C.P. provides that the attorney representing the State may, by permission of the court, dismiss a criminal action at any time, upon filing a written statement with the papers in the case setting out his/her reasons for such dismissal, which shall be incorporated in the judgment of dismissal. No case shall be dismissed without the consent of the presiding judge.</td>
</tr>
</tbody>
</table>
ANSWERS TO QUESTIONS

PART 1
Q. 1. It is divided into titles, subtitles, chapters, subchapters, and sections.
Q. 2. Title 7.
Q. 3. Subtitle A.
Q. 4. Subtitle B.
Q. 5. Chapter 543.
Q. 6. Chapter 543.
Q. 7. Chapter 553.
Q. 8. Subtitle D.
Q. 9. Subtitle H.
Q. 10. Subtitle I.
Q. 11. Subtitle I.
Q. 12. Subtitle I.
Q. 13. Subtitle I.

PART 2
Q. 15. Chapter 543; Section 543.003, Transportation Code.
Q. 17. b. Speeding and possession of an alcoholic beverage in a motor vehicle.
Q. 18. The defendant can continue to exercise his or her right to take the course until the person is informed of the right or until the disposal of the case.
Q. 19. The citation must contain notice in type larger than other type on the citation (except for the type of the statement required about the surcharges) about a second or subsequent conviction resulting in suspension of the defendant’s driver’s license and motor vehicle registration.
Q. 20. The notice regarding surcharges must be in type larger than any other type on the citation and notify the defendant that a conviction of a traffic law may result in an assessment of a surcharge on the defendant’s driver’s license.
Q. 21. The requirement to notify the court of any change of address and that the failure to do so is a Class C misdemeanor.
Q. 22. The notice should be on citations issued to persons violating traffic laws and notify the violator that if he or she fails to appear, pay the fine, or satisfy a judgment in a manner ordered by the court that his or her driver’s license may be denied renewal.
Q. 23. The additional information required to be on a citation issued to a person who holds a commercial driver’s license includes the following: (1) whether the vehicle is a commercial motor vehicle as defined in Chapter 522, T.C.; (2) whether the vehicle was transporting hazardous materials; and (3) whether the offense was a serious traffic violation as defined in Chapter 522, T.C.
Q. 24. Written notice of the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged.

Q. 25. Duplicate form or on an electronic device capable of creating a copy of the signed notice.


Q. 27. a. 10 days.

**PART 3**

Q. 29. False.
Q. 30. False.
Q. 31. True.

**PART 4**

Q. 32. True.
Q. 33. False.
Q. 34. False.
Q. 35. False. (It is a Class B misdemeanor.)
Q. 36. False.
Q. 37. True.

**PART 5**

Q. 38. False. (Defendant has 20 working days or before first court appearance date.)
Q. 40. True.
Q. 41. True.
Q. 42. False. (The commercial driver’s license must also be valid for the class of commercial motor vehicle that was driven on the day of the offense.)
Q. 43. False. (Passenger vehicle means passenger car, light truck, sport utility vehicle, passenger van designed to transport 15 or fewer passengers, including the driver, truck, or truck tractor.)
Q. 44. False. (Cities must remit one-half of the fines collected upon conviction for a child not being secured in a passenger safety seat system or a safety belt.)
Q. 45. True.
Q. 46. False. (Minimum fine of $200 and a maximum fine of $1,000).
Q. 47. True.
Q. 48. True.
Q. 49. False.
Q. 50. False.
Q. 51. False. (The judge does not have authority to dismiss the case unless the defendant had valid insurance on the date of the arrest.)
Q. 52. True.
Q. 53. True.
Q. 54. True.
Q. 55. True.
Q. 56. False. (The penalty is a minimum of $10 and a maximum of $50.)
Q. 57. False.
Q. 58. True.
Q. 59. True.

**PART 6**

Q. 60. False.
Q. 61. True.

**PART 7**

Q. 63. True.
Q. 64. True.
Q. 65. False.
Q. 66. True.
Q. 67. False.
Q. 68. False. (Persons on active military duty may be eligible.)
Q. 69. True.
Q. 70. True.
Q. 71. True.
Q. 72. False.
Q. 73. True.
Q. 74. True.
Q. 75. True.
Q. 76. False.
Q. 77. False. (The court reports the date the defendant completed the course.)
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INTRODUCTION

The Legislature provides courts with special procedures for handling defendants under the age of 17, commonly called juveniles, because of their youth and lack of maturity.

This guide covers municipal court jurisdiction, appearances, status offenses, penalties, expungents, sentencing alternatives, magistrate warnings, and special handling provisions pertaining to juveniles provided for in the Code of Criminal Procedure and the Family Code. It also discusses the Transportation Code, Penal Code, Alcoholic Beverage Code, Health and Safety Code, and Education Code. Some of these codes contain specific procedures for persons under the age of 17, but not all of them do. When a code does not specify how a court handles a juvenile, courts must use the special procedures contained in the Code of Criminal Procedure and the Family Code.

True or False

Q. 1. The Legislature provides special handling provisions for persons under the age of 17 because of their age and lack of maturity. _____

Q. 2. The Family Code and the Code of Criminal Procedure provide special handling provisions that are applicable to persons under the age of 17 charged in municipal court. _____

Q. 3. All statutes have special handling provisions for persons under the age of 17. _____

PART 1
JURISDICTION

A. Municipal Court Jurisdiction

Municipal court has jurisdiction over adult and juvenile fine-only misdemeanors punishable by fine and such sanctions, if any, as authorized by statute not consisting of confinement in jail or imprisonment. The fact that a conviction has as a consequence, the imposition of a penalty or sanction by an agency or entity other than the court, such as a denial, suspension, or revocation of a privilege, does not affect the original jurisdiction of the municipal court. Art. 4.14, C.C.P., and Sec. 29.003, G.C.

B. Waiver of Jurisdiction

In some cases, the court is required to or has the option to waive jurisdiction of juvenile offenses to the juvenile court. Proceedings in juvenile court are governed by the Juvenile Justice Code, found in Chapter 51 of the Family Code. Juvenile court proceedings are matters of civil law, rather than criminal law and they cover two categories of conduct by children: (1) delinquent conduct and (2) conduct in need of supervision (CINS). A municipal court is required to waive jurisdiction and transfer a case to juvenile court if the child has been previously convicted of two or more fine-only offenses, other than traffic or tobacco; two or more violations of a penal ordinance other than traffic or one or more of each of the two types described. A municipal court has discretion to waive jurisdiction whenever a complaint is pending against a child for a fine-
only offense, other than traffic or tobacco. For purposes of juvenile court jurisdiction, a child is defined as older than 10 and younger than 17.

1. **Exception to Mandatory Waiver**

Section 51.08(d) of the Family Code allows a court that implements a juvenile case manager program under Article 45.056, C.C.P., to retain its original jurisdiction over third and subsequent juvenile offenses. Article 45.056, C.C.P., provides authority, with written consent of the city council, to employ a case manager to provide services in juvenile cases.

2. **No Waiver**

The court may not waive jurisdiction over traffic offenses, regardless of how many times a defendant is convicted of a traffic offense. A traffic conviction does not count toward the mandatory waiver provisions either.

The court may not waive jurisdiction over tobacco offenses. Section 161.257, H.S.C., provides that Title 3 of the Family Code does not apply to a proceeding under Subchapter N, Chapter 161, *Tobacco Use by Minors*, including the offenses of possession, purchase, consumption, and receipt of cigarettes or tobacco products by individuals who are under the age of 18 as well as misrepresentation of age to obtain a tobacco product. Title 3 of the Family Code, commonly referred to as the Juvenile Justice Code, contains procedures for child defendants in municipal courts, including the transfer provisions in Section 51.08(b).

3. **Procedure for Waiving**

When a judge waives jurisdiction and transfers a case to the juvenile court, the court should:

- forward all pertinent documents in the case to the juvenile court with a transfer order;
- include information about the two prior cases (if the case is being transferred under the mandatory provision);
- retain a copy of all documents; and
- use a form containing:
  - the name of the court,
  - the name of the defendant,
  - the name of the judge,
  - the offense charged, and
  - the cause number assigned to the case.

4. **Juvenile Court Prohibited from Refusing Transfer**

A juvenile court is prohibited from refusing to accept the transfer of a case brought under Section 25.094, E.C., *Failure to Attend School*. This prohibition is subject to the juvenile court prosecutor determining under Section 53.012, F.C. (Review by Prosecutor), that the case is legally sufficient. Sec. 51.08(e), F.C.
PART 2
TRANSPORTATION CODE

Section 729.001, T.C., provides that a person who is under the age of 17 commits an offense if the person violates a traffic law of this state. Municipal courts may not waive jurisdiction over traffic offenses committed by a person under age 17 regardless of the number of convictions for traffic offenses. Sec. 51.08, F.C.

Since the Transportation Code does not provide any special rules regarding a person under the age of 17 charged with a traffic offense, courts must look to Chapter 45, C.C.P., for the procedures for handling these defendants.

A. Offenses

Chapter 729, T.C., lists traffic offenses that a person under the age of 17 can be charged with in municipal court. The Family Code in Section 51.02(16) defines “traffic offense” to mean a violation of a penal statute under Chapter 729, except for conduct for which the person convicted may be sentenced to imprisonment or confinement in jail. Traffic offenses also include violations of motor vehicle traffic ordinances of an incorporated city or town in this state. Juveniles charged with traffic offenses that are Class B misdemeanors must be filed with the juvenile court.

B. Penalty

When a person under the age of 17 is charged with a traffic offense under the Transportation Code, the punishment is the same penalty that is applicable to adults. Sec. 729.001, T.C.
True and False
Q. 10. The majority of handling provisions for persons under the age of 17 charged with a traffic offense are found in the Transportation Code. _____
Q. 11. Municipal courts have jurisdiction over all fine-only traffic offenses committed by juveniles. _____
Q. 12. The penalty for violations of the traffic laws by a person under the age of 17 is the same as for adults. _____

PART 3
PENAL CODE

The Penal Code does not provide special handling provisions for someone under 17 years of age. Therefore, courts must use the procedures located in the Family Code and the Code of Criminal Procedure. Those codes provide procedures for persons committing offenses who are at least 10 years of age but younger than age 17.

A. Offenses

Municipal courts have jurisdiction over persons under the age of 17 charged with Class C misdemeanor Penal Code offenses. Art. 4.14, C.C.P., Sec. 8.07(4), P.C., and Sec. 51.03(f), F.C.

A notable exception has been the offense of public intoxication committed by a person under the age of 17. However, effective September 1, 2009, municipal courts do have jurisdiction over the public intoxication of children.

B. Penalty

Persons under the age of 17 charged with Penal Code violations are subject to the same penalties as adults. The penalty for a Class C misdemeanor offense in the Penal Code is a fine not to exceed $500. Sec. 12.23, P.C.

The penalty for the offense of public intoxication for a person who is under the age of 21 is the same as a person charged with an Alcoholic Beverage Code offense such as minor in possession of an alcoholic beverage.

True or False
Q. 13. The Penal Code has special handling procedures for a child under 17. _____
Q. 14. Municipal court has jurisdiction over public intoxication cases committed by persons under the age of 17 and older than 10. _____
Q. 15. Persons under 17 charged with Penal Code offenses, other than public intoxication, are subject to the same penalties as adults. _____
PART 4
ALCOHOLIC BEVERAGE CODE

Section 106.01, A.B.C., defines “minor” to mean someone under 21 years of age. A minor who is at least age 10 and under 17 is also a “child” by Family Code definition and, in some instances, referred to as a child in the Alcoholic Beverage Code.

Specific authority is given to municipal courts in Article 4.14(b)(2), C.C.P., over cases that arise under Chapter 106, A.B.C., not including confinement as an authorized sanction.

A. Offenses
The following is a list of Alcoholic Beverage Code offenses with which persons under the age of 21 may be charged:

- Purchase of Alcohol by a Minor (Sec. 106.02);
- Attempt to Purchase Alcohol by a Minor (Sec. 106.025);
- Consumption of Alcohol by a Minor (Sec. 106.04);
- Driving or Boating Under the Influence of Alcohol by Minor (DUI) (Sec. 106.041);
- Possession of Alcohol by a Minor (Sec. 106.05); and
- Misrepresentation of Age by a Minor (Sec. 106.07).

The 82nd Legislature amended the Alcoholic Beverage Code to provide that in the case of possession or consumption of alcoholic beverages by a minor, there is immunity for a minor that requests emergency medical assistance for the possible overdose of another person. Secs. 106.05(d) and 106.04(e).

B. Penalty
The penalties listed in the chart below regarding fine-only Alcoholic Beverage Code offenses also apply to a person under age 21 but at least age 17 charged with the offense of public intoxication. Sec. 49.02(e), P.C.

1. Alcoholic Beverage Code Offenses Involving a Minor, Except DUI
Municipal courts have jurisdiction over minors charged with a first offense and a second offense. Municipal courts do not have jurisdiction over juveniles charged with a third offense if there are two prior convictions of non-traffic offenses unless the court has a juvenile case manager program under Article 45.056, C.C.P.
<table>
<thead>
<tr>
<th>Penalty</th>
<th>First Offense</th>
<th>Second Offense (Charge Enhanced)</th>
<th>Third Offense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fine</td>
<td>Class C Misdemeanor – maximum fine of $500.</td>
<td>Class C Misdemeanor – maximum fine of $500.</td>
<td>Class B Misdemeanor -- If the minor is at least 17, $250 to $2000 fine and confinement up to 180 days.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| Alcohol Awareness Program | Court must require attendance at an alcohol awareness program.  
Evidence of completion must be presented to the court within 90 days of judgment. Judge may then reduce fine to not less than one-half of the amount of the initial fine.  
Court should conduct a show cause hearing if defendant does not show evidence of completion within the first 90 days. At the show cause hearing, the court may also require the parents to do or refrain from doing anything that would increase the likelihood that the minor will complete the alcohol awareness program, and allow another 90 days to complete the program. | Not required, but judge may require attendance at program. |                                                                               |
|            |                                                                                |                                                           |                                                                               |
| Failure to Complete Program | The court is required to order the defendant’s driver’s license (DL) suspended or denied issuance of for a period not to exceed six months. | The court is required to order the defendant’s DL suspended or denied not to exceed one year. |                                                                               |
|            |                                                                                |                                                           |                                                                               |
| Community Service | Court must require defendant to perform eight to 12 hours of community service. | Court must require defendant to perform 20 to 40 hours of community service. |                                                                               |
|            |                                                                                |                                                           |                                                                               |
| Failure to Complete Service | The court is required to order the defendant’s DL suspended or denied for a period not to exceed six months. | The court is required to order the defendant’s DL suspended or denied not to exceed one year. |                                                                               |
|            |                                                                                |                                                           |                                                                               |
| Driver’s License Suspension | Court must require suspension or denial of issuance of DL for 30 days.  
Effective the 11th day after the judgment. | Court must require suspension or denial of issuance of DL for 60 days, effective the 11th day after the judgment. |                                                                               |
2. **Driving Under the Influence of Alcohol by Minor (DUI)**

Municipal court has jurisdiction over a minor charged with a first and second offense of DUI but not over a juvenile charged with a third offense if there are two prior convictions of non-traffic offenses unless the court has a juvenile case manager. Art. 45.056, C.C.P.

<table>
<thead>
<tr>
<th>Penalty</th>
<th>First Offense</th>
<th>Second Offense (Charge Enhanced)</th>
<th>Third Offense</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fine</strong></td>
<td>Class C Misdemeanor – Maximum fine of $500.</td>
<td>Class C Misdemeanor – Maximum fine of $500.</td>
<td>Class B Misdemeanor -- If the minor is at least 17, $250 to $2000 fine and confinement up to 180 days.</td>
</tr>
<tr>
<td><strong>Alcohol Awareness Program</strong></td>
<td>Court must require attendance at an alcohol awareness program. Evidence of completion must be presented to the court within 90 days of judgment. Judge may then reduce fine to not less than one-half of the amount of the initial fine. Court should conduct a show cause hearing if defendant does not show evidence of completion within the first 90 days. At the show cause hearing, the court may also require the parents to do or refrain from doing anything that would increase the likelihood that the minor will complete the alcohol awareness program, and allow another 90 days to complete the program.</td>
<td>Not required, but judge may require attendance at program.</td>
<td></td>
</tr>
<tr>
<td><strong>Failure to Complete Program</strong></td>
<td>Court must order the defendant’s driver’s license (DL) suspended or denied for a period not to exceed six months.</td>
<td>If the court required an alcohol awareness program, must order a DL suspension/denial not to exceed one year.</td>
<td></td>
</tr>
<tr>
<td><strong>Community Service</strong></td>
<td>Court must require defendant to perform 20 to 40 hours of community service.</td>
<td>Court must require defendant to perform 40 to 60 hours of community service.</td>
<td></td>
</tr>
<tr>
<td><strong>Failure to Complete Community Service</strong></td>
<td>Court must order the defendant’s DL suspended or denied for a period not to exceed six months.</td>
<td>Court must order the defendant’s DL denied or suspended for a period not to exceed one year.</td>
<td></td>
</tr>
</tbody>
</table>
True or False
Q. 16. The Alcoholic Beverage Code (A.B.C.) defines a minor as a person under 21. _____
Q. 17. Municipal courts have jurisdiction over fine-only offenses in the A.B.C. _____
Q. 18. If a minor aged 17 is charged with a subsequent A.B.C. offense after two prior convictions, the penalty for third offense includes confinement in jail. _____
Q. 19. Courts must require minors convicted of a first time A.B.C. offense to complete an alcohol awareness program. _____
Q. 20. Alcohol awareness programs must be approved by the court. _____
Q. 21. Minors must complete the alcohol awareness program within 90 days from the date of conviction. _____
Q. 22. The court does not have any authority to grant an extension of time if the minor fails to complete the alcohol awareness program. _____
Q. 23. Clerks should notify DPS of an order of driver’s license suspension immediately upon conviction of an A.B.C. offense because the suspension is effective on the 11th day after conviction. _____
Q. 24. If a minor fails to complete an alcohol awareness program, the court must order DPS to suspend the minor’s driver’s license for a period not to exceed six months. _____
Q. 25. Judges may require minors convicted of a fine-only A.B.C. offense to perform a certain number of community service hours upon conviction. _____
Q. 26. Persons under 21 charged with the offense of public intoxication are subject to the same penalties as minors convicted of an Alcoholic Beverage Code offense. _____
Q. 27. Municipal court’s jurisdiction over minors is only over the first offense of driving under the influence (DUI). _____
Q. 28. A defendant convicted of a first time DUI offense must attend an alcohol awareness program. _____
Q. 29. If a defendant charged with DUI fails to complete the alcohol awareness program or his or her community service, the court must order DPS to suspend or deny issuance of a driver’s license. _____

PART 5
HEALTH AND SAFETY CODE

A. Offenses

An individual under the age of 18 commits an offense if he or she possesses, purchases, consumes, or accepts a cigarette or tobacco product. Sec. 161.252(a)(1), H.S.C. Also, if an individual falsely represents himself or herself as being 18 years of age or older to obtain possession of, purchase, or receive a cigarette or tobacco product, he or she commits an offense. Sec. 161.252(a)(2), H.S.C.
If a second or subsequent offense is filed with the court, the complaint must allege the prior conviction; otherwise, the court must process and handle it as a first time offense.

**B. Penalty**

<table>
<thead>
<tr>
<th>Penalty</th>
<th>First Offense</th>
<th>Subsequent Offenses (Charge Enhanced)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fine</strong> (Section 161.252(d), H.S.C.)</td>
<td>Fine not to exceed $250. Court required to suspend execution of the fine until completion of a tobacco awareness program. (Court costs paid when fine suspended.)</td>
<td>Fine not to exceed $250. Court required to suspend execution of the fine until completion of a tobacco awareness program. (Court costs paid when fine suspended.)</td>
</tr>
</tbody>
</table>

- **Tobacco Awareness Program**
  - Court must compel attendance at a tobacco awareness program approved by the DSHS to be completed within 90 days of the suspended judgment.
  - The court may also require the parent or guardian of the individual to attend the tobacco awareness program.

<table>
<thead>
<tr>
<th>Tobacco Awareness Program</th>
<th>Completion of the tobacco awareness program</th>
<th>Failure to complete the tobacco awareness program</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Court required to dismiss the charge.</td>
<td>Court must order DPS to suspend or deny a DL not to exceed 180 days and impose the fine.</td>
</tr>
<tr>
<td></td>
<td>Court required to impose the fine, but may reduce the fine to not less than one-half original amount.</td>
<td>Court must order DPS to suspend or deny of a DL not to exceed 180 days.</td>
</tr>
</tbody>
</table>

**True or False**

- **Q. 30.** The Health and Safety Code for the purpose of tobacco offenses provides that an individual commits an offense if the individual is younger than 21 years of age. _____
- **Q. 31.** An individual convicted of a tobacco offense must attend a tobacco awareness program. _____
- **Q. 32.** When a defendant completes a tobacco awareness program and presents evidence of completion to the court, the court may, but is not required to, dismiss the case if it is a first time offense. _____
- **Q. 33.** If a defendant is charged with a subsequent tobacco offense, the court may reduce the fine to not less than half of the original amount if the defendant completes the tobacco awareness program. _____
- **Q. 34.** Defendants must complete the tobacco awareness program within 90 days of conviction. _____
Q. 35. Courts may order DPS to suspend or deny issuance of a defendant’s driver’s license for up to 180 days if the defendant fails to complete the tobacco awareness program.

PART 6
EDUCATION CODE

A. Compulsory Attendance Laws

Section 25.085(b), E.C., states that a child who is between six and 17, or who is younger than six and has previously been enrolled in first grade, must attend school unless specifically exempted. Section 25.086, E.C., lists exemptions for children who:

- attend a private or parochial school that includes in its course a study of good citizenship;
- are eligible to participate in a school district’s special education program and cannot be appropriately served by the resident district;
- have a physical or mental condition of a temporary and remediable nature that makes the child’s attendance infeasible and holds a certificate from a qualified physician specifying the temporary conditions, indicating the treatment prescribed to remedy the temporary condition and the anticipated period of the child’s absence from school;
- are expelled in accordance with the requirements of law in a school district that does not participate in a mandatory juvenile justice alternative education program under Section 37.011, F.C.;
- are at least 17 years of age, and
  - have received a high school diploma or high school equivalency certificate; or
  - attend a course of instruction to prepare for the high school equivalency examination, and
    - have the permission of the child’s parent or guardian to attend the course;
    - are required by court order to attend the course;
    - have established a residence separate and apart from the child’s parent, guardian, or other person who has lawful control of the child; or
    - are homeless (as defined by 42 U.S.C. Sec. 11302);
- are at least 16 years of age and are attending a course of instruction to prepare for the high school equivalency examination, if the child is recommended to take the course of instruction by a public agency that has supervision or custody of the child under a court order or is enrolled in a Job Corps training program;
- are enrolled in the Texas Academy of Mathematics and Science;
- are enrolled in the Texas Academy of Leadership in the Humanities; or
- are specifically exempted under another law.

When a person reaches age 18 and voluntarily enrolls in school, the person must attend school during the whole period of instruction or school year. A school district may revoke for the remainder of the school year the enrollment of a person who has more than five absences in a
semester that are not excused under Section 25.087, E.C. A person whose enrollment is revoked under this statute may be considered an unauthorized person on school district grounds for the purposes of Section 37.107, E.C. (Trespass on School Grounds). Sec. 25.085(e), E.C.

The compulsory school attendance rules under Section 25.085, E.C. did not change in the last legislative session, but the municipal court’s jurisdiction to prosecute children for non-attendance did. Effective September 1, 2011, children ages 10-11 are not to be criminally prosecuted. Furthermore, students who are 18 or older may not be criminally prosecuted, even though they remain subject to compulsory school attendance. Sec. 25.094, E.C.

A. Offenses

1. Offenses Committed by a Child

Municipal courts have jurisdiction over the following Education Code offenses:

- Failure to Attend School (Sec. 25.094);
- Parking on School Property (Sec. 37.102);
- Trespass on School Grounds (Sec. 37.107);
- Possession of Intoxicants on School Grounds (Sec. 37.122);
- Disruption of Classes (Sec. 37.124);
- Disruption of Transportation (Sec. 37.126); and
- A Member of a Fraternity, Sorority, Secret Society, or Gang that is Not Sanctioned by Higher Education (Sec. 37.121).

a. School District’s Responsibility when Child is Truant

If a student fails to attend school without an excuse on 10 or more days or parts of days within a six-month period in the same school year, the school district must first adopt truancy prevention measures, file a complaint against the student, the student’s parents, or both in a municipal or justice court accompanied with a statement certifying that the school applied its truancy prevention measures and that the measures failed and whether or not the child is eligible for special education services. If the school district is located in a county with a population of less than 100,000, the school district may refer the student to the juvenile court for conduct indicating a need for supervision. Section 25.0951, E.C., requires a school district to file a complaint with a court within 10 school days of a student’s 10th absence. If a school district fails to file a complaint in the time required, the court shall dismiss the complaint. Sec. 25.0951(d), E.C.

If a student fails to attend school without an excuse on three or more days or parts of days within a four-week period, the school district may, but is not required to, file a complaint against the student or the student’s parent in the municipal or justice court, or refer the child to the juvenile court in a county with a population of less than 100,000.

b. Jurisdiction over Truancy and Failure to Attend School Cases
### Offense

<table>
<thead>
<tr>
<th>Offense</th>
<th>Municipal Court Jurisdiction</th>
<th>Juvenile Court Jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Failure to Attend School</strong> (Criminal offense with a maximum fine of $500; court may also require sanctions under Art. 45.054, C.C.P.)</td>
<td>May be filed in the municipal court where the child, age 12-17 lives or where the school that the child attends is located. (Section 25.094(b), E.C.)</td>
<td>If a school district is in a county with a population of less than 100,000, the school district may file a complaint in the justice or municipal court or refer the student to the juvenile court. Sec. 25.0951, E.C.</td>
</tr>
<tr>
<td><strong>Truancy</strong> (Civil offense with only sanctions. Sec. 54.021, F.C.)</td>
<td>None.</td>
<td>Must be filed in juvenile court where school is located. Juvenile court may waive jurisdiction and transfer the case to the municipal or justice court as a criminal failure to attend school case.</td>
</tr>
</tbody>
</table>

### c. Custody in Failure to Attend School Cases

Under Section 25.094(d), E.C., pursuant to an order of the justice or municipal court based on an affidavit showing probable cause to believe that an individual has committed the offense of failure to attend school, a peace officer may take the individual into custody. A peace officer taking an individual into custody shall:

- promptly notify the individual’s parent, guardian, or custodian of the officer’s action and the reason for that action; and
- without unnecessary delay:
  - release the individual to his or her parent, guardian, or custodian or to another responsible adult if the person promises to bring the individual to the justice or municipal court as requested by the court; or
  - bring the individual to the municipal or justice court with venue over the offense.

Section 52.02(a), F.C., allows a peace officer to bring a juvenile in custody to the child’s school if the principal, principal’s designee, or a peace officer assigned to the campus agrees to assume responsibility for the child for the school day. Section 25.091(b-1), E.C., gives peace officers the authority to take a child in custody who is truant and return the child to the child’s school campus to ensure the child’s compliance with compulsory school attendance requirements.

### 2. Offense Committed by Parent

Parents may be charged with the separate offense of parent contributing to non-attendance. Sec. 25.093, E.C. Section 25.0951, E.C., requires a school district to file a complaint with a court. If a school district fails to file a complaint within 10 school days of a student’s 10th absence, the court shall dismiss the complaint. Sec. 25.0951(d), E.C.
School officials or the school attendance officer may file a complaint in either a municipal court or justice court against a parent accused of contributing to a child’s nonattendance. If the complaint is filed in a justice court, it can be filed in the precinct either where the school is located or where the parent resides. If it is filed in a municipal court, it can be filed in the municipal court in the municipality in which a parent resides or in which the school is located. The burden is on the parent to show by a preponderance of the evidence that the absence has been or should be excused. A decision by the court to excuse an absence does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

B. Penalty

1. Offenses Committed by Child

a. Chapter 37 Offenses

The penalty for Education Code offenses committed by a child is a Class C misdemeanor defined in the Penal Code, which provides a fine not to exceed $500. Sec. 12.23, P.C.

Under Article 45.057, C.C.P., when a child is convicted of a fine-only offense, the court may enter an order requiring additional sanctions.

b. Failure to Attend School

The offense of a failure to attend school is a Class C misdemeanor. Sec. 25.094(e), F.C. The maximum fine amount is $500. Under Article 45.054(f), C.C.P., the court may order the Department of Public Safety to suspend or deny issuance of the driver’s license or permit of the individual for a period not to exceed 365 days. Article 45.054 provides for additional rehabilitative sanctions that the court may order upon conviction. The court may enter an order that includes one or more of the sanctions listed in Article 45.054, C.C.P. The sanctions are:

- attend school without unexcused absences;
- attend a preparatory class for the high school equivalency examination administered under Section 7.111, E.C., if the court determines that the individual is too old to do well in a formal classroom environment and/or, if the person is at least 16 years of age, take the high school equivalency examination;
- attend an alcohol or drug abuse program;
- attend a rehabilitation program;
- attend a counseling program, including self-improvement counseling;
- attend a program that provides training in self-esteem and leadership;
- attend a work and job skills training program;
- attend a program that provides training in manners, violence avoidance, or advocacy and mentoring;
- attend a program that provides sensitivity training;
- complete reasonable community service requirements; or
• participate in a tutorial program covering the academic subjects in which the student is enrolled provided by the school in which the student is enrolled.

The court can require the individual and the individual’s parent to attend a class for students at risk of dropping out of school designed for both the individual and the individual’s parent.

A dispositional order under Article 45.054, C.C.P., is effective for the period specified by the court in the order, but it may not extend beyond the 180th day after the date of the order or beyond the end of the school year during which the order was entered, whichever period is longer. Art. 45.054(g), C.C.P.

D. Dismissal Required

The 82nd Legislature added new provisions to Article 45.054, C.C.P. Effective September 1, 2011, a judge shall dismiss the complaint against an individual for the offense of failure to appear if the court finds that the individual has successfully complied with the conditions imposed by the court or the individual presents the court proof that he or she has obtained a high school diploma or high school equivalency certificate. The judge may also waive or reduce the fee or court cost if the payment of the fee or court cost would cause financial hardship. Arts. 45.054(h) & (j), C.C.P.

2. Offenses Committed by Parent

The offense of parent contributing to non-attendance is a Class C misdemeanor and each day that a child remains out of school may constitute a separate offense. Two or more offenses may be consolidated and prosecuted in a single action. It is an affirmative defense if one or more of the absences was excused by a school official or should be excused by the court.

If the parent is convicted, one-half of the fine must be deposited to the credit of the fund of the school district in which the child attends school or the juvenile justice alternative program that the child has been ordered to attend. The city’s portion is deposited into the city’s general fund.

Upon conviction or deferred disposition, the court may order the parent to attend a program, if one is available, that is designed to assist parents in identifying problems that contribute to student absences and to assist in developing strategies for resolving those problems. If the court orders deferred disposition under Article 45.051, C.C.P., the court may require the defendant to provide personal services to a charitable or educational institution as a condition of the deferral. If the parent refuses to obey a court order, the court may punish the parent for contempt under Section 21.002, G.C.

True or False
Q. 36. There are no exceptions to attending school for any students. _____
Q. 37. Municipal court does not have jurisdiction over parking offenses on school property. _____
Q. 38. Municipal court has jurisdiction over truancy. _____
Q. 39. The offense of failure to attend school may be prosecuted in municipal court where the child lives instead of the municipal court where the child attends school. _____
Q. 40. Parents who do not require a child to attend school commit a Class C misdemeanor offense. _____

Q. 41. The court may order a child convicted of failure to attend school to attend other programs specifically aimed at preventing truancy. _____

Q. 42. When a defendant is convicted of failure to attend school, the court may order DPS to suspend or deny issuance of a driver’s license for up to 365 days. _____

Q. 43. When a parent is convicted of parent contributing to non-attendance, the court must give half of the fine to the school district or to a special juvenile program that the court ordered the child to attend when convicted of failure to attend school. _____

Q. 44. A ten-year-old can be prosecuted in municipal court for failure to attend school. _____

PART 7
FAMILY CODE

A. Definition of Child
Section 51.02(2), F.C., defines “child” to mean a person who is at least 10 years of age and younger than age 17 or 17 years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

B. Delinquent Conduct
Juvenile court has jurisdiction over delinquent conduct. Sec. 51.03, F.C. This statute provides exceptions to delinquent conduct for fine-only offenses. Secs. 51.03(a) and (f), F.C. Justice courts and municipal courts have jurisdiction over these offenses.

C. Conduct in Need of Supervision
Juvenile court has jurisdiction over conduct in need of supervision. Sec. 51.03(b), F.C.

D. Truant Conduct
Subsection 54.021(b), F.C., provides that a municipal court or justice court may exercise authority over a person engaged in truant conduct—conduct indicating a need for supervision—if the juvenile court has waived its original jurisdiction and a complaint is filed by the appropriate authority in the municipal or justice court charging failure to attend school under Section 25.094, E.C. A proceeding in a justice or municipal court based on a complaint for failure to attend school is governed by Chapter 45, C.C.P. (Sec. 54.021(c), F.C.). Municipal court only has jurisdiction over the offense of “failure to attend school” and not Family Code “truancy” hearings.

The offense of failure to attend school may be prosecuted in a justice or municipal court in the precinct or city where either the school is located or the individual resides. Sec. 25.094(b), E.C.
If a school district is in a county with a population of less than 100,000, the district may file a complaint in the justice or municipal court or refer the student to the juvenile court. Sec. 25.0951, E.C.

A juvenile court is prohibited from refusing to accept the transfer of a case brought under Section 25.094, E.C. (Failure to Attend School). This prohibition is subject to the juvenile court prosecutor determining under Section 53.012, F.C. (Review by Prosecutor), that the case is legally sufficient under Section 53.01, F.C. Sec. 51.08(e), F.C.

<table>
<thead>
<tr>
<th>True or False</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Q. 45. The Family Code provides that the offense of public intoxication is an exception to municipal and justice court jurisdiction over juveniles.</td>
<td>_____</td>
</tr>
<tr>
<td>Q. 46. If a juvenile court waives its jurisdiction over a child charged with truancy, a complaint charging failure to attend school must be filed in the municipal court instead of a petition alleging truancy.</td>
<td>_____</td>
</tr>
</tbody>
</table>

**PART 8**

**APPEARANCE**

**A. Juvenile’s Appearance**

### 1. Required in Open Court

Article 45.0215, C.C.P., requires that defendants under age 17 appear in open court regardless of how the person wants to handle his or her case. Even if an attorney appears in court on behalf of the juvenile, the juvenile must still appear with the attorney in open court. The parents must also be present.

<table>
<thead>
<tr>
<th>Code</th>
<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Alcoholic Beverage</strong></td>
<td>All minors must appear in open court. (Section 106.10, A.B.C.) Minors under 17 must appear in open court with a parent. (Art. 45.0215, C.C.P.)</td>
</tr>
<tr>
<td><strong>Penal</strong></td>
<td>Persons under 17 must appear in open court with a parent. (Art. 45.0215, C.C.P.)</td>
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<td><strong>Transportation</strong></td>
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<td><strong>Health &amp; Safety</strong></td>
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</tr>
<tr>
<td><strong>Education</strong></td>
<td>All persons regardless of age charged with the offense of failure to attend school must appear in open court with a parent. (Art. 45.054(c), C.C.P.)</td>
</tr>
<tr>
<td></td>
<td>All persons under 17 charged with an E.C. offense must appear in open court with a parent or guardian. (Art. 45.054(c), C.C.P.)</td>
</tr>
<tr>
<td></td>
<td>Parent must appear in open court if minor is under 17. (Art. 45.0215, C.C.P.)</td>
</tr>
</tbody>
</table>
2. **Determining Sophistication and Maturity of Juvenile**

At the time of appearance, the court should make notes of the juvenile’s sophistication and maturity and place them in the case file. These notes may be used later if the juvenile fails to pay a fine or violates a court order before issuing a capias pro fine.

3. **Notification of Change of Address**

Article 45.057, C.C.P., provides that a child and parent required to appear before a court have an obligation to provide the court with the current address and residence of the child. The obligation does not end when the child reaches 17. On or before the seventh day after the date the child or parent changes residence, the child or parent shall notify the court of the current address in the manner directed by the court. A violation of this requirement may result in arrest and is a Class C misdemeanor. The obligation to provide notice terminates on discharge and satisfaction of the judgment. The child and parent are entitled to written notice of their obligation to provide a change of address to the court. The notice requirement may be satisfied by:

- the court during their initial appearance before the court;
- a peace officer arresting and releasing a child under Article 45.058(a), C.C.P.; and
- a peace officer issuing a citation under Section 543.003, T.C., or Article 14.06(b), C.C.P.

It is an affirmative defense to the prosecution that the child and parent were not informed of their obligation to provide a current residential address.

4. **Juvenile Residing in Another County**

When a defendant younger than 17 resides in a county other than the county in which the alleged offense occurred, the defendant, with permission of the court, may enter a plea before a judge in the county where the defendant resides. Art. 45.0215(c), C.C.P. This does not mean that the case is transferred to the other court. After the other court receives the plea from the juvenile, it must send it to the court with jurisdiction over the case. All other appearances of the juvenile and parent must be in the court in which the case is filed.

5. **Failure to Appear**

Article 45.060, C.C.P., provides rules and procedures for handling a person who committed a crime while under the age of 17 and is now age 17 or older.

a. **Requirements Before 17th Birthday**

The court must use all available procedures under Chapter 45 to secure the individual appearance to answer allegations made before the individual’s 17th birthday. The procedures that the court must use include the following:

- provide notice to the juvenile and the juvenile’s parents of their continuing obligation to provide the court notice of change of address within seven days of moving (Art. 45.057, C.C.P.);
- summon the parents of the juvenile to appear in open court with their child (Arts. 45.0215 and 45.057, C.C.P.);
• order DPS to suspend or deny issuance of the juvenile’s driver’s license (Secs. 521.201, and 521.294, T.C.); and
• order the juvenile to be taken into nonsecure custody under Article 45.058, C.C.P.

b. Procedures when Children Turn Age 17

After the above requirements have been met, the court may send the juvenile who is now an adult, a notice of continuing obligation to appear. The notice may be served by personal service or by mail to the last known address and residence of the individual. Process issued out of a municipal court may be served by a peace officer or a city marshal. Art. 45.202, C.C.P. Court clerks do not have authority to serve this process.

A notice to appear must contain the following statement in bold-faced type or capital letters:

WARNING: COURT RECORDS REVEAL THAT BEFORE YOUR 17TH BIRTHDAY YOU WERE ACCUSED OF A CRIMINAL OFFENSE AND HAVE FAILED TO MAKE AN APPEARANCE OR ENTER A PLEA IN THIS MATTER. AS AN ADULT, YOU ARE NOTIFIED THAT YOU HAVE A CONTINUING OBLIGATION TO APPEAR IN THIS CASE. FAILURE TO APPEAR AS REQUIRED BY THIS NOTICE MAY BE AN ADDITIONAL CRIMINAL OFFENSE AND RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST.

If the defendant fails to appear, the prosecutor may charge a violation of continuing obligation to appear and issue an arrest warrant for the defendant. Upon arrest, the court may handle all the unadjudicated charges committed by this person as a juvenile.

B. Parent’s Appearance

Article 45.057(a)(3), C.C.P., defines “parent” to include a person standing in parental relation, a managing conservator, or a custodian.

1. Required in Open Court

A parent, managing conservator, or custodian is required to be present at all proceedings involving their child under the age of 17. Art. 45.0215, C.C.P. Even if an attorney appears in court with the child, the court must still require the presence of the parent or guardian.

2. Parental Summons

The court is required to summon the parent, managing conservator, or custodian to appear with his or her child and to be present during all court proceedings. Art. 45.0215, C.C.P. The summons must contain a notice that if the parent fails to appear in court with his or her child, the parent may be charged with a Class C misdemeanor offense. The summons should also contain a statement about the required notification of change of address that the parent must provide the court.

The summons is issued by the judge and served as other summonses are served—by a peace officer. Art. 45.202, C.C.P. A peace officer may serve the summons by mail or by delivering the summons to the parent. Article 102.011(4), C.C.P., requires a $35 fee to be assessed upon conviction of the juvenile for the service of the summons.
3. **Parent’s Failure to Appear**

If the parent, guardian, or conservator fails to appear with his or her child, he or she could be charged with the offense of failure to appear at hearing with child. Art. 45.0215(d), C.C.P. This charge should not to be confused with the failure to appear offense in Section 38.10, P.C., which applies only to a defendant’s failure to appear.

4. **Waiver of Presence**

The court may waive the requirement of the presence of the parents or guardians only if, after diligent effort, the court cannot locate them or compel their presence. Art. 45.0215, C.C.P. Consequently, the clerk should document all efforts to compel the presence of the parents or guardian. The documentation could include the summons showing service by a peace officer, copies of any courtesy notices, and notes about any telephone contact with the parents or guardians.

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**True or False**

Q. 47. When an attorney represents a child, the child and parent do not have to make a personal appearance in court. _____

Q. 48. A person under 18 charged with an A.B.C. offense must appear in open court with a parent or guardian. _____

Q. 49. All persons charged with an A.B.C. offense, even someone 20 years old, must appear in open court. _____

Q. 50. A person 17 years old charged with a tobacco offense must appear in open court with a parent. _____

Q. 51. A person 17 years old charged with failure to attend school must appear in open court with a parent. _____

Q. 52. When a juvenile appears, the judge should determine the sophistication and maturity of the juvenile. _____

Q. 53. Both a parent and child may be charged with a Class C misdemeanor if they fail to notify the court within seven days of an address change. _____

Q. 54. If a juvenile resides in another county, a court with fine-only jurisdiction may take the plea only if the court where the case is filed gives its permission. _____

Q. 55. Parent is defined to mean a person standing in parental relation, a managing conservator, or a custodian. _____

Q. 56. The court must issue a summons for the parent of a juvenile requiring the parent to appear with his or her child in open court. _____

Q. 57. The court may never waive the presence of the parent. _____

Q. 58. A parent who fails to appear with his or her child may be charged with the Penal Code offense of failure to appear. _____

Q. 59. The municipal court may order a juvenile taken to nonsecure custody. _____

Q. 60. The court must use all available procedures under Chapter 45 to secure the appearance of a juvenile before issuing a written notice to appear when the juvenile turns age 17. _____
Q. 61. When a juvenile reaches age 17, the court may issue a warrant of arrest for all offenses committed before reaching age 17.

PART 9
FAILURE TO PAY OR VIOLATION OF A COURT ORDER

A. General Procedures

Article 45.050, C.C.P., provides that the municipal court may not order a child confined for failure to pay all or any part of a fine or costs or for contempt of another order of the court. Instead, if a child fails to obey an order of the court under circumstances that would constitute contempt of court, the court must give the child notice of a contempt hearing. The purpose of the hearing is to give the child an opportunity to tell why he or she had failed to pay or violated the court order.

If the court determines that the child’s conduct constitutes contempt, the court decides whether to refer the child to the juvenile court for delinquent conduct or whether to retain jurisdiction. If the court retains jurisdiction, it may hold the child in contempt and impose a fine not to exceed $500, and/or order the Department of Public Safety to suspend or deny issuance of the child’s driver’s license or permit until the child fully complies with the orders of the court. Art. 45.050, C.C.P.

For purposes of Article 45.050, C.C.P., “child” has the meaning described in Article 45.058, C.C.P.—a person at least 10 years of age and younger than 17 years of age and charged with or convicted of an offense that municipal court has jurisdiction of under Article 4.14, C.C.P.

B. Capias Pro Fine

Article 45.045, C.C.P., provides that a capias pro fine may not be issued for an individual convicted for an offense committed before the individual’s 17th birthday unless:

- the individual is 17 years of age or older;
- the court finds that the issuance of the capias pro fine is justified after considering:
  - the sophistication and maturity of the individual (use the notes taken when the juvenile made an appearance before the judge);
  - the criminal record and history of the individual (generally, this will be a history of cases filed in the municipal court, including information from the Texas Department of Public Safety); and
  - the reasonable likelihood of bringing about the discharge of the judgment through the use of procedures and services currently available to the court; and
- the court has proceeded under Article 45.050, C.C.P., to compel the individual to discharge the judgment.

The court uses the same procedures under Article 45.050, C.C.P., even if the juvenile failed to obey a court order after he or she turned 17 years of age and the failure to obey occurred under circumstances that constitute contempt of court. If the juvenile engaged in conduct in contempt of an order issued by the court, but the contempt proceedings could not be held before the
person’s 17th birthday, the court must still use the proceedings under Article 45.050 before issuing a capias pro fine.

### True or False

Q. 62. When a juvenile defendant fails to pay or violates a court order, the court must conduct a contempt hearing before finding the juvenile in contempt. _____

Q. 63. If a juvenile is found in contempt, the court may order the juvenile to pay a fine not to exceed $500 and/or order DPS to suspend or deny issuance of the driver’s license. _____

Q. 64. Before the court can issue a capias pro fine for a juvenile convicted of offenses that occurred before the juvenile’s 17th birthday, the court must wait until the juvenile turns age 17. _____

Q. 65. When a court issues a capias pro fine for an individual who has just turned age 17, the court must consider the individual’s sophistication and maturity and criminal history. _____

Q. 66. If a person turns age 17 and then fails to pay a fine, the court may immediately issue a capias pro fine. _____

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### PART 10

#### CUSTODY

**A. General Custody Procedures**

Under Article 45.058, C.C.P., a child taken into nonsecure custody may be:

- released to a parent, guardian, custodian, or other responsible adult;
- taken before a municipal or justice court; or
- taken to a place of nonsecure custody.

A place of nonsecure custody is defined as:

- an unlocked multipurpose area;
- a lobby;
- an office;
- an interrogation room (suitable if the area is not designated or set aside, or used as a secure detention area and is not part of a secure detention area);
- a juvenile processing office (may be used as a nonsecure custody as long as it is not locked when being used as nonsecure custody area).

While in the custodial area of nonsecure custody, the child:

- cannot be handcuffed to a chair, rail, or any object; and
- must be under continuous visual observation by a law enforcement officer or a member of the facility staff.

The child cannot be held in the facility for longer than is necessary to take the child before a judge or to release the child to the parents. If the child is being held on charges other than municipal court matters, he or she may be held long enough to be:
• identified;
• investigated; and
• processed.

Under no circumstances is the child to be held for more than six hours. During that time, arrangements must be made for transportation to a juvenile detention facility. These same regulations apply to children who are taken into custody for curfew violations.

**B. Failure to Attend School**

Under Section 25.094(d-1), E.C., pursuant to an order of the justice or municipal court based on an affidavit showing probable cause to believe that an individual has committed the offense of failure to attend school, a peace officer may take the individual into custody. A peace officer taking such an individual into custody shall:

• promptly notify the individual’s parent, guardian, or custodian of the officer’s action and the reason for that action; and
• without unnecessary delay:
  – release the individual to his or her parent, guardian, custodian, or another responsible adult if the person promises to bring the individual to the justice or municipal court as request by the court; or
  – bring the individual to the municipal or justice court with venue over the offense.

**C. Curfew Ordinances**

Article 45.059, C.C.P., provides that a person who takes an individual under the age of 17 into nonsecure custody for violation of a juvenile curfew ordinance shall without unnecessary delay:

• release the person to the person’s parent, guardian, or custodian;
• take the person before a municipal or justice court; or
• take the person to a place designated as a juvenile curfew processing office by the head of the law enforcement agency having custody of the person.

A juvenile curfew processing office:

• must be an unlocked multipurpose area that is not designated, set aside, or used as a secure detention area or part of a secure detention area;
• the person may not be secured physically to a cuffing rail, chair, desk, or stationary object;
• detention may not be longer than necessary to accomplish the purposes of identification, investigation, processing, release to parents, guardians, or custodians, and arrangement of transportation to school or court and in no case may the detention be longer than six hours; and
• the person must be under continuous visual supervision by a peace officer or other person during the time the person in detained in the office.
D. **Referral to Juvenile Court**

If the child has been referred to juvenile court, the child may be detained in a juvenile detention facility. Sec. 52.027, F.C.

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<table>
<thead>
<tr>
<th>True or False</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Q. 67. A child who is taken into nonsecure custody may be brought before the municipal court.</td>
<td></td>
</tr>
<tr>
<td>Q. 68. A place of nonsecure custody could be a locked room located in the court.</td>
<td></td>
</tr>
<tr>
<td>Q. 69. A person charged with violating a curfew ordinance may only be taken home and released to a parent.</td>
<td></td>
</tr>
</tbody>
</table>

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**PART 11**

**SENTENCING**

A. **Community Service**

Fines and costs imposed by municipal courts can be discharged by performing community service. Art. 45.049, C.C.P.

A judge may require a defendant who fails to pay a previously assessed fine or costs, or who is determined by the court to have insufficient resources or income to pay a fine or costs, to discharge all or part of the fine or costs by performing community service. A defendant may, at any time, discharge an obligation to perform community service by paying the fines and costs assessed.

New legislation, effective September 1, 2011, allows the judge to allow the fine or costs of a defendant under the age of 17 to be discharged without considering the child’s resources or ability to pay. Art. 45.049, C.C.P.

B. **Additional Optional Requirements**

Under Article 45.057, C.C.P., when a child is convicted of a fine-only offense, the court may enter an order requiring additional requirements.

Article 45.057 defines:

- “child” as the same as Article 45.058, C.C.P., which provides that a “child” is a person who is at least age 10 and younger than age 17;
- “residence” to mean any place where the child lives or resides for a period of at least 30 days; and
- “parent” to include a person standing in parental relation, managing conservator, or a custodian.

The additional optional requirements include the following:

- referring the child or the child’s parents, managing conservators, or guardians for services under Section 264.302, F.C. (early youth intervention services);
• requiring the child to attend a special program that the court determines to be in the best interest of the child, including rehabilitation, counseling, self-esteem and leadership, work and job skills training, job interviewing and work preparation, self-improvement, parenting, manners, violence avoidance, tutoring sensitivity training, parental responsibility, community service, restitution, advocacy, or mentoring program; or
• requiring the child’s parent, managing conservator, or guardian, if the court finds they by act or omission, contributed to, caused, or encouraged the child’s conduct, to do or refrain from doing any act that the court determines will increase the likelihood that the child will comply with the orders of the court and that is reasonable and necessary for the welfare of the child, including:
  – attend a parenting class or parental responsibility program; and
  – attend the child’s school classes or function.

The court may require:

• the parent, managing conservator, or guardian of a child required to attend one of the above mentioned programs to pay an amount not greater than $100 for the costs of the program (Art. 45.057, C.C.P.); and
• both the child and the parent to attend a program, class, or function and to submit proof of attendance to the court (Art. 45.057, C.C.P.).

An order for a child to attend any special programs is enforceable under Article 45.050, C.C.P. Art. 45.057(f), C.C.P.

In addition to the above options, the court may also allow a child younger than 17 to discharge his or her fines and court costs through tutoring, if the child was convicted of a Class C misdemeanor that occurred in a building or on the grounds of the primary or secondary school at which the defendant was enrolled at the time of the offense. Art. 45.0492, C.C.P. Admittedly, this option to order tutoring in lieu of fines and costs is limited; however, the change in the law does reflect the trend to decriminalize or punish children for low-level, nonviolent behavior.

C. Alternative Sentencing

1. Teen Court

Article 45.052, C.C.P., provides authority for municipal and justice courts to defer children’s cases for a teen court program. Teen court is a deferral program in which defendants are sentenced by their peers. The defendant must complete the teen court program not later than the 90th day after the date of the teen court hearing to determine punishment or the last day of the deferral period, whichever date is earlier. The teen court program must be approved by the court. To be eligible, the defendant must:

• enter a plea of guilty or no contest in open court in the presence of parents or guardian and request, either in writing or orally, the teen court program;
• be under the age of 18 or enrolled full time in an accredited secondary school in a program leading toward a high school diploma for 90 days;
be charged with a misdemeanor punishable by fine-only or a violation of a penal ordinance of a political subdivision, including a traffic offense punishable by fine-only; and
not have successfully completed a teen court program in the two years preceding the date that the alleged offense occurred.

A court may transfer a case deferred under the teen court program to a court in another county if the court consents. A case may not be transferred unless it is within the jurisdiction of the court to which it is transferred. Art. 45.052(f), C.C.P.

The judge must dismiss the charge at the conclusion of the deferral period if the defendant presents satisfactory evidence that he or she has successfully completed the program. A charge that is dismissed may not be part of the defendant’s criminal record or driving record or used for any purpose. However, if the charge was for a traffic offense, the court shall report to the Department of Public Safety that the defendant successfully completed the teen court program and the date of completion for inclusion in the defendant’s driving record. Art. 45.052(d), C.C.P.

2. **Driving Safety Course**

Persons under the age of 17 are eligible to request a driving safety course. However, they must make a personal appearance with a parent or guardian in open court to request to take a driving safety course or a motorcycle operator course.

3. **Deferred Disposition**

As in all other proceedings involving persons under the age of 17, the court is required to summon the parent or guardian and require his or her presence when granting deferred disposition. Before granting deferred disposition, the judge accepts a plea of guilty or no contest or the defendant may be found guilty after a trial. The defendant may be required to pay court costs before the judge grants deferred disposition or the judge may allow the defendant to pay the court costs out during the deferral period or to pay the court costs by performing community service or through a combination of both. When deferred disposition is granted, the judge may impose reasonable conditions or requirements for the defendant to perform within a certain time. The judge has the discretion to impose a probation period of up to 180 days.

a. **Exceptions**

An alternative to a fine is placing the child on deferred disposition. Art. 45.051, C.C.P. Deferred disposition is available for most offenses with a few exceptions noted below.

- Traffic offenses committed in a construction maintenance zone when workers are present. Secs. 472.022 and 543.117, T.C.
- Alcoholic Beverage Code offenses committed by a minor who is not a child and who has been previously convicted at least twice of an offense to which Section 106.071 applies, is not eligible to receive a deferral of final disposition of a subsequent offense. Sec. 106.071(i), A.B.C.
- A minor who commits the offense of driving under the influence of alcohol and has been previously convicted twice or more of that offense is not eligible for deferred disposition. Sec. 106.041(f), A.B.C.
- A minor charged with consuming an alcoholic beverage is not eligible for deferred disposition if he or she has been previously convicted twice or more of consuming an alcoholic beverage. Sec. 106.04(d), A.B.C.

b. **Alcoholic Beverage Code Offenses**

(1) **Enhancement of a Charge**

For the purpose of determining whether a minor has been previously convicted of an offense for possessing, consuming, purchasing, attempting to purchase alcohol, misrepresentation of age, driving under the influence of alcohol, or public intoxication, an order of deferred disposition is considered a conviction. Secs. 106.04(d), 106.041(h)(2), and 106.071(f)(2), A.B.C. This means that an order of deferred disposition is considered a conviction for the purpose of enhancing a charge to a subsequent offense.

(2) **Not Eligible for Deferred Disposition**

A minor who is not a child and who has been previously convicted at least twice of an offense to which Section 106.071(Punishment for Alcohol Related Offense by Minor) applies is not eligible to receive a deferral of final disposition of a subsequent offense. Sec. 106.071(i), A.B.C. A minor who commits the offense of driving under the influence of alcohol (DUI) and has been previously convicted twice or more of that offense is not eligible for deferred disposition. Sec. 106.041(f), A.B.C. A minor charged with consuming an alcoholic beverage is not eligible for deferred disposition if he or she has been previously convicted twice or more of consuming an alcoholic beverage. Sec. 106.04(d), A.B.C.

(3) **Alcohol Awareness Program**

When a court grants deferred disposition to a minor charged with an Alcoholic Beverage Code offense or public intoxication, the court must require the minor to attend an alcohol awareness program approved by the Texas Commission on Alcohol and Drug Abuse. Sec. 106.115, A.B.C.

(4) **Community Service**

When a court grants deferred disposition to a minor charged with possessing, consuming, purchasing, or attempting to purchase alcohol, misrepresentation of age, or public intoxication (under age 21), the court must require the minor to perform not less than eight or more than 12 hours community service if the minor does not have any previous convictions. If the minor has a previous conviction, the minor must perform not less than 20 or more than 40 hours of community service. Sec. 106.071(d)(1), A.B.C. Article 45.049(g), C.C.P., provides that, the defendant may elect to perform the community service in the county in which the court is located or the county in which the defendant resides, but only if the entity or organization agrees to supervise the defendant and report back to the court. If the defendant elects to perform the community service in the county in which the defendant resides and community service involving education about alcoholic beverage issues is not available, the court may order community service that it considers appropriate for rehabilitative purposes. Art. 45.049(h), C.C.P.
4. **Failure to Complete Terms of DSC or Deferred Disposition**

If the person fails to complete the terms of a driving safety course or deferred disposition, the court must set a contempt hearing under Article 45.050, C.C.P., and notify the defendant of the hearing. The court may not issue a capias pro fine unless the court complies with the procedures under Article 45.045, C.C.P.

| Q. 70. | Municipal courts may require juveniles to perform community service to discharge a fine and costs. ______ |
| Q. 71. | Additional optional sanctions such as requiring a child to attend a special program that the court determines is in the best interest of the child may only be required for Penal Code offenses. ______ |
| Q. 72. | Teen court is a deferral program in which defendants are sentenced by peers. ______ |
| Q. 73. | A defendant participating in a teen court program may not have completed a teen court program in the two years preceding the date of the current offense. ______ |
| Q. 74. | Juveniles requesting a driving safety course may make the request by mail. ______ |
| Q. 75. | The court may immediately issue a capias pro fine for a juvenile who does not complete the driving safety course and fails to appear for a show cause hearing. ______ |
| Q. 76. | A juvenile’s parent’s appearance may be automatically waived if the court is going to grant deferred disposition to the juvenile. ______ |
| Q. 77. | The court may grant deferred disposition to a juvenile regardless of the charge. ______ |
| Q. 78. | When a court grants deferred disposition for an Alcoholic Beverage Code offense, the court must require the defendant to attend an alcohol awareness program. ______ |
| Q. 79. | If the court grants deferred disposition for any A.B.C. offense, the court must require the defendant to perform a certain number of community service hours. ______ |
| Q. 80. | If a juvenile fails to complete the terms of the deferral, the court may immediately issue a capias pro fine. ______ |

**PART 12**

**EXPUNCTION AND NON-DISCLOSURE**

Expunge means to erase, remove, or wipe out. Municipal court has authority to expunge only records of juveniles and minors. In all instances, they must apply to the municipal court and pay a $30 fee. Article 102.006, C.C.P., provides for fees in expunction proceedings that are in addition to any other required fees.

**A. Penal Code and Chapter 37, Education Code Offenses**

Under Article 45.0216, C.C.P., convictions of the following offenses may be expunged:

- Penal Code offenses;
- possession of drug paraphernalia;
- Chapter 37, Education Code offenses; and
- penal city ordinance offenses.

Also, records of a person under 17 years of age relating to a complaint for a penal offense dismissed under deferred disposition (Art. 45.051, C.C.P.) or teen court (Art. 45.052, C.C.P) may be expunged under Article 45.0216.

1. **Court Required to Inform Child and Parent of Right to Expunction**

The judge must inform the child and his or her parent in open court of the child’s expunction rights and provide both with a copy of Article 45.0216, C.C.P., which provides the expunction procedures.

2. **Procedures**

When the child reaches the age of 17, he or she may apply to the court in which the conviction occurred to have the conviction expunged.

- The request must be in writing and made under oath.
- It must contain a statement that the person was not convicted of any offense described by Subsections 8.07(a)(4) or (5), P.C., other than the offense the person seeks to have expunged while under the age of 17.

If the court finds that the person was not convicted of any other offense described by those subsections while a child, the court shall order the conviction, together with the complaint, verdict, sentence, prosecutorial and law enforcement records, and any other documents relating to the offense expunged. After entry of the order, the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose.

3. **Costs**

Article 45.0216(i), C.C.P., requires a $30 fee to be paid by the petitioner to defray the cost of notifying state agencies of orders of expungement.

B. **Alcoholic Beverage Code – Minor Offenses**

1. **Notification**

The court is not required to, but may, advise defendant and parent of right to expunction for Alcoholic Beverage Code offenses.

2. **Procedures**

To be eligible, the minor:

- must not have been convicted of more than one alcohol-related offense; and
- must now be at least 21 years old. Sec. 106.12(a), A.B.C.

To expunge the offense the person must file with the court that tried the case an application with a sworn affidavit that the person:

- only has one conviction (the one he or she is trying to expunge); and
- is now 21 years of age. Sec. 106.12(b), A.B.C.
Some courts simply accept the affidavit, conduct a record check, and in the absence of other alcohol-related offenses, expunge the conviction. Other courts conduct a more formal proceeding notifying all agencies or persons who have records about the case or have knowledge about the applicant. These agencies might include:

- the state and local office of the Alcoholic Beverage Commission;
- the Department of Public Safety (since it maintains the records of all convictions of Alcoholic Beverage Code offenses);
- the community service provider;
- the alcohol awareness program provider;
- the local police department; and
- the city attorney’s office.

If no agency or person can provide evidence that the applicant was convicted of more than one alcohol-related offense, the court must grant the petition for expunction.

When a case is expunged, the judge issues an order that dictates that the conviction, along with all complaints, verdicts, sentences, and other documents be expunged from the applicant’s records. Sec. 106.12(c), A.B.C. After the order is issued, the applicant is released from all disabilities arising from the conviction. In addition, the case may not be shown or made known for any purpose. Sec. 106.12(c), A.B.C.

In recent years, the process of expunction has become a more complicated procedure. It is no longer just a matter of gathering relevant paper files and destroying them. To make a complete expunction, computer records must now also be deleted. These must be removed from the court and other agencies’ computers. Records are typically stored in police department computers and in other agencies’ files including the alcohol awareness programs and community service providers. These must be expunged so that complete eradication of the case history is accomplished.

3. **Costs**

Section 106.12(d), A.B.C., requires courts to assess a $30 fee for an application for expunction of a conviction of an offense involving a minor.

C. **Health and Safety Code – Tobacco Offenses**

1. **Notification**

The court is not required to notify defendants convicted of a tobacco offense of their right of expunction, but may do so. Sec. 161.255, H.S.C.

2. **Procedures**

Since the court must determine if the defendant satisfactorily completed a tobacco awareness program or tobacco-related community service, the court should set the expunction request for a hearing. All agencies or persons who have a relation to the case, records about the case, or knowledge about the applicant should be notified.
At the hearing, if the judge determines that the defendant has complied, the court orders an expunction. The judge then issues an order that dictates that the conviction, along with the complaint, verdict, sentence, and other documents be expunged.

After expunction, the applicant is released from all disabilities arising from the conviction. Thereafter, the case cannot be shown or made known for any purpose. A defendant may request multiple expunctions as long as the defendant has completed the tobacco awareness course or tobacco-related community service for each conviction.

3. Costs

Section 161.255(b), H.S.C., requires the court to assess a $30 fee for an application for an expunction of a conviction of a tobacco offense under Section 161.252, H.S.C.

D. Failure to Attend School Offenses

Article 45.054, C.C.P., requires courts, upon commencement of proceedings in a failure to attend school case, to inform the individual and his or her parent in open court of the right to expunction and to give them a copy of Article 45.055, C.C.P., providing the rules for expunging a conviction of failure to attend school.

The following is a list of the rules under Article 45.055.

- The individual can seek expunction with only one conviction of failure to attend school.
- The individual can apply for the expunction on or after his or her 18th birthday.
- The application must be to the court in which the individual was convicted.
- The applicant must submit a written request made under oath stating that he or she has not been convicted of more than one violation of failure to attend school.
- The court may order the expunction without a hearing or, if facts are in doubt, conduct a hearing on the application.
- If the court finds that the applicant has only the one conviction, the court must order the conviction, complaint, verdict, sentence, and other documents relating to the offense, including documents in the possession of a school district or law enforcement agency, to be expunged from the applicant’s record.
- After entry of the order, the applicant is released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose.
- The court shall inform the applicant of the court’s decision.

Expunction is no longer a matter of gathering paper files and destroying them. Computer records must also be deleted from the court’s and other agencies’ computers. Records kept in computers by the police department, school district, alcohol or drug abuse programs, counseling services, training programs, and community service providers, must all be expunged to completely eradicate the case history.

Article 45.055(d), C.C.P., requires the court to assess a $30 fee for an application for an expunction of a conviction for the offense of failure to attend school.
E. NON-DISCLOSURE ORDERS REPEALED

The 81st Legislature amended Section 411.081, G.C., to require that a court convicting a child for a fine-only misdemeanor offense must immediately issue an order prohibiting criminal justice agencies from disclosing, except to other criminal justice agencies or specified noncriminal justice agencies, any criminal history record information related to the offense for which the child was convicted. This amendment applied only to children (persons at least 10 and less than 17 years of age) and only to cases where there was a conviction, as opposed to the granting of any form of probation. This attempt by the Legislature to treat juvenile case records similarly to juvenile court records did not work on many levels. Effective September 1, 2011, Sections 411.081(f-1) and (j) of the Government Code are repealed. The Legislature did take on the issue of juvenile record disclosure in municipal courts by adding confidentiality provisions related to the conviction of a child, which will be discussed below.

True or False

Q. 81. The court must inform a juvenile and his or her parent in open court of the juvenile’s right to expunge a conviction for a penal offense. _____
Q. 82. A juvenile convicted of a penal offense may apply for an expunction at 17. _____
Q. 83. A request to expunge a penal conviction must be in writing and under oath. _____
Q. 84. The court may not charge a fee for expunging the record of a penal offense. _____
Q. 85. The court is required to notify minors charged with an A.B.C. offense of the right to expunge a conviction. _____
Q. 86. Minors convicted of an A.B.C. offense must be 17 before seeking expunction. _____
Q. 87. Minors requesting an expunction of a conviction for an A.B.C. offense may request the expunction even if they have multiple convictions for A.B.C. offenses. _____
Q. 88. To have an A.B.C. offense expunged, there is a $30 fee. _____
Q. 89. Individuals convicted of multiple tobacco offenses may request expunction of all convictions. _____
Q. 90. To be eligible for an expunction for a tobacco offense, an individual must have completed the tobacco awareness course. _____
Q. 91. Individuals requesting an expunction of a tobacco offense cannot be charged for getting their records expunged. _____
Q. 92. The court is required to notify the child and parent of the right to expunge a conviction for the offense of failure to attend school. _____
Q. 93. An individual convicted of failure to attend school may not request an expunction until the individual reaches age 18. _____
Q. 94. Individuals convicted of failure to attend school must pay $30 for expunction. _____
Q. 95. When a clerk expunes court records, computer records are also expunged. _____
Part 13
Juvenile Records

A. Handling Provisions
Prior to 2011, there were no special handling provisions for juvenile records. This was changed in the 82nd Legislative Session. Section 58.007(a), F.C., provides that records related to juvenile conduct are confidential and may not be released to the public, but the section expressly provides that it does not apply to records held by municipal and justice courts. Newly-enacted Section 58.0071, F.C., provides that all records and files relating to a child who is convicted of and has satisfied the judgment for a fine-only offense, other than a traffic offense, are confidential and may not be disclosed to the public.

B. Confidential Records Related to the Conviction of a Child
Article 45.0217, C.C.P., was enacted by the 82nd Legislature to address concerns about the disclosure of records regarding children. The new statute provides that all records and files, including those held by law enforcement, and information stored by electronic means or otherwise, relating to a child who is convicted of and has satisfied the judgment for a fine-only misdemeanor offense, other than a traffic offense, are confidential and may not be disclosed to the public. There are exceptions to this rule. Information may be open to inspection only by:

- judges or court staff;
- a criminal justice agency for a criminal justice purpose;
- the Department of Public Safety;
- an attorney for a party to the proceeding;
- the child defendant; or
- the child’s parent, guardian, or managing conservator.

Note that the records are confidential only if there is a conviction which has been satisfied and that conviction is for a non-traffic fine-only offense. Thus, according to this new statute, if a defendant is on a time-payment plan, the records do not become confidential until the fine and costs have been satisfied.

Q. 96. The rules on confidentiality of juvenile records do not apply to juvenile records in municipal court. _____
Q. 97. Because of the change in the law, all juvenile records on defendants who have convictions in municipal court are confidential. _____

Part 14
Reports to the Juvenile Court

In addition to reporting requirements to TCADA and DPS already discussed in TMCEC Study Guide Level I, State and Local Reporting, when a municipal court has a pending complaint against a child alleging a misdemeanor offense punishable by fine-only other than traffic, municipal court shall notify the juvenile court of the pending complaint and furnish a copy of the final disposition. Sec. 51.08(c), F.C.
True or False

Q. 98. Municipal court is required to report all types of cases filed against juveniles and dispositions of the cases to juvenile court. _____

CONCLUSION

Although offenders under the age of 17 require special handling, they have the right to a trial by jury or judge; an attorney may represent them; the burden of the proving their guilt falls on the State; and they have the same appeal rights as adults. If a child does not understand the proceedings or is incompetent to handle his or her own defense, assistance of appointed counsel may be necessary. Courts must always consider the age and maturity of children before them and can never be too cautious in protecting their rights.
## APPENDIX A

### MUNICIPAL JUVENILE/MINOR CHART

|--------------|-------------------------|--------------------------------|----------------|------------------------|------------|---------------------------------|
| **Waiver of Jurisdiction**<br>**- Transfer to Juvenile Court**<br>(Sec. 51.08, F.C.)<br>Under age 17;<br>**May waive** jurisdiction over first and second violations;<br>**Shall waive** jurisdiction after two previous convictions of any non-traffic fine-only offenses.<br>*At age 17 or more, after two previous convictions, charge may be enhanced and filed in county court.*<br>**Sec. 51.08, F.C.**<br>Under age 17;<br>**May waive** jurisdiction over first and second violations;<br>**Shall waive** jurisdiction after two previous convictions of any non-traffic fine-only offenses.<br>*At age 17 or more, after two previous convictions, charge may be enhanced and filed in county court.*<br>**Sec. 51.08, F.C.**<br>Under age 17;<br>**May waive** jurisdiction over first and second violations;<br>**Shall waive** jurisdiction after two previous convictions of any non-traffic fine-only offenses.<br>*Age 17 – court retains jurisdiction.*<br>**Sec. 51.08, F.C.**<br>May not waive jurisdiction. Title 3, Family Code (including transfer to juvenile court) does not apply to Subchapter N, H.S.C.<br>**Sec. 51.08, F.C.**<br>Under age 17;<br>**May waive** jurisdiction over first and second violations;<br>**Shall waive** jurisdiction after two previous convictions of any non-traffic fine-only offenses.<br>*Shall waive jurisdiction if there is pending Sexting (section 43.261, P.C.) complaint against a child (under 17 years of age).*<br>**Sec. 51.08, F.C.**<br>Municipal court **may not waive** its jurisdiction over traffic violations.<br>**Sec. 51.08, F.C.**<br>Defendant must be 17 years of age & younger than age 17.<br>**Sec. 51.02, F.C. & Art. 45.058(h), C.C.P.**<br>Child defined as at least 10 years of age & younger than age 17.<br>**Sec. 25.085. Compulsory School Attendance**<br>*Municipal court has jurisdiction if child at least age 10;*<br>*Child under age 6, if previously enrolled in 1st grade,*<br>*At least age 6 and who has not reached his or her 18th birthday.*<br>(See Sec. 25.086 for Exemptions.)<br>**Sec. 51.02, F.C. & Art. 45.058(h), C.C.P.**<br>Child defined as at least 10 years of age & younger than age 17.<br>**Sec. 25.085. Compulsory School Attendance**<br>*Municipal court has jurisdiction if child at least age 10;*<br>*Child under age 6, if previously enrolled in 1st grade,*<br>*At least age 6 and who has not reached his or her 18th birthday.*<br>(See Sec. 25.086 for Exemptions.)<br>**Sec. 51.02, F.C. & Art. 45.058(h), C.C.P.**<br>Child defined as at least 10 years of age & younger than age 17.<br>**Sec. 8.07. Age Affecting Criminal Responsibility under age 17.**<br>**Sec. 51.02, F.C. & Art. 45.058(h), C.C.P.**<br>Child defined as at least 10 years of age & younger than age 17.<br>**Sec. 43.261**<br>**Sec. 729.001. Operation of Motor Vehicle by Minor- Under age 17.**<br>**Sec. 51.02, F.C. & Art. 45.058(h), C.C.P.**<br>Child defined as at least 10 years of age & younger than age 17.**

### Age Art. 45.058(h), C.C.P.; Sec. 51.02, F.C. & Sec. 8.07, P.C.<br>Child defined as at least 10 years of age & younger than age 17.<br>**Sec. 25.085. Compulsory School Attendance**<br>*Municipal court has jurisdiction if child at least age 10;*<br>*Child under age 6, if previously enrolled in 1st grade,*<br>*At least age 6 and who has not reached his or her 18th birthday.*<br>(See Sec. 25.086 for Exemptions.)

### Common Offenses<br>**Sec. 106.02. Purchase of Alcohol by Minor;**<br>**Sec. 106.025. Attempt to Purchase**

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<td>• Alcohol by a Minor;</td>
<td>• Sec. 106.04, Consumption of</td>
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<td>• Purchase of cigarettes</td>
<td>• Secs. 502.282 or 502.412;</td>
<td>• Secs. 729.001 and 729.002</td>
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<td>Alcohol by a Minor;</td>
<td>School Board);</td>
<td>or tobacco;</td>
<td>• Ch. 521. Driver’s Licenses, except Sec.</td>
<td>Penalty same as adult defendant. See</td>
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<td>of cigarettes or tobacco;</td>
<td>• Subtitle C. Rules of the Road, except</td>
<td>throughout Transportation Code.</td>
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<td>&amp; Sec. 37.112. Possession</td>
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<td>• Ch. 601. Safety Responsibility</td>
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<td>&amp; Sec. 37.124. Disruption of</td>
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<td>• Sec. 25.094, 37.102, 37.107,</td>
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<td>• Mandatory alcohol</td>
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<td>confinement not to exceed 180 days</td>
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<td>• Fine $250 to $2000 and/or confinement not to exceed 180 days if charge enhanced.</td>
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**Complete alcohol awareness program**
Court may reduce the fine to half the amount assessed.

**Failure to complete alcohol awareness program**
Court may give another 90 days to complete.
### APPENDIX A

#### MUNICIPAL JUVENILE/MINOR CHART

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<td>Sec. 106.10, A.B.C.</td>
<td><em>Plea of guilty must be in open court.</em></td>
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<td>Art. 45.0215, C.C.P.</td>
<td>Under age 17:</td>
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<td>•Must be in open court;</td>
<td>Complete alcohol awareness program</td>
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<td>Age 17 – parent’s presence not required.</td>
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<td>Art. 45.058, C.C.P.</td>
<td>- A child at least age 10 and under age 17 may be taken into nonsecure custody.</td>
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<td>- released to parent, guardian, custodian, or other responsible adult;</td>
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<td>- taken before a municipal or justice court;</td>
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<td>- taken to a place of nonsecure custody – held for not more than 6 hours.</td>
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<td>- If a minor who is a child has been referred to juvenile court under Sec. 51.08(b), F.C., or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility.</td>
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**Failure to Appear**

- **Sec. 38.10, P.C.** — Failure to Appear may be charged.
- **Art. 45.058, C.C.P.**
  - Court may issue an order for nonsecure custody.
- **Art. 45.057(h), C.C.P.**
  - Child may be charged with the offense of failure to provide written notice of current address. (It is an affirmative defense to prosecution if the child and parent were not informed of their obligation to notify the court of change of address.)
- **Secs. 521.201(8) and 521.294(6), T.C.**

- **Sec. 38.10, P.C.** — Failure to Appear may be charged.
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**Violation of Promise to Appear**

- **Sec. 543.009, T.C.** — Violation of Promise to Appear may be charged for Subtitle C, Rules of the Road offenses.
- **Sec. 38.10 P.C.** — Failure to Appear may be charged for other traffic offenses.
- **Art. 45.058, C.C.P.**
  - Court may issue an order for nonsecure custody.
- **Art. 45.057(h), C.C.P.**
  - Child may be charged with the offense of failure to provide written notice of current address. (It is an affirmative defense to prosecution if the child and parent were not informed of their obligation to notify the court of change of address.)
## APPENDIX A
### MUNICIPAL JUVENILE/MINOR CHART

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<td><strong>Violation of a Court Order; Failure to Pay Fine: Art. 45.050, C.C.P.</strong></td>
<td><strong>Art. 45.050, C.C.P. Applies to: children under age 17; children who turn age 17 before contempt proceedings can be held; and persons who failed to obey court order while age 17 or older. Court must provide notice of and conduct a hearing on contempt, before court may:</strong></td>
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**Rev. Fall 2011 - Level I**

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<tr>
<td><strong>Expunction</strong>&lt;sup&gt;5&lt;/sup&gt;</td>
<td>Sec. 106.12, A.B.C. Yes. May apply to municipal court at age 21 if only one conviction under Alcoholic Beverage Code.</td>
<td>Sec. 106.12, A.B.C. Yes. May apply to municipal court at age 21 if only one conviction under Alcoholic Beverage Code.</td>
<td>Art. 45.055(a)</td>
<td>Sec. 161.255, H.S.C.</td>
<td>Art. 45.0216, C.C.P.</td>
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<td></td>
<td>Court shall charge $30 fee for each application.</td>
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<td>• Court must notify child of right;</td>
<td>• May apply to municipal court to have conviction expunged;</td>
<td>• Court must notify child of right;</td>
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<td></td>
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<td>• Court must give copy of Art. 45.055, C.C.P., to defendant and parent</td>
<td>• Applicant must have completed tobacco awareness course;</td>
<td>• Court must give copy of Art. 45.0216, C.C.P., to defendant and parent;</td>
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<td></td>
<td></td>
<td>Art. 45.055(a)</td>
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<td>• May have multiple convictions expunged as long as applicant completed tobacco awareness course for each conviction.</td>
<td>• Not more than one conviction;</td>
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<td></td>
<td>May apply to municipal court if only one conviction for offense of failure to attend school;</td>
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<td>• Court shall charge $30 fee.</td>
<td>• Child may apply on or after age 17;</td>
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<td>May apply at age 18;</td>
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<td>• Apply to trial court;</td>
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<td>Must submit written request made under oath;</td>
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<td>• Child makes request under oath;</td>
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<td>Form of submission determined by applicant;</td>
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<td>• Court shall charge $30 fee.</td>
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<td>Must pay $30 fee.</td>
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<td><strong>Ch. 55, C.C.P.</strong> Expunction order must be filed in district court.</td>
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<td>Art. 45.055(e)</td>
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<td>Art. 45.060, C.C.P.</td>
<td>Court must have used all available procedures under Chapter 45 to secure appearance while under the age of 17 before proceeding under Art. 45.060, C.C.P.</td>
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<td>At age 17 or older, court issues an order to appear. Order must have a warning about continuing obligation to appear and that failure to appear may result in a warrant being issued. If person fails to appear after notice, prosecutor may file complaint for violation of obligation to appear under Art. 45.060 and court may issue a warrant of arrest.</td>
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<td><strong>Child Turns age 17 after Failing to Pay Fine; Capias Pro Fine; Art. 45.045, C.C.P.</strong></td>
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<td>Art. 45.045, C.C.P.</td>
<td>Court must determine before issuing a capias pro fine:</td>
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<td>• that person is age 17 or older;</td>
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<td>• that issuance of capias pro fine is justified (must consider sophistication &amp; maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment)</td>
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<td>and</td>
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<td>• that the court has proceeded under Art. 45.050, C.C.P.</td>
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<td>Sec. 51.08(e), F.C.</td>
<td>Under age 17</td>
<td>Juvenile court when case filed; juvenile court when case disposed.</td>
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<td>Juvenile court when case filed; juvenile court when case disposed.</td>
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<td>Secs. 521.201(8) and 521.294(6), T.C.</td>
<td>Under age 17</td>
<td>• DPS, if child fails to appear; DPS, when case adjudicated.</td>
<td>• DPS, if child fails to appear; DPS, when case adjudicated.</td>
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<td>• DPS, when child makes final disposition.</td>
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<td>Sec. 106.115(d), A.B.C.</td>
<td>All minors</td>
<td>• DPS, upon conviction or order of deferred.</td>
<td>• DPS, upon conviction, order of deferred, and acquittal under 106.041.</td>
<td>• DPS, when child makes final disposition.</td>
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<tr>
<td>Sec. 106.115(d), A.B.C.</td>
<td>All minors</td>
<td>• DPS, court order of DL suspension or denial not to exceed six months upon failure to complete alcohol awareness program or community service.</td>
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<td>Parents</td>
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<td>Art. 45.0215, C.C.P.</td>
<td>• Court required to issue summons for parents.</td>
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## APPENDIX A

### MUNICIPAL JUVENILE/MINOR CHART

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<td>Art. 45.057(a), C.C.P.</td>
<td>• Parent includes a person standing in parental relation, a managing conservator, or a custodian.</td>
<td>Sec. 25.093, E.C.</td>
<td>• May be charged with the offense of Parent Contributing to Nonattendance, a Class C misdemeanor.</td>
<td>Art. 45.057(a), C.C.P.</td>
<td>Art. 45.057(a), C.C.P.</td>
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<tr>
<td>Art. 45.057(g), C.C.P.</td>
<td>• Failure to appear with child in court is a Class C misdemeanor.</td>
<td>Art. 45.054, C.C.P.</td>
<td>• Order parent to attend a class for students at risk of dropping out of school.</td>
<td>Art. 45.057(g), C.C.P.</td>
<td>Art. 45.057(g), C.C.P.</td>
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<tr>
<td>Art. 45.057(h), C.C.P.</td>
<td>• Failure to notify the court in writing of the child’s current address is a Class C misdemeanor.</td>
<td>Art. 45.057(h), C.C.P.</td>
<td>• Parent includes a person standing in parental relation, a managing conservator, or a custodian.</td>
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<td>Art. 45.057(c), C.C.P.</td>
<td>• Failure to do an act or refrain from an act to increase likelihood that child will comply.</td>
<td>Art. 45.057(c), C.C.P.</td>
<td>• Court may order: • Attend a parenting class. • Attend child’s school classes &amp; functions. • Pay up to $100 for special program for child. • Parent to do an act or refrain from doing an act that will increase likelihood that child will comply.</td>
<td>Art. 45.057(c), C.C.P.</td>
<td>Art. 45.057(c), C.C.P.</td>
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<td>Sec. 106.115(d), A.B.C.</td>
<td>• Court may order parent to do any act or refrain from an act to increase likelihood that minor will complete alcohol awareness program after child fails to complete program.</td>
<td>Art. 45.054(d), C.C.P.</td>
<td>• Failure to comply with summons to appear with child charged with failure to attend school is a Class C misdemeanor.</td>
<td>Art. 45.054(d), C.C.P.</td>
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- **Art. 45.057(c), C.C.P.** • Failure to do an act or refrain from an act to increase likelihood that child will comply.

- **Sec. 106.115(d), A.B.C.** • Court may order parent to do any act or refrain from an act to increase likelihood that minor will complete alcohol awareness program after child fails to complete program.
Art. 45.056, C.C.P., provides authority for municipal courts to employ case managers for juvenile cases. Sec. 51.08, F.C., provides that a court that has implemented a juvenile case manager program under Art. 45.056, C.C.P., may, but is not required to, waive its original jurisdiction under subsection (b)(1) of Section 51.08, F.C. Article 102.0174, C.C.P., provides that cities may adopt an ordinance creating a juvenile case manager fund and collect a fee of up to $5 to fund a juvenile case manager.

Art. 45.057, C.C.P. – When a child who is at least 10 years old and younger than age 17 is charged with a fine-only offense, the court may, in addition to a fine, order the following sanctions: 1) Refer the child or child’s parent for services under Sec. 264.302, F.C.; 2) Require child to attend a special program that is in best interest of child, including rehabilitation, counseling, self-esteem and leadership, work and job skills training, job interviewing and work preparation, self-improvement, parenting, manners, violence avoidance, tutoring, sensitivity training, parental responsibility, community service, restitution, advocacy or mentoring program; 3) Require parents to do an act or refrain from an act that will increase the likelihood that the child will comply with court orders, including attending a parenting class or parental responsibility program and attending the child’s school classes or functions; 4) Order the parents of a child required to attend a special program to pay an amount not greater than $100 for the costs of the program; 5) Require both the child and parent to submit proof of attendance. (If program involves the expenditure of county funds, county must approve child’s attendance.)

Deferred Disposition

- If the court grants deferred for all Alcoholic Beverage Code offenses except DUI, the court must require the defendant to perform the community service requirements and attend an alcohol awareness course; for DUI, the court must require an alcohol awareness course.

- If defendant charged with the offense of public intoxication is under age 21, and the court grants deferred, the court must order the community service requirements under Sec. 106.071, A.B.C., and attendance at an alcohol awareness course.

A dispositional order under Art. 45.054, C.C.P., is effective for the period specified by the court in the order but may not extend beyond the 180th day after the date of the order or beyond the end of the school year in which the order was entered, whichever period is longer.

Art. 45.059, C.C.P., Children Taken into Custody for Violation of Juvenile Curfew or Order: 1) Release person to parent, guardian or custodian; 2) Take person before a justice or municipal court; or 3) Take person to juvenile curfew processing office (similar to nonsecure custody and not held for more than six hours).

Art. 45.0216, C.C.P., provides that proceedings under Art. 45.051, C.C.P. (Deferred Disposition), and proceedings under Art. 45.052, C.C.P. (Teen Court), may be expunged under Art. 45.0216, C.C.P.

Under Sec. 25.093(f), E.C., when a court grants deferred disposition to a parent charged with parent contributing to nonattendance, the court may require the defendant to attend a program that provides instruction designed to assist the parent in identifying problems that contribute to his or her child’s absence from school and strategies for resolving those problems.

ARTENTION

H.B. 961, passed in the 82th legislature, replaces procedures for nondisclosure with procedures that conditionally make particular criminal case records confidential. Article 45.0217 provides that all records and files, including those held by law enforcement and all electronically stored information, relating to a child who is convicted of an has satisfied the judgment for a fine-only misdemeanor offense other than a traffic offense are confidential. Confidential records may not be released to the public, but they can be inspected by judges, court staff, a criminal justice agency for a criminal justice purpose, DPS, the defendant, the defendant’s attorney, a prosecuting attorney, or the defendant’s parent, guardian, or managing conservator. Like nondisclosure orders, this new confidentiality protection only applies to cases in which a conviction is obtained. This means there is no confidentiality for records related to a case where a child defendant receives deferred disposition and the case is subsequently dismissed or where a child gets a dismissal from successful completion of teen court. Unlike nondisclosure, this new confidentiality does not attach to records until the judgment is satisfied. H.B.
ANSWERS TO QUESTIONS

INTRODUCTION
Q. 1. True.
Q. 2. True.
Q. 3. False.

PART 1
Q. 5. When the court has two or more prior fine-only offense convictions for offenses other than traffic, or tobacco offenses. When there are two or more convictions for violations of a penal ordinance of a political subdivision other than a traffic offense; or when there is one or more conviction of each type of offenses already described.
Q. 6. When there is no previous conviction for any fine-only offense other than a traffic offense or when there is only one previous conviction for any fine-only offense other than traffic.
Q. 7. When the court has a juvenile case manager program under Article 45.056, C.C.P.
Q. 8. Traffic offenses and tobacco offenses.
Q. 9. All pertinent documents in the case; information about any prior convictions; the name of the court; the defendant; the judge; the offense charged; and cause number assigned to the case.

PART 2
Q. 10. False.
Q. 11. False.
Q. 12. True.

PART 3
Q. 14. True. The law was amended in 2009 to give municipal courts jurisdiction.
Q. 15. True.

PART 4
Q. 16. True.
Q. 17. True.
Q. 18. True.
Q. 20. False.
Q. 22. False.
Q. 23. True.
Q. 24. True.
Q. 25. False. (The court must require the defendant to perform community service as a sanction upon conviction.)
Q. 27. False.
Q. 29. True.

PART 5
Q. 30. False.
Q. 31. True.
Q. 32. False.
Q. 33. True.
Q. 34. True.
Q. 35. False. (The court must order DPS to suspend or deny issuance of the drivers license.)

PART 6
Q. 36. False.
Q. 37. False.
Q. 38. False.
Q. 40. True.
Q. 41. True.
Q. 42. True.
Q. 43. True.
Q. 44. False. (The 82nd Legislature changed the age for prosecution of this offense. The court has jurisdiction for children ages 12-17.)

PART 7
Q. 45. True.
Q. 46. True.

PART 8
Q. 47. False.
Q. 48. False. (Under age 17, the child must appear with a parent or guardian in open court. At age 17, the defendant must appear in open court, but does not have to have a parent or guardian appear with him or her.)
Q. 49. True.
Q. 50. False.
Q. 51. True.
Q. 52. True.
Q. 53. True.
Q. 54. True.
Q. 55. True.
Q. 56. True.
Q. 57. False.
Q. 58. False.
Q. 59. True.
Q. 60. True.
Q. 61. False.

PART 9
Q. 62. True.
Q. 63. True.
Q. 64. True.
Q. 65. True.
Q. 66. False.

PART 10
Q. 67. True.
Q. 68. False.
Q. 69. False.

PART 11
Q. 70. True.
Q. 71. False.
Q. 72. True.
Q. 73. True.
Q. 74. False.
Q. 75. False.
Q. 76. False.
Q. 77. False.
Q. 78. True.
Q. 79. False.
Q. 80. False.
PART 12
Q. 81. True.
Q. 82. True.
Q. 83. True.
Q. 84. False.
Q. 85. False.
Q. 86. False.
Q. 87. False.
Q. 88. True.
Q. 89. True.
Q. 90. True.
Q. 91. False.
Q. 92. True.
Q. 93. True.
Q. 94. True.
Q. 95. True.

PART 13
Q. 96. False. (The 82nd Legislature added Art. 45.0217, C.C.P., which provides for the confidentiality of juvenile records in some instances.)
Q. 97. False. (The confidentiality provisions do not apply to traffic convictions.)

PART 14
Q. 98. False. (Only the non-traffic offenses except for tobacco offenses.)
# Communications and Stress Management

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INTRODUCTION

More citizens come in contact with the Texas municipal courts than with all of the other Texas courts combined. From that experience, citizens form lasting impressions of the justice system. Confidence in and respect for our system is essential to ensure compliance with the law and orders of the court. The clerk has the responsibility of presenting a positive image and communicating about the judicial process and court procedures effectively.

If clerks want to increase their knowledge of communication and stress management skills for personal and professional growth, there are many commercial seminars and books available. Strong verbal and written communications skills as well as stress and time management skills help clerks to become more effective in their jobs.

PART 1
COMMUNICATIONS

A. The Communication Process

The word “communication” evokes imagery of speech or conversation. The dictionary defines “communication” as exchanging information: both sending and receiving. When people communicate orally or in writing, the messages sent and received pass through filters that modify, and sometimes incorrectly skew, the original message’s intent. These filters may include:

- a person’s perception of a situation;
- past experiences; and
- assumptions about what a person might be trying to say.
Any one of these filters can block communication. In addition, a person’s ability to communicate effectively is effected by his or her thoughts and feelings about the situation and the other speaker. A frightened or angry person will not be able to understand directions as easily as a person who is calm. Accordingly, if a defendant does not understand a set of instructions, clerks can try a different communication strategy rather than becoming irritated or defensive. Communication is less effective and often fails when one or both of the people exchanging information does not do his or her part as sender or receiver.

B. Communication Skills

Although this study guide focuses primarily on communications with defendants who come before the court, other work situations require effective communication skills, including:

- managing witnesses, jurors, lawyers, and other court users;
- interacting with co-workers, supervisors, and the judge(s).

1. Believable Communication

For a message to be believable, it must be consistent. Consistent communications include not only a verbal message, but also a vocal and visual component. Trainers often say that believability depends on three factors:

Verbal: 7%  (what words you say)

Vocal: 38%  (how you sound when you say them)

Visual: 55%  (how you look when you say them)

Research shows that verbal communication is the smallest factor of the communication process. How a person sounds and how a person looks are the biggest contributing factors to getting people to understand a message. Think for a moment of an unpleasant confrontation with an adolescent and how effective he or she was at using body language or tone of voice to convey attitude! Sometimes the verbal message is overpowered by the vocal and visual message. Rehearsing in front of a mirror, with a tape recorder, or with a co-worker will help clerks to be aware of how they are perceived by defendants.

2. Steps to Effective Communication

When dealing with citizens who come into the court, remember to:

- listen carefully;
- face the person you are speaking to;
- establish eye contact;
- adopt a concerned body posture, tone of voice, and facial expression;
- avoid a condescending or impatient tone;
- have and exhibit empathy;
- eliminate distractions;

---

• practice patience;
• be consistent; and
• do not take things personally.

**True or False**

Q. 1. Communication involves only the giving of information. ____

Q. 2. People listen through filters that often block communication. ____

Q. 3. Communication is affected only by the sender’s thoughts and feelings, not the receiver’s. ____

Q. 4. The believability of communication depends only on what words are said and not on how a person sounds or looks when speaking. ____

End True/False

Q. 5. List the steps to effective communication. __________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________

**PART 2**

**WORKPLACE COMMUNICATIONS**

This section discusses adopting unbiased language; handling difficult defendants; dealing with violence; using the telephone; providing court interpreters; displaying procedural pamphlets; and talking with the judge. Although this guide does not discuss legal procedures, it does discuss how clerks can provide legal information without giving legal advice.

From this section, clerks will learn how to adjust their communication style to each situation and to the person they are communicating with. Clerks may worry that by developing different coping strategies for dealing with upset citizens that they are not treating all persons equally and fairly. Although communication strategies may vary, if all people that come into contact with the court are treated with dignity and respect and afforded the same due process of law, there should not be a complaint of unfairness.

**A. Adopting Bias-Free Language**

Clerks should avoid using biased language that reflects any predisposition or tendency to think and behave toward people mainly on the basis of sex, ethnicity, disability, age, religion, national origin, or socio-economic status. Frequently, bias in these areas is expressed subtly so that the one expressing it does not realize that a biased statement or action has occurred. The courts’ challenge is to be alert to ways of thinking, speaking, writing, and acting that reflect unbiased behavior. Shown below are some guidelines.

• Use gender-neutral words. Avoid using “he” as the generic pronoun meaning all persons rather than all males. Instead, use plural pronouns (“they”) or use a singular or plural noun that is a synonym (the “judge” or “judges”).
• Avoid biased occupational terms:
INSTEAD OF  USE

policeman  police officer
fireman  fire fighter
work men  workers

- Avoid using male references when other words can be more specific.

INSTEAD OF  USE

a one-man operation  a one-person operation
man-made  manufactured
to man a post  to staff a position

- Avoid stereotyping roles and using words or phrases that imply an evaluation of the gender and ethnicity.

- Canons 3B(4),(5), and (6) of the Code of Judicial Conduct require judges and court support personnel to maintain bias-free courtrooms by exhibiting patience, dignity, and courtesy to litigants, jurors, witnesses, and lawyers; and avoiding bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.

B. Handling Difficult Defendants

Almost every day, municipal courts deal with defendants who are angry, impatient, or uncertain about procedures. Court clerks are often the first to encounter the indignation, irritation, and anxiety felt by these people. Handling them courteously and effectively is perhaps one of the most burdensome tasks of the court clerk’s job. This task will become easier if clerks recognize why people are being difficult and then adapt certain strategies for deflecting anger and redirecting their energies. The credibility of the court and the clerks will be enhanced if clerks work on how to verbalize instructions to defendants. Follow the steps below to deal with difficult defendants more effectively;

- assess the situation;
- stop wishing that the person would behave differently;
- formulate a strategy or plan;
- implement the plan; and
- monitor the effectiveness and modify where appropriate.

Below is a typical example:

A defendant appearing at the clerk’s office is angry about getting a ticket. He refuses to talk to the clerk and demands to talk with the judge.

Clerk Response #1: “You can’t talk to the judge. She is not available.”

Clerk Response #2: “Court procedures give you two options. The option which allows you to talk to the judge about your side of the story requires you to enter a plea of guilty or no contest before the judge can hear the facts of your case. The judge can then take into account any extenuating circumstances before setting the fine. Unless
you enter a plea of guilty or no contest, it is a violation of the *Code of Judicial
Conduct* for the judge to hear facts about a case when just one party is present. The
other option is for you to plead not guilty and exercise your right to a trial. If you do
that, after the prosecutor presents the evidence, the judge or jury hears both sides of
the case and makes a decision from the evidence.”

The second response is more effective because the clerk is giving complete information
about court procedures and giving the defendant clearer options. The clerk should follow up
statements with questions that verify whether or not the receiver understood the message.
When asking follow-up questions, clerks should avoid direct questions that begin with “do,”
“did,” “will,” and “can.” These types of questions usually elicit a YES/NO answer, can make
people feel defensive, and limit communication. Try questions that begin with words such as
“how,” “when,” “what,” “where,” and “please explain for me.” This allows the
listener/receiver to give the clerk more information and to verify whether or not the message
received was correct.

1. **Learning Helpful Communication Techniques**

Imagine the following scenarios and think about how the defendant feels.

**Example 1**

The defendant believes police are unfair. He is shaking and red-faced. “I wasn’t
speeding. The police officer ticketed me because I have a red sports car. Ten people
passed me and she stops me! I’ve heard about small town ‘justice.’ I bet your salary is
dependent on traffic violations.”

This defendant is displaying anger. When defendants are angry—with themselves, at the
arresting officer, or at someone else who has caused a perceived injustice—they may direct
that anger at the clerk. This anger may be expressed as verbal aggression and abusive
language or non-verbal, threatening body language.

**Example 2**

The defendant is a business executive and talks loudly and firmly. “Look, I’ve waited
in line for 20 minutes, and now you tell me that I can’t see the judge! I had an
important meeting this morning that I missed. Do you know how much money my
time is worth? You are all incompetent!”

The business executive is simply expressing impatience. When defendants are impatient, it is
often because they value work and efficiency above many other facets of life. They blame the
clerk for keeping them from important activities. As a result, they may attempt to intimidate,
insult, or offend.

**Example 3**

The defendant has driven 20 years without a ticket. An older woman, she is nervous
and distraught—rushing from point to point. “I have never had a ticket before, and I
don’t know what to do. I’ve heard about taking a driving safety course, but I don’t
know how it works. I don’t really think the officer should have given me a ticket . . . I
wasn’t going that fast. What do you think I should do? Am I going to lose my
insurance? I just don’t know what will happen.”
This defendant may speak quickly due to uncertainty and anxiety. If defendants are uncertain about what will happen to them, they may become incoherent, defensive, and even aggressive.

In general, there are three options for handling difficult people: be authoritative, be positive, or be task-oriented. Typically, these options should be used in combination for the greatest impact.

a. **Be Authoritative, But Not Domineering**

Defendants who attempt to be intimidating—whether because of impatience or anger—are less successful when the clerk has established authority, without being overpowering. Clerks can redirect domineering behavior by creating nonverbal barriers and actively asserting their rights. A wide, high counter between clerks and defendants makes it more difficult for someone to nonverbally exert dominance. This physical barrier may also protect clerks from potential physical contact. In addition, if clerks perch on stools or use bumper steps to make themselves higher than a defendant or provide a seat for the defendant to sit in at the counter, they exhibit nonverbal control.

A sensible system of lines, is another method for averting domineering behavior. Lines make people aware of those around them, decreasing the opportunity for a disgruntled defendant to confront clerks without cause.

Clerks can assert themselves verbally by making people aware of the clerk’s position and the correct manner for interacting with the court. For example, if a defendant starts cursing, clerks may warn the defendant firmly but politely: “Sir, I cannot help you if you swear at me. I find it offensive and will call security. Now, please let us continue in a civil manner. How may I help you?” Threats and other attempts to intimidate should be handled similarly.

b. **Be Positive, But Not Submissive**

Negative behavior can be very trying, but it is greatly diminished when matched with a positive attitude. There is a natural tendency to match a negative comment or behavior with negative actions in kind, but such a reaction tends to aggravate and reinforce the negativity.

Here are two ways to be positive without giving the impression of being weak or defenseless.

1. Try using supportive listening responses. Nod your head, smile (if you feel it is appropriate), and use affirming phrases such as “yes,” “right,” and “okay.” These positive behaviors encourage the other person to express themselves and explain the reasons for such behavior.

2. If the defendant is being emotional, let him or her vent his or her frustrations within reason. Use the supportive listening responses discussed above to keep the defendant talking until he or she calms down.

Clerks might also try to create a positive mood by introducing nonverbal softeners. These might include comfortable seating, soft lighting, and plants. Even a change in color can make a drab room more cheery. Making the waiting area in front of the counter or window more appealing can encourage positive feelings toward the court and clerk.
c. Be Task-Oriented, But Not Cold or Impersonal

When a person has calmed down or is willing to listen, a clerk will be able to more easily address his or her problems. Clerks should try to be task-oriented, but not cold or impersonal. Appropriately frame the situation for the defendant, and act in a problem-solving fashion.

Clerks should feel free to explain their role, the role of the judge, and others in the judicial process and the options available to the defendant. Many defendants do not know why they cannot talk to the judge immediately or why the court cannot correct the officer’s obvious mistake in issuing them a ticket. Also, human nature being what it is, defendants often make incorrect assumptions about what they will have to do to contest a ticket. It is the clerk’s job to explain court options and procedures, record pertinent information, dispense necessary forms, and indicate the appropriate people to contact.

2. Applying the Techniques

In the first example, the defendant was angry and acting negatively and emotionally. In response, clerks should be positive, but not submissive.

“I know that you are upset, and I want to assure you that the procedures exercised by this court are firmly established by law. However, I want us to be on civil terms if I am to help you. So please let me explain court procedures and give you this pamphlet so that you may better understand court procedures and the options available to you.”

The first sentence acknowledges the defendant’s emotional state, hopefully making the defendant self-aware. It ignores the defendant’s insults and addresses the misconception that the court is not fair. The second and third sentences signal that the clerk is there to help the defendant. The clerk is focusing on the problem—not the person.

Once the defendant has become calmer and more willing to listen, the clerk can be task-oriented.

“I can see your concern. Let me explain your options concerning your ticket. First, if you believe you are not guilty, you can request a trial. This will be a trial by jury unless you waive that right, in which case the judge will decide your innocence or guilt. Second, if you do not want to go to trial, you can request a driving safety course. Here is a pamphlet that explains that option in more detail. If you have additional questions after reading it, please ask me, and I will be glad to try to answer them.”

The first sentence acknowledges the defendant’s concerns. Then the clerk immediately frames the situation by explaining specific options and procedures. Next the clerk provides written information to the defendant and states that he or she will be glad to answer questions about the informational pamphlet. By providing information to the defendant that he or she needs to make a decision, the defendant is enabled to have more control over the situation. The control helps the defendant calm down and behave in a more appropriate manner.

In the second example, the defendant was acting domineering and emotional. An appropriate response might be both authoritative and task-oriented.

“I know you’ve been waiting, and I understand you wish to see the judge immediately. It is unethical for the judge to talk to you before trial, and I believe you
would not want the judge’s impartiality to be questioned. The judge must follow certain procedures so that everyone is treated fairly. My role is to help you decide how to proceed. I can help you set your case on the trial docket, provide information about taking a driving safety course, or set you for a hearing to talk to the judge if you want to plead guilty or no contest. Here is a pamphlet that explains the court’s procedures. Please take a minute to examine it so I can help you as quickly as possible.”

The first sentence acknowledges the defendant’s frustration and underlying emotion. The remainder of the response asserts the clerk’s rights by clarifying the judge’s role and the clerk’s role. This approach combines the authoritative approach with a task-oriented strategy.

In the third example, the woman is unsure of what to do. This response merits a task-oriented approach.

“I know you probably feel unsure about what will happen in your case. Let me explain several options you have for taking care of your ticket. First, if you believe you are not guilty, you can request a trial. This will be by a trial by jury unless you waive that right, in which case the judge will decide your innocence or guilt. Second, if you do not want to go to trial, you can request a driving safety course; if you complete it, your ticket will be dismissed. Third, if you want to plead guilty or no contest, I can set a hearing for you to talk to the judge about any circumstances you believe should be taken into account when setting the fine. Here is a pamphlet that explains these options in more detail. If you have additional questions after reading it, please see me, and I will be glad to try to answer your questions.”

Showing empathy initially may establish trust and a willingness to listen. This will make the defendant more receptive to the information being given, and more likely to understand how to make an appropriate decision.

C. Dealing with Violence

Municipal courts are often at greater risk than other workplaces for threats and physical violence perpetrated against court employees. Look for potentially violent behavior by reading nonverbal communication signals, such as clenched fists, tight lips, agitated tone of voice, tense body posture, flared nostrils, red face, and wide eyes. Also, look for evidence of drugs or alcohol use.

Work with the judge, court administrator, and bailiff to develop a safety plan for the court. If the court does not have a bailiff on site at all times, establish a distress or panic signal known to law enforcement. Schedule periodic inspections to identify and evaluate security hazards. Remember to report any incidents related to the court’s security to OCA at http://www.courts.state.tx.us/oca/.

D. Using the Telephone

When responding to questions on the telephone, communication is inhibited by the absence of visual clues that are so important to understanding. Therefore, tone of voice, pitch, and volume become even more important for making inferences and responding appropriately. Loud, harsh tones may signify anger, while loud, high-pitched laughter usually means nervousness. Clerks should remember the Code of Judicial Conduct and always project the
dignity and impartiality of the court. Patience and consistency is essential to effective communication on the telephone.

The court should establish a policy on answering telephones and giving out information over the telephone. Avoid forwarding the court’s calls to the police department as this practice gives the public the impression that the court is not independent from law enforcement. Modern technology provides low cost voice mail, answering machines, and telecommunications systems that can give the public access to unbiased court information.

E. Providing Court Interpreters

The court must establish a clear policy for using court interpreters for defendants or witnesses who do not understand or speak the English language or persons who are deaf. Translated forms and signage can also help assist non-English speakers.

In counties with populations of at least 50,000, licensed court interpreters must be appointed by the court when a defendant or witness does not understand the English language. Sec. 57.002, G.C. Courts must also appoint a certified interpreter for a defendant or witness who is deaf or hearing impaired. If a juror is deaf or hearing impaired, the juror may request an auxiliary aid or service. A court procedures brochure will assist deaf persons, but it does not substitute for the services of an interpreter.

Because non-English speaking or deaf defendants may face difficulty in understanding court procedures, clerks who are bilingual or know sign language and interpret for defendants at the clerk’s office must be cautious in making sure these defendants truly understand the procedures. Defendants who are unsure of what to do should be set for a hearing before the judge. The clerk should make the judge aware that the defendant needs an interpreter so that the judge may appoint someone to be available at the hearing.

F. Giving Legal Information—Not Legal Advice

When assisting the public, court clerks must learn to distinguish between legal advice and legal information. Clerks who give legal advice could be charged with the unauthorized practice of law and subject their city to liability. The following guidelines are from the publication, *User-Friendly Justice*:

- Court staff has an obligation to explain court processes and procedures to litigants, the media, and other interested people.
- Court staff has an obligation to inform potential litigants how to bring their problems before the court for resolution.
- Court staff cannot advise litigants whether to bring their problems before the court or what remedies to seek.
- Court staff must always remember the absolute duty of impartiality. They must never give advice or information for the purpose of giving one party an advantage over another.
- Court staff must never give information to one party that they would not give to the opponent.

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• Court staff should be mindful of the basic principle that legal counsel may not communicate with the judge ex parte.

G. Displaying Court Procedures Pamphlets and Other Information

It helps to provide defendants with a pamphlet that explains court procedures to reinforce the information provided at the window. See Appendix A for a sample pamphlet. The pamphlet should clearly outline court procedures on appearances, pleas, driving safety courses, trials, continuances, fines, court costs, and appeals. Make sure that the pamphlet is understandable, grammatically correct, and legally accurate.

Courts should also consider setting up displays of legal information on victims’ rights, domestic violence, juvenile issues, and parental rights. Juror handbooks might explain practical information, such as parking locations and costs, nearby restaurants, emergency telephone numbers, and juror rights and responsibilities.

H. Talking with the Judge, Supervisors, and Co-Workers

People have different personality styles, work habits, approaches to learning, and time and stress management skills. Whether working with the judge, a supervisor, or a co-worker, try to carve out solutions to allow for those differences.

It helps a judge and clerk’s working relationship if they approach conflicts collaboratively from a problem-solving perspective. This can be done by establishing regularly scheduled meetings for continuous improvement of the court. The basis of collaboration is finding an agreement that reflects the needs of the parties involved. Try using the following steps:

- gather information;
- identify the issue or problem;
- generate several options;
- evaluate each option;
- choose a course of action and plan it out;
- implement the plan;
- evaluate the result; and
- modify and try again.

There are many different ways to achieve a collaborative agreement to solve problems. The more creative and flexible the process, the better chance clerks have of working as a team with the judge.

Example:

Don’t confront the judge with “Do you always have to grant time payments to everyone that asks? Can’t you do indigent hearings on them? I know some of these people really do have the money to pay and it’s frustrating to deal with the accounting for these payments.”

Instead, try saying: “Judge, I would like to work with you to develop an easier way for handling defendants’ time payments. It is difficult to manage the current procedures. How do you think that we could improve the process?”
True or False
Q. 6. The purpose of developing strategies of coping with difficult people is to change their feelings. ______
Q. 7. Treating people fairly and with due process of law means treating them the same, even when they are upset or agitated. ______
Q. 8. The Code of Judicial Conduct prohibits conduct that manifests bias or prejudice in the court behavior of both judges and clerks. ______
Q. 9. Bias is acceptable as long as it does not surface in the form of words in the court. ______
Q. 10. Judges and clerks may treat persons with preference based on their religion and sexual orientation. ______
Q. 11. Three options for handling difficult people are to be authoritative, positive, and/or task oriented. ______
End True/False

Q. 12. Short Answer: Write a memo to the judge explaining why it is not in the best interest of the court to forward the telephone to the police station while you and the judge are in trial.

Sample Memo

TO: Judge Goode
FROM: Taylor Smith, Clerk of the Court
RE: Call forwarding

True or False
Q. 13. Court clerks may give legal advice to citizens if so directed by the judge. ______
Q. 14. A deaf defendant appears at the window. He has the right to have court procedures explained to him in sign language even though you have offered him the court brochure that explain the procedures. ______
End True/False

Q. 15. Apply the problem-solving approach to rewrite this dialogue:
Clerk to Judge: “Do you always have to have me check on every insurance card?
Judge: Yes.
Clerk: Can we change that policy?
Judge: No.

Clerk to Judge:

PART 3
GRAMMAR AND WRITING SKILLS

Written communications from the court are as important as visual and verbal ones. Clerks should be familiar with generally accepted rules of grammar, such as the proper use of language and punctuation (comma, period, semi-colon, question mark, exclamation mark, dash, hyphen, parentheses, brackets, apostrophe, and quotation marks). Two excellent resource materials that clerks can keep at their desks to reference when writing communications are: Strunk and White’s The Elements of Style and the AP Stylebook. Many dictionaries also have a handy grammar reference section in the back. Stylebook publications have variations in certain rules, such as the use of commas in a series:

The mayor, city manager, and judge arrived

The mayor, city manager and judge arrived

Although both examples are correct, when putting communication in writing, clerks should be consistent in selecting one style within a document.

A. Basic Rules

1. Incorrect Usage

- Avoid double negatives: “You haven’t got no money?”
- Do not make double comparisons: “The defendant is more angrier than the code enforcement officer.”
- Avoid extra words: “Where did you get that there copy of your speeding ticket?”
- Do not confuse adverbs and adjectives: “I feel badly that your case was postponed.”
- Do not use inappropriate pronouns: “Bring the driving safety course form to the judge or I.”
- Make the subject(s) and verb(s) agree: “The defendant have pled no contest.”

2. **Capitalization**
   - Capitalize:
     - the first word of sentences, quotations, listed items in sentence form, salutations, and complimentary closings;
     - races, nationalities, languages, and religions;
     - the name of an organization, association, or team;
     - abbreviations of titles and organizations;
     - the letters used to indicate form or shape: U-turn;
     - all main words of headings, subheadings, and titles;
     - the names of directions when they indicate specific geographic areas; and
     - all proper nouns, such as people, places, things, days, months, holidays, streets, and titles. (Example: Austin Municipal Court, Travis County, Texas. When clerks are generally referring to the municipal courts throughout the state, there is no need to capitalize.)
   - Refer to a dictionary or style guide when there is a question.
   - Be consistent.

3. **Abbreviations and Acronyms**
   - Make sure the reader understands the abbreviation or acronym.
   - Consult a dictionary or style guide for the proper form.
   - Be consistent within a document.
   - When in doubt, spell it out.

4. **Numbers**
   - Spell out numbers from one to nine.
   - Use numerals for 10 and above.
   - Spell out numbers at the beginning of a sentence.
   - Be consistent within a sentence. (Example of Inconsistency: Forty-five of the cows were blue. Of those, 29 had spots. Only fifteen were less than three years old. We sold 3 of the 45 to the King Ranch).

5. **Writing and Style**
   - Keep it simple and straightforward (KISS)—use everyday language concisely.
   - Use active voice. “The court issued a warrant.” not “A warrant was issued.”
   - Be gender-neutral.
   - Avoid legalese: “We are returning the same herewith.”
   - Proofread to catch errors.
B. Guidelines

1. Proofing a Business Letter

a. Form and Appearance

- The letter is typed or neatly written in ink with no smears or obvious corrections.
- The letter has all of the necessary parts: return address, date, inside address, salutation, body, complimentary closing, signature, initials, and notations.
- The letter is centered on the page, with equal spacing for the top and bottom margins as well as for the left and right margins.
- All left-hand margins are even.
- The right-hand margin of the body of the letter is fairly even.
- The signature is legible and written in blue or black ink.
- Special notations (enclosures, copies) are shown.

b. Punctuation

- A comma always separates the city and state. There is no comma between the state and the zip code.
- A comma separates the day of the month from the year.
- A colon is used after the salutation.
- A comma is used after the closing.

c. Capitalization

- The names of the streets, cities, and people in the heading are capitalized.
- The month is capitalized.
- The title of the person the letter is being written to and the name of the department and company listed in the inside address are capitalized.
- The first letter of the word Dear and all nouns in the salutation are capitalized.
- Only the first word of the closing is capitalized.

d. Numbers

- Numbered street names from one to nine are spelled out. Example: Fifth Street.
- Numerals are used for numbered street names above 10. Example: 11th Street.

e. Abbreviations

- The names of cities, streets, and months in the heading and inside address are spelled out.
- The state may be abbreviated correctly.
2. **Writing In-Court Memos, Bulletins, and Short Reports**

- State the purpose in the first sentence.
- Include the time and date.
- Be specific.
- Write neatly and clearly.
- Use only commonly understood abbreviations.
- Arrange the information in the order most useful for the reader.

Q. 16. Mark the business letter below to correct the capitalization and punctuation.

municipal court of mabry  
123 oak street  
mabry, texas 78621

may 16, 2009

Hope fairfield  
P. o. box 12487  
Austin, texas  78711

dear ms fairfield  
on april 2, 2006 you were issued a citation for speeding you were scheduled to appear on may 16, 2009 at 9:00 a.m. in this court. you **failed to appear**. if you do not contact the court within 10 days a charge of violation of promise to appear will be filed in addition to the speeding charge. warrants will be issued for your arrest and you will have to pay an additional $50 for each warrant if you are convicted if you wish to waive your right to a jury trial and plead guilty or nolo contendere, meaning no contest you may do so by paying the fine and costs of $75 if you wish to plead not guilty you must post a bond with the court in the amount of $75.

the office hours of the court are 8:00 a.m. to 5:00 p.m. monday through friday. the court telephone number is .512.328-7809

**your failure to respond to this letter will result in warrants being issued and your arrest**

sincerely

mark Itup, court clerk
PART 4
STRESS

A. The Physical Environment

Stress is the response to environmental situations or events that place excessive psychological or physical demands on people. Each person has a different reaction to stressors, depending upon his or her personality, outlook on life, and overall health.

Continuously high levels of workplace stress can have significant health-related effects. The physical environment may cause stress through low levels of lighting, smoke-filled air, loud noises, and high or low temperatures. Office furniture, computer terminals, and keyboards should all be adjusted to meet each person’s body type and size. Some clerks modify their office environment by adding soft lighting, plants, or music. Other courts may make defendants communicate through a speaker imbedded in glass, forming a partition between the clerk and the public and reducing stress caused by threatening verbal confrontations.

B. The Work Itself

Work in municipal courts tends to fall into one of three categories: demand overload, demand underload, and competing demands, all of which can be a source of stress.

Demand overload occurs when a clerk is expected to accomplish too many activities in a set period of time. In smaller courts, clerks may continually feel behind on paperwork due to constant interruptions by citizens seeking information or other city employees. In larger cities, the sheer volume of cases filed creates an overload. Updating new computer systems and filing systems can temporarily make the situation worse. Clerks should discuss their workload with their supervisor, to discuss options for restructuring to avoid interruptions, or delegating responsibilities to others. Reserve time each day to work without interruption. Use time management skills to help plan, organize, and prioritize work more effectively.

Demand underload occurs when a person is not sufficiently challenged, usually due to the repetitive tasks. This may occur in a larger court where tasks are broken down and delegated to various divisions. A clerk’s only job might be to sit at a computer and enter tickets all day. Clerks might request to rotate job duties occasionally or be given variation in responsibilities.

Conflicting demands involve meeting deadlines and expectations for multiple projects from multiple sources. This may happen in a small court, when the court supervisor, such as the city secretary, may not understand the legalities of operating the judicial branch. The monthly report to the Office of Court Administration and the quarterly reports to the State Comptroller’s Office may be due on the same day that the city manager asks for the court’s budget or revenue projections. Careful planning and time management are essential.

C. Stress Management Techniques

A major challenge in today’s stress-filled world is to make stress work for a person instead of against the person. Stress is with people all of the time. It comes from mental, emotional, and physical sources, and it feels different for each person. If a person likes to keep busy all the time, “taking it easy” at the beach on a beautiful day may be extremely frustrating, nonproductive, and upsetting. This could cause emotional distress from “doing nothing.”
There are five primary ways to relieve stress: diet/nutrition, relaxation, exercise, support groups, and time management. These five methods can be used together or separately to increase longevity of lifespan and create a continuous feeling of well-being.

1. **Diet/Nutrition**

   Eat a variety of fruits, vegetables, and grains; maintain a healthy weight; and keep a diet low in fat and cholesterol. Use sugar, alcohol, salt, and caffeine in moderation.
   - Eat breakfast regularly, and take time for lunch.
   - Eat healthy snacks between meals.
   - Select restaurants that offer a variety of foods.
   - Limit desserts, second helpings, and fried foods.
   - Control portion sizes.
   - Reduce the amount of salad dressing, butter, margarine, sauces, and toppings.
   - Take charge; ask for substitutions. Adapt food choices to meet your needs.
   - Avoid alcohol, smoking, and other nicotine products.

2. **Relaxation**

   One great strategy for avoiding stress is to relax outside of the workplace. Make it a point to tune out worries about time, court procedures, productivity, and “doing right.”
   - Find satisfaction in just being, instead of striving.
   - Find activities that give you pleasure, and focus on relaxation, enjoyment, and health.
   - Make time for fun.
   - Schedule time for both work and recreation.
   - Create breaks in your daily routine to relax, have fun, stretch, or walk.
   - Sleep seven to eight hours a night.

   Techniques used to teach relaxation include yoga, meditation, biofeedback, progressive deep relaxation, guided imagery, and relaxed breathing. All have one goal: to quiet the mind and body and create a sense of inner peace.

3. **Exercise**

   Physical exercise helps us feel better, have more energy, look better, tone muscles, increase resistance to fatigue, control appetite and weight, and create a positive feeling of wellness. Exercise also assists in coping with anxiety and depression and provides opportunities to interact socially.

   Before starting an exercise program, it is wise to first have a medical examination and a physician’s approval. The program should balance frequency (how often one exercises) with intensity (how hard) and time (how long). Aim for a minimum of three times a week for at least 20 minutes at an increased heart rate, and incorporate a warm-up and cool-down period to avoid injury.
4. **Support**
Clerks should create a support system for themselves, whether it is a formal support group or just a friend. Sharing stress, talking with someone about concerns and worries may help you to see your problems in a different light. If a problem is serious, do not hesitate to seek professional help.

Clerks should know their limits. If a problem is beyond a person’s control and cannot be changed at the moment, don’t fight the situation. Learn to accept what is for now until such time that it can be changed.

5. **Time Management**
 Appropriately managing time is another way to reduce stress both in and out of the workplace. Below are some helpful techniques to use to get organized:

- Know your mission and job description;
- Set your goals and prioritize them;
- Create and keep track of projects;
- Plan your year, month, and week;
- Prioritize your activities for the week;
- Schedule the most important activities first;
- Plan your day;
- Prioritize your daily list;
- Reach closure by finishing what you start; and
- Allow time for relaxation, planning, and interruptions.

True or False

Q. 17. It is possible through planning to eliminate all stress in court. _____
Q. 18. Stress is unique and personal to each of us. _____
End True/False

Q. 19. Give a specific example of demand overload or underload in your court and make suggestions to relieve the problem. ________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________

Q. 20. List one to two changes in your diet and/or nutrition plan that might help you cope with stress. ___________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
Municipal Court Procedures:

Adults

The court before your appearance, the State must prove you guilty “beyond a reasonable doubt” of the offense with which you are charged. Every criminal defendant has the right to remain silent and refuse to testify (without consequences). You have the right to retain an attorney and have them try your case or answer your questions. Since offenses in this court are punishable only by fine and not by incarceration, you do not have the right to appointed counsel.

You have the right to a jury trial. You may waive a jury trial and have a trial before the judge, commonly called a “bench trial.” If you elect to represent yourself, no person other than an attorney can assist you during a trial.

At trial you have many rights, including:

1) The right to have notice of the complaint not later than the day before any proceedings in the prosecution;
2) The right to inspect the complaint before trial, and have it read to you at the trial;
3) The right to hear all testimony introduced against you;
4) The right to cross-examine witnesses who testify against you;
5) The right to testify on your own behalf;
6) The right not to testify (your refusal to do so may not be held against you in determining your innocence or guilt); and
7) You may call witnesses to testify on your behalf at the trial, and have the court issue a subpoena (a court order) to any witnesses to ensure their appearance at the trial.

Appearance

In addition to your rights, you have some legal responsibilities. The law requires you to make an appearance in your case. Your appearance date is noted on your citation, bond, summons, or release papers. You or your attorney may appear in person in open court, by mail, or you may deliver your plea in person to the court. (Juveniles have a separate set of rules for their appearance. Please read the Juveniles pamphlet).

Your first appearance is to determine your plea. If you waive a jury trial and plead guilty or nolo contendere (no contest), you may present extenuating circumstances for the judge to consider when determining the proper punishment. However, the judge is not required to reduce your fine. If you plead not guilty, the court will schedule a jury trial. You may waive a jury trial and request a bench trial.

When you make your appearance by mail, your plea must be postmarked by your scheduled appearance date. If you plead not guilty, the court will notify you of the date of your trial. If you enter a plea of guilty or no contest, you must also waive your right to a jury trial. You may request the amount of fine and appeal bond in writing and mail or deliver it to the court before your appearance date. You then have up to 31 days from the time you received a notice from the court to pay the fine or file an appeal bond with the municipal court.

Pleas

Unless you are entitled to a compliance dismissal, you must enter one of the following three pleas:

Plea of Not Guilty – A plea of not guilty means that you deny guilt and require the State to prove the charge. A plea of not guilty does not waive any of your rights. A plea of not guilty does not prevent a plea of guilty or no contest at a later time.

Plea of Guilty – By a plea of guilty, you admit that you committed the criminal offense charged.

Plea of Nolo Contendere (no contest) – A plea of nolo contendere means that you do not contest the State’s charge against you.

The difference between a plea of guilty and nolo contendere is that the no contest plea may not later be used against you in a civil suit for damages. For example, in a civil suit arising from a traffic crash, a guilty plea can be used as evidence of your responsibility or fault.

If you plead guilty or no contest, you will be found guilty and should be prepared to pay the fine. A plea of guilty or no contest waives all of the trial rights discussed earlier. If you are unable to pay the entire fine and costs, you should be prepared to document and explain your financial situation.

Prepared and Distributed by the Texas Municipal Courts Education Center

TMCEC is funded by a grant from the Texas Court of Criminal Appeals

City:
Address:
Telephone:

This pamphlet is designed to provide information about criminal court proceedings. It is not a substitute for legal advice from a licensed attorney. If you have questions about your best course of action, what plea you should enter, your rights, or the consequence of a conviction of the offense with which you are charged, you should contact an attorney. Neither the clerk, judge, nor prosecutor can give you legal advice.

Your Rights

Under our American system of justice, all persons are presumed to be innocent until proven guilty. The
Fines, Costs, and Fees
The amount of the fine assessed by the court is determined by the facts and circumstances of the case. Mitigating circumstances may lower the fine, and aggravating circumstances may increase the fine. The maximum fine amount allowed for most traffic violations is $200; for most other violations of State law and city ordinances—$500; for fire safety, health, zoning, and sanitation ordinance violations—$2,000. Courts are required by the laws of the State of Texas to collect court costs and fees. Because costs vary for different offenses, check with the court for the amount of costs that will be assessed for the violation with which you are charged. If you go to trial, you may have to pay the costs of overtime paid to a peace officer spent testifying at trial. If you request a jury trial and are convicted, a $3 jury fee is assessed. If a warrant was served or processed, a $50 warrant fee is also assessed. If you do not pay the whole fine and costs within 30 days of the court’s judgment, you must pay an additional $25 time payment fee. Court costs are only assessed if you are found guilty at trial, if you plead guilty or no contest, or if you are granted deferred disposition or a driving safety course. If you are found not guilty or the case is dismissed, court costs are not assessed.

Judge’s Ability to Dismiss
The municipal judge is responsible for conducting a fair, impartial, and public trial. The case against you is brought by the State of Texas through the prosecutor, not the court. Therefore, the judge may not dismiss a case without the prosecutor having the right to try the case. There are several exceptions to this rule, including deferred disposition, driving safety courses, and compliance dismissals.

Trial Procedures
If you need a continuance, you must put the request in writing with your reason for your request and submit it to the court prior to trial. You may request a continuance for the following reasons:
1) A religious holy day where the tenets of your religious organization prohibit members from participating in secular activities such as court proceedings (you must file an affidavit with the court stating this information);
2) You feel it is necessary for justice in your case; or
3) By agreement of the parties (you and the prosecutor).

The judge decides whether or not to grant the continuance. Failure to submit the request in writing may cause your request to be denied. If you choose to have the case tried before a jury, you have the right to question jurors about their qualifications to hear your case. If you think that a juror will not be fair, impartial, or unbiased, you may ask the judge to excuse the juror. You are also permitted to strike three members of the jury panel for any reason you choose, except a strike based solely upon race or gender.

As in all criminal trials, the trial begins with each party given an opportunity to make an opening argument. Then the State presents its case first by calling witnesses to testify against you. You then have the right to cross-examine the State’s witnesses. You may not, however, argue with the witnesses. Cross-examination must be in the form of questions.

After the prosecution has rested, you may present your case. You have the right to call witnesses who know anything about the incident. The State has the right to cross-examine the witnesses that you call.

If you so desire, you may testify on your own behalf; but as a defendant, you may not be compelled to testify. It is your choice, and your silence cannot be used against you. If you do testify, the State has the right to cross-examine you.

After all testimony is concluded, both sides can make a closing argument. This is your opportunity to summarize the evidence, present your theory of the case, argue why the State has failed to meet its burden of proof, and make other arguments allowed by law. The State has the right to present the first and last arguments.

In determining the defendant’s guilt or innocence, the judge or jury may consider only the testimony of witnesses and evidence admitted during the trial. The judge or jury must find the defendant guilty “beyond a reasonable doubt.”

You may elect the jury to assess the fine if you are convicted. If you do not file an election before the trial begins, the judge will assess the fine. You should be prepared to pay the fine and costs or post an appeal bond if you are convicted.

Driving Safety Course
If you are charged with a traffic offense, you may be eligible to ask the judge to take a driving safety course to dismiss the charge. The request must be made on or before the appearance date on the citation. It must be made in person, by counsel, or by certified mail. (If you are under age 17, you must appear in open court with a parent or guardian to make the request.) If you were operating a motorcycle, you may be required to take a motorcycle operator’s training course. If you are charged with allowing a child to ride unsecured in a safety belt or a child passenger safety seat system, you must take a special driving safety course that has four hours training on child passenger safety seat systems. At the time of the request, you must do the following:
1) Plead guilty or no contest;
2) Pay court costs;
3) Pay a $10 administrative fee, if required;
4) Present proof of financial responsibility (insurance); and
5) Present a valid Texas driver’s license or permit. (Active military and spouses or
 dependent children of active military may present a valid driver’s license from any state.)

To be eligible, you:

1) Cannot have taken a driving safety course or motorcycle operator’s course for a traffic offense within the last 12 months from the date of the current offense;

2) Cannot currently be taking the course for another traffic violation;

3) Cannot be the holder of a commercial driver’s license (CDL) or have held a CDL at the time of the offense; and

4) Have not committed one of the following offenses:
   Failure to Give Information at Accident Scene;
   Leaving Scene of Accident;
   Passing a School Bus;
   A serious traffic violation, which applies to commercial motor vehicle operators;
   An offense in a construction or maintenance work zone when workers are present;
   Speeding 25 mph or more over limit; or
   Speeding 95 mph or more.

The case will be deferred for 90 days. During that time you must:

1) Complete a driving safety course approved by the Texas Education Agency or a motorcycle operator’s course approved by the Department of Public Safety and present the completion certificate to the court;

2) Present a certified copy of your driving record from the Department of Public Safety that shows that you have not had a driving safety course within the preceding 12 months from the date of the current offense; and

3) Swear to an affidavit that you were not taking a driving safety course at the time of the request for the current offense and that you have not taken one that is not shown on your driving record.

If you do not present the required documents in time, the court will notify you to return to court and explain why you failed. The judge may, but is not required to, allow you to file the proper papers for an extension at that time. Your failure to be present at that hearing will result in a conviction, a fine being assessed, and a capias pro fine for your arrest being issued.

Deferred Disposition
The judge may, in the judge’s sole discretion, defer disposition on most cases. The holder of a commercial driver’s license (CDL) is not eligible for deferred disposition on moving traffic violations, and neither is a person charged with a traffic offense in a work zone with workers present. Costs must generally be paid when the court grants deferred. If you complete the required terms, the case is dismissed, and the court may impose a special expense fee not to exceed the maximum fine amount authorized by state law. The deferred period cannot exceed 180 days.

New Trial and Appeal
If you are found guilty, you may make an oral or written motion to the court for a new trial. The motion must be made within five days after the court’s rendering a judgment of guilt. The judge may grant a new trial if persuaded that justice has not been done in your case. Only one new trial may be granted. Defendants in courts of record should check with the court for rules regarding new trials.

If you are found guilty, you have the right to appeal your case. To appeal, you must file an appeal bond with the municipal court within 10 days of the judgment. The court must set the appeal bond amount for at least twice the amount of the fine and costs. For an appearance by mail, look at the section Appearance for the special rules for appealing pleas made by mail. Defendants in courts of record should check with the court for rules regarding appeals.

Updated 9/11
Municipal Court Procedures:

Children
Ages 10-16

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TMCEC is funded by a grant from the Texas Court of Criminal Appeals

City:

Address:

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This pamphlet is designed to provide information about criminal court proceedings involving children. It is not a substitute for legal advice from a licensed attorney. If you have questions about your best course of action, what plea you should enter, your rights, or the consequence of a conviction of the offense, you should contact an attorney. Neither the clerk, judge, nor prosecutor can give you legal advice.

Your Rights
Under our American system of justice, all persons are presumed to be innocent until proven guilty. The State must prove you guilty “beyond a reasonable doubt” of the offense with which you are charged. Every criminal defendant has the right to remain silent and refuse to testify (without consequences). You have the right to retain an attorney and have them try your case or answer your questions. Since offenses in this court are punishable only by fine and not by incarceration, you do not have the right to appointed counsel. Although your parents or guardians must appear with you, they may not act as your counsel (or attorney) unless they are, in fact, a licensed attorney.

You have the right to a jury trial. You may waive a jury trial and have a trial before the judge, commonly called a “bench trial.” At trial you have many rights including:

1) The right to have notice of the complaint not later than the day before any proceedings in the prosecution;
2) The right to inspect the complaint before trial, and have it read to you at the trial;
3) The right to hear all testimony introduced against you;
4) The right to cross-examine witnesses who testify against you;
5) The right to testify on your own behalf;
6) The right not to testify (your refusal to do so may not be held against you in determining your innocence or guilt); and
7) You may call witnesses to testify on your behalf at the trial, and have the court issue a subpoena (a court order) to any witnesses to ensure their appearance at the trial.

Appearance
In addition to your rights, you have some legal responsibilities. The law requires you to make an appearance in your case. Your appearance date is noted on your citation, bond, summons, or release papers.

You and a parent or guardian must appear in person in open court. You are not allowed to appear by mail or by delivery of a plea or fine to the clerk’s office. You have an absolute right to be accompanied by your retained attorney. Your parent or guardian, however, must still appear with you even if your attorney accompanies you to court.

Your first appearance is to determine your plea. If you enter a plea of guilty or no contest, you must also waive your right to a jury trial. Be prepared to pay the fine or file an appeal bond with the court. You may present extenuating circumstances for the judge to consider when determining the proper punishment. However, the judge is not required to reduce your fine. If you plead not guilty, the court will schedule a jury trial. You may waive a jury trial and request a bench trial.

Pleas
Unless you are entitled to a compliance dismissal, you must enter one of the following three pleas. The plea must be made by the defendant charged with the offense. Parents or guardians, while they must be present, may not enter a plea on a child’s behalf.

Plea of Not Guilty – A plea of not guilty means that you deny guilt and require the State to prove the charge. A plea of not guilty does not waive any of your rights. A plea of not guilty does not prevent a plea of guilty or no contest at a later time.

Plea of Guilty – By a plea of guilty, you admit that you committed the criminal offense charged.

Plea of Nolo Contendere (no contest) – A plea of nolo contendere means that you do not contest the State’s charge against you. The difference between a plea of guilty and nolo contendere is that the no contest plea may not later be used against you in a civil suit for damages. For example, in a civil suit arising from a traffic accident, a guilty plea can be used as evidence of your responsibility or fault.

If you plead guilty or no contest, you will be found guilty and should be prepared to pay the fine. A plea of guilty or no contest waives all of the trial rights discussed earlier. If you are unable to pay the fine and costs, you should be prepared to document and explain your financial situation.
Fines, Costs, and Fees
The amount of the fine assessed by the court is determined by the facts and circumstances of the case. Mitigating circumstances may lower the fine, and aggravating circumstances may increase the fine. The maximum fine amount allowed for most traffic violations is $200; for most other violations of State law and city ordinances—$500; for fire safety, health, zoning, and sanitation violations—$2,000.

Courts are required by the laws of the State of Texas to collect court costs and fees. Because costs vary for different offenses, check with the court for the amount of costs that will be assessed for the violation with which you are charged. If you go to trial, you may have to pay the costs of overtime paid to a peace officer spent testifying at trial. If you request a jury trial and are convicted, a $3 jury fee is assessed. If a summons was served on your parents, a $35 fee is also assessed. If you do not pay the whole fine and costs within 30 days of the court’s judgment, you must pay an additional $25 time payment fee.

Court costs are only assessed if you are found guilty at trial, if you plead guilty or nolo contendere, or if you are granted deferred disposition, teen court, or a driving safety course. If you are found not guilty or the case is dismissed, court costs are not assessed.

Deferred Disposition
The judge may, in the judge’s sole discretion, defer disposition on most cases. Costs must generally be paid when the court grants deferred. The court may also impose educational terms, different types of treatment, or other terms, and the court may impose a special expense fee not to exceed the maximum fine amount authorized by state law. If you complete the required terms, the case is dismissed. The deferred period cannot exceed 180 days.

Discharge by Community Service or Tutoring
The judge may, in the judge’s discretion, allow you to discharge your obligation to pay a fine and costs by performing community service or attending a tutoring program. This must be granted by the court. Please let the judge know if you are unable to pay the fine and costs.

Judge’s Ability to Dismiss
The municipal judge is responsible for conducting a fair, impartial, and public trial. The case against you is brought by the State of Texas through the prosecutor, not the court. Therefore, the judge may not dismiss a case without the prosecutor having the right to try the case.

There are several exceptions to this rule, including deferred disposition, driving safety courses, teen court, and compliance dismissals.

Trial Procedures
If you need a continuance, you must put the request in writing with your reason for your request and submit it to the court prior to trial. You may request a continuance for the following reasons:

4) A religious holy day where the tenets of your religious organization prohibit members from participating in secular activities such as court proceedings (you must file an affidavit with the court stating this information);

5) You feel it is necessary for justice in your case; or

6) By agreement of the parties (you and the prosecutor).

The judge decides whether or not to grant the continuance. Failure to submit the request in writing may cause your request to be denied.

If you have a jury trial or bench trial scheduled, the case proceeds the same as if you were an adult. See the Adults pamphlet for information on trial procedures.

Continuing Obligation to Appear
You and your parents or guardians have a duty to continue appearing in court even after you reach age 17. If you fail to appear before reaching age 17, you can be arrested and brought before the court. If you fail to appear after your 17th birthday and after notification by this court, you can be charged with an additional offense of violation of continuing obligation to appear and be arrested in the same manner as any other adult.

Obligation to Notify Court of Address Change
You and your parents or guardians have an obligation to inform the court in writing each time you change your address. You must notify the court within seven (7) days of each change of address. This obligation continues until your case is fully resolved and all fines and costs are paid or discharged. This obligation does not end when you turn age 17. Failure to make a proper notification may cause you and your parents or guardians to be charged with an additional criminal violation and to be arrested.

Mandatory Alcohol and Tobacco Courses and Community Service
If you are found guilty of, or placed on deferred disposition for, an alcohol offense, the court must order you to complete an alcohol awareness course. The court must also order you to complete a period of community service.

If you are found guilty of, or placed on deferred for, a tobacco offense, the court must order you to complete a tobacco awareness course.

Contempt
If you fail to pay your fine and costs, or violate other orders in the court’s judgment, the court must provide an opportunity for you to explain your conduct. The court at this time may:

1) Determine that you are not in contempt;

2) Refer your case to the county juvenile court as delinquent conduct; or
3) Retain jurisdiction and find you in contempt and assess a fine up to $500 and/or order the Texas Department of Public Safety to suspend or deny issuance of a driver’s license, until you comply with the court’s order.

**Failure to Pay a Fine and Turning Age 17**

Even when you turn age 17, you are still obligated to discharge your responsibility to the court by paying your fine. If you do not, at age 17, the court may issue a capias pro fine for your arrest. You may then be committed to jail until you have earned enough jail credit to satisfy the fine(s) and costs owed.

**Driver’s License Suspension**

You may be denied issuance of a driver’s license or, if you have a driver’s license, your privilege to drive may be suspended until you comply with the order(s) of this court. The following is a list of acts that can cause you to be denied or to lose your license:

1) Failing to appear in court;
2) Failing to pay or discharge your fine and costs;
3) Failing to take and present proof of taking an alcohol or tobacco awareness course; and
4) Violating a court order in the court’s judgment.

Some offenses, such as the Alcoholic Beverage Code offenses, require courts upon conviction to order the Department of Public Safety to deny issuance of or to suspend a defendant’s driver’s license for a period of time.

**Expunction Rights**

The records of this court, including all records in your case, are public and accessible to the public. However, if you are convicted of an offense in this court, the records in your case will be deemed confidential once you satisfy the orders in the court’s judgment against you. Confidential records can only be released to you, your parents, attorneys in your case, other courts, or criminal justice agencies.

You may be entitled to an expunction of the records of a conviction in your case.

For a single alcohol conviction, you may petition this court for an expunction after your 21st birthday.

For tobacco convictions, you may petition this court for expunction after your 18th birthday.

For a single conviction for failure to attend school violation, you may petition this court for an expunction after your 18th birthday. If you successfully comply with the court’s orders in a failure to attend school case, the court shall expunge the records relating to your case.

For a single conviction of any other non-traffic violation, you may petition this court for expunction after your 17th birthday.

Ask the court for proper forms for the application for expunction. The cost of an expunction is a minimum of $30. If you have questions concerning the right to, need for, or consequences of expunction, please consult with a licensed attorney. Updated 9/11

**New Trial and Appeal**

If you are found guilty, you may make an oral or written motion to the court for a new trial. The motion must be made within five days after the court’s rendering a judgment of guilt. The judge may grant a new trial if persuaded that justice has not been done in your case. Only one new trial may be granted. Defendants in courts of record should check with the court for rules regarding new trials.

If you are found guilty, you have the right to appeal your case. To appeal you must file an appeal bond with the municipal court within 10 days of the judgment. The court must set the appeal bond amount for at least twice the amount of the fine and costs. Defendants in courts of record should check with the court for rules regarding appeals.
ANSWERS TO QUESTIONS

PART 1
Q. 1. False.
Q. 2. True.
Q. 3. False.
Q. 5. The steps to effective communication are:
   Listen carefully;
   Face the customers;
   Establish eye contact;
   Adopt a concerned body posture, voice tone, and facial expression;
   Avoid a condescending or impatient tone;
   Have and show empathy;
   Eliminate distractions;
   Practice patience;
   Be consistent; and
   Do not take things personally.

PART 2
Q. 7. False. (Treating persons fairly and with due process of law means affording them
the same legal protections and procedures. The clerk can use varying
communication strategies without violating due process.)
Q. 8. True. (The judge shall perform his or her duties without bias and require the same
of the staff.)
Q. 10. False.
Q. 11. True.
Q. 12. Sample response:
The city requested that I forward court calls to the police department while court
is in session. I am concerned about doing this. As part of my research into the
issue, I reviewed the Code of Judicial Conduct specifically looking at Canon 1
and Canon 2. Canon 1 requires the court to be independent. Canon 2 requires
judges to avoid impropriety in all judicial activities. Having the police
department answer the phone will make it more difficult to appear independent
and impartial. This may give an appearance of impropriety. I suggest that the
court have an answering machine take messages or have the calls forwarded to
the city hall receptionist to take messages. Please respond so that I may resolve
this issue. Thank you.
Q. 13. False. (Clerks can only explain procedures to give legal information.)


Q. 15. Sample response:
When we process tickets for failure to maintain financial responsibility, it is very time consuming to check on everyone’s insurance card. I learned at the last TMCEC seminar that defendants should present the court with the policy or certificate of self-insurance as their proof. How do you think that information could change our procedures?

PART 3

Q. 16. Mark the business letter shown below for correct capitalization and punctuation.

*Municipal Court of Mabry*

123 *Oak Street*

*Mabry, Texas 78621*

*May 16, 2009*

Hope Fairfield

P. O. Box 12487

Austin, Texas 78711

*Dear Ms. Fairfield,*

*On April 2, 2002,* you were issued a citation for speeding. *You* were scheduled to appear on *May 16, 2009,* at 9:00 a.m. in this court. You **failed to appear.** *If* you do not contact the court within 10 days, a charge of violation of promise to appear will be filed in addition to the speeding charge. *Warrants will be issued for your arrest, and you will have to pay an additional $50 for each warrant if you are convicted.*

*If* you wish to waive your right to a jury trial and plead guilty or nolo contendere, meaning no contest, *you may do so by paying the fine and costs of $75.* *If* you wish to plead not guilty, *you must post a bond with the court in the amount of $75.*

*The office hours of the court are 8:00 a.m. to 5:00 p.m. Monday through Friday.* *The court telephone number is 512.328.8754.*

*Your failure to respond to this letter will result in warrants being issued and your arrest.*

*Sincerely,*

*Mark Itup, Court Clerk*

PART 4

Q. 17. False.

Q. 18. True.

Q. 19. Answers will vary.

Q. 20. Answers will vary.
Level I - GLOSSARY

(Note: See Code of Judicial Conduct, Canon 8, Construction and Terminology, for more definitions.)

Acquittal: The legal and formal certification of the innocence of a person who has been charged with a crime; a finding of not guilty.

Actor: A person whose criminal responsibility is in issue in a criminal action.

Adjudicative Proceeding: A proceeding in which a person is entitled to due process of law—notice and an opportunity to be heard.

Adversary System: A system in which there are two opposing sides. In municipal court, the opposing sides are the state (prosecution) and the defense. The judge and jury are neutral.

Affinity: The relation that one’s spouse has to the other spouse’s blood relatives because of their marriage.

Afforded: Given or provided.

Allocation: The process of distributing in equal or proportionate parts.

Appeal: The process of having a higher court conduct a new trial or review either the facts or questions of law from a proceeding held in a lower court. In municipal courts of record, the appellate court reviews the transcript of the trial. In municipal courts of non-record, there is a new trial in the appellate court. All defendants have a right to appeal their case.

Appeal Bond: The bond presented to the court by a defendant who desires to appeal his or her case to a higher court. The bond may be surety or cash, or the court may allow a personal bond.

Appearance: The formal proceeding by which a defendant submits to the jurisdiction of the court. Only the defendant or an attorney hired to represent the defendant may make an appearance.

Appellate Courts: Courts that have jurisdiction over appeals from lower courts.

Arbiter: A person chosen to decide a controversy; a referee.

Arraignment: The proceeding in which the court identifies the defendant, explains the charge, and asks for a plea.

Array: Jury pool; all persons summoned for possible jury service; also called the venire.

Attest: To certify as being true or genuine.

Authority: The right to exercise power.

Avocational: A subordinate occupation pursued in addition to one’s vocation (occupation).
**Bail:** The security given by the accused that he or she will appear and answer before the proper court the accusation brought against him or her. Bail may be made by a personal or surety bond, or a cash deposit.

**Bench Trial:** A trial before the judge where there is no jury and the judge makes the decision of guilt or innocence.

**Beyond a Reasonable Doubt:** The measure of the State’s burden of proof in a criminal trial; the State must exclude reasonable doubt of the defendant’s guilt by the presentation of its case.

**Bifurcated System:** A system divided into two parts. The Texas court system is bifurcated: the Supreme Court is the highest state appellate court for civil appeals; the Court of Criminal Appeals is the highest court for criminal appeals.

**Bill of Rights:** That part of the constitution guaranteeing rights and privileges to individuals; the first ten amendments of the U.S. Constitution.

**Bond Forfeiture:** Triggered by failure to perform a condition of the bond, such as when the defendant fails to appear as promised. The defendant and/or surety become(s) liable for the payment of the bond as a consequence.

**Branches of Government:** Three divisions of government, each having its own obligations, duties, and powers. The legislative branch, executive branch, and judicial branch. See also separation of powers doctrine.

**Canon:** Standards of ethical conduct for members of the judiciary.

**Capias:** A written order from a court directed to a peace officer commanding him or her to arrest a person accused of an offense and bring him or her before that court immediately or on a day or at a term stated in the capias.

**Capias Pro Fine:** Issued by a judge when a defendant is absent at the time judgment is rendered or when a defendant defaults in payment of fine. It is a written order from a court directed to a peace officer commanding him or her to arrest a person and to bring the person before the court or place him or her in jail until he or she can be brought before the court.

**Challenge for Cause:** Request that a prospective juror be disqualified or excused from jury service; an objection lodged on legal grounds.

**Charging Instrument:** A complaint filed with the court charging a criminal offense; the formal accusation that a person has committed a criminal offense.

**Citation:** In a criminal case, it is a written notice to appear issued by a peace officer that may be used as the charging instrument in municipal court.

**Civil Lawsuit:** An action brought in court to enforce, redress, or protect private rights.

**Civil Liability:** Civil relates to private rights and remedies. A civil action can be brought to enforce, redress, or protect private rights. Being liable civilly means that a person may be held responsible for a certain act and required to pay money damages.

**Color of Office:** Pretense of an official right to do an act made by one who has no such right. An act under color of office is an act of an officer who claims authority to do the
act by reason of his or her office when the office does not confer on him or her any such authority.

**Commercial Motor Vehicle:** A motor vehicle used to transport passengers or property that: (1) has a gross combination weight rating of 26,001 or more pounds, including a towed unit with a gross vehicle weight rating of more than 10,000 pounds; (2) has a gross vehicle weight rating of 26,001 or more pounds; (3) is designed to transport 16 or more passengers, including the driver; or (4) is transporting hazardous materials and is required to be placarded. (Subtitle B, Section 522.003(5), T.C.)

**Common Law:** A body of law developed in England that the U.S. justice system accepts and upon which it bases its principles, customs, and rules of action.

**Complainant:** In this Chapter, it refers to a person who applies to the Commission on Judicial Conduct for some type of remedy. A complainant can also be a person who has a complaint sworn out charging someone with an offense.

**Complaint:** The written affidavit or sworn statement that accuses a person of committing a crime. It also initiates a file with the Commission on Judicial Conduct. In municipal court, the complaint is the charging instrument.

**Concurrent Jurisdiction:** Jurisdiction shared between more than one court; cases can be filed in either court.

**Conflict of Interest:** A relationship that suggests disqualification of a public official from performing his or her sworn duty; a clash between public interest and the private pecuniary interest or other interest of the individual concerned.

**Consanguinity:** Blood relationship; the connection of persons descended from the same stock or common ancestor.

**Constitution:** A document that established the American system of government and its principles.

**Constitutional Courts:** Courts established by the Texas Constitution, including the Supreme Court, Court of Criminal Appeals, courts of appeals, district courts, county courts, and justice of the peace courts.

**Contempt:** Any act calculated to embarrass, hinder, or obstruct a court in the administration of justice, or to lessen its authority or dignity. There are two kinds of contempt: direct and indirect. Direct contempt is committed in the immediate presence of the court; indirect chiefly refers to the failure or refusal to obey a lawful court order.

**Contiguous:** Adjoining; side-by-side.

**Continuance:** The adjournment or postponement of a case pending in court to a later date and time.

**Conviction:** The final judgment on a verdict or plea of guilty, or a plea of nolo contendere. The result of a criminal trial that ends in a finding that the accused is guilty as charged.

**Corporation Court:** An antiquated term for a municipal court.
County Courts: Constitutional courts that have general jurisdiction over probate cases; exclusive original jurisdiction over misdemeanors punishable by fines exceeding $500 and/or a jail sentence not to exceed one year; concurrent jurisdiction with the justice of the peace courts in civil cases where the amount in controversy exceeds $200 but does not exceed $10,000; and appellate jurisdiction over cases from justice of the peace and municipal courts.

Court of Criminal Appeals: A constitutional court of last resort that has jurisdiction over appeals of criminal cases from the courts of appeals as well as trial court cases in which the death penalty has been imposed. The Court of Criminal Appeals is authorized by the state legislature to promulgate rules of evidence and appellate procedure in criminal cases and the rules for judicial education.

Covert: Not openly known; hidden, concealed.

Criminal Action: An action brought by the government against a person charged with committing a crime.

Culpable Mental State: The state of mind of the defendant indicating some degree of guilt or responsibility at the time the crime was committed.

Custodian of the Records: Anyone who has charge or custody of property or records. Municipal court clerks are responsible for the care, control, maintenance, and archival of municipal court records and, as such, are custodians of the court records.

Deferred Disposition: A process in which a judge defers imposition of the fine and grants probation requiring the defendant to adhere to certain terms. If a defendant successfully completes the terms of probation, the judge is required to dismiss the case.

Delineate: Described or represented accurately.

De Novo: A new trial as if the case had not been previously heard and no decision had been rendered. Appeals from municipal courts of non-record are heard de novo in the county court.

Denunciation: To condemn something as being evil or morally wrong.

DIC-15 Form: The DPS form that is required to report orders for license suspension for: (1) conviction of most Alcoholic Beverage Code offenses and public intoxication of persons under age 21; (2) failure to complete alcohol awareness program; (3) failure to complete community service; and (4) failure to complete tobacco awareness course. It is also used to report acquittals of Driving Under the Influence and orders of deferred disposition of Alcoholic Beverage Code offenses.

DIC-21 Form: The DPS form that is required to report convictions of offenses that carry an automatic suspension of driver’s license.

DIC-81 Form: The DPS form used to report a juvenile’s failure to appear in court or failure to pay a judgment.

Diligence: Characterized by persevering the attention and care legally expected or required of a person.

Diminution: The act, process, or instance of diminishing (decreasing).
**Discovery:** A pre-trial device that can be used to obtain facts and information about the case.

**Discretion:** Sound, professional judgment that encompasses and reflects both equity (fairness) and experience under the law; A latitude of choice within certain legal bounds.

**District Courts:** Constitutional courts of general jurisdiction having original jurisdiction in all criminal felonies, as well as misdemeanors involving official misconduct; cases of divorce; suits for title to land or enforcement of liens on land; contested elections; suits for slander or defamation; suits on behalf of the State for escheat (a right of the State to an estate left vacant); and all civil matters where the amount in the controversy is $200 or more.

**Docket:** A formal record with brief entries required to be kept on all complaints filed in the court. Maintaining the docket is a ministerial duty that the judge may delegate to the clerk.

**Double Jeopardy:** A second prosecution after a first trial for the same offense; prohibited by the Fifth Amendment to the U.S. Constitution and the Texas Constitution, Article I, Section 14. It is the only special plea allowed in municipal court.

**DR-18 Form:** The DPS form used by the courts to report traffic convictions.

**Emolument:** The profit arising from office or employment; includes salary and fees.

**Empowered:** Authority to perform certain actions.

**Entrapment:** An act of law enforcement officers to induce a person to commit a crime not contemplated by the person for the sole purpose of instituting a criminal prosecution against the person.

**Escheat:** The preferable right of the State to an estate left vacant and without anyone in existence able to claim the estate.

**Ethics:** Relates to moral action, conduct, motive, or character; conforming to professional standards of conduct; the discipline dealing with what is good and bad and with moral duty and obligation; a set of moral principles or values.

**Evidence:** Any type of proof legally admitted at a trial through witnesses, records, documents, objects, etc., for the purpose of instituting a criminal prosecution or proving or disproving elements of a criminal case.

**Excess Fines Law:** Found in Transportation Code, Subtitle C, Section 542.402(b). Applies to cities with a population of less than 5,000, and enacted to prevent “speed traps,” or small cities that collect a large portion of their budget from traffic enforcement.

**Execution (Writ of):** A civil process where a defendant’s property may be seized and sold to pay for the municipal court’s judgment of fine and costs.

**Exclusive Original Jurisdiction:** A court having sole jurisdiction over a case because no other court has jurisdiction to hear and determine the case.

**Ex Officio:** Powers resulting from the holding of a particular office. Powers that may be exercised by an officer that are not specifically conferred upon him or her, but are necessarily implied in his or her office.
Ex parte: Hearing from one side only outside of the presence of the other side.

Expunction: The process by which the record of a criminal conviction is destroyed or sealed.

Federal Court System: The judicial system that hears criminal and civil cases involving federal law, and states’ appeals.

Felony: A classification of criminal offense; felonies are more serious than misdemeanors; classified according to the relative seriousness of the offense into five categories: (1) capital felonies; (2) felonies of the first degree; (3) felonies of the second degree; (4) felonies of the third degree; and (5) state jail felonies.

Fidelity: A quality or state of faithfulness to something to which one is bound by duty or by a sense of what is right or appropriate.

Financial Responsibility: The ability to respond in damages for liability in an accident.

Fine: The penalty assessed by a judge or a jury when convicting a defendant.

Forfeiture of Bail: A process that occurs when a defendant posts bond and then fails to appear. When a defendant posts bond, he or she agrees to appear in court as a condition of being released. Failure to perform a condition of the bond causes the forfeiture of the bail to be declared.

General-Law City: A city that looks to the state legislature for its authority, a statutory court.

Guilty: A plea by which a defendant confesses to the crime with which the defendant is charged, or the verdict by which a defendant is convicted.

Habeas Corpus (Writ of): A written order issued by a court or judge of competent jurisdiction directed to anyone having a person in his or her custody or under restraint, commanding him or her to produce the person at a time and place named in the order and show why the person is held in custody or under restraint.

Highway or Street: The width between the boundary lines of a publicly maintained way, any part of which is open to the public for vehicular travel. (Subtitle C, Section 541.302(5), T.C.)

Home-Rule City: A city that is governed by a charter, which gives the city a measure of self-government. A home-rule city looks to its charter for limitation in power.

Impartial: Not biased; treating all equally.

Impinge: Encroach or infringe.

Impropriety: The state of being improper (not in accord with fact, truth, or right procedure).

Indictment: A sworn affidavit accusing a person of a crime made by a grand jury.

Indigent: Poor; unable to pay; one who does not have sufficient financial ability to hire legal counsel or pay a fine and court costs.

Integrity: An adherence to one’s moral values or practicing what one claims to believe in.
Inviolate: Free from substantial impairment. Secure, holy, sacrosanct, invulnerable.

Jail Time Credit: Credit on a defendant’s fine required to be given when a defendant has been confined in jail before being convicted of a crime by the court or jury, or after a conviction.

Judgment: The written declaration of the court signed by the judge and entered on record showing the conviction or acquittal of the defendant.

Judgment Nisi: A temporary order that will become final unless the defendant and/or surety show good cause why the judgment should be set aside.

Judicial Duties: Duties that require the exercise of judgment or the determination of a question of law or fact. Only judges may perform judicial duties.

Jurisdiction: The legal power or authority courts have over certain types of offenses and geographical locations; the power to hear and decide cases.

Jury Charge: An instrument that contains the law that applies to the case and is read to jurors before argument commences in the trial.

Jury Shuffle: When juror names are mixed to create a new order on a jury list.

Justice of the Peace Courts: Constitutional courts that have original jurisdiction over fine-only offenses; concurrent jurisdiction with municipal courts over fine-only state law violations; concurrent jurisdiction over a city ordinance violation involving signs in the city’s extraterritorial jurisdiction; exclusive jurisdiction over civil matters when the amount in controversy does not exceed $200; and concurrent jurisdiction with the county courts when the amount in controversy is over $200 and up to $10,000.

Juvenile: Although there is no legal definition of juvenile, the Family Code defines a child as a person who is at least 10 years of age and under the age of 17.

Legal Authority: The right and power of judges to require obedience to their orders.

Liaison: A person who establishes and maintains communication and understanding between groups of people.

Litigant: A party to a lawsuit.

Magistrate: A judicial officer whose duty it is to preserve the peace within a certain territorial jurisdiction by use of all lawful means; to issue all process intended to aid in preventing and suppressing crime; and to cause the arrest of all offenders by lawful means in order that they may be brought to trial or, after trial, to punishment.

Manifest: To make evident or certain by showing or displaying a certain conduct.

May: Denotes permissible discretion or, depending on the context, refers to action that is not covered by specific proscriptions.

Ministerial Duties: Duties in which there is nothing left to discretion; generally administrative in nature.

Minor: In traffic law, a minor is a person who is younger than 17 years of age; in the Alcoholic Beverage Code, a minor is a person who is under 21 years of age. In the Health and Safety Code, a minor is person under the age of 18.
**Misconduct of Office:** An offense that is an intentional or knowing violation of a law committed by a public servant while acting in an official capacity as a public servant. Municipal judges, court clerks, and deputy court clerks are public servants.

**Misdemeanor:** A classification of criminal offense according to the relative seriousness of the offense; misdemeanors are less serious than felonies; misdemeanors are classified into three categories: Class A, Class B, and Class C misdemeanors; Class A and B misdemeanors are punishable by fine and confinement in jail; Class C misdemeanors, over which municipal courts have jurisdiction, are punishable by fine-only.

**Mitigating Circumstances:** Circumstances that do not constitute a justification or excuse of the offense in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability.

**Municipal Court:** Statutory courts created in each city with original jurisdiction over fine-only offenses; exclusive original jurisdiction over city ordinance violations with the exception of concurrent jurisdiction with a justice court involving a sign ordinance violation dealing with signs in the city’s extraterritorial jurisdiction; and concurrent original jurisdiction with the justice of the peace courts over fine-only state law violations.

**Municipal Court of Non-Record:** A municipal court created by statute in which a city has not opted by ordinance for the court to be a record court. Hence, the trials are not recorded and appeals from the court are de novo, which means that the defendant gets a new trial as if a trial had not occurred in the municipal court.

**Municipal Courts of Record:** A municipal court that is required to keep a record of its proceedings. Established either by state legislation or city election.

**Must:** Required by law; mandatory; creates or recognizes a condition precedent.

**No Contest or Nolo Contendere:** A plea in which the defendant does not contest the charge. Nolo contendere has the same legal effect as a guilty plea; however, it may not be used against the defendant as an admission of guilt in a civil suit based upon or growing out of the act upon which the criminal prosecution is based.

**Nonresident Violator Compact:** An agreement between certain states involving participation in a reciprocal program to provide for the fair and impartial treatment of traffic violators operating within party jurisdictions.

**Nonsecure Custody:** An unlocked multipurpose area where juveniles may be detained for up to six hours. While the juvenile is in the custodial area, they cannot be handcuffed to a chair, railing, or any object, and they must be under continuous visual observation by a law enforcement officer or a member of the facility staff.

**Not Guilty Plea:** A plea in which the defendant informs the court that he or she denies guilt or has a defense in the case and that the State must prove what it has charged in the complaint.

**Oath of Office:** An oath taken by officers when they assume their office, whereby they declare that they will faithfully discharge the duties of the office. Appointed and elected clerks and judges are required to take an oath of office.
Office of Court Administration (OCA): An agency of the State that operates under the direction and supervision of the Supreme Court and the Chief Justice of the Supreme Court charged with collecting data on the work conducted by the judiciary.

Onerous: A burden imposed.

Ordinance: A law passed by a county or municipal lawmaking body.

Original Jurisdiction: The first jurisdiction to try a case and pass judgment upon the law and facts.

Overt: Open to view.

Peace Bond: A type of surety bond required by a judge or magistrate of one who has threatened to harm another person.

Pecuniary: Relating to money.

Peremptory Challenge: An objection made to a particular juror that does not require that any cause be shown or that any ruling be made by the judge; the striking of a juror. In municipal court, three peremptory challenges or strikes are allowed both to the State and to the defendant.

Perfected: Completed; person has completed all the acts required to be done.

Plaintiff: A person who brings an action; the person who complains or sues in a civil action; a person who seeks remedial relief for an injury to rights.

Plea: The defendant’s answer to the accusation or complaint brought against a person by the state in municipal court. There are five possible pleas: guilty, not guilty, nolo contendere (no contest), not guilty by reason of insanity, or the special plea of double jeopardy.

Preponderance of the Evidence: Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Presumption of Innocence: A principle of criminal law that places the burden of proving every element of a crime beyond a reasonable doubt; the defendant has no burden to prove his or her innocence.

Pre-Trial Hearing: A court hearing before the trial to attempt to narrow the issues to be tried, secure stipulations, and rule on motions. The actions taken at the hearing or conference are made the subject of an order that controls the future course of the action.

Privileged Information: Information that is protected from disclosure.

Privileged Parking: Once called handicapped parking, now often referred to as disabled parking. (Section 681.001, T.C.)

Probable Cause: Probable cause is the amount of evidence necessary to cause a person to believe someone has committed a crime. An arrest warrant, a summons, and a capias require probable cause before being issued. A complaint is not sufficient to issue a warrant unless it contains probable cause.
**Process:** A series of actions leading to the preparation of court orders, complaints, and other required papers.

**Processes:** Written orders such as warrants, capias, capias pro fine, subpoenas, and summons issued by the municipal judge.

**Promulgate:** To publish; the formal act of announcing a statute or rule of court.

**Proration:** The process of dividing or distributing proportionately.

**Reasonable Doubt:** All persons are presumed innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that a person has been arrested, confined, indicted, or otherwise charged with the offense gives rise to no inference of guilt at his or her trial.

**Record:** A written transcription of testimony, exhibits, and documents of a trial.

**Recusal:** The process by which a judge is disqualified from hearing a charge filed in his or her court.

**Remand:** To send back; as when the appellate court sends a case back to the same court from which it came, for the purpose of having some further action taken on it there.

**Rendering Judgment:** The judicial act of pronouncing the decision of the court.

**School Crossing Zone:** A reduced speed zone designated by a local authority to facilitate safe crossing of the street by children going to or leaving a public or private elementary or secondary school during the time the reduced speed limit applies.

**Scire Facias:** A special docket required by law to handle all cases and proceedings involved in the forfeiture of bail bonds.

**Sealing of Records:** The process whereby a juvenile’s court records are closed and the matter is regarded as if it never occurred. The records will not be opened except by order of the juvenile court brought about by a petition of the person whose records were sealed.

**Search Warrant:** An order in writing issued by a magistrate authorizing a peace officer to search for and seize any property that constitutes evidence of the commission of a crime, contraband, the fruits of crime, or things otherwise criminally possessed.

**Separation of Powers Doctrine:** The constitutional requirement that the three branches of government—judicial, legislative, and executive—not encroach upon or usurp each other’s powers.

**Serious Traffic Violations:** Traffic offenses, which when committed by a person operating a commercial motor vehicle, are considered to be more serious than others. They include: excessive speeding 15 mph over the posted limit or more; reckless driving; violation of State and local traffic laws other than parking, weight, or vehicle defect violations, arising in connection with a fatal accident; improper or erratic lane change; or following too closely. (Section 522.003(25), T.C.)

**Shall and Shall Not:** Denotes binding obligations that if violated can result in disciplinary action.
**Should or Should Not:** Relates to aspirational goals and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined.

**Stare Decisis:** To abide by or adhere to decided cases; the policy of courts to stand by precedent and to not disturb settled points; the doctrine that when a principle of law as applicable to a certain state of facts is laid down, it will apply to all future cases where facts are substantially the same.

**Statute:** A particular law enacted and established by the state legislature.

**Statute of Limitations:** Time limit for filing criminal charges. For all fine-only misdemeanors in Texas, a charging instrument must be filed two years from the date the offense occurred.

**Statutory Courts:** Courts established by the state legislature and defined by statute. Municipal courts are statutory courts.

**Strict Liability:** Offenses in which the state is not required to prove a culpable mental state. Commission of the act itself is sufficient to determine guilt.

**Strike:** A common name for peremptory challenge where an objection is made to a particular juror which does not require that any cause be shown or that any ruling be made by the judge.

**Style of the Action:** The title of the case; for example, *The State of Texas vs. John Doe* with the case number.

**Subsidiary Dockets:** Listings of cases set for a particular date for trial; also called trial dockets.

**Subpoena:** A command by a court to appear at a certain time and place to give testimony upon a certain matter.

**Subpoena Duces Tecum:** A command by a court to appear at a certain time and place and to produce books, papers, or other things requested by the court.

**Summons:** An order from a magistrate or judge directed to a peace officer commanding him or her to notify a person that he or she must appear in court on a stated day and time to plead to a complaint filed in the court.

**Supersedeas Bond:** A writ or bond that suspends the execution of a judgment pending appeal.

**Suppress:** To keep evidence from being presented during a trial.

**Supreme Court:** A constitutional court that has statewide final appellate jurisdiction in most civil and juvenile cases and makes and enforces all necessary rules of civil trial practice and procedure, evidence, and appellate procedure.

**The Rule:** Rule 614 of the Texas Rules of Evidence, requiring the removal of all witnesses who are not parties to the case to an area outside the hearing of the courtroom at all times while testimony is being heard, except when testifying or until discharged.
**Trial Court:** A court of original jurisdiction and the first to consider evidence and render a judgment.

**Trial De Novo:** Trying a matter anew on appeal; the same as if it had not been previously heard before and as if no decision had been previously rendered.

**Trial Dockets:** Listings of cases set for a particular trial date and are commonly called subsidiary dockets.

**Truancy:** The unexcused voluntary absence of a child on 10 or more days or parts of days within a six-month period or three or more days of parts of days within a four-week period from school without the consent of the child’s parents.

**Venire:** The whole group of prospective jurors; the panel from which jurors are selected to hear the case; jury pool.

**Venire Person:** A person summoned as a juror.

**Venue:** The particular geographical area in which a court with jurisdiction may hear and determine a case.

**Verdict:** The formal and unanimous decision of a jury impaneled and sworn for a trial of a case and returned in open court to the judge on the matters or question of fact submitted to the jury during the trial; Finding of “guilty” or “not guilty.”

**Verity:** The quality of being true or real.

**Violate Promise to Appear:** An offense that may be filed when a defendant fails to appear for an offense charged under Subtitle C, T.C.

**Voir Dire:** This phrase means “to speak the truth” and describes questioning by the court, defense, or prosecutor about a person’s qualifications as a potential juror in a case or a witness’s competency during a trial.

**Voluntarily:** Intentionally and without coercion.

**Waive/Waiver:** Voluntary, knowing, and intentional relinquishment or surrender of a right, claim, or privilege.

**Warrant of Arrest:** A written order issued by a magistrate or judge directed to a peace officer commanding him or her to take the body of the accused to be dealt with according to law.

**Witness:** One who personally sees, observes, or is an expert concerning something and later testifies to what was seen, perceived, or known; a person whose declaration under oath or affirmation is received as evidence.

**Writ:** A written order.

**Writ of Mandamus:** A written order issued from a court of superior jurisdiction commanding an administrative or judicial officer of an inferior court to perform a particular act, directing the restoration of the complainant’s rights or privileges of which he or she has been illegally deprived, or compelling the performance of a ministerial act or mandatory duty.
**Writ of Procedendo:** A written order by which the county court declares its lack of jurisdiction over an appeal and returns the case to municipal court to collect the judgment.

**Writ of Venire:** An order from the judge commanding the proper officer (usually the court clerk) to summons immediately a list of prospective jurors to serve for a particular term of the court.