

# Tools for Effective Court Administration

TMCEC Regional Judges & Clerks  
Pre-Conference Session



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## ACTIVITY: Issue Spotting

What “log jams” have you encountered that have hindered effective court administration?

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# Whose Job Is It?



# Who Can Legitimately Do It?

## Types of Duties

### - Law enforcement

It is the duty of every peace officer to preserve the peace within the officer's jurisdiction... [by the use of] all lawful means (Art. 2.13, CCP)

- Where authorized, to interfere (and arrest offenders) without warrant to prevent or suppress crime;
- Execute all lawful process issued to the officer by any magistrate or court;
- Give notice to magistrate of all offenses committed within his jurisdiction where he has probable cause



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## Types of Duties

### - Magistrate

It is the duty of every magistrate:

- to preserve the peace within his jurisdiction by the use of all lawful means
- to issue all process intended to aid in preventing and suppressing crime
- to cause the arrest of offenders by the use of lawful means in order that they may be brought to punishment (Art. 2.10, CCP).



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## Types of Duties

- **Prosecutorial**

It is the primary duty of a municipal prosecutor not to convict, but to see that justice is done.



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## Types of Duties

- **Judicial duties**

Require:

An exercise of judgment

A question of law or fact

A choice of alternatives



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## Types of Duties

- **Ministerial duties**

- Nothing is left to discretion

- Imposed by law and generally administrative in nature



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## Ministerial Duty: **Docketing**

### Article 45.017, CCP

• The judge of each court, or if directed by the judge, the clerk of the court, shall keep a docket containing the following information...

• The information in the docket may be processed and stored by the use of electronic data processing equipment, at the discretion of the municipal court judge.

### A delegable duty

*The judge abdicated official duties by relinquishing control of the court's criminal docket to the county attorney, whose office was unable to handle the volume of work due to staff shortages.*

-2008 Private Warning and Order of Additional Education of a County Judge

**Danger!**

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## Judicial Duty: **Accepting pleas**

### Definition of "accept"

• To receive something with approval and intention to keep it.

### What do the statutes say?

- A plea of guilty or no contest may be made either by defendant or counsel in open court under Article 27.14
- But in a fine-only case, in lieu of above, defendant may mail or deliver in person to the court a plea of guilty or no contest

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## Judicial Duty: **Accepting pleas**

### Definition of "accept"

• To receive something with approval and intention to keep it.

### What do the statutes say?

- A plea of not guilty may be made orally by the defendant or counsel in open court under Article 27.16
- But in a fine-only case, in lieu of above, defendant may mail to the court a plea of not guilty

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## Judicial Duty: **Accepting pleas**

### Is it delegable?

- Clerks can accept the plea and process the paperwork
- But think through what happens when the plea is accepted...
- Only a judge can formally accept a plea
- Only a judge can enter a plea of not guilty

*The judge relinquished his judicial duties to officers in the police department and allowed them to accept pleas and collect fines and court costs from criminal defendants arrested on Class C misdemeanor or "sight" offenses and/or arrested on outstanding warrants and capiases.*

-2009 Private Admonition of a Municipal Court Judge



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## Judicial Duty: **Accepting pleas**

### Specific circumstances

- If defendant is a child: Article 45.0215 says the JUDGE must take the defendant's plea in open court
- If defendant is a minor charged with an ABC offense, plea of guilty must be made in open court before the JUDGE (Section 106.10, ABC)

*The judge failed to comply with the law and failed to maintain professional competence in the law when she allowed her court staff and city prosecutors to "take" pleas from juvenile defendants in her absence.*

-2011 Private Admonition of a Former Municipal Court Judge



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## Judicial Duty: **Accepting payments**

### What do the statutes say?

- Article 27.14(c) provides that payment of a fine or an amount ACCEPTED by the court constitutes a finding of guilty in open court as though a plea of no contest had been entered and jury trial waived

### Who can accept?

- Only the judge has the discretion to decide whether payment offered satisfies the judgment

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## Judicial Duty: **Setting fines**

Article 45.041, CCP

- The judgment and sentence shall be that the defendant pay the amount of the fine and costs to the State.

### Non-delegable duty

- Legislature (or council) sets the range, while the judge sets the amount within the range
- Window fines as a standing order

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## Standing Orders

What are they?

- Orders from the judge directing court staff on how to perform a duty
- Must be in writing
- Signed by the judge
- Must be specific
- Must remove all discretion from the situation

What can they cover?

- Payment of Fines at Window
- Payments Received by Mail

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## Judicial Duty: **Entering judgment**

Article 45.041, CCP

- The JUDGE may direct the defendant to pay...
- All judgments, sentences, and final orders of the judge shall be rendered in open court

*The judge failed to enter a final written order or judgment in Complainant's case.*

-2011 Private Order of Additional Education of a Municipal Court Judge

**Danger**

Why is judgment important?

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## Judicial Duty: **Entering Judgment**

Also entails:

- Granting payment plans
  - Article 45.041
- Granting community service
  - Article 45.049
- Waiving fines/costs
  - Article 45.0491
- Determining indigency
  - All of the above
- Granting time served
  - Articles 45.041, 45.048

Where could we use a standing order?

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## Judicial Duty: **Granting deferred**

Article 45.051, CCP

- The judge may defer further proceedings...
- Defendant can request, clerk can process, but only the JUDGE can grant
- Great use of standing orders – to allow clerk to process case without waiting on judicial determination

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## Judicial Duty: **Granting DSC**

Article 45.0511(c), CCP

- Some are entitled to take a DSC – if the appropriate offense, proof of insurance, valid DL, has not taken one in the past 12 months, and makes a timely request
- Clerk can process as judge shall enter judgment and defer imposition

Article 45.0511(d), CCP

- If defendant did not timely request or has taken one within the past 12 months, DSC is discretionary
- The COURT may grant a request to take a DSC...

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## Judicial Duty: **Granting continuances**

Good use for standing orders

- Chapter 29, CCP
- Upon motion to the court (ruling on motions is a judicial duty)

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## Judicial Duty: **Determining Indigency**

Article 45.049, CCP

- A defendant...who is determined by the court to have insufficient resources ...may [do community service]

Article 45.0491, CCP

- A court...may waive payment of a fine or costs... if the court determines that [the defendant is indigent]

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## Judicial Duty: **Dismissing cases**

Judge's authority is limited

- **Lack of jurisdiction**
  - Subject matter
  - Territorial
- **Operation of law**
  - Deferred disposition
  - Driving safety course
  - Teen court
  - Chemically dependent person
  - Tobacco awareness course
  - Failure to attend school – proof of graduation/compliance

- **Compliance dismissals**
  - Expired registration, inspection, equipment violation, etc.
- **Proof of insurance**
- **Proof of valid DL**

No motion needed

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## Judicial Duty: **Dismissing cases**

### Prosecutorial discretion

- Interest of justice
- Defense to prosecution that cannot be overcome
- Non-prosecutable
  - Officer unavailable
  - Length of time that has passed
- Plea-bargaining

*The judge failed to comply with the law, engaged in improper ex parte communication with a litigant, and denied a party the right to be heard according to law when he: (1) communicated and plea bargained with a defendant outside the presence of the State; (2) dismissed several of the defendant's cases without input or consent from the State; and (3) erroneously noted on the file jackets of the dismissed cases that the State and its witness were not ready for trial.*

**Danger!**  
-2011 Private Admission and Order of Additional Education of a Municipal Court Judge

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## Judicial Duty: **Dismissing cases**

- Article 32.02: 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 reasons for such dismissal... No case shall be dismissed without the consent of the presiding judge.

**Use of standing order?**

**Danger!**

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## **Judicial duties that cannot be delegated**

And what could happen if they are...

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## Judicial Duty: **Issuing Warrants**

Article 45.014(a), CCP

“When a sworn complaint or affidavit based on probable cause has been filed before the municipal court, the JUDGE may issue a warrant for the arrest of the accused and deliver the same to the proper officer to be executed.”

### Non-delegable duty

- Law enforcement may request the warrant
- Clerk may prepare the warrant
- But only a judge may issue the warrant

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## Judicial Duty: **Issuing Capias Pro Fines**

Article 45.045(a), CCP

“If the defendant fails to satisfy the judgment according to its terms, the COURT may order a capias pro fine issued for the defendant’s arrest.”

### Non-delegable duty

- Clerk may prepare the capias pro fine
- Only a judge may issue the capias pro fine
- Law enforcement would then execute the writ

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## Judicial Duty: **Commit someone to jail**

Article 45.046(a), CCP

“The JUDGE may order the defendant confined in jail until discharged by law if the JUDGE at a hearing makes a written determination that...”

### Non-delegable duty

- Clerk may prepare the commitment order
- Only a judge may sign the commitment order

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## Consequences of delegating a judicial duty

- Arrests may be illegal
- Evidence may be suppressed
- Judge, clerk or city may not be immune from liability



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## Limits on judicial discretion

- A judge should not act arbitrarily or unreasonably
- A judge should view each individual case and not resort to unbending standards



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## Sources

- *Daniels v. Stovall*, 660 F. Supp. 301 (S.D. Tex. 1987)
- *Crane v. Texas*, 759 F.2d 412 (5th Cir. 1985)
- *Sharp v. State*, 677 S.W.2d 513 (Tex. Crim. App. 1984)
- *Lopez v. Vanderwater*, 620 F.2d 1229 (7th Cir. 1980)
- Tex. Atty. Gen. Op. No. H-386 (1974)
- SCJC, Annual Report, FY 2008, 2009, 2011
- "Who Can Accept Payments from Defendants?" *The Recorder* (May 2007), p. 21

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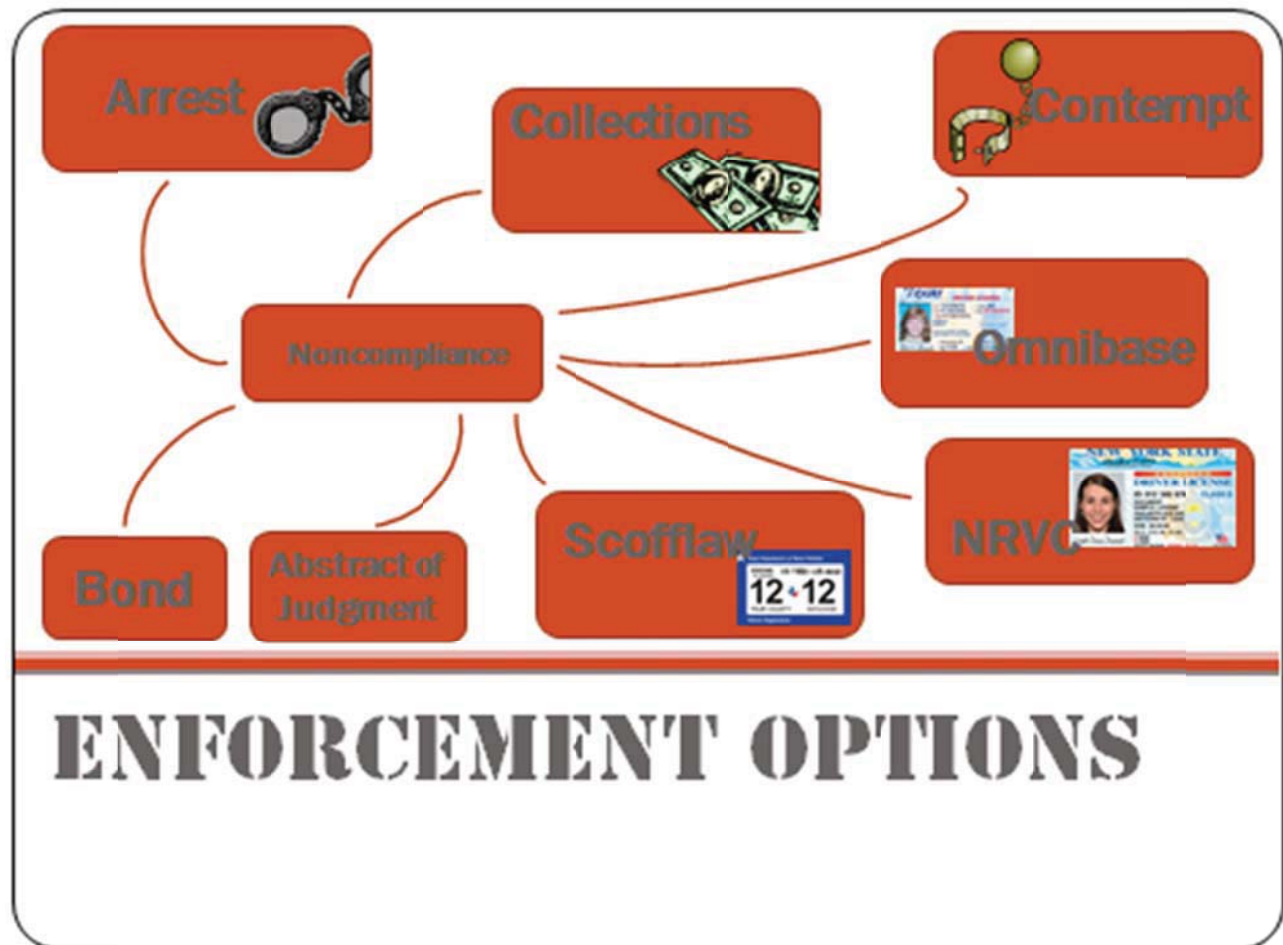
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# GETTING THEM TO COMPLY



## ENFORCEMENT OPTIONS

## **PASSIVE ENFORCEMENT**

### **COME TO PAPA**



- Omnibase/ FTA Program (DPS)
- Scofflaw (TxDOT)
- Non-Resident Violator Compact

## **ACTIVE ENFORCEMENT**

### **GO GET 'EM**

- Collection Contract
- Warrant
- Capias Pro Fine
- Abstract of Judgment and Writ of Execution
- Contempt
- Bond Forfeiture





## **PASSIVE ENFORCEMENT**

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## **DPS OMNIBASE PROGRAM**

- Chapter 706, Transportation Code
- City must contract with DPS (Omnibase)
- DPS may deny RENEWAL of driver's license for failure to appear based on citation or complaint –or- failure to pay or satisfy judgment ordering payment of fine/costs
- Applies to any offense that the court has jurisdiction of

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## **How does it work?**

- City contracts with Omnibase Services of Texas
- City sends new offenses to Omnibase
- Omnibase notifies DPS to flag the violator's DL record
- Omnibase notifies violator of restriction on renewal
- Violator contacts city to resolve open cases
- City notifies Omnibase to remove the hold
- Omnibase notifies DPS to remove the restriction

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<http://www.texasfailuretoappear.com>

**Results for:**

- **Driver License #:**
- **Birth Date:** Feb 19

Note: You may hover over the Court and Amount Due to get more details

**Outstanding Violations**

You must resolve the outstanding violations before the Department of Public Safety will be able to renew your license. "You should contact the court listed below to confirm the amount of the fines, court costs, and fees and verify that a court appearance is not required."

Court	Docket Number	Offense Date	Description	Amount Due
No Cases Found				

**Closed Violations**

Court	Docket Number	Description	Disposition	Cleared Date
No Cases Found				

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**What are the issues?**

- **City must include a warning on citations for any "traffic law" that essentially warns defendants that the failure to appear or pay/satisfy the judgment may result in denied renewal of the person's driver's license**

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**What are the issues?**

- **City shall immediately notify Omnibase that there is no cause to continue to deny renewal on payment of the fee and:**
  - **Perfection of appeal**
  - **Dismissal of charge**
  - **Posting or bond of other security to reinstate the charge**
  - **Payment or discharge of fine and costs owed**
  - **Other suitable arrangement with court to pay the fine/costs**

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### What are the issues?

- Violator shall pay an administrative fee of \$30 for each complaint or citation reported, unless acquitted of the charge
- Fee shall be paid when:
  - Court enters judgment
  - Offense is dismissed
  - Bond or other security is posted to reinstate the charge

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### What are the issues?

- Renewal will be denied until the fee is paid
- Collected by the court
  - Reported on quarterly report
  - \$20 to the Comptroller
    - \$10 to go to DPS
  - \$10 stays with city
    - \$6 often the contracted rate with Omnibase

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### What are the issues?

- City shall immediately notify Omnibase that there is no cause to continue to deny renewal on payment of the fee and:
  - Perfection of appeal
  - Dismissal of charge
  - Posting or bond of other security to reinstate the charge
  - Payment or discharge of fine and costs owed
  - Other suitable arrangement with court to pay the fine/costs

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### What are the issues?

- **DPS may not continue to deny renewal after receiving notice:**
  - **From the city as discussed on previous slide**
  - **That the violator was acquitted for the charge**
  - **From the city that the flag was sent in error or the case records have been destroyed in accordance with records retention policy**

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### How effective is it?

- **As of March 1, 2011**
  - **10.1 million offenses entered**
  - **57.4% cleared**
  - **695 cities participating**
  - **236 counties participating**

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### **NONRESIDENT VIOLATOR COMPACT**

- **Chapter 703, Transportation Code**
- **Only applies to traffic violation, and not to**
  - **Offenses that mandate a personal appearance**
  - **Moving violations that alone carry a suspension**
  - **Equipment, inspection, registration, parking violations**
  - **Size and weight limit or hazardous material violations**
  - **Motor carrier violations**

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## How does it work?

- Upon violator's failure to comply with the terms of the citation for a traffic violation, court shall notify DPS of the failure
- DPS should then notify the violator's home jurisdiction
- Home jurisdiction should then notify the violator and suspend the driver's license until compliance

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You have failed to respond to the citation described in this notice by appearing in court, entering a plea and/or paying the fine within the prescribed time limit. Failure to appear or remit the fine to the court within 15 days from the date shown in the lower right corner of this notice will result in notifying the licensing authority in your state to suspend your driver's license until you respond or the fine has been paid.

CITATION NO.		VIOLATION DATE		LOCATION OF VIOLATION		SECTION VIOLATED	
DESCRIPTION OF VIOLATION				APPEARANCE DATE		FINE AND COSTS	
DRIVER'S LICENSE NO.		STATE	DATE OF BIRTH		NAME OF COURT		
NAME	LAST	FIRST	MIDDLE	SEX	MAILING ADDRESS		
STREET ADDRESS				CITY STATE ZIP CODE			
CITY		STATE	ZIP CODE		TELEPHONE NUMBER		CASE NUMBER
PLATE NUMBER	STATE	YEAR	MAKE	MODEL	AUTHORIZED BY		DATE

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## What are the issues?

- City must submit within 6 months of the date on which the citation was issued
- Cannot be transmitted to home jurisdiction if both jurisdictions were not already parties to the compact
- Compact states include all states except:
  - Alaska
  - California
  - Michigan
  - Montana
  - Oregon
  - Wisconsin

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# DMV SCOFFLAW PROGRAM

- Chapter 702, Transportation Code
- City must contract with TxDMV or county
- DMV or county may deny registration of vehicle for failure to appear-or- failure to pay on a complaint that involves the violation of a traffic law
  - Traffic law means a statute or ordinance punishable by a fine not to exceed \$200 that regulates the conduct or condition of a person operating a vehicle or the condition of a vehicle being operated
- Must have a warrant issued!

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## How does it work?

- Used to only be for home-rule cities; this limitation was repealed in 2011
- Contract directly with TxDMV to flag records of vehicles
- No per-se contract with the county, but an interlocal agreement is suggested, as the law only provides that the county MAY deny renewal
- City can submit probes (Inquires) to match vehicle registration with defendant
- City can then submit a flag
- A flagged record will display a scofflaw remark

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<p>MVDINGL.rdg. 04 8658MN</p> <p>10/21/2004 TEXAS DEPARTMENT OF TRANSPORTATION VEHICLE TITLES AND REGISTRATION DIVISION</p> <p>LIC FEB/2001 OLD # --NONE- N/A EWT 3200 GWT 3200 PASSENGER FLT, STR 30763DWB REG CLASS 25 \$ 69.80 EL PASO CNTY TITLE 07125336613085 ISSUED 04/12/2000 ODOMETER 31493 REG DT 03/30/2000 VR:1993 MAK:NISSA MODL:G35 BODY STYL:4D VEN CLS:PASS SALE PRC: 915206.80 VIN: 4A3AA46G8E8087572 BODY VIN: PREV OWN CASH NISSAN IN, EL PASO, TX</p> <p>OWNER FREDRICK, EL PASO, TX, 79906 LIEN 03/14/2000, AMERICREDIT FINANCIAL SVCS INC, PO BOX 192673, ARLINGTON, TX, 76096 PLATE AGE: 0 LAST ACTIVITY 01/29/2004 TITLE OFC: 999 REMARKS RELEASE OF PERSONAL INFO RESTRICTED .ACTUAL MILEAGE.COUNTY SCOFFLAW: 071.</p>	<p>MVDINGI8-- LAST RECORD AVAILABLE</p>
<p>*TITLE</p> <p>MVDINGL.rdg. 04 8938TC</p> <p>10/21/2004 TEXAS DEPARTMENT OF TRANSPORTATION VEHICLE TITLES AND REGISTRATION DIVISION</p> <p>LIC JAN/2003 OLD # JUN/2001 EWT 3900 GWT 3900 PASSENGER FLT, STR 29524E2WD REG CLASS 25 \$ 51.80 EL PASO CNTY TITLE 07110716862131 ISSUED 03/23/2001 ODOMETER 143339 REG DT 02/14/2002 VR:1993 MAK:FORD MODL:EPF BODY STYL:4D VEN CLS:PASS SALE PRC: \$0.00 VIN: 1FMDU127TUDG654 BODY VIN: PREV OWN BARRIO MOTORS, EL PASO, TX OWNER MARLA, EL PASO, TX, 79907 LIEN 02/12/2001, BARRIO MOTORS, 4498 ALAMEDA, EL PASO, TX, 79905 STATE AGE: 3 LAST ACTIVITY 06/04/2004 BARFCT OFCI 999 REMARKS RELEASE OF PERSONAL INFO RESTRICTED .ACTUAL MILEAGE.CITY SCOFFLAW: EL PASO.COUNTY SCOFFLAW: 071.</p> <p>*TITLE AND REGISTRATION VERIFICATION*</p>	<p>MVDINGI8-- LAST RECORD AVAILABLE</p>

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## Registration renewals will contain a notice

The image shows a sample DMV registration renewal form. Two red circles highlight specific sections: one around the 'CITY OF DENVER - DENVER' section and another around a section titled 'NOTICE OF VIOLATION'.

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## How does it work?

- Violator receives notice at tax office
- Notice refers violator to the appropriate court
- Violator takes care of case at the court and obtains release document
- Violator returns to tax office to register vehicle

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## How does it work?

- City shall notify DMV / county (submit clear) on:
  - Entry of judgment and payment to the court of fine/costs
  - Perfection of an appeal
  - Dismissal of the charge
- After notice is received, county/DMV may not refuse to register the vehicle
- City may impose a \$20 fee against violator
  - May only be used to reimburse the DMV / county
  - DMV does not want the money

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### What are the issues?

- City must include a warning on citations for any “traffic law” that essentially warns defendants that the failure to appear or pay/satisfy the judgment might result in the person not being permitted to register a motor vehicle

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### What are the issues?

- Flag is only a “soft stop”
  - County tax office clerk must
    - Notice the remark
    - Participate in enforcement
  - Subcontractors should not process
    - But grocery store locations will likely not deny
- Online renewal is a “hard stop”

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## ACTIVE ENFORCEMENT

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## COLLECTION CONTRACTS

- Chapter 103, Code of Criminal Procedure
- City may contract with private attorney or private vendor to collect unpaid fines, fees, court costs and restitution ordered by the court
- Also for amounts in cases in which the accused has failed to appear
- If city has more than 1.9 million population, can run inside collection agency

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## How does it work?

- City can turn over amounts that are more than 60 days past due:
  - Remains unpaid on the 61<sup>st</sup> day after the amounts were ordered paid (in the judgment) or the defendant failed to appear
- City may authorize a 30% collection fee on matters referred to collection agency on amounts more than 60 days past due (or the amount to be paid that is communicated to the defendant as acceptable / amount ordered paid in later judgment)
  - Collection fee does not apply to case dismissed by court or to amounts satisfied through time-served or community service
  - If court determines defendant is indigent, has insufficient resources, or is otherwise unable to pay all of part of fine/costs, not liable for 30% fee

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## What are the issues?

- Negotiation of contracts
- What if case is dismissed or defendant is acquitted?
- Others?

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## ARREST WARRANT

### Pre-Judgment

- Article 15.01, Code of Criminal Procedure: A magistrate may issue an arrest warrant or a summons
- Article 17.19, Code of Criminal Procedure: Arrest warrant for bond forfeiture or surrender of principal
- Article 45.014, Code of Criminal Procedure: Upon sworn complaint or affidavit of probable cause, a judge may issue warrant for the arrest of the accused

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## CAPIAS PRO FINE

### Post-Judgment

- Defined in Article 43.015, Code of Criminal Procedure
- Means a writ that is
  - Issued by a court having jurisdiction of a case after judgment and sentence for unpaid fines and costs; and
  - Directed "to any peace officer of the State of Texas" and commanding the officer to arrest the person convicted of the offense and bring the arrested person before that court immediately"
- Must state the amount of the judgment/sentence and command the peace officer to bring the defendant before the court immediately or place in jail until the following business day if cannot be immediately

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## Defendant is arrested. Now what?

- Defendant is taken to county jail, where he is released upon payment of delinquent amount
- Defendant is taken before magistrate and a new bond is set
- Defendant is taken to the court of original jurisdiction, where court will determine his fate

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### **Commitment to Jail**

- **Article 45.046, Code of Criminal Procedure**
- **When a judgment and sentence have been entered against a defendant and the defendant defaults in the judgment, the judge may order the defendant confined in jail if at a hearing, the judge makes a written determination that:**
  - **The defendant is not indigent and failed to make a good faith effort to discharge fines/costs -or-**
  - **The defendant is indigent, has failed to make a good faith effort to discharge fines/costs, and could have done so without undue hardship**

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### **Jail credit for time served**

- **Article 45.048, Code of Criminal Procedure**
  - **A rate of not less than \$50 per period**
  - **Period is 8-24 hours**
  - **So... at least \$50 per 24 hours**

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### **CIVIL ENFORCMENT**

- **Article 45.047, Code of Criminal Procedure**
- **If after a judgment and sentence is entered, the defendant defaults in payment of a fine, the judge may order the fine and costs collected by execution against the defendant's property in the same manner as a judgment in a civil suit**

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### Civil Enforcement: Writ of Execution

- **Writ of Execution**
  - Legal process of enforcing judgment by seizing and selling property of debtor
  - Requested by prosecutor
  - Usually issued by clerk
- **Exempt property includes:** home furnishing, food, farming equipment, equipment used in a trade or profession, clothes, two firearms, one motor vehicle per member of family, two horses/mules/donkeys and saddle for each, 12 head of cattle, 60 head of other livestock, 120 fowl, household pets, life insurance policies, retirement plans and IRAs, current wages
- Can garnish amounts in checking/savings accounts

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### Civil Enforcement: Abstract of Judgment

- **Abstract of Judgment**
  - Lien filed on real property
  - Filed with the county clerk
  - Must be renewed every 10 years

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